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Also from

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The Director
Copyright Law Review Committee Secretariat
Attorney-General's Department
Robert Garran Offices
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Dear Director

CLRC Issues Paper: Public Consultation Meeting Sydney re Crown Copyright

Thank you for the opportunity to participate in the public forum at NSW state library on 27th July. Tony made the comment at the meeting that several well-known principles within international treaties for intellectual property may need further examination for evaluating the viability of the scope of default allocation of copyright to the crown.

This submission explains some of these principles and is made on behalf of our family. There are several hundred persons involved worldwide including in USA, Australia, England, Eire, Switzerland, and France. There are expectations that government agencies should assist or sponsor individuals to exploit their IP on an international basis for the benefit of their country.

It would appear that an optimistic view of the management of crown copyright in Australia may be evaluated as approaching some of the standards accepted globally for intellectual property and copyright. But this view may only be valid within an Australian State.

The actions and rights of a government agency within the state or country that defines its existence may freely operate the provisions of Copyright Acts and related international treaties. This applies to Australia. The first area is that the agency can assume that the default allocation of author's commercial rights under the usual "direct and control" provisions may often apply. The agency should make allowances that creator moral rights always apply. The agency can also assume that reasonable fees may be charged for administrative actions.

However, any activity or rights claimed by agencies that try to validate further provenance in other areas may be subject to challenge and justification that these actions are legitimate to meet the public interest. As examples:

- **Commercial Rights:**

An agency may need to implement alternate processes to enable rights for commercialisation within its own jurisdiction to meet appropriate criteria for charging prices in excess of minimal administration fees. It is considered that the enabling legislation describing the rights and responsibilities for each government agency takes precedent over copyright. This is allowed under international treaties as the methods that agencies utilize to pay for their activities are a state/country responsibility. However, the common assumption that provenance of such rights are valid in other jurisdictions is suspect. It is unlikely that such rights and activities can be translatable easily to international scenarios by a state government agency. It is considered that equivalent rights to the default Australian Crown Copyright may often be invalid in many countries. It is suggested that arranging specific licences and agreements via local agents may be more effective in enabling deployment of both moral and commercial rights - See explanations and other aspects indicated below.

- **Duty of Care:**

An agency has a duty of care to employees to ensure that they receive reasonable reward for any intellectual property and copyright that the agency operates on behalf of their employees. It is reasonable to relate this to the normal employment duties of those employees. However, where

the copyright is used or published outside normal duties or outside the implied jurisdiction, then the agency needs to justify that they meet the duty of care for further reasonable payment for those employees. In addition, the agency also needs to meet the international expectations for integrity and moral rights, even in those circumstances, where employees' names are not published as creators/performers. Likewise, the assumption that default crown rights may be claimed in other jurisdictions is suspect and liable to the risk of being invalidated. See Clause 48U (1) for international material used within Australia in the Copyright Act.

- Business and Volunteer sponsorship

An agency has a duty of care to others including volunteers, patients, students, consumers, artists and business organisations to pay reasonable remuneration. This is accordance with Clauses 30, 31, 32, 35, and 190 under the Copyright Act.

The agency has a duty of care to enable rights for adaptation and deployment for their constituencies for their life-time expectations for benefits from their works and to use other material for fees appropriate to the circumstances: This principle applies generally, but have been proceduralised for aspects including access to unpublished and archive materials, educational use, government and political aspects and use for disability and health assistance.

- Original and pre-existing material

An agency may have an obligation to identify new original material that they claim as subject to copyright, as against existing material of the author/creator and material that is "free-for education" or "free-for-government" or is subject to other intellectual property rights including patents and designs. It is evaluated that material and works that have deemed rights and are also subject to technical protection rights such as digital rights management and/or use proprietary formats may be struck-out or invalidated by tribunals and courts. See Appendix B.

There are also a number of other aspects that would appear that need clarification to enable effective involvement of individuals in creative and developing situations. From Tony's attendance at your forum it is considered that the previous submissions from agencies may have concentrated too much on information that is prepared in writing as traditional documents. Our family view is that such submissions have overlooked some aspects about international creative and performance aspects in interpretation of copyright.

