

# Unlocking IP National dimensions of public rights and the public domain in Australian copyright

Graham Greenleaf, David Vaile and Philip Chung\*

21 September 2005

Introduction .....	1
Terminology for public rights in copyright .....	1
The 'Unlocking IP' project.....	2
Key features and benefits.....	2
Open content, open source, open standards.....	2
Research team.....	3
Five main topics of proposed research.....	4
(1) Analysing public rights – Theory and taxonomy .....	4
(2) Licences involving public rights - Consistency, simplicity, effectiveness , implications .....	5
(3) Finding works with public rights more effectively .....	6
(4) Incentives and requirements to expand public use rights .....	6
(5) Collecting societies using commons content (a complementary project) .....	7
Project outputs.....	8
References.....	9
Appendix – Project Participant Details .....	10

---

\* Graham Greenleaf is Professor of Law, University of New South Wales, Co-Director Australasian Legal Information Institute (AustLII) and Co-Director Cyberspace Law and Policy Centre (CyberLPC). David Vaile is Executive Director, Cyberspace Law and Policy Centre at UNSW. Philip Chung is Lecturer in Law, University of Technology Sydney and Executive Director, AustLII. We wish to acknowledge the assistance of all of our co-researchers and industry partners in the 'Unlocking IP' project (see Appendix to this paper).

## Introduction

Although copyright law and practice is usually seen as concerning private (proprietary) rights in works, public rights (as explained below) and the public domain are of vital importance to both innovation and democracy. Finding ways to expand the creation and use of these public rights, to enhance innovative and public discourse, particularly in the Australian context, is at the heart of the research project funded by the Australian Research Council, in which the co-authors are researchers (with other colleagues and industry partners mentioned below). ARC and partner funding amounts to about AUS \$200,000 per year, plus in-kind contributions of personnel time of similar dimension, so the project is of modest but non-trivial dimensions.

The project, entitled 'Unlocking IP', will investigate the rapidly changing relationship between public and private rights in Australian copyright law and practice, and explore options for maximising the 'unlocking' of the potential uses of copyright works through sharing and trade in works involving public rights (open content, open source and open standards licensing) and through enhancement to the public domain.

This paper outlines the proposed project, which will be carried out from now to 2008. It is based on the research funding application and therefore poses questions and issues rather than provides answers.

## Terminology for public rights in copyright

Since the 1960s, the expression 'the tragedy of the commons' has summarised the assumption that private property rights were necessary for 'efficient or even sustainable, resource management'. Over the past 20 years an extensive body of argument, primarily American, has challenged this assumption and argued that under certain circumstances common property regimes are sustainable and some resources cannot be allocated efficiently by markets, and are better shared by institutional arrangements based on commons. Applied to digital information and its communications, we can distinguish commons at the physical layer, the logical layer (including open standards, protocols and software platforms), and the content layer (see Benkler 2003 for a concise statement; and Boyle 2003 and the Special Issue 2003 of *Law & Contemporary Problems* for an overview).

Work in the digital domain has led to an emphasis on how private property and the public domain are not a dichotomy, and a recognition of a more complex reality. There is a spectrum of where works can be located, from 'full copyright' to 'entirely public domain' at the extremes. This more flexible approach recognises that many works can be (and should be) located at intermediate points along the spectrum. Both the state (through legislation) and copyright owners (through licensing) can locate works at various points on this spectrum. Licensing is used increasingly to create some public rights in works where other proprietary rights are still held by the copyright owner ('some rights reserved'). Significant Australian examples include AShareNet's licences for sharing and trading educational materials; the iCommons Australia licences; Free & Open Source software licensing; and licences to the public of works under Crown copyright (eg legislation and case law in NSW). The Industry Partners and investigators in this research are key players in all these forms of licensing in Australia.

Legislation can also expand or contract the public use rights in works (redefining the boundary between public and private rights). Important current issues include: the extension of the copyright term to life plus 70 years and the extent to which it will constrict the public domain in Australia

over time; abolition or restriction of Crown copyright; and exceptions for educational uses. These are also major issues for our various Industry Partners.

