Access to and Use of PSI: Law and Policy
An Australian Perspective

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Elements for Enabling Real Time Access to PSI

- Policy
- Law
- Technology

Practical implementation
Copyright

- Publicly owned copyright
- How do we manage it in a way that promotes social, economic and cultural innovation?
- What policy do we implement?
- What legal tools do we need?
Making Copyright Active

- It is not necessarily about removing copyright
- Ownership is not the primary factor
- It is about the ability to access and reuse PSI

Venturous Australia Report

• Promotes the development of a National Information Strategy
Recommendation 7.7

Australia should establish a National Information Strategy to optimise the flow of information in the Australian economy.

The fundamental aim of a National Information Strategy should be to:

- utilise the principles of targeted transparency and the development of auditable standards to maximise the flow of information in private markets about product quality; and

- maximise the flow of government generated information, research, and content for the benefit of users (including private sector resellers of information).
Recommendation 7.8

Australian governments should adopt international standards of open publishing as far as possible. Material released for public information by Australian governments should be released under a creative commons licence.
Recommendation 7.14

To the maximum extent practicable, information, research and content funded by Australian governments – including national collections – should be made freely available over the internet as part of the global public commons. This should be done whilst the Australian Government encourages other countries to reciprocate by making their own contributions to the global digital public commons.
Developing an Information Policy for Australia

• Aim: To provide optimal flow of publicly owned information – remove impediments
• The Department of Innovation, Industry Science and Research and the Department of Broadband, Communications and the Digital Economy are already looking at this
"The rise of internet-enabled peer production as a social force necessitates a rethink about how policy and politics is done in Australia," he said. "In the longer term, governments will have to adapt to information's new online centre of gravity."

"This is not an undesirable thing; there are significant opportunities for government to use peer production to consult, develop policy and make closer connections with the citizens it serves."

Mr Tanner said the Government not only had to adapt to a world moving online, but would have to do so at an ever-increasing pace. "As a huge creator and manager of information with an obligation to be open and transparent, we have little choice," he said.

[Link to the source article](http://www.australianit.news.com.au/story/0,27574,24601440-15306,00.html)
“We want the research conducted in universities and public research agencies to inspire and inform fresh thinking across the community. The more collaboration and interaction there is between researchers and the society around them, the better. It follows that research and research data should be widely disseminated and readily discoverable. .. The results of publicly funded research should be publicly available. … More accessible information equals more robust debate equals a stronger national innovation system.”

“There is More than One Way to Innovate” 7 Feb 2008
http://minister.industry.gov.au/SenatortheHonKimCarr/Pages/
“Creative commons
The last big idea in the report I want to touch on is open access.
It is embodied in a series of recommendations aimed at unlocking public information and content, including the results of publicly funded research.
The review panel recommends making this material available under a creative commons licence through machine searchable repositories, especially for scientific papers and data cultural agencies, collections and institutions, which would be funded to reflect their role in innovation and the internet, where it would be freely available to the world….

…Australia takes justifiable pride in the fact that it produces 3 per cent of the world’s research papers with just 0.3 per cent of the world’s population, but that still means 97 per cent of research papers are produced elsewhere.

We are and will remain a net importer of knowledge, so it is in our interest to promote the freest possible flow of information domestically and globally.

The arguments for stepping out first on open access are the same as the arguments for stepping out first on emissions trading – the more willing we are to show leadership on this, we more chance we have of persuading other countries to reciprocate.

And if we want the rest of the world to act, we have to do our bit at home.”


- Uhlir’s description of the key elements required for a national information policy highlights the need for governments to:
  - consider what information is to be made publicly available (with open access as the default);
  - develop legal frameworks that provide not only for freedom of information (FOI) but also encompass a positive right of access to PSI; and
  - develop a comprehensive national Information Policy Framework and detailed plans for implementation of the guiding policy, including strategies on information systems and information technology management.
Open Innovation

- In 2000 Goldcorp issues global challenge to find new deposits in Red Lake Mine in northern Ontario Canada
- Releases 50 years of mining data in an industry that is careful about its secrets
- Nicholas Archibald and his company in Western Australia - Fractal Graphics now Geoinformatics Exploration Inc., “used sophisticated software to create 3-D electronic models of underground rock formations, pinpointing five sites where they thought Goldcorp would find new veins of gold. The winner’s take was peanuts -- just US$105,000 -- but for Archibald the real prize would be exposure. Almost needless to say, he won the contest.” : K. Macklem, *Pixels, not pickaxes, Deskbound computer jockeys are the hottest thing in modern mining exploration* (2005)
Open Innovation

- Goldcorp pursued the leads given in the contest
- Share price quadrupled
- Went from a 100 million dollar company to a 9 billion dollar company
- Now one of the world’s most successful gold mine
“Access” Based Innovation

• We need to provide it with the copyright clearances in advance – so that downstream quantifiers can be multiplied

• Access based model rather than a control model of information distribution and knowledge creation
Australia – Previous Developments

• Office of Spatial Data Management (OSDM) Policy on Spatial Data Access and Pricing (2001)
  – The Inter-Departmental Committee adopted the basic principle that the new Commonwealth spatial data access and pricing policy should seek to maximise the net benefits to the community. The Commonwealth’s spatial data holdings are an asset that, if made more accessible can deliver economic and social benefits far exceeding the direct financial returns of higher levels of cost recovery.

