California State Auditor

BUREAU OF STATE AUDITS

State-Owned Intellectual Property:

Opportunities Exist for the State to Improve Administration of Its Copyrights, Trademarks, Patents, and Trade Secrets

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November 16, 2000 2000-110

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning the State's administration of its intellectual property. Intellectual property typically consists of copyrights, trademarks, patents, and trade secrets. This report concludes that many state agencies are not sufficiently knowledgeable about the intellectual property they own. Lacking adequate knowledge of their intellectual property ownership and rights, state agencies could fail to act against those who use the State's intellectual property inappropriately. Inappropriate use includes unauthorized use of state trademarks and improperly profiting on products developed at state expense. Further, we note that state-level direction for administering intellectual property is limited. The few state laws that address intellectual property do so in a piecemeal fashion. We also point out that state agencies have either no or incomplete written policies for managing their intellectual property.

Finally, although our survey of state agencies and other work we performed identified more than 113,000 items of state-owned intellectual property, the State likely owns more. For each of the 125 state agencies identified as having intellectual property, we list the quantity of each type of intellectual property owned as part of the report.

Respectfully submitted,

STEVEN M. HENDRICKSON
Chief Deputy State Auditor

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SUMMARY

Audit Highlights . . .

Our review of the administration of state-owned intellectual property disclosed the following:

- ☑ ***A lack of sufficient knowledge by state agencies of the intellectual property they own can hamper the State's protection of its interests.***
- ☑ ***Not only is state-level direction for administering intellectual property limited, but state agencies have either no or incomplete policies for its management.***
- ☑ ***Although our survey of state agencies and other work we performed identified more than 113,000 items of state-owned intellectual property, the State likely owns more.***

RESULTS IN BRIEF

Many state agencies are not sufficiently knowledgeable about the intellectual property they own.[1] Intellectual property consists primarily of copyrights, trademarks, patents, and trade secrets. Lacking adequate knowledge of their intellectual property ownership and rights, state agencies could fail to act against individuals and entities that use the State's intellectual property inappropriately. Inappropriate use includes improperly profiting from products developed at state expense, unauthorized use of trademarks to imply state approval, and claiming patent rights to state-developed inventions.

As part of our review of state-owned intellectual property, we surveyed state agencies. The survey's results, combined with other work we performed, disclosed that more than half of them actually own some form of intellectual property whether they know it or not. Typical properties held by state agencies include documents, web sites, and software, which can be copyrighted; and agency logos and acronyms, which may qualify as trademarks. Few state agencies report owning patents and trade secrets.

The results of our review of the intellectual property owned by state agencies revealed that, although 125 agencies had more than 113,000 identified items of intellectual property, state-level direction concerning intellectual property is limited. This lack of direction contributes to state agencies not being knowledgeable about the intellectual property they own, and in some instances, agencies believing that they are not authorized to own or formally protect through registration intellectual property they create. For instance, 74 state agencies that indicated they had no intellectual property failed to identify their web sites, which can be copyrighted. Further, the web sites for nearly three dozen of these agencies showed agency logos, which likely qualify as trademarks. For these and other reasons, we believe that the State actually owns more intellectual property than our report identifies.

[1] Throughout this report, the term *state agency* refers to any type of state entity, regardless of its formal name (e.g., agency, board, bureau, commission, council, department, university, etc.).

When state agencies do not adequately administer their intellectual property, they risk being unable to act against people or entities that use it inappropriately. Weak administration of intellectual property could, for example, lead to the State's failure to act against a vendor that deceives consumers by inappropriately using a trademark, such as a state agency's logo, in connection with its products or services to imply approval by the State. It could also result in inaction against a publisher that improperly sells state-copyrighted information that a state agency otherwise provides free or at low cost. Likewise, weak administration could cause the State to pay unnecessary license fees to a patent owner to use a device that the State actually invented or paid a contractor to invent for it.

Proper administration of intellectual property would allow state agencies to act against others who infringe on their rights to control how their property is used. For example, because the California Department of Alcohol and Drug Programs was aware of its intellectual property rights, it was able to prevent a person from operating a pornographic web site with a name that was identical to one of the department's federally registered trademarks.

Our review of the State's overall administration of its intellectual property revealed other weaknesses. For example, many state agencies have no written policies for intellectual property management. Of those written policies provided to us, none provides complete guidance to help the agency to, among other things, identify items that could qualify as intellectual property, determine whether to formally protect intellectual property, and enforce its rights against those infringing on the intellectual property.

A final concern we observed was the limited extent to which state agencies appeared to capitalize on their intellectual property. Capitalizing on their intellectual property may lead to reduced contract costs or the development of new revenue sources. Yet, state agencies do not have statewide guidance that describes the circumstances under which they can or should capitalize on their intellectual property. We also question whether the State's use of standard contract language that essentially gives contractors a free license to use or sell intellectual property is in the best interest of the public.

RECOMMENDATIONS

The Legislature should clarify state law to specifically allow all state agencies to own and, if necessary, formally register intellectual property they create or otherwise acquire when it is deemed to be in the public's best interest.

The Legislature should designate a single state agency as the lead for developing overall policies and guidance related to state-owned intellectual property. This agency should be responsible for, among other tasks:

- Developing an outreach campaign informing state agencies of their rights and abilities concerning intellectual property.
- Establishing guidelines for use by state agencies in administering their intellectual property, including establishing policies concerning the criteria for determining which products will be treated as intellectual property, which should be placed into the public domain, and factors that state agencies should consider when deciding whether to sell their intellectual property or license it to others.

Finally, the Legislature should consider whether the interest of the public is best served when the State uses standard contract language that essentially gives contractors a free license to use and sell intellectual property they develop for the State. ■

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INTRODUCTION

BACKGROUND

The term *intellectual property* describes products of the mind, such as ideas, inventions, and creations. Unlike real property such as land, intellectual property is intangible. As a type of personal property, however, intellectual property is protected by law.

There are four primary types of intellectual property: copyrights, trademarks, patents, and trade secrets. Taken as a whole, federal, state, and common law provide intellectual property owners with an extensive legal tool bag to protect the items they create. It is important to note that intellectual property laws enable an owner to pursue legal remedies against any person or entity that infringes on the owner's rights; they do not always give the owner the right to manufacture or produce a product. Infringement includes making unauthorized versions of the intellectual property or using it against the owner's wishes. See Appendix A for more information on certain legal aspects of the four major types of intellectual property.

Copyrights Protect Original Works of Authorship

A copyright grants an exclusive legal right to reproduce, publish, perform, display, distribute, or sell the content and form (such as print, audio, video, or electronic) of an original work of authorship. Examples include literary and artistic works, architectural drawings, audiovisual materials, publications, computer programs, web sites, data compilations, and maps.

Copyrights in the United States are governed exclusively by federal statute. To be protected by a copyright, the material in question must be an original creation and must be set in a "tangible form of expression": a vehicle from which it can be perceived, reproduced, or otherwise communicated. For example, a story cannot be copyrighted until its words are transcribed on paper or another form that allows people to read, hear, or otherwise perceive it. Likewise, a song cannot be copyrighted until its notes and lyrics are recorded or set in some other perceptible form.

Federal law recognizes two forms of copyrights: unregistered and registered. As soon as an author transcribes, records, or otherwise puts a work into some tangible form, federal law protects the work under a copyright. It extends certain rights solely to the owner, including the right to reproduce and distribute the work. Federal copyright law also allows copyright owners to secure additional protections by formally registering their copyrights with the federal Copyright Office. Although formal copyright registration is optional, there are advantages to having it. One advantage of registration is that it establishes a public record of the copyright claim. This puts the public on notice of the copyright and makes it more difficult for violators to claim they unknowingly infringed on it. A second advantage is that, with a formal registration, a copyright owner can file suit against any person or entity attempting infringement. Timely registration enables a copyright owner to claim attorneys' fees and statutory damages under federal law in infringement cases. Such claims can provide leverage in obtaining early resolution of infringement disputes on terms favorable to the copyright owner.

Trademarks Protect Names and Logos

A trademark is any name (McDonald's), word (McBurger), symbol (the golden arches), device (Ronald McDonald), slogan ("You deserve a break today"), package design (the Happy Meal box), or any combination of these features that identifies and distinguishes the source of goods produced by one entity from those goods produced by others. A service mark, which is protected under federal and state trademark laws, is used to distinguish the source of a service rather than a good.[2] Trademark rights are governed by federal, state, and common law. They give an owner the right to exclude others from using a specific mark or one confusingly similar to the owner's mark. To qualify as a trademark, a word, name or the like must be both distinctive and actually used by the owner.

Like copyrights, trademarks can be either unregistered or registered. Registration is not required to protect trademarks because trademark rights also arise under common law from the owner's actual use of the mark. Here again, however, registration offers the owner benefits that include public notice, evidence of ownership, and the right to claim litigation costs and certain damages.

[2] Throughout this report, we include the term *service mark* as part of *trademark*.

Trademarks in California can be registered with the federal Patent and Trademark Office and California's Secretary of State. Federal registration allows trademark owners to file infringement suits in federal court. Also, because state trademark registrations can usually be obtained faster than federal registrations, some trademark owners seek state registration to have its protections while the federal registration is pending.

Patents Protect Inventions and Discoveries

A patent is a property right that the federal government grants to an owner to exclude others from making, using, selling, or importing the patented item into the United States. Examples include inventions and discoveries, new industrial or technical processes, improvements to existing industrial or technical processes, business methods, or compositions of matter such as chemical compounds. In the United States, patents are governed exclusively by federal law and are issued by the federal Patent and Trademark Office. Only items that are novel, operable, and capable of use can be patented. In addition, the item must not be obvious to a person of ordinary skill in the field in which the item is used. Unlike a copyright or trademark, which offers the owner some protection even when it is not registered, a patent only protects an owner who files an application with the federal Patent and Trademark Office and meets the statutory requirements of that office.

