ECONOMIC DEVELOPMENT AND INFRASTRUCTURE COMMITTEE

Inquiry into Improving Access to Victorian Public Sector Information and Data

Brisbane - 12 August 2008

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Ms Kim Weatherall, Senior Lecturer, TC Beirne School of Law, University of Queensland

The CHAIR—We officially begin the afternoon session with a welcome to our guest, Ms Kimberlee Weatherall. Thank you for joining us. You have had the chance to meet the members of the committee over lunch. This committee is an all-party parliamentary committee and it is hearing evidence today on the Inquiry into Improving Access to Victorian Public Sector Information and Data. Could you please state your name and address and if you are attending in a private capacity or representing an organisation.

Ms WEATHERALL—My name is Kimberlee Weatherall. My address is 51 Gloucester Street, Highgate Hill in Brisbane. I am appearing here in a personal capacity. I am a senior lecturer in law at the University of Queensland and so my interest in the matters before the committee is an academic one. I am not associated or affiliated with Creative Commons or any of those licensing bodies, nor am I affiliated with any of the open source groups, although I should say that I have advised them on various submissions at various times, in particular Linux Australia.

The CHAIR—We would appreciate it now if we could pass over to you for you to give us your presentation. I need to state the obvious—that this is being transcribed by Hansard and in due course it will be on the net.

Ms WEATHERALL—Thank you. I understand that this inquiry has been constituted to consider the opening of access to public sector information and in that context the licensing of public sector information. I also understand that the main reason I was asked to appear before the inquiry is my familiarity with open content and open sourced licensing and, in particular, an article that I have written on Creative Commons licensing and published via the Austlii web site. I am sure I do not need to, or at least I am not the best person to, preach the gospel of open access to public sector information. You will be hearing, no doubt, from many people who can talk about the benefits and costs of making more public sector information available. It is perhaps worth noting that we are behind many countries here in Australia in promoting both consistency of approach in access to public sector information and in adopting systems to make such information more generally available. I note that the Victorian Auditor-General has advocated support for active management of IP to facilitate the unlocking of that asset.

So, from my perspective, and what I want to focus on is not whether public sector information should be more available but how, what are the mechanisms used, what licences and what licence terms. A key point is that you do need, and this is to state perhaps the obvious, a consistent approach across government as much as possible. At the moment the multiple different rules and the lack of simple central systems is holding back what innovation can occur with public sector information. But what that system should be is a real question—what the restrictions should be, what licences should be used.

In relation to licensing, there are a couple of basic points I would make for your consideration. Transparency is hard but I would encourage you to think about using or advocating the use of less restrictive rather than more restrictive licences where possible subject obviously to issues of sensitivity, privacy, security and the like. There are two basic reasons for that. Firstly, you want to be non- discriminatory as much as possible in terms of the business models that you encourage. The more restrictions you place on public sector information, the more you are choosing business models for the potential innovators who might seek to use that information. This is the lesson of the open source community with which I have had some involvement over time. The most successful open source licences that have generated the most open source software have tended to be less restrictive in terms of choosing particular things like business models and the like.

Secondly, additional conditions on use of information that may seem sensible and harmless look less so down the track when you are talking about second and third generation uses. If someone uses, say, a government report in setting a class or privacy, so they are using a government document and it is subject to certain conditions and they put together their class and then someone else wants to use that class and put it into a database of classes on all kinds of different things, you have the potential for accumulation of licence terms, which can make

re-use difficult. So you need to think about second generation uses as well as first generation uses when imposing conditions on things like information.

You need to be very clear about the type of material that you are dealing with. This is again to some extent to state the obvious, but software is different from databases, databases are different from books and government reports. Different conditions may well be appropriate. You need to think about process. I note there have been questions about that already.

In relation to the Creative Commons licences in particular, I am aware that you have my article in which I was outlining a number of criticisms of the Creative Commons licences. It is important to bear that paper in mind. I do not detract from anything I said in it, but it was written two years ago and some of the things that I talk about in there are no longer true. In particular, it is worth noting that the current Creative Commons licence in Australia, the 2.5 licence, is still very legally verbose and incredibly difficult to read. It is based on US legal drafting, unfortunately, and if you have ever seen much US legal drafting it is not exactly happy. However, it is worth noting that the version 3 licences which are currently in draft in Australia are much clearer and much easier to read. They are based on a plain English language model which I believe derives from the UK and New Zealand, who moved to plain English language drafting first. So it is much easier to read—much clearer. Those licences are not yet ready but I think they will be an improvement.

