



**Asia-Pacific
Economic Cooperation**

APEC Policy: **APEC INTELLECTUAL POLICY**
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INTELLECTUAL PROPERTY POLICY

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ASIA PACIFIC ECONOMIC COOPERATION

INTELLECTUAL PROPERTY POLICY

1. INTRODUCTION

1.1 What this document is about

This document sets out APEC's policy in relation to Intellectual Property that is owned by APEC.

1.2 Why have an Intellectual Property policy?

An Intellectual Property Policy regulates how Intellectual Property is to be used and treated.

Recording this in a written policy ensures that there is a common understanding on the use and treatment of Intellectual Property ensures that that use and treatment is uniform, and that the policy is equitably applied in relation to all persons with whom APEC deals, including:

1. Economies
2. consultants retained by APEC
3. the private sector, including publishers, conference organisers, higher education institutions, and others.

APEC's standing and reputation will be affected, either positively, or adversely, by the manner in which its Intellectual Property, including its trade mark, is used and treated, and so recording this in an Intellectual Property Policy is important to protect APEC's reputation and standing.

1.3 What is Intellectual Property?

There are two types of Intellectual Property:

The first type is statutory Intellectual Property, that is Intellectual Property that exists by virtue of the legislation of an Economy, and includes:

1. trade marks
2. copyright (including software code)
3. patents (including software patents)
4. industrial designs
5. circuit layout rights, and
6. plant breeders rights.

Each of these is described below in the relevant sections of this policy.

The second type is Intellectual Property that is not protected by legislation, but instead is protected by general law legal principles.

This type of Intellectual Property is confidential information. It is also described below in its relevant section.

1.4 APEC's Intellectual Property, not an Economy's Intellectual Property

This policy applies only to APEC's own Intellectual Property. That is, Intellectual Property that is owned by APEC itself.

This policy:

1. does not apply to Intellectual Property that is owned by an Economy
2. does not impact in any way upon an Economy's own domestic laws concerning Intellectual Property in the Economy itself.

APEC's Intellectual Property needs to be owned by a legal entity.

This is important, for example, in relation to registered trade marks, where it would be impractical to record all the Economies as owners.

The APEC Secretariat owns other property to enable the functions of APEC to be carried out, such as the lease on its building, office furniture and equipment.

The APEC Secretariat similarly enters into legal agreements to enable the functions of APEC to be carried out.

Similarly, the APEC Secretariat will own APEC's Intellectual Property.

The APEC Secretariat will be the owner of APEC's Intellectual Property, just as it is the owner of other assets.

1.5 What Intellectual Property is important to APEC?

Not all the types of Intellectual Property mentioned directly impact upon APEC.

It is unlikely for example that APEC, or any consultant that it engages, will be concerned in the development of new products with unique designs that should be protected by the registration of an industrial design.

However, the following types of Intellectual Property are directly relevant to APEC's operations:

1. trade marks
2. copyright, and
3. confidential information.

How that is so is fully more explored in the sections below relating to each.

The remaining types of Intellectual Property are less likely to be relevant to APEC, but are also mentioned in this Policy below, as they may be important to APEC on specific projects undertaken by APEC.

1.6 IP Register

APEC will ensure that an Intellectual Property Register is maintained which records:

1. Trade Marks (both registered and unregistered) owned by APEC
2. Copyright in reports written for APEC
3. Other Intellectual Property owned by APEC
4. Licenses of Intellectual Property granted by APEC

5. Licenses of Intellectual Property granted to APEC

1.7 Administrator

The administrator of this Policy is the APEC Secretariat, which will undertake all tasks that are necessary for the administration of this Policy, and the management of APEC's Intellectual Property.

2. TRADE MARKS

2.1 What is a trade mark?

A trade mark is a name or designation that identifies a product or service.

APEC owns the following trade marks:

1. the following logo:



2. the name:
"Asia Pacific Economic Cooperation"
3. the acronym:
"APEC"
4. and all variants of the foregoing.

In some Economies, some trade marks may already be registered.

In others they are in the course of registration as at the date that this Policy comes into effect. Or, in relation to some trade marks, the decision may be made to allow the trade mark to remain unregistered.

The legal entity that is recorded as the owner of the trade mark is the APEC Secretariat.

These trade marks serve to identify APEC, and to link APEC to each occasion that they are used.

Some of those occasions may be:

1. reports published by APEC and others
2. meetings and events organised by APEC
3. meetings and events organised by others, including Economies, and the private sector.

2.2 What rights attach to the owner of a trade mark?

A trade mark confers upon its owner the exclusive right to use that trade mark.

The trade mark owner may accordingly prevent or restrict any unauthorised use of its trade mark.

