



Electronic Frontiers
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Mr Gregory Miller
Senior Advisor
Department of Prime Minister and Cabinet

Via email to: SDD@pmc.gov.au

14th January 2013

Dear Mr Miller,

Electronic Frontiers Australia Inc. (EFA) would like to thank Minister for Broadband, Communications and the Digital Economy for the invitation to submit further comments to the Cyber White Paper. EFA retains a strong interest in this area of policy, and welcomes the opportunity to contribute further.

EFA is a national non-profit organisation representing Internet users concerned with on-line rights and freedoms. EFA was established in January 1994 and incorporated under the Associations Incorporation Act (S.A.) in May 1994. Our website address is: www.efa.org.au.

EFA is independent of government and commerce, and is funded by membership subscriptions and donations from individuals and organisations with an altruistic interest in promoting online civil liberties. EFA members and supporters come from all parts of Australia and from diverse backgrounds.

Our major objectives are to protect and promote the civil liberties of users of computer-based communications systems (such as the Internet) and of those affected by their use and to educate the community at large about the social, political and civil liberties issues involved in the use of computer based communications systems.

EFA policy formulation, decision making and oversight of organisational activities are the responsibility of the EFA Board of Management. The elected Board Members act in a voluntary capacity; they are not remunerated for time spent on EFA activities.

EFA has presented written and oral testimony to State and Federal Parliamentary Committee and government agency inquiries into regulation of the Internet and online issues.

Please find following our submission. EFA would be pleased to expand on the issues below in oral testimony or otherwise.

Yours faithfully,

David Cake, Chairperson
Electronic Frontiers Australia, Inc.

Open Access to Public Sector Data

Open access to public sector data is a potentially great driver both of democratic transparency, and the digital economy. The value to the digital economy has been well-established in Australian public policy. For example, recommendation 7.8 of the 2008 review of the National Innovation System, which recommends both adoption of open publishing standards and creative commons licensing terms for Australian government publishing.

We need to re-examine the openness of government data, particularly data that is either not available to the public directly, or that is available currently on a commercial basis. The presumption should be that data should be made available to the public, unless there is a significant reason not to make it available (the exemptions such as those found in Part IV of the *Freedom of Information Act 1982* (Cth) provide some guidance to which government material should not be made available to the public).

Availability of existing arrangements for public sector data should be reviewed regularly to investigate whether it can better meet the needs of the digital economy, in which data usage patterns can regularly change. For example, geographic (GIS) data was formerly considered an area in which the majority of demand for public sector data came from a small number of commercial sectors, and data was often provided by the public sector on a cost-recovery commercial sale basis. With the proliferation of GPS and mobile internet enabled consumer devices (such as smartphones), the demand for geographical data services from the general public is far higher, and such services are often provided by commercial operators. We believe that free, open, provision of Australian public sector geographical data is both a valuable public service, and a crucial driver of the digital economy, in which such services are increasing valuable. This is simply one example of how the changing nature of the digital economy means that the ways in which government data is made available need regular review. The National Broadband Network will also drive a need for review of government services - many data sources that previously may have simply contained too much data and required too much bandwidth to provide direct access to, may suddenly become practical, and provision of such high bandwidth services by the public sector will drive use of the NBN and other high bandwidth networks.

Support of Open Standards

Simply making the data available is the first part of the process. The two other significant parts of the process are providing data in standard, open, formats, and providing legal licensing terms that allow for free and innovative use.

Open standards continue to be an ongoing issue for government provision of data, We consider that the digital economy is changing the ways in which we use government data, and making higher demands for open availability. Standard, open, document formats are considered to be an important goal for public sector provision of information, and government provision of reports that contain structured summaries and analysis, and are freely readable and licensable, are valuable. But availability of 'raw' data with minimal

analysis, in standard, open, formats, preferably through standard, documented and publicly accessible, real time if appropriate, application programming interfaces (APIs) should be a further goal. Availability of such open data feeds provides many opportunities for innovative use of such data in ‘mashups’ that combine multiple data sources to provide valuable new services, and public sector delivery of data in such forms is a valuable way of enabling new digital economy services.

Creative Commons Licensing

EFA welcomes government release of data under Creative Commons licensing terms, and hopes it will continue and expand. But many sectors of the Australian economy (notably, some statutory collection agencies) remain unsupportive of Creative Commons use. We recommend the government support the work of Creative Commons Australia, and other organisations that actively support the use of open and innovative copyright licences.

International governance

We encourage the Australian government to fully support the Internet Governance Forum. Australian participation in the Internet Governance Forum, both from government and other sectors, is good and continues to be valuable. We welcome the active involvement of the Australian government in international Internet governance fora such as the IGF, the OECD Committee for Information, Computer and Communications Policy (ICCP), and organisations such as ICANN, and we welcome the focus on these topics that the dedicated Spectrum, Treaties and Internet Governance (STIG) group within the DBCDE brings, but we believe that the Australian government involvement in international Internet governance fora needs to be broader. Many government departments would benefit from increased awareness of international discussion of Internet and ICT specific policy issues.

EFA supports the Australian government stance against international calls for greater government regulation of the Internet, such as its position on the recent ITU WCIT meeting.

Privacy Engagement

Privacy is a significant area of policy in relationship to Internet and ICT policy, and very relevant to the digital economy, and these policy areas are often intrinsically international in nature. Cloud computing makes these issues both more urgent and more important for the digital economy. Australian public sector privacy organisations (and specifically the Office of the Australian Information Commissioner (OIA)) need to engage with international policy debates, and continue to develop expertise in these policy areas. Public sector privacy representatives should be involved in Internet governance fora such as ICANN, the OECD ICCP, and the IGF.

It is EFAs view that increasing use of cloud computing by Australian organisations (business, government, and non-profit alike) must not be allowed to compromise the protection that Australian privacy laws provide to the Australian public. Maintaining Australian privacy standards is not a matter of ‘digital protectionism’ as some have labelled it, and we favour a strong stance in support of maintaining (and enforcing) Australian privacy standards, even if

the result is that adoption of cloud computing is slowed. Ultimately, the digital economy will be strengthened by taking consumer and business privacy protection seriously.

Australian Internet Governance Forum

While major international Internet governance fora are important, good Internet governance begins at home. We welcomed strong government departmental support of the inaugural Australian Internet Governance Forum, and hope that that support increases and is considered an important part of Australian policy discussion. We believe that as this forum grows, it should come to be considered one of the most important annual events for anyone involved in policy issues relevant to the Internet and the digital economy.

Support for Civil Society

Another aspect of International internet governance, and ICT and communications policy generally, is the involvement of civil society organisations. There are a range of civil society organisations with a focus on Internet and communications policy in Australia, representing a range of views and policy concerns. We consider that the involvement of such organisations greatly strengthens Australian policy debate, which results in stronger policy, and a better environment for the digital economy in Australia. The IGF system (global, regional, and national) is an example of policy fora that are multi-stakeholder, and already has civil society policy input fully integrated as equal policy participants. But many important policy fora exist that either do not make provision for civil society policy involvement, make provision for civil society involvement but leave in place structural barriers (such as requiring physical attendance but providing no funding to facilitate it, or having large registration fees), or requiring government accreditation of civil society involvement. Such important organisations as the ITU, for example, are difficult for civil society to be involved in without government assistance. But many governments do support their civil society delegations in active involvement (for example, the UK and the US both had significant civil society representation within their delegations to the recent ITU WCIT meeting). While the policy positions of government and civil society often differ on specific details (naturally, as many civil society organisations have lobbying for policy change as part of their mission and goals), within the context of international Internet governance fora the policy positions of national governments and civil society are often in substantial agreement, and the civil society organisations can substantially aid government policy lobbying efforts.

In short, we think government assistance of civil society involvement in international Internet and ICT policy fora would have benefits for both civil society and government. Support could include proactively assistance with registration and credentialing, grants schemes for travel and registration support, and facilitating dialogue between representatives from all sectors.

Telecommuting

Telecommuting will continue to be a vital part of the digital economy. Telecommuting has many benefits, including revitalisation of rural and regional Australia, reduced traffic congestion, more flexible working hours, for accessible and diverse employment, flexible

responses to disasters and other problems that may cause difficulties with workplace access, and many other benefits. While investment in infrastructure such as the NBN will enable telecommuting, it also needs to be driven by employers. The Federal government is a major employer, and many government positions are good candidates for telecommuting. The Federal government should strive to encourage telecommuting in all workplaces where it is practical, and should be a leader in enabling and encouraging telecommuting.

