

IP Australia

Submission to Department of the Prime Minister and Cabinet, *Data Sharing and Release Legislative Reforms Discussion Paper*

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Introduction

IP Australia welcomes the opportunity to provide comments on the *Data Sharing and Release Legislative Reforms Discussion Paper*. This submission provides some information on open release of data by IP Australia and provides comments on some specific items in the discussion paper.

About IP Australia

IP Australia is the Australian Government agency that administers intellectual property (IP) rights and legislation relating to patents, trade marks, designs and plant breeder's rights. As well as granting exclusive rights under the statutes it administers, IP Australia works closely with the Department of Industry, Innovation and Science to advise the Australian Government on IP policy; provides IP information and education services to business and the broader community to increase understanding of the important role IP plays in innovation; regulates the IP attorney profession; and contributes to bilateral and multilateral negotiations and development cooperation programs to promote a more harmonised global IP system.

IP Australia works with professional bodies, business groups and other government agencies and holds regular meetings with our national stakeholder groups to ensure the continuing effectiveness and ongoing improvement of Australia's IP system.

Current Open Data Release by IP Australia

IP Australia currently has three main categories of open data release, which can be broadly described as

- traditional publication (as legislatively required),
- technologically-enabled publication, and
- linked data sets.

IP Australia will continue to release open data as required and authorised by the current legislation to enable research, policy development and management of IP rights. The opportunity to improve sharing of data in a controlled manner for public benefit is welcome as an option when open release is not possible.

Open Data Release – legislatively required

IP Australia administers several pieces of legislation relating to the patents, trade marks, designs, and plant breeder's IP rights. The legislation requires or authorises IP Australia to collect, and make available to the public, information about IP rights. In addition, IP Australia's privacy notices detail the personal information that is collected, used and disclosed (including published on the Internet) in relation to those IP rights.

Information, including personal information, relating to IP rights data is required to be disclosed by IP right legislation so that IP right applications can be challenged based on eligibility or validity, and/or so that entities can contact the IP right owner to negotiate licencing, collaboration, and other business ventures. In addition, it allows the IP right owner to take legal action for any infringements that occurred from the published date of the IP right application.

Open Data Release – technologically enabled

In addition to the publication of the rights under the relevant legislation, IP Australia also:

- hosts searchable IP right databases. For example, in 2008 consolidated patent data from the inception of the Australian Patent Office in 1904 was made available online in one search system – AusPat.
- produces and disseminates bulk data products containing details of IP rights. Bulk data refers to a variety of data products provided by IP Australia that suit the requirements of large companies, research organisations, libraries, and international IP offices.
- hosts open datasets in a cloud environment on the IP Data Platform, where users can access and analyse IP Australia and other IP office open data.

Open Data Release – linked data sets

The IP Government Open Data (IPGOD) on data.gov.au is the first complete and open national intellectual property register that links IP rights to ABNs (Australian Business Numbers) in a simple data format. The data includes information about IP rights applications and can match individual firms along with information about their size, technology and geographic location. The data is highly detailed, including information on each aspect of the application process from application through to granting of IP rights.

Comments on the Discussion Paper

IP Australia supports the intention to safely use valuable public sector data holdings to improve policy, deliver better services for public benefit.

1.1. Interactions with existing mechanisms

IP Australia supports the proposal that the legislation will not compel sharing where secrecy provisions exist, and notes that the National Data Commissioner will not be able to overturn decisions to share or not to share, and will instead focus on ensuring that data sharing is done safely.

IP Australia considers that IP Rights legislation and associated Regulations should be included on the list of secrecy provisions to be exempt from override that is being developed for public consultation in conjunction with the exposure draft of the legislation. Without inclusion Australia may be in breach of our international obligations under the Patent Cooperation Treaty (PCT).

Further, clear approaches to managing changes in the status of previously shared data need to be developed. For example, the Data Sharing and Release legislation should permit data that was previously shared to be amended should some data later be identified as secret or need to be suppressed.

1.2. Release of personal information

It is noted that the Data Sharing and Release Legislation will never authorise the release of personal information as open data. Personal information relating to IP right applicants are required to be disclosed by the relevant legislation. The Data Sharing and Release legislation should not inhibit this requirement.

1.3. Sharing data for public benefit - Government service delivery

IP Australia provides a portal where people who interact with us directly can update their details and the updated information is used automatically when they next apply for a new IP Right. However, we are legally restricted in using this to update the details on their existing IP Rights unless they explicitly request this on a Right by Right basis. A proposed solution to this is to ask if users of the portal wish all of their existing rights to be updated with the new details, but this is not available at the moment due to technical and legal constraints. These existing legislative restrictions should be considered in general in the Data Sharing and Release legislation in order to reuse data that is collected to improve government services.

1.4. Consultation on the proposed Sensitive Data Code

IP Australia holds significant commercial-in-confidence data and as such is interested in the specific provisions in the development of the Sensitive Data Code that would cover any additional limitations for categories of sensitive data such as commercial-in-confidence and legally-privileged data.

The associated breach notification scheme that is being considered for this type of data in addition to the existing scheme for personal information under the Privacy Act 1988 is also of particular interest.

1.5. Reporting requirements

As it is likely that the National Data Commissioner will require information from agencies on the number of Data Sharing Agreements entered into, information on unsuccessful requests for data and outcomes from greater data sharing, IP Australia would value additional information on the form this reporting will take. It is important for the smooth functioning of data services that the reporting overheads not be onerous. A simple way to track data requests and resulting Data Sharing Agreements or the decision not to enter into an agreement is desirable.

Clarity on the breadth of coverage would also be welcome, and we would suggest that domestic sharing requests and perhaps government-to-government requests be the focus of the reporting scheme. IP Australia provides a lot of data to international bodies, and reporting against every request from an international source could be an administrative burden with little value to Australian stakeholders.

1.6. Accreditation for data users and data service providers

Accreditation of users and data service providers is desirable but should not impact on the existing arrangements in place, for example joint research projects or data release.

It is also not clear if Data Custodians need to be accredited when sharing data themselves and not using a Data Service Provider.

The role of the Data Custodian will be critical in the success of data sharing.

Achieving the benefits listed in section 1.3 of the Discussion Paper will perhaps require more maturity in systems and data management practices than currently exists. Therefore, support arrangements for Agencies need to be in place to build data literacy and awareness of the Data Sharing Principles. As many examples and as much guidance as possible in conjunction with the legislation will enable Agencies to develop and maintain good data management, data skills and strong leadership so they can participate well in making the best possible use of public sector data.

