

**Australian Broadcasting Corporation**

submission to

**Department of Broadband, Communications  
and the Digital Economy**

**Response to the consultation paper “Digital Economy  
Future Directions”**

February 2009



# **ABC submission to the Department of Broadband, Communications and the Digital Economy in response to the consultation paper “Digital Economy Future Directions”**

## **Introduction**

The ABC welcomes the opportunity to contribute to the formation of a roadmap for increasing online participation in Australia by commenting on the consultation paper “Digital Economy Future Directions.” As a major national cultural institution that provides a wide array of digital broadcasting and online services to the Australian people, the Corporation already makes a significant contribution to the information society in Australia.

The ABC Charter, set out in section 6 of the *Australian Broadcasting Corporation Act 1983*, requires the Corporation to, among other things, provide innovative services. Consistent with this obligation, the ABC has been a constant leader in the transition to multi-channel, multi-platform digital media in Australia.

The ABC launched its primary digital (simulcast) television channel, now known as ABC1, in January 2001 and the multi-channel service ABC2 in March 2005. It convened the first industry conferences on digital radio and has been an active participant in trials of the technology.

The Corporation has been an active participant and innovator in the online environment for more than a decade. Its website, which boasts over five million pages, has been in operation for 13 years. In recent years, the ABC has pioneered the introduction of podcasting and vodcasting in Australia, and in July 2008, launched the nation’s first full-screen, free-to-view television “catch-up” service, iView. It has actively supported user engagement and interactivity through its website and most recently through its involvement in the user-generated content (UGC) initiative Pool. The ABC has also developed applications, such as ABC Now and ABC Earth, that provide new ways to access its content. It actively experiments with new platforms to understand their potential, and has launched an island in Second Life and has developed “off-deck” mobile applications that can be run on any IP-enabled phone, rather than through the “walled gardens” of content offered by individual service providers.

The ABC’s comments on the consultation paper are confined to those topics that directly relate to the ABC’s activities and output.

## **The Role of the National Broadcaster in the Information Society**

ABC services are for all Australians. From this simple premise, the Corporation supports social inclusion by helping ensure that all citizens, regardless of circumstances, have access

to a pool of necessary information and services that allows them to participate in democratic society and an advanced, knowledge-based economy. As a result, the ABC has a policy of national coverage and carriage of its services on all major platforms, making them available to all Australians however they choose to access them. Matching audience expectations in today's media environment requires significant emphasis on digital platforms, especially the internet.

Recognising that broadband permits interactive, immersive and collaborative forms of media activity that have not previously been possible and which create entirely new relationships with audiences, the ABC is increasingly building content specifically for online use, rather than simply as an extension or augmentation of its broadcasting output.

As a public broadcaster, the ABC is not subject to the need to maximise audiences that characterises commercial media organisations. As a result, it is able to actively experiment with potentially "risky" content that may not attract significant audiences, such as cutting-edge drama or comedy, and to play the role of the "early adopter" of emerging technologies and formats. This experimental role benefits audiences and the digital industries alike, providing the former with new and challenging opportunities to experience, interact and engage with media online and the latter with a showcase of possibilities. Examples of recent innovative online activity include:

- **ABC Earth:** the ABC was the first media company globally to introduce news stories, photos and videos geotagged to the locations where they occurred within the Google Earth platform. The ABC Earth project also includes relevant television programs such as *Foreign Correspondent* and archival news, allowing users to navigate content by time and by place ([www.abc.net.au/earth](http://www.abc.net.au/earth)).
- **ABC Now:** a widget that gives quick and easy access to the latest ABC news stories and audio and video content from the computer desktop, making it more convenient for audiences to find the wealth of ABC content ([www.abc.net.au/now](http://www.abc.net.au/now)).
- **ABC iView:** Australia's first full-screen, full-length internet television service. Its seven channels of content allow users to catch up on a wide range of news, entertainment, arts, documentaries and children's programs ([www.abc.net.au/iview](http://www.abc.net.au/iview)).
- **ABC Mobile:** a soon-to-be-launched comprehensive ABC mobile service which provides ABC news, weather, sport and movie reviews on a range of mobile devices, including iPhones – a crucial way of providing content to audiences on the move ([www.abc.net.au/mobile](http://www.abc.net.au/mobile)).

The ABC is committed to continuing to push technological boundaries, experiment with new applications and develop new, immersive and interactive content within the limits of available funding.

The Corporation believes, however, that Australia is in danger of missing a key economic opportunity for the digital content industry. That sector, from which the ABC draws production partners, is small, highly fragmented and struggling to compete globally. It has an average turnover of less than \$3 million p.a. and average full-time staffing levels of 22.<sup>1</sup> The fragmented nature of the industry has led to many Australian digital innovations being acquired by foreign venture capitalists, while graduates with digital expertise are presented with limited opportunities to work – in turn fuelling a skills shortage as they seek employment overseas.<sup>2</sup>

The development of a National Broadband Network creates the potential for this content industry to flourish. Broadband is already transforming communications and media delivery, as the ABC is demonstrating with services such as iView and live radio streaming. Not as well recognised is the ability of broadband to enable interactive, immersive and collaborative forms of media activity that have not previously been possible and which create entirely new relationships with audiences.

In its Triennial Funding Submission 2009–12, the ABC has sought funding from Government to establish a Broadband Content Fund that will seed the national broadband content industry. The proposed fund will commission immersive and interactive content from independent content makers from around Australia. It will seek a diverse range of innovative broadband content and services, including hands-on educational sites, serious participation games, compelling access to rich archives and history, and applications that encourage the formation of communities. The ABC will provide an initial distribution and promotional platform for content commissioned through the Fund, as well as assistance with subsequent commercialisation, giving Australian digital businesses the catalyst they need to compete globally.

The Fund will not only ensure that Australian audiences benefit from a substantial increase in immersive, interactive and cutting-edge content, but will also be a major contributor to the development of a sustainable digital industry. Graduates would have more opportunities for work after completing their studies and current employees would benefit from greater job choice and certainty. Additionally, other industries would benefit from being able to access a highly-skilled digital workforce enabling them to better confront the challenges and opportunities posed by the increasing movement into a digital world.

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<sup>1</sup> “Unlocking the Potential: the Digital Content Industry Action Agenda”, Report by the Strategic Industry Leaders Group to the Government, November 2005, p.25.

<sup>2</sup> For example, a University of Melbourne researcher who developed an algorithm to make ADSL 100 times faster by getting rid of the “noise” on the lines was immediately lured to Silicon Valley; see Asher Moses. “Australian adds fast lane to superhighway”, *Sydney Morning Herald*, 6 November 2007, p.5.

## Open access to public sector information

The ABC is aware of the growing interest in the output of publicly-funded cultural institutions being made available via the internet on an open-access basis, such as the various Creative Commons licences. This includes the final report of the Review of the National Innovation System, *Venturous Australia*, which uses the Corporation's output as an example of "government-funded 'content'" that should be made freely available to the public, arguing that "unless it seriously undermines its commercial objectives of sale of product, the ABC should err on the side of making its content available over the internet unless this has large opportunity costs."<sup>3</sup>

As a public broadcaster, the ABC provides its broadcast and online services free to the public and strongly supports free access to publicly-funded content. The Corporation has also begun to explore providing open access to content for reuse under Creative Commons licences. In particular, staff at ABC Radio National are researching the public broadcaster's continuing role as a vital player in Australia's "information commons" through Pool, a creative media-sharing web project developed in partnership with the University of Technology, Sydney, the Royal Melbourne Institute of Technology, the University of Wollongong and a growing community of contributors.<sup>4</sup> The site allows users to upload content that they have created and assign to it one of the Creative Commons licences, the majority of which permit other users to recombine or "mash up" that content to create further works.<sup>5</sup>

In its 2009-12 Triennial Funding Submission, the ABC has sought funding from Government to convert news, current affairs and science programs from its television and radio archives into "web friendly" formats that can be made freely available to Australians. The Corporation notes that copyright issues potentially inhibit its ability to release content from its archive more widely. These issues are explored under "Copyright Issues and the Information Society," below.