The use of a trade mark by a person that is not the owner requires the owner's consent, which is customarily given by the issue of a trade mark license. This is described below.

2.3 Why is a trade mark important to APEC?

APEC's standing and reputation will be affected, either positively, or adversely, by the manner in which its trade mark is used.

For example, when the trade mark appears on a report that serves an important policy or educational function, APEC's reputation and standing is enhanced.

Conversely, if the trade mark were to appear on a report that is not authorised by APEC, of questionable quality, with questionable conclusions or recommendations, APEC's reputation and standing is detrimentally affected. APEC's standing and reputation as an organisation with high standards which disseminates important and reliable reports will be detrimentally affected.

Similarly, if the trade mark were to appear on unauthorised promotional material for a meeting unconnected with APEC, and with which APEC did not wish to associate itself, then its reputation and standing might be adversely affected.

Any misuse of a trade mark may well be likely adversely affect APEC's reputation and standing.

Like all trade mark owners, APEC wishes to ensure that its trade mark is used in a manner that enhances its reputation and standing, and is concerned that its trade mark is not misused, with the risk that its reputation and standing is adversely affected.

The reputation and standing of Economies is also affected.

Any misuse or improper use of APEC's trade mark will not only adversely affect APEC's reputation and standing, but may well adversely affect an Economy's reputation and standing as well. The standing and reputation of both APEC and its Economies are linked in a way that may have this affect.

2.4 Policy: Use of trade mark by APEC Secretariat

The APEC Secretariat will consider each occasion that it will use the APEC trade mark. .

The APEC Secretariat will consider in relation to each such occasion APEC's reputation and standing, and whether there is any possibility that its reputation and standing may be adversely affected by the use of its trade mark on that occasion.

In making that determination, the APEC Secretariat will consider not just the occasion when the trade mark is proposed to be used, but as well:

1. the manner and style of the use
2. other names, organisations and trade marks that will appear on the same document or file, or will be otherwise linked to the document or file, and the reputation and standing of the organisations associated with those organisations
3. other names, organisations and trade marks that will be linked to or associated with any meeting or event with which APEC's own trade mark will be linked, and the reputation and standing of the organisations associated with those organisations
4. any other fact or circumstance that it considers should be taken into account.

The APEC Secretariat will decide upon the appropriateness or inappropriateness of the use of the APEC trade mark on any particular occasion.

If the APEC Secretariat considers that any special guidelines should be imposed in relation to that occasion to properly protect APEC's reputation and standing, it will formulate those guidelines and comply with them.

Where the APEC Secretariat has reasonable grounds to believe that APEC's reputation or standing may be adversely affected by the proposed use of the trade mark, it will decide not to use APEC's trade mark.

2.5 Policy: Use of trade mark by Economies

Separate license for host Economy

Relativity of prominence between APEC logo and other logo

As is always the case, the use of a trade mark by anyone that is not the owner will require a license.

An Economy that will be APEC's Host Economy will be issued a license to use trade marks for the purposes required while it is the Host Economy for that year.

An Economy otherwise wishing to use APEC's trade mark must apply to the APEC Secretariat for such a license.

The application for the license must be in writing, and must be accompanied by all information concerning the proposed use that APEC will reasonably require to properly consider the application.

This may include by way of example, a description of the meeting or event in relation to which it is proposed to use the trade mark, the program, relevant dates, details of other organisations connected with the meeting or event, etc.

The APEC Secretariat will consider each application for a license, and will apply the same considerations as operate in relation to its own use of the APEC trade mark that are set out in section 2.4.

The APEC Secretariat may issue a trade mark license to the Economy upon terms that are appropriate for the Economy's need for the trade mark license.

2.6 Policy: Use of trade mark by persons and organisations other than Economies

Similarly, any proposed use of APEC's trade mark by a person or organisation other than an Economy will require a trade mark license.

The following may for example seek a trade mark license from APEC:

1. the organiser of a meeting or other event
2. a publisher of a report.

As is the case with an Economy, a person or organisation wishing to use APEC's trade mark must apply to the APEC Secretariat for such a license.

Similarly, the application for the license must be in writing, and must be accompanied by all information concerning the proposed use that APEC will reasonably require to properly consider the application.

This may similarly include by way of example, a description of the meeting or event in relation to which it is proposed to use the trade mark, the program, relevant dates, details of other organisation connected with the meeting or event, etc.

The APEC Secretariat will consider each application for a license, and will apply the same considerations as operate in relation to its own use of the APEC trade mark that are set out in section 2.4.

The APEC Secretariat may issue a trade mark license to the applicant upon terms that are appropriate for its need for the trade mark license.