We have therefore provided an Appendix A that matches some points in the discussion paper for your public seminar against our suggestions for further clarification. We have also provided a second Appendix B to further explain those areas that we would suggest need clarification

May we suggest that: the involvement of international business patent specialists and managers of performers' rights might provide some further useful views.

May we also submit the view that the CLRC may need to undertake further consultation with representative bodies, relating to employees, students and volunteers to clarify their views.

In summary, our suggestions for additional points that may require clarification include;

1. Role of International Agreements for Intellectual Property and Copyright;
2. Implications linked to USA / Australia Free Trade Agreement, and International Treaties;
3. Definition of Roles for Government Agencies - public interest and rights for adaptation;
4. Jurisdiction aspects, and duty of care for fair payments, including re-presentation and copies;
5. Pre-existing Precedents for Intellectual Property, Patents, and Copyright;
6. Moral rights and performer rights for authors, creators, and performers - particularly provenance and roles involving interactive games, mobile, collaboration, and business intelligence systems.

Yours sincerely

Tony Barry
On behalf of the Barry family worldwide

Appendix A - Questions in the CLRC discussion paper and views for evaluation and for further clarification.

Copyright Law Review Committee - Crown Copyright
Re - Discussion paper for consultation forum, Sydney, 27 July 2004

Questions Asked by CLRC, (paragraph numbers as original) and Views submitted by Barry Family, 22nd September

3. Key issues explored in this paper are:
- public policy considerations for government copyright,
 - the scope of material in which the government owns copyright,
 - the prerogative right in the nature of copyright,
 - sections 176-178 and 35(6) of the *Copyright Act 1968* (Cth),
 - which entities should be included as part of the 'Commonwealth or State',
 - exceptions to infringement, and
 - management of Crown copyright.

Views

- Comments are provided below against paragraph numbers in the original CLRC paper.
- Further explanations and some references are provided in Appendix B

Public policy

10. For example, the ACC argued in relation to the 'first ownership provisions' in the Copyright Act (discussed further at paragraphs 29-40):
The original justification for Crown copyright appears to be that copyright subsist in, and the Crown control the use of, materials which were "governmental" in nature ... The expanding role of governments has meant that a provision which initially had a quite limited effect now applies much more broadly.
13. **The Committee is interested to discuss the policy basis for government ownership of copyright, taking into account the broad range of material produced by governments (discussed further at paragraphs 18-22 below).**
- The Committee is also interested to explore arguments that copyright may be used to protect the integrity of material.**

Views

- Copyright work created by government agencies, or used by government (as created by individuals or by business organisations) should be protected by Copyright. This should be in accordance to the International Agreements - The Berne Convention and the Universal Copyright Convention. These rights for individuals are now included in the Copyright Act Clauses 248U and 10. See Appendix B
- The reasons for government ownership of copyright material outlined in paragraph 11 of the CLRC Discussion Paper are supported.
- These international conventions provide that the only procedures for protecting Australian copyright work are based on Creator Rights when the work is used

Extract from CLRC - Discussion Paper on Crown Copyright

- internationally in any country in the world - The International Agreements. Allocation to a Business Entity is allowed. However, allocation to a Government Agency is not allowed and is only available as a local country variation. Hence, the Government default assumptions can be invalidated in any other country. In addition, specific licences are the usual method to protect works imported from individual creators, from commercial organisations and from overseas government agencies. The removal of any Australian work from copyright or the use of alternate definitions or processes would provide severe risks that the material would become freely available on a global basis.
- The ownership and moral rights of copyright works applies to Authors/Creators. The assignment to other organizations needs to be in writing. Such international organizations can be individually specifically identified within Australia. See Clauses 184, 185, 186 and 187 of the Copyright Act. It is considered that Crown Copyright is not enabled by these clauses. For example, consider the position of USA or UK government works used within Australia. The assumption that works subject to Crown Copyright within a state of Australia are valid internationally will be subject to being identified and being validated under similar rules in each and every overseas country.
 - It is considered that the Queensland Policy for Intellectual Property follows the international good practices. This may be viewed at http://www.sdi.qld.gov.au/innovation/publications/ip/ip_guidelines.pdf
 - It is considered that the arrangements for commercial use of mineral leases in Queensland is an appropriate licence agreement for a government agency. See the Queensland Department of Natural Resources submission to CLRC no S65 and Queensland Government submission no S71.