There is as yet no fully accepted terminology for the public rights aspect of works which are to some extent also subject to private copyright interests. Some theorists use the expressions 'public domain' and 'commons' in a new and broader sense, to include all uses of works by the public which do not breach copyright. We use 'public rights' to refer to the public aspect of works which are not fully in the public domain but are in some part proprietary ('some rights reserved'). We use 'public domain' more conservatively to refer to the end of the spectrum where there is no proprietary control at all. We use 'commons' to encompass both works involving public rights and those in the full public domain.

## The 'Unlocking IP' project

### ***Key features and benefits***

Key feature of the research are its *emphasis on self-help*, through licensing, incentives and discovery mechanisms, within the existing statutory context, and its *comprehensiveness*, examining the role of public rights in all types of works, and all types of public rights. We need to understand commons as a whole.

The third and most distinctive feature is a *focus on Australia's distinct copyright commons*. The project investigates which aspects of public rights are likely to be of particular value to Australians, in addition to their dual role as Australians' contribution to global access to cultural and scientific works. The research will map the content and contours of Australia's commons.

From this perspective, a major emphasis will be to identify the spectrum of licences involving public rights, and how they can be most effectively implemented in Australia's public interest. Sustainable commons do not 'just happen' but require understanding and organisational structures to make them prosper. The research will investigate these structure in the Australian context, including by: analysis of the relationships between the different licence types in use here; prototyping of technical measures to assist potential users to find what is in the commons; identification of incentives and business models that can best encourage the creating of public rights and the expansion of the public domain; and questioning whether law reform is also needed to protect these public aspect of copyright.

So the project deals with a universal subject, but has a national focus, in that it will more precisely identify Australia's public domain and will suggest strategies to expand and preserve it that are appropriate in Australia's constitutional, statutory, cultural and business context. This is unusual: in the relatively new field of studies concentrating on the public use aspects of copyright, many previous studies have adopted a US-centric perspective (consciously or unconsciously), national interests receiving little explicit attention. The intellectual benefits to be obtained from this research should be universal (the interplay between national and global factors is of interest everywhere) but most of the practical benefits will be national benefits. For example, the more effective sharing and trading of educational and other resources may increase national productivity. Successful business models for use of open source software and open standards will reduce government and business costs. The creation of a larger public domain, with higher quality content, and content that is more easily found for purposes of re-use, will create a stronger base for national creativity.

### ***Open content, open source, open standards***

As explained below, our Industry Partners are comprehensively engaged with all the subject matters affected by the development of commons. One main focus of this research will be on the open content layer, with an emphasis on educational and scholarly content. The second main focus will be on software and on standards, both as content and as a component of the 'open logical layer'. Many argue that 'a systematic preference for open over closed protocols and standards, and support

for free software platforms' is necessary so that a commons infrastructure can be sustained (eg Benkler 2003). The research will examine (again in the Australian legal and cultural context) the relationships between the licensing models, institutions and issues developed to support open content, compared with models supporting open software standards and protocols.

The 'Free Software' and 'Open Source' software movements pioneered use of licensing to create commons, and prompted rethinking of their nature. Software developed under their licensing models, particularly the Linux operating system, is reaching global acceptance by governments and businesses. Open Source licensing is superficially similar to Australia's open content licensing in locating works along the copyright continuum depending on its terms. The issues investigated by this research will often be the same for both open content and open software, but the answers may be different: Can existing software licences be improved in light of other, newer licences?; Will the online discovery tools prototyped here also be useful for software? What incentives and legislative support are needed (in the Australian context) to consolidate open source software's position? Our IT Industry Partners share an interest in asking similar questions concerning Open Standards. For example, proprietary document format standards raise concerns and risks both for end-users and for compliant IT businesses (eg costs, potential archive access loss due to obsolescence, and incomplete adoption). This project will investigate how Open Standards can play a more significant role in Australia.

### ***Research team***

The following intellectual property and IT law academics are the Chief Investigators (listed alphabetically) have come together as a research team because of the complementary nature of their interests and expertise, necessary for a project this broad in its scope and complexity:

- Dr Kathy **Bowrey** (UNSW);
- Philip **Chung** (UTS and AustLII);
- Professor James **Dalziel** (Macquarie University and MELCOE)
- Professor Brian **Fitzgerald** (QUT and iCommons Australia)
- Professor Philip **Griffith** (UTS)
- Professor Graham **Greenleaf** (UNSW, AustLII and CyberLPC) who will coordinate the input of the CIs.
- Bryan **Mercurio** (NSW)
- Professor Jill **McKeough** (UTS)
- Professor Michael **Pendleton** (Chinese University Hong Kong and formerly Murdoch University); Dr Matthew **Rimmer** (ANU).