• Productivity Commission
  – The Productivity Commission’s final report, Cost Recovery by Government Agencies, was released on 14 March 2002. It recommended that -
    Recommendation 7.7:
    As a general principle, the costs of providing information products that are additional to the basic product set should be recovered. However, cost recovery should not be implemented where:
    • it is not cost effective;
    • it would be inconsistent with policy objectives; or
    • it would unduly stifle competition and industry innovation.
Australia – Current Activities

Creative Commons licences can be used as a tool to implement policy

Some government bodies and publicly-funded institutions have already done this:

- Australian Bureau of Statistics (ABS)
- Australian Broadcasting Corporation (ABC)
- National Library of Australia (NLA)
- Government Information Licensing Framework (GILF)
Power of Information Taskforce Report (UK)

Recommendation 8

• Government should ensure that there is a uniform system of release and licensing applied across all public bodies; individual public bodies should not develop or vary the standard terms for their sector.

• The system should create a ‘Crown Commons’ style approach, using a highly permissive licensing scheme that is transparent, easy to understand and easy to use, modeled on the ‘Click Use’ license, subject to the caveats below.

• OPSI, part of the National Archives, should investigate how source code can be handled within the public sector information framework, and look into appropriate licensing terms drawing on best practice in the open source community.

• The Government should report on the options for these three recommendations by end 2009 and if required, statutory measures should be brought forward not later than the 2009/2010 session.
Recommendation 12

OPSI should begin a communications campaign to re-present and improve understanding of the permissive aspects of Crown Copyright along the lines of creative commons by end June 2009. This should be combined with ‘permission to scrape’ being given over Crown Copyright data, removing any risk of prosecution under the Computer Misuse Act. This might fall under the banner of a ‘Crown Commons’ brand. OPSI should begin a communications campaign to that end by end June 2009.
In December 2008, the ABS released all content on the ABS website (other than logos and other trade marked content) - including all census data, economy data, fact sheets, analysis, press releases etc. - for re-use under a Creative Commons Attribution 2.5 Australia licence.
From the ABS website:

Creative Commons licensing is here!

The Australian Bureau of Statistics (ABS) has introduced Creative Commons (CC) licensing for the bulk of the content on this website. This will lessen the restrictions on the use of free data from the website considerably by changing the copyright from "all rights reserved" to "some rights reserved". In effect, what the ABS is asking is only that it be acknowledged as the source of the data. People are free to re-use, build upon and distribute our data, even commercially. This makes a wealth of data readily available to the community, researchers and business, facilitating innovative research and development projects based on quality statistics, and promoting the wider use of statistics in the community, which is one of our core objectives.

This step has followed a process of investigation and consultation with various stakeholders including Commonwealth Government Agencies and the Creative Commons community of interest. The change was achieved through the release of a new copyright statement on 18 December 2008, and the addition of CC metadata to the footer of each page of the website on 19 December 2008. A document entitled Attributing material sourced from the ABS website is also provided.

http://www.abs.gov.au/websitedbs/D3310114.nsf/4a256353001af3ed4b2562bb00121564/8b2bdbc1d45a10b1ca25751d000d9b03?opendocument?
ABS Dissemination of Statistics

# ABS Dissemination of Statistics

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ABC Pool

• Australian Broadcasting Commission’s (ABC) collaborative online media platform (Aug 2008)

• Publish, remix and share media in any form (text, photos, videos, sounds) – best contributions featured on ABC

• Default licence is CC BY-NC – all CC licences or all rights reserved available

• More than 60% of the 1900 works are CC

• Feb 2009 began releasing ABC archival material under CC BY-NC – now a dozen archival videos, podcasts and stills, all remixable

• Has built a strong remix community – current Pooling Ideas competition with CCau has nearly 70 entries.
PictureAustralia

- National Library of Australia (NLA) in collaboration with Yahoo! (Jan 2006) - individuals contribute to PictureAustralia collection through Flickr

- Images and metadata added to relevant Flickr groups are harvested by NLA portal

- 13,000 images donated in first year – now 45,000

- Encourages use of CC licences because:
  - ideological - encourages contributors to “think like librarians” re public benefit of access
  - for users - creates a pool of legally reusable photos
  - content management - NLA can harvest, maintain and promote the collection, hold exhibitions etc without additional permissions
Government Information Licensing Framework (GILF) (Qld)

Stage 2 Report recommendations:

2.1 That the Queensland Government establish a policy position that, while ensuring that confidential, security classified and private information collected and held by government continues to be appropriately protected, enables greater use and re-use of other publicly available government data and facilitates data-sharing arrangements.