Copyright Review

It is essential to the digital economy that cultural producers are able to reap economic reward for their creative efforts. It does not, however, follow that the most rigid and broad copyright laws are desirable. Much important creative cultural production includes the creation of derivative work, and other transformative uses of original copyrighted work. It is also the case that we need to encourage not just original creative production, but also innovative and flexible distribution and use of creative work. Australia is a nation whose economy includes much active creative cultural production industry, but has so far attempts by Australian industry to produce innovative digital distribution means have been hampered by legal challenges, many of them made easier by an inflexible legal environment. Thus new services are more likely to thrive in legal environments that allow for more flexible approaches to distribution of copyrighted material, and services that are well-established in other jurisdictions often face significant delays before being offered to Australian consumers.

We strongly recommend that the government consider the arguments of the many respondents to the Australian Law Reform Commission review into Copyright law who have suggested the introduction of fair use rights into Australian law, and other calls for increased flexibility in copyright law (such as a flexible approach to orphan works). We feel strongly that the copyright law that works best for the entire digital economy will be law that provides the flexibility needed for creators of new works, creators of new distribution and access methods, and curators and maintainers, and balances them appropriately with the needs of existing copyright based businesses.

We also consider that trade treaties that impact intellectual property law (particularly copyright and patent) and enforcement in Australia (notably ACTA and the currently in negotiation TPP agreement) have been negotiated in a way that does not properly involve the many domestic stakeholders in intellectual property law and enforcement, and is very inappropriate for treaties that so significantly effect our domestic policy. We urge the government to make the negotiation process far more open, and urge the government to avoid making any commitments that would require changes to law that would restrict its ability to reform the local intellectual property legal regime.

Classification System

The Australian classification system remains notably conservative by international standards, resulting in a difficult domestic market for many forms of cultural production. In particular, despite the welcome introduction of the R18+ classification for digital games, the

environment for local games retain remains difficult by international standards, and a difficult domestic market in turn restricts the local industry. There is significant evidence that strict classification regimes restrict cultural economic production, and their relaxation can lead to economic benefits (note, for example, the many successes of the Australian film industry following a relaxation of classification standards in the 1970s). We believe the Australian classification system is out-dated, and very unusual in its Refused Classification system that attempts to remove consumer access to material that is legal to possess and legal to consume. If the government is serious about boosting cultural contribution to the digital economy, it should consider changes to the entire classification system, not just the details of what content is available in each category, including rules that streamline classification, and reduce the amount by which content such as games require minor changes specific to the Australian market.

Conclusion

A summary of recommendations contained in this submission:

- Continue with efforts to make as much public sector information transparently available. Open availability should be the default for public sector data.
- Where public sector data is currently made available under a commercial or cost recovery basis, review existing arrangements and consider if free and open availability would be more appropriate
- Creative Commons licencing should be considered for public sector data, and the work of Creative Commons Australia etc supported.
- Open and standard formats should be used as much as possible for public sector data.
- Real time availability via a documented API should be considered for data where this would add value to the public.
- The government should continue to engage with international Internet governance and ICT fora, continuing the work of the dedicated STIG group within DBCDE but also broadening this engagement to directly involve other departments.
- The government should continue and broaden its support of the Australian Internet Governance Forum, and engage with it as broadly as possible.
- Civil society activism within international ICT and Internet governance fora (such as the ITU, OECD ICCP, etc) should be actively supported and encouraged by the government.
- Support for engagement with digital economy issues, particularly the many issues raise by broad adoption of cloud computing for data storage, by privacy authorities such as the OIAC, including being active international fora.
- Government support for copyright reform to make a more flexible copyright law, that is more welcoming to innovative creation and distribution activities.
- Open the negotiation process for treaties that include provisions about copyright and other intellectual property law, both current and future, and avoid changes that would change domestic law or reduce our future ability to reform domestic law.
- A more modern classification system that is more welcoming to innovative creative production, particularly in modern digital forms such as gaming.