



DIGITAL
TECHNOLOGY
SUPERCLUSTER

INTELLECTUAL PROPERTY (IP) STRATEGY

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Definitions

Throughout this document the following terms have the meanings set out below:

“Contribution Agreement”: means the agreement reached between the Her Majesty the Queen in Right of Canada and 10793574 Canada Association (the Supercluster) and signed November 27, 2018;

“IP Rationale”: means the element of selection criteria used by the Supercluster as described in Section 7.3 (e) of the Contribution Agreement;

“Member”: means both a “Member” and “Associate Member” as defined in the Supercluster Membership Agreement.

“Project Consortium”: means the organizations who together submit a proposal that is approved for co-investment by the Supercluster in accordance with the Project Guidance Document and the terms of the Contribution Agreement.



Introduction

Canada's Digital Technology Supercluster, (the "Supercluster"), aims to help Canada be recognized as a global leader with a high performing digital innovation system. This includes helping Canadian companies adopt the digital platforms they need to be global leaders, creating a cluster of digital technology companies with global market leadership and supporting the development of a digitally skilled workforce.

In accordance with Sections 15.1 and 15.2 of the Contribution Agreement, this IP Strategy outlines the framework for Members in a Project Consortia to discuss the commercialization, use, protection and sharing of Intellectual Property to foster innovation in a manner that maximizes returns on investment for Members and as such, is a critical pillar in meeting the leadership aspirations of the Supercluster by helping foster increased investment in R&D, increased synergies between Members, and support the business and economic value creation critical for job creation. As such, this IP Strategy is designed to help Members strengthen their IP portfolios while in the pursuit of industry led, market facing opportunities. The objectives are:

- 1. *Protect the value of background IP.*** It is critical that an organization feels confident that they can protect the value of their IP portfolio and that becoming a Member of the Supercluster creates no encumbrances on the background IP they bring to projects. This includes the right to define appropriate permissions and restrictions on its usage. This is an essential trust building step.
- 2. *Align foreground IP with commercialization strategies.*** Ensure that the IP Rationale within selected projects supports the success of globally competitive project teams developing transformative digital innovations aimed at compelling market opportunities. This is essential for converting the raw potential of technology and foreground IP into meaningful economic impacts.
- 3. *Leverage foreground IP.*** Utilize the market leadership obtained through the technology and foreground IP by creating opportunities for complementary business, technology and application development agreements. Cultivate investment opportunities in secondary, non-competitive applications. This is essential for ensuring that the benefits of foreground IP are felt beyond the participants in a Project Consortium and ensure results can be scaled out into adjacent industries, markets and geographies.
- 4. *Demonstrate value to Canadians.*** Show how innovation affects all citizens. Share stories around the Supercluster supported products and technology pursuing big ideas to improve people's lives. Ensure that these stories connect high performance innovation as the path to deliver these new products and technology.

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5. **Augment the capacity of SMEs.** Ensure that IP outcomes will augment capacity for strategic IP management amongst SMEs, which will enable them to grow and be competitive on the global stage. Support competency development activities through the delivery of direct programming to SME Members in addition to taking advantage of resources from other IP service providers, such as CIPO (Canadian Intellectual Property Office). This is essential for helping Canadian companies understand how IP can improve their productivity and competitiveness in global markets.

This document outlines the Supercluster's strategy and approach to managing Intellectual Property. The IP Management Framework outlines the principles that are applied at different stages of program and project development activities. This is followed by an implementation section outlining the first year's activities and a commitment to review the effectiveness of the IP Strategy on an annual basis.



IP Management Framework

Building Trust

The Digital Supercluster developed a Charter of Values to create and reinforce a culture of collaboration and partnership. Extending these values into IP management means that it is important to respect the background IP, confidential information and insights Members bring into potential collaborative projects. As such all Supercluster Members are bound to respect the confidential information they receive as a condition of their membership or participation agreement. This helps reinforce a trustworthy environment where Members can feel confident exploring new ideas and potential innovation relationships.

