Consultation Paper:
Digital Economy Future Directions

Submission of
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1. About us

This submission is made on behalf of Wikimedia Australia Incorporated.

We thank the Department of Broadband, Communications and the Digital Economy (DBCDE) for the opportunity to comment on the Consultation Paper "Digital Economy Future Directions" (the **Consultation Paper**).

Wikimedia Australia is a member-based non-profit organisation whose members come together to advance Free Cultural Works[1] in Australia. We achieve this by promoting Free Cultural Works and related open source software systems; increasing public awareness, support and participation in projects hosted by the Wikimedia Foundation – including the free online encyclopedia Wikipedia; and by developing resources to assist Australians in the creation and maintenance of free cultural works.

2. Outline

Wikimedia Australia's primary goal is to enable, assist and promote access to knowledge for anybody, anywhere, anytime and for any purpose. We see the digital economy enabling this vision to improve education and innovation in Australia and around the world.

As described in further detail below, Wikimedia Australia holds the following opinions:
- to enable the digital economy, the government will have to overcome the "digital divide" between metropolitan and regional Australia[2];
- the publication of as much PSI as is practicable, with an open a licensing regime as possible, will bring great but unforeseeable advantages;
- Australian copyright law is poorly understood (especially in the area of copyright expiration) and therefore Australians' access to their culture suffers greatly through unnecessary restrictions on its access and usage.

3. Open Access to Public Sector Information

Wikimedia Australia strongly supports the proposal to open access to public sector information (PSI) and believes there are many and varied benefits from opening PSI for use and re-use.   By opening PSI, the government will benefit individuals, business, the education sector and cultural institutions. Wikimedia Australia could improve the quality of content on Wikimedia projects such as Wikipedia and Wikibooks. Contributors would be able to reference open PSI, which could be then verified by those using Wikimedia resources for educational and other purposes.

Wikimedia Australia applauds the Australian Bureau of Statistics for its recent move to a Creative Commons licence for all information on its website and would like to see other government departments and agencies moving to a similar model in the future.

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[1] Definition of Free Cultural Works, available at http://freedomdefined.org/Definition
[2] Black, R & Atkinson, J (2007), *Addressing the Digital Divide in rural Australia*, available at http://ausweb.scu.edu.au/aw07/papers/refereed/black/paper.html

A number of cultural organisations in Australia are currently pursuing or have commenced increasing access to materials over the internet through digitisation. This allows Australians whose access is limited by geographical barriers to view parts of their collections.

What categories of Public Sector information are most useful to industry and other stakeholders to enable innovation and promote the digital economy?

We support the submission of the Australian Digital Alliance (ADA) and agree that it is difficult to predict what information will be useful to its users.

From Wikimedia Australia's perspective, the most useful PSIs are maps, archival audio-visual recordings, photography of public officials and of landmarks (both recent and historical). Significantly, government funded cultural works such as documentary film footage and radio broadcasts held in the National Archives and National Film and Sound Archives are held with great restriction on access and use. Opening such PSI would enable us to further develop content on Wikimedia projects using high quality supporting materials.

If PSI is made open access, what are the best formats to enable and promote use and reuse?

Wikimedia Australia supports the submission of Electronic Frontiers Australia in its call for the use of open standards. This refers especially not only to publishing PSI using the de-facto standards of information delivery, but also to publishing using the agreed interoperable and open standards of the relevant industry. For example, this means that although Microsoft's proprietary .doc format is a commonly used document format, its open standard equivalent is .odt. Open standards have much greater possibility of remaining usable into the future as methods of accessing information change because they are not reliant on the patronage of a particular corporation. Furthermore, using open standards lowers the barriers to accessing PSI because, unlike proprietary standards, as there are no licensing fees required to be paid by the end user.

If PSI is made open access, what licensing terms would best facilitate the use of PSI?

It is the opinion of Wikimedia Australia that PSI belongs to the public and therefore should be treated as public domain by default. Any restrictions placed on the reuse of PSI should be justified on a case by case basis.

Wikimedia Australia would like to see Australian government works released in a similar fashion to those of federal government employees in the United States, that is straight into the public domain with no restrictions. It is this licensing scheme that has served to distribute United States PSI so broadly and thereby contribute to the wide distribution of American cultural works. For example, NASA's deep space photography is available for all to use whilst content created by the Australian Broadcasting Corporation contains great restrictions on access and reuse. Consequently, few may access the ABC whilst all are aware of the works of NASA.

Should licensing terms distinguish between commercial uses and non-commercial uses and reuses?

Should the government be unwilling to release PSI into the public domain, Wikimedia Australia believes that the Creative Commons Attribution licence would best facilitate use and reuse.

We strongly discourage any differentiation between commercial and non-commercial use of PSI on the basis that such limitations will only serve to limit usage of Australian government content in the broad range of cultural works which may be intended for sale.

Is there any additional economic modelling or other evidence to show the benefit to Australia from open access of PSI?

Creative Commons Australia has undertaken significant research into proving the commercial viability and distributive power of using open access models. Their case studies enumerate the advantages of open access, and especially the advantages of derivative works, for a variety of industries – including commercial, cultural and public sector.[3]

4. Developing Australia's Knowledge and Skills Base

In the digital economy, digital media literacy is an important skill for Australians in the new cultural landscape. An ever increasing number of Internet users now use Web 2.0 technologies to communicate and exchange information for personal, commercial and educational purposes.

According to Alexa[4], 7 out of the most popular 20 web sites in Australia are those which fit into the Web 2.0 category.