2.2 That the CC open content licensing model be adopted by the Queensland Government to enable greater use of publicly available government data and to support data-sharing arrangements.

2.5 That the Draft Government Information Licensing Framework toolkit, which incorporates the six iCommons (Creative Commons Australia) licences, be endorsed for use in pilot projects proposed for Stage 3, which involves Information Queensland, the Department of Natural Resources and Water, the Environmental Protection Agency, the Department of Primary Industries and Fisheries, the Office of Economic and Statistical Research of Queensland Treasury and the Queensland Spatial Information Council, enabling testing of the CC licences for multi-agency and whole-of-Government arrangements.

Right to Information Bill 2009 (Qld)

Preamble—
Parliament’s reasons for enacting this Act are—
1 Parliament recognises that in a free and democratic society—
[...]
(b) information under the government’s control is a public resource; and
[...]
(d) openness in government enhances the accountability of government; and
(e) openness in government potentially increases the participation of members of the community in democratic processes leading to better informed decision making; and
[...]
(h) right to information legislation is only 1 of a number of measures that should be adopted by government to increase the flow of information that the government controls to the community.
OECD PSI Principles 2008

• *Copyright*. Intellectual property rights should be respected. There is a wide range of ways to deal with copyrights on public sector information, ranging from governments or private entities holding copyrights, to public sector information being copyright-free. Exercising copyright in ways that facilitate re-use ... and encouraging institutions and government agencies that fund works from outside sources to find ways to make these works widely accessible to the public.
OECD PSI Principles 2008

• *Pricing.* When public sector information is not provided free of charge, pricing public sector information transparently and consistently ... Where possible, costs charged to any user should not exceed marginal costs of maintenance and distribution ...

• www.oecd.org/dataoecd/0/27/40826024.pdf
Australia – Challenges

• Primarily relate to geospatial information

• Recent examples include:
  – Access to Victorian fire data
  – Use of NSW train timetables
Access to Victorian Fire Data

• Google was working with Country Fire Authority (which manages fires on private lands) to overlay the Authority’s data onto Google Maps to produce a real-time map of the locations of the Victorian fires

• Google also wanted to plot fires on public lands

• This data was owned and controlled by the Victorian Department of Sustainability and Environment

• Data is covered by Crown Copyright and permission is required from the government before the data can be used

• Google was denied permission to the data and so could not plot this data onto their fire map
Google Victorian Fire Map
Subsequent collaboration

The Victorian Government and Google Australia came together to develop the Victorian Bushfires Events map. This was not a map tracking the actual bushfires, but rather gave Victorian citizens information about where they could find events and fundraisers supporting victims of the fires.

From the Google Australia Blog (posted 18/2/09):

You may have read the Victorian Premier's announcement - we're pleased to have developed the Victorian Bushfire Events map for the Victorian Government. We worked with the Premier's staff to get this up and running and hope that it's useful.

Any organisation can upload a bushfires-related event to this map - such as a fundraiser, gathering or memorial service - by clicking on "Add a New Event". Anyone can see upcoming events in map view, or in calendar view.

To embed this map on your website (as the Premier of Victoria has done), just copy this HTML code and paste it on your site:

<iframe src="http://vicbushfireevents.appspot.com/" border="1" align="left" frameborder="0" height="900" scrolling="no" width="950">
</iframe>
2009 Victorian Bushfires Royal Commission

From the Terms of Reference:

“AND WE direct you to make such recommendations arising out of your enquiry as you consider appropriate, including recommendations for governments, emergency services, other entities and the community on:

[...]
10. Public communication and community advice systems and strategies.”

Use of NSW train timetable data
Use of NSW train timetable data

- Alvin Singh developed a popular iPhone app called “Transit Sydney” (sold for $2.49)
- Transit Sydney provides a display like the one on the TV monitors in train stations that shows the next trains coming past the platform. It pulls timetable data from CityRail for display to people on the move.
- Singh received a cease and desist notice from Rail Corporation NSW, the government body that administers Sydney's CityRail network.
- RailCorp claimed that:
  
  "RailCorp's primary concern is that our customers receive accurate, up-to-date timetable information. [...] This includes details of service interruptions, special event services, trackwork and other changes. Third-party RailCorp timetable applications may contain inaccuracies and have the potential to mislead our customers."
Use of NSW train timetable data

On 9 March 2009, Asher Moses reported in the Sydney Morning Herald that the NSW Premier, Nathan Rees, had “indicated he would override RailCorp's decision and force the bureaucracy to meet the mobile software developers and work out a way they can use the timetable data.

