



COMPUTERS & LAW

Journal for the Australian and New Zealand Societies

for Computers and the Law

Editor: Kylie Howard & Allison Manvell

ISSN 08117225

Number: 68

June 2007

A Step on the Way: toward a more consistent ICT contract across all Australian governments

Mike Pym

Mike Pym is the director of Pym's Technology Lawyers, a boutique law firm specialising in technology law. Mike represented the AIIA and ITCRA on the steering committee of the National ICT Contracting Framework project. Pym's Technology Lawyers' web site is <www.pyms.com.au>.

Imagine a world where contracts for the procurement of ICT products and services were consistent across all States, Territories and the Australian Government. Heaven! Just how much would that help the ICT industry and government buyers? It would be easy to do business, cost and time efficient and everyone would spend less on lawyers!

Over the past year the States, Territories and the Australian Government, working through the Australian Procurement and Construction Council ('APCC'), have taken a step on the way to that ideal by creating a nationally consistent ICT Contracting Framework ('Framework'). The project's steering

committee included high level representatives from the ICT procurement policy and/or legal branches of NSW, Queensland, South Australia, Victoria, Western Australia, and the Australian Government as well as the Australian Information Industry Association (AIIA) and the Information Technology Contract and Recruitment Association (ITCRA). The steering committee recognised the practical difficulties and costs associated with having more than nine separate 'standard' contracts for the procurement of ICT products and services across Australia. Following the consultation period and any resulting changes to the Framework, the Framework will be presented to

the Council of Ministers for approval later this year.

Terms of Reference

The Council of Minister's directions to the project steering committee was to draft a Framework that included top-level headings (for example, clause descriptions such as 'Indemnity', 'Personnel', 'License Rights' etc), an agreed sequence of clauses and a suite of agreed core terminology. Upon endorsement by the Council of Ministers, each State, Territory and the Australian Government will:

Continues page 3

In this issue:

<i>Mike Pym</i> , A Step on the Way: toward a more consistent ICT contract across all Australian governments	1	<i>Alex Hutchens</i> , GooTube: Who is the empire now and will it strike back?	8
<i>Catherine Bond</i> , Legal Controversies Surrounding Wikipedia	4	<i>Mike Pym and Sarah Mann</i> , The New Australian Government Standard Contract For ICT Procurement, SourceIT: The New Benchmark	12

A Step on the Way: toward a more consistent ICT contract across all Australian governments

Continued from page 1

- (a) create its next 'standard' contract for the procurement of ICT products or services using the Framework;
 - (b) use the top-level headings in the same order as in the Framework,
 - (c) use the same order (but not the same numbering) for the clauses in the Framework; and
 - (d) adopt the common terminology as defined in the Framework (for example, it is proposed that 'New Material' will be used instead of "Developed Material", 'New Contract Material' or "Foreground IP" or other terms that are currently used to cover the same general area).
- (c) facilitate the entry of new companies into the market, improving choice and competition;
 - (d) facilitate investment from international companies in Australia;
 - (e) enable the procurement process to be simplified and computerised;
 - (f) minimise the risk of conflict and disagreements between Agencies and suppliers;
 - (g) make the process of agreeing terms more efficient; and
 - (h) enable procurement officers to be able to move between different jurisdictions without having to know the standard contract for purchasing the product or service in the relevant State or Territory.

The Benefits

The benefits of achieving a higher degree of consistency in ICT contracts are significant. At the moment if a supplier sells an ICT product or service to a government department in a different State or Territory, or the Australian Government, it is likely that the buyer will have a different 'standard' contract to buy the software, computer, major office machine, consultancy service or telecommunications service. This means that every time a supplier wishes to sell its products or services it must read, understand (with or without a lawyer's guidance) and decide whether to agree to or seek to negotiate the contract terms. The cost benefit of this process for simple or low value procurements is very poor. There is no difference in the characteristics of the underlying ICT product or service based on the jurisdiction in which it is sold. So why is it necessary to have a completely different set of terms and conditions for its sale?

