



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>).

Professor Brian Fitzgerald
Professor of Intellectual Property
and Innovation, QUT
bf.fitzgerald@qut.edu.au

Professor Anne Fitzgerald
QUT Law Faculty
am.fitzgerald@qut.edu.au

Kylie Pappalardo
Research Assistant, Law School
k.pappalardo@qut.edu.au

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).

Professor Anne Fitzgerald
QUT Law Faculty
am.fitzgerald@qut.edu.au

Professor Brian Fitzgerald
Professor of Intellectual Property and
Innovation, QUT
bf.fitzgerald@qut.edu.au

Kylie Pappalardo
Research Assistant, Law School
k.pappalardo@qut.edu.au

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.