

DIGITAL MEDIA RIGHTS FRAMEWORKS – PUBLIC ORGANISATIONS

INTRODUCTION

These guidelines set out the rights frameworks under which Public Organisations will commission stand-alone new media propositions.

They aim to give clear guidance to both commissioners and suppliers about the way rights should be treated in new media commissions.

All parties recognise that this is an evolving market and the guidelines will need to be kept under review and developed as the market develops.

They are aimed at ensuring that Public Organisations are able to meet their public service commitments while at the same time allowing suppliers to retain and exploit rights where appropriate.

They are intended to apply to stand-alone digital media commissions and not to professional services e.g. technical consultancy.

DIGITAL MEDIA RIGHTS FRAMEWORKS

The headlines for the six Digital Media Rights Frameworks are as follows:

Framework 1 - The Public Organisation acquires by assignment all rights in material produced under the terms of the commissioning arrangements. The public organisation makes the materials available for re-use and development for all, under standard, non-exclusive terms.

Framework 2 - The Supplier owns and retains all rights to any new stand alone IP they bring to the Public Organisation; the Public Organisation takes an exclusive licence only. Any publicly-owned data will be made available for licence under Crown Copyright.

Framework 3 - The Supplier licences their existing third party rights to the Public Organisation on a non-exclusive basis.

Framework 4 - The Supplier licences their off the shelf technology product to the Public Organisation on a non-exclusive basis.

Framework 5 - The Supplier licences their off the shelf technology product to the Public Organisation on a non-exclusive basis, but the Public Organisation owns (or may take a non-exclusive licence in) the bespoke development which it specifies and pays for.

Framework 6 - The Public Organisation commissions bespoke technology with the explicit goal of making it open-source – i.e. with non-existent copyright restrictions.

Key points to using the Rights Frameworks:

- The Public Organisation's commissioners should identify which Rights Framework applies before asking suppliers to respond to a request for a proposal.
- The question of how any revenues from commercial exploitation is shared will need to be discussed and agreed before asking suppliers to respond to a request for a proposal.
- Suppliers should then provide a fully-costed proposal which should include all necessary fees, payments etc.
- The majority of commissions will fit under one of these Frameworks, but it is also accepted that some may not; given the varied nature of these commissions there will need to be some flexibility in how they operate.

DIGITAL MEDIA RIGHTS FRAMEWORKS

Description	Key Features
<p>Framework 1:</p> <p>Public Organisation Owns</p> <p>a stand-alone commission based on an existing idea or brand which the public organisation makes available to all.</p> <p>Note: Where the Public Organisation asserts its ownership of an idea, the Public Organisation should be able to specify the following:</p> <ul style="list-style-type: none"> • User interaction • Content • Target audience • Deliverables 	<p>Under this model the supplier, will have the opportunity of developing new stand alone products based on the materials delivered but other organisations would also be entitled to the same rights.</p> <ul style="list-style-type: none"> • All rights granted are non-exclusive • The same terms are applied to all • The licensee has ownership of the resultant product • One licence covers various material and various uses • Supplier would retain any pre-existing, underlying technology rights but grant the Public Organisation a non-exclusive licence for use of the technology as part of the commission for all public service and commercial uses i.e. the licence would need to be perpetual and sub-licensable.
<p>Framework 2 : Supplier Owns</p> <p>New stand-alone IP commissions.</p> <p>Note: if commissioned as part of an in-house idea, then Framework 1 will apply</p>	<ul style="list-style-type: none"> • Supplier digital media content proposal (e.g. broadband service) • Supplier retains rights in the proposal; the Public Organisation has an exclusive licence for all public service uses for one year with an option to extend for another year for an additional fee. This may not be required for some projects and these will be identified at the commissioning stage. • Public Organisation retains rights in any of its own branding or look and feel. • Publicly-owned data will be retained by the Public Organisation and will be made available under a Crown Copyright Licence • During the Public Organisation's exclusive licence, Supplier can exploit the same proposition commercially beyond the Public Organisation's specific use • Any commercial exploitation opportunities in the UK outside of the Public Organisation's specific use licence should be subject to the Public Organisation's approval. • Any new technology rights created as a result of writing code shall be retained by the Supplier who grants the Public Organisation a non-exclusive licence for use of the technology as part of the commission. • From time to time the Public Organisation may wish to own bespoke technology rights specified by the Public Organisation, but this should be highlighted by the commissioner up front and the commissioned price should reflect that these rights are being acquired, (unless agreed subsequently in which case it should be paid for as an addition to the commissioned price).

