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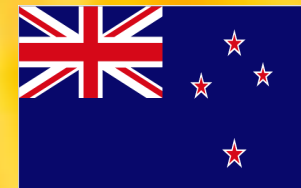
International Open Government Data Conference

Who Owns What? Licensing of Government Data

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Research, QUT Law School, Australia*



Richard Best, *Solicitor, Government Technology
Services, Department of Internal Affairs, New
Zealand*



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New Zealand (Moderator)*

Managing rights to open up government data – the Australian experience in using Creative Commons licences on public sector copyright materials (2004 – 2010)

Professor Anne Fitzgerald

JSD, LLM Columbia NY

International Open Government Data Conference

Washington DC

17 November 2010





Sam the Koala and David Tree
Victorian bushfires, February 2009
Vale Sam

Federal Budget Papers

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BUDGET STRATEGY AND OUTLOOK

BUDGET PAPER NO. 1
2010-11

CIRCULATED BY

THE HONOURABLE WAYNE SWAN MP
TREASURER OF THE COMMONWEALTH OF AUSTRALIA

AND

THE HONOURABLE LINDSAY TANNER MP
MINISTER FOR FINANCE AND DEREGULATION
OF THE COMMONWEALTH OF AUSTRALIA

FOR THE INFORMATION OF HONOURABLE MEMBERS
ON THE OCCASION OF THE BUDGET 2010-11

11 MAY 2010

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How CC came to be applied to PSI in Australia – a chronology

- **1990s:** Cutler, Wainwright – digital content strategy proposals
- **2001:** Office of Spatial Data Management (OSDM) access and reuse policy
- **2004:** Launch of Creative Commons in Australia (managed by Professor Brian Fitzgerald, QUT)
- **2004:** Launch by Queensland Government of Spatial Information Licensing Project
- **2005:** CC Australia and Qld Government begin discussing possibilities for use of CC on Government copyright materials
- **2005:** *Unlocking the Potential: Digital Content Industry Action Agenda, Strategic Industry Leaders Group report to the Australian Government* (Cutler)
- **2005 – 2006:** Queensland Government’s Government Information Licensing Framework (GILF) proposed use of Creative Commons licensing for PSI - see “Access to Government Information and OCL – An Access and Use Strategy”, September 2006 at <http://www.qsic.qld.gov.au/>
- **2007 – 2010:** GILF project continues as a Queensland Government-QUT collaboration, developing knowledge about and models for use of CC on PSI
- **2007 on:** Australian Bureau of Statistics (ABS), Geoscience Australia (GA), Bureau of Meteorology (BoM) implement open access and adopt CC licensing; National Library of Australia; Australian Broadcasting Corporation; various State and local government initiatives
- **2008:** *OECD Ministerial Seoul Declaration on the Future of the Internet Economy* - OECD Recommendations on publicly funded research (2006) and Access to PSI (2008)
- **2008:** *Venturous Australia* report on National Innovation System (Cutler Report)
- **2009:** *Australia’s Digital Economy, Future Directions* (Department of Broadband, Communications and the Digital Economy)
- **2009:** EDIC Report (and Victorian Government’s response (2010)
- Government 2.0 Taskforce (2009), “Engage: Getting on with Government 2.0” (December 2009) and Government’s response
- **2009:** New Zealand (draft) Government Open Access Licensing Framework (NZGOAL) published – approved 2010; UK *Power of Information* report
- **2009 – 2010:** Freedom of Information/Right to Information reforms – State and Federal legislation

Government (Crown) Copyright

- Vast amounts of government copyright materials
- Copyright applies to:
 - Informational works
 - Research outputs (reports, papers, databases)
 - Cultural materials
- Public Sector Information (PSI) in a broad sense includes material that is:
 - created within government by government employees;
 - produced externally by recipients of government funding; or
 - prepared by non-government parties and lodged with government under a statutory obligation or regulatory direction.

