

The OAK Law Project: an overview

In 2006, the Australian Government funded the establishment of a novel project in Australia – the Open Access to Knowledge (OAK) Law Project at the Queensland University of Technology (QUT) (<http://www.oaklaw.qut.edu.au>). The OAK Law Project had the aim of facilitating open access to a range of publicly funded materials, such as academic publications and research data, by improving knowledge about and management of the legal rights in these materials. The initial project publication, *OAK Law Project Report No. 1: Creating a legal framework for copyright management of open access within the Australian academic and research sectors* (2006), set out the Project's objectives for the 3-year funded period.

The following provides an overview of the OAK Law Project's work in relation to open access to academic publications, research data, and public sector information.

Access to academic publications

The initial focus of the OAK Law Project was managing the legal rights in academic publications, including journal articles and research theses, in order to provide open access to these works. The Project examined the publishing agreements

and copyright policies of more than 100 publishers based in Australia and overseas to determine their position on the deposit of academic works in institutionally-based open access repositories. These findings were published in the report, *OAK Law Project Report – A Review and Analysis of Academic Publishing Agreements and Open Access Policies (Version 1 – February 2008)*, then used to develop the OAK List – an online, searchable database of publishers' agreements and open access policies. The OAK List was developed to assist anyone trying to deposit into, create, or manage an open access repository to ensure compliance with the law. The database is accessible to authors, copyright administrators, and repository managers, both in Australia and overseas and was designed to be fully interoperable with the RoMEO/SHERPA database in the UK.

In 2007, the OAK Law Project conducted a nationwide survey of the attitudes and practices of Australian academic authors towards the publication and dissemination of their research. The survey obtained evidence of authors' experiences with publishing agreements, their perceptions of open access and commercial publishing, their understanding of copyright ownership in their research, and their involvement with online repositories and open access journals. The results of the survey were published in the report, *Academic authorship, publishing agreements and open access: Survey Results* (2008). Additionally throughout 2006-2008, the Project engaged in education initiatives to teach academics, researchers, and students about copyright in their works and to assist university librarians in setting up and managing institutional repositories. In furtherance of these endeavours, the OAK Law Project has published a range of guides, downloadable from <http://www.oaklaw.qut.edu.au/reports>. The OAK Law Project will be soon releasing a copyright and open access guide for publishers, which will form part of the OAK Law Project's guide series.

Access to research data

Building on its work on open access to research publications, the OAK Law Project also focused on the development of legal protocols to enable open access to datasets and databases. Although there is no copyright in mere facts, data is literally surrounded by law. Compilations and arrangements of data in datasets and databases will often attract copyright protection in Australia and an array of other laws comes into play, including information privacy, confidentiality, and specific constraints imposed by legislation. These legal issues – and how they can be managed in practice to enable data access and sharing – are considered in the OAK Law report, *Building the Infrastructure for Data Access and Reuse in Collaborative Research: An Analysis of the Legal Context* (2007) and the accompanying guide,

Practical Data Management: A Legal and Policy Guide (2008). These publications have been of assistance to numerous individuals and projects involved with data management, including the Australian government funded Australian National Data Service (ANDS), a large scale project which aims to develop policy and capability in the area of data management in the Australian research community (<http://www.ands.org.au>). The OAK Law Project has also contributed a further two short guides to ANDS on 'Copyright and Data' and 'Creative Commons and Data'.

Access to public sector information (PSI)

"Public sector information" (PSI) includes information and data produced by the public sector as well as materials that result from publicly funded cultural, educational, and scientific activities. Generally, the situation with respect to PSI access and use in Australia has been fragmented and lacking a coherent policy foundation, whether viewed in terms of interactions within or among the different levels of government at the local, State/Territory, and Federal levels, or between the government, academic, and private sectors.

There have been some outstanding examples within Australian government of how PSI can be made easily and freely available for reuse, though these are not the norm. For example, since late 2008, the Australian Bureau of Statistics (ABS) has made all content on their website (other than logos and other trade marked content) available under Creative Commons Attribution (CC-BY) licences – including all census data, economy data, fact sheets, analysis, and press releases. The Australian Bureau of Meteorology (BoM) is moving in the same direction, making water data available through the Australian Water Resources Information System (AWRIS) under CC licences. Geoscience Australia also offers free downloads of geospatial data from its website.

The situation in Australia with respect to PSI is beginning to change, with the need for a comprehensive national information policy framework to be developed having been recognised in the Review of the National Innovation System in 2008. The *Venturous Australia – Building Strength in Innovation* ("Venturous Australia") report produced by the National Innovation System review panel recommended that a National Information Strategy should be established, to optimise the flow of information in the Australian economy. It further recommended that, "to the maximum extent practicable, information, research, and content funded by Australian governments should be made freely available over the internet as part of the global public commons", that "Australian governments should adopt international standards of open publishing as far as possible" and that PSI "should be released

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under a creative commons licence". The federal government's response to the *Venturous Australia* recommendations, contained in the White Paper, *Powering Ideas: An Innovation Agenda for the 21st Century*, is generally supportive of its recommendations on access to PSI.

The OAK Law team has been keeping track of developments in this area of the access to and use of PSI (auPSI) website: <http://www.aupsi.org/>. Additionally, Professor Anne Fitzgerald has released a comprehensive literature review entitled, *A Review of the Literature on the Legal Aspects of Open Access Policy, Practices and Licensing in Australia and Selected Jurisdictions* (available at <http://www.aupsi.org/publications/reports.jsp>).

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What we have learned from the OAK Law Project

The following is a brief summary of some of the key insights that we have gained from our work on the OAK Law project over the last four years.

Access to academic publications

Open access policies are important – A clearly articulated, sensible open access policy is a key strategic document for any institution that is promoting OA. It sets out the institution's position on open access and can be influential in encouraging academic staff to deposit their research outputs into an OA digital repository. Repository deposit statistics show that deposit mandates work. Download statistics show that online repositories help authors reach a wider audience. See the OAK Law project guides, *Understanding Open Access in the Academic Environment: A Guide for Authors* (2008) at pp. 30-32; 37-39 (<http://eprints.qut.edu.au/archive/00013935/02/13935.pdf>) and *A Guide to Developing Open Access Through Your Digital Repository* (2007) (<http://eprints.qut.edu.au/archive/00009671/01/9671.pdf>).

Proper understanding and management of copyright is essential – Academic authors, in particular, should be educated about the legal rights they hold in their work and the practical consequences of assigning or licensing copyright in their work. Librarians and repository managers can help authors to understand the importance of proper copyright management and how open access works.

Talk to your publisher – Some authors are afraid to talk to their publisher about the allocation of rights in their work. However, more and more publishers are listening and responding positively to authors' requests to make their work publicly available in a digital repository. Resources such as the OAKList can help authors to be aware of their publisher's position on open access.

Think about reuse, not just access – Some repository deposit licences secure from a depositing author the right to display the work in the repository, but do not secure any further rights. While it may be helpful for users to be able to access and read an academic work, without a further grant of rights many reuse possibilities for research and teaching will be limited. Authors should be encouraged to consider what rights of reuse they would like to grant. An author may give permission to the repository to sub-license the work on specified terms, or may license the work directly to end-users by applying an open content licence, such as a Creative Commons (CC) licence, to their work. Any grant of reuse rights must stay within the boundaries of what is permitted in the author's publishing agreement. For this reason, it is imperative that authors read their publishing agreements carefully and discuss with their publishers what rights they would like to retain under the agreement.

Access to publicly funded research data

In Australia, data compilations like datasets and databases can be protected by copyright in the literary works category of the *Copyright Act 1968* (Cth), which includes 'tables' or 'compilations'. Mere information or a random collection and listing of unrelated facts or data is not considered a compilation for copyright purposes. However, a factual compilation will be a literary work if it supplies "intelligible information". It will be protected by copyright as an original literary work if it has been produced by the application of independent intellectual effort by the author/s, which may involve the exercise of skill, judgment, knowledge, creativity, or labour in selecting, presenting, or arranging the information. Copyright applies not to the data itself, but to the particular way the data is presented in the dataset or database.

Many of the same considerations apply to research data as apply to academic publications (see above). For example, an owner of copyright in data should be careful to manage that copyright to allow the owner and others to make use of that data. Data may be deposited into research repositories or databases, and as such, the research institution's open access policy and repository deposit licence are likely to apply to data in the same way that they apply to research publications.

Data compilations can be openly licensed under appropriate open content licences, such as Creative Commons (CC) licences. Recent debate in Australia has concerned whether data should be licensed under a CC licence or whether it should be "dedicated to the public domain", for example under a CC0 ("CC zero") waiver. CC0 is a form of Creative Commons dedication whereby the licensor (here called the "affirmer") waives all of their copyright and "related rights" in a particular work to the maximum extent permitted by law. Although it has been proposed for use in some jurisdictions as a way of ensuring that data remains free and open for access and reuse, this approach is problematic in the Australian legal environment and its use is not generally recommended, particularly for data produced by publicly funded researchers or government research institutes. For publicly funded material in Australia, the CC Attribution (CC-BY) licence will usually be the most appropriate licence to facilitate broad access and reuse with minimal restrictions (users are only obliged to retain associated metadata or rights management information and to correctly attribute authorship and maintain the integrity of the data).

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The ALIA Board of Directors and Sue Hutley, ALIA Executive Director, wish to acknowledge and thank Dr Matthew Rimmer for his valued contributions and commitment to the ALIA Copyright and Intellectual Property Advisory Committee. Matthew has recently resigned from this Committee.

Matthew has been the longest standing Copyright & IP Advisory Committee member, and his interpretation and understanding of copyright and current issues and his legal advice have been instrumental to the Committee's work. Matthew's generosity and willingness to share knowledge have also been greatly appreciated.

ALIA thanks Matthew for his support of and commitment to this important area of the Association's activities.