Use of copyright to control access to information

17. The Committee seeks your views on whether government ownership of copyright should be used as a means of restricting access and controlling use in light of FOI legislation.

Views

- The submissions from various government agencies are interpreted as mainly referring to physical text based materials or written materials. It is not clear that the FOI legislation can be easily applied to other categories of material covered by Copyright - for example an artistic performance. It is considered that the alternate categories covered by copyright have not been adequately evaluated or suggestions presented. In particular,

the following categories of material are suggested as requiring further examination. Internet and electronic information (all digital materials as in the Australia or USA copyright definitions of copyright for digital materials); musical works; dramatic works; artistic works, computer programs, compilations, cinematograph films, sound recordings; broadcasts; and published editions. In addition, it is not clear how FOI applies to collaborative materials including such materials as games, electronic learning, health materials and electronic business materials. See ACC information sheets G48 for Education and G62 for Government for other works covered by copyright.

- The original creation of copyright in England was to prevent lock-out from information by trade guilds, unions and business organizations. Government agencies should be using copyright to provide provenance and integrity for original materials. Copyright is not appropriate to lock-out constituents and the public from government and other materials. Adaptation and re-use should always be allowed for the public benefit.

Scope of material in which government owns copyright

22. The Committee is interested in your views on the following:
- What material, if any, should be excluded from copyright protection?
 - If material is not excluded from copyright, should it be subject to particular exceptions?
 - Should copyright in certain works such as Bills, Acts, judgments, parliamentary debates and reports of commissions or inquiries be abolished as in New Zealand, as the Law Council of Australia and AustLII suggest?

Views

- All material and works should be covered by copyright where this may apply.
- It is suggested that CLRC clause 22 should have “works” added to the evaluation. The use of the word “material” is unclear under the Copyright Act. A typical interpretation may be considered that only government physical materials are being evaluated. Different criteria may apply to other works. This should be clarified.
- The CLRC examination may need to be extended to cover performances, musical and artistic works and other types of intellectual property affected by copyright.
- It is considered that copyright protection is a very appropriate method for protecting such materials and works. In particular, the international precedents for moral right are evaluated as requiring copyright to apply.
- The European and French life-time rights for authors/creators should apply to government materials and works. These are used for life-time linkage to value of artifacts, materials and works, so that, when there is a large increase in value the original

artist may obtain benefits from re-sale. These rights should apply to artists, indigenous, community, and ethnic works.

- If any Australian material and works are removed from Copyright, it may become extremely difficult to protect such material and works in other countries.
- The precedent of making government material free as in the USA is considered a better exemption for the legal, executive and parliamentary materials as in Clause 22 of the CLRC paper.
- It is suggested that the current Australian practice of removing Authors names from material is not viable on a global basis. The rights claimed by Judges, Politicians, Engineers, Doctors, Professionals and other similar people are vested in Moral Rights on a worldwide basis. It is suggested that the Australian practice of anonymous material is not appropriate and will progressively lead to Australian Government material being rejected as not viable. The provenance of the creator is vital. This view is supported by university professorial evaluations, and by many professional organisations. There is no criteria globally that justifies that only a single interpretation is valid. It is normal practice that different interpretations and views are viable. These will need reference to the professional criteria and provenance of the author.
- There seems to be a concept common among Australia Government Agencies that all content is covered by copyright. This is not valid: Copyright often only covers the new presentation formats and/or new original material. The contents are often not covered as they have been previously published. Materials covered by various Intellectual Property Acts are also not included: viz including patents, designs, biotechnology materials. In addition, ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, as distinguished from a description, explanation, or illustration are not covered.
- It is suggested that crown copyright may not assume that exclusive rights have been deemed allocated unless the work can be proven to be new and original. Many works that contain some pre-existing material cannot be covered. In addition, the assumption that crown copyright can cover alternative presentations in other formats, electronic versions, and adaptation are not clear. It is suggested that the author/creator may retain the rights to perform, adapt and make further copies of such works.