Trade Secrets Protect Sensitive Information

A trade secret is any information used in an owner's operations from which value is derived because the information is not generally known. A trade secret must also be subject to reasonable efforts to maintain its secrecy. Common examples include formulas or recipes, patterns, data compilations, computer programs, methods, techniques, and processes. Until recently, trade secrets were governed only by state and common law. In 1996, the Economic Espionage Act made stealing trade secrets a federal criminal offense. Because there are no provisions for the registration of a trade secret, protection begins once the trade secret is identified as such by the owner, as long as it is secret at the time. Patent applicants generally will protect their product or process as a trade secret while their application is pending. Also, because patent registrations are not secret, some owners will protect their property as a trade secret rather than under a patent when they do not wish to disclose their property to others.

APPROACHES USED BY OTHERS TO ADMINISTER INTELLECTUAL PROPERTY VARY

To determine how entities other than the State administer intellectual property, we reviewed the practices used by organizations in the private sector, by several other states, and by several research universities. We learned that they use a variety of methods.

Private Sector Approaches to Intellectual Property Management Vary With the Industry

Our discussions with representatives of the private sector—two manufacturing firms, one management consulting firm, three trade associations, one industry task force, and two attorneys specializing in intellectual property—revealed that intellectual property management in the private sector varies depending on the nature of the industry.

Because each has a unique emphasis in the marketplace, manufacturing firms and retail firms tend to administer their intellectual property differently and focus their efforts on different types of intellectual property. Firms in the manufacturing industry, especially high-tech manufacturing, often hold large patent and software copyright portfolios to maintain an edge over competitors, preclude competitors from developing a particular technology, or to make themselves more desirable partners for joint development projects with other firms. For firms in the retail industry, however, patents typically make up only a small part of their intellectual property portfolios. Because retail firms, like many state agencies, focus on providing services rather than creating products, they typically hold more trademarks. A retail firm uses a trademark to communicate information about the company and its goods and services. A retailer's primary "product" often is its image and the values associated with that image, such as quality, reputation, trust, customer service, and brand loyalty. Consequently, retailers emphasize the protection of their trademarks against unauthorized or inappropriate use.

Other States Have Various Approaches to Intellectual Property Administration

Our search of other states' intellectual property laws and our discussions with representatives of five states (Florida, Minnesota, New York, Texas, and Virginia) revealed various approaches to managing and protecting intellectual property. These approaches range from not allowing state agencies to own any intellectual

property without specific authorization to having written guidance specifically granting state agencies the authority to own intellectual property. For example, state agencies in Florida cannot own patents, copyrights, or trademarks without express legislative authorization. Florida's intent is that the public's interest is best served when most of its products are placed in the public domain where the community has maximum access to them. The term *public domain* describes property rights that belong to the community at large. Once intellectual property has been placed in the public domain, it can no longer be protected against infringement; anyone can use it for any purpose.[3]

Florida's approach is also predicated on the public having free access to state-owned intellectual property because it was developed with tax dollars. Florida's "pro public domain" approach is similar to the general legal prohibition against the federal government owning copyrights for works it authors. In contrast, Virginia maintains that the public's interest is best served by protecting state-developed intellectual property rather than putting it into the public domain. Through a gubernatorial executive memorandum, Virginia authorizes its state agencies to pursue patent and copyright protections for materials believed to have commercial or marketable value, and it directs its secretary of administration to coordinate the administration of intellectual property for the state.

Other states take different approaches. For example, Minnesota's state agencies simply follow federal intellectual property laws; that is, they can exercise the same rights as other parties to own and protect copyrights, trademarks, and patents under federal laws. New York allows its state agencies to decide for themselves whether or not they will protect their intellectual property.

We also inquired about the written intellectual property policies of these five states. Only Virginia has a comprehensive written policy that authorizes its state agencies to own and protect patents and copyrights. It centralizes the administration of the state's intellectual property holdings through a single state agency. Although their guidance is much more limited in scope, Florida allows its state agencies to copyright the software they develop, and Texas has a law that requires its state agencies to report any technology innovations that meet certain criteria to its Attorney General's Office.

[3] The public domain consists of works formally granted to the public; materials that cannot be copyrighted, such as blank forms, names, and titles; lost or expired copyrights; and, with certain exceptions, products authored by the federal government.

Most of these states have passed legislation authorizing certain state agencies to own and protect one or more types of intellectual property. For example, state laws authorize Florida's Department of Citrus and Minnesota's Department of Natural Resources to own one or more types of intellectual property. Finally, like many other states, Florida, Minnesota, and Virginia have adopted versions of the Uniform Trade Secrets Act, authored by the National Conference of Commissioners on Uniform State Laws.

Intellectual Property Administration Appears More Consistent Among Research Universities

Because federal legislation offers them a financial incentive, universities with federally sponsored research have a relatively consistent approach to intellectual property administration. The federal Bayh-Dole Act assigns to universities the rights to patents that result from research sponsored by the federal government. This grant of ownership allows universities to pursue exclusive licensing arrangements with corporate partners to convert university research into marketable products—a process known as technology transfer. The Bayh-Dole Act, consequently, creates a potentially lucrative mechanism for research universities to generate revenue while serving the public's interest by converting their discoveries into useful products. It also creates an environment where universities engage in relatively similar intellectual property management practices to capitalize financially on the technology transfer process. Because it can be so lucrative to convert their research into commercially viable applications, universities have a strong incentive to protect their intellectual property. For example, a report issued by the University of California shows that in fiscal year 1998-99, the university earned approximately $89 million in licensing revenue from its patent portfolio.

SCOPE AND METHODOLOGY

Due to concerns about the extent to which state agencies have identified, managed, and protected their intellectual property, the Joint Legislative Audit Committee (committee) directed the Bureau of State Audits to review the administration of state-owned intellectual property. Specifically, the committee asked us to determine whether state entities have policies and procedures to identify, manage, and protect intellectual property; to survey state entities about their inventory and management of

intellectual property; and to determine how other states and the private sector identify, manage, and protect their intellectual property.

To gain a general understanding of intellectual property, we interviewed private-sector attorneys who specialize in one or more areas of intellectual property law, and state attorneys and other state employees who participate in a working group that periodically meets to discuss issues concerning state-owned intellectual property. We also reviewed applicable federal and state laws and the web sites for the federal Patent and Trademark Office and the Copyright Office. Finally, we reviewed the web sites for various consulting and law firms, trade groups, professional journals, and research universities.

To determine how entities other than California state agencies identify, manage, and protect their intellectual property, we examined the policies and practices of the private sector, other states, and research universities. To identify a sample of states from which to obtain further information, we scanned state laws looking for those related to intellectual property. For five states (Florida, Minnesota, New York, Texas, and Virginia) that appeared to have relevant laws related to intellectual property, we discussed their approaches with employees knowledgeable about intellectual property. Similarly, we discussed approaches to identifying, managing, and protecting intellectual property with representatives of the private sector, including two manufacturing firms, one management consulting firm, three trade associations, one industry task force, and two private attorneys specializing in intellectual property. We also reviewed the intellectual property policies of six research universities.

To identify the nature, quantity, and policies relating to the State's intellectual property holdings, we surveyed the State's 220 agencies. Our survey universe primarily included entities at the agency and department level because they have the autonomy to develop their own policies and procedures for administering intellectual property. For example, we sent our survey to the California Department of Corrections and the Department of Mental Health rather than to each state prison and each state hospital. However, because the Office of the Chancellor for the California State University delegates responsibility for developing policies related to intellectual property to each of its campuses, we included each campus within our survey universe. We did not include auxiliary organizations, such as foundations that are associated with educational institutions, because they are distinct

legal entities separate from the State. We also did not include the University of California in our survey universe; however, we included it as one of the six research universities we studied to learn how others administer their intellectual property. We received responses to our survey from all 220 state agencies.

In our survey, we asked agencies to tell us about the intellectual property policies or procedures they currently use; the types and quantities of registered and unregistered intellectual property they own; whether they keep inventories of their intellectual property; the nature of the intellectual property they own (such as publications, formulas, inventions, logos, software, etc.); why they do or do not register their intellectual property; enforcement actions they have taken to stop infringement; and their opinions regarding whether the State should establish guidelines for managing and protecting intellectual property.

We visited seven state agencies to verify the accuracy of their survey responses and to perform additional follow-up work. We also searched databases maintained by the federal Copyright Office for copyrights and the federal Patent and Trademark Office for patents and trademarks that state agencies had registered under federal law. In addition, we searched the card files at California's Secretary of State for trademarks that state agencies had registered under California law.

Because intellectual property is typically defined as copyrights, trademarks, patents, and trade secrets, we focused our review primarily on these four types. Appendix B lists the identified quantities of each type of intellectual property for 125 state agencies.

It was not practicable for a variety of reasons to determine the value of the State's intellectual property. For example, state agencies are not always knowledgeable about the intellectual property they own. Also, some items of intellectual property have inherent but not market value, so their worth cannot be easily measured. For instance, what value should be ascribed to a state agency's copyrighted web site or to its trademarked logo?

To help ensure the accuracy of the information presented, we discussed with agency representatives the examples and other instances when we specifically mention a state agency by name in the body of the report. ■

CHAPTER 1

State Agencies Generally Lack Knowledge of and Could Improve Control Over Their Intellectual Property

CHAPTER SUMMARY

Our review of the intellectual property owned by state agencies and the policies and procedures used to administer it revealed that state agencies do not always know that they actually own intellectual property and are not always aware of their intellectual property rights. As a result, they could miss opportunities to act against individuals or entities that use the State's intellectual property inappropriately.

One indication of the lack of knowledge is that 74 state agencies indicated that they own no intellectual property when in fact they have web sites, which are typically protected by copyright law. Further, although a database for the federal Copyright Office shows that the State owns approximately 1,600 registered copyrights, state agencies reported owning only one-fourth of that amount.

