



29 July 2019

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## Submission on Distribution and Licensing Policy Framework

Creative Commons Australia (CC Au) thanks Standards Australia (SA) for the opportunity to contribute to this consultation. CC Au helps promote access to information by supporting Australian copyright owners to use free and open licensing to build a more equitable, accessible, and innovative world.

As Standards Australia undergoes this review, we believe that it is now time for a fundamental reorganisation of its distribution and licensing model. We suggest that **the important public interest role that Standards Australia plays can only be adequately fulfilled if standards are freely available to those who are required to comply with them**. We urge Standards Australia to consider an operating model that unties revenue raising activities from distribution. Instead, we suggest that there are important opportunities for enhanced public funding and industry subscription-based funding models that will help Standards Australia maintain its long term financial sustainability while also maximising the public benefit that it provides.

In summary, we believe that:

- Public standards should be freely available online, and any revenue raising distribution models should be limited to value added products and services
- The most appropriate licence for public standards is the Creative Commons Attribution licence (CC BY), which is the established default for public sector information
- There are many examples of successful, sustainable operating models that are not tied to licensing fees that Standards Australia could learn from to ensure its long term financial sustainability.

## The public interest requires that public standards are freely available

It is a fundamental requirement of the rule of law that people are able to gain access to the rules that they are expected to comply with. While Standards Australia is an independent organisation, the standards it promulgates form a fundamental part of the Australian legal landscape. These standards place obligations on Australian businesses to ensure products and services are safe, consistent and reliable. At a minimum, **Standards that are mandated by law should be freely accessible**.

The Western Australian Joint Standing Committee on Delegated Legislation summarised the issue when they reported on access to Australian standards incorporated into legislation. The Delegated Legislation Committee said:<sup>1</sup>

This Committee believes that it is much more important that the public is aware of what such a standard (law) says, not only because everyone is entitled to know the law as it applies to them but also so that compliance may be better achieved. Generally, laws made by parliaments and the executive through statutes and statutory instruments, or local laws made by local governments, are freely available to everyone through libraries and websites, but this is not the case with material such as the standards which are adopted in those instruments or local Laws.

The Committee went on to say that ‘restricting free access for members of the public to the laws that apply to them is contrary to the rule of law principles that apply to all democracies such as ours.’<sup>2</sup> A ‘user-pays’ model is not appropriate for mandatory standards – the WA Committee noted that people ‘are only users to the extent that they are forced to be users to access laws that should otherwise be freely available on rule of law principles.’<sup>3</sup>

We recommend that Standards Australia seize this ‘once-in-a-generation’ opportunity to revise its operating model to fundamentally change how it promotes access to Australian Standards. Because compliance with Standards is often mandatory, we strongly believe that Standards Australia should enable free online access to the general public. Finding a way to do this sustainably is a challenge that requires some bold leadership to address, but would go a long way to help Standards Australia promote reach, awareness, and use of its content in the Australian community.

## The most appropriate licence is CC BY

Creative Commons licences provide reliable, easy to use mechanisms to make information available while protecting the interests of copyright owners. The CC licences have gained widespread adoption over the last two decades, and are now the leading standard for promoting free access to public sector information.

Australian government guidelines promote a default application of CC licences (CC BY) for Public Sector Information:

PSI should be released free of charge under a Creative Commons ‘BY’ licence (the most liberal Creative Commons licence)...Use of more restrictive licensing arrangements for new material should be reserved for special circumstances only.<sup>4</sup>

We recommend that Standards Australia follow best practices in licensing Public Sector Information by adopting a CC BY licence. Creative Commons licences are well-understood by users, reducing costs in identifying what people may do with content made available. We recommend the more

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<sup>1</sup> See Report 84 of the Joint Standing Committee on Delegated Legislation – Access to Australian Standards Adopted in Delegated Legislation, p. i, [http://parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/416D0BF968BDB17048257FDB0009BEF9/\\$file/dg.asa.160616.rpf.084.xx.pdf](http://parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/416D0BF968BDB17048257FDB0009BEF9/$file/dg.asa.160616.rpf.084.xx.pdf).

<sup>2</sup> See Note 1.

<sup>3</sup> See Note 1, p. 141.

<sup>4</sup> Guidelines on licensing public sector information for Australian Government entities, <https://www.communications.gov.au/documents/guidelines-licensing-public-sector-information-australian-government-entities>.

permissive CC BY licence as the default, because it maximises public benefit by allowing others to distribute content in repackaged formats. However, we are happy to work with Standards Australia to help it navigate any questions about different licensing options if it chooses to make its content freely available online.

## Alternative operating models are practical and sustainable

Free and open licensing of standards would enable an alternative distribution model more closely aligned with public interest. While free public licensing would require Standards Australia to rethink its operating model, it is possible to develop strong, sustainable business models around free distribution.

Generally speaking, there are several different types of business models that can be used around the free distribution of content:

- Securing public funding where standards are mandated in legislation
- Charging for value-added goods and services
- Consortia-based models that seek commitments from main industry beneficiaries (including professional bodies) to cover the costs of developing and distributing standards.

Particularly where standards are incorporated into legislation, we believe that some or all of the costs of maintaining and distributing standards should be borne by the relevant government. However, for other standards, or in order to make up shortfalls, it is certainly possible for Standards Australia to develop a practical and sustainable model to fund its important public interest role. Perhaps the best analogy for private entities shifting to free publishing models come from the experiences of open access scholarly publishers. Over the last two decades, commercial publishers have undergone major revolutions in how they support the professional publication of information that is then made freely available to the public. Successful transitions include large scale initiatives that have involved groups of industry partners and professional bodies coming together to collectively fund the sustainable production of valuable but freely available information.<sup>5</sup> Other initiatives have been able to develop sustainable models using a range of options, including value-added goods and services, sponsorships, partnerships, and subsidies.<sup>6</sup> There is clear potential to learn from these examples and develop new revenue models to support the sustainable production and free distribution of high quality information goods across many different sectors.<sup>7</sup>

We look forward to an ongoing conversation with Standards Australia about these issues. We firmly believe that it is possible to develop a sustainable financial model that, at its core, prioritises the public interest in making Standards freely available to the public.

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<sup>5</sup> Peter Suber, *Open Access* (MIT Press, 2012).

<sup>6</sup> Ryan Crow, 'Income models for open access: an overview of current practice' (2009) [https://sparcopen.org/wp-content/uploads/2016/01/incomemodels\\_v1.pdf](https://sparcopen.org/wp-content/uploads/2016/01/incomemodels_v1.pdf)

<sup>7</sup> Nicolas Suzor, 'Free-Riding, Cooperation, and Peaceful Revolutions in Copyright' (2014) 28 *Harvard Journal of Law & Technology* 137, <http://jolt.law.harvard.edu/articles/pdf/v28/28HarvJLTech137.pdf>.