Facilitating Collaboration

Before a meaningful discussion on IP can take place, a number of conversations need to occur in project teams throughout ideation, the expression of interest (EOI) stage, full proposal development and completion of a master project agreement. These conversations create the necessary focus and alignment around well-defined market opportunities including:

- A clear, shared vision of the market opportunity;
- A clear understanding of the roles and expected benefits in both the development project and the post-project delivery of the solution for organizations in the project consortium;
- A clear understanding of the solution architecture including where the targeted technical performance advances reside. This helps isolate where discussions around foreground IP need to start and then working backwards, enables a proper definition of background IP; and
- A strategy for engaging Members outside the Project Consortium to help accelerate market leadership and ecosystem development.

The Supercluster plays an important role in facilitating these conversations as part of the team building process. In particular, the IP Manager will work with SMEs to ensure their fulsome participation in these conversations and assist SMEs in accessing external legal advice where necessary. By working with the team to align IP in the context of market leadership and ecosystem development opportunities, it also makes it easier to attract leadership, talent, and capital to our world-class innovation opportunities. This ensures that our IP strategy creates investable assets that lead to the business expansion required to deliver job creation and economic impact.

Project Proposals

The project proposal is a key element for planning the application of the IP Strategy in Supercluster funded projects. Consistent with section 7.3 (e) of the Contribution Agreement, project proposals are required to provide an IP Rationale that demonstrates how the proposed project will provide participants in the Project Consortium and Members outside the consortium, the opportunity to request negotiations for potential access to the foreground IP arising from the Project. The IP rationale must include:



- a. a description of expected foreground intellectual property and the legal means by which it would be protected;
- b. the applicants' agreed ownership and licensing terms governing access to the expected Foreground Intellectual Property within the project consortium, based on project participants having access on fair, reasonable and non-discriminatory terms and subject to relevant competitive issues, all foreground intellectual property arising from the project, at least for internal R&D purposes;
- c. a strategy to create access opportunities to the digital innovation's technology and foreground IP where Members outside the Project Consortium with a business or technology development interest should identify an opportunity to use, develop or be a supplier to the digital innovation;
- d. a list of potential Members that participants in the Project Consortium would be willing to negotiate access to the digital innovation's technology and foreground IP. Access could take a variety of forms (license, customer usage contract, developer or supplier agreement etc.) and is intended to be complementary. The result should strengthen the market leadership of the digital innovation and build momentum within the ecosystem.

Project proposal templates have a section dedicated to the IP Rationale noted above, ensuring that proposal teams, with the assistance of the IP Manager, present a strong strategy supporting the success of the project consortium and a plan to leverage foreground IP in ways that strengthen the overall ecosystem.

Project Selection

Using the information provided in the proposal, intellectual property gets factored into the project selection in three main areas. First, it is included in the evaluation of the digital technology innovation. This includes confirming that the innovation is an advance in the state of the art, is likely to create new applied knowledge and if successful, will resolve issues of technical uncertainty. Together, these create a sufficient degree of uncertainty that will drive the creation of one or more inventions, which in turn, can then be protected in some form of intellectual property. These conditions are essential for the generation of IP.

Second, in the area of commercial impact, IP plays a role in evaluating the strength and sustainability of the competitive advantage. This is where a strong relationship with research intensive universities can play a role by bringing new knowledge to bear on the technology behind the digital innovation. A strong competitive advantage improves the ability of the participants in the consortium to capture market share here in Canada and around the world. These conditions are essential in confirming the value of generating the IP.

Third, it is included in the evaluation of ecosystem impact. Each IP Rationale includes a proposed strategy for creating access opportunities to the digital innovation's technology and foreground IP, where Members with a business or technology development interest should identify an opportunity to use, develop or be a supplier to the Digital Innovation. Proposals with strategies that are likely to benefit a broad range of Members in the ecosystem will score higher.



Master Project Agreements

The Master Project Agreement (MPA), is a key element for the implementation of the IP Strategy in Supercluster funded Projects. Considerations include:

- a. All Projects are subject to an MPA. The MPA must comply with this IP Strategy, and the Project Selection Guide.
- b. Members require flexibility to address IP aspects particular to their projects, especially to ensure that the value of their IP portfolio is enhanced, that Supercluster activities do not result in dissipation of their background IP, and to address legitimate competitive concerns.
- c. Participants in the Project Consortium need to ensure they have alignment around the market opportunity, roles, the solution architecture and a strategy that creates access opportunities for Members outside the Project Consortium in order to have a beneficial IP Rationale for the project.
- d. The Supercluster shall develop performance support resources including relevant template agreements, template terms, and use cases, for use by Members in developing MPAs.
- e. The IP Manager shall provide templates related to best practices for licensing IP in collaborative agreements and shall assist SMEs participating in projects in accessing independent legal expertise related to Intellectual Property.
- f. The sharing of Intellectual Property is a vital component of building ecosystems and ensuring that Members, particularly SMEs, realize tangible benefits beyond the project.
- g. The MPA, (including Schedule D) approved by the Supercluster shall meet the following requirements:

i. Definitions

The MPA shall include definitions for categories of background IP and/or foreground IP applicable to the project based on the approved project work plan.

ii. Background IP

Project participants shall own and control the use of their background IP. Project participants may impose restrictions on the use of their background IP, including but not limited to restrictions on sublicensing, reverse engineering, decompiling, and disassembly.

Project participants may take measures to protect or obscure certain aspects of their background IP (e.g. products that include “black box” components or that use masking).

Consistent with Section 15.1 of the Contribution Agreement, in order to facilitate the successful implementation of Eligible Projects, Project participants commit to enter into negotiations with other participants in the Project Consortium, on request, for access on a non-exclusive basis, to background IP where such access is required for the completion of the Project.

In establishing any license for background IP, project participants shall consider the extent to which background IP is required to make or use foreground IP from the project



and ensure appropriate licenses are in place based on fair, reasonable and non-discriminatory terms. The IP manager will assist and support project participants in arriving at terms which could include royalty-free arrangements.

iii. Foreground IP

Project participants shall establish fair and reasonable conditions defining their respective rights to own, use or commercialize foreground IP.

Project participants shall have access to foreground IP that they require to fulfil their obligations in accordance with the project work plan.

Project participants shall have access on fair, reasonable and non-discriminatory terms and subject to relevant competitive issues, all foreground intellectual property arising from the project, at least for internal R&D purposes.

Project participants may take measures to implement foreground IP in a way that protects or obscures certain aspects of their foreground IP (e.g. products that include “black box” components or that use masking). Schedule D of the MPA shall describe any applicable protections or use restrictions, including any that ought to be specified in the IP Registry.

Project participants will define the geographies to which their foreground IP primarily applies. Other Members may then identify geographical opportunities to leverage and scale out the original IP into complementary markets. The IP owner may add specific conditions for licensing their IP into new geographies.

Project participants may also take measures to protect foreground IP, which is strongly related to their existing background IP (such as background IP improvements).

iv. Leveraging Technology and Foreground IP in the Ecosystem

The project consortium will have a strategy to create access opportunities to the digital innovation’s technology and foreground IP. This strategy will enable Members with a business or technology development interest to identify an opportunity to use, develop or be a supplier to the digital innovation. These are intended to be complementary opportunities that strengthen the market leadership position of the digital innovation while building momentum in the Supercluster’s ecosystem. In addition, project participants will, upon request, enter into negotiations regarding access to their foreground IP with Members listed in the project proposals’ IP Rationale, subject to any applicable limitations related to such access.

The IP Registry

The Supercluster shall design and implement a Member accessible registry where Members can look for opportunities to use, develop or be a supplier to a digital innovation’s technology and foreground IP. These opportunities will have defined access terms and conditions, enabling Members to identify potential collaborative relationships.

The IP Registry is the mechanism to allow Members to create further economic benefits



by extending, scaling out, or developing new market channels for digital technology IP created as a result of Supercluster projects. These extensions shall also be recorded in the IP registry.

The IP Registry will have descriptions of the foreground IP generated through Supercluster-supported projects. This includes patents, trademarks, copyrights and novel methods or models.

