

SUBMISSION BY THE COPYRIGHT ADVISORY GROUP OF THE
SCHOOLS RESOURCING TASKFORCE

OF THE

MINISTERIAL COUNCIL ON EDUCATION, EARLY CHILDHOOD
DEVELOPMENT AND YOUTH AFFAIRS

Submission to the Government 2.0 Taskforce

Towards Government 2.0: An Issues Paper

August 2009

The Copyright Advisory Group of the Schools Resourcing Taskforce (CAG) commends the Government 2.0 Taskforce (the Taskforce) on the release of the Towards Government 2.0 Issues Paper. CAG strongly supports the objective of the Taskforce, “to open up government and to maximize access to publicly funded information through the use of Web 2.0 techniques”.

In particular, CAG wishes to respond to questions 1-4, 5, 16-18, 22 and 25 raised in the Issues Paper, as well as the broader points raised by the terms of reference.

1. Background

This submission is made on behalf of the Copyright Advisory Group of the Schools Resourcing Taskforce of the Ministerial Council of Education, Early Childhood Development and Youth Affairs (CAG).

CAG is responsible for copyright policy and administration for the Australian school sector, including the management of obligations under educational statutory licences. CAG represents almost all primary and secondary school educational authorities in Australia. Its members include State and Territory Departments of Education, all Catholic Education Offices and the Independent Schools Council of Australia.

CAG's main role is the negotiation of licence fees with collecting societies under the educational statutory licences in Parts VA and VB, Division 2A of the *Copyright Act 1968*.

Currently, schools pay remuneration under the educational statutory licences for the educational use of government publications and websites unless there are very clear terms indicating that remuneration is not payable.

Notably a significant amount of government materials and websites do not contain any such clear terms. In 2009, the schools paid in excess of \$50 million under the Part VB licence to copyright owners. A portion of that amount applies to government publications and website material.

CAG believes that facilitating access to government materials in schools is fundamental to the key questions raised by the Taskforce's Issues Paper, namely:

- making government information more freely available;
- encouraging participation in policy development and collaboration between citizens and government; and
- fostering a culture of online engagement between government and its citizens.

Importantly, CAG believes access to government materials is fundamental to providing quality education to Australian school students.

As the representatives of the great majority of schools in Australia, we are keen to see Government remove obstacles to accessing non-confidential public sector information by making more information publicly available and free for educational use in Australian schools.

2. Principles for openness and access (*Addressing Questions 1 and 3 of the Issues Paper*)

A. Policy of openness of public sector information

CAG strongly supports a policy of openness of public sector information (PSI) and believes that it should be applied as broadly as possible to materials which are non-confidential PSI.

CAG recommends the policy apply to PSI materials which have been developed for the benefit of the public as the preferred option, or option of first preference, unless there are special circumstances in existence which mean that openness is not appropriate or should be limited.

Importantly, CAG is of the view that a key aspect of the broader policy of openness to PSI is that, as a general rule, government materials should be made accessible to Australian schools and other education institutions such as TAFEs, without payment for use in those institutions.

3. Barriers to access and re-use of PSI (*Addressing Questions 5 , 22 and 23 of the Issues Paper*)

A. Key obstacles to accessing PSI in schools

The key obstacles to accessing PSI within schools are:

1. the copyright restrictions on those materials (or the absence of any clear indication that the relevant materials are 'free for education');
2. as a result of obstacle 1. above, the costs associated with using those materials; and
3. the practical difficulty or impossibility of seeking copyright clearances from government agencies on a case-by-case basis.

We detail these obstacles below.

B. Copyright restrictions and costs

A significant amount of PSI is not made available for free for use by schools. This is a problem in both the digital and print environments. The terms and conditions on which government publications are often made available will usually result in schools only being able to reproduce and communicate these publications under Part VB of Division 2A of the *Copyright Act 1968*, and thus being liable to make payment. Sometimes, the terms and conditions will vary between different formats of the same publication, resulting in the situation where a print publication may be 'free for education' but the equivalent online publication may be remunerable. This situation results in Australian Schools and other educational institutions in Australia being required to pay for use of a wide range of PSI materials.

CAG strongly believes that, in order to develop Government 2.0, educational institutions should be able to use non-confidential, publicly available PSI for educational purposes without having to pay copyright licence fees.

CAG does not consider it equitable or appropriate that Australian educational institutions have to pay for using Australian government materials that educational institutions elsewhere in the world are able to use for free. Australia is the only country in the world with a compulsory

statutory licence scheme for its educational institutions. While the scheme generally serves the educational sector well, CAG believes that the payment of copyright licence fees to government for the use of publicly available government materials by Australian school students is an unintended consequence of the scheme that needs to be reviewed and remedied.

Currently, educational institutions are increasingly committing public funds for the payment of copyright fees for use of a range of copyright materials, including government materials. This position is unsustainable. Therefore, schools will have little option but to limit usage of these materials in order to reduce costs. This will in turn inhibit use of copyright materials, including Government materials, by Australian school students.