In spite of its exploration of open-access content, the ABC does not believe that the majority of its content and services can or should be made available on an open-access basis. In the first instance, the Corporation does not fully own the rights to any content that it has not produced internally. This includes a significant proportion of the television content that it broadcasts. Where programs are co-produced with an external producer, externally produced for the ABC or acquired from an external supplier, the Corporation pays a licence fee for broadcast and online carriage of the content. These licences entitle the ABC to broadcast the content a specified number of times or, in the case of online video, to make it

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<sup>3</sup> Cutler & Company. *Venturous Australia: Building strength in innovation*. Report to the Minister for Innovation, Industry, Science and Research, August 2008, p.94.

<sup>4</sup> [www.pool.org.au](http://www.pool.org.au)

<sup>5</sup> [www.pool.org.au/help/faqs#rightlicence](http://www.pool.org.au/help/faqs#rightlicence)

available for streamed access for a specified period of time. While the Corporation could seek to pay for licences allowing it to make co-produced and externally-produced content available for longer than it currently does, doing so will not provide it with the rights necessary to offer such content on an open-access basis.

Secondly, the Corporation has reservations about releasing some categories of content for re-use on an open-access basis. For example, the ABC applies strict editorial guidelines to the creation of news and current affairs programs in order to ensure that it provides its audiences with fair, accurate and independent reporting. Allowing free mash-ups of recent news and current affairs items, particularly if the results may have the appearance of an actual ABC news program, has the potential to mislead viewers and damage the Corporation's reputation.

At the same time, the ABC has seen clear evidence of an audience appetite for editing and adapting content. The website accompanying the television program *The Gruen Transfer* included Consumer's Revenge, a drag-and-drop online tool that allowed users to easily edit the three spoof advertisements prepared for the program.<sup>6</sup> The site received more than 16,500 uploads of user-created ads. To make Consumer's Revenge possible, the ABC specifically licensed content for open-access use on the site.

Finally, the ABC receives revenue from the post-broadcast sale of content in which it partially or wholly owns rights in the form of CDs, DVDs and, most recently, digital downloads. This revenue supplements the Corporation's appropriation from government and is invested in programming. While only part of the ABC's output is used in this way, any decision to instead make it available on a free and open-access basis would reduce this source of funds.

### **Media Accessibility**

The ABC notes the consultation paper's comments regarding access issues that may limit online participation by Australians with hearing or vision impairments and the role of the Government's Media Access Review in "exploring strategies to facilitate access to electronic media (including digital media) by people with impaired hearing or vision." In its submission to the Media Access Review the ABC stated that "as Australia engages in the digital media age ... it is important that all Australians have the opportunity to gain access to content that enriches their lives and is relevant to their community."

Having provided broadcast captions for over twenty-five years the ABC has demonstrated a long commitment to providing access to electronic media. As a result of the introduction of multi-channel television services, the Corporation has significantly extended its captioning

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<sup>6</sup> <http://abc.net.au/tv/gruentransfer/consumersrevenge.htm>

and currently provides over 10,000 hours of captioned programming annually on ABC1 and ABC2. The ABC is currently investigating technical and related issues to enable the extension of captions to online audiovisual content.

The final report of the Media Access Review will be important in addressing a number of key issues relating to the future delivery of content for people with hearing or vision impairment. A key issue is the need to give certainty to the community and to broadcasters so that there is a clear set of rules for the delivery of captioned content in electronic media.

### **Copyright Issues and the Information Society**

The consultation paper considers whether Australia's copyright law unreasonably inhibits the operation of basic and important internet services. Although the question is framed in the context of carriage service providers, greater consideration needs to be paid to content generators, such as the ABC, and the copyright policy surrounding provision of content to the public. Current copyright laws act as an inhibitor.