Some of the early criticisms, too, which the Australian Copyright Council promulgated and which I refer to in the paper, such as the fact that the no derivatives licence did not, in fact, prevent derivatives, again is no longer true. That was true of the 2.1 licence maybe. I cannot remember the number that was true of, but it was true of the earlier licences. Those issues have been dealt with. Some of those issues that I raise in the paper are probably no longer true.

That said, I think there are certainly still some remaining issues with Creative Commons when looked at in this context. The system as a whole has advantages—the key advantages being the ones you have probably heard from earlier today from the Creative Commons people. People are familiar with them. They are that you are buying into an infrastructure which has been built around these licences including everything from the Yahoo search engine. I think probably in terms of infrastructure, the key benefit from using Creative Commons licences is potentially the relationship that might be developing between Creative Commons and the collecting societies. I do not know if that was addressed at all this morning. You would be aware that collecting societies collect money from people who copy material and they distribute that money to the creators of documents. One of the problems that the New South Wales Government has been very concerned with in this has been the circle of money—that government provides money to public schools, public schools photocopy government documents, money is collected for the photocopying of that government document by the collecting society and the collecting society takes 20 per cent off the top and then pays the money to government for the photocopying of government documents. That sort of circle of public money with some coming off the top for administration was seen as undesirable.

Mr DAVIS—Dumb.

Ms WEATHERALL—Dumb, exactly.

Mr CRISP—Superfluous, I would have thought.

Ms WEATHERALL—Precisely. The issue has been how to stop that happening. The New South Wales Government has come up with various ways, but I understand that Creative Commons has been talking to the collective societies about excluding commons licence material from collecting society collections. If Creative Commons enabled you to buy into that sort of infrastructure, that would be useful. That would be a particularly useful part of the infrastructure.

So there are certainly advantages to the licensing system. I am just checking that I have not missed anything in particular that I wanted to highlight. The other advantage of buying into a standard system is preventing licence proliferation. The more different licences there are, the harder it gets for all the users.

Ms THOMSON—Confusing.

Ms WEATHERALL—The more confusing it gets. There are some questions that need to be asked. Some of the common criticisms of Creative Commons probably are not relevant for the Victorian Government. The one that is most commonly made is that users of the licences do not understand the implications of the licences that they are using. I referred to that in the paper; that people apply these licences thinking it is going to make them famous and it does not. They end up giving away more than they think they are giving away. It is probably not an issue for the Victorian Government, which one would assume would have good legal advice and would be telling its bureaucrats what to do.

I think there are some things that need to be asked. One is the anti-technological measures clause. This is a clause in the Creative Commons licences that the licensee must not impose any technological measures on the work or derivative works as incorporated in a collection that restrict the ability of recipients of the work to exercise the rights granted to them by this licence. This is getting an anti-circumvention law in copyright. You might be aware in copyright there are these rules about breaking technological measures. For example, when Apple issues iTunes and it is included in the protective envelope, you are not allowed to break into that. The Creative Commons movement as a whole has taken a fairly strong stance against the use of these kinds of measures. So all of their licences include this term that you are not supposed to use technical measures in relation to the licensed material.

Mr TEE—To limit its distribution?

Mr DAVIS—Or reuse?

Mr TEE—Or reuse?

Ms WEATHERALL—To restrict the ability of the recipients to exercise the rights granted by the licence. So that would be copying or distribution. I am the first to admit that I have not fully thought through the implications of that particular clause. I am not sure whether it would be enough that government was providing material freely. But if you are talking about licensing to commercial parties to encourage innovation and innovative use of databases, for example, if that is going to restrict commercial parties' ability to choose how to market their products or what to do with their databases, I suspect that could be an issue for commercial parties. I would be interested to know how commercial parties have responded to that in the context, for example, of the Queensland Government licensing initiative. Presumably they talked to commercial parties about how they feel about reusing material under these licences. It would be interesting to know how they would respond to that clause. I do not know. I am just raising the question.

Another question that I have in relation to Creative Commons, particularly in relation to public sector information, is how well suited the licences are for the statistical and similar databases. I listened with interest to some of the presentations before lunch that talked about using Creative Commons in relation to databases, spatial information and the like. I listened with interest partly because the licences were not of course originally designed for databases; they were designed for literary works, musical works and things like that—Creative Commons. That was, as I understand it, the original thinking behind the use of these licences. So when you read through the licences, they do not talk about all of the kinds of things you can imagine doing with databases such as repeated extraction of material. The European Union has a directive on databases. They do not protect database with copyright; they protect it with a database right. The whole database directive is built around different kinds of things you do with databases that you would not necessarily do with books such as extract little bits of information, analyse or combine with other data and all of those sorts of things.

