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Legal Deposit  
Content Regulation Branch  
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## **Submission in response to the 2007 Discussion Paper on the Extension of Legal Deposit**

Google welcomes the opportunity to provide a submission in response to the 2007 Discussion Paper on the Extension of Legal Deposit (Discussion Paper). Google would like to thank the Department of Broadband, Communications and the Digital Economy (DBCDE) and the Attorney General's Department (AGD) for extending the time for lodgment of this submission.

### ***About Google***

Google Australia Pty Limited provides marketing and technical support and representation in Australia for Google corporations providing the Google family of services globally. These service provider entities relevantly include Google Inc and Google Ireland Limited. We use Google in this submission to refer to Google Inc and its subsidiaries, including Google Australia Pty Limited.

Google initially became familiar to most Internet users as the provider of the Google search engine and subsequently as the provider of email, instant messaging and specialist search and information services, including Google News, Google Finance and Google Maps. More recently Google (by acquisition of YouTube) became the provider of the well-known YouTube service. YouTube is a platform for people to watch and share original videos through a Web experience. Google is also the provider of Picasa. Picasa allows users to manage, edit and share their photographs online.

In light of the scope of Google's operations, this submission is limited to the proposed extension of the legal deposit scheme to the collection of *internet material*, including:

- audiovisual material posted on YouTube; and
- photographs posted on Picasa.

### ***Summary of submission***

Google supports the policy underpinning the legal deposit regime in Australia – the development of a national collection of culturally significant material, including internet material. However, Google submits that extending the existing scheme to internet material would be unworkable for both internet content hosts and collecting institutions. Instead, Google submits that the Government should introduce a specific exception into the *Copyright Act 1968* (Act) to enable collecting institutions to collect internet material for the purposes of preserving national heritage and making this



material available to the public for research or study, if this activity is not considered to be adequately captured by the existing section 200AB of the Act.

***The existing legal deposit scheme and internet material***

The existing legal deposit scheme, contained in the *Copyright Act 1968* (Cth) (the Act) requires Australian publishers of 'library material' to deposit copies of that material with the National Library of Australia (NLA). 'Library material' includes all paper-based publications, books, pamphlets, sheet music and periodicals that are published in Australia. It does not extend to internet material. Importantly, the existing legal deposit scheme is based on an obligation of publishers to deposit library material that is 'published in Australia' with the NLA.

A key feature of many of the services offered by Google is that they are user generated content services offered as on-sites – that is, enabling content to be uploaded by users without human intervention or intermediation by the content host. Therefore, the uploaded content is spontaneously shared, becoming immediately globally available.

Google submits that an extension of the existing legal deposit scheme to internet material would be problematic for two key reasons:

1. The volume of material potentially covered by the legal deposit scheme
2. The practical and legal realities of user generated content sites.

The exponential growth of popular internet services such as YouTube and Picassa has led to vast amounts of content being uploaded to the Google services on a daily basis. By way of example, *every minute*, approximately eight hours worth of content is uploaded to YouTube.

To collect all of this material would place an unworkable burden on collecting institutions in terms of storing and managing the material once it has been collected. In any event, as content is uploaded to the services by users, it is doubtful that Google itself publishes that material. In light of this, and the amount of content being uploaded by users, Google submits it would not be appropriate to place an obligation on Google to monitor the vast amounts of content available on its sites in order to select and deposit material of cultural significance with a collecting institution.

A further difficulty in the context of websites that host user generated content is that the website provider will rarely, if ever, be the owner of the copyright in the content posted on the site by site users. Further, the internet content host will not ordinarily have the legal right to select and deposit content with a collecting institution, or to grant permission to collecting institutions to copy the content posted to the site by users.



### ***The current framework for the collection of internet material***

The NLA, together with ScreenSound and other collecting institutions, operates PANDORA. PANDORA is Australia's Web Archive. It:

*'is a growing collection of copies of Australian online publications, established initially by the National Library of Australia in 1996, and now built in collaboration with nine other Australian libraries and other cultural collecting organizations. ... The purpose of the PANDORA Archive is to collect and provide long-term access to selected online publications and web sites that are about Australia, are by an Australian author on a subject of social, political, cultural, religious, scientific or economic significance and relevance to Australia, or are by an Australian author of recognised authority and make a contribution to international knowledge.'*<sup>1</sup>

As this extract illustrates, PANDORA effectively achieves the purpose of a legal deposit scheme – it collects and retains copies of Australian culturally significant internet material.

Presently, as the legal deposit scheme does not extend to internet material, the PANDORA collecting institutions seek the permission of web publishers before copying material. As mentioned above, in the specific context of user generated content websites, the internet content host is not ordinarily in the legal position to be able to grant such permissions.

To facilitate the collection of culturally significant internet material without the need to seek the permission of copyright owners, Google submits that an exception should be introduced into the Act to allow collecting institutions to use systems such as PANDORA to copy internet material for legal deposit purposes. For the reasons outlined above, Google submits that this would be a more appropriate way of achieving the public policy objective of extending the legal deposit scheme to the internet, without imposing significant burdens on both collecting institutions and internet content hosts.

### ***A new exception to better facilitate the collection of culturally significant internet material***

The development of a collection of Australian culturally significant material is of great public importance. This is demonstrated by the existence of the legal deposit scheme and the endeavours to ensure that legal deposit serves 'its purpose of building a broad national collection of culturally significant material'.<sup>2</sup>

Google submits that introducing a new exception into the Act (to the extent these activities are not already permitted by section 200AB) to allow collecting institutions to copy Australian culturally significant internet material for the purposes of creating

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<sup>1</sup> PANDORA website: <http://pandora.nla.gov.au/about.html>

<sup>2</sup> Paragraph 3 of the Discussion Paper



an archive of material (such as PANDORA) would achieve the objectives of legal deposit in a way that:

- supports the existing initiatives of collecting institutions; and
- does not place an unreasonable burden on collecting institutions in terms of their collection, storage and management of material.

New exceptions must meet the requirements of what is commonly referred to as the 'three step test'. These requirements are set out in international treaties to which Australia is a party, including the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

The three requirements are that any new exception must be confined:

- to certain special cases,
- which do not conflict with a normal exploitation of the work, and
- do not unreasonably prejudice the legitimate interests of the right holder.

Google believes that a new exception to facilitate the collection of Australian culturally significant material by collecting institutions would:

- be clearly defined and narrow in scope and reach,
- not conflict with existing or potential new uses of copyright material; and
- not cause disproportionate prejudice to the economic and personal interests of copyright owners.

As noted above, there is great public interest in facilitating the collection of Australian culturally significant material. Allowing limited copying for this purpose would not unreasonably prejudice the interests of the copyright owners.

Google submits that a new exception might have the following elements:

- allowing the copying of works and other subject matter made available on the internet (material);
- by or on behalf of a library or archive;
- where the material to be copied is of Australian cultural significance; and
- where the copying is for the purpose of developing a collection of Australian culturally significant material (to which access could be granted to the public for the purposes of research or study).

Google would be pleased to provide further comments about any issues raised in this submission. If you would like to discuss these issues please contact me on the details below.

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