3. COPYRIGHT

3.1 What is copyright?

Copyright is a legislative right that relates to various classes of works, including:

1. written works (such as reports, promotional material, etc)
2. data (including tables and databases)
3. software code
4. drawings, diagrams and charts
5. photographs
6. maps
7. sound recordings, recorded by any means including CDs
8. video recordings, recorded by any means including DVDs.

This list is not exhaustive, but serves to illustrate the type of works in which copyright subsists.

Copyright subsists in works that are in a material form, that is, tangible (like books, pages, posters, microfilm etc), as well as works in electronic form or which can only be viewed with the assistance of a machine (like computer files).

3.2 What rights attach to the owner of copyright?

The copyright owner has exclusive rights in relation to the copyright work, including the following exclusive rights:

1. to copy or reproduce a work
2. to publish it
3. to translate it
4. to adapt it.

A copyright owner may prevent or restrict any unauthorised use of its copyright work.

The use of a copyright work by a person that is not the owner requires the owner's consent, which is customarily given by the issue of a copyright license.

3.3 Why is copyright important to APEC?

For APEC to achieve its objectives, APEC must be able disseminate works in which copyright subsist.

APEC must also, if it so chooses, be able to embargo the publication of a copyright work until an appropriate release date.

APEC must also be able to prevent the misuse of copyright works, for example, by their publication or use for profit making purposes, without compensation to APEC.

APEC accordingly needs to own works in which copyright subsists that are relevant to APEC's operations.

3.4 Policy: Copyright in works created by APEC Secretariat staff

Works in which copyright subsists that are created by APEC Secretariat staff in the course of their duties within the APEC Secretariat will be owned solely by APEC.

3.5 Policy: Copyright in works created by contractors engaged by APEC

Original works in which copyright subsists that are created by contractors engaged by APEC will also be owned solely by APEC.

Consultancy agreements entered into by APEC with contractors will provide for the assignment of the copyright in those original works by the contractor to APEC.

APEC realises however that contractors may in their reports and other deliverables to APEC reproduce copyright works that are owned otherwise than by the contractor.

APEC will be concerned that it does not inadvertently infringe another person's copyright by reproducing for example, a written report provided by a contractor, where the contractor includes in that report, another person's copyright work.

In relation to those deliverables from contractors in which copyright subsists, but which are not original works written by the contractor in the course of its engagement by APEC, the contractor will be expected to have procured a license from the copyright owner upon such terms as permits:

1. the contractor to include the work in its deliverable to APEC,
2. the contractor to grant a non exclusive worldwide license to APEC to reproduce and use the work for APEC's purposes.

3.6 Policy: License of copyright in works to contractors

APEC realises however that contractors engaged by APEC may have a reasonable expectation that they will be able to use the copyright works that they have created during their engagement by APEC, for their own purposes.

This may be reasonable where, for example, the contractor that is engaged is:

1. a government department or agency of an Economy, or
2. a higher education institution.

APEC does not think it unreasonable that such a contractor should be able to use the copyright work that it has created in the course of its engagement by APEC.

In such cases, APEC will consider granting a license to the contractor to reproduce the copyright work.

This license may be with conditions, such as:

1. the use is for the non profit making purposes of the contractor, namely:
 - (a) in the case of a government department or agency of an Economy – the proper purposes of the Economy, and
 - (b) in the case of a higher education institution – for educational and research purposes
2. the copyright work is reproduced fairly, and not out of context or in any way that would adversely affect APEC's reputation and standing
3. APEC's ownership of the copyright work, and license to the contractor, is acknowledged.

Such a license is not expected to require any payment to APEC.

However, where the contractor intends to put the copyright work to a profit making purpose, it would be expected that the license will require the payment of a reasonable royalty or license fee to APEC.

Such a license will not commence however, until APEC first publishes the work. It would be inappropriate for the first use of the copyright work to be made by anyone other than APEC, whose resources, including financial resources, were used to bring the work into existence.

Such a license however, would not include the right to reproduce or use any copyright works owned other than by APEC. For example, if copyright works owned by an Economy are provided to a contractor that is engaged to undertake a study and provide a report, while a license in respect of the report may be granted, no license would be granted by APEC in relation to the Economy's copyright works.

3.7 Policy: License of copyright in works to others

APEC will consider any request for a license of its copyright works from a person other than the contractor engaged to have created it, and will consider any appropriate terms to include in such a license.

Again, where it is intended that the copyright work will be put to any profit making purpose, it would be expected that the license will require the payment of a reasonable royalty or license fee to APEC.

3.8 What are moral rights?

Moral rights are rights that rest with the author of a copyright work.

There are two moral rights:

1. Fair attribution

This is the right of an author to be identified as the author of a work.

It is also the right of the author not to have authorship wrongly attributed.

2. Integrity

This is the right of an author not to have the work altered or used in such a way that it harms the honour or reputation of the author.

These moral rights last for the duration that copyright subsists.

They cannot be assigned or transferred. As a result, they always remain with the person employed by a contractor engaged by APEC.

Strictly speaking, these moral rights cannot be waived. They are personal rights that are incapable of being extinguished.

It is sometimes the case that moral rights are sought to be waived or released.

Effectively, an author is asked to sign a document by which the author promises not to seek any legal remedy in the event that the author's moral rights are infringed.

The validity and effectiveness of these legal techniques to circumvent moral rights have not been fully tested.

3.9 Policy: Moral rights

Given the nature of moral rights, it is difficult to anticipate any need that APEC may have to seek to have any waiver or release of moral rights held by an author.

APEC realises that a contractor cannot itself waive or release the moral rights of its staff.

APEC also realises that a contractor such as a government department or agency of an Economy, or a higher education institution, will not readily agree to seek a waiver or release of moral rights from its own staff, and also realises that the staff of such an employer will not readily agree to such a waiver or release.

APEC additionally recognises that a waiver or release is of questionable legal value.

APEC will observe the moral rights of authors. This includes its own staff members, as well as staff members of contractors.

4. CONFIDENTIAL INFORMATION

4.1 What is confidential information?

Confidential information is:

1. information
2. which is not in the public domain, and where it is sought to ensure that it continue to be outside the public domain, including temporarily.

Any type of information can be subject to confidentiality.

Some examples are:

1. information concerning APEC's operations or an Economy's operations
2. information provided by an Economy, through APEC, to a consultant, for the purposes of undertaking consultancy services
3. the contents of the consultant's report itself.

Information must be distinguished from copyright.

Copyright concerns rights of reproduction, publication etc, of the form of a work.

Information however is the concepts and ideas contained in a work.

4.2 What rights attach to the owner of confidential information?

The owner of confidential information (using the word owner loosely, as information cannot as such be owned) is entitled to restrict its dissemination.

If another person attempts to disseminate the confidential information without the owner's sanction, the owner may seek legal orders preventing its unauthorised dissemination.

4.3 Why is confidential information important to APEC?

Information that is outside the public domain may for example be sought to always remain outside the public domain.

A good example is information provided by an Economy, through APEC, to a consultant, for the purposes of undertaking consultancy services.

Or, information that is outside the public domain may be sought to remain outside the public domain for a limited time, for example, to be launched at a meeting or event.

It would be inappropriate in these circumstances for the information to enter the public domain earlier than its planned release.

4.4 Policy: Confidential Information

APEC will require its consultants to maintain confidentiality about APEC's information, which includes information provided for the purpose of a consultancy, as well as the reports delivered in the course of the consultancy.

APEC will also require its consultants not to use any such information in any manner.

These obligations will cease, as is customary, when information

1. enters the public domain, since from that time it loses its confidential character
2. is communicated to a person without any obligation of confidentiality,
3. can be demonstrated to have been independently developed.

Any license to a consultant to use APEC's information will commence only when the information first enters the public domain by APEC's dissemination of the information.

5. PATENTS, INDUSTRIAL DESIGNS, CIRCUIT LAYOUT RIGHTS, PLANT BREEDERS RIGHTS

5.1 What is a patent?

Patents are granted in relation to inventions and discoveries, and may operate in relation to new products and processes. In recent years their coverage has extended to software, and to business methods.

A granted patent is intended to confer upon the patent holder the exclusive right to exploit the patented invention or discovery.

This is achieved by the patent conferring upon the patent holder the right to exclude others from exploiting the patent, including, if necessary, by legal action.

5.2 What is an industrial design?

Industrial designs are registered in relation to the unique physical appearance or design of new products. Examples include: the unique shapes and designs of mobile telephones, and the unique shapes and designs of furniture.

5.3 What are circuit layout rights?

Circuit layout rights subsist in relation to layout designs in integrated circuits and computer chips. These integrated circuits and computer chips are highly complex and the key to the operation of electronic devices such as computers.

5.4 What are plant breeder's rights?

Plant breeder's rights can be registered in relation to new varieties of plants and seeds. These types of rights are particularly valuable in relation to, for example, new disease resistant or pest resistant crops.

5.5 APEC and these types of rights

Having regard to APEC's past activities, it is considered most unlikely that APEC's projects would generate the types of Intellectual Property referred to in sections 5.1 to 5.4.

It is acknowledged however that this may occur in the future.

APEC will watch for any projects or circumstances where it should protect its interests in relation to the types of Intellectual Property rights referred to in sections 5.1 to 5.4, and will consider what measures may be appropriate to protect its interests on any such occasions.