#### *Statutory licences to unlock valuable archives*

As the Corporation has previously argued in its 2005 submission to the Attorney-General's Department on fair use and other copyright exceptions, it is increasingly difficult for a public cultural institution like the ABC to achieve both its mandate and comply with the technical impositions of copyright law, particularly in preserving and maintaining its archives and unlocking archival material.<sup>7</sup> The Corporation has a substantial back catalogue of programs which contain culturally and historically significant material that could contribute to the digital economy as a resource and stimulus for new content. *Sydney Sidetracks*, which synchronises audio, video and images from the ABC's archives and those of other cultural institutions (Customs House, the Powerhouse and the NSW State Library, among others) in a map interface on mobile and other online devices, is a good example of the kind of innovative reuse of archive material that is possible.<sup>8</sup> However, the scope for developing such projects is limited to that proportion of the archive in which the Corporation is able to clear the necessary rights. The ABC's ability to unlock its archived content more widely would be greatly assisted by the introduction of a statutory licence for digital content.

Statutory licences have the advantage of minimising transactional clearance and administration costs for the Corporation, providing certainty by ensuring that the ABC does not infringe copyright, and ensuring that public information and cultural material are not

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<sup>7</sup> ABC. *Fair Use and Other Copyright Exceptions: An examination of fair use, fair dealing and other exceptions in the Digital Age*, Submission to the Department of the Attorney General, July 2005, p.17.

<sup>8</sup> [www.abc.net.au/sidetracks](http://www.abc.net.au/sidetracks)

made redundant through restriction, but instead are available to the public through the ABC's activities.<sup>9</sup>

A statutory licence for the ABC's archive is particularly important as collecting societies cannot currently offer the Corporation sufficient licences for online digital technologies, including podcasting. The collecting societies are not necessarily empowered by their members to grant appropriate digital rights and the collective licences currently offered are both limited and expensive, as well as containing restrictions that are at odds with the ABC's objectives; they favour commercial interests, rather than public access.<sup>10</sup>

While certain statutory licences already exist in the *Copyright Act 1968* to assist the Corporation,<sup>11</sup> they are so old and technologically-specific to broadcasting, they do not extend to the ABC's other digital activities, such as abc.net.au and iView. The technology specificity of these statutory licences renders the public policy underlying those statutory licences ineffective.

#### *Administration of copyright*

The ABC has also previously noted that the administration of copyright has become increasingly difficult, complicated and costly. The system of copyright and contract has created a complex network of legal responsibility in relation to clearance of copyright such that the increasing cost of rights compliance and administration makes it more likely that the material remains redundant.<sup>12</sup> Increased time, effort, resources and licence fees are required to obtain these clearances.

#### *Orphaned copyright material*

Many programs cannot be cleared for new technology formats because of an inability to locate the copyright owner. Difficulties have arisen with such programs as *Poetica*, *Rewind*, and *Play School*.<sup>13</sup> This limits public access to the ABC archive and the Corporation's capacity to use this content on digital services.<sup>14</sup>

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<sup>9</sup> Ibid, p.18.

<sup>10</sup> Ibid, p.22.

<sup>11</sup> See for example, section 45 – Reading or Recitation in public or for a Broadcast; section 47 – Reproduction for Purpose of Broadcasting; section 67 – Incidental filming or televising of artistic works; section 70 – Reproduction for Purpose of Including Work in Television Broadcast; and section 107 – Making a Copy of the Sound Recording for Purpose of Broadcasting in the *Copyright Act 1968*.

<sup>12</sup> ABC Submission to the Department of the Attorney General, p.21, n.1.

<sup>13</sup> Ibid, p.16.

<sup>14</sup> Ibid, p.22.

