Sharing IP: Things to Think About

A note from the [Intellectual Property Centre of Excellence](http://iservice.prv/eng/finance/ip/ip_centre_excellence.shtml) (IPCOE, CFOB)

Sharing our work as public servants is a laudable goal. Doing so is also in line with future goals and expectations from the Clerk of the Privy Council on down. However, as public servants, ESDC employees are expected to be sound stewards of the resources they handle in their daily work. This includes respecting legal obligations, including **intellectual property (IP)** rights.

# If I’m just sharing a document, do I *really* need to think about IP?

IP *always* applies. Most everything employees prepare is *automatically* subject to [copyright](http://iservice.prv/eng/finance/ip/docs/ip_faq.docx). So, **when an employee shares ESDC materials**, **they are sharing IP** (be it ESDC IP, third party IP, or some of each).

All ESDC employees are required to “protect ESDC’s IP in a manner that supports its mandate and objectives and to *respect the IP rights of third parties*” asper the [ESDC IP Management Policy](http://iservice.prv/eng/finance/ip/ip_Management_Policy.shtml#TOC8_2). This ESDC internal policy was implemented in February 2014. While it’s helpful to clarify such obligations in a policy, practically speaking many of that policy’s sections are also required *by law* (Copyright Act).

# *What should I consider* when sharing and licensing IP?

**Director General signoff is required** to grant IP licenses (permissions from ESDC to third parties, including in MOUs). This applies when ESDC permits third parties to publish, modify or do most any other acts with the IP. When deciding whether to share or license IP, context matters: consider the two points below.

## Ask: Is the IP all “ours to share”?

In terms of ***IP*** risks, there are few to none if ESDC is only sharing *its own* IP. Employees must respect the IP Management Policy, including Director General signoff on all licenses, but it should be relatively easy.

However, that changes when *third party IP* is involved. In this case, ESDC must make sure it has *all* the required third party permissions *to share*, with valid documents to prove it. Photos online (even those paid for by ESDC), texts written by contractors, articles extracted from the web – all of these are usually *not* ESDC-owned IP. Nor do they become ESDC-owned IP simply by being added to an ESDC product. (If you put someone­’s short story into an anthology, you don’t suddenly own that short story!) **ESDC should not share third party IP unless it has documented permission *to share* the IP, from the IP owner.**

## Decide: How formal is the arrangement *and* how public is the result?

The more formal the arrangement, *and* the more public or widespread the result, then the more diligence ESDC should put into the process. When sharing a single reference copy of a document so that someone outside ESDC can just have a quick look at it, *in* ***most*** *cases* there is no major IP concern.

However, *whenever* ESDC shares IP for the third party to reproduce (in print or online!) or reuse in any substantial way, such as in their internal training programs, there are real risks. If *ESDC lacks the required IP rights and permissions, or if those permissions* ***do not allow ESDC to share*** *the IP with a third party,* not only could ESDC potentially be “infringing” on the IP owner’s copyright – but we could *also* put the third party at risk of infringement claims! **This is why for formal sharing arrangements (such as interdepartmental letters of agreement) a thorough review of IP origins, ownership and documents, with a final DG signoff, is required**. The [IPCOE](http://iservice.prv/eng/finance/ip/ip_centre_excellence.shtml) is here to advise ESDC on these and other IP topics.