

Paper for the International Council on Archives Congress, Brisbane, Australia, 2012

Towards an Archival Commons Licence: Managing access to the private domain in the digital universe.

Gavan McCarthy ¹

Summary

This paper proposes the establishment of a web-enabled Archival Commons Licence (AC) to meet the needs of the archives and the community more generally to streamline ethical web access to records held in archives, in particular born-digital and digitised materials. The Creative Commons Licence (CC) provides a useful model and a working example of the infrastructure needed to support such a service. However, Creative Commons was designed for materials that were always intended for the public domain. Archival materials are not, as a rule, created with publication in mind which means that for most of these materials the CC licence is not appropriate. At the heart of an Archival Commons licence is the recognition and codification of the obligations that a user should sign up to before getting access to archival materials. Experiences in Australia provide practical examples and a basis for reflection on similar proposals elsewhere. It appears to be achievable but its impact will be much greater if it can be coordinated internationally.

Content Warning



Figure 1a. 'A precursor to the Parental Advisory logo, introduced in 1990', from Wikipedia [1.]



Figure 1b. 'The current Parental Advisory logo, introduced in 2000', from Wikipedia [2.]

For the purpose of clearly illustrating a point in this paper there are references to sex and there is an image that contains nudity. Otherwise it is pretty OK. You have been warned.

Introduction

This paper proposes, to the international archival community, the establishment of a web-enabled Archival Commons Licence (AC) to meet the needs of the community to utilise records held in archives, in particular born-digital and digitised materials.

As Michael Piggott noted in the *Bulletin of the University of Melbourne Archives* in September 2000, 'One of the enduring complications and challenges in archival work is establishing and administering rules of access.' [3.]. In the twelve years since we have learned much more about this issue in relation to the networked digital domain and it is maybe that we are now ready to tackle this thorny issue as a community.

At the International Council on Archives congress in Brisbane, August 2012, the Committee on Best Practice and Standards presented for community acceptance an articulation of 'Principles for Access to Archives'. [4.] This generally well considered account of the challenges of access to materials held by archives is presented in the traditional language of the archives which is firmly based in the experiences of the pre-digital world. A scan of the

¹ Gavan McCarthy is a Senior Research Fellow and Director of the eScholarship Research Centre, The University of Melbourne. Email: gavanjm@unimelb.edu.a

document for the terms 'digital' and 'online' found no references. 'Web' and 'Internet' did however draw results but only in relation to publicising the work of an archive and its holdings, not as a mechanism for providing access to archival materials. In theory, principles of access to archives should apply no matter what technologies are employed, and this is broadly true for this document. The networked digital world has opened new possibilities and created new expectations from those wanting access to archival records but it can be argued that with these new expectations should come obligations that treat with respect the information held in archival records. The principles document only makes reference to the obligations of the archive and discusses the implied obligations that a user may take on in terms of 'restrictions' that are imposed by an archive. In Appendix A 'Sample Access Policy for an Archival Institution' two types of restrictions are suggested: 'General Restrictions' that apply to classes of materials, and 'Specific Restrictions' that may be issued by an entity with some enduring responsibility for the records. A fair assumption would be that the intricacies of negotiating the user's obligations would happen in a research or reading room, in person and in discussion with a reference archivist resulting in the signing of some form of access agreement and enabling the ethical use of the records. Is it possible to translate some or all of these processes into a form that would work in the web-services, networked digital world?

The Creative Commons Licence (CC) provides a useful model and a working example of the infrastructure needed to support such a service. [5.] However, Creative Commons was designed for materials that were always intended for the public domain, whether under an open access regime or under some level of constraint. What Creative Commons does do is clearly identify the obligations of the user in simple language and symbols that are supported by expression of the terms and conditions in legally acceptable language. Archival materials, as a rule, are not created with the intention of release to the public domain, which means, for most of these materials, the Creative Commons licence is neither suitable nor appropriate.

The 'Open' licence movement has made in-roads into the research domain with the emergence of the 'Open Data Commons' [6.] and the 'Science Commons' [7.], recognizing that Creative Commons does not address the specific needs of the open data movement or scientists. For the same reasons that Creative Commons does not apply to archival materials, both the Open Data Commons and the Science Commons licenses are not appropriate for archival materials in that they make an assumption of the intent of publication on the part of the creator.