Framework 3: Third Party Rights or Services Licence Deal	<ul style="list-style-type: none"> • This is a licence of existing third party content e.g. text, images and other content or services. • This will involve largely non-exclusive licence of pre-existing content or services for a stated period. • There will be occasions when the Public Organisation wishes to take an exclusive licence for a period, but this will form part of the individual negotiation at the time. • Clearly there will be a price differential between an exclusive and a non-exclusive deal. Example: a non-exclusive licence of generic images for all public services uses.
Framework 4: Technology Licence Deal	<p>This is for a standardised off-the -shelf technology product or application which can be supported by the supplier. Example: web search.</p> <ul style="list-style-type: none"> • The Public Organisation would take a non-exclusive licence to use the technology for all relevant public service uses for the duration required, and which will relate to the licence fee. • The supplier retains ownership of all pre-existing technology, but not of any of the IP which is running through the software application or any associated data which will be owned by the Public Organisation (and which may be opened up under other licences)
Framework 5: Bespoke Technology Deal	<ul style="list-style-type: none"> • Under this framework, the Public Organisation would own the bespoke technology, i.e. the technology created to the Public Organisation's specific technical requirements or purpose, and would require only a non-exclusive licence of the pre-existing, underlying, technology. • The external supplier retains ownership of pre-existing underlying technology but not to the bespoke elements. • There may however be instances where the Public Organisation is satisfied with a non-exclusive licence for the bespoke element, as well as for the pre-existing underlying technology rights, provided the Public Organisation has all of the rights it needs to use the technology for its purposes. • The supplier retains ownership of all pre-existing technology but not of any of the content which is running through the software application or any associated data which will be owned by the Public Organisation. • Rights to bespoke technology would be made available under Crown Copyright licence.
Framework 6: Open-Source Technology Deal	<ul style="list-style-type: none"> • The Public Organisation commissions bespoke technology with the explicit goal of making it open-source – i.e. with non-existent copyright restrictions. • This should be highlighted by the commissioner up front and the commissioned price should reflect that these rights are being acquired

DIGITAL MEDIA RIGHTS FRAMEWORKS:**NOTE on Source Code and Object Code in digital media commissioning:**

Where software programme code forms part of a commission, ownership and use of source code and object code also needs to be clear. The Public Organisation will follow the following principles:

- Where the Public Organisation has a licence only (Frameworks 2, 3 & 4), the Public Organisation will require i) delivery of and a licence to use the object code for the purposes of the commission and ii) delivery of and a licence to use the source code for the purposes of security checking and quality assurance only and for no other use (unless otherwise agreed in writing).
- Where the Public Organisation will own rights in a new media commission (Frameworks 1 and 5), the Public Organisation will require delivery and ownership of all new source code and object code created as part of the commission. This is so that the Public Organisation can edit, modify and maintain and otherwise use the new code created as a result of the commission.
- Where the Public Organisation has a licence to use the source code only for the purposes of security checking and quality assurance, the Public Organisation may also require the supplier to provide support for a further 12 months (or longer) after the warranty period (including an agreed rate card).
- Where source code is crucial to output, the Public Organisation may require a supplier to lodge a copy of the source code with a third party escrow agreement, such that it is accessible in the event of certain trigger events (bankruptcy etc). The Public Organisation commissioner should consider whether an escrow agreement is required at the point of commissioning.