

# Managing Intellectual Property in Defence and Marine Procurement

\*Full article available at <http://www.tpsqc-pwgsc.gc.ca/app-acq/amd-dp/propriete-intellect-property-eng.html#s2>

## Industry and government collaborate on Principles for the Management of Intellectual Property in Defence and Marine Procurement

In 2017 Public Services and Procurement Canada, the Department of National Defence, Innovation Science Economic Development Canada and the Canadian Coast Guard worked with Canadian defence industry representatives such as Canadian Association of Defence and Security Industries (CADSI) and Aerospace Industries Association of Canada (AIAC), through the Defence Industry Advisory Group, to develop principles for the management of IP in defence and marine procurement.

The Principles for the Management of IP in Defence and Marine Procurement (Principles) provide a broad policy foundation for IP management in defence and marine procurement by the Government of Canada that:

- reflect the Government's national interests and strategic defence and marine capability needs
- reflect the defence industry's interests in the protection of privately developed IP as valuable business and economic assets and as a factor in creating and sustaining an innovative Canadian defence and marine industry
- recognize that the development, protection and commercialization of IP are critical among several priorities to advance a broader Canadian socio-economic agenda, including economic growth and jobs
- recognize that IP management occurs between the Government and defence industry in strategic and dynamic sectors subject to rapid technological changes, and emerging defence capabilities and vulnerabilities
- serve as a framework for adaptable, flexible, principles-based and outcome-based approaches using IP management strategies that help government secure needed capabilities and ensure value for money while bolstering industry innovation and sustainability, and
- serve as a framework to help define IP requirements, draft contracts and design bid evaluations at earliest stages in procurements, while also helping guide the management of IP throughout the lifecycle of defence and marine assets

The Principles align with the Canadian Government's *Contracting Policy* and *Policy on Title to Intellectual Property Arising Under Crown Procurement Contracts*, which prescribed a whole-of-government approach to IP management and addresses the ownership and licensing of intellectual property arising during a Crown procurement contract.

## **Principles for the management of intellectual property in defence and marine procurement**

The Principles reflect key points of agreement between government and the Canadian defence industry on how government intends to approach the management of IP throughout the life cycle of defence and marine assets [Footnote1](#).

The Principles serve as a framework for government and industry on the framing of requirements, the design of bid evaluations, and the drafting of contracts. They should also guide the management of IP during the life cycle of assets, seeking to balance the national interests of the government and the industry's interests to maximize benefits for Canada.

The Principles recognize that the development, protection, and commercialization of IP are among several priorities to advance the broader Canadian socio-economic agenda, such as economic growth and jobs.

The Principles also recognize that IP management discussions between governments and defence suppliers occur in strategic sectors subject to rapid technological changes, and emerging defence capabilities and vulnerabilities. As a result, governments are facing shorter and shorter procurement life cycles and having to return to market sooner to benefit from technological changes, while ensuring value for money.

Defence firms, on the other hand, are in a position to offer technological evolution through the lifecycle of products and offer new products and services which may significantly alter the performance or the cost of the item procured. Being able to take advantage of this dynamic market will require that IP discussions take place very early on during the procurement phase and be considered as a function of the life cycle of the product or service.

In this context, adapted, flexible, principles-based and outcome-based IP management strategies can help the Government secure needed capabilities, while ensuring value for money and working with industry to foster technological advantages and economic benefits.

## **Principles**

### **1. National interests**

IP management strategy delivers on national interests, including:

- Meeting **operational requirements** by securing necessary IP to fully use, maintain, and modify in order to respond to new risks and dispose of capabilities to achieve national security objectives
- Achieving **value for money** over the life cycle of the asset
- Fostering **economic benefit**, innovation, growth and jobs in Canada focusing mainly on valuable IP from emergent defence capabilities with export potential
- Fostering **competition** and competitive business environments

## **2. Protection of industry-owned intellectual property**

IP management strategy reflects industry's interests in the protection of privately developed IP as valuable assets that are critical to the financial strength of businesses.

## **3. Default ownership of intellectual property in the foreground information**

IP management strategy recognizes that the private sector is best suited to commercially exploit IP and reflects starting default position of contractor ownership of IP in the foreground information.

## **4. Balancing national interests and industry interests**

IP management strategy delivers the best possible balance between national interests and industry's interests to maximize benefits for Canada.

## **5. Mandatory government intellectual property rights and scaled approach to risk and complexity of the procurement**

IP management strategy defines mandatory government IP requirements in the background and foreground information adapted to the risk and complexity of the procurement and to the nature of the asset.

IP management strategy relies on standardized IP approaches for common/low risk procurements, and on more creative and flexible IP approaches for complex/high risk procurements.

## **6. Life-cycle approach**

IP management strategy considers and articulates a full life-cycle approach to identify, assess, protect, value and enforce IP at all stages of acquisition, use, maintenance and

disposal of asset, including Canada's long-term in-service support (ISS) interests and the potential to contract ISS separately at a later time.

## **7. Early engagement, collaboration throughout**

IP management strategy engages parties as early, continuously, and collaboratively as possible prior to acquisition and over the life cycle of an asset.

## **8. Clear, outcome oriented requirements**

IP management strategy articulates clear and outcome-oriented IP requirements, including third party access and use.

## **9. Motivational intellectual property approaches**

IP management strategy gives additional consideration to IP solutions beyond the mandatory IP requirements that provide added economic benefits to Canada.

## **10. Contractual remedies**

IP management strategy enables clear and robust remedies to ensure IP protection and compliance.

## **11. Government management of intellectual property, strategies, plans and practices**

Government manages IP in its control or custody in an effective, efficient, economical and ethical manner.

Government defines and executes IP management strategies, plans and practices to appropriately assess, acquire, exploit, protect and enforce IP.

## **12. Early identification of intellectual property issues, continued attention planning**

Government takes a proactive approach to IP planning to ensure that it is best positioned to acquire the necessary IP rights for the acquisition, in-service support, and disposal of defence capabilities.

## **13. Knowledgeable workforce**

Government provides IP expertise and training to its employees to build and maintain a knowledgeable workforce to deliver on the effective management of IP.

## **14. Government process: identify and record intellectual property**

Government maintains appropriate systems and processes to identify and record IP. The systems to identify and record IP complement or are linked to current government systems and generally do not duplicate asset and record management systems. In recording IP, government pays particular attention to any IP having public, strategic or significant financial value.

Please refer any enquiries on the Principles to [TPSGC.PAAchatsPolitiquesPI-APIProcurementPolicy.PWGSC@tpsgc-pwgsc.gc.ca](mailto:TPSGC.PAAchatsPolitiquesPI-APIProcurementPolicy.PWGSC@tpsgc-pwgsc.gc.ca)

## **Footnote**

### **Footnote 1**

For the purposes of the Principles, marine assets refer to goods and services procured for the Canadian Coast Guard under the Defence Procurement Strategy, the National Shipbuilding Strategy, and the Sustainment Initiative.