The term, 'commons', is important in this context as there are two readings worth consideration. A commons could generally be regarded as place where people can go without inhibition but where actions and activities are sanctioned by cultural norms. It could be synonymous with the 'public domain'. It is often a place for a market where things can be traded, including information. In the digital commons it seems to have become a place where information objects are placed with labels that prescribe the cultural norms of use. As indicated above, the principles of access to archives would suggest that the commons is a good place for information about records and about how to access them but not really appropriate for the records themselves.

Governments around the world have also embraced the ideal of openness and making much more information widely available to the citizenry and in Australia this led to the establishment in 2011 of 'AusGOAL' – the Australian Governments Open Access and Licensing Framework. [8.] While AusGOAL focuses on data and government information that can be published, that is it can be put directly into the public domain, it acknowledges that there may be

information resources that can only be made available under more restrictive licensing conditions. For that purpose they provide a restrictive license template - see Figure 2. The template is in the form of a legal agreement with the boilerplate itself covering 30 sections of legal clauses, a schedule pro forma comprising Parts A through to O, with the whole document extending through to 31 pages. It was not created as a generic tool but as a model for bespoke agreements. This legal fabric appears to be far in excess of the conditions, assumptions and cultural norms either explicit or implicit in the Principles of Access to Archives document.



Figure 2. The general introduction to the AusGOAL Restrictive Licence Template [8.]

In this paper two examples illustrate the issues surrounding the access to archival materials in the networked digital environment. The first is from a family records project from 2004 for which I have full responsibility. I became involved in assisting in the preservation of this collection because of its relevance to the history of Australian science. It is both an example of the problem we are dealing with but also it gives us insight into why the issues may or may not become problems. The second example is from an archival digitisation project run by Professor Richard Maltby at Flinders University, South Australia relating to the records of Motion Picture Association of America, 1922-1939.

Example 1 – The Brown Family Collection -What not to do but also why it has not been a problem

In September 2000, Richard Brown contacted the Australian Science and Technology Heritage Centre (now the eScholarship Research Centre at the University of Melbourne) about records relating to his father [Ian Brown (1917-1987), CSIRO Chemist] , and also to his grandparents, Gilbert and Marie Brown. The records were surveyed in Richard Brown's home in December 2000 and transferred to the Centre where they were accessioned, re-boxed and over the next two years described at inventory level in some detail. In August and September 2002, the collection comprising 72 inventory items and occupying 1.74 linear metres of shelf space was digitally imaged in its entirety with the specific intention of broadening access via web accessibility. This was the first time we had attempted such an exercise and were most excited to experiment with this transformative technology. An HTML guide to the collection was published in 2004 with links from each inventory description to the full set of images of the records - see Figure 3. At the time there was discussion within the staff as to the ethical issues associated with making the images of records readily available to the whole world via the web, thus circumventing the traditional methods of archival mediation that happens in a reading room. The nature of some of the content further challenged this approach and raised the question of whether we should engage in some sort of self-imposed censorship. However, our commitment to open scholarship

and the critical importance of both physical and intellectual context convinced us to proceed with the experiment as planned – that is we would make all the records available online.



Figure 3, The top of the title page to *The Brown Family Guide to Records* published by the Australian Science and Technology Heritage Centre in 2004. [9.]

Item 1 from Series 3 of the collection provides an illustrative example of records that maybe easily de-contextualised in the networked, indexed, digitised domain. The example refers to records that make explicit references to sex (albeit in a fairly clinical way) within a context of a file that captures more ordinary aspects of family life in the first half of the Twentieth Century - see Figure 4.