As I said, I understand that the Queensland Government have been through a full analysis of the applicability of these licences to all of the information they have talked about, presumably including statistical databases. But I have not seen that analysis and I have my doubts—they could well be resolved if I saw the analysis—simply because the licences were not designed for that originally. Of course, there is also the fact that Science Commons—and you might be aware of that as a separate part of the Creative Commons organisation—set up specifically to deal with the sharing of research databases and how they can facilitate more open use of science and e-science very notably have not been out there promoting use of Creative Commons for databases in that context. In my mind that just raises the question whether and to what extent the Creative Commons is suitable for these. It may be some databases yes and some no, but it is worth thinking about.

Another question with government use of Creative Commons of course is in a sense the handing over of control in the sense of the understanding of some of these terms. One term about which there is a great deal of debate as to the meaning is the 'non-commercial use' term. We heard one interpretation of that this morning as to what the Queensland Government's view of what counts as non-commercial is. They said they took a narrow view of what counted as commercial. In the Creative Commons community more generally I understand at the moment they are seeking to find that interpretation of non-commercial—an agreed interpretation. They have been working towards guidelines for some time and they have been surveying users and trying to reach an understanding of this term. What are the implications of that if government is using non-commercial terms and has a different understanding of what that means? It is a question worth raising. What if you do not agree with the way that the understanding of these terms has been developed within the community?

In the end, whether to use Creative Commons is a cost-benefit analysis. There is a standard system with some good infrastructure and it might buy you into quite a lot of benefits, but there are some things to think about such as its applicability to databases, how non-commercial is used and whether of course you can get the same advantages in other ways, for example, simply by having a declaration available on the government web site that the material is freely reusable under these terms. Do you need the licence to travel with the document? I think that is a real question. Of course, if you have read the paper you would be aware that I also advocated for the removal of copyright from some government material, in particular legislation and bills. That is consistent with the CLRC recommendation which, of course, the Federal Government has not responded to and which is not within your power.

If we really want to make this stuff available another way is to not assert copyright on it at all. So to push for a Federal Government response on that or to push them towards the ability to dedicate to the public domain without having to worry about licensing is an alternative that I think you should consider for at least some material.

The CHAIR—Good. Thank you very much. Now we have about half an hour for questions. If I could go to the first one in relation to Crown copyright. You have made reference to the Copyright Law Review Committee. Have you got an opinion on its recommendation that Crown copyright be repealed?

Ms WEATHERALL—The CLRC recommended a couple of things. One was that the specific permissions on Crown copyright should be repealed so that it simply worked under ordinary principles of employment and another was that copyright should effectively be removed for certain materials. I have just said that I support the latter, that I actually think it would be very beneficial if we did not have copyright at all for legislation, bills, parliamentary *Hansard* and the like. In relation to the repeal of the Crown copyright, the specific rules for Crown copyright, I think my view would be that I would be in favour of that, largely because I think having one set of rules as to ownership would be simpler. Of course, my experience in dealing with government and having written a number of reports for various government departments is that it is all dealt with by contract most of the time, anyway.

Mr DAVIS—There are a whole host of different questions, but just on the Crown copyright issue— and you are suggesting the removal of that—we heard argument this morning to a contrary position that it might just create greater complexity. Likewise in terms of Creative Commons systems, you are also suggesting that did we not look at that as a model on its own, we look at the difficulties of integrating that in a sense with government activity. But it seems to me that either of these steps would mean erecting some sort of new arrangement. If we did not go with some sort of Creative Commons arrangement, what other arrangement would you put in place of that? That is the essential question, given the general understanding and general applicability of that and the wide community acceptance.

Ms WEATHERALL—Sure and that is the strength of the Creative Commons system, that you have a standard. Standards are always good when you are dealing with ICT. People are familiar with it and the infrastructure is all there and the licences are all there. These are all benefits as long as you like the licensed terms, and I have raised a couple of questions with that.

Mr DAVIS—I accept your point.

Ms WEATHERALL—As long as you like the licensed terms there is a lot to be said for that. There are a couple of alternatives. One is that government in a sense makes its own declaration available on its own web sites as to what the conditions of reuse of information are. One of the reasons it was important to have standards for Creative Commons was that these were designed originally for all those individual creators out there who were putting stuff on line and might keep some copyright and the alternative was all rights reserved. We are talking about millions of individuals.