Copyright in data compilations

- Copyright applies to data compilations if they are sufficiently **original**
 - Copyright does not apply to mere facts/information or trivial/obvious/mundane arrangements of data
 - Copyright must apply to original data databases – TRIPs and WIPO Copyright Treaty
 - For copyright to apply, there must usually be originality provided by some independent intellectual creation/creative spark/application of skill and judgment
 - No special legal protection for non-original data collections (cf European Database Directive)

Creating information flows

- Complexity of information pathways:
 - within government – among departments, agencies, different levels of government; between government and community:
 - from government to community; from community to government to community; from local to national to global
- Problem of “licence logjams”
 - Copyright has been relied on by governments to control access (to prevent flow of information or to preserve commercial rights);
 - Often, there is no licence, so access/use/reuse rights are unknown – high transaction cost of negotiating new licences
 - Where licences exist, terms are incomprehensible or inconsistent
- Promoting the flow of information requires appropriate policy frameworks and licensing practices

Open Access to PSI

- Creating a commons of public sector materials
 - New conceptualisation of “public domain” – insisting on no rights constrains thinking about public domain
 - Public domain is not just a no rights “wasteland [or] dump on the outskirts of respectable culture” (Bollier, *Viral Spiral*)
 - Something of value in its own right – open knowledge and content that can be accessed, reused and distributed
 - Encompasses materials that are copyright-protected and made available for access and reuse under open source software and open content licences

Open Access to PSI

Open access to government data can dramatically increase the value created from the data both socially and economically [and] the society as a whole benefits from access to the data

Senator Kate Lundy at the Free and Open Source Software for Geospatial Conference, Sydney, 2009

Creative Commons (CC)



Attribution – attribute the author



Noncommercial – no commercial use



No Derivative Works – no changes allowed

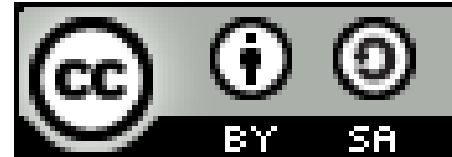


ShareAlike – changes allowed, but only if you put the new work under the same licence

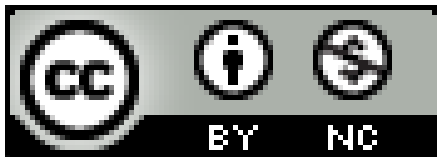
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Attribution



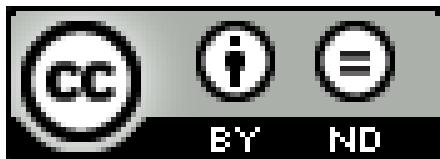
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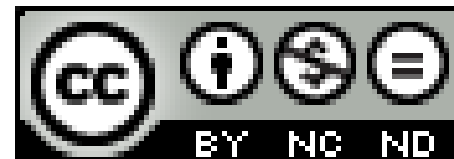
Attribution-Noncommercial



Attribution-Noncommercial-ShareAlike



Attribution-NoDerivatives



Attribution-Noncommercial-NoDerivatives

CC is a direct, copyright-based licence

Legend

W : Copyright Work

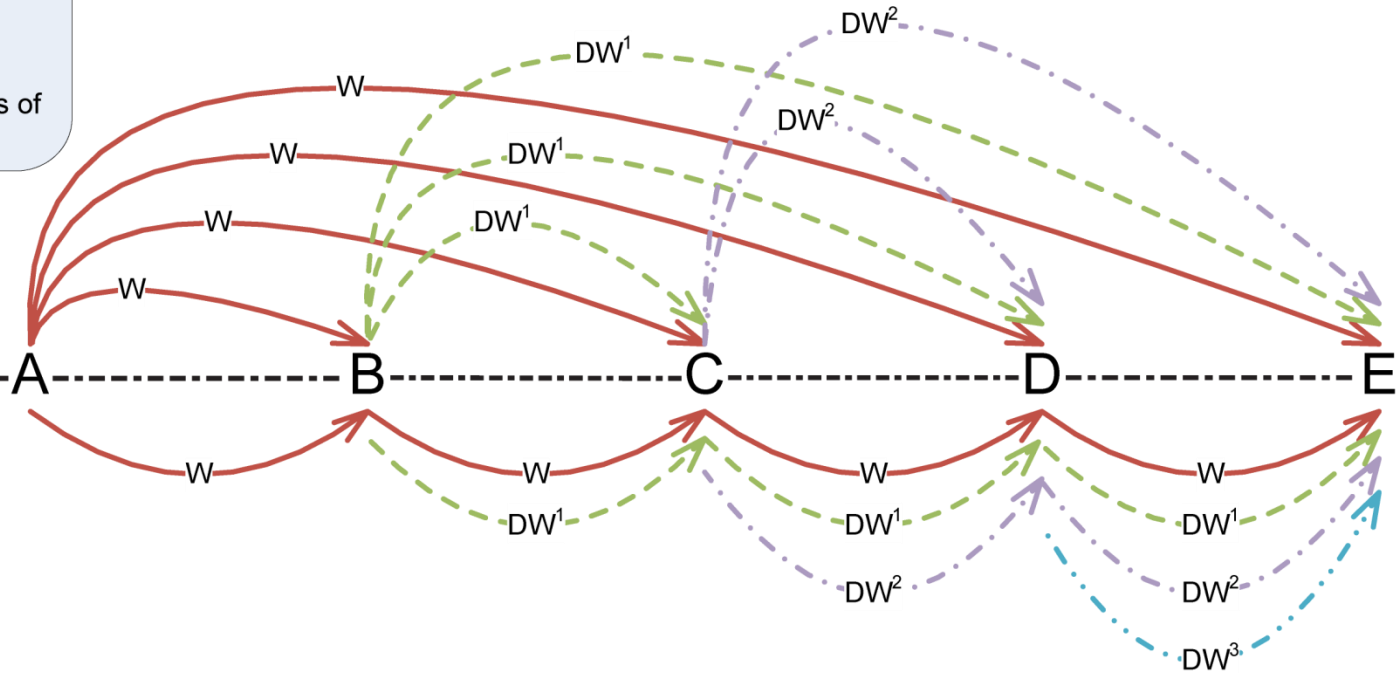
DW : Derivative Work

A : Original Author

B, C, D, E : Downstream Recipients of Licensed Copyright Work

Direct Licensing Model
E.g. Creative Commons
(Copyright-based licence)

Indirect Licensing Model
(Daisy Chain Model,
Combined Contract-Copyright model
with sub-licensing)



Creative Commons (CC)

- Advantages of this approach for government and publicly funded research bodies:
 - mirrors the fundamental justification for recognising copyright in government materials
 - supports government's open access policy objectives
 - clear statement about the source of the data (attribution/provenance) – increased user confidence
 - avoids financial and technical lock-up of taxpayer-funded materials
 - permitted uses are consents/permissions to do acts within the scope of the copyright owner's exclusive rights

Creative Commons (CC)

- Advantages of CC for use by government:
 - enforceability of licence
 - *Jacobsen v Katzer* (US Court of Appeals for the Federal Circuit, 2008)
 - explicit statement of reuse rights
 - universal recognition of symbols – overcomes language barriers
 - discoverability of digital objects (search engines and new services eg ccmixer)
 - enables legal remix and mashup

OECD PSI Recommendation

- the “**Openness**” principle states:
 - “Maximising the availability of public sector information for use and re-use based upon **presumption of openness as the default rule to facilitate access and re-use**. Developing a regime of access principles or assuming openness in public sector information as a default rule wherever possible no matter what the model of funding is for the development and maintenance of the information. Defining grounds of refusal or limitations, such as for protection of national security interests, personal privacy, preservation of private interests for example where protected by copyright, or the application of national access legislation and rules.”
- the “**Access and transparent conditions for re-use**” principle states:
 - “Encouraging broad non-discriminatory competitive access and conditions for re-use of public sector information, eliminating exclusive arrangements, and removing unnecessary restrictions on the ways in which it can be accessed, used, re-used, combined or shared, so that **in principle all accessible information would be open to re-use by all**. Improving access to information over the Internet and in electronic form. Making available and developing automated on-line licensing systems covering re-use in those cases where licensing is applied, taking into account the copyright principle below.”