The project has six industry partners, each of which has strong business reasons for commitment to this project and will actively collaborate in particular parts of the research relevant to their interests:

- AEShareNet Limited (AESL);
- Baker & McKenzie;
- Linux Australia ;
- IBM Australia Ltd;
- Open Source Industry Australia Limited; and
- LAMS International Pty Ltd.

In addition the project has two individual Partner Investigators from industry:

- Ian **Oi**, and
- Philip **Crisp**.

Oi and Crisp are respectively the lead draftspersons of the two most significant sets of public rights licences in Australia: the iCommons Australia licences (Oi) and the AESL licence suite (Crisp). Visiting Professor Roger Clarke (UNSW) will also be a consultant to the project, particularly on open content business models.

Brief details of all researchers and industry partners are given in the Appendix. In the research details following, each participant is indicated in relation to those aspects of the research in which they have a particular involvement.

The project will be based at the Cyberspace Law and Policy Centre at UNSW, where the Centre's Executive Director David Vaile will be the project manager, responsible for resources and a small staff. Two doctoral students (funded under the Australian Postgraduate Award (Industry) scheme - 'APAIs') will investigate topics described below. Philip Chung will supervise those based at AustLII.

## Five main topics of proposed research

This research project aims to reach a comprehensive understanding of the role of public rights in Australian copyright law, and to investigate how those rights may be most effectively identified, utilised and protected in the Australian context. This involves investigating four closely inter-related topics (and one subsequent addition), each of which builds upon its predecessors in the order below.

The researchers to be involved in research on a particular issue are identified by surname in italics following each item. Partner Investigators are identified by firm. APAI projects are identified. The Project Manager and Research Assistants are not listed as they may be involved in all topics.

A thread of importance to our software Industry Partners, running through the first four topics of the research, is the question of which issues and answers are the same for software and standards as they are for open content.

### ***(1) Analysing public rights – Theory and taxonomy***

New theories of the relationships between public and private rights in copyright law are emerging, but have done so principally in the context of US copyright and constitutional law (eg Boyle (2003), Benkler (2003), Samuelson (2003), Lessig (2004)). We need to start by re-conceptualising public rights (including commons and public domain) in the context of the Australian constitution, law and institutions. In doing so we will better understand which elements are distinctive to Australia (and any country) and which are universal.

By examining both the new theories and the emerging range of licences, we will develop a taxonomy of existing and ideal rights, which can also be put to practical use as a template against which existing or proposed licences may be compared and understood, and the shape of the public domain (and threats to it) better understood. Samuelson (2003) has started to map the content of the public domain in the digital environment, but hers is a particularly US-oriented exercise and does not adequately consider licensing.

Investigation of theory and taxonomy will include the following specific issues:

- *Statutory public rights and limits of copyright* - The role of fair dealing rights, similar statutory rights (eg educational uses), and the background conditions of Australian copyright law (eg the lack of any general 'lending right' or 'access right') needs to be established in Australian public domain theory, as the context in which rights creating by public licensing operates. 'Fair use' reforms similar to US copyright law have been advocated in Australia and are the subject of a current public enquire, but their utility has been questioned here and elsewhere (see Lessig 2004). The significance and legality of attempts to diminish statutory rights by contract ('negative licensing') (see CLRC 2001) needs more consideration, as does the related issue of how technological protection

measures be adapted to avoid their destruction, as many authors have warned (see eg Samuelson 2003, Greenleaf 2003)

