



Intellectual Property Ownership Advisory Committee
Tuesday, September 21, 2010 1:00 p.m.
General Assembly Building, 6th Floor, Speaker's Conference Room

- Call to Order; Roll Call

Senator John Watkins called the meeting to order. He explained that Committee member Kirk Schroeder would be unable to attend in person because his car broke down that morning, and he was in Charlottesville. Pursuant to FOIA, Senator Watkins called for a vote to approve Mr. Schroeder's participation via teleconference from his Charlottesville law office. The motion carried unanimously.

- Introduction of Members

Members of the Committee introduced themselves, briefly explaining their backgrounds.

- Review of HB 716 (Peace)/SB 242 (Watkins)

Senator Watkins explained the background behind HB 717/ SB 242. He noted that through other subcommittees, several intellectual property issues had come to his attention. Anecdotal evidence emerged that state agencies had created some intellectual property that might have commercial potential. He explained that Virginia's colleges and universities handled their own intellectual property issues independently. With this background, he and Delegate Chris Peace proposed legislation to update § 2.2-2822 of the Code of Virginia to help the state government address these intellectual property issues. Senator Watkins explained that he was motivated in part by the idea that tax payers could be getting some return on their investment of tax dollars in state agencies.

JCOTS staff made a presentation on the history and development of the state's intellectual property laws and policy. A copy of the presentation is available on the JCOTS website at <http://jcots.state.va.us>. Among other things, the presentation explained that the administration of Governor George Allen had promulgated a state level intellectual property policy with Executive Memorandum 4-95. This memorandum did not appear to have been widely circulated.

The committee discussed the proposed legislation in the context of its alignment with federal intellectual property laws. Some members expressed concern that the proposed legislation might run contrary to established laws on intellectual property ownership. This led to a discussion on the importance of contractual arrangements to address intellectual property issues.

Through the course of discussion, it became apparent that agencies and localities across the state share and enforce intellectual property rights in a number of different ways with varying degrees of effectiveness. Senator Watkins noted that this issue is becoming increasingly important. He singled out the state's use of contractors to develop new health care information systems. The state, and the tax payers, may have the opportunity to benefit from new intellectual property created in the field.

- Review of 2009 Work on Guidelines

Patrick Cushing, former JCOTS staff attorney, attended the meeting. Committee members asked him to explain the 2009 work on intellectual property policies. Last year's work revealed several philosophical points that needed to be addressed. Some issues that merit further consideration included:

- the extent to which decision making on intellectual property issues might be centralized at the Secretary of Administration level or the agency level
- the thresholds which might determine when the state collects or commercializes intellectual property created by employees
- the means and methods of monitoring the creation and development of intellectual property

Mr. Cushing noted that last year's group had observed that the state might avoid creating a large bureaucracy by setting a high threshold for collecting and commercializing intellectual property. Ideas with less commercial value could be left to the employees to develop on their own. Secretary of Administration Lisa Hicks-Thomas noted that some state intellectual property need not necessarily be commercialized, but could be disseminated through open intellectual property mechanisms, such as Creative Commons.

Committee members who had worked on this issue in the past noted that Creative Commons had been explored as a tool for sharing intellectual property created in the field of education. However, any state intellectual property policy would apply not only to education, but also to all agencies in the executive branch of government. State institutions of higher education, however, would maintain their own intellectual property policies.

Members also discussed the philosophical questions of how to monitor state developed intellectual property as well as who might conduct the monitoring. The Committee considered whether a policy should centralize intellectual property in

the Governor's administration, as Governor Allen's policy had envisioned. Some members thought that creating a library of the state's intellectual property might be a good starting point. With an understanding of what the state already had, it might be easier to develop appropriate governance structures to monitor intellectual property in the future. Committee members observed that it is a mark of good government for the state to know what property it has.

The idea of a self reporting system appeared to address some of these philosophical issues. Secretary of Technology Jim Duffey noted that a self reporting system that gave state employees a share of any value generated could have several benefits. Self reporting would reduce the need for a large complex bureaucracy. Also, state employees would have an incentive to develop and report intellectual property. Senator Watkins noted that the draft policy created last year had included a similar idea. A representative from VDOT noted that while such a policy might improve intellectual property reporting, the issue of educating state employees about such a policy might merit some attention.

- Formulation of Work Plan & Direction to Staff

Senator Watkins asked JCOTS staff to work with several committee members on fine tuning the proposed legislation to take into account issues discussed at the meeting. Particularly, JCOTS staff should look at what other states have done in the field.

Committee members and JCOTS staff were directed to consider a list of questions that new legislation and the state intellectual property policy should answer. Secretary Hicks-Thomas indicated that she would consult the Governor to hear his opinion on these issues. The Committee is to reconvene in 30 to 45 days.

- Adjournment