



COPYRIGHT AGENCY LIMITED

Towards Government 2.0: an Issues Paper **Response by Copyright Agency Limited** **21 August 2009**

About Copyright Agency Limited

Copyright Agency Limited (CAL) is a copyright collecting society – a non-profit company that manages access to, and use of, copyright content. CAL’s members include more than 13,000 Australian writers, illustrators, photographers and publishers. Through agreements with similar collecting societies in other countries, CAL manages overseas content as well as Australian content.

Some of the content managed by CAL meets some definitions of “public sector information”, such as that in footnote 1 of the *OECD Recommendations of the Council for Enhanced Access and More Effective use of Public Sector Information* (the OECD Recommendations). The copyright in some of this content is owned by the public sector (Commonwealth, State and Territory government departments and agencies), and some is owned by private organisations and individuals (for example, novels and poems written with assistance of an Australia Council grant, or documents produced by a non-government organisation that receives some government funding, or publishers of items held in public collections).

CAL’s role is to facilitate access to, and use of, copyright content. It does this in a number of ways, including by:

- licensing uses of copyright content in its repertoire to corporations, non-profit organisations, local governments and churches;
- collecting and distributing copyright fees paid by educational institutions and government departments and agencies, under special provisions in the Copyright Act that entitle them to use copyright content in return for fair payment;
- facilitating access to, and use of, copyright content by people with a print disability through projects such as the online Masters Catalogue (masters.copyright.com.au), copyright guidelines for people with a print disability (www.copyright.org.au/disability) and sample agreements for publishers to license people with a print disability, and organisations assisting them, to make uses beyond

those allowed under the special provisions in the Copyright Act for people with a print disability; and

- via its Cultural Fund, providing funding for projects such as Australian Poetry Resources Internet Library ([http:// april.edu.au](http://april.edu.au)), an online resource of Australian poetry (the Cultural Fund distributes the 1% of collections allowed for cultural purposes under the Copyright Act).

Where amounts of payment or other terms of use cannot be resolved by agreement, they are resolved by the Copyright Tribunal.

CAL is the government-authorised collecting society for collection and distribution of copyright payments under Part VB of the Copyright Act (for use of text, images and notated music by educational institutions), and section 183 (for government use).

CAL's interest in Government 2.0

CAL's interest in Government 2.0 is threefold:

1. it is seeking to encourage the government to differentiate types of information, types of information products, types of access and use, and types of user, to assist the government to identify the best public policy outcome in each case;
2. it has considerable experience and expertise in rights management that may be of assistance to the government in delivering its public policy solutions; and
3. its engagement with government on policy issues is enhanced by access to government documents relating to those issues.

Objectives of Government 2.0

Towards Government 2.0: an Issues Paper (the Issues Paper) identifies the objectives of Government 2.0 as follows:

1. make government information more accessible;
2. make government information more useable;
3. make government more consultative, participatory and transparent;
4. build a culture of online innovation within government; and
5. promote collaboration across agencies in online and information initiatives.

CAL's main interest is in the first two objectives.

Responses to questions in the Issues paper

We have confined our responses to questions that affect CAL's members.

Question 1: How widely should policy to optimise the openness of public sector information be applied? Should it be applied beyond government departments and, if

so, to which bodies, for instance government business enterprises or statutory authorities?

The response to this question varies depending on:

- what is meant by public sector information;
- whether the information is merely viewed, or whether it is re-used; and
- what open access is intended to achieve.

Meaning of Public Sector Information

According to the OECD principles:

“Public sector information” is broadly defined for purposes of this Recommendation as “information, including information products and services, generated, created, collected, processed, preserved, maintained, disseminated, or funded by or for the Government or public institution”, taking into account the legal requirements and restrictions referred to in the last paragraph of the preamble of this Recommendation.

Much of the discussion in the Issues Paper seems to apply to information, or data. Use of information or data does not infringe copyright. Use of an information product, on the other hand, may.