Inventory Listing

3-1 Photographs, Letters and Lectures

[Image >>](#)

Unlabelled envelope containing: four typed pages with annotation, inscribed 'Sex Instruction for Recruits. Lecture I. The Physiology of Sex' by Marie Brown; Gilbert Brown's pocket diary, 1935; cloth badge, inscribed 'Fiftieth Anniversary Reunion', depicts a kangaroo, boomerang and the Scout emblem; five typed pages with annotation, inscribed 'Sex Instruction for Recruits. Lecture II. The Social and Psychological Aspects of Sex' by Marie Brown; news clipping, 'A Monument to Human Love is Scotland's Sweetheart Abbey', undated; publication, 'Attenborough, Chilwell and Toton: then and now' by Robert Mellore, Nottingham, 1919, inscribed 'Marie Brown lived in Attenborough'; empty envelope addressed to Dr and Mrs Ian Brown, inscribed 'Photos of Kris in London'; yellow Kodak photo envelope, containing single photo, unlabelled; negative of a woman and two children; three black and white photographs and a postcard; three page hand-written letter from Marie Brown, addressed to 'My Dear Kids', 1949; fifteen photographs of Gilbert, Marie and Ian Brown and members of their families, some labelled, c1900-c1940; copies of correspondence between Ian Brown and Kelly, Luft, Stanley & Ashton, Advocates & Notaries, in regard to Caroline Gell, deceased, also hand-written copies of family tree; and, mounted black and white photograph, inscribed on back 'Arthur Hebry'.

Creator [Gilbert Brown](#)
Date range c. 1900 - 1949 Quantity 2 cm, 1 file
Formats General Correspondence, News Clippings, Loose Notes, Loose Photographic Prints, Mounted Photographic Prints and Diaries
Inventory Identifier BROW00010 Box Number 1 Series [3](#)

Figure 4, Inventory description for item 3-1 (BROW00010) from *The Brown Family Guide to Records*.

Marie Brown graduated MB BS from the Royal Free Medical School in London in 1907. In 1913 she undertook a diploma in Public Health at Sheffield University, a subject which she would remain interested in throughout her career. She migrated to Australia in 1914, marrying Dr Gilbert Brown on the day of her arrival in Adelaide in November, and then joined him in his practice in Snowtown, South Australia. She was a strong advocate of sex education, in the tradition of Marie Stopes, as an issue of importance for the Australian troops, as this annotated typescript of a lecture 'Sex Instruction for Recruits' from Item 3-1 exemplifies. Figure 5 shows a section of that document within the context of the records image viewer that was accessed via the '[Image >>](#)' hyperlink shown in Figure 4. The URL for this web page,

which is both persistent and citable, is

http://www.austehc.unimelb.edu.au/guides/brow/image_viewer.htm?BROW00010,194,2,S,80. The image is located in a subdirectory on the web server where the HTML guide is located at `images\BROW00010\small\BROW00010_00002_S.JPG`. The Image Viewer uses Javascript code to locate the relevant metadata and creates the relevant pages as required by the user.

The Brown Family Guide to Records

Item: BROW00010

Copyright of the Australian Science and Technology Heritage Centre

To print this page you may need to select landscape paper orientation for better results.

Zoom % 80

☒ Read

☐ Enlarge

☐ Custom Zoom

<-- Image 2 of 194

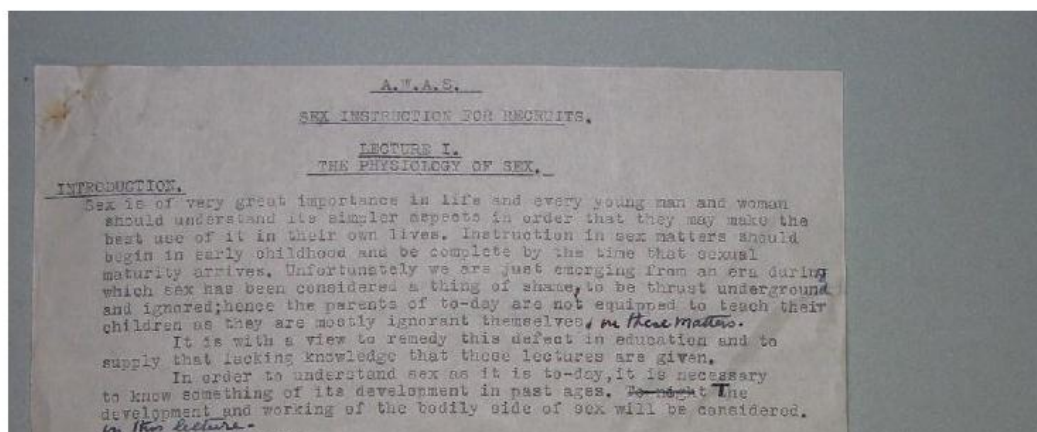


Figure 5, Image 2 of records from Item 3-1 from *The Brown Family Guide to Records*