In order to best prepare Australia for the digital economy, computing skills need to be introduced during the secondary years of schooling. Students need to be equipped with digital media literacy skills in particular, prior to entering the workforce or continuing on to post-secondary education. In implementing the framework for the digital economy, the government must be cognisant of the digital divide which exists between metropolitan and regional Australia. Wikimedia Australia applauds the efforts of One Laptop Per Child in its endeavours to provide specially designed, open source computing hardware to children disadvantaged by this divide. The digital economy presents a unique opportunity for regional Australians to access high quality resources via the internet within their own communities.

Wikimedia Australia also acknowledges the efforts of the New South Wales Department of Education and Training (DET) in bridging Australia's digital through its Connected Classrooms Program[5] - a program that focuses on the provision of high-speed internet access, video conference facilities and learning tools to promote resource sharing, reuse and remixing.

Indeed, the digital economy can improve the quality of life and education in regional centres. We support the belief of the Australian Libraries Copyright Committee that

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[3] Creative Commons Australia, Building an Australasian Creative Commons, available at http://creativecommons.org.au/casestudiesvol1
[4] Top websites in Australia, available at http://www.alexa.com/site/ds/top_sites? cc=AU&ts_mode=country&lang=none
[5]https://www.det.nsw.edu.au/strat_direction/schools/ccp/aboutccp/index.htm

high speed broadband across Australia can reduce many problems of resourcing and access to information faced in Australia arising from our dispersed population.[6]

The benefits to students in remote communities are also clear. Senior secondary students in NSW now have access to a wider range of subject choices than they have in the past when many students had to leave their community to be able to study a wider range of subjects. The delivery of these subjects is now enabled via video conferencing, allowing those students to remain in their local area. All Australians, regardless of geographical location should have access to the internet at a speed and price that is comparable to OECD standards.[7]

What more can industry and other stakeholders do to address concerns about consumer privacy and online safety?

By teaching digital media literacy during secondary school, Australia will increase its competitiveness in the global digital economy and thereby improve the economic potential of the country. However, it is equally important that teaching would provide access to resources and global networks in such a way as to increase equity and cyber safety. Online safety is increasingly important as more of our culture, education and commerce take place online. Despite calls for tough technical responses these are social problems and cannot be solved technologically. Rather, the best form of safety is through public education especially in schools. The potential pitfalls of digital communication – from the theft of financial details to cyber-bullying – need to be discussed in an informed, calm and nuanced manner proactively through education rather than reactively in the media.

5.   Ensuring Australia's regulatory framework enables the digital economy

Does Australia's copyright law unreasonably inhibit the operation of basic and important internet services? If so, what are the nature of such problems and practical consequences? How should these be overcome?

Wikimedia Australia believes the purpose of copyright is to motivate the creation of new cultural works by ensuring a period of time for the exclusive commercial exploitation of those works. Therefore, extending copyright terms beyond their current post-mortem date provides no added motivation for the creation of new cultural works. Wikimedia Australia is concerned by the the secrecy surrounding the negotiations of the multi-lateral Anti-Counterfeiting Trade Agreement (ACTA). We feel that the outcomes of this agreement may be to lengthen copyright terms and to further complicate the legal basis for using copyrighted content under fair use/fair dealing provisions. We see no justification for any further lengthening of copyright terms over already existing works - they have recently been extended again under the US-Australia free trade agreement. Rather it would serve only to financially benefit the holders of existing, soon to become public-domain, works and this is contrary to the purpose of copyright. Whilst it is possible that these outcomes might not occur, the secrecy surrounding the negotiations serves to undermine the confidence and planning

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[6] Australian Libraries Copyright Committee (2009), *Submission on Consultation Paper: Digital Economy Future Directions,* p.2
[7] OECD Broadband Portal, available at http://www.oecd.org/sti/ict/broadband

of those who use Australian cultural works – thereby harming the nation's cultural output and digital economy.

Wikimedia Australia supports the submission of the Australian Libraries Copyright Committee (ALCC) on this topic and agrees that cultural institutions should be supported in the digitisation and provision of their collections online. Furthermore, Wikimedia Australia supports the submission of Electronic Frontiers Australia regarding the presumption of publication.

There may be no royalty or publication charge required for the *use* of information or media from government-funded organisations. However, the current standard practice is to charge significant *access* fees. Whilst such a fee structure can be legally continued even when the cultural work itself is out of copyright, this practice is used not just to recoup operating costs but also to profit from public property which they cannot otherwise commercialise. Wikimedia Australia believes this practice to be an unethical restriction on Australians' use of their cultural heritage.

Furthermore, the practice of charging above-cost access fees extends to the requirement to sign conditions of use licenses for information which is out of copyright (such as requiring that the information be for personal non-commercial use only). This purpose of this demand is to maintain effective monopoly on the cultural work and maximise the ability to exploit it commercially. It is the poor public understanding of what copyright expiration means in practice, and the institutional uncertainty surrounding the complexities of copyright, that allow this to continue.

Wikimedia Australia recommends that all organisation receiving public funding for the majority of their operations should not be allowed to charge beyond cost-recovery, usage and access fees to archives in the public domain. Those in charge of institutional access to the public need support by training in the implications and purpose of copyright expiration.

Should the existing copyright safe harbour scheme for carriage service providers be broadened?

Wikimedia Australia is aware of many instances where a technology enabling organisation (in this case the Wikimedia Foundation) has had legal action taken against it for content appearing on its project websites, despite the fact that the Wikimedia Foundation does not control content and has acted in good faith. Therefore, in this matter we support the submission of Electronic Frontiers Australia. We support efforts to ensure that service providers are given safe harbour against legal threats resulting from the action of their users.

6. Conclusion

We thank the Department of Broadband, Communications and the Digital Economy for the opportunity to comment on this important area of development.

Wikimedia Australia sees great potential in Australia's ability to engage in the global digital economy and in doing so share our cultural heritage. However, in order to do

so this cultural heritage needs first to be made available in a way that is usable by others - both in terms of technology and copyright.