State agencies that are unaware of their intellectual property holdings and the rights that accompany them risk missing opportunities to prevent their misuse. For example, a state agency could fail to act against a vendor that deceives consumers by inappropriately using a state-owned trademark, such as an agency's logo, in connection with its product or service to imply state approval. Because of its lack of knowledge, an agency might not be able to stop a publisher from improperly selling state-copyrighted information that a state agency otherwise provides free or at cost. Likewise, a state agency that is unaware of intellectual property matters could fail to patent a device it had invented, enabling someone other than the State to receive the patent and then charge the State a license fee to use its own device. Being aware of the intellectual property it owns and of its intellectual property rights would allow a state agency to act quickly against individuals or entities that inappropriately use its products, or infringe on its right to control how they are

used. When a state agency is able to identify an infringement, it can use tools such as cease-and-desist letters or the judicial system to stop it.

State agencies also lack guidance from the State and have incomplete internal policies regarding intellectual property. State law does not expressly authorize all state agencies to own and protect all their intellectual property. When it does address intellectual property, it typically allows a specific state agency to own a certain type of intellectual property or authorizes state agencies to protect certain products such as software that can be safeguarded by copyrights. Further, statewide policies, such as those found in the State Administrative Manual or the State Contracting Manual, do not address intellectual property. When it comes to internal policies, only 43 of the 220 state agencies report having written policies concerning intellectual property. Interestingly, none of these policies provides state agencies with complete guidance for, among other things, identifying products that could be intellectual property, determining whether to formally protect intellectual property, and enforcing their rights against those infringing on the intellectual property.

A final issue we observed was the limited extent to which state agencies appeared to capitalize on their intellectual property. Additionally, state agencies lack guidance that describes the circumstances under which they can or should capitalize on their intellectual property. We also raise the question of whether the State's use of standard contract language that essentially grants contractors a free license to use or sell intellectual property developed through some of its contracts is appropriate.

These findings indicate a need for centralized state guidance concerning intellectual-property administration and a campaign to educate state agencies on their intellectual property rights and responsibilities.

STATE AGENCIES DO NOT ALWAYS KNOW ABOUT THE INTELLECTUAL PROPERTY THEY OWN OR THEIR RIGHTS TO OWN IT

Our survey of state agencies and other work we performed revealed that many agencies do not realize they own intellectual property, are not aware of the quantity of intellectual property they own, or are unclear or incorrect about their ability to own

or formally protect through registration their intellectual property.[4] Not being knowledgeable about intellectual property increases the risk that state agencies will not act against others that misuse their protected material.

One indication that many state agencies may not be aware of all intellectual property they own is that they did not identify all of it in their survey responses. Although our search of the copyright database of the federal Copyright Office disclosed approximately 1,600 registered copyrights owned by 60 state agencies, only 23 agencies identified 400 such copyrights in their survey responses. For 16 of these 60 agencies, data from the Copyright Office showed 10 or more registered copyrights that each agency had not counted. For example, although California State University, Dominguez Hills, reported in its survey response that it held no copyrights, Copyright Office data shows that it actually held 54 registered copyrights.

Many state agencies did not report all the copyrights they owned.

Another indication that not all state agencies have adequate knowledge of their intellectual property holdings is that some agencies either did not or could not tell us how much intellectual property they own. For instance, despite acknowledging that it possesses intellectual property, the California Department of Education reported that it did not have the resources to quantify its holdings. The Copyright Office database shows that the department in fact owns 303 registered copyrights. The existence of these registered copyrights suggests that the department also holds many unregistered copyrights.

Some state agencies do not routinely keep track of what intellectual property they actually own. Five state agencies that reported owning 30 or more items of intellectual property did not provide a written inventory of their intellectual property with their survey responses. Further, many state agencies did not acknowledge common items of intellectual property. Specifically, 74 state agencies that reported not owning any intellectual property actually have web sites, which are typically protected by copyright law. Also, the web sites for 33 of these state agencies show logos, which are a form of trademark.

A final indication that some state agencies are not knowledgeable about their intellectual property is that some appear to be unclear or incorrect about their ability or right to own or register

[4] See the Introduction for a discussion of registered and unregistered copyrights and trademarks.

Nine state agencies mistakenly believe that they either had no legal authority to register their intellectual property or no authority to own it.

intellectual property. Although state agencies have the legal authority to own and protect their intellectual property, nine state agencies stated in their survey responses that they had either no legal authority to formally register their intellectual property or no authority to own it. For example, the Department of Finance indicated that it does not have the authority to formally register its intellectual property. Additionally, the California State Library believes that, other than software, it is not authorized to own intellectual property. After we pointed out that federal Copyright Office data showed that it owned three registered copyrights, the California State Library stated that its staff had obtained the copyrights without proper authorization and that it was going to cancel its copyright registrations.

STATE AGENCIES RISK BEING UNABLE TO CONTROL MISUSE OF THEIR INTELLECTUAL PROPERTY

If state agencies fail to properly identify, manage, and protect their intellectual property, inappropriate use and missed opportunities can result. Specific effects can include the unauthorized use of copyrighted material or trademarks, missed patent opportunities, and improper disclosure of the State's trade secrets.

Unauthorized Use of Copyrighted Material Could Harm the Public

When state agencies are not familiar with their copyrighted material or do not know their rights under copyright law, they can be ill-prepared to prevent unauthorized and inappropriate use of copyrighted material. Failure to prevent such use can mislead or harm the public. However, when state agencies are familiar with their copyright material and know their rights under copyright law, they can prevent individuals or entities from inappropriately using state-owned property.

For example, because it knew about its rights under copyright law, the Department of Motor Vehicles was able to stop the unauthorized distribution of answers to its drivers' examination. According to its management, when it found web sites and foreign language telephone books that distributed answers to its drivers' examination, the Department of Motor Vehicles registered its copyright for the examinations and answers. Since then, the Department of Motor Vehicles has not discovered any announcements for the sale or distribution of answers to the examination.

Unauthorized Use of Trademarks Can Incorrectly Imply State Endorsement or Lead to Confusion

When state agencies do not know or recognize the trademarks they own or know the rights they possess under trademark law, they may fail to prevent inappropriate use of their trademarks. If the State does not prevent others from inappropriately using its trademarks, the public may be confused or harmed. Similar to the retail industry, which uses trademarks to associate its products or services with a set of positive values, the State uses trademarks to identify official state departments, programs, or state-sponsored activities for the public's benefit. Some state agencies allow or even require businesses that meet specific program requirements to use designated logos to signify authorized program participation. Such logos may be called "certification marks," a specific type of trademark. For example, the Department of Conservation allows program participants, such as certified recycling centers, to signify their state-approved participation in its recycling program by using the department's recycling logo. Likewise, the Bureau of Automotive Repair, part of the Department of Consumer Affairs, requires certified participants in its smog certification program to display its smog check logo. Because the use of such logos implies that the State has sanctioned these businesses, a misused trademark can improperly suggest that the State has given its approval of a product or service that it has not endorsed.

Misused trademarks can harm the public in other ways. For example, the California State Lottery Commission recently won a court decision concerning infringement on its federally registered trademarks. Because it was aware of its rights under trademark law, the commission was able to prevent a person from operating five web sites that resembled its official web site. This trademark infringement confused many individuals who went to the misleading web sites searching for the official California State Lottery Commission web site. In another instance, the California Department of Alcohol and Drug Programs was able to prevent a person from operating a pornographic web site with a name that was identical to one of the department's federally registered trademarks associated with a program aimed at teenagers.

Because it knew its trademark rights, one state agency was able to stop the operation of a pornographic web site that used the same name as one of its trademarks.

Poor Patent Practices Can Prove Costly to the State

Although few state agencies report owning patents, the missions of some, such as the California Energy Commission and the California Prison Industry Authority, allow for such development.

When a state agency does not know which items or processes it can patent or which rights it possesses under patent law, it may be unable to keep others from patenting items it rightfully owns. In addition, the State loses the opportunity to recoup some or all development costs and to generate additional revenues when a state agency misses opportunities to patent inventions.

Although we did not find examples in California, we did find an agency in another state that had experienced problems arising from failure to obtain patents. Until it received statutory authority in 1995 to own and protect its intellectual property, the Texas Department of Transportation experienced a number of ownership disputes over intellectual property, including patents, that parties such as contractors developed for the department. In some cases, it lost ownership of the property and the right to unrestricted use of the property. In other cases, it retained the right to use the property but was not compensated or given recognition of ownership when others who developed the property for the department sold it for commercial gain.

The State lacks a statewide policy for patents to help ensure that it retains ownership to patentable products developed using state resources.

A related issue is that the State does not have a statewide policy for patents to help ensure that it retains ownership of the rights to potentially patentable products or processes developed by its employees working on state time using state resources. When state employees create copyrightable works as part of their jobs, the legal principle of "works made for hire" holds, meaning that their employers typically own the copyrights over the created works. However, this same principle does not necessarily apply to state employees who create patentable products on the job. Under some circumstances, state employees can secure the patent rights to inventions created on the job and require the State to acquire licenses to use them.

To avoid the possible loss of patent rights to products developed as part of an employee's job, private-sector firms and research universities can require their employees to sign documents acknowledging that the rights to any patentable works developed as part of their jobs belong to the employers. These documents are called invention assignment agreements. To ensure that employee creativity still flourishes under invention assignment agreements, employers may give their employees incentives such as a percentage of any revenue generated from the sale or licensing of their inventions.

Invention assignment agreements can help to preserve the State's right to assert patent ownership and could help strengthen the State's claim of ownership in court should a patent dispute arise. In fact, two of the four state agencies that own patents have used invention assignment agreements with one or more of their employees. Although few state agencies report owning patents, other state agencies may engage in activities from which their employees might develop products or processes that could be patented. Thus, the need for invention assignment agreements could be greater than otherwise indicated by the results of our survey. Therefore, guidance from the State concerning the proper use of these agreements may encourage the other two state agencies to consider them, and it may assist other state agencies that develop inventions or processes worth patenting in the future.