Mr DAVIS—It has gone far beyond those original uses.

Ms WEATHERALL—Absolutely. That is the familiarity point. The other reason Creative Commons was set up the way it was is so you would not have to go and find the owner. The licence would travel with the document. You would look at the document and you would say, 'Okay, I can use that. I can copy it or do whatever.' That is not such an issue with government, particularly when you are talking about official documents such as legislation. There is an authoritative source of such things and it is government. People know where to find you.

Mr DAVIS—But there are still the transactional issues of having to go and seek approval.

Ms WEATHERALL—That depends on how you do it.

Mr DAVIS—I am trying to get to this.

Ms WEATHERALL—The other benefit of Creative Commons is the unmediated thing—that is, you do not have to negotiate individual licences. There are other ways you can do that rather than through the Creative Commons system. If you have your own set of conditions available in one central place on the Victorian Government web site, people can see the conditions on which they can use material. Potentially that is as legally effective. It is a disclaimer in the same way that Creative Commons is a disclaimer of certain rights.

Ms THOMSON—I would be interested if you could tell us more about the way the EU treats databases? How does that operate in the EU?

Ms WEATHERALL—There are a couple of things to note. I referred to a couple of EU directives. One is the EU database directive. Under EU law they do not recognise full copyright protection in the contents of databases because they are considered to be unoriginal. A lot of databases are unoriginal. There might be copyright in the selection or the particular set of parameters that you have used for a database but you will not get copyright in the database itself. This was the position. So they established a separate kind of intellectual

property right which was a database right. It has different kinds of rights from copyright. It has rights of extraction and the like.

This is one of the reasons it is actually difficult to do Creative Commons for databases. Many countries do not recognise copyright in databases. The US does not in the same way that we do, for example. Being a US originated system, they have not approached databases quite the same way. That has implications for how a Creative Commons licence would be understood by an overseas users. Obviously the Creative Commons licences say that Australian law applies. It has implications for the way people will understand its applicability to databases.

The other European directive I referred to was the public sector information directive. I think that is referred to in the discussion paper. That was a directive designed to promote consistency in the method of dealing with public sector information across the EU, the problem being that information providers who were using public sector information were coming across different licensing systems in every country and every department and it was all getting a bit too hard. The European Union set up a set of standards which they expected to be applied by all the countries.

Ms THOMSON—I was more interested in the database and how it actually operates. It would seem to me that for the vast majority the information that would be more usable would be the database information.

Ms WEATHERALL—That is what we are expecting to jump-start the innovation—the idea of the iPhone application that mashes up Google maps with—and this was Joshua Gans's idea—information on public toilets so that you can get a map of where the nearest public toilet is on your iPhone.

Ms THOMSON—We did that for the Commonwealth Games.

Mr DAVIS—It is quite handy.

Ms WEATHERALL—Very handy. There should be more of that kind of thing.

Ms THOMSON—We had a whole lot of that sort of information.

Ms WEATHERALL—Joshua Gans had a post on his blog. He is an economist at the Melbourne Business School. Did you see it? His view was basically that he could not get the data. It is just not possible to get this and do this, even though it would be a great idea.

Mr CRISP—We have different systems evolving. How difficult is it going to be for them to co-exist?

Ms WEATHERALL—That is the million-dollar question in the open content world at the moment. When you refer to 'systems' do you mean licensing systems?

Mr CRISP—Your proprietary and open-source ones out there. No-one is going to rule. They are going to develop. They will probably need to co-exist within organisations.

Ms WEATHERALL—They are co-existing within organisations if you are talking about software. Every survey and every study that I am aware of so far has found that most companies are using quite a lot more open-source software than they are aware of. They are aware that they are using some.

How they will co-exist is one of the policy areas that we are currently working through at the moment. Let me put it this way: I do not know whether you have seen the Open Source Industry Association submission to the national innovation review. The Open Source Industry Association have talked generally about the need to develop systems, particularly within government, so there is not discrimination between different business models, whether it is within the tender process or making decisions about how to use government intellectual property once created, not assuming that it should be licensed in a proprietary way but

considering the open-source alternative.

I think we are feeling our way towards that. People are becoming more aware. But it is something that we are going to have to negotiate over time. I would recommend that the committee have a look at that Open Source Industry Association submission because they outline all the different barriers that they face and the discrimination that they encounter at a government level. It would be worth looking at that as at least a first step.

