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Digital Economy Future Directions Consultation Paper

Universities Australia welcomes the opportunity to comment on the Government's Digital Economy Future Directions Consultation Paper. Unfortunately, Universities Australia was not involved in the workshops that were conducted by the Australian Government in August and September 2008 which led to the preparation of this consultation paper.

Open Access to Public Sector Information

Universities Australia strongly supports the philosophy of open access to public sector information, particularly internet access. Specifically, public sector information should be made available to the education sector free of charge in machine-readable formats, for example in Microsoft Word and Excel so that the material can be re-used. This is also an economically efficient approach. Information is a "public good"- non-rival and non-excludable. To artificially exclude access to material already produced for the purposes of government is to deprive the economy and society of knowledge that can improve understanding and outcomes. Application of so-called "user-pays" and "cost recovery" management approaches typically neglect vast benefits and focus only upon modest costs, often swamped by the collection costs of charges.

The higher education sector draws heavily on Crown copyright material for educational and research purposes. While some public institutions provide free access to Crown copyright material most do not, particularly those institutions at the State and Territory level. As a result education institutions are paying to use this material under the Part VA and VB statutory licences embodied in the Copyright Act (1968) (*the Act*). In 2009 Universities Australia paid Copyright Agency Limited (CAL), the declared collecting society under Part VB, more than \$24 million and Screenrights, the declared collecting society under Part VA, more than \$4 million. Unfortunately we are unable to identify the proportion of these funds that were distributed for Crown copyright material as this is confidential to CAL and Screenrights. However, we are confident that it is not insignificant.

The issue of Crown Copyright has been examined by the Commonwealth Government on a number of occasions in the past and most recently by the now defunct Copyright Law Review Committee in 2005. In its submission to the review, the Australian Vice-Chancellors' Committee, as Universities Australia was previously known, stated that the public should have free access to Crown copyright material where there is a clear national interest to be served, and that the education and training function of the education sector meets this national interest requirement. It also stated that such free access should apply equally across all Federal, State and Territory jurisdictions in Australia. A copy of that submission is attached.

The Report of the Review of the National Innovation System addressed the issue of Intellectual Property which included the question of access to publicly funded research and reported that to the greatest extent possible, publicly funded research should be made available over the internet as part of the global public commons. In response to the report Universities Australia noted that universities currently face competing priorities for commercialisation vs. open access to research outcomes and processes. Universities Australia accepts the general position of the Review that national progress is best served by more open access arrangements for new knowledge. But to assist in determining how this principle can operate into the future, the Commonwealth should provide a clear statement of the public good nature of university research and should fund programs to make such research available to the global public commons. Government should also clarify the role of universities in relation to the appropriate commercialisation of publicly funded research, and should fund such commercialisation separately from the research grants process where desired. A copy of our submission is attached.

Ensuring Australia's regulatory framework enables the digital economy

Copyright "Safe Harbours"

Unfortunately the present safe harbour regime that was introduced into the Act as part of the USA Australia Free Trade Agreement only applies to carriage service providers as that term is defined in the *Telecommunications Act 1997*. Most universities do not come within this definition and are thus denied the opportunity to take advantage of the safe harbour provisions.

Universities Australia submitted to the Commonwealth Attorney General's Department Review of the scope of Part V Division 2AA of the Act that the safe harbour regime should be extended to universities and that the preferred approach is to replace the term "carriage service provider" where it is used in Part V Division 2AA of the Act with the term "service provider" as used in the equivalent USA legislation and to define that term in section 10 of the Act in the same terms as in the USA legislation. Universities Australia still holds this view. A copy of the Australian Vice-Chancellors' Committee's submission is attached.

Appropriate Flexibility for digital technologies

Universities Australia supports the principle behind the new flexible dealing exception contained in s 200AB of the Act. It is in the national interest that universities are able to access third party copyright content for their education and training functions. Universities Australia also supports the statutory licence provisions and the range of specific copyright exceptions. However, Universities Australia is concerned that the usefulness of these exceptions is to a large extent undermined by the way in which they interact with the anti-circumvention restrictions contained in the Act, particularly those that apply to Access Control Technological Protection Measures (TPMs). Universities Australia articulated its concerns with respect to TPMs in its submission to the Attorney General's Department on the Copyright Amendment (Technology Protection Measures) Bill 2006. A copy of that submission is attached.

Universities Australia is willing to meet with Government officials to discuss any elements covered in either the discussion paper or the response.

Yours sincerely



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