Trade Secrets Disclosure Can Harm the State

Few state agencies report owning trade secrets. By definition, a state agency must derive actual or potential economic value from a trade secret based on its not being generally known to the public or to other entities that can obtain economic value from its disclosure or use. Since few state agencies appear to generate economic value from their work, there may be only limited need to protect state-owned trade secrets. However, agencies with a quasi-business mission, such as the California State Lottery Commission and the California Prison Industry Authority, and agencies that develop products or processes that are potentially marketable to other states or the private sector, such as the Department of Forestry and Fire Protection, are more likely to develop trade secrets.

The California State Lottery Commission has developed processes that it protects as trade secrets to help ensure lottery game integrity and security.

Disclosure of state-owned trade secrets could financially harm the State if an agency spends significant resources developing information and it is divulged without the State receiving fair compensation. For example, the California State Lottery Commission has developed software security and validation procedures and other processes that it protects as trade secrets to help ensure lottery game integrity and security. This information is potentially marketable to other state lottery agencies and firms in the gaming industry.

STATE AGENCY OWNERSHIP OF INTELLECTUAL PROPERTY STEMS FROM MANY SOURCES

As we mentioned earlier, some state agencies believe they cannot own or formally register their intellectual property. However, two court decisions support the position that state agencies can legally own and protect their intellectual property. Additionally, certain state agencies cite other reasons why they believe they can own intellectual property.

The State's authority to own intellectual property can be reasonably inferred.

State law does not expressly grant all state agencies the legal ability to own intellectual property, but it can be inferred. Specifically, we believe that this ability falls reasonably within the bounds of "powers incidental" to the authority granted to state agencies by statute. Decisions in two court cases support the proposition that state agencies possess those powers that are necessarily or fairly implied or incidental to that authority.[5] Because state agencies are obligated to protect their property—typically thought of as assets such as equipment, supplies, and the like—it seems reasonable to conclude that state agencies can protect, and therefore own, intellectual property.

State agencies cite a variety of other reasons to justify their ownership of intellectual property. For instance, the Department of Conservation cites Section 11152 of the California Government Code as one of the sources for its authority to issue all policies, including those related to owning intellectual property. Section 11152 states that the head of each department may adopt rules and regulations as needed to govern the activities of the department. Additionally, the Commission on Peace Officer Standards and Training states that it is not aware of any statutory authority that precludes it from registering its intellectual property. Finally, some state agencies cite California law that specifically authorizes them to own certain types of intellectual property.

Current State Laws Address Agencies' Intellectual Property Rights in Piecemeal Fashion

The State provides only limited direction to its agencies concerning the administration of state-owned intellectual property. In our review of California laws, we found none prohibiting state agencies from owning intellectual property, but we also found no laws specifically granting them general authority to own all types of intellectual property. Laws that address intellectual

[5] See *Dickey v. Raisin Proration Zone No. 1*, 24 Cal. 2d 796, (1944), cert. denied; and *First Industrial Loan Co. v. Daugherty,* 26 Cal. 2d 545, (1945).

property are rather piecemeal. For example, state law allows all state agencies to own and protect trade secrets and copyrights on software. California laws also allow at least one state agency, the Department of Toxic Substances Control, to own copyrights in general. It also allows the California Energy Commission to claim a share of the rights in intellectual property developed under certain agreements, and it permits the commission to claim ownership of this intellectual property under certain conditions. We even found state laws that specifically prohibit unauthorized use of certain state agency names such as the Department of Motor Vehicles, the California Community Colleges, and the California State University. Current state law also forbids the unauthorized use of the logos of certain state agencies, such as the Department of Motor Vehicles and the California Highway Patrol, as well as the unauthorized use of the Great Seal of the State of California.

Written guidance addressing state-owned intellectual property is minimal.

Although California laws address some aspects of state-owned intellectual property, other state-level sources provide little written guidance. Statewide policy manuals such as the State Administrative Manual and the State Contracting Manual contain no substantive guidance concerning intellectual property. Moreover, staff of the California Attorney General's Office stated that the office has issued no published legal opinions supporting or opposing state agencies' authority to own intellectual property.

This piecemeal approach to intellectual property creates confusion among state agencies. Tellingly, 58 state agencies indicated in their responses to our survey that guidance—both general and specific—from the State concerning the administration of intellectual property would be helpful. We discuss the comments of these 58 agencies further in Chapter 2.

Arguments Against State Agency Ownership of Intellectual Property Are Based on Concerns the State Can Address

During our review, we identified two primary arguments against state agency ownership of intellectual property. The first is that state agency ownership can unreasonably restrict otherwise legally allowable public access to state-produced information. The second argument is that state agency ownership can lead to taxpayers paying twice for the same item from the State—once when their taxes are used to develop the item and then again when they have to purchase the item. The State can address the concerns upon which both these arguments are based.

State ownership of intellectual property does not necessarily conflict with the California Public Records Act.

One concern arising from state ownership of intellectual property is that ownership conflicts with the principle of open government—as embodied in the California Public Records Act—by restricting the dissemination of information. The argument is that state agencies could use intellectual property laws to deny access to information they create that would otherwise be accessible. In at least one state, this threat exists because materials to which access is limited by copyright or patents can be legally withheld from the public. However, since California does not have similar exclusions, this threat seems remote. Even so, the State can answer this concern by clarifying existing law to declare its intent that protection under intellectual property laws does not preclude state agencies from disclosing otherwise accessible information. Such a clarification, while not requiring state agencies to disclose material kept confidential under trade secret laws, would enable state agencies to provide access to material protected by other intellectual property laws.

Another way the State can handle the argument that intellectual property ownership restricts public access to government information is by structuring its ownership rights to encourage information dissemination while discouraging unauthorized private economic gain or other inappropriate use. For example, the State could provide the public with information that is subject to a license or a terms-of-use agreement. This license or agreement would restrict the information's use to private, noncommercial purposes. Consequently, the license or agreement would allow public access to the information and, indeed, the right to use the information in any acceptable manner.

Precedence exists in California for controlling the use of information once it is provided to the public. Specifically, the California Public Records Act permits disclosure of certain crime-related information only for scholarly, journalistic, political, or governmental purposes, or for investigation purposes by a licensed private investigator. Such an arrangement continues to support the principle of public access while preventing inappropriate economic gain or other unacceptable use from publicly funded activities. Thus, protection of intellectual property and access to public records do not have to be mutually exclusive ideals working at cross purposes; they can work in tandem to protect the public's interest.

Moreover, intellectual property protection and exclusive licensing arrangements sometimes are necessary to achieve wider dissemination or to serve the public's best interest. In the Introduction

to this report, we discussed how research universities use exclusive licensing arrangements with corporate partners to convert their intellectual property into marketable products. Another example is the Office of Administrative Law, which is responsible for, among other things, ensuring that state regulations are accessible to the public. Because it does not have the necessary expertise in-house, the Office of Administrative Law licenses a private company to publish the regulations. The publisher, which will pay the office about $2.5 million over three years for the exclusive rights to publish the regulations, provides free copies to all county law libraries and to depository libraries in the State and makes a searchable version of the regulations available free on the Internet. It also sells copies of the regulations to other organizations. The Office of Administrative Law's licensing arrangement ensures that the public has access to state regulations while it returns revenue to the State.

Precedence exists for the State controlling how others use state-provided information.

A second argument against state ownership of intellectual property is that people "pay twice" for state-developed information, first when their taxes are used to develop the information and again when they are forced to purchase it. We believe that it may be appropriate in some circumstances to charge for state-developed intellectual property. As we note later in this chapter, the decision by the State to license or sell its intellectual property should rest primarily on whether such licensing or sale is in the public's best interest. However, when unauthorized vendors repackage and sell information that the State otherwise provides free, the public is indeed inappropriately paying twice for that information. As we described earlier, licenses or terms-of-use agreements are designed to inhibit private parties from improperly profiting on the State's intellectual property. They would also inhibit repackaging and selling information that the State provides free.

STATE AGENCY POLICIES CONCERNING INTELLECTUAL PROPERTY ARE GENERALLY INCOMPLETE

In the absence of clear guidance from the State, some state agencies have developed written policies for administering their intellectual property. None of the policies provided to us, however, address all six areas we believe are necessary at minimum for sound intellectual property administration. In response to our survey, 43 state agencies provided copies of their policies concerning intellectual property. Of the remaining 177 state agencies, 117 stated that they had no policies concerning

Six Areas That an Intellectual Property Policy Should Address

1. Identification of products that could be intellectual property whether created by employees or contractors.
2. Factors for determining whether to protect products as intellectual property (e.g., potential commercial value, need for ensuring accuracy or access, etc.).
3. Criteria for determining whether possible copyrights or trademarks should be protected through registration.
4. Maintenance of an inventory of intellectual property.
5. Procedures for allowing others to use intellectual property.
6. Guidance for pursuing infringement of intellectual property rights (e.g., referral to legal counsel, use of cease-and-desist calls or letters, etc.).

intellectual property, 23 stated that they had only unwritten policies, and 37 failed to answer the question. Twenty of the 43 state agencies submitting policies were either the Office of the Chancellor or campuses of the California State University.

We reviewed state agency policies to see whether they addressed six areas that we believe are important to ensure proper management of intellectual property. These six areas ranged from identification of potential intellectual property to enforcement of intellectual property rights. No agency's policies addressed all six areas. Of the 43 agencies submitting policies, only 28 covered at least one area. In fact, only 2 state agencies, the State Bar of California and the Department of Conservation, had policies concerning as many as four of the areas.

Of the 23 agencies that provided written policies for identifying products that could possibly be intellectual property, 17 were campuses of the California State University. An interesting practice used by the Commission on Peace Officer Standards and Training is to copyright all training materials it produces to inhibit unauthorized commercial use. The California Department of Corrections, meanwhile, allows its employees to copyright at their own expense any publications prepared as part of their official duties. However, the copyright is considered to be held in trust for the department if the material is pertinent to the department.