A general web user can make a copy of the image for local use from the Image Viewer but they cannot access the image directly nor can they cite the image outside of the context of the Guide. In this edition of the Guide no reference is made at all to issues of copyright, moral rights, restrictions or common archival usage norms that would apply to accessing and using these materials – an oversight that was addressed in later guides to collections that have been published by the Centre.

The disjunction between the information about the records (the Guide) and the records themselves is neatly illustrated in the two examples that follow. If 'Sex Instruction for Recruits' is typed into a well known search engine the top hit is, despite there being over 9 million possible hits, the entry for item 3-1 in *The Brown Family Guide to Records*, as is shown in Figure 6. There may well be a doctorate in studying this finding as it stands.



Figure 6, Search results for 'Sex Instruction for Recruits' from Google conducted 15 July 2012.

A couple of points worth noting are that the image of the record was not found by the search engine but the metadata describing the record was and was highly ranked despite the text being a relatively small part of the description. A web user wanting access to the records would have to do a bit of extra work to realise that the material was available online and they would have to work through the materials seeking what may be of interest to them. In much the same way a researcher would work through a physical file. In utilising this disjunction between the descriptive metadata and the records it was possible to reduce discoverability while technically not restricting access to the dedicated researcher.

In Series 4 of the same collection is the description of an item with minimal detail – see Figure 7.

4-3 Caroline (Carrie) Haase - File 3

[Image >>](#)

File 3 contains: one large post card album.

Creator [Ian Brown Family](#)

Quantity 7 cm, 1 file Inventory Identifier BROW00027 Box Number 1 Series [4](#)

Figure 7, Inventory description for item 4-3 (BROW00027) from *The Brown Family Guide to Records*.

The post card album contains publically purchased but unsent post cards from England and Egypt. The former are very sedate while the latter tend towards the racy end of the spectrum as is illustrated in Figure 8. It was the web accessibility of these images that created some concern amongst the Centre staff in 2004.