An interesting example of the current obstacles relates to blogs and social networks. As the Issues Paper notes at page 25, increasingly agencies are combining traditional modes of consultation with Web 2.0 features and applications to enhance interaction. Schools believe that students should be taught about this form of participatory democracy. However, under the present regime, if blogs were downloaded onto a school website or learning management system to facilitate this learning, it would constitute a remunerable activity under Part VB for which they would have to pay.

This outcome is contrary to the principles of openness outlined by the Taskforce in its Issues Paper as it would:

- reduce the accessibility of government materials by Australian school students; and
- hinder online engagement of students with government.

CAG notes that the current position is also inconsistent with a number of other Government policies and reports including:

- the Australian Government's innovation agenda and the recommendations of the Cutler Review¹;
- the Australian Government's report on 'Australia's Digital Economy: Future Directions'²; and
- the recommendations of the Copyright Law Review Committee (CLRC) in its report on Crown copyright³.

C. Practical barriers to accessing government materials

Currently, schools are seeking copyright clearances from government departments and agencies on a case-by-case basis, by writing to them individually and seeking free use of their materials. This has proven to be an ineffective method of obtaining free access to government materials for schools.

While it has led to some government bodies writing to CAL to ask that their materials be excluded from the educational statutory licences, and therefore better access to those limited government materials for schools, there are some key problems with this approach, namely:

- obtaining permission is time consuming and difficult. Problems are often encountered with finding the relevant person who can provide permission and having the request processed;

¹ <http://www.innovation.gov.au/innovationreview/Pages/home.aspx>

² http://www.dbcde.gov.au/digital_economy/future_directions_of_the_digital_economy/australias_digital_economy_future_directions

³ http://www.ag.gov.au/agd/WWW/clrHome.nsf/Page/Past_Inquiries

- government officers are often not 'copyright educated' and find it difficult to assess the merits of granting or denying copyright permission; and
- the result is an inconsistent pattern across government departments and agencies which makes it difficult for educational institutions to assess whether materials are provided without the requirement for payment.

4. Suggested solutions: Promoting access to government materials and challenging barriers to innovation

(Addressing Questions 5 and 16 -18 and 25 of the Issues Paper)

CAG submits that the following solutions should be considered to ensure access to PSI by Australian students is not hampered:

A. Amend terms on government publications to allow free use for education.

Despite the intentions of Government to the contrary, many governmental websites do not currently allow free use for education. Terms and conditions on these websites can be restrictive, non-existent, or unclear in meaning. All of these scenarios result in a situation where schools pay for any copyright uses made in relation to those websites.

For example, the websites of the Australian Parliament⁴ and the Copyright Tribunal⁵ do not have any copyright terms or conditions. Therefore, if a student prints a page from either of these websites for the purposes of a legal studies subject, this would constitute a remunerable activity for which the education sector is required to pay.

Similarly, where website terms and conditions are restrictive or unclear, the education sector is required to pay for copyright uses in relation to PSI material on those websites. For example, the copyright notice on the website of the Australian Institute of Health and Welfare⁶ provides:

"All Australian Institute of Health and Welfare publications and other information products on this web site are protected by the Copyright Act 1968. Apart from use permitted under the fair dealing provisions in the Act, no part of any publication or other product may be reproduced without written permission.

Enquiries relating to copyright should be addressed to the Head, Media and Communications Unit, AIHW, GPO Box 570, Canberra ACT 2601."

This notice does not allow any free uses of PSI materials on the website except for those which fall within the narrow scope of the fair dealing provisions of the Copyright Act.

Some websites allow some free copyright uses but not others. An example is the 'Australians at War' website conducted by the Department of Veterans' Affairs⁷, which has the following copyright notice:

"This work (encompassing every element of this website) website is copyright – © – of the Commonwealth of Australia (Australian Government Department of Veterans' Affairs), 2001.

⁴ www.aph.gov.au

⁵ <http://www.copyrighttribunal.gov.au/>

⁶ <http://www.aihw.gov.au/copyright.cfm>

⁷ <http://www.australiansatwar.gov.au/default.html>

This is copyright. You may only access, download, display, print and reproduce this material in unaltered form (retaining this notice or a reference to it) for your personal, non-commercial use or use within your organisation. Apart from any use as permitted under the Copyright Act 1968, all other rights are reserved.

You may not adapt, distribute, transmit, perform, publish or create derivative works from any part of this website. Nor may you commercialise any information, products or services obtained from any part of this website without our written permission.

Please correctly attribute any information reproduced from this website, such as information copied under the fair dealing provisions of the Copyright Act 1968."

This notice allows organisations, including schools and TAFEs, to make non-commercial reproductions of PSI from the website for internal use without payment. However, the notice expressly prohibits 'transmissions' (which are 'communications' for the purposes of the Copyright Act). Therefore, a school or TAFE could not place material from the website onto their intranet site without seeking prior written permission. CAG notes that a key reason why schools and TAFEs place materials onto intranet sites rather than linking to them is to avoid the costs associated with heavy internet traffic and because of bandwidth issues. However, if institutions are required to pay escalating copyright fees for reproductions and communications associated with this current practice, the cost-saving purpose will be frustrated. Ultimately, the costs associated with use of materials on the internet, including PSI, will force educational institutions to reduce their access to and use of those materials.

