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## Submission to the National Cultural Policy Review

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Queensland University of Technology School of Law  
ARC Centre of Excellence for Creative Industries and Innovation (CCi)

16 November 2011

### “Digitisation of books in Australia for the public good”

The National Cultural Policy (NCP) Discussion Paper highlights that the ‘National Broadband Network, with its high-speed broadband, will enable new opportunities for developing and delivering Australian content and applications reflecting our diverse culture and interests’.<sup>1</sup> A significant source of content and knowledge is our books, in particular, out of print, in copyright books and books in the public domain. More and more people, especially those who are digitally literate, will demand that the store of knowledge in these hard-to-find (and at times, decaying) books be digitised and made readily accessible on the internet.

In order to take advantage of these new opportunities, we need to develop, as a matter of urgency, a strategic plan within the NCP to lawfully digitise and make available these kinds of materials in a way that does not create new barriers to access. We also need to do this hand in hand with new business models that facilitate broad public access.

Three significant impediments to mass digitisation projects have been identified: (1) cost of scanning, (2) access to books, and (3) copyright law (for in copyright books).<sup>2</sup> In the United States, Google has taken the lead in digitising books stored in libraries, attracting criticisms against our valuable store of knowledge being held by a corporation that could easily sell, or worse, shut down access.<sup>3</sup> We believe that in Australia, the Federal Government is in the best position to coordinate and overcome these three impediments. It should take the lead and establish a book digitisation project for out of print, in copyright books and books in the public domain. Our suggested model<sup>4</sup> is in line with the NCP’s aim of connecting audiences and markets, driving innovation across the nation and contributing to productivity.<sup>5</sup>

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<sup>1</sup> Department of the Prime Minister and Cabinet, National Cultural Policy Discussion Paper.

<sup>2</sup> Pam Samuelson, ‘Google Book Search and the Future of Books in Cyberspace’ (2010) 94 *Minn. L. Rev.* 1308, available at <http://people.ischool.berkeley.edu/~pam/GBSandBooksInCyberspace.pdf>.

<sup>3</sup> Pamela Samuelson, ‘Google Books Is Not a Library’, *The Huffington Post*, 13 October 2009, available at [http://www.huffingtonpost.com/pamela-samuelson/google-books-is-not-a-lib\\_b\\_317518.html](http://www.huffingtonpost.com/pamela-samuelson/google-books-is-not-a-lib_b_317518.html).

<sup>4</sup> For more on the Google Books project as an exercise in copyright modelling for the future, see B Fitzgerald et al, *Internet and E-commerce Law, Business and Policy* (Lawbook, Sydney: 2011), pp 448-457.

<sup>5</sup> Department of the Prime Minister and Cabinet, National Cultural Policy Discussion Paper, p 3.



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Brian Fitzgerald studied law at the Queensland University of Technology graduating as University Medallist in Law and holds postgraduate degrees in law from Oxford University and Harvard University. He is well known in the areas of Intellectual Property and Internet Law being a pioneer researcher in the area of Cyberlaw. Brian is also internationally recognised for his work on Open Access (leading the OAK Law Project) and facilitating access to public sector information. Brian is a project lead and active member of the Creative Commons community and in 2010 lead an Australian pilot of the Peer to Patent Project. From 1998-2002 he was Head of the School of Law and Justice at Southern Cross University in New South Wales, Australia and from January 2002 – January 2007 was appointed as Head of the School of Law at QUT in Brisbane, Australia. Brian is currently a specialist Research Professor in Intellectual Property and Innovation at QUT and a Chief Investigator with the ARC Centre of Excellence for Creative Industries and Innovation. His recent (co-authored/edited) books are *Cyberlaw: Cases and Materials on the Internet, Digital Intellectual Property and E Commerce* (2002); *Jurisdiction and the Internet* (2004); *Intellectual Property in Principle* (2004) *Internet and Ecommerce Law* (2007); *Copyright, Digital Content and the Internet in the Asia Pacific* (2008); *Access to Public Sector Information: Law Technology and Policy* (2010); *Internet and Ecommerce Law* (2011); *Knowledge Policy for the 21<sup>st</sup> Century* (in press 2011) and *Copyright 1709-2010* (in press, 2011) See further [http://eprints.qut.edu.au/view/person/Fitzgerald\\_Brian.html](http://eprints.qut.edu.au/view/person/Fitzgerald_Brian.html)

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Cheryl Foong is a researcher and LLM (IP & TechLaw) candidate at the QUT Law Faculty. She holds a First Class Honours degree in Law from QUT. Cheryl is an active member of the Creative Commons (CC) Australia project based at QUT, and has researched on the use of CC licences in new business models and co-authored the *CC & Government Guide*. Cheryl's publications are available at [http://eprints.qut.edu.au/view/person/Foong\\_Cheryl.html](http://eprints.qut.edu.au/view/person/Foong_Cheryl.html).

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Kylie Pappalardo is a doctoral candidate in the QUT Faculty of Law and the ARC Centre of Excellence for Creative Industries and Innovation (CCI). Her thesis investigates the role and regulation of copyright intermediaries in the digital economy. Kylie holds degrees in Law and Creative Writing from QUT and a Masters of Laws from Georgetown University in Washington D.C. Kylie has worked as a research officer for the Open Access to Knowledge (OAK) Law Project and Creative Commons Australia, both based at QUT. She has been actively involved in the Intellectual Property and Technology Law Clinic at QUT (with the Queensland Public Interest Law Clearing House).