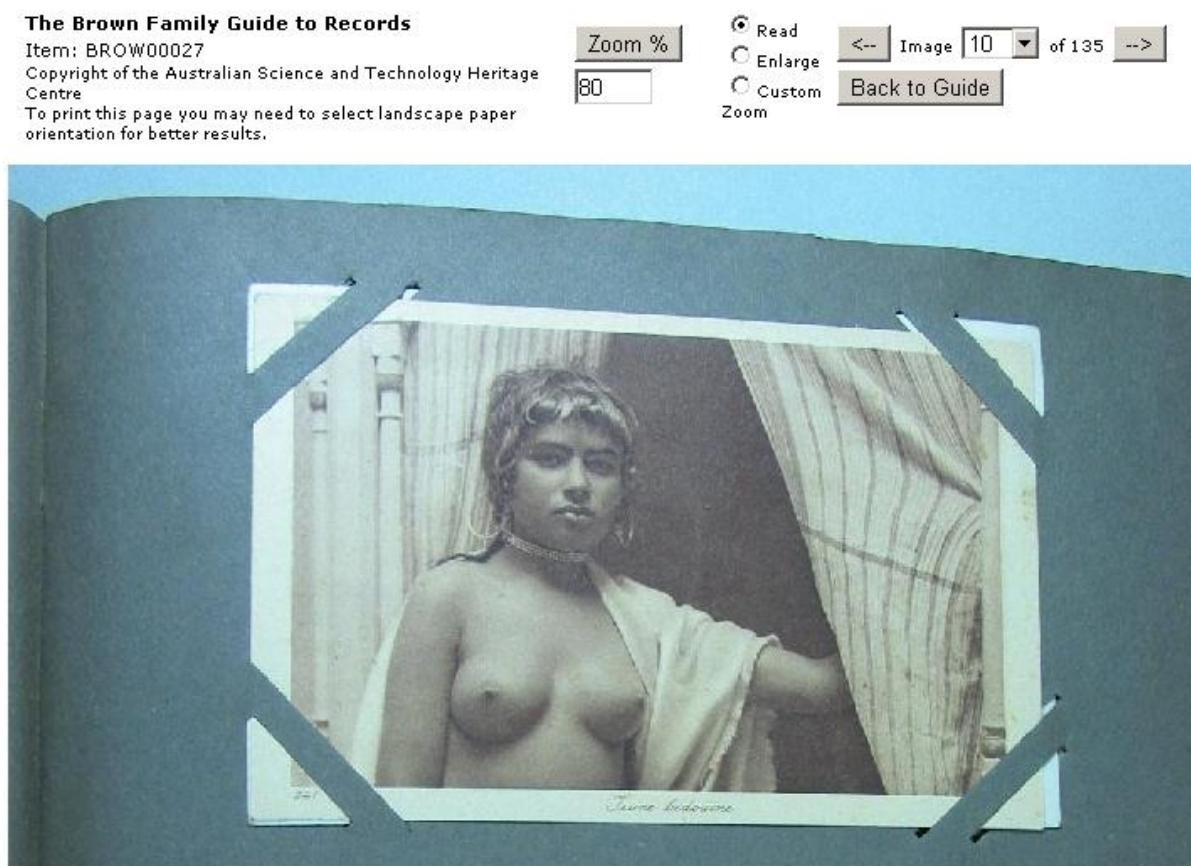


Figure 8, Image 10 of records from Item 4-3 from *The Brown Family Guide to Records*

By not including in the description of the item, for example: 'Contains images of English country houses and naked Egyptian girls from the early Twentieth Century', we seem to have effectively limited access and use of the materials to 'bone fide' scholars. That is those people who were already investing time and effort to explore the collection in search of evidence to support their research. In order to test the public discoverability of images in this series a Google image search was undertaken on 15 July 2012 using the title of File 2. The results of the search are shown in Figure 9. For various technical reasons the search engine could not locate the images of the records, only images embedded in the HTML guide. This fortuitous exclusion of the images from the search engine has acted as a further brake on unintended exploitation of the archival content that may have caused problems for both the publisher of the guide, the custodian of the collection and the Brown family.

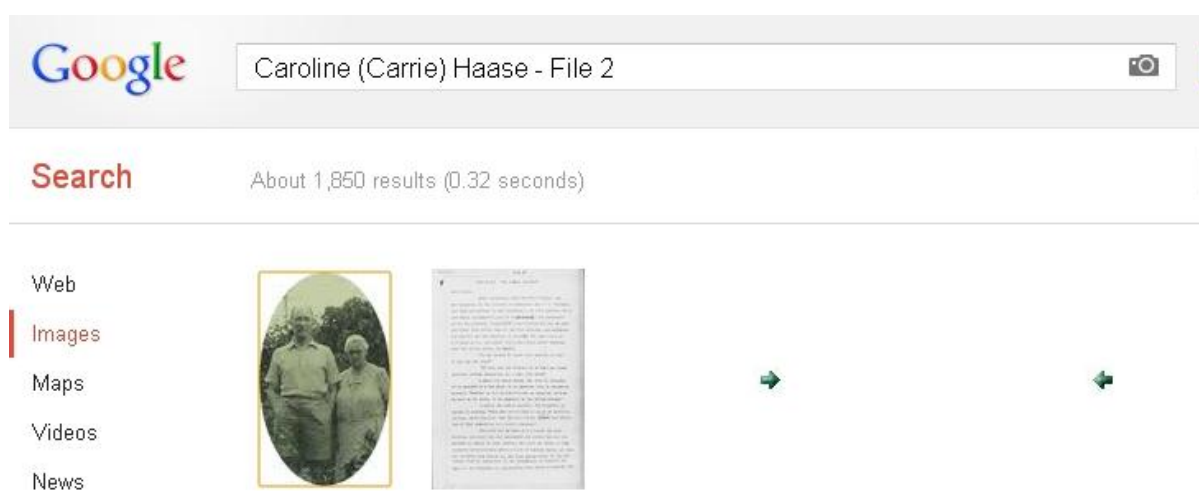


Figure 9, Image Search results for 'Caroline (Carrie) Haase – File 2' from Google conducted 15 July 2012.

In the twelve years since the publication of the guide there have been no complaints or indications of any sort that there has been any abuse of the materials. Although we were aware in 2004 that we did not have the ideal means of delivering archival content via the web we seem to have delivered a service that worked reasonably responsibly within the broader technological context of the period. Given the rapidity of technological change, the growing sophistication of the search engines and the ability to mash data from multiple source I would contend that we have been lucky.

Example 2 – The Digital Archives of the Motion Picture Producers and Distributors of America – Introducing Online Registration

Professor Richard Maltby, from Flinders University South Australia and a scholar of the motion picture industry, in particular in the United States of America, located in his field work the one microfilmed copy of the destroyed records of the Motion Picture Association of America 1922-1939. He promptly arranged for a duplicate to be made (12 reels at \$15 per reel) and returned with this copy to Australia.



Figure 10, MPPDA Digital Archive Header, located at <http://mppda.flinders.edu.au>, accessed 27 July 2012

He subsequently discovered that about half of the original reels were later lost to misadventure. Richard then set about describing the records and creating digitised copies to enhance the usability of the materials. [10.] He was also keen to publish the results of his scholarly archival documentation on the web but realised that the complexity and multidimensional copyrights, moral rights and other intellectual property rights were a major inhibitor to the ethical public release of the records themselves. His solution was to publish the guide, which was the creative work of his research team but to require researchers to register to get access to digitised records – see Figures 11 and 12. He did allow users to browse low resolution copies of the images. Whether intentional or not, what they had done was include the low resolution (digitally redacted) copies as part of the publishable descriptive metadata and, hopefully, not in conflict with any of the rights mentioned above.



Figure 11, MPPDA Digital Archive copyright notice

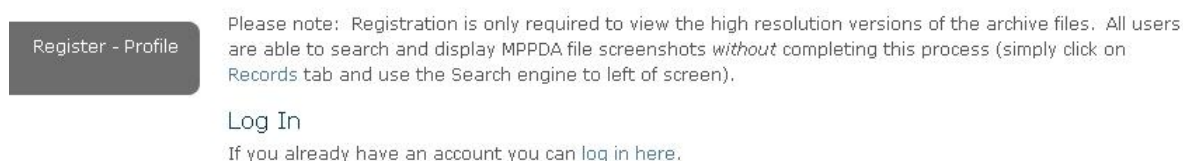


Figure 12, MPPDA Digital Archive user registration notice

The information required to register is: First Name; Surname; Email; Password; Confirm Password; Institution; Position [Professor | Lecturer | Researcher | Library Staff | Staff | Student | Other]; Please detail your Research Interest; Are you working on a Research Project intended for publication, or as part of a course of study?; How did you find the MPPDA Digital Archive?; and a 'Re-Captcha' box to ensure human only registration. In testing the registration process an application was submitted on 4.25pm on 23 July 2012 and a reply email received by 4.32pm confirming registration.

Register - Profile

Thank you for registering! Once your account is approved you will be sent a confirmation email.

Figure 13, MPPDA Digital Archive user registration thank you notice

The speed of turnaround would indicate that this was entirely a machine process without human mediation or judgement. The process endeavoured to prove that the user was a person and that they had a functioning email address. At this point in the registration process no particular guidance is given as to the obligations the researcher may or may not have signed up to in the process of registering and being given access. It seems to be a buyer beware model. The publisher has a record of the human at the end of the registration process but there did not appear to be a human evaluation process as to user 'bona fides' (the concept of good faith). The site does, however, provide very clear information on how to cite or reference materials used in scholarly works.