Mr TEE—I have two questions. Am I right in saying that one of the difficulties in government moving to the Creative Commons model is that you are basically buying into the terms of conditions that apply— that includes terms such as non-commercial? If you buy into that, you really do not have much control over those terms and you do not have much control over how those terms change or evolve. Is that a fair criticism?

Ms WEATHERALL—The one issue is that you do not necessarily have much control over how some of those terms change and evolve.

Mr TEE—Can you cut and paste your own term? Can you define a non-commercial use and manipulate the Creative Commons model in that way?

Ms WEATHERALL—The Creative Commons licences are available under Creative Commons licence, which means that, yes, you can take that licence and change it. Once you do that you can no longer use the Creative Commons trademark. You cannot use the same infrastructure. You can no longer link back to that licence because it is no longer the Creative Commons licence.

Earlier on, the Queensland Government representatives said that they had a narrow view of what counted as commercial. Is that what they said? In any event, they had their own understanding of the meaning of 'non-commercial'. If you have made that sort of understanding publicly known, I imagine that you would at least give people out there in the real world the assurance that you will not sue them if you take a different view.

Mr TEE—It just starts adding to the complexity. You buy into the model and then you add to that your own definition of what 'commercial' is?

Ms WEATHERALL—If you are at least still using the standard licences, the obvious response would be: is that still less complex than having a whole different licensing system? I do not think it is a good idea as a committee to start thinking of extra terms that you would like to add in.

The discussion paper talks about geographical restrictions. Do not think about geographical restrictions. The BBC might have an excuse on the basis of the particular way they are funded and set up and the particular way that they make money everywhere else in the world by commercially licensing BBC material, as we are all familiar with, seeing it repeatedly on television. But there is just no way you can realistically impose geographical restrictions, and you would not want to. Anyone using Victorian data is likely to be either offering services to Victoria or making your information environment more rich. You want people in New South Wales to be using your data, trust me.

Mr TEE—The other area that I wanted some comment on was the perceived economic benefit. There is talk that by making these documents available under Creative Commons it will generate innovation and this will become a better place to live. I think about the sort of terminology that you use in your article. You talk about the almost evangelical nature of Creative Commons and some of the people associated with it. I think about the way it evolved in terms of the creative side—music and the arts. Do you have a view about whether the economic benefits have been rigorously tested? I note that Queensland, for example, has said that they have done no economic analysis.

Mr DAVIS—That is not actually what they said.

Ms THOMSON—Yes, it was.

Ms WEATHERALL—They looked at overseas studies, I understand.

Mr DAVIS—There has been some examination of that issue.

Mr TEE—So they had not had a look at it from a Queensland perspective?

The CHAIR—We can seek clarification from them on that if people wish.

Mr TEE—Has the business, scientific or academic community been clamouring for this as a way of generating innovation, as a way of generating economic activity? Has there been a push from those communities? Have you got a sense of that at all?

Ms WEATHERALL—I should probably start out by saying that it is going to depend on what sort of material you are talking about whether this is possible. I do think that a number of the benefits are relatively untested. We do work on the assumption that more information will tend to generate more innovation.

Mr DAVIS—What is your view about that?

Ms WEATHERALL—I am not an economist so I have not done any rigorous modelling, either. My view is that I would be surprised if it did not lead to more innovation. To take one example, Google Maps was created and they opened up their APIs so that people could mix that information with other information. We have seen a whole lot of very useful things come out of that. Google probably did not foresee what shape they would take.

Mr DAVIS—Very few of them they would have foreseen.

Ms WEATHERALL—Exactly. Open innovation platforms, like some of the open-source platforms, have led to innovations that we could not have foreseen.

Ms THOMSON—But there is a difference between opening and accessing and Creative Commons. Giving people access to the information is the actual result you want. The methodology is not the issue really, is it? It is actually getting access to the information?

Ms WEATHERALL—It is—

Ms THOMSON—For innovation, it is the access that they can get to the information and then—

Ms WEATHERALL—Access and re-use.

Ms THOMSON—Yes, and how they can use it.

The CHAIR—The utility of it.

Mr DAVIS—The methodology is part of the issue.

Ms WEATHERALL—It must be re-usable.

Ms THOMSON—Yes, absolutely—

Ms WEATHERALL—And for it to be re-useable you need some terms that are going to allow it to be re-used, whether that be by the removal of copyright in some cases perhaps, a declaration by the government that it will not be asserting copyright in certain ways, or Creative Commons licensing or some variation thereof. There are various ways that you can make re-use possible but, yes, obviously you need to get access to the data in order to do that.

So as I was saying, I would be incredibly surprised if opening up access to some of the valuable information that government has did not lead to innovative ideas and new

businesses, many of which you would not necessarily predict. One thing that would be worth looking at in terms of thinking about mechanisms is how businesses react to the Creative Commons licences. That was something that I was talking about with someone at lunchtime. We know that the creative community has adopted Creative Commons like there is no tomorrow and that people online are using it for everything and anything that they can possibly think of to use it for. How do small businesses feel—or large businesses—about re-using information under a Creative Commons licence? Are they troubled by any of the terms? I am not aware of any study that has been done on that. It may well have been, but I think it would be of interest if you were thinking about wanting to jump-start innovation.

Mr TEE—I suppose that is right. My question is: is the model good for business? Is it good for innovation?

Ms WEATHERALL—That is unproven. The particular model of Creative Commons is unproven, although there may well have been studies that I am not aware of. The idea of making money off open development is not unproven, because we have open source, which has actually generated quite a lot. As various studies have shown, it has generated quite a lot of economic activity

Mr THORNLEY—I have a pile of questions, Chairman. I will try to get—

The CHAIR—No, you can have almost 15 minutes.

Mr THORNLEY—The economic one, just by the way, I think is kind of a no-brainer in the sense that there is always a significant cost in using information. I do not mean a licence; I mean just in taking it down, manipulating it, or doing whatever you do.

Ms WEATHERALL—Sure. It costs your eyesight.

Mr THORNLEY—So if there is any significant business usage, then you can probably presume that in most cases they are only incurring those expenditures—

Ms WEATHERALL—For a reason.

Mr THORNLEY—If they are going to generate greater value. So I am pretty confident about that.

Ms WEATHERALL—Yes.

Mr THORNLEY—I have a couple of questions. Starting at this high level, you gave us quite an enjoyable discussion of the politics of this and the copy leftists and so on, which I particularly enjoyed.

Ms WEATHERALL—Sure.

Mr THORNLEY—That was listed as one of the concerns that people had about the Creative Commons movement in that it had an agenda, if you will, or that this was the thin end of some wedge that they were trying to drive through. I heard a counterargument this morning that I thought was intriguing and that is that it is not a bad quick, enabling tool to do some experimentation with. So even if government ultimately wanted to create its own regime, or change its own regime, we can bootstrap up with some Creative Commons stuff tomorrow, start seeing usage, start seeing what type of things are used, what types of licences work and what we might learn from that operation over a few years might then lead to us a more reasoned and considered view about anything we might want to do separately, including potentially your suggestion that we go to our own declaration. I am interested in your response to that argument.

Ms WEATHERALL—That is interesting. It is not an argument I have heard before. But thinking about it on the spot, one obvious point is the licences are stated to be revokable. So at least for the material that you put out under a Creative Commons licence, that

material—

Mr THORNLEY—Let us assume we are not playing for sheep stations on that stuff.

Ms WEATHERALL—Exactly. That is why I made it a minor point rather than a major one. I think we are seeing this kind of experimentation from various public sector institutions at the moment, particularly in the galleries and the libraries and the universities. Various of these are, in fact, using Creative Commons licences in this way. The sorts of processes that I think you are going to need in place to make this work are a reasonable investment whichever way you look at it. One of the questions that was raised before lunch was how do you make this work internally and in government departments. That sort of process matter is actually not straightforward, as I am sure you are all aware.

MIT, when they started the OpenCourseWare Project, after a couple of years they had to re-evaluate their processes because it was not working. People were not actually putting forward material for use in OpenCourseWare, partly because it was just another thing that they had added to the academics' workload and, frankly, they had other things to do with their time than worry about this. But there were issues about the third-party IP and who was responsible for working out the third-party IP issues. There were a lot of processes which you need to have working in order to make Creative Commons or any similar system work. So it is not something you take on lightly, although I would acknowledge that some of those processes would be changeable.

Ms THOMSON—What you would have to do anyway.

Ms WEATHERALL—You would have to do them however you want to openly license this material.

Mr THORNLEY—Although with exactly that argument, you would probably argue that an existing infrastructure might be a quicker and cheaper way of getting that going rather than having to create your own system altogether plus all of its surrounding infrastructure?

Ms WEATHERALL—But you need to be quite specific I think about what is the infrastructure that you are getting from this that you really need. What is that benefit? Is it the familiarity of people with the licences? That is good. Are there people who you want to be familiar with the licences familiar with them? Are businesses familiar with Creative Commons? Are there people who will be re-using these databases familiar with Creative Commons? Or are you going to have to go and educate them, in which case you are not buying into that infrastructure? Is it the writing of the licences—come on, you have lawyers—and the Creative Commons licence is a Creative Commons licence. So you could take it and amend it or build on their knowledge. Is it the technical infrastructure? That would be perhaps more significant. But do you need the licence to travel with the document when people are coming to you for it? I think you do need to sit down and say, 'What exactly is it that we get from these licences?' If it is something—particularly, as I said, if it happens to be that they have negotiated something with the collecting society, so your schools are not going to be paying for copying your documents, or their documents—then maybe that is really worth doing, because it is a piece of infrastructure that you would not otherwise have. But maybe not. I think you need to think it through fairly carefully.

Mr THORNLEY—Thank you.

The CHAIR—Can I pursue that little component further? You and others did a report to DIIRD.

Ms WEATHERALL—Yes.

The CHAIR—There was quite a discussion in that on the type of licensing model.

Ms WEATHERALL—Yes.

The CHAIR—You posed a whole lot of questions in your last answer. Could I press you to say what is a good information policy for government? Not so much the questions, but what is it? How does that licensing fit with the policy that you would identify would be good? You might prefer to ask questions and not give me an answer, but if you could—

Ms WEATHERALL—I am an academic; that is what I do.

The CHAIR—Yes, I know, but also academics do, after examining a whole lot of questions and posing even more, have to reach a conclusion at some point. It does not need to be pages; it could be a paragraph.

Ms WEATHERALL—When you say 'good information policy for government', do you mean—

The CHAIR—In terms of the type of licensing model

Ms WEATHERALL—In terms of the type of licence that should be used.

The CHAIR—Say you were heading the department and you have got to give the minister the advice—

Ms THOMSON—Give the poor woman a break.

Ms WEATHERALL—No, it is a fair question.

The CHAIR—We have to write a report. We want to know what some of the experts in this area think.

Ms WEATHERALL—My view is, as I started to express it, it is probably fair, in the paper that I wrote, and which we started to reach in that report that we wrote for DIIRD, although I admit I have not reviewed that in preparation for today—I do not have access to it, I do not think.

Mr TEE—The Department has the copyright.

Ms WEATHERALL—TheDdepartment has that. They made us hand all of that over.

Ms THOMSON—It was about setting your own standards of licensing.

Ms WEATHERALL—Yes.

Ms THOMSON—From memory.

Ms WEATHERALL—My guess is you do not necessarily need Creative Commons to achieve the kind of open access that you want in the sense that you can have a fairly simple set of terms—probably more than one, but not many—looking at the Creative Commons licences but also looking at the Click-Use licences, which may or may not have been successful in the UK but which do have some useful approaches in them that I think would answer some of the issues I raised with TPMs and databases and the like earlier for Creative Commons. You could have a single source, or at least a one-stop shop, or a place that people could go to for access to information in Victoria coupled with doing whatever you can to get rid of copyright or absolute minimum restrictions on certain public documents like legislation, bills, transcripts and the like.

My guess is that Creative Commons, while it has many, many strengths, has some weaknesses that are important to you if you want to kick-start commercial business. But that is a personal view and in the end the cost-benefit analysis is for you to do, not me. The honest truth also is that I have not talked directly to people who are using this material. I have not done the study I would need to do to reach a firm conclusion.

The CHAIR—You might get another piece of work from DIIRD.

Ms WEATHERALL—I am always open to opportunity.

The CHAIR—When we identify whatever it is you have written for DIIRD.

Ms WEATHERALL—They are the questions that I have raised that I would want answers to before I reached a final conclusion, thinking as an academic thinks. But you will have lots of opportunities to ask those questions because you are going to talk to these people; right?

The CHAIR—Yes. We will ask them for a copy of your report.

Dr KOOPS—We have it.

The CHAIR—Right.

Mr THORNLEY—I am sorry to backtrack but I just want to make sure that I understood the database point, because it sounds pretty important. We talked earlier—and the Richard Allan view and others were expressed to us—that, really, government ought to get out of the business of having single places on the internet where all of its information was available and get into the business of creating APIs into its database and letting the commercial sector rip.

Ms WEATHERALL—Good point.