- *Effects of other public domains* - All other forms of intellectual property (eg patent law and confidential information) affect the content of copyright's public domain, and involve the creation of public rights by licensing. They must be considered to obtain a comprehensive account (*McKeough, Griffith*). This project will not involve detailed investigation, or practical steps in relation to patents and the public domain, which must be left to a separate investigation.
- *Categories of commons* – Theory and practice to date has emphasised the 'creative commons', but some types of information in the public domain (eg some essential legal information) do not fit comfortably in theories based on innovation (Benkler (2003) realises this). We will investigate the theoretical basis for the 'democratic commons' and other 'non-creative' commons, and their implications for commons-based production
- *The digital divide* - Consideration of commons from an Australian perspective must take into account the broader question of the digital divide and whether developed and developing countries have different interests in the development of commons. The future of copyright is in a period of global dispute, particularly regarding the role of commons. The *Geneva Declaration on the Future of WIPO* by NGOs and experts (Geneva Declaration 2004), regards WIPO's failure to protect the public domain as one of its greatest failings. Developing countries are increasingly concerned with the loss of the public domain exacerbating the digital divide (see eg *Contested Commons* 2004). This research will situate Australian issues in that global context. Of particular relevance to Australia are concerns that a possible 'freeing up' of access to indigenous culture and heritage (particular archival material currently) could further exacerbate exploitation and cultural harm.
- The research thesis of APAI#1 '*Mapping Australia's Copyright Commons*' will involve an analysis and definition of commons (including open content, software and standards) under Australian copyright law and practice, with analysis of the extent to which there exists a distinct Australian copyright commons, and its significance.

## **(2) Licences involving public rights - Consistency, simplicity, effectiveness, implications**

Working from the theory and taxonomy of (1) above, we will investigate the extent to which existing and emerging licences differ in substance, and how can they be made more consistent, accessible and understandable? Is it possible to increase public (and copyright owner) understanding and acceptance of public right licensing by keeping the high level licence attributes relatively few, uniform and simple? How important is consistency compared with maximising flexibility through alternative licensing regimes? (*Fitzgerald, Rimmer, Clarke, AESL, Oi, Crisp, Baker & McKenzie*) Public licensing is not always the best solution. Alternatives to licensing such as trust law, which allows for more complex property relations than exclusively private ownership, need consideration. (*Bowrey*)

*International* consistency of licences must also be addressed, particularly because of the likelihood of cross-border use of digital works, but it must be balanced against the need for adjustment to the local legal and policy environment. The porting of the international creative commons licences (eg iCommons Australia) from a template based on US law has already led to difficult issues in reconciling Australian and other licences (eg on moral rights) and this needs further research. (*Fitzgerald, Mercurio, Clarke, AESL, Oi, Crisp, Baker & McKenzie, IBM*)

Although drafting new licences is best left to administering organisations such as iCommons Australia and AESL, where there are major gaps in the range of licences needed, the project will investigate how this can be remedied and work with our Industry Partners to fill the gaps. For example, licences to the public which could be used to provide greater access to works under Crown Copyright (complex because of Australia's federal structure) will be developed with iCommons Australia. A prototyping study will be done of the mechanism of obtaining and utilising a uniform licence of primary legal materials in all Australian jurisdictions.

There are important implications of public rights licences for private rights-owners representatives (eg collecting societies will need to adjust their assessment and collection mechanisms to accommodate works that are ‘part free and part for fee’). Efficient solutions are needed in the interests of both copyright owners and users. Similarly, what are the implications of the new public rights for users and their representatives, including schools and universities? They may need to adjust their practices in order to recognise when materials may be available for free or at a reduced fee. This scoping study in this research will identify the issues but will not explore detailed solutions (appropriate Industry Partners would be needed).

### ***(3) Finding works with public rights more effectively***

It is essential to our Industry Partners that works with public rights licences be made more usable for the public by making them easier to find. The public will benefit if all of Australia’s commons are made more discoverable, preferably by a uniform mechanism. The range of technical solutions include registers, depositories, catalogs, search engines, embedded code and combinations of all of these. The research needs to investigate and compare the effectiveness of all of these alternative technical measures, and to develop and test prototypes. There may be valuable lessons for the public domain identification mechanisms from the emerging literature and practice of digital rights management systems (DRMS) and DOI (Digital Object Identifier).

