

**Education and Workforce Development Cabinet
POLICY/PROCEDURE**

Policy Number: EDU-14

Effective Date: October 1, 2006
Revision Date: December 20, 2012

Subject: Intellectual Property Rights

Policy: This policy supports the Education and Workforce Development Cabinet (EDU) regarding Intellectual Property.

Scope: This policy applies to all EDU employees and contractors, including all persons providing contractor services, who use, access, process, or store computerized data relevant to agency business on an EDU maintained server or workstation.

Policy/Procedure Maintenance Responsibility: The EDU Agency Security Contacts (ASC) is responsible for the maintenance of this policy. The Chief Information Officer (CIO) is responsible for the revision of the EDU Policy and Procedures Manual (PPM). The EDU CIO is responsible for authorizing all changes to the PPM.

Applicability: All EDU employees and contractors shall adhere to the following policy.

Responsibility for Compliance:

Each Department is responsible for assuring that employees within their organizational authority have been made aware of the provisions of this policy, that compliance by the employee is expected, intentional misuse and/or inappropriate use may result in disciplinary action pursuant to KRS 18A up to and including dismissal. It is also each Department's responsibility to enforce and manage this policy.

Overview: To establish a common, uniform policy for Education Cabinet agencies regarding the ownership and distribution of software code and related intellectual property.

Definitions:

Software Code – Programming statement that are created and then saved in a file. Programming statements typically conform to the structure and syntax rules of a particular programming language. This includes derivative products, such as object codes, run time modules, etc.

Intellectual Property – A commercially valuable product of the human intellect, in a concrete or abstract form, such as a copyrightable work, a protectable trademark, a patentable invention, or a trade secret.

Policy:

Unless explicitly covered in a contract executed by an authorized state official, all computer software and related intellectual property developed by State employees or (contract) personnel, or companies, on behalf of the State is the sole property of the State. The software may not be distributed for sale, lease or given to other entities outside of the Education Cabinet without authorization from the Secretary of the Education Cabinet.

Programs and related intellectual property written by State employees or contract personnel, on non-state owned equipment, on behalf of the State are the property of the State, and all State ownership, copyright, security, access policies and standards apply absent a specifically written waiver signed by the Secretary of the Education Cabinet. All contract personnel shall be considered and treated as “work for hire”, upon completion or termination of the contract, nondisclosure or non-compete provisions apply.

All original software, software code and related intellectual property developed, created, or partially developed by the Contractor in the performance of its obligations under a Contract or any Task Order issued under a Contract, are the sole property of the State. The Contractor will surrender any and all work product materials including but not limited to, original written materials, including any reports, studies, designs, drawings, specifications, notes, documents, software and documentation, computer-based training modules, electronically or magnetically recorded mater, used to develop this software and/ or software code and related intellectual property to the Education Cabinet.

Procedural Issues:

State entities must publish and distribute the ownership of software code and related intellectual property policy to all IT managers and employees responsible for the development and maintenance of software.

State entities may not sell or share software code and related intellectual property unless the sale or sharing of the asset has been approved by the Secretary of the Education Cabinet.

State entities receive approval by first preparing a disclosure of intent to sell or transfer software code and intellectual property. This intent document should be submitted to the Secretary for the affected branch of government. The Secretary of the Education Cabinet must approve sale or transfer before any action is taken. If multiple branches of government are affected, the

Cabinet Secretary for each agency must be notified and approve the transaction. The affected state entity and the appropriate Cabinet Secretary must take into account any security ramifications, as well as restrictions and conditions applied to the software by the federal government.

State entities must identify Software code and intellectual property that is involved with mission critical applications, which if compromised could affect the entity's operation.

All transactions of software code and related intellectual property must be documented. The documentation should include provisions for ownership of software code and intellectual property and any limitations of use by acquiring parties, including but not limited to confidentiality provisions and restriction, if applicable.

When sharing software code and intellectual property with a source outside of a state entity, a disclaimer will be attached specifying that the state will not be responsible for any maintenance or upkeep of the software by the state.

When federal funding is involved, "the State government must include a clause in all procurement instruments that provides that the State will have all ownership rights in software or modifications thereof and associated documentation designed, developed or installed with Federal financial participation".

RESPONSIBILITIES:

Heads of divisions, departments, agencies, boards, commissions, and other state entities, are responsible for establishing procedures to insure their organization's compliance with the requirements of this policy.

Review Cycle:

Annually

Timeline:

Review Date: December 10, 2012

Reviewed by: EDU Agency Security Contacts

Enterprise Security and Policies

Cross Reference:

OTS Standards

Cross Reference: