

**The question of access to and re-use of materials produced by government and other publicly-funded bodies has emerged as an important issue in recent years.** The growing interest in open access to government copyright products has been driven not only by technological advances in software and hardware and a growing appreciation of the economic advantages to be gained by states who enable access to and re-use of public sector information,<sup>1</sup> but also by user demand. In the era of Wikipedia, Amazon and Google, when the knowledge of the world is available to all at a click of a button, instant access to government information is not only desired by the public, it is expected. Furthermore, industry, artists, researchers and scientists, as well as the general public and other government bodies, are increasingly demanding the ability to re-use this material, rather than merely acting as passive consumers. There is now widespread recognition that such re-use is crucial not only because of its contribution to state economic development but also for creative, educational and scientific purposes. The consequence has been exponentially increasing activity directed at the development and implementation of systems

1. See for example, Peter N. Weiss, *Borders in Cyberspace: Conflicting Public Sector Information Policies and their Economic Impacts* (2002), US Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service <[http://www.weather.gov/sp/Borders\\_report.pdf](http://www.weather.gov/sp/Borders_report.pdf)> at 11 April 2007

# THE AUSTRALIAN EXPERIENCE

## CREATIVE COMMONS LICENSING AND THE RE-USE OF PUBLIC SECTOR OR GOVERNMENT COPYRIGHT MATERIAL

and procedures to make materials generated and held by governmental entities and publicly-funded research institutes more readily available for access and re-use. The task ahead is to map out how governments can best approach the management of their copyright materials in order to foster social, cultural and economic innovation.

In most countries, the government sector is one of the primary producers and owners of intellectual property. The management of these informational products has become one of the most significant issues for government in the knowledge age, with governments challenged to develop and implement best practice copyright management strategies to allow the broadest possible access to their publicly-funded resources – both on a philosophical basis (i.e., consistency with democratic

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ideals) and on a rational-policy basis (i.e., what is paid for by the people should be available to the people). Where large amounts of publicly-funded creative, educational and scientific materials are subject to government copyright, there exists an enormous opportunity to unlock this material for re-use in the name of innovation and education.<sup>2</sup>

There is a growing awareness that the key to facilitating access to copyright material revolves not so much around the issues of subsistence and ownership of copyright, but rather the system put in place to enable access to and re-use of the material. Adopting an overly simplistic response to calls for greater access to public sector information by putting all such material into the public domain runs the risk that material which is essentially a public and national asset will be appropriated by the private sector, without any benefit to either the government or the taxpayers who have contributed to the cost of its creation or acquisition. The principal advantage of an open content licensing model over the complete revocation of copyright is that it enables governments to set the conditions upon which materials generated by public

**2.** See further Australian Commonwealth Government Department of Communications, Information Technology and the Arts, *Unlocking the Potential: Digital Content Industry Action Agenda: Strategic Industry Leaders Group report to the Australian Government* (November 2005) <[http://www.dcita.gov.au/\\_data/assets/pdf\\_file/37356/06030055\\_REPORT.pdf](http://www.dcita.gov.au/_data/assets/pdf_file/37356/06030055_REPORT.pdf)> at 11 April 2007; J Mosedale, *A Proposal for A Government Data MashingLab* (2006) <<http://lists.okfn.org/pipermail/okfn-discuss/2006-July/000114.html>> at 11 April 2007; and Intrallect Ltd (E. Barker, C. Duncan) and AHRC Research Centre (A. Guadamuz, J. Hatcher and C. Waelde) *The Common Information Environment and Creative Commons: Final Report to the Common Information Environment Members of a study on the applicability of Creative Commons Licenses* (2005) <<http://www.intrallect.com/cie-study/>> at 11 April 2007

funding may be accessed and re-used once they leave the walled garden of the bureaucracy. By continuing to own copyright, the government reserves the right to be able to structure "downstream" access in accordance with policy objectives that will secure optimal benefits to the ultimate beneficiaries, the public at large.