CAG submits that other than in exceptional circumstances, clear terms and conditions should be provided with all government PSI which would allow educational institutions to use public sector information without payment. An example of how such terms and conditions might be drafted can be found on the NSW Attorney-General's Department's website⁸, which provides the following wording in its online copyright policy:

"The Attorney General's Department of NSW encourages the availability, dissemination and exchange of public information. You may copy, distribute, display, download and otherwise freely deal with the Material for any purpose, on the condition that you include the copyright notice "© State of New South Wales through the Attorney General's Department of NSW" on all uses.

You must, however, obtain permission from the Attorney General's Department of NSW if you wish to:

- *charge others for access to the work (other than at cost)*
- *include all or part of the work in advertising or a product for sale, or*
- *modify the work.*

Another example can be found on the National Film and Sound Archive's 'ScreenOnline' website⁹. The relevant term of the copyright policy states:

"You may save, copy, print, distribute or download for your own personal use or for non-commercial educational purposes only".

⁸ http://www.lawlink.nsw.gov.au/Lawlink/Corporate/ll_corporate.nsf/pages/LL_Homepage_disclaimer

⁹ <http://australianscreen.com.au/about/terms/>

B. Use of Creative Commons licensing

While it would be simpler for many government departments and instrumentalities to adopt simple website terms allowing use by educational institutions, another highly credible approach to making government PSI openly available is via the Creative Commons licensing model. Creative Commons licences are commonly used to facilitate open content. Examples within government include:

- the Australian Bureau of Statistics has licensed its website under a 'Creative Commons Attribution Only licence'¹⁰;
- at a State level, a policy of using Creative Commons licences has been initiated by the Queensland Government via the Government Information Licensing Framework (GILF)¹¹. GILF provides seven licensing options which include six Creative Commons licences.

Use of Creative Commons licences could provide users, including teachers and students, with a clear indication of what kinds of uses are allowed with the relevant material. We also refer the Taskforce to *Creative commons licensing for public sector information: Opportunities and pitfalls*¹² which identifies further advantages of using the creative commons model in government licensing, as follows:

- “Creative Commons licenses are ‘ready to use’, automated and standardised; public sector bodies do not need to draw up their own licenses but can benefit from the expertise brought together in CC.
- Use of the licenses, nationally and internationally, is expanding quickly, aiding recognition and acceptance.
- The licenses are standardized which adds to transparency for the user; at the same time however the licensor still has a fair amount of flexibility because the optional conditions of use, enables a public sector body to choose the license most suited to its information policy for particular data/content. The lack of transparency in public sector licenses is a much criticized phenomenon.
- The icons and the human readable Commons Deed are user friendly and give citizens (including businesses, interest groups) a much clearer indication of which rights are reserved and to what extent, and what kind of use is allowed.
- The licensing information is linked to the content, in the metadata of the website, its pages or individual files (e.g. as exchanged in peer-to-peer networks or other distribution outside the web), providing stable clarification of which documents (or works) fall under the license and which do not.
- Creative Commons (and iCommons) offers community based development of free tools to improve the infrastructure for licenses and standards, allowing public sector bodies to share knowledge and benefit from the work of others.
- The technical implementation of the license makes it easier to search for re-usable works. Creative Commons stimulates interoperability of its licenses with other open information licenses.
- Creative Commons stimulates interoperability of its licenses with other open information licenses."

¹⁰ <http://www.abs.gov.au/websitedbs/D3310114.nsf/home/%C2%A9%20Copyright>

¹¹ <http://www.gilf.gov.au/>

¹² http://learn.creativecommons.org/wp-content/uploads/2008/03/cc_publicsectorinformation_report_v3.pdf

C. Developing a whole of government approach to PSI

CAG strongly suggests that this should be a whole of Government approach to making publicly funded, non-confidential information open for all to use.

CAG notes that the beta version of the report by the UK Power of Information Taskforce¹³ (released in March 2009) has considered similar issues of licensing within Government and recommended as follows:

Recommendation 10:

"(a) 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.

(b) The system should be a creative commons style approach, using a highly permissive licensing scheme that is transparent, easy to understand and easy to use, modelled on the 'Click Use' licence, subject to the caveats below...."

Recommendation 11:

"Public information should be available at marginal cost, which in practice means for free. Exceptions to this rule should pass stringent tests to ensure that the national benefit is actually served by charging for information and thus limiting its reuse by exploiting the monopoly rights conferred by intellectual property regimes...."

Conclusion

CAG thanks the Government 2.0 Taskforce for the opportunity to provide these comments in response to the Issues Paper.

We would be pleased to discuss any aspect of this submission with you further.

¹³ <http://poit.cabinetoffice.gov.uk/poit/>