The OECD definition lists many ways that a government might be connected to an information product, including information products that are created by third parties. In many cases, the government will own copyright in this material, either by assignment or as a result of provisions in the Copyright Act that vest ownership of copyright in a government in anything made for it, or first published by it.

These provisions were the subject of an extensive review by the Copyright Law Review Committee (CLRC), which made a number of recommendations for amendments to the Copyright Act (see www.ag.gov.au/clrc). Those recommendations included:

- repeal of the provisions that automatically vest copyright in governments in material they commission or first publish (so that this be left for negotiation, as it is for non-government organisations);
- that there be no copyright at all in certain government materials, such as legislation, judgments, parliamentary reports and other material to be specified by regulation.

The CLRC report includes a useful analysis of government material, and different considerations that may apply for different sorts of material. That analysis may be useful to the Taskforce in considering the matters raised by the Issues Paper.

In looking at different approaches to information products, it can be helpful to distinguish:

- products conveying information that is “governmental” in nature (such as data collected from censuses, emergency information) from products that are not intrinsically governmental in nature (such as architects’ plans or photographs); and

- whether the product was produced by a government department or government agency, or by a third party.

What open access is intended to achieve

In thinking about open access to information products, it can be useful to identify:

- what public benefit is achieved by allowing members of the public to view the information (that is, to get information from the product);
- what additional public benefit might be achieved by re-use of the product in another product;
- whether that public benefit is best achieved by re-use by the government itself or by third parties (or both); and
- how the licence conditions for the re-use might best bring about that public benefit.

Inquiry into Improving Access to Victorian Public Sector Information and Data

The Issues Paper refers to the June 2009 report of the Victorian Parliament's Economic Development and Infrastructure Committee (the Committee) into Improving Access to Victorian Public Sector Information and Data. CAL has some concerns about the discussion in the report about access to government-owned educational materials (page 55ff), and will forward the Taskforce its comments to the Committee regarding these concerns.

Question 2: What are the ways in which we build a culture within government which favours the disclosure of public sector information? What specific barriers exist that would restrict or complicate this and how should they be dealt with?

Again, it is useful in this context to distinguish access to information from an authorised government source (such as a departmental website) from re-use of information and information products by third parties. Government departments and agencies may have more concerns about the re-use of information, and the implications of that for the accuracy and currency of the information, than for disclosure of information in a form that minimizes the risks of misinterpretation.

Question 3: What government information would you like to see more freely available?

There have been instances in which CAL has been impeded in its capacity to contribute to government consideration of a public policy issue because the government has elected to not disclose a document created by or for the government in relation to that issue. In one instance, the existence of a commissioned report was revealed following a freedom of information request by a newspaper. The government provided no explanation for not voluntarily disclosing the contents of that report, let alone its existence, to organisations affected by the policy issue. A decision to disclose the contents of the report earlier would have assisted the government in its consideration of the policy issue because the report revealed a misunderstanding about facts relevant to the policy issue.

On another occasion the government declined to disclose any information about legal advice it had received about a policy issue. While in some cases there may be good reasons

for the government to decide to not disclose legal advice (for example, because it relates to an issue that may result in legal proceedings), it was not clear, in this case, that there were good reasons for not disclosing any aspect of any of the pieces of advice that the government received.

Question 5: How might the licensing of online information be improved to facilitate greater re-use where appropriate?

This question appears to presuppose that facilitating greater re-use will necessarily result in a public benefit. It is more helpful to start by identifying what public benefit the government hopes to achieve from re-use of the information, and then identify what licence conditions might best achieve that outcome. There are different considerations for disseminating a government information product as widely as possible “as is”, and for seeking third party input to produce new information products incorporating government information with a view to making that information accessible in a wide variety of contexts.

Licensing of copyright content can be greatly facilitated by the use of electronic rights management information and standardised metadata. The Australian Publishers Association endorses ONIX, an international open standard for storing and sharing title information for books. CAL uses ONIX (ONline Information eXchange) to more efficiently manage rights in content it licenses.