It is hardly surprising, therefore, that the last few years have seen exponentially increasing interest in open content licensing, and the Creative Commons licences in particular, by governments and public sector authorities around the world.<sup>3</sup> Examples of this can be seen in the British Broadcasting Corporation's Creative Archive Licence Group project,<sup>4</sup> the findings of the UK's Common Information Environment Report<sup>5</sup> and the involvement of the US National Institutes of Health with the Public Library of Science and other open publishing bodies.<sup>6</sup> At the Australian level, this interest is represented by initiatives such as the National Education Access Licence for Schools being developed by the Ministerial Council for Employment, Education, Training

**3.** See, for example, Onsrud, Harlan, 2004, 'Overview of Open-Access and Public-Commons Initiatives in the United States', In Esanu, J. and P. Uhlir, (Eds.), *Open Access and the Public Domain in Digital Data and Information for Science: Proceedings of an International Symposium* (Washington D.C: National Academies Press), 114-118 <<http://books.nap.edu/catalog/11030.html>> at 11 April 2007

**4.** <<http://creativearchive.bbc.co.uk/>> at 11 April 2007

**5.** Intrallect Ltd (E. Barker, C. Duncan) and AHRC Research Centre (A. Guadamuz, J. Hatcher and C. Waelde) *The Common Information Environment and Creative Commons: Final Report to the Common Information Environment Members of a study on the applicability of Creative Commons Licenses* (2005) <<http://www.intrallect.com/cie-study/>> at 11 April 2007

**6.** 'BioMed Central Announces New Partnership with the Scholarly Publishing and Academic Resources Coalition (SPARC)' (Press Release, May 2002) National Library of Medicine <[http://www.nlm.nih.gov/mimcom/news/biomed\\_central\\_03.html](http://www.nlm.nih.gov/mimcom/news/biomed_central_03.html)> at 5 April 2007

RELATED WEBSITES:

[www.ip.qut.edu.au](http://www.ip.qut.edu.au), [www.cci.edu.au](http://www.cci.edu.au), [www.creativecommons.org.au](http://www.creativecommons.org.au), [www.oaklaw.qut.edu.au](http://www.oaklaw.qut.edu.au)

and Youth Affairs,<sup>7</sup> the Department of Education, Science and Training's Open Access to Knowledge Law project<sup>8</sup> and the long-standing AShareNet project.<sup>9</sup>

One particularly significant local initiative is the Queensland Government's Whole-of-Government Information Licensing Project.<sup>10</sup> This study was commissioned in 2005 by the Queensland Spatial Information Council (QSIC) to review how Queensland Government information assets are used to deliver government priorities and how licensing models could be used to enable better access to these assets. After reviewing existing licensing practices, the project concluded that there were significant problems with the Queensland Government's current approach to information licensing, particularly in relation to the lack of adequate or uniform practices.<sup>11</sup> It identified a need for clear and succinct guiding principles for access, re-use and pricing, such as those foreshadowed by the European Union's Directive 2003/98/EC on the re-use of public sector information<sup>12</sup> and the OECD's Declaration on Access to

Research Data from Public Funding.<sup>13</sup>

Having considered the applicability of a range of open and closed licensing models to various types of information made available by government, and having consulted extensively with Creative Commons Australia, the project's Stage 2 report, released in March 2007, came to the conclusion that the Creative Commons licences were the most appropriate available for the licensing of government material. Furthermore, the report found that, while a qualifying process for material to be included in the licensing programme would be needed to ensure that privacy, confidentiality, security and other legal issues were considered, approximately 85 percent of government material could, and indeed should, be made available under a Creative Commons licence.<sup>14</sup> In its final determination, the report recommended 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;<sup>15</sup> and**
- **that the CC open content licensing model be adopted for this policy.<sup>16</sup>**

7. Della Browne, 'Implementing NEALS', Catholic Education Commission (Friday 20 October 2006)

<[http://www.cecnsw.catholic.edu.au/CEC\\_NEALS\\_Presentation201006.pdf](http://www.cecnsw.catholic.edu.au/CEC_NEALS_Presentation201006.pdf)> at 11 April 2007