Discussion

The argument for an Archival Commons licence combined with an access management service is twofold. Firstly, for a range of reasons it is not appropriate or indeed ethical to make archival materials available via the web without the user being aware of the obligations they are accepting. And secondly, it is not practical for bespoke registration systems to be built for every guide to archives that is published on the web that provides a gateway to digitised versions of the records. The development of ubiquitous web services technologies, for example the tools, functions and systems that underpin the social media web world, as well as services such as Trove at the National Library of Australia, provide the possibility of building web services access management gateways. These services could provide the ethical and responsible channels through which researchers and general users can gain access to records, at anytime and anywhere they have Internet access.

Conceptually the requirements are quite straightforward. There are a number of working assumptions:

- That the access management service is separate, both from the public discovery gateway (the guide or public database) and the place where the sets of digitised images are stored;
- That there needs to be standardised metadata documenting the conditions of access and user obligations associated with every set of digitised materials to be made available via the service; and that this metadata needs to be available to the service;
- That the access management service can: register users; verify they are competent persons; collect information about them and the materials they access; and, supply that information to the requesting service (the archive) in a standardised form; and
- That an Archival Commons licence framework would provide a standardised set of simply stated obligations and responsibilities, for the user and the archive, based on the concept of general classes of access as recommended in the ICA Principles for Access to Archives, including the ability to set specific requirements in special cases.

Essentially the access management service would provide a roundtrip process (data in; perform functions based on the data; data out). Although there are many more details to be worked through the essence of the service is relatively straightforward. The productivity gains, both for users and archives, will come from the standardised classes in the Archival Commons licence. Gut feeling says that these classes could cover the majority of cases and that in a very small number of cases there will need to be direct human mediation to establish bone fides and perhaps a signed legal agreement. There will always be cases where access can only be provided to an individual in physically secure premises, for example criminal records for people still alive.

Conclusion

This paper has explored two Australian case studies that have involved the provision of access to digitised archival materials via the web. It is assumed that archivists could cite similar developments and experiences in other jurisdictions. This paper has not attempted to tackle the detail of access to materials of significant cultural complexity as proposed by projects such as Mukurtu, but assumes that a mechanism like an Archival Commons licence and an access management service could also be utilised in such cases. It appears to be achievable but its impact could be much greater if it is coordinated internationally, specifically by the International Council on Archives as the next phase of its Principle of Access to Archives project. At the heart of the Archival Commons is a conceptual move away from 'restrictions' being the guiding principle, to the recognition and codification of obligations and responsibilities that a user should sign up to before getting access to archival materials.

-oOo-

References

- [1.] Wikipedia Entry, File:Parental Advistory (sic) Logo (old).png, located at [http://en.wikipedia.org/wiki/File:Parental_Advistory_Logo_\(old\).png](http://en.wikipedia.org/wiki/File:Parental_Advistory_Logo_(old).png)
- [2.] Wikipedia Entry, File:Parental Advisory label.svg, located at http://en.wikipedia.org/wiki/File:Parental_Advisory_label.svg
- [3.] Michael Piggott, 'Openness and Privacy', *Bulletin of the University of Melbourne Archives*, The University of Melbourne, No. 6, September 2000, page 1]
- [4.] International Council on Archives, *Principles for Access to Archives: give your opinion now!*, located at: <http://www.ica.org/9400/news-events/principles-for-acces-to-archives-give-your-opinon-now.html>
- [5.] *Creation Commons Australia*, located at <http://creativecommons.org.au/>
- [6.] *Open Data Commons: Legal tools for open data*, located at <http://opendatacommons.org>
- [7.] *Science Commons*, located at <http://sciencecommons.org>
- [8.] AusGOAL, located at <http://www.ausgoal.gov.au>
- [9.] Ailie Smith and Gavan McCarthy, *The Brown Family Guide to Records*, Australian Science and Technology Heritage Centre, The University of Melbourne on April 2004, last updated 8 November 2008, HTML edition located at <http://www.austehc.unimelb.edu.au/guides/brow/brown.htm>
- [10.] *MPPDA Digital Archive: Documents from the Motion Picture Association of America 1922-1939*, Flinders University, South Australia, 2012, located at <http://mppda.flinders.edu.au/>