Prerogative right in the nature of copyright

25. Similarly, the ACC argued:
We think that governments should be obliged to ensure that certain materials such as legislation and judgments are freely and easily available to the public. The Copyright Act should assist with this obligation. The Crown prerogative, however, is an outdated and uncertain mechanism for doing so.
28. **The Committee is interested in:**
- **the role of the prerogative right in the nature of copyright in a modern context. Does it continue to be relevant given its genesis?**
 - **situations where government has relied on the prerogative right in the nature of copyright,**
 - **how the prerogative right might be clarified, and**
 - **the potential effects on the States of abolishing or limiting the Crown prerogative.**

Views

- It is considered that copyright is appropriate to legislative, executive, and judicial materials. However the default terms may need clarification. It is suggested that the terms used by the “open source” and “creative common” initiatives should be used as precedents. In these examples, the validity and integrity of the original materials are maintained together with acknowledgement to the authors/creators, whilst adaptation and re-use is also allowed.
- It may be worth defining a precedent for government that the reference to the original material is always published in any adaptation. It is suggested that training materials, explanations, comments, criticism and other developments and adaptations of government materials should always be allowed, and this public right should be allowed and this should be clarified in the Copyright Act.
- It is noted that the ability of Governments to assume copyright in unpublished material was an original justification for allowing the public to adapt and use material that were being locked away by trade guilds, professional associations and commercial organizations. Such usage rights were provided in the public interest for minimal fees. In particular, such material and works were made generally available for use including for education, for personal and community safety, for government, for disability assistance, for political and fair use purposes.
- It is suggested that any method where both organizations and government try to lock away any material or works from public use are prohibited and the responsibility be defined for government to facilitate publication and adaptation of works and materials.
- See also the comments on the rapid development of multiple sources of public materials and works and free non-commercial public use under “creative common” processes in Appendix B.

Sections 176-178 and 35(6) of the Copyright Act

29. **The Committee is interested in obtaining further views regarding the implications of the principle of competitive neutrality for Crown copyright.**
33. However, the NSW Government noted that the provisions may be important in relation to such materials as government discussion papers:
While the Crown copyright provisions are of limited relevance in a commercial context, the Crown copyright provisions play an important role in respect of 'core' government functions. For example, where a government appoints a person to prepare a report for public discussion, this may not necessarily be commissioned through a formal contract. Without the protection provided by Crown copyright, there is a risk that the author of the report may retain ownership of the material and government could lose the right to deal with the report for the benefit of the public.
34. FACS stated that:
 ... the operation of sections 176-179 provide a greater degree of certainty and recognise the unique situation of the government who direct and control the creation of material but do not control the content.
38. Vic Government considered that sections 176-178 could be improved by:
- **abolishing the 'direction and control' test, focusing instead on whether the work was made by an officer or servant of the Crown in the course of his or her duties,**
 - **providing specifically that Crown copyright subsists in Acts of Parliament, and**
 - **establishing Parliamentary copyright for Bills and other Parliamentary documents.**
39. The WA A-G recommended that the phrase 'under the direction or control' in sections 176 and 178 be clarified to include material created by employees, contractors and volunteers. They also noted that section 177 has little practical application and should be amended to apply only in cases where a connecting factor is absent. The WA A-G also favoured clarification of the relationship between Part III and Part VII of the Act.
40. **The Committee is interested in obtaining further information about situations where government has relied on sections 176-178 for copyright ownership.**
- **The Committee is interested in how sections 176-178 might be amended:**
 - **if the 'first publication' provisions were removed in section 177, what would be the impact?**
 - **if 'under the direction or control' were changed to 'in the course of employment' in sections 176 and 178, what would be the impact?**

Views

- There is a definition of "Direction and Control" provided in USA copyright legislation. It is suggested that this will become a valid precedent within Australia under the USA Australia Free Trade Agreement. It is suggested that there would be considerable international difficulty if this definition be rejected. This is in Section 101 of the USA copyright Act: Viz:

In the case of works made for hire, the employer and not the employee is considered to be the author. [Section 101](#) of the copyright law defines a "work made for hire" as:

- (1) a work prepared by an employee within the scope of his or her employment; or
- (2) a work specially ordered or commissioned for use as:
 - a contribution to a collective work
 - a part of a motion picture or other audiovisual work
 - a translation
 - a supplementary work
 - a compilation
 - an instructional text
 - a test
 - answer material for a test
 - an atlas

if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire....