If the contracts for purchasing ICT products and services were more consistent it would:

- (a) reduce the costs of supply to the ICT industry;
- (b) reduce the time and money spent by industry and government buyers alike in negotiating changes to contracts;

The list of benefits is significant and it is universally recognised that increasing consistency will benefit both industry and government.

The Challenges

The challenge, of course, is the implementation of the good intentions. One of the starting parameters was that the Framework had to be flexible enough to accommodate each government's current procurement models. This meant that the Framework had to deal with models including decentralised procurement through model contracts (such as SourceIT as used by the Australian Government), more centralised procurement models such as the panel contracts in NSW using ProcureIT, and Module-based contracts such as GITC v5 in Queensland. In addition it was also necessary to accommodate the different policy requirements of each of the governments.

Another challenge was to adopt a common terminology. One person's 'head agreement' was another person's 'panel contract'. One person's 'managed services' arrangement was another person's 'facilities management' arrangement. One person's 'consulting services' was another's 'contracting service'

and a third person's 'personnel services'.

Just dealing with these critical issues as part of the Framework required nearly a year of regular meetings and consultation.

Draft Framework is available for Consultation

The draft Framework is now available for consultation with both Australian Government and industry having the opportunity to provide feedback. Feedback from government Agencies should be directed to Jane Montgomery-Hribar, Executive Director, APCC (www.apcc.gov.au). Feedback from the ICT industry should be directed to Bridget Larsen, Policy Manager at AIIA at b.larsen@aiaa.com.au, or to Norman Lacy, Executive Director at ITCRA (www.itcra.com.au), or to the APCC. By contributing to this Framework you will be helping to develop a better and more efficient contracting process for ICT procurement for many years to come. These opportunities do not come along often; make the most of it and have your say.

Raising the Bar

If the Framework is endorsed by the Council of Ministers later in the year then each State, Territory and the Australian Government will implement the new Framework as they roll out their next standard contract. There is no expectation that current contracts will be amended to reflect the Framework. A governance process will be put in place to maintain the Framework, harness ideas on best practice and the practical experience gained from the use of the Framework, and to promote a higher degree of consistency for ITC contracting nationally.

So how Big is the First Step?

The draft Framework represents a significant first step to achieving a consistent contract for the procurement of ICT products and services. It may seem that the starting goals were modest, but the level of commitment needed from all involved to achieve those goals was significant.

A Step on the Way: toward a more consistent ICT contract across all Australian governments

It is hoped that the Framework and the level of co-operation between States, Territories, the Australian Government and the ICT industry will

continue and grow as the project moves forward.

Note. The Australian Construction and Procurement Council represents the

Ministers for Procurement for each the States, Territories and the Australian Government.

Legal Controversies Surrounding Wikipedia

Catherine Bond

Catherine Bond is a PhD student based at the Cyberspace Law and Policy Centre at the University of New South Wales. Her thesis is part of the ARC-funded "Unlocking IP" project, focussing on the commons, public domain and public rights in Australian copyright law.

For many individuals, Wikipedia¹ has become the first place to look when confronted with an unfamiliar term or historical event, or to get up-to-date with the latest development in a current story. It is an online, free to use, encyclopedia that provides a wealth of information on a diverse number of topics including culture, history, medicine, and sports. Wikipedia describes itself as the "encyclopedia that anyone can edit"² and any individual can theoretically make changes to any entry, or even create a new entry for an event, category or term not yet included. However, with the growth in both the content and success of Wikipedia, there has been a concurrent increase in the legal controversies surrounding this collaborative encyclopedia.

It is the aim of this article to address these legal controversies, before briefly discussing in each example whether these particular issues are any different to those experienced by websites and other online forums since the explosion of cyberspace. This article will first provide a brief overview of the growth of Wikipedia and then consider four interrelated Wikipedia legal controversies: factual inaