



Intellectual Property and Data Strategy

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Disclaimer

DIGITAL’s IP and Data Strategy has been developed and approved by DIGITAL’s Board of Directors and is periodically reviewed for consistency with DIGITAL’s Corporate Plan and policies. This guidance does not bind us or Innovation, Science and Economic Development Canada (ISED) and is subject to change at any time based on guidance from ISED or DIGITAL’s Board of Directors.

Introduction

In today's knowledge-based economy, intangible assets often contribute more to an organization's value than tangible assets. Organizations that understand the importance of intangibles and effectively build, manage, protect, and leverage them in line with their business strategy are better positioned to thrive in a competitive business landscape.

In collaborative arrangements, a clear understanding and communication of intellectual property (IP) rights and data rights is essential to minimizing disputes and enabling the fair distribution of benefits among the parties involved. And importantly, it is imperative that Canadians at large benefit from publicly-funded IP and data assets.

DIGITAL is committed to helping organizations build their competitive strength through the value of their intangible assets for the benefit of Canadians and has, therefore, adopted this "IP and Data Strategy" that is premised on the following 4 pillars:

1. Developing Strong IP and Data Use Capacity
2. Supporting the Development of an IP and Data Strategy at the Member Level
3. Supporting the Development of an IP and Data Strategy at the Project Level
4. Investing in IP for the Benefit of Canadians

Developing Strong IP and Data Use Capacity

Intellectual property are intangible assets that are protected through various legal means, primarily patents, trademarks, copyrights, and trade secrets. Securing appropriate IP rights and understanding the IP landscape can allow an organization to strengthen its competitive position, generate additional revenue, protect its brand identity, and help identify potential infringement risks.

Similarly, data is a strategic asset that drives organizational growth, innovation, and competitiveness. Organizations that recognize and harness the value of their data are better equipped to adapt to changing business environments and thrive in the digital era.

To support its members to maximize the benefits of IP and data, DIGITAL will:

- Provide expertise from a Senior Official for Intellectual Property¹ and other strategic advisors retained by DIGITAL who will support the development of an IP and data strategy for members.
- Support selected Canadian companies to explore opportunities for leveraging their IP and data assets across different sectors, markets, and ecosystems (even in unrelated fields for novel applications), through introductions to other members and publishing information about the IP generated during a project (“Foreground IP”) through the IP Registry².
- Facilitate access and introductions to leading experts within Canada so that they can be independently retained by members to help them protect and leverage their intangible assets. These costs may be eligible for DIGITAL co-investment³.
- Work in partnership with other organizations in the global IP ecosystem to expand members’ access and referrals to specialists who can provide guidance and insights related to IP and data.
- Build ecosystem awareness by offering educational webinars and coaching so that members learn the value of IP and data, how to best protect their IP and data, and how to best leverage these intangible assets for competitive advantage while minimizing risk and complying with regulatory requirements.
- Provide co-investment to eligible members for the further development of their Canadian-owned IP portfolios.

¹ Refer to Appendix A to better understand the role of DIGITAL’s Senior Official for Intellectual Property.

² DIGITAL has designed and implemented a member-accessible registry to explore potential collaborative relationships for opportunities to use, develop, or be a supplier to the Foreground IP generated in projects. Members provide DIGITAL with approved publishable summaries, subject to confidentiality and trade secret considerations, to coincide with ongoing intellectual property reporting requirements.

³ The term “co-investment” refers to the concept that the consortium partners, including DIGITAL, sharing in the total investment required to fund the collective project costs.

Supporting the Development of an IP and Data Strategy at the Member Level

An IP and data strategy helps organizations protect their innovations that drive business value, leverage their intangible assets, and position themselves strategically in the market, leading to enhanced competitiveness, profitability, and long-term success. Embedded throughout the project application, evaluation, and contracting processes is DIGITAL's commitment to having its members develop effective IP and data strategies as they develop their project proposals and refine them throughout the project once selected.

DIGITAL will help members develop robust IP and data strategies by:

- Increasing their organizational capacity and IP and data maturity through educational seminars and resources as well as facilitating access to qualified experts.
- Supporting project participants in minimizing conflicts around IP and data ownership and use by fostering discussions amongst the project consortium on what pre-existing IP ("Background IP") and pre-existing data ("Provided Data") will be shared, how and under what terms it will be shared (during and after the project), and how it will then be leveraged by each project participant for ongoing research and commercial benefit.
- Helping project participants understand what form of IP protection may be available to safeguard the Foreground IP that will be developed during a project by considering both registered (e.g., patents, industrial designs, trademarks) as well as unregistered (e.g., copyright, trade secret) IP protection.
- Guiding project participants to consider the costs associated with IP protection as part of the budget rationale during project proposal development.
- Providing co-investment to eligible project participants towards the costs for IP protection where such IP will further the project participants' business objectives and are aligned with their IP and data strategy, in order to help them grow and scale.
- Spurring licensing opportunities through the collaborative network created during a project and attracting potential licensees through facilitating introductions and by developing and using the IP Registry.

- Requiring project participants to mitigate IP ownership issues as it relates to their employees, contractors, and service providers by confirming that such individuals will have assigned their IP rights and agreed to confidentiality obligations.
- Compelling project participants to consider the competitive landscape, understand their freedom to operate, and identify the impact of third-party and open-source IP in their commercialization opportunities.
- Facilitating engagement with investors who deem IP and data as integral to their investment approach.