- It is noted that the USA definition of direction and control does not include artistic performances and several other categories of copyright and intellectual property.

- It is suggested that international agencies may use the USA precedent of “free” government materials under the AU/USA FTA to try to obtain Australian government works for nominal charges or for free.
- It is suggested that the usual precedent in Australia of not making written agreements with employees implies that the default assignment of copyright can only apply within the jurisdiction of the particular government agencies eg typically a state.

What entities should be included as part of the ‘Commonwealth and or a State’?

43. The Committee is considering three possible options to redress the concerns raised in the submissions:

- amending the Act to include a list of non-exhaustive factors for the courts’ consideration in determining the status of an entity,
- amending the Act to allow the Commonwealth Attorney-General to declare the status of an entity in a similar way to declaring collecting societies, or
- creating a list similar to the Crown bodies list used in the United Kingdom.

The Committee seeks your views on how such mechanisms could work in practice.

Views:

- It is suggested that the definition of government agency is not expanded in the Copyright Act. However, the processes in Clauses 184, 185, 186, 187, 248U and 248V may possibly be worth expanding to include proscribing Australian Organizations and individuals as well as international individuals and organizations.
- It is suggested that government agencies and government commercial organizations should not be defined as different from individuals, business and community organizations.
- It is suggested that more use of written licences and agreements would avoid the uncertainties about default Crown Copyright assignments. For example, if “creative common” terms were to be described as a good practice default for crown agencies. Such a default is in use by some agencies in Canada.
- It is suggested that specific licences should always be agreed for any materials and works subject to commercial and business arrangements.

Exceptions to infringement

48. The Committee is interested to explore further when exceptions should apply, taking into consideration the public policy of government ownership of copyright and the scope of material in which governments own copyright.

Views:

- It is recommended that the exemptions should not be expanded.
- It is considered that the rights and responsibilities in enabling legislation for each specific government agency will always override the default terms in the Copyright Act. Such duties of the specific agency are usually subject to public interest determinations and processes when they are agreed by the relevant parliament, commission or tribunal.

Section 182A

50. In addition to the general exceptions, section 182A of the Copyright Act permits reproductions of certain primary legal materials. This section only allows for a reprographic reproduction for non-commercial purposes.

Blanket licence scheme

57. ... first, because it leaves untouched the possibility that judges and not the government own the copyright in judgments, and, secondly, because some governments might not waive copyright.

58. **The Committee is interested in your views on whether a blanket licence scheme or amendment of section 182A is more appropriate in providing access to certain government copyright material.**

Views:

- It is considered that rights in legislation, judgments, Hansard and other government records and materials such as Acts and Regulations are covered by the moral rights of the authors/creators. The provenance of the authors, judges, tribunal and regulatory officers and other people such as politicians are needed to verify the provenance of the views contained in the materials.

Management of Crown copyright

59. The Committee seeks other examples of the impact of the different management systems of Australian governments.

International government copyright management models

64. **The Committee is interested in obtaining views on what would be a effective management system for Crown copyright.**

Views:

- It is not considered that any centralized method of management of records and materials can be viable.
- It is not considered that any centralized system can adequately cover works. See comment above about the applicability of FOI to certain types of artistic and musical performances.
- It is not considered that any management system can adequately cover international materials used within Australia or vice versa Australian materials used internationally.

- It is not considered appropriate that commercial licenses are included within management systems for copyright.
- It is considered that publication within the USA may be subject to the registration and collection/payment arrangements of the USA copyright office.
- The USA Copyright Office (LOC) maintains a list of agencies that publish material on the Internet. <http://www.copyright.gov/resces.html> and of some other authorized collection agencies.

Appendix B - Suggested Aspects for Clarification re Default Allocation of Copyright to the Crown in Australia

Note: The version of the Australian Copyright Act referenced is dated 26 August 2004.

1. International Agreements for Intellectual Property and Copyright:

- See quote below from USA, Library of Congress.
- There is no such thing as an “international copyright” that will automatically protect an author’s writings throughout the world. Protection against unauthorized use in a particular country basically depends on the national laws of that country. However, most countries offer protection to foreign works under certain conditions which have been greatly simplified by international copyright treaties and conventions. There are two principal international copyright conventions, the Berne Union for the Protection of Literary and Artistic Property (Berne Convention) and the Universal Copyright Convention (UCC). LOC, Copyright Office, USA, FL100, June 1999
- See the following documents for views on Copyright, Intellectual Property and trade protection globally. These may be accessed on the USA Office of the Trade Representative website. They describe the involved procedures that are essential to arrange commercial rights to protect business interests and intellectual property in each specific overseas country. There are difficulties described for protecting trade including with China, Taiwan, India, European Union, Indonesia, Korea and the Philippines.
 - The President’s Trade Policy Agenda, 2004.
 - 2004 Special 301 Report Section 306, March 2004
 - Special 301 Priority Watch List, March 2004
- The above references should be reviewed for interpretation of Crown Copyright outside an individual state in Australia.
- It is suggested that Government Agencies make specific arrangement for commercial activity via Government Owned Corporations for business outside their state. It is suggested that copyright should remain with the individual author/creator (or business organization) and that licence arrangement be agreed for exploitation.

2. Changes linked to USA / Australia Free Trade Agreement, and International Treaty aspects.

- The Australia USA Free Trade Agreement defines the terms for exchange of Copyright and Intellectual Property between USA and Australia. This includes processes to progressively further align laws and regulations. It is a common view in USA that their courts will never order a government agency to be allowed to charge any fees above minimal administrative charges as Copyright is “free” for government material. It should be noted that USA controls about 60% of international trade. This may be larger considering the USA international free trade agreements.
- Copyright and consumer protection are also subject to the laws and regulations of each individual state in USA. This may affect government commercial enterprises.
- It is therefore suggested that: Australian agencies do not use or rely on the default crown copyright rights for trade with USA.
- That USA commercial organizations will progressively present evidence to Australian Courts that will further harmonize copyrights and intellectual property rights.

- It is suggested that arrangements are made with local agents for any international exploitation of copyright. Such agents need to be properly authorized under the local country consumer protection and intellectual property legislation.

3. Definition of Roles for Government Agencies - public interest and rights for adaptation.

- It is believed that the activities of a government agency in Queensland are subject to the Public Service Act, the Commercial and Consumer Tribunal Act 2003 as well as the Competition Policy Reform (Queensland) Act 1996. These acts contain processes to determine the public interest.
- There does not seem to be any Acts that authorize the prevention of adaptation of government information. In Queensland it is expected that agencies authorize use of any such material and works for the benefit of the individual, a business organization. See policy for intellectual property in the Queensland Government submission to CLRC No S71.
- The definition of the default allocation of employee commercial rights to government agencies as crown copyright does not include any directive that such allocation is “exclusive”. It is considered that the authors/creators are able to repeatedly perform works and may make adaptations and similar part copies .
- Many governments authorize or licence many professional bodies and individuals: such as doctors, nurses, architects, teachers, and lawyers. These licenses are for life. Hence there is an implied expectation that the professional work of such individuals will be aided by government agencies. It is considered inappropriate that any information is withheld by using copyright from such professionals. Indeed it is considered a duty of government to ensure all professionals always have complete information in order to serve the public.