Venturous Australia

Recommendation 7.7

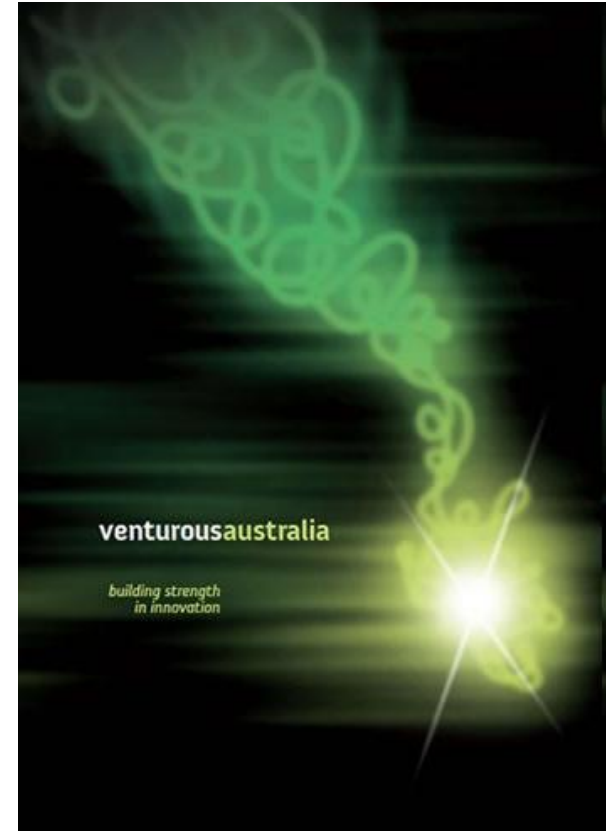
- Australia should establish a **National Information Strategy** to optimise the flow of information in the Australian economy.

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

- **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.



Government 2.0 Taskforce Report

Government 2.0 Taskforce report, “Engage: Getting on with Government 2.0” (December 2009) , Dr Nick Gruen (chair) – <http://gov2.net.au/report>

Central recommendation: A declaration of open government by the Australian Government

Recommendation 6: Make public sector information open, accessible and reusable [chapter 5, p 58]

6.1 By default Public Sector Information (PSI) should be:

- free
- based on open standards
- easily discoverable
- understandable
- machine-readable
- freely reusable and transformable.

6.2 PSI should be released as early as practicable and regularly updated to ensure its currency is maintained.

6.3 Consistent with the need for free and open reuse and adaptation, PSI released should be licensed under the **Creative Commons BY** standard as the default.

Government's response to Gov 2.0 Taskforce report

<http://www.finance.gov.au/publications/govresponse20report/index.html>

- Generally accepted Gov 2.0 Taskforce's recommendations (12 out of 13)
 - agreed in principle to Recommendation 6, including:
 - 6.3 Consistent with the need for free and open reuse and adaptation, PSI released should be licensed under the **Creative Commons BY standard as the default.**
- Government's response was released under a Creative Commons Attribution (CC BY) 2.5 Australia licence



Adoption of CC licensing in Australia

- Australian Bureau of Statistics
- Geoscience Australia
- Bureau of Meteorology
- IMOS (Integrated Marine Observing System)
- Polar Information Commons (June 2010)
- ANU – IP Policy (July 2010)
- Australian Information Commissioner (November 2010)
- Department of Broadband, Comms & Digital Economy: National Broadband Network Implementation Study (May 2010)
- Treasury: Federal Budget Papers (May 2010)
- Australian Parliament (June 2010)

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Australian National University's IP Policy

(1 July 2010)

http://policies.anu.edu.au/policies/intellectual_property/policy

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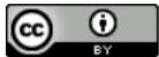
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**Sam the Koala and David Tree
Victorian bushfires, February 2009**

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

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>

See also: *Open Access Policies, Practices and Licensing: A Review of the Literature in Australia and Selected Jurisdictions* by Professor Anne Fitzgerald at

<http://eprints.qut.edu.au/28026/>

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- March 2008 - Second National Summit <http://datasmart.oesr.qld.gov.au/Events/datasmart.nsf/0/D5A62A2C8FAA54754A2573D40018342A?OpenDocument>
<http://www.osdm.gov.au/Events/182.aspx>
- The Report of the Victorian Parliament’s Economic Development and Infrastructure Committee (EDIC), *Inquiry into Improving Access to Victorian Public Sector Information and Data* (EDIC Report), was tabled in the Victorian State parliament on 24 June 2009 - http://www.parliament.vic.gov.au/edic/inquiries/access_to_PSI/final_report.html
 - Government of Victoria, Whole of Government Response to the Final Report of the Economic Development and Infrastructure Committee’s Inquiry into Improving Access to Victorian Public Sector Information and Data, February 2010, available at <http://www.diird.vic.gov.au/diird-projects/access-to-public-sector-information>
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<http://www.oaklaw.qut.edu.au/reports>
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