Two forms of registration are proposed for investigation of both legal and technical issues: an optional *register* of Australian public right and public domain works; this may be coupled with an optional *depository* system (also an archive, as works easily become lost without proprietary incentive for preservation). Both proposals require considerable legal analysis (eg authorisation and infringement issues, but also s52 etc), and technical investigation of the most efficient and comprehensive solution. A single register will probably be undesirable or unachievable and, as in other areas (eg PKI), the best solution may lie in developing federations of registers and search mechanisms across multiple repositories (eg Creative Commons Content Portals; EdNA federated search protocols, WorldLII). Standards for licences to the public can and usually do result in embedded codes within a work identifying its licence type, which can then be used as the basis for a dedicated web-spider-based **search engine** restricted to such works. Alternatively, existing search engines may be used. Finding the most effective solution requires work on: use of metadata, including its automated generation; the comprehensiveness of coverage of existing search engines, and the potential comprehensiveness of a dedicated search engine. The Creative Commons uses a dedicated search engine to search for works with Creative Commons licences, but the task here is to create a generic search engine for content using any form of licence to the public, and one specific to Australia’s commons. The relationships between global and Australia-specific commons registers need to be examined. Working prototypes of proposed solutions will be developed where feasible.

The research thesis of APAI#2 ‘*Technology Creating Commons*’ will involve an analysis of the technical measures most effective to support the creation and sustainability of copyright commons (including open content, software and standards), in the context of Australian law, culture and business practices, including incentives and mechanisms to create commons, discovery mechanisms for user identification and location, and their inter-relationships.

### ***(4) Incentives and requirements to expand public use rights***

#### **Incentives and voluntary measures**

Commons do not ‘just happen’, and our Industry Partners are involved in actively creating new commons. This project investigates pro-active steps (including technical measures) that copyright owners can take to create public rights, relying on both market and non-market factors. How can particular classes of copyright owners (eg educators, researchers, software developers) be most effectively encouraged to make use of these mechanisms, so as to expand the Australian commons? What business models for creating open content have been effective?

There are many valuable examples of ‘commons-based production’ (Benkler 2004) and their successes in devising both non-monetary inducements and business models are very instructive.

Examples include the experiences of academic publishing networks such as SSRN (Social Science Research Network), the Public Library of Science, the open bioinformatics movement, the Creative Commons project, and parts of the Australian education sector (eg EdNA's services, AEShareNet in the VET sector, and Curriculum Corporation, SOCCI and TLF activities for schools). Collecting societies' experience in standardising low cost licences for some uses of works is also very relevant. New models for commons-based production will be sought, drawing on this experience.

Methods of creating greater access to publicly-funded research and creativity are an area of many possibilities. Public funding bodies could make grants conditional upon publication of results or works in ways guaranteeing public access, but unduly onerous conditions could stifle willingness to undertake funded research, and thus creativity. Possibilities here are equivalent to a range of statutory licences, with 'inducements' close to compulsion (contractual conditions of grant; availability of future grants etc), but these may be blended in complex ways with normal financial incentives (royalties etc) and non-financial incentives. This project can clarify these options and place them in their broader context.

Extension of the copyright term from 50 to 70 years after the life of the author (as required by the *Australia-US Free Trade Agreement*), will have a major effect on Australia's public domain, particularly over the next 20 years (when very few works will come into the public domain merely because of effluxion of time). Research is needed on what can be done to minimise undesirable effects, such as incentives to encourage these authors to 'leave' their works in the public domain (as if term extension had not happened), and development of licences to enable this (see the US Creative Commons 'Founders Licence' for something similar).

### **Legislation to enhance and protect the public domain?**

Although this research emphasises self-help, it will also need to consider whether such voluntary steps are likely to be sufficient, or whether legislative interventions to protect or enhance the commons will also be necessary. Proposals for such legislative changes are being made in other countries (particularly the USA), but there is a need to consider what is appropriate and possible in the different context provided by Australia's constitution, intellectual property laws, and treaty obligations. Examples of changes proposed elsewhere include Lessig's proposals for registration, marking and renewals of copyrights; shorter terms and/or only prospective extensions; and presumptions of statutory licences for 'unmarked' works (Lessig 2004). Australian proposals include limits on the effectiveness of contracts overriding statutory fair use rights (CLRC 2001).

### ***(5) Collecting societies using commons content (a complementary project)***

Separate from the 'Unlocking IP' project but complementary to it, a number of the project participants (AustLII, CyberLPC, MELCOE, AESL and iCommons Australia) are developing a research and development proposal with Australia's print medium collecting society, Copyright Agency Limited (CAL). CAL has a 'Coursepack' system which enables commercial publishers to make selections from works in which they control copyright (book chapters, paragraphs and even as fine-grained as paragraphs) to be assembled by academic users into printed student 'coursepacks' and licenced to academic institutions. The system currently involves the licensable works being identified by digital object identifiers (DOIs) held in a database by CAL, and then being transferred to CAL from a publisher's repository.

The proposed policy and technical mechanisms would enable materials subject to public rights (such as some AustLII primary legal materials, and works subject to some iCommons Australia or AESL licences), to be retrievable and incorporated in Coursepacks in similar ways, with guarantees that the conditions of the relevant public licences were respected. Students and academics would benefit from choice from a wider range of materials. The technical and policy challenges are both significant, and research funding is being sought for 2006. This would be a very practical example of cooperation between those representing the interests of both proprietary and public rights.



## Project outputs

Three main organising devices will be used to coordinate investigators inputs.

There will be a bi-annual '**Unlocking IP**' conference hosted by the CyberLPC, to provide not only an annual public stocktake of research by the project's investigators, but also the opportunity to involve other Australian and international researchers in informing the project and contributing to its goals. Project partners held in November 2004 a two day 'Unlocking IP' Conference at UNSW, the most extensive conference on this subject yet held in Australia. The next will be held in July 2006. Selected papers will be published in a special edition of a law journal following each year's conference. By project end a revised series of papers will be published in a book edited by project coordinators, in addition to normal academic publication. The project website will provide a full directory of all project-related publications wherever published.

**Specific reports** and other outputs planned with assistance of project staff may include a *Taxonomy of licence types* along the spectrum of public/private rights, with an analysis of their suitability for various applications and business models.; *Guides to the spectrum of licences (including plain English versions)*, with a supporting website, explaining public licenses for works and how to find and use them; publication of *new licence types* (in conjunction with Industry Partners) where needed (eg in relation to public legal documents; for legacies to the public domain); a report on *effects of term extension* on Australia's public domain and on possible responses including how copyright owners can be encouraged and facilitated to 'leave' work in the public domain. The project will also develop, on the AustLII platform, operating prototype(s) of *Australian Public Domain Registry/Depository* (or a federated functional equivalent), an *Australian Public Domain search facility*, and incentive mechanisms.

The project manager (Vaile) will facilitate **in-person and online discussion** by each particular sub-group of researchers and project staff on the various topics, and will organise the provision of research assistance. There will be two meetings per year of all available researchers, one to coincide with the annual conference, one mid-year. Research training is an important part of this project, as it involves both APAIs and research assistants who must understand the full dimensions of the project. APAIs will have short-term placements with appropriate Partner Investigators. A postgraduate course at UNSW Faculty of Law will explore all aspects of the new public rights in IP, taught cooperatively by a number of the researchers, and attended by APAIs and the research assistants, and other available researchers, as well as normal enrolled students.

## References

The literature on commons in digital information is now substantial, predominantly American, and including relatively little Australian research. The following are only references in the preceding text, plus selected relevant publications by CIs and Pis, and other key Australian publications.

- AESL 2005 - AShareNet Limited website at <<http://www.aesharenet.com.au/>>
- Benkler, Y 'Coase's Penguin, or Linux and the Nature of the Firm' (2002) 112 *Yale Law Journal* 369
- Benkler Y, 'The Political Economy of Commons', *Upgrade*, Vol. IV., No.3 June 2003
- Benkler, Y 'Commons-Based Strategies and the Problems of Patents', 305 *Science* 1110 (2004)
- Boyle J 'The Opposite of Property' *Law and Contemporary Problems* Winter 2003
- Bowrey, K *Law and Internet Cultures*, (Cambridge University Press, 2005)
- Bowrey, K "The ideal copyright framework for academic authors? A bounty to genius and learning," *Australian Academic and Research Libraries Journal*, Vol 32(4) 2002
- Bowrey K 'Who's Writing Copyright's History?', (1996) *EIPR* 18:6 pp322-329
- Contested Commons (2004) - Call for Proposals: Contested Commons/Trespassing Publics - A Conference on Inequalities, Conflicts and Intellectual Property - January 2005, New Delhi <http://www.sarai.net/>
- Copyright Law Review Committee 2001 *Copyright and Contract* (AGPS)
- Crisp, P (DoCITA) Guidelines for Management of Commonwealth Intellectual Property in the Field of Information Technology, 2000 (The IT IP Guidelines)
- Crisp P and Kearns P Legal and Regulatory Framework for Flexible Learning (report), ANTA, 2001
- Christie A, D'Aloisio, S, Gaita K, Howlett M, Webster M Analysis of the Legal Framework for Patent Ownership in Publicly Funded Research Institutions (IPRIA, 2004)
- Drahos P and Braithwaite J *Information Feudalism* Earthscan Publications 2002
- Ergas H, McKeough J and Stonier Review of Intellectual Property Legislation Under the Competition Principles Agreement Commonwealth of Australia, AGPS, Canberra 2000
- Gans J and Stern S Assessing Australia's Innovative Capacity in the 21st Century (IPRIA 2004)
- Geneva Declaration 2004 'Geneva Declaration on the Future of the World Intellectual Property Organization' <<http://www.cptech.org/ip/wipo/genevadeclaration.html>>
- Fitzgerald, B Bassett G 'Legal Issues Relating to Free and Open Source Software' (2001) 12 *JLIS* 159
- Fitzgerald, B "Commodifying and Transacting Informational Products Through Contractual Licences: The Challenge for Informational Constitutionalism" in CEF Rickett and GW Austin (eds), *Intellectual Property and the Common Law World*, Oxford, Hart Pub, 2000, 35.
- Fitzgerald B, Oi, I, Cochrane T, Bartlett T and Tzimas, V 'The iCommons Australia Experience' in "International Commons in the Digital Age" (forthcoming, 2004) (Éditions Romillat, France)
- Greenleaf, G 'IP, Phone Home: Privacy as Part of Copyright's Digital Commons, in Hong Kong and Australian law' in Lessig L *Hochelega Lectures 2002: The Innovation Commons* Sweet & Maxwell Asia, Hong Kong, 2003
- Greenleaf G, Chung P and Mowbray A 'A new home online for Commonwealth law: A proposal for a CommonLII' *Journal of Law Information and Technology* (JILT), 2004 (in publication)
- Oi, I and Fitzgerald P 'Free Culture: Cultivating the Creative Commons' (2004) *Media and Arts Law Review* (forthcoming)
- Oi, I 'American Copyright in Australian Cyberspace' (2001) 19 *Copyright Reporter* 105 (winner, 2001 O'Donnell Prize, The Australian Copyright Council)
- Special issue - *Law and Contemporary Problems* Winter/Spring 2003
- Lessig, L *Free Culture* Penguin, New York, 2004
- Rimmer, M. "The Dead Poets Society: The Copyright Term And The Public Domain", *First Monday*, June 2003, Vol. 8, No. 6
- Samuelson, P 'Mapping the Digital Public Domain: Threats and Opportunities' in *Law and Contemporary Problems* Winter/Spring 2003

## Appendix – Project Participant Details

### **Researchers**

The following alphabetic list comprises the intellectual property and IT law academics who are the Chief Investigators, together with (as indicated) two individual Partner Investigators, a consultant and a project manager :