Mr THORNLEY—Before we go doing that, I did not quite understand the point about copyright databases. Let me say what I thought I understood and you tell me where I have it wrong. At least in somewhere like the US copyright is not recognised in the data itself—in the database—although there may be copyright in a query formulation, or some other thing, to the database.

Ms WEATHERALL—More accurately it is not recognised in what they call non-original databases, which are these whole-of-university types of things, like the white pages and the like. It is not recognised in the facts themselves. So insofar as copyright is recognised in databases in the US, it is a kind of thin copyright. You do not get the same extent of rights that you get here following the white pages and the IceTV decisions.

Mr THORNLEY—Right. That was my next question. What is the copyright regime for databases in Australia? The discussion that we have been having today has partly been about the primary use for copyright for us in this situation, which is about the protection of the integrity of the information and the way it is used. The argument that has been put to us is that in those limited but important situations where somebody was wrongly, or ineffectively, or misleadingly using government information and you wanted to stop that, then copyright as a head of action is the most potent and easy way to do that. Therefore, a licence regime that stands on the underlying copyright gives you that, even though it is a pretty open licence that basically lets people do what they want as long as they do not do naughty things, which is what we want to stop. All of that sounds great, but if there is no underlying copyright and we are APIing all of our databases, it sounds like we are standing a bit naked in that.

Ms WEATHERALL—No. I have two points just in response to that. There is, of course, a very respectable set of opinion that says copyright in this context is about integrity; it is about protecting the integrity of material. It is worth noting that there is no copyright recognised in the US in their legislation, in their judgements and the like. We can overcome integrity issues by plenty of mechanisms other than trying to protect it by copyright. One is by recognising authoritative sources, by using rights that you have in things like the insignia on officially endorsed versions et cetera.

Ms THOMSON—For instance, say Victorian databases were being used in some sort of US study that was a little suspect in the methodology and the way in which they were manipulating those databases. Under a Creative Commons model or under some other model, how could you protect the use of that database, the integrity of that database? You are saying

that copyright law would protect us here in Australia. How would it be addressed if it was being manipulated and utilised overseas, under both scenarios?

Ms WEATHERALL—There are general laws against misleading and deceptive behaviour under most legal systems, including our own.

Ms THOMSON—Yes, the Fair Trading Act.

Ms WEATHERALL—Yes, the Fair Trading Act, the TPA and all of that. In a sense, that gets rid of your endorsement issue here, too. You have actions for people who are being misleading and you have actions for misuse of state insignia and the like under various laws.

Ms THOMSON—I am trying to see if there is an advantage internationally under Creative Commons licensing arrangements in relation to those databases that would not be there as a protection for us under existing law?

Ms WEATHERALL—If you have a licence so that, in effect, when someone breaches the licence they no longer have permission to use the material and, therefore, they have to stop using the material, that creates an action that you can use to protect integrity. I am not denying that for a minute. I am just saying there are other ways as well.

Ms THOMSON—I am interested in knowing what the other ways might be in that context.

Ms WEATHERALL—As I said, there are various actions at law, and we have laws at the moment that prevent misleading or unauthorised use of state insignia like royal coats of arms and the like, including the sort of insignia that you have on your report. There are actions against use of material in a way that suggests that it is official or government authorised or government endorsed. Countries all around the world have that sort of action.

People who are going to want to use government material are going to want to use an authorised source, an official source, an endorsed source or the like. Government always has the power to endorse certain organisations as being an authoritative source of government information. In a sense, if other people are providing dodgy material, they are highly unlikely to be successful, one would think, if there are good authorised sources available. As a backup, you have actions against misleading conduct. There was another question and I am trying to think what it was.

Mr THORNLEY—I have a follow-up question.

The CHAIR—If I can cut across, we have a flight to catch and we have to be downstairs at three o'clock. Evan, this will be the last question.

Mr THORNLEY—I am trying to evaluate the Creative Commons path versus the only real alternative I have heard about, which is your argument about a self-declaration path. I am wondering if the integrity thing would be best managed by some stronger revokability clauses within any declaration that we might make. Therefore, people can use this stuff whenever they like, but if we see some use of it that we do not like we have the capacity to revoke that licence. Is revokability a useful tool in that or does it create more problems than it solves in a whole range of other ways?

Ms WEATHERALL—That makes perfect sense as a method for controlling that.

The CHAIR—On that note, we thank you very much, Ms Weatherall. We appreciate your time. Within about a fortnight you will be provided with a copy of the transcript. You can make typographical corrections but not substance corrections. Thank you very much.

Witness withdrew.

Hearing suspended.