Question 13: How does the government manage the costs and risks of publication of inaccurate information?

From the discussion that precedes it in the Issues Paper, this question appears to be about information published by governments, but it can also be asked about information in products produced using PSI. The licence conditions for re-use may need to include conditions relating to the accuracy of the information in the new product.

Question 16: What can we do better to promote and co-ordinate initiatives [to promote better access to and re-use of public sector information]

No changes to the Copyright Act are needed for governments to formulate and implement policies about when and how they will acquire copyright. Similarly, no changes are needed for governments to identify and articulate the public benefits from access to, and use of, material in which they own copyright, and to adopt mechanisms – including the formulation of licence terms – that reflect those objectives. The Copyright Act enables copyright owners to determine how their content is used, including the circumstances in which the content may be used without payment. Creative Commons licences, and other licences that allow certain uses of content without payment, are dependent upon the Copyright Act for their legal effectiveness.

Having said that, amendments to implement the CLRC’s recommendation to remove copyright altogether from material such as legislation and judgments may result in increased access to, and possibly re-use of, these materials where the government has not clearly indicated terms of use.

Question 17: What sort of public sector information should be released under what form of copyright licence? When should government continue to utilise its intellectual property rights?

By licensing, the government is using its intellectual property rights. Copyright is the legal mechanism by which governments can ensure that its information products are used as it intends, and to achieve the public benefits it regards desirable.

Some of the issues to be taken into account are set out in the document entitled “Intellectual Property Principles for Australian Government Agencies”, available from the webpage for the Commonwealth Copyright Administration webpage (www.ag.gov.au/cca). The Taskforce will no doubt be assisted by the submission from the Attorney-General’s Department about CCA’s experience in dealing with a variety of licensing situations, including the *IP Manual for Australian Government Agencies*.

Creative Commons licences may not always be the best solution to achieve a desired outcome. Limitations of these licences include:

- they are not limited by time (there is no facility to license for, say, two years with an opportunity to review before extension of the licence);
- they are irrevocable (once a CC licence has been applied to an information product, it cannot be removed if the content owner later wants to offer the product under different terms of use, or withdraw it because there is an updated version of the product);
- they are available to everyone (there is no facility to limit the licence to a class of licensees, such as non-profit organisations, or educational institutions);
- they provide no information to the government about the extent to which the information product is being used; and
- there is no facility to customise or add conditions.

The sorts of additional conditions a government may be interested include obligations to:

- customise an information product for a particular group;
- republish without any additions or alterations;
- report how the information product is being used (for example, whether it is reaching its intended audience);
- direct users of the information product to the primary source of the information;
- include information about the currency of the information and the availability of updated information; and
- clearly identify which aspects of an information product are public sector information, which are the producer’s value-add elements, and which are content belonging to third parties (such as photographs and illustrations).

There is more information about when a Creative Commons licence may or may be suitable in the Australian Copyright Council’s information sheet *Creative Commons Licences*, which can be downloaded from www.copyright.org.au/wp0022, and

Question 18: When should agencies charge for access to information? Should agencies charge when they are providing value-added services?

There is discussion of these issues in the “Intellectual Property Principles for Australian Government Agencies”, referred to above. Those principles identify categories of copyright material, such as government information and activities, to which government should encourage public use and easy access. They also set out some principles relating to commercialisation of government IP.

As for other questions, it is helpful to distinguish access to information from re-use of information. There may be different considerations for each.

There may also be different considerations for government agencies and statutory authorities than for government departments. The “information products” produced by government departments are more likely to be “governmental” in nature than products produced by government agencies. At the one end of the spectrum might be something like travel warnings published on the Department of Foreign Affairs and Trade website, and at the other end television programs produced by the ABC. The pricing of information products by government agencies is more likely to be affected by the agency’s need for funds for new content. This may be less of a concern for government departments.

A handwritten signature in black ink, appearing to read 'Jim Alexander', with a large, sweeping initial 'J'.

Jim Alexander
Chief Executive Officer