### *Multitude of copyright owners*

The ABC has encountered difficulties in attempting to clear material for online communication and podcasting where one piece of content has numerous underlying rights owners.<sup>15</sup>

For example, a ten-second piece of audiovisual content could have five or more underlying rights owners: the copyright owner of the literary works, the copyright owner of the musical works, the copyright owner of the sound recordings, the copyright owner of any underlying films and any performances contained in the content. For the ABC to be able to make use of the material on its digital services thus requires a clearance officer to undertake research and possibly five or more separate correspondences, with or without success of contacting or ascertaining the correct copyright owner. If the correct copyright owner is located, it requires the clearance officer to negotiate and manage the expectations of those copyright owners, often requiring the officer to deal with unreasonable fee expectations. In addition, the clearance officer often has to deal with the concerns that copyright owners have about new technologies. If only one of the owners chooses to say “no,” the piece of content is rendered redundant and the costs incurred and resources spent by the ABC to that point are wasted.<sup>16</sup> Clearance is often made particularly difficult if a copyright owner chooses to ignore the request, says “no,” or is not able to satisfy the Corporation’s editorial deadlines. This web of underlying rights limits public access to the ABC archive and the ABC’s capacity to use this content on digital services.<sup>17</sup>

### *Cost*

Prohibitive costs involved in clearing copyright material for inclusion in ABC digital services inhibits public access. It is imperative that the ABC has cost-effective means to make copyright material accessible in order to fulfil its duties and contribute to the digital economy. This can only be achieved by the introduction of appropriate copyright provisions that support public access to digital content.

### *Copyright and contract overlap*

Finally, uncertainties about the overlap between copyright law and contract is an inhibitor, as it affects the ABC’s ability to unlock archival material for digital use. The Copyright Law Reform Committee made recommendations in 2002 that the *Copyright Act* be amended to

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<sup>15</sup> Ibid, p.22.

<sup>16</sup> Ibid, p.22.

<sup>17</sup> Ibid, p.22.

preserve the integrity of certain copyright exceptions that are fundamental to the balance between copyright owners and users.<sup>18</sup>

The ABC believes that any examination of factors inhibiting the growth of the digital economy should give serious consideration to these issues.

### **Measuring the Information Society**

In the ABC's experience, adequate information available about the digital economy exists at a macro level. Where useful information is less available is trend data and breakdowns at a sub-sectoral level. One example of an industry subsector for which the Corporation believes specific measurement would be valuable is digital content production, which should be broken down to distinguish between traditional radio and television production and digital content production.

Further information of specific interest to the ABC includes broadband connection speeds (average and range) and a benchmarking of broadband performance. In the UK, Ofcom has commissioned a two-part survey to provide an improved level of understanding of current broadband performance.<sup>19</sup> The survey will cover both consumer perceptions and behaviour and actual broadband speed and quality. Ofcom notes in the introduction that "[t]here is a lack of robust information available on the actual speeds that consumers receive and how these relate to both the maximum possible line speeds and the advertised 'up to' broadband speeds they pay for." This is also true in Australia, where similar benchmarking would be extremely valuable.

The Corporation also supports the need for an industry standard for online audience measurement and acknowledges the Measurement Guidelines published recently by the Interactive Advertising Bureau for public comment.

Finally, ABC notes that it is equally important for organisations seeking to understand the digital media environment in a period of rapid change to have regular access to current and reliable information. For example, the Australian Bureau of Statistics statistical series *Household Use of Information Technology* (ABS 8146.0) provides an excellent resource on a range of metrics relating to household access to computers and the internet, but is only published on an annual basis. There is significant value in data of this kind being published more regularly. Ideally, such data would be made available quarterly, although even biannual publication would be useful.

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<sup>18</sup> Copyright Law Reform Committee Report. *Copyright and Contract*, 2002. <<http://www.ag.gov.au/agd/WWW/clrhome.nsf/AllDocs/092E76FE8AF2501CCA256C44001FFC28?OpenDocument>>.

<sup>19</sup> Ofcom. *UK broadband speeds 2008: Consumer experience of broadband performance: initial findings*. Research Report, 8 January 2009. <[http://www.ofcom.org.uk/research/telecoms/reports/bbspeed\\_jan09/bbspeed\\_jan09.pdf](http://www.ofcom.org.uk/research/telecoms/reports/bbspeed_jan09/bbspeed_jan09.pdf)>.