4. Jurisdiction aspects and duty of care for fair payments.

- The jurisdiction of a government agency is defined by the relevant enabling legislation. If such legislation does not enable commercial activity for copyright purposes; It is suggested that an agency can only levy reasonable administration charges.
- For Queensland a government department and/or agency is defined as an individual. Constitution of Queensland, Division 1, Clause 51, and Acts Interpretation (State Commercial Activities) Amendment Act 1994, Clause 47B(1). Such definitions as an individual may inhibit crown copyright activity outside the state.
- It is expected that similar definitions may apply to other states and countries.
- The issue of indivisibility of the “crown” may need examination. For example does England and Canada have access rights to Australian Crown Copyright materials and works? It has been considered by some people that Australia does have some access to English material.
- The concept of government may be summarized as government of the people by the people for the people. This might imply that government does not have the rights to reserve information solely to itself for legislative, executive functions, rights and duties.
- It is considered that a crown agency has obligations to undertake due diligence research about pre-existing materials, about components that are subject to intellectual property rules, or are “free”. It is considered that government agencies should not place reliance on statements by employees who do not have the professional training or resources to complete such reviews.
- Examples of sources that should be checked include [wikipedia](#), and MIT [OKI](#) – the “open knowledge initiative”

5. Pre-existing Intellectual Property, Patents and Copyright.

- Copyright does not cover pre-existing materials. Only original materials that are unpublished are covered. Copyright Act Clause 32.
- It is relatively easy for any author /creator to publish works. A simple transmission by eMail or even printing a document can be deemed to be publishing (ie fixed in electronic format).
- As an example this document has been circulated among the Barry family. Vboth by eMail and in printed formats. This is publishing of pre-existing material.
- If a document is prepared in a proprietary format such as in Microsoft Word, as a star office document, as an MP3 file or as a video and/or by other proprietary formats – then it is subject to technology protection and the patents of the commercial vendor. A government agency is not allowed to use any circumvention devices to remove the technical protection measures for re-publishing such works or to adapt such works.
- Information in databases is covered under intellectual property rights in many countries, particularly in Europe. Government Agencies need to take account of such provisions in any use of materials, information and works internationally. Databases may also include proprietary design and patent facilities that also can inhibit use without valid licences.
- Microsoft holds the most important patents for video, DVDs and high definition television. Such facilities are not yet generally available to re-publish some materials and works see
- Any author or teacher may publish material and works to websites such as the Aesharenet website under “free-for-education” copyright terms.
- More than 30 USA Federal agencies formed a working group in 1997 to make hundreds of Federally supported teaching and learning resources easier to find. The result of that work is the FREE web site. Accessed 15 August 2004. <http://www.ed.gov/free/what.html>
- There are laws that regulate privacy and information ownership for example Health and Education. These need to be allowed for use of copyright.
- The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a USA Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education. These may be reciprocal rights under the FTA. There are similar laws in Australia for example the Education Act in Queensland.
- Microsoft, Apple, Sony, Motorola and IBM own many patents and designs for Digital Rights Management, and for compression of music and video publishing. Any material that is subject to such patents and are published by individuals such as students and employees will not be viable for the default assignment of crown copyright. The standard licences to use do not allow such transfer of rights from the creator. Such rights and the prevention of re-publishing are being reviewed by the “Induce” Bill in the USA Senate.

6. Moral rights and performer rights for authors, creators, and performers - particularly provenance and role for interactive games, mobile, collaboration and business intelligence systems.

- It is considered that the default crown copyright provisions do not authorize the re-publishing of material and works in alternate formats. Such new presentations will require specific agreements with authors/ creators.
- Many works and materials need the provenance of the creator to be viable.
- There are a considerable number of websites that publish “public” information under the “free-for-education” or free-for-government scenarios” using creative common agreements. It is expected that many professionals will publish their material and works to such websites.

- Most professionals achieve degrees and other qualifications. The content of such education may involve the university, education establishment or professional institute.
- The increasing use of mobile equipment and services such as phones, PDAs and games boxes is changing the scope of copyright. This may need more investigation. Such material is characterized by very short sets of exchange of information between numbers of individuals and with business organizations. This aspect has not been included in this submission. However further investigation is warranted see the review being carried out by Victoria Government Consumer Affairs. See the M-Commerce Issues Paper.
http://www.consumer.vic.gov.au/cbav/fairsite.nsf/pages/of_hottopics_mobile_commerce?OpenDocument

Intellectual Property and Copyright in this Paper

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The Barry family has members in several countries worldwide. A number of people have completed education to degree level in one country and are now working in another. Several members have changed employers between countries. At the second generation there are some 200 family members. At the fourth generation, there are some thousands.