As part of the registration process, Members shall provide to the Supercluster, at the time periods referenced below, a written abstract or summary and where applicable, an application or registration number, of foreground IP generated as part of the project, subject to confidentiality and trade secret considerations;

- a. Foreground IP either protected by patent or industrial design (IP for which a Member intends to file a patent or industrial design application) shall be registered as soon as the patent or industrial design application is filed with an Intellectual Property Office;
- b. A summary of foreground IP protected by copyright or trademark will be published on the IP Registry via a call to Members at a minimum of semi-annually to coincide with Ongoing Intellectual Property Reporting requirements as outlined in section 15.7 of the Contribution Agreement;
- c. Foreground IP other than that listed in (a) and (b) is expected to be submitted to the IP Registry when the R&D work on that IP is complete;
- d. Members registering foreground IP may indicate in the IP Registry at the time of registration specific opportunities for their IP in non-competitive areas – e.g. new geographies, adjacent markets and industries;
- e. The Supercluster and the Member(s) holding rights in such foreground IP shall establish at the time of registration a version of such written abstract or summary, that excludes confidential information and/or trade secrets, for publication through the IP Registry;
- f. The IP Registry shall reflect any conditions, restrictions or exceptions to the inclusion of foreground IP or their use or access by the Members to the IP Registry; and
- g. The IP Registry will track the number of new entries as well as new licenses executed in respect of foreground IP in each project.

In terms of ensuring that the registry does not disclose competitively sensitive information, the IP Manager will work closely with the holders of foreground IP in a way that is consistent with best legal practices associated with properly protecting the form of foreground IP in question (i.e., patent law for patents; copyright law for copyright etc.). The IP Manager will also support SMEs' use of the IP Registry, by identifying potential opportunities for future collaboration or commercialization.

The IP registry will also store the IP rationales and have access to the data required either in the IP registry or a related Supercluster database to support the Intellectual Property Reporting required for the Minister on September 30th and March 31st of each Fiscal Year.

Dispute Resolution

Project participants shall be subject to a dispute resolution mechanism to address and resolve disputes in respect of IP, including their ownership or rights to use. This resolution will be embedded in the body of the MPA.



Governance

The Supercluster as Facilitator

The role of the Supercluster is to be a facilitator of collaboration and therefore, does not seek to profit directly from an ownership position in IP. The Supercluster may own IP and license it in situations where a Project Consortium decides to use the Supercluster legal entity as a more efficient 3rd party entity for IP or data management. Specific terms and conditions associated with that role would be covered in the applicable MPA.

Board or Governance Committee of the Board

The Board is responsible for championing the understanding of IP governance and how the Supercluster will enact its IP Strategy. This includes a review and approval of the IP Strategy. Once approved, the Board will ensure that IP policies and governance are consistent with the Supercluster's overall policies with respect to risk management and the goals of the Supercluster overall.

Supercluster Executive

The Supercluster shall develop best practices and guidelines for IP management, and participate in the diffusion of these guidelines throughout the Supercluster. The Supercluster will maintain an IP Registry and shall conduct outcome monitoring to evaluate IP commercialization progress and identify further IP commercialization opportunities to help maximize the return on investment both for Members and Canada as a whole.

Intellectual Property Manager

Consistent with and subject to Section 15.6 of the Contribution Agreement, the Supercluster will have an IP Manager responsible for supporting Members in identifying and maximizing the opportunities to develop, protect, and license Intellectual Property. The role of the Intellectual Property Manager shall be to:

serve as the Intellectual Property Strategy lead and assist the Board of Directors and management in executing the Intellectual Property Strategy;
oversee the administration of all requirements and processes set out in the Intellectual Property Strategy, and ensure compliance with the requirements of the Contribution Agreement;

- a. assist project participants in the development of their IP Rationale and strategy as part of their project proposals and appropriately balance the participant's reasonable interests in any foreground intellectual property and the reasonable interests all Members may have in accessing that foreground intellectual property;
- b. present the IP strategy and Rationale for qualifying projects to the Project Selection Committee;
- c. work with Project Participants to achieve the objectives identified in the proposal's IP rationale and identify any further opportunities to share their Foreground Intellectual Property; and
- d. provide dedicated support to SMEs in an effort to increase their understanding and use of Intellectual Property.



This role is, expected to work directly with Members and to access legal, patent and training resources as appropriate. This includes expectations around Member IP awareness and education outlined in the section below. As the role evolves, we may also see the IP Manager develop relationships with university technology transfer offices and help facilitate the movement of IP from universities into industry led projects.

Member IP Awareness and Education

An important component of the IP Strategy is to help Members develop competencies in IP management, with a particular focus on helping SMEs develop internal IP strategies as part of their business planning and management. This includes the delivery of direct programming to SME Members, organizing sessions on general IP literacy and specific IP-related topics raised by Members, providing digital resources, prior art information and answers to frequently asked questions through the Supercluster Member Portal, helping Members access independent expertise and advice on IP by connecting them with potential service providers. To that end, part of the IP registry will include a searchable section on service providers.