- Dr Kathy **Bowrey**, University of New South Wales Faculty of Law - Author of *Law and internet Cultures*, Oxford (2005) and co-author of 'Intellectual Property. Commentary and Materials' (2<sup>nd</sup> Ed 2002, 3<sup>rd</sup> Ed, 2005); member AHRB Copyright Research Network (UK)
- Philip **Chung**, UTS Faculty of Law – Lecturer in Law and Executive Director, Australasian Legal Information Institute (AustLII) (UTS/UNSW) – developer of legal commons (AustLII/WorldLII), and supervisor of the computing aspects of the project
- Visiting Professor Roger **Clarke** (Project Consultant), Visiting Professor UNSW, e-commerce consultant and Chair, AEShareNet Limited
- Philip **Crisp** (Industry Partner), Special Counsel, Australian Government Solicitor and lead draftsman, AESL licence suite
- Professor James **Dalziel**, Director of the Macquarie E-Learning Centre of Excellence (MELCOE)
- Professor Brian **Fitzgerald**, Queensland University of Technology Faculty of Law - Joint Project Leader, iCommons Australia and co-author of two books on intellectual property.
- Professor Philip **Griffith**, University of Technology, Sydney Faculty of Law - co-author of the leading texts *Intellectual Property. Commentary and Materials* (2<sup>nd</sup> Ed 2002, 3<sup>rd</sup> Ed, 2005) and *Intellectual Property in Australia* Lexis Nexis Butterworths (3<sup>rd</sup> Ed 2004)
- Professor Graham **Greenleaf**, UNSW Faculty of Law - Co-Director Australasian Legal Information Institute (AustLII) and Baker & McKenzie Cyberspace Law and Policy Centre, developer of legal commons (AustLII/WorldLII)
- Ian **Oi** (Industry Partner), Special Counsel Blake Dawson Waldron, Joint Project Leader iCommons Australia and lead draftsman, iCommons Australia licences
- Bryan **Mercurio**, University of New South Wales Faculty of Law, Director of the International Trade and Development Project, Gilbert+Tobin Centre of Public Law, author and editor of books on international trade and electronic democracy
- Professor Jill **McKeough**, Dean, University of Technology Sydney Faculty of Law – Member of the Ergas Committee reviewing competition and IP in Australia, co-author of the leading texts *Intellectual Property. Commentary and Materials* (2<sup>nd</sup> Ed 2002, 3<sup>rd</sup> Ed, 2005) and *Intellectual Property in Australia* Lexis Nexis Butterworths (3<sup>rd</sup> Ed 2004)
- Professor Michael **Pendleton**, Chinese University Hong Kong Faculty of Law and formerly Murdoch University Faculty of Law - member of the Copyright Law Review Committee and Foundation Director, Asia Pacific Intellectual Property Law Institute
- Dr Matthew **Rimmer**, Australian National University Faculty of Law - senior lecturer in the Australian Centre for Intellectual Property in Agriculture
- David Vaile (Project Manager), Executive Director, Cyberspace Law and Policy Centre, University of New South Wales

## ***Industry Partners and Partner Investigators***

The project has six industry partners, each of which has strong business reasons for commitment to this project, and will actively collaborate in particular parts of the research relevant to their interests.

- *AEShareNet Limited* (AESL) is a non-profit company (established by the Australian Ministers of Education and Training), It operates a collaborative system (see AESL 2005) to streamline the licensing of intellectual property so that Australian learning materials are developed, shared and adapted efficiently, particularly in the Vocational Education and Training (VET) sector. AESL is developing a suite of licences involving various degrees of public rights, to encourage and enable such sharing and trading, and business models based on them. Carol Fripp, AESL General Manager, is a PI.
- *Baker & McKenzie* have been the lawyers acting for the Australian Vice-Chancellors Committee (AVCC) for some years and much of that work involved IP issues concerning educational licensing. As a law firm which also has a substantial involvement in IP and IT issues generally, plus this specific interest in the implications for tertiary education, it is particularly important to the firm that its IP lawyers are 'ahead of the game' in understanding the fundamental changes taking place in relation to the role of public rights in IP, and in implementing these new forms of licensing for its clients. Baker & McKenzie IP partner Ross McLean and senior associate Anne Flahvin are PIs.
- *Linux Australia* is an association which is one of the main industry organisations advocating Open Source software (mainly representing individual developers). It has a fundamental interest in better understanding the relationships between their particular licensing model (based on the General Public Licence (GPL)) and the broader public rights licences now arising (AESL licences, Creative Commons licences etc). They also need to investigate more fully aspects of copyright which have the capacity to promote or impede these models, by affecting implementation risk and business efficacy. Pia Smith, president of Linux Australia and consultant for software supplier Volante, is a PI.
- *IBM Australia Ltd* has made a very significant investment in the development of Open Source software and in adapting its business model to take advantage of Open Source and Open Standards. Aspects of IBM's business have a similar core interest in this project's Open Source activities as Linux Australia; it is also keen to explore the requirements for and obstacles to 'open standards', and to understand where open content may be relevant. It is an Industry Partner in that specific aspect of this project. 'Rusty' Russell, a senior developer with IBM's Linux Labs, is a PI.
- *Open Source Industry Australia Limited* is a non-profit organisation supporting software developers basing their business in part on open source software. OSIA Director Brendan Scott is a PI.
- *LAMS International Pty Ltd* is the developer of the Learning Activity Management System (LAMS), which has decided to release its software as open source under the GPL, and is also encouraging its users to make LAMS sequences available under open content licences (possibly iCommons Australia licences). This research is vital to their understanding how best to implement both these plans. Jonathan Clare, Chief Operating Officer, is a PI.