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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)

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### “Free our cultural archives”

Australians are the creators and custodians of a broad range of cultural materials. This material includes literary, photographic, video and audio archives. These archives should be made available to all Australians for access and reuse, as part of a pre-competitive platform which promotes the interests of the Australian public in gaining access to a diverse range of content that contributes to the development of national and cultural identity. This does not mean that *all* material must be made available for access and reuse for free and in an unrestricted fashion. But for publicly funded content, free and unrestricted access should be the default. The *Venturous Australia* report on the National Innovation System recommended that “[t]o the maximum extent possible, information, research and content funded by Australian governments – including national collections – should be made freely available over the internet as part of the global public commons.”<sup>1</sup> The report further stated that “both for its direct and indirect benefits to Australia and for the greater global good, Australia should energetically and proudly maximise the extent to which it makes government funded content available as part of the global digital commons.”<sup>2</sup>

Many citizens increasingly want access to the rich cultural materials which define us as a country. However, these materials are largely difficult to access and enjoy because of pricing, technological and legal issues which affect our cultural archives. While the Australian Government has led the world in opening up access to public sector information, access to our cultural archives is still an ongoing project that needs urgent attention and support as we enter the NBN era.

To this end, we make the following points:

#### 1. Awareness and engagement with our heritage

The National Cultural Policy (NCP) Discussion Paper raises the importance of bringing the arts and creative industries into the mainstream of Australian life, and into the heart of our technological development and national economic growth.<sup>3</sup>

In line with the aims of this renewed policy, we believe that our cultural archives, particular those owned and managed by the public sector, should be available to all Australians for free and under reusable open access terms. At a fundamental level, this step will help Australians of all ages be aware of and engage with Australia's rich cultural heritage. Furthermore, allowing Australians to build upon

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<sup>1</sup> Cutler & Company (2008) *Venturous Australia*, Review of the National Innovation System, Recommendation 7.14.

<sup>2</sup> Cutler & Company (2008) *Venturous Australia*, Review of the National Innovation System, p.98.

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



our existing heritage means that the younger generation will have the opportunity to revive Australia's dynamic and unique expressions that have previously been locked away.

## 2. Fostering new business models and revenue streams

Australia's rich cultural heritage should also be available to all Australians to foster creative innovation. The proposed NCP is aimed towards driving innovation across the nation and contributing to productivity.<sup>4</sup> Combined with the availability of high-speed broadband, the policy aims to allow business and community organizations in all regions the opportunity to connect with national and international audiences and markets.

In accordance with this aim, we believe that the availability of our rich and diverse cultural heritage in an open access archive will enable our creative skills and talent base to build and foster creative innovation, in and beyond Australia. A free and open access cultural archive will provide the opportunity for new business models and new revenue streams to emerge.

## 3. Coordination efforts and resources needed

For cultural institutions to be fully able to free our cultural archives and provide access to collections there must be support and leadership from government policy makers, and investment in the necessary resources. The government needs to spearhead proper coordination to guide the various cultural institutions towards establishing a universally accessible resource.

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<sup>4</sup> Ibid.



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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).