"I've asked [Transport] Minister [David] Campbell to speak to RailCorp. They will meet with the app developers to negotiate how to use the info accurately," Rees wrote.

Campbell this morning confirmed he had "asked RailCorp to meet with these developers and see if they can work together on a way forward"."

“Today, government bodies consider their own Web sites to be a higher priority than technical infrastructures that open up their data for others to use. We argue that this understanding is a mistake. It would be preferable for government to understand providing reusable data, rather than providing Web sites, as the core of its online publishing responsibility…

…In order for public data to benefit from the same innovation and dynamism that characterize private parties’ use of the Internet, the federal government must re-imagine its role as an information provider. Rather than struggling, as it currently does, to design sites that meet each end-user need, it should focus on creating a simple, reliable and publicly accessible infrastructure that “exposes” the underlying data.”

Policies and Principles on Access To and Reuse of Public Sector Information: a review of the literature in Australia and selected jurisdictions

Professor Anne Fitzgerald (2008)

The full economic, cultural and environmental value of information produced or funded by the public sector can be realised through enabling greater access to and reuse of the information. To do this effectively it is necessary to describe and establish a policy framework that supports greater access and reuse among a distributed, online network of information suppliers and users. The objective of the literature review is to identify materials published in Australia and elsewhere dealing with policies, principles and practices relating to access to and reuse of public sector information.

http://www.aupsi.org/publications/reports.jsp
Policies and Principles on Access To and Reuse of Public Sector Information: a review of the literature in Australia and selected jurisdictions

Professor Anne Fitzgerald (2008)

http://www.aupsi.org/publications/reports.jsp

Now available:
- Chapter 1: Australia
- Chapter 2: New Zealand
- Chapter 3: International
- Chapter 6: Canada

Forthcoming:
- Chapter 4: Europe, UK and Ireland
- Chapter 5: United States
- Chapter 7: Asia
auPSI is at the heart of developing information policy about delivering access to and encouraging the use of public sector information (PSI) for social, cultural and economic advancement.
Conclusion: Policy Recommendation

- Develop a best practice information policy – support through OECD, EU and WTO
- As the OECD suggests - it should require open access to PSI suitable for public distribution - through open content licences and sensible pricing (limited to cost of dissemination? Internet – as close as possible to zero?)
- Support with a legal and technical approach that promotes rather than inhibits innovation
- Enabling Real Time Access to PSI
References

- J Coates, “Creative Commons – The Next Generation: Creative Commons licence use five years on” (2007) 4:1 SCRIPTed 72
References

References

- J Coates, N Suzor and A Fitzgerald *Legal Aspects of Web 2.0 Activities* (2007) http://creativecommons.org.au
Biography – Professor Brian Fitzgerald

BA (Griff) LLB (Hons) (QUT) BCL (Oxon.) LLM (Harv.) PhD (Griff) , Barrister of the High Court of Australia
Website at: http://www.law.qut.edu.au/staff/lsstaff/fitzgerald.jsp

Brian Fitzgerald is an internationally recognised scholar specialising in Intellectual Property and Cyberlaw. He holds postgraduate degrees in law from Oxford University and Harvard University and his recent publications include *Cyberlaw: Cases and Materials on the Internet, Digital Intellectual Property and E Commerce* (2002); *Jurisdiction and the Internet* (2004); *Intellectual Property in Principle* (2004) and *Internet and Ecommerce Law* (2007). Brian is a Chief Investigator and Program Leader for Law in the ARC Centre of Excellence on Creative Industries and Innovation and Project Leader for the Australian Government funded Open Access to Knowledge Law Project (OAK Law) and the Australian Government funded Legal Framework for e-Research. He is also a Program Leader for the CRC Spatial Information. His current projects include work on intellectual property issues across the areas of Copyright, Digital Content and the Internet, Copyright and the Creative Industries in China, Open Content Licensing and the Creative Commons, Free and Open Source Software, Research Use of Patents, Patent Transparency, Science Commons, e-Research, Licensing of Digital Entertainment and Anti-Circumvention Law. From 1998-2002 Brian was Head of the School of Law and Justice at Southern Cross University in New South Wales, Australia and from January 2002 – January 2007 was Head of the School of Law at QUT in Brisbane. He is currently a specialist Research Professor in Intellectual Property and Innovation at QUT. He is also a Barrister of the High Court of Australia.