8. <<http://www.oaklaw.qut.edu.au/>> at 11 April 2007

9. <<http://www.aesharenet.com.au/>> at 11 April 2007. For more information, see Carol Fripp and Dennis McNamara 'AeShareNET' in Brian Fitzgerald (ed), *Open Content Licensing: Cultivating the Creative Commons* (2007) Sydney University Press

10. <<http://www.qsic.qld.gov.au/QSIC/QSIC.nsf/CPByUNID/6C31063F945CD93B4A257096000CBA1A>> at 11 April 2007 3-4

11. Queensland Spatial Information Office and Office of Economic and Statistical Research, Queensland Treasury, *Government Information and Open Content Licensing: An Access and Use Strategy* (2007)

12. Directive 2003/98/EC, 17 November 2003, OJ L345/90, 31 December 2003 Available at

<[http://europa.eu.int/information\\_society/policy/psi/docs/pdfs/directive/psi\\_directive\\_en.pdf](http://europa.eu.int/information_society/policy/psi/docs/pdfs/directive/psi_directive_en.pdf)>.

13. See <[http://www.oecd.org/document/0,2340,en\\_2649\\_34487\\_25998799\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/0,2340,en_2649_34487_25998799_1_1_1_1,00.html)>.

14. Queensland Spatial Information Office and Office of Economic and Statistical Research, Queensland Treasury, *Government Information and Open Content Licensing: An Access and Use Strategy* (2007) 2

15. Queensland Spatial Information Office and Office of Economic and Statistical Research, Queensland Treasury, *Government Information and Open Content Licensing: An Access and Use Strategy* (2007) 1

16. Queensland Spatial Information Office and Office of Economic and Statistical Research, Queensland Treasury, *Government Information and Open Content Licensing: An Access*

...THE KEY TO FACILITATING ACCESS TO COPYRIGHT MATERIAL REVOLVES NOT SO MUCH AROUND THE ISSUES OF SUBSISTENCE AND OWNERSHIP, BUT RATHER THE SYSTEM PUT IN PLACE TO ENABLE ACCESS TO AND RE-USE OF THE MATERIAL.

Complementing the Queensland Government project, there has been significant work undertaken in other Australian jurisdictions on using open content licensing for datasets. For example, as part of the follow-up to the 2006 Australian Government Information Interoperability Framework,<sup>17</sup> the Commonwealth Government's Australian Government Information Management Office (AGIMO) is currently developing guidelines for cross-jurisdictional access, use and sharing of datasets between two or more Australian Government agencies. In an address to the Australian Government Solicitor's Media and Communications Forum the AGIMO Minister, Special Minister of State the Hon. Gary Nairn MP, made the following statements regarding sharing of government data and Creative Commons licensing:

"The Information Interoperability

and Use Strategy (2007) 2

17. 'Australian Government Information Interoperability Framework', Australian Government Information Management Office (April 2006) <<http://www.agimo.gov.au/publications/2006/may/iif>> at 11 April 2007

Framework identifies those components that support an environment where information that is generated and held by government will be valued and managed as a national strategic asset. It provides the principles that underpin sound information management and establishes the concepts, practices and tools that will drive the successful sharing of information across agencies and jurisdictions.

... In this regard, AGIMO is examining the suitability of the Creative Commons licensing regime . . . the Creative Commons scheme provides a new, innovative approach, and legal framework, to the recording, protection, and distribution of information, across both government and non-government spheres.<sup>18</sup>"

Also at the national level, significant work on opening up access to government data is being undertaken by the Commonwealth Government's National Water Commission (NWC).

Australia is currently undergoing a major crisis with respect to the availability of water for its cities. Driven by this need, both the government and industry are looking for dynamic and innovative solutions for Australia's water-management strategy, and have begun to realise that universal and equitable access to the vast amounts of water data held by disparate organisations across several levels of government is critical to providing such solutions. With this in mind, on 17 August 2006 the NWC

18. The Hon Gary Nairn MP, The Future of e-Government in Australia: Minister's Address to the Australian Government Solicitor's Media and Communications Forum (30 March 2007) <[http://www.smos.gov.au/speeches/2007/sp\\_20073003.html](http://www.smos.gov.au/speeches/2007/sp_20073003.html)> at 11 April 2007