To avoid duplicating efforts, the Supercluster will develop a relationship with the Canadian Intellectual Property Office (CIPO) to see what resources can be leveraged in the Supercluster. In addition, the Supercluster will see if there are any plans to put an IP Law Clinic in place in Vancouver or Victoria as per the Federal Government's IP Strategy.

Finally, using Member feedback and a competency framework for IP management, the IP Manager will see what gaps exist in terms of training, development and performance support so that Supercluster Members, and especially SME Members, will be able to access a comprehensive service package supporting world-class IP management.

Protecting IP Investments

The Supercluster will work with Members to help ensure that investments in innovation are protected. Recognizing that some Members, especially SMEs, may face challenges in obtaining protection for generated IP, the Supercluster may, at its discretion, support the cost of obtaining IP protection in cases of demonstrated need.



Implementation

Stage 1

IP Strategy Development and Program Set-Up (Application and Entity Stand-Up)

Upon submission of the original LOI (Letter of Intent) in July 21, 2017, the Digital Supercluster has had various working groups dealing with Governance and Intellectual Property. This ensured we have had Member input for the Intellectual Property portion of the Phase II Application where we introduced the concept of the IP Registry, the importance of Member training & development and a commitment to a dedicated service function for IP, governed by a Board approved IP policy.

After the Phase II Application, work continued and with the stand-up of the new legal entity, the formal responsibility for the IP Strategy was transferred to the Board Governance Committee which was active in providing feedback during the finalization of the Contribution Agreement and reviewing the latest formal version of an IP Strategy (Board Review Version of Nov 2018).

Once the Contribution Agreement was signed, all requirements, including those associated with Intellectual Property were embedded in the Master Project Agreement template. Projects that had been approved in the Phase 1 Competition Cycle (a small-scale pilot program to test and refine the project selection process under real conditions), have been introduced to the IP Rationale during the development of their master project agreement and as part of the contracting process, will have that rationale embedded in their final agreements.

In other words, we have an active IP Strategy and Management function initiated. Responsibilities are actively shared between the CTO, Director of Strategic Foresight and the Program Director of Data Programs. As part of this, we have recruited an IP Manager as the next step in the development of this service function.

Stage 2

Recruitment of an IP Manager and Program Calibration for Year 1 – FY2019/20

This stage involves the recruitment and onboarding of the IP Manager by May 15, 2019. Once onboarded, the IP Manager, will take over working with project participants on developing strong IP Rationales in both project proposals and Master Project Agreements. They will also take over implementation of the IP Strategy which will include a staged development path intended to align program objectives and implementation with the outcomes and desired results of the Supercluster initiative. Priorities for the IP Manager are:

Set-up the IP Registry (May to Jul). While the requirements for the IP Registry are established, there are still a number of associated procedures to be put in place, infrastructure to be built (think of the interface to a web-based searchable directory) and reporting templates to create. The IP Manager will use their expertise to set up the operational elements of a fully functional IP Registry.

Set-up Member Awareness & Education (Aug to Nov). In terms of the types of training and frequency, the IP Manager will survey Members to ascertain need. From there, they will



meet with key partners, like the Canadian Intellectual Property Office to see what kinds of training resources can be leveraged and whether or not there are any plans for an IP Law Clinic in Vancouver as per the Federal Government's IP Strategy. Gaps will then be covered through the delivery of direct programming to SME Members.

Global Survey of Best Practices (Dec to Mar). In anticipation of a first annual review of the IP Strategy in February 2020, the IP Manager will be responsible for the completion of a global survey of best practices in IP Strategy and Management. The purpose is to find relevant ideas that we can adapt to our situation and elevate the performance of IP management within the Supercluster and our Members.

At the end of this year, we will have all the foundational elements in place, have benchmarked them against practices in other jurisdictions around the world and built in a responsive review function. This will allow the Supercluster to take advantage of lessons learned and evolve into a world-class performer in IP management

Stage 3
Annual Program Review and Adjustment (FY2020/21 onwards)

In February 2020, the IP Manager will be responsible for coordinating a formal review of the IP Strategy. The Board Governance Committee will establish the terms for the review.