Supporting the Development of an IP and Data Strategy at the Project Level

DIGITAL takes no interest in or rights to any Background IP, Foreground IP, Provided Data, or the data generated during the project (“Collected Data”), but has an interest in addressing potential IP issues at the outset of a project ensuring that:

- project participants leverage IP for the success of the collaborators; and
- DIGITAL’s co-investment will benefit Canadians more broadly.

To meet these objectives, DIGITAL requires project participants to enter into a Master Project Agreement (“MPA”) once selected, in which, while supported by DIGITAL’s IP advisors, consortium members are required to:

- Identify any pre-existing IP and data, third-party or open-source IP, and third-party data that is relevant to the collaboration, and determine how it will be used in the project and under what terms.
- Determine ownership and licensing rights in relation to the IP and the data generated as part of the project to avoid potential future legal conflicts, including clear language that addresses IP that project participants expect to use or create, as well as the ownership and licensing of unexpected IP.
- Consider how they can use each other’s IP and data during and after the project and ensure that these parties have the necessary rights to use the IP and data for the intended purpose while respecting each of their ownership rights.

- Adhere to DIGITAL's requirements to have a clear, transparent and predictable approach to IP licensing, including confirming that they are willing to license Foreground IP and Collected Data, and any relevant Background IP and Provided Data required to make use of the Foreground IP, on fair, reasonable, and non-discriminatory (FRAND) terms, subject to relevant competitive issues.
- Agree on confidentiality obligations (since collaborative arrangements typically involve sharing sensitive information and trade secrets).
- Decide how they will handle publications and disclosures related to the collaborative work so as to not jeopardize IP protection.
- Determine patent filing strategies by deciding who will be responsible for patent filings (where applicable) and with DIGITAL providing financial support where eligible.
- Confirm that any project participants providing access to any data for the purposes of the project have the right to do so.
- Secure data sharing agreements and/or research and ethics approvals to provide safe access and responsible use of the data for the purposes of the project.
- Agree upon standardized methods to permit the sharing of data between them for the purposes of the project.
- Adopt appropriate data governance policies, procedures, and standards around data extraction, standardization, storage, and access including ensuring that data is collected for specified, explicit, and legally authorized purposes.
- Adopt organizational policies, procedures, and standards for protecting restricted, confidential or sensitive data from unauthorized access or loss (e.g., encrypting data, backing it up appropriately, and establishing incident management protocols) as well as taking measures to prevent cyberattacks.
- Ensure there is an ethical, transparent, and responsible framework for the use of data and the design, development, and eventual use of the technology solution.
- Commit to comply with industry standards / best practices and relevant legal requirements related to data privacy, security, and ethical use of data and AI.

- Address IP infringement issues and the liability for potential IP and data violations in the collaborative project.
- Address how IP and data issues will be handled if there is a change of control of one of the project participants or a premature termination of the project activities.
- Consider how the Foreground IP and Collected Data will be monetized (e.g., in conjunction with the sale of a product or service, or through simply licensing the IP or data on a standalone basis).
- Set out what role each project participant will play in the monetization process and related commercial terms and/or license agreements.
- Agree on mechanisms for resolving any IP and data-related disputes that may arise (including those that relate to ownership of and access to Foreground IP), such as arbitration or mediation, to avoid costly and time-consuming litigation.

Investing in IP for the Benefit of Canadians

DIGITAL is committed to building a future where Canadian organizations are global industry leaders and where Canadians benefit from the prosperity and growth that comes from creating and commercializing novel technology products and services.

To support this objective, DIGITAL has developed and adopted policies designed to maximize the rewards for Canadians of taxpayer-funded research and development. DIGITAL not only supports members and project participants to develop robust IP and data strategies but encourages them to contribute to the technology ecosystem by providing co-investment for Canadian-owned IP. Specifically, DIGITAL encourages the development of Canadian-owned IP by only investing in improvements to Canadian-owned Background IP and the creation of new Canadian-owned Foreground IP. In addition, DIGITAL imposes restrictions and/or financial consequences related to the transfer of any DIGITAL-funded Foreground IP to a non-Canadian entity or to a Canadian entity without substantial operations in Canada.

Appendix A

Senior Official for Intellectual Property

Consistent with and subject to DIGITAL’s obligations to ISED, DIGITAL has a Senior Official for Intellectual Property who works directly with members and project participants to:

- serve as the IP strategy lead and assist DIGITAL’s Board of Directors and management team in executing this IP and Data Strategy;
- oversee the administration of all requirements and processes set out in this IP and Data Strategy, and ensure compliance with the requirements of the Contribution Agreements between DIGITAL and ISED;
- assist project participants in the development of their “IP Rationales”⁴ and appropriately balance their reasonable interests in any Foreground IP and the reasonable interests all members may have in accessing that Foreground IP;
- present the IP Rationale for qualifying projects to the Project Selection Committee;
- work with project participants to achieve the objectives identified in the project proposal’s IP Rationale and identify any further opportunities to share their Foreground IP;
- work closely with the holders of the Foreground IP in terms of ensuring that the IP Registry does not disclose competitively sensitive information; and
- provide dedicated support to SMEs in an effort to increase their understanding and use of IP and support their use of the IP Registry to identify potential opportunities for future collaboration or commercialization.

⁴ “IP Rationale” refers to a requirement that project proposals provide a rationale that demonstrates how the proposed project would create opportunities for members, including members who are not participating in any project, to access expected Foreground Intellectual Property arising from a project. The rationale shall include but not be limited to, a description of the expected Foreground Intellectual Property and the legal means by which it would be protected; the applicants’ agreed ownership and licensing terms governing access to the expected Foreground Intellectual Property; a list of members that applicants believe would have a technological or business interest in the expected Foreground Intellectual Property, and a description of the interest.