Thirteen state agencies provided written policies for determining whether to protect products as intellectual property. For example, one factor used by California State University, Chico, is the level of direct supervision or oversight the university has over a product; the more the university controls the acceptance of the final work, the greater the likelihood of copyrighting. Another three state agencies also have written policies for determining whether a work product should be protected formally through registration or informally. As we described in the Introduction, registration of copyrights or trademarks provides state agencies additional protections for their intellectual property. The Department of Conservation bases its decision on whether any statutes deny formal protection of a particular product, whether the benefits outweigh the costs, and whether the public interest is

best served by formally protecting a product. No state agency has any written requirements concerning maintaining an inventory of its intellectual property.

Weak policies for administering intellectual property increase the risk of poor decisions regarding its management.

Only 12 state agencies provided written policies concerning requests to use their intellectual property. The Department of Boating and Waterways grants permission to reproduce and distribute its intellectual property on condition that the requester does not profit from the reproduction or distribution, does not alter the material, and includes the department's copyright notice on all printed copies. No state agency provided written policies concerning the enforcement of its intellectual property rights against alleged violators.

When state agencies do not establish and follow adequate policies and procedures concerning their intellectual property, they increase the risk that they will not recognize the need to make critical decisions in a consistent and deliberative manner to best protect the intellectual property assets of the State.

STATE AGENCIES CAPITALIZE ON INTELLECTUAL PROPERTY ONLY TO A LIMITED EXTENT

Another issue that came to our attention was the limited extent to which state agencies capitalize on their intellectual property. Although some state agencies capitalized on their intellectual property by selling it or licensing it to others, the survey responses for most indicated that they did not. Given that only 16 state agencies we surveyed stated that they formally protect their intellectual property to generate revenue, and given that the State owns the rights to at least 113,000 identified intellectual property items, it can be argued that state agencies are missing opportunities to capitalize on their intellectual property. Two specific concerns came to our attention. First, the State does not have guidance that describes the circumstances under which state agencies can or should capitalize on their intellectual property or the factors that state agencies should consider when deciding whether to sell or license their intellectual property. Second, the State's use of standard language that essentially gives contractors a free license to use or sell intellectual property they developed under some state-funded contracts raises questions as to whether this is in the best interest of the public.

State-Issued Guidance for Capitalization of Intellectual Property Is Lacking

Obviously, opportunities exist for the State to capitalize on its intellectual property; some state agencies currently do so. For example, as we mentioned earlier, the Office of Administrative Law stands to make about $2.5 million over three years by licensing the publication rights for one of its documents to a publisher. However, we found no state-issued guidance describing the circumstances under which state agencies can or should take advantage of these opportunities or the factors they should consider when making such decisions.

A state agency's decision to capitalize on its intellectual property should not be made lightly. This decision needs to rest primarily on whether the licensing or sale of its intellectual property will be in the public's best interest. Two factors helpful when considering public interest are the purpose for creating the intellectual property and the purpose for which other parties will use it.

The public's best interest should be key in determining whether to capitalize on state-owned intellectual property.

Knowing why a product was produced or the goal a state agency hopes to achieve through the product can often indicate the route to achieve the public's best interest. For example, one of the purposes of the California Driver Handbook is to achieve a higher rate of compliance with California's traffic laws. If the Department of Motor Vehicles attempted to capitalize on this document by licensing its publication and sale (or even selling it itself), a likely effect is that relatively fewer drivers would obtain the handbook. Consequently, fewer drivers would be familiar with the laws, and compliance with traffic laws would likely decrease. Clearly, if the Department of Motor Vehicles expected lower compliance, which runs counter to the goal it hopes to achieve, it would not be in the public's best interest to charge for the handbook. The Department of Motor Vehicles currently provides this document at no cost and does not intend to sell it.

It may also be useful to know how others intend to use the intellectual property. For example, a state agency may have no concerns about providing copies of documents to a member of the public who wants simply to keep an eye on the operations of the State. In fact, the law may require the agency to provide access to or copies of the intellectual property in this situation. On the other hand, the state agency may object to someone commercially profiting from its intellectual property if it does not receive proper compensation, especially since it developed the material at state expense. A few state agencies indicated in

Knowledge of how state-owned intellectual property will be used can help determine the public's best interest.

their survey responses that it would be an illegal "gift of public funds" to allow others to make a profit on state-produced intellectual property. As discussed earlier, state agencies could inhibit unauthorized profit making on their intellectual property by limiting its use to only private, noncommercial purposes.

In addition to these two factors, others may also come into play. However, absent any direction from the State, it is likely that state agencies will continue to miss opportunities to capitalize on their intellectual property when appropriate.

Standard Contract Language Raises Questions That Should Be Considered Further

During our review, we also noted standard contract language regarding intellectual property rights that raises questions as to whether it is in the best interest of the public. The Department of General Services requires state-funded contracts for the development of information technology that exceed $500,000 to include standard language that essentially gives the contractors a free license to use and sell intellectual property developed under these contracts. Specifically, the standard language grants contractors a "nonexclusive, royalty-free license for any such invention, discovery, or improvement" arising from the contracts and states that contractors may sub-license the intellectual property to others on the same royalty-free basis. Thus, it raises the question as to why the State is apparently giving a portion of its intellectual property rights to contractors without considering the potential value of these rights. The State's inclusion of this language in its contracts may result in missed opportunities to either lower contract costs or, if a licensing arrangement can be made, to establish additional revenue sources.

The chief counsel of the Department of General Services comments that it is speculative whether the State would actually receive any financial benefit as a result of changing the standard language and that there are few, if any, demonstrable instances of contractors being "enriched at the expense of California taxpayers." Additionally, he states that it is costly to enforce intellectual property rights and that the State is not currently equipped to pursue remedies. He believes that the existing language is an appropriate balance of these factors plus others, including the unknown value of the rights to intellectual property before contracts are begun and the need for contractors to use incremental discoveries for other customers without being burdened by costly tracking and accounting procedures. He also

The Department of General Services favors keeping the existing standard contract language for several reasons.

stated that changes in the language could result in fewer vendors bidding for state contracts and increased costs of information technology products. Further, he indicates that, to the extent that the private sector benefits from working on state contracts, it should be regarded as incidental only and that such incidental benefit is "in the best interest of contributing to the creativity of the State's vital technology resources." Finally, he believes that any change in the current language should be considered only after careful consultation with affected stakeholders.

Although the chief counsel's arguments against changing the standard language may have merit, it still seems questionable to us that the State would enter the competitive process for selecting contractors having already given them a free license to use and sell intellectual property they ultimately develop for the State. We believe the question of whether the standard language is in the public's best interest is a matter that merits further consideration.

RECOMMENDATIONS

The Legislature should clarify existing state law to specifically allow all state agencies to own and, if necessary, register the intellectual property they create or otherwise acquire when such actions are deemed to be in the public's best interest.

The Legislature should also clarify existing law to declare its intent that protection of state-developed products under intellectual property laws does not preclude state agencies from disclosing information otherwise accessible under the California Public Records Act.

The Legislature should designate one state agency as the lead for developing intellectual property policies and guidance. This lead agency should also, as necessary, recommend any statutory clarifications necessary to better protect the State's intellectual property. Such an agency should have the ability to issue guidelines that all state entities could follow.

This lead agency should be responsible for the following tasks:

- Establishing an outreach campaign informing state agencies of their rights and responsibilities concerning intellectual property.

- Developing guidelines that state agencies can use to manage their intellectual property. These guidelines should cover:
  - General policy development for state agencies' intellectual property administration.
  - Identification of employee or contractor products that could be potential intellectual property.
  - Factors for deciding whether to protect products as intellectual property.
  - Criteria for deciding whether to seek the additional protections provided by registering their intellectual property or relying on the protections provided for unregistered intellectual property.
  - Maintenance of an inventory of intellectual property.
  - Procedures for allowing others to use state-owned intellectual property.
  - Guidance for pursuing infringement of intellectual property rights.
  - Factors that state agencies should consider when deciding whether to sell their intellectual property or license it to others.
- Developing sample invention assignment agreements that state agencies can consider if they believe it is necessary to secure the rights to potentially patentable items created by their employees on work time using state resources.
- Developing sample language for licenses or terms-of-use agreements that state agencies can use to limit the use of their intellectual property by others to only appropriate purposes.

Finally, the Legislature should consider whether the interest of the public is best served when the State uses standard contract language that essentially gives vendors a free license to use and sell intellectual property they develop as a result of state-funded contracts. ■

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CHAPTER 2

Survey Responses Reveal Extent of State Agencies' Ownership and Administration of Intellectual Property

CHAPTER SUMMARY

As part of this audit, we developed and issued a survey to state agencies concerning their ownership and administration of intellectual property. Among other things, we asked the State's 220 agencies to identify the types and quantities of registered and unregistered intellectual property they own. According to the survey responses we received and other work we performed, the State owns a fair amount of intellectual property, most of it copyrights. Our review disclosed that a little more than half of all state agencies have intellectual property. However, other information obtained during the course of our work led us to conclude that the State likely owns more intellectual property than we describe in this report.

We also asked state agencies to tell us the reasons for registering or not registering their intellectual property, the reasons for assigning the rights to their intellectual property to others, the tools they used to enforce their intellectual property rights, and their opinions about the extent to which the State should establish guidelines for managing and protecting intellectual property. Among the state agencies answering questions about intellectual property registration, most cited preventing unauthorized use or ensuring control of the content as the primary reasons for registering. Concerning assignment of rights to others, few state agencies reported doing so to generate revenue. In those limited instances in which state agencies have enforced their intellectual property rights, the State generally has stopped infringement. Finally, many state agencies would like to see additional guidance from the State concerning administration of intellectual property.

MORE THAN HALF OF STATE AGENCIES HAVE INTELLECTUAL PROPERTY

To identify the nature and extent of state-owned intellectual property, we conducted a survey of the State's 220 agencies, asking a variety of questions ranging from the policies state agencies used to administer their intellectual property to how successful they were in fending off violators. We received responses from all 220 state agencies. In addition to the survey responses, we relied on several other sources to help compile the inventory information presented in this report: site visits to 7 state agencies to verify their responses, reviews of copyright registrations at the federal Copyright Office, patent information and trademark registrations at the federal Patent and Trademark Office, and trademark registrations at California's Secretary of State. Of the State's 220 agencies, 125 (57 percent) have at least one type of intellectual property. In total, these agencies have more than 113,000 identified items of intellectual property. In fact, as indicated in Table 1, one agency owns about 88 percent of all state-owned intellectual property. The 20 state agencies with the most identified intellectual property own almost 99 percent of it. See Appendix B for a summary inventory of intellectual property held by the 125 agencies.

Survey Topics

- Types and quantities of the intellectual property owned.
- Policies and procedures used to administer intellectual property.
- Reasons why agencies choose to register or not register their intellectual property.
- Tools used to thwart infringement.
- Whether the State should establish guidelines for managing and protecting intellectual property.

The majority of state-owned intellectual property consists of copyrights; 92 state agencies own nearly 112,000 copyrights. The California Department of Parks and Recreation has the largest share, with more than 100,000 copyrights, mostly unregistered slides and photographs. The copyrights held by the Department of Finance, all of which are unregistered, include approximately 3,500 software items, about 155 publications, 59 items of data, and 56 maps.

Trademarks are the second most frequent type of intellectual property owned by state agencies; 80 agencies own 462 trademarks. The California State Lottery Commission owns 18 percent (84 of 462) of all state-owned trademarks, including the phrases *California Lottery, Big Spin,* and *Scratchers*. The California State Lottery Commission registers its trademarks to protect the image and integrity of its name and logos.

TABLE 1

Summary of the Types and Amounts of Identified Intellectual Property Owned By State Agencies

Agency Name	Copyrights	Trademarks	Trade Secrets	Patents	Other*	Totals
Parks and Recreation, California Department of	100,005	10				100,015
Finance, Department of	3,770	2				3,772
Forestry and Fire Protection, Department of	1,912	86	12		3	2,013
Bar of California, State	868	7				875
Judicial Council of California	808	8				816
Peace Officer Standards and Training, Commission on	740	1				741
Health Services, Department of	736	2				738
Teachers' Retirement System, California State		3			607	610
Integrated Waste Management Board, California	545	6				551
Community Colleges, California	332	1			1	334
Education, California Department of	303					303
African American Museum, California	274					274
Humboldt State University (California State University)	203					203
Criminal Justice Planning, Office of	177					177
Little Hoover Commission					155	155
Sonoma State University (California State University)	134	3			13	150
Motor Vehicles, Department of	105	1	2			108
Lottery Commission, California State	2	84	5			91
Office of the Chancellor (California State University)	68	1				69
Public Employees' Retirement System, California	60	2				62
The other 200 state agencies	765	245	1	15	134	1,160
Totals	**111,807**	**462**	**20**	**15**	**913**	**113,217**

Sources: Survey responses from state agencies, copyright registrations at the federal Copyright Office, patent information and trademark registrations at the federal Patent and Trademark Office, trademark registrations at California's Secretary of State, and our site visits to seven state agencies.

Note: State agencies did not always report precise numbers in the inventories they submitted with their surveys. For example, the California Department of Parks and Recreation reported that it had "100,000+" copyrighted photographs and slides.

* The amounts reported in this column, although they accurately reflect what state agencies reported to us, may not be truly "other" types of intellectual property. State agencies sometimes included items in this category that more accurately belong in another category. For example, within this category, the California State Teachers' Retirement System included software, publications, and web site addresses; and the Little Hoover Commission included reports.

The State owns a variety of intellectual property items such as photographs, maps, and software.

The State also owns some trade secrets and patents. Just four agencies possess the 20 state-owned trade secrets. The Department of Forestry and Fire Protection owns 12 of the 20 trade secrets to protect the processes it developed for reformulating and refurbishing mechanical parts and maintenance methods for its fleet of aircraft. Similarly, four state agencies—California State University, Fullerton; the Department of Transportation; the California Prison Industry Authority; and the California Energy Commission—own the State's 15 patents. State-owned patents include wheelchair locks that an employee of the Department of Transportation developed and performance-enhanced, gas turbine power plants developed by an employee of the California Energy Commission.

The specific intellectual property items owned by state agencies vary. They include maps owned by the Department of Finance and the Department of Forestry and Fire Protection, photographs and slides owned by the Department of Parks and Recreation, and inventions owned by the California Energy Commission. Table 2 shows the intellectual property items owned by state agencies. Note that because state agencies' responses to our survey were occasionally inconsistent, the amounts listed in Table 2 do not reconcile to those in Table 1.

TABLE 2

Intellectual Property Items That State Agencies Report Owning

Description of Item	Total Quantity Identified
Photographs and slides	100,000
Software	4,797
Publications	3,656
Other (e.g., videotapes and audiotapes, etc.)	1,570
Maps	1,210
Logos	532
Web sites	476
Data	261
Formulas	108
New processes	108
Inventions	20
Total	**112,738**

Source: Survey responses from state agencies.

SURVEY DATA LIKELY DOES NOT REFLECT ALL STATE-OWNED INTELLECTUAL PROPERTY

When combined with the concerns we described in Chapter 1, other information that we obtained during our review causes us to believe that the State likely owns more intellectual property than we describe in this report. As we noted in Chapter 1, many state agencies are not aware of the quantity of intellectual property they own, do not recognize all intellectual property they own, or are unclear or incorrect about their ability to own or register intellectual property. Although our search of the federal Copyright Office's database disclosed approximately 1,600 state-owned registered copyrights for 60 state agencies, state agencies reported owning only 400, or one-fourth of the total. Further, although the Copyright Office shows that the California Department of Education owns more than 300 registered copyrights, the department stated that it did not have sufficient resources to quantify the amount of intellectual property it owns. Also, 74 state agencies that reported having no intellectual property actually had web sites, which are typically protected by copyright laws, and the web sites for 33 of these state agencies display logos, which likely qualify as trademarks.

Some state agencies estimated the amount of intellectual property they owned, while others could only provide vague responses regarding what they own.

Moreover, certain responses to our survey refer to unspecified quantities of intellectual property. Notably, some state agencies did not specifically quantify the intellectual property they owned. For example, the Department of Conservation reported that the maps it owns "numbers in the thousands," while the California Public Utilities Commission stated that it owns "many thousands" of reports and other records that technically have unregistered copyrights. Other state agencies described the amount of intellectual property they owned as "numerous," "several," "very few," "unknown," and "?." Because state agencies did not properly quantify their intellectual property in some cases, we cannot include it in the State's inventory.

While some state agencies gave vague answers, others attempted to give at least ballpark estimates of the amount of intellectual property they own. The California Department of Parks and Recreation, for instance, indicated that it owns "100,000+" unregistered copyrighted photographs and slides, the Department of Finance reported that it owns "approximately" 3,500 unregistered copyrighted software items, and the California State Lottery Commission stated that it owns "~ 5" trade secrets. Although not specific quantities, we included these amounts and other similarly reported quantities in this report to better reflect how

much intellectual property the State owns. However, the lack of precision in some state agencies' responses indicates that the numbers we report do not accurately reflect the State's intellectual property holdings.

Other departments included comments in their survey responses that also indicate that the State owns more intellectual property than disclosed. For example, the California Department of Parks and Recreation stated that because its operations are decentralized to 265 park units, each of which "may be responsible for the creation and stewardship of intellectual property," the time frame for responding to our survey did not allow it to gather information from each unit. Further, the Department of Health Services stated that, given the vast array of its programs and the extensive number of contracts and grants awarded, it is difficult to provide an exact count of the intellectual property it owns.

Federal databases for copyrights, trademarks, and patents may identify more state-owned intellectual property than we include in this report.

We also believe the amount of intellectual property owned by the State is higher than what we disclose in this report because our reviews at seven state agencies, although limited in scope, resulted in the identification of additional intellectual property. For instance, the Commission on Peace Officer Standards and Training has 530 more copyrighted documents than it originally reported in its survey response. Also, the Department of Pesticide Regulation has three logos that it did not recognize as trademarks in its survey response, while the Department of Toxic Substances Control has one. Although we corrected the inventory for the unreported items, other state agencies that we did not visit are likely to have made similar omissions.

Finally, we found it impracticable to search the federal databases for intellectual property registered under other than the most obvious of various permutations of their names, under former names of state agencies, or under the names of state agencies that no longer exist. Consequently, it is likely that these databases could identify more state-owned intellectual property than we disclose in this report. Although we corrected amounts of intellectual property owned by the State when these errors came to our attention, it is likely that other errors remain.

OTHER SURVEY TOPICS INCLUDED REGISTRATION, ASSIGNMENT OF INTELLECTUAL PROPERTY RIGHTS, ENFORCEMENT ACTIONS, AND THE EXTENT OF STATE GUIDANCE NEEDED

In addition to identifying the quantities of intellectual property owned by state agencies, the survey also inquired about why state agencies registered or did not register their intellectual property, why state agencies assigned their intellectual property rights to other parties, actions taken by state agencies against those who violated their intellectual property rights, and the extent to which the State should provide guidance to its agencies on managing and protecting their intellectual property.

Reasons for Formally Registering Intellectual Property Vary

Nearly one-third of the state agencies responding to our survey provided reasons why they formally registered their intellectual property. Most wanted to prevent unauthorized use or ensure control over the contents. Far fewer registered their intellectual property to ensure access to the property or to generate revenue. Only 16 responded that they registered their intellectual property to generate revenue. Eighty-nine state agencies responded that they do not register their intellectual property for one or more reasons. Most reported that the property was either already in the public domain or that it was a non-value-added task. A smaller number claimed that they lacked adequate resources, either staff or funding, to formally register their intellectual property. Six agencies responded that they lacked adequate knowledge, expertise, guidance, or training to protect their intellectual property.

Few state agencies register their intellectual property to generate revenue.

Few State Agencies Have Transferred Their Intellectual Property Rights

Only 36 state agencies reported having assigned their intellectual property rights to other individuals or entities in the last five years, and 30 agencies gave one or more reasons why. Of these, 11 agencies transferred their rights to recover a portion of the development costs associated with the intellectual property, and 14 did it to reduce contract costs. All 5 agencies that indicated they assigned their intellectual property rights to generate revenue were campuses of the California State University. Further, 20 state agencies checked "other" in response to this question, offering a variety of reasons for transferring their intellectual property rights. For example, the Supreme Court assigned its

rights for a manual to a private legal publisher to reduce the cost of publication and printing in exchange for providing free copies to the courts.

When Enforcing Their Intellectual Property Rights, State Agencies Are Typically Successful

A small portion of state agencies reported instances in which they took steps to enforce their intellectual property rights. In total, only 32 of the 220 state agencies responded that they had acted against violators in the last five years. However, when state agencies pursued violators on their intellectual property, they usually were successful in stopping them without resorting to litigation.

To enforce their intellectual property rights, state agencies report taking steps such as placing warning calls, issuing cease-and-desist letters, and pursuing litigation.

Examples of actions taken against alleged violators include 13 state agencies reporting that they placed 144 telephone calls to warn off violators. The Board for Professional Engineers and Land Surveyors placed 100 of these calls. Similarly, 18 state agencies reported sending cease-and-desist letters generated by their staff on 63 separate occasions. Three state agencies—the California State Lottery Commission, the California Department of Parks and Recreation, and California State University, Fullerton—sent more than half of these in-house letters. Eight state agencies reported using outside counsel a total of 13 times to issue cease-and-desist letters; the California State Lottery Commission led this group by using outside counsel on 5 occasions. State agencies reported that, generally, these informal actions stopped the infringement or potential infringement.

One agency reported pursuing litigation to a successful conclusion. As we discussed in Chapter 1, the California State Lottery Commission successfully challenged an instance of trademark infringement.

Many State Agencies Would Like Additional Guidance From the State

Since we found little state-issued guidance concerning administration of intellectual property, we asked state agencies about the extent to which they believed that the State should establish guidelines for managing and protecting intellectual property. Of the 106 state agencies that responded to this question, 58, or nearly 55 percent, indicated that they wanted some sort of additional guidance or help from the State. Suggestions ranged from the general to the specific. Some suggestions also applied

More than half of those state agencies that commented on the matter in our survey desire additional guidance concerning intellectual property.

to only one type of intellectual property. Other state agencies, however, questioned either the need for the additional guidance or the ease of implementing it.

The California Exposition and State Fair is one state agency that provided a general suggestion concerning the issuance of statewide guidance. Specifically, it recommended that state agencies be responsible for protecting their own intellectual property based on general guidelines provided by the State. Further, the Department of Alcoholic Beverage Control mentioned that the State should establish guidelines for managing and protecting intellectual property to protect the State and the public against use by unauthorized individuals or groups.

Other departments made suggestions related to specific areas of intellectual property administration. Concerning decisions about whether to protect intellectual property, for instance, the Department of Conservation stated that it would be helpful if the State provided the factors that state agencies should consider when making such decisions. Similarly, the California Department of Social Services stated that guidelines would be valuable to the extent that they clarified which intellectual property the State might be or should be protecting. Moreover, the Business, Transportation and Housing Agency indicated that it would be helpful for the State to establish general guidelines for ensuring that all agencies are aware of the existence of intellectual property, take a full and complete inventory of such intellectual property, and consider the necessity of formally protecting such property. Further, the Department of Pesticide Regulation believes that the State should provide statutory authority to own intellectual property, including definitions, time frames, chain of custody protocols, and written policy to all state agencies.

Two state agencies that specifically desired guidance about patents are the California Prison Industry Authority and the California Energy Commission. The California Prison Industry Authority said that state law should be enacted to govern who owns patents and other intellectual property when developed during employment with the State. Similarly, the California Energy Commission would like to see policies identifying whether the State or a state employee owns products invented by state employees. Finally, some state agencies mentioned that a single state entity should oversee aspects of intellectual property. The Office of Statewide Health Planning and Development recommended that a state agency be established to advise other

state agencies when it is appropriate to protect intellectual property. The Unemployment Insurance Appeals Board suggested that one state agency provide the services for securing protection for intellectual property.

Some state agencies are not convinced that more guidance from the State concerning intellectual property is necessary.

Not all state agencies, however, believe that additional guidance from the State is necessary or will be easy to implement. For example, the Judicial Council of California states that an information guide to assist public agencies in determining how to approach intellectual property issues might be helpful. However, it also stated that it would be difficult to develop uniform guidelines that take into account all individual characteristics and responsibilities of every state agency. The Judicial Council also stated that if the policies eliminated flexibility or added bureaucracy, they would not be helpful. The Youth and Adult Correctional Agency believes that intellectual property is so diverse that uniform guidelines would be difficult to apply. The California State Summer School for the Arts stated that "one size fits all" solutions that typify state government could cause more harm than good.

Additionally, the California State Lottery Commission questioned the idea of statewide guidelines because they might prevent state agencies from taking into account their own needs and resources. The California State Lottery Commission also stated that any guidelines could be used as evidence against the State if the State wishes to enjoin someone from infringing activities but has not followed "each and every guideline set forth." Finally, the Department of Finance stated that because the types of intellectual property are diverse, establishing formal policies for the management of all intellectual property would require extensive documentation specific to each situation and would be burdensome to administer and verify. It also stated that protection of state-owned intellectual property should be unnecessary except in very rare circumstances, such as when releasing the property into the public domain could jeopardize the privacy or health and safety of the public. Otherwise, the Department of Finance believes that all intellectual property of the State should be available to the public subject only to reproduction costs.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,

STEVEN M. HENDRICKSON
Chief Deputy State Auditor

Date: November 16, 2000

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APPENDIX A

Summary of Laws for the Four Primary Types of Intellectual Property

Table 3 summarizes selected information regarding the four major types of intellectual property: copyrights, trade marks, patents, and trade secrets. For each type, the table identifies the laws from which they derive their authority, states the length of time they are protected against unauthorized use, describes any designations or markings that can or must be used, and describes actions that constitute infringement.

TABLE 3

Certain Legal Aspects Related to Intellectual Property

Legal Base	Length of Protection	Designation or Marking	Infringement
Copyrights			
Federal Copyright Act	For all works, copyrights begin the moment the work is fixed in a "tangible form of expression" (e.g., put on paper or on a computer disk). For works created by noncorporate authors, copyrights expire 70 years after the author's death. If multiple authors, they expire 70 years after the death of the last surviving author. For works created by corporate authors (also known as "works made for hire") or anonymously, copyrights expire 95 years after the publication date or 120 years after the creation date, whichever is shorter.	Notice of copyright should include the © symbol or the word *copyright*, the year of first publication, and the owner's name (e.g., © 2000 Bureau of State Audits). For works created after March 1, 1989, the use of the copyright notice is optional.	Copying, distributing, displaying in public, or performing in public a copyrighted work or derivative work without the owner's permission is considered infringement. Civil and criminal penalties may apply.
Trademarks			
Federal Trademark Act California's Trademark Law Common law	Federal trademark registration lasts for 10 years and is renewable indefinitely as long as the trademark is in use. Trademarks registered before November 16, 1989, last for 20 years. State trademark registration also lasts for 10 years.	Under common law, notice should include the symbols ™ for a trademark or ℠ for a service mark. If the mark has been registered with the federal Patent and Trademark Office, the symbol ® may be used. Notice may also state "[mark] is a trademark of [owner]."	Without the consent of the owner, use of a mark that is confusingly similar to an existing mark by a party other than the owner is considered infringement. Also, without the consent of the owner, use of a mark that dilutes a famous mark is also a violation of federal trademark law. Civil penalties may apply.

Legal Base	Length of Protection	Designation or Marking	Infringement
Patents			
Federal Patent Act	Utility patents, which cover new and useful machines, processes, business methods, and compositions of matter, and plant patents, which cover distinct and new asexually reproduced plants, last for 20 years from the date of filing an application. Design patents last for 14 years from the date the patent is granted.	If an application has been filed with the federal Patent and Trademark Office, the phrases "patent pending" or "patent applied for" may be used. Once a patent has been issued, the words "patent" or "pat." followed by the patent number may be used.	Making, selling, offering for sale, or importing a patented product without the owner's consent is considered infringement. Civil penalties may apply.
Trade Secrets			
California's Uniform Trade Secrets Act Common law Federal Economic Espionage Act	Indefinite, as long as secrecy is maintained.	Material should be marked "trade secret," "proprietary," "confidential," "restricted," or otherwise labeled. Also, employee confidentiality and vendor nondisclosure agreements should be used in addition to observing other reasonable steps based on common practice in the relevant industry.	Persons to whom trade secrets have been disclosed under a duty of nondisclosure who then make an unauthorized disclosure, or persons who use improper means to obtain trade secret information from the owner may be liable for trade secret misappropriation. Civil and criminal penalties may apply.

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APPENDIX B

Summary of the Types and Quantities of Intellectual Property Owned by 125 State Agencies

More than half of the 220 state agencies in our review own at least one item of intellectual property. In total, 125 state agencies own more than 113,000 identified items of intellectual property. Copyrights constitute 99 percent of all intellectual property holdings.

To develop the following table, we relied on several sources: survey responses from state agencies, copyright registrations filed with the federal Copyright Office, patent information and trademark registrations filed with the federal Patent and Trademark Office, trademark registrations filed with California's Secretary of State, and our site visits to seven state agencies to validate certain information from their survey responses. As we note in the Introduction, copyrights and trademarks can be either registered or unregistered. We report the quantities for both in this appendix.

In numerous instances, we found differences between the quantities state agencies reported in their responses and numbers we obtained from other sources. When the amounts that we obtained from the registration information or our site visits were higher than those in the survey responses, we reported the higher quantities. If the amounts reported by the state agencies in their survey responses were higher, we used those numbers because of the limitations in identifying all registered copyrights and trademarks that we describe in Chapter 2. In the following table, entries that include the footnote reference † are for the 59 state agencies whose survey responses differ from the quantities we report. We report as one any trademark registered with both the federal Patent and Trademark Office and California's Secretary of State. Likewise, we count as one any trademark with multiple registrations that show only variations in color or that are registered as both a trademark and a service mark. When state agencies reported an approximate number, we recorded that number. For example, the California Earthquake Authority indicated that it owned ">10" unregistered copyrights, and we recorded that as 10 unregistered copyrights. As we describe in Chapter 2, the quantities of intellectual property we identify in this report are likely not complete.

TABLE 4

Summary of Identified State-Agency Owned Intellectual Property

Department	Copyrights		Trademarks		Trade Secrets	Patents	Other	Totals
	Registered	Unregistered	Registered	Unregistered				
Accountancy, California Board of		3		3				6
Administrative Law, Office of	1	2						3
African American Museum, California		274						274
Air Resources Board		30		1				31
Alcohol and Drug Programs, California Department of			3	*				3
Architects Board, California	3[†]	13						16
Arts Council, California	2[†]	3						5
Audits, Bureau of State				1			1	2
Bar of California, State	25	843	5	2				875
Behavioral Sciences, Board of	3[†]	1						4
Boating and Waterways, Department of	8		1					9
Building Standards Commission, California	11	1						12
Business, Transportation and Housing Agency		1		1				2
Child Support Services, Department of			2				21	23
Coastal Commission, California	2[†]		1	1				4
Coastal Conservancy, California			1[†]					1
Community Colleges, California	17[†]	315		1			1	334
Conservation Corps, California		41						41
Conservation, Department of	3[†]	*	5	3				11
Consumer Affairs, Department of	10[†]	30						40
Contractors State License Board		1		1			13	15
Control, State Board of		8						8
Corporations, Department of				1				1
Correctional Peace Officer Standards and Training, Commission on		3		1				4
Corrections, State Board of	1[†]	27						28
Corrections, California Department of	2[†]						53[‡]	55
Criminal Justice Planning, Office of		177						177
Debt and Investment Advisory Commission, California		28						28
Dental Board of California							4	4
Developmental Disabilities, Area Boards on				2				2
Developmental Services, Department of	4[†]							4

Note: Footnotes for this table appear on page 52.

Department	Copyrights		Trademarks		Trade Secrets	Patents	Other	Totals
	Registered	Unregistered	Registered	Unregistered				
Earthquake Authority, California		10[‡]		2				12
Education, California State Board of		9		1				10
Education, California Department of	303[†]							303
Emergency Medical Services Authority				5			1	6
Emergency Services, Office of	3[†]							3
Employment Development Department	1[†]	1	3[†]					5
Energy Commission, California	12[†]		2			8		22
Equalization, Board of							2	2
Exposition and State Fair, California			6					6
Fair Employment and Housing, Department of	1[†]							1
Finance, Department of		3,770[‡]		2				3,772
Fish and Game, Department of	1[†]			1				2
Food and Agriculture, California Department of	2	3	3	3				11
Forestry and Fire Protection, Department of	84	1,828		86	12		3	2,013
Franchise Tax Board			1[†]					1
General Services, Department of		5[‡]	1[†]	2[‡]				8
Geologists and Geophysicists, State Board of Registration for							10	10
Health and Human Services Agency Data Center, California			1[†]					1
Health Services, Department of	11[†]	725	2					738
Highway Patrol, Department of the California	1[†]							1
Housing and Community Development, Department of		6						6
Housing Finance Agency, California	3[†]	1[†]		1[†]				5
Industrial Relations, Department of		13		3				16
Information Technology, Department of				1			*	1
Insurance, California Department of		1						1
Integrated Waste Management Board, California	5[†]	540	1	5				551
Judicial Council of California	8	800		8				816
Justice, Department of	8[†]	3		1				12
Lands Commission, California State	1			1				2
Library, California State	3[†]							3
Little Hoover Commission							155	155
Lottery Commission, California State	2[†]	*	34[†]	50	5[‡]			91

Note: Footnotes for this table appear on page 52.

Department	Copyrights		Trademarks		Trade Secrets	Patents	Other	Totals
	Registered	Unregistered	Registered	Unregistered				
Managed Risk Medical Insurance Board			2					2
Mental Health, Department of	20†							20
Motor Vehicles, Department of	2†	103†	1		2‡			108
Native American Heritage Commission, California				1				1
Parks and Recreation, California Department of	5*,†	100,000‡	10					100,015
Peace Officer Standards and Training, Commission on	740†		1					741
Personnel Administration, Department of							5	5
Personnel Board, State								*
Pesticide Regulation, Department of				3†				3
Pharmacy, California State Board of		3		1				4
Planning and Research, Office of		3						3
Prison Industry Authority, California		1		41	1	4	3	50
Professional Engineers and Land Surveyors, Board for		5					10	15
Public Employees' Retirement System, California	1	59	2					62
Public Employment Relations Board							5	5
Public Utilities Commission, California							*	
Public Works Board, State							1	1
Real Estate, Department of	15†							15
Reclamation Board				1				1
Registered Nursing, Board of							1	1
Resources Agency, California		1		1				2
San Joaquin River Conservancy				1				1
Santa Monica Mountains Conservancy		1		1				2
Secretary of State		15	1	7				23
Seismic Safety Commission	2†	50						52
Social Services, California Department of			1†					1
Statewide Health Planning and Development, Office of	1†		1					2
Stephen P. Teale Data Center		1		1				2
Student Aid Commission, California	1†	38		1				40
Supreme Court of California	1	1						2
Teacher Credentialing, California Commission on	6	1	6	2			2	17

Note: Footnotes for this table appear on page 52.

Department	Copyrights		Trademarks		Trade Secrets	Patents	Other	Totals
	Registered	Unregistered	Registered	Unregistered				
Teachers’ Retirement System, California State			2†	1			607	610
Toxic Substances Control, Department of	2†		1†					3
Trade and Commerce Agency, California	6†	*	8†	*				14
Transportation, Department of	12†	2	1			2		17
Unemployment Insurance Appeals Board							1	1
University, California State:								
Office of the Chancellor	68†	*	1†					69
Bakersfield	1†							1
Chico	23†		17					40
Dominguez Hills	54†							54
Fresno	4†		1†					5
Fullerton	23†		1†	20		1		45
Hayward		1	1	8				10
Humboldt	3†	200						203
Long Beach	31†		1					32
Los Angeles	28†	1		2				31
Maritime Academy				10‡				10
Monterey Bay			3	1				4
Northridge	7†		1†	12				20
Pomona	10†		2†					12
Sacramento	10‡		8‡					18
San Bernardino	4	*	2					6
San Diego	26†						1	27
San Francisco	5†		2					7
San Jose	5†		2†					7
San Luis Obispo			1†					1
Sonoma		134	3				13	150
Stanislaus	1†							1
Vocational Nursing and Psychiatric Technicians, Board of	4†	3						7
Water Resources, Department of	5†	*		1				6
Wildlife Conservation Board				1				1
Youth and Adult Correctional Agency		1						1
Totals	**1,667**	**110,140**	**155**	**307**	**20**	**15**	**913**	**113,217**

Note: Footnotes for this table appear on page 52.

* State agency provided an unquantifiable response for the quantity of intellectual property owned.

- California Department of Alcohol and Drug Programs reported that it owns an "unknown" number of unregistered trademarks.
- Department of Conservation reported that it owns an unquantified number of unregistered copyrights and that maps alone number in the thousands.
- Department of Information Technology reported that it owns several items of other intellectual property.
- California State Lottery Commission reported that it owns numerous unregistered copyrights.
- California Department of Parks and Recreation reported that it owns very few registered copyrights.
- State Personnel Board reported that it owns numerous materials that could be construed as falling within the definition of intellectual property but that it has not protected these materials, either formally or informally.
- California Public Utilities Commission reported that it owns many thousands of other unregistered intellectual property.
- California Trade and Commerce Agency reported that it owns a number of unregistered copyrights and trademarks.
- California State University, Office of the Chancellor, reported that it owns an unknown number of unregistered copyrights.
- California State University, San Bernardino, reported that it owns an unknown number of unregistered copyrights.
- Department of Water Resources reported that it was not aware of its unregistered copyrights and responded with a "?."

† The quantity of intellectual property reported in this table is different from the quantity identified by agency in its survey response. (See the narrative in this appendix for why we reported a different amount in these instances.)

‡ Survey response provided an approximation for the quantity of intellectual property owned.

- California Department of Corrections reported that it owns +/- 53 items of other intellectual property.
- California Earthquake Authority reported that it owns >10 unregistered copyrights.
- Department of Finance reported that it owns approximately 3,770 unregistered copyrights.
- Department of General Services reported that it owns <5 unregistered copyrights and <2 unregistered trademarks.
- California State Lottery Commission reported that it owns ~5 trade secrets.
- Department of Motor Vehicles reported that it owns >2 trade secrets.
- California Department of Parks and Recreation reported that it owns 100,000+ unregistered copyrights.
- California Maritime Academy (California State University) reported that it owns 5-10 unregistered trademarks.
- California State University, Sacramento, reported that it owns approximately 10 registered copyrights and 6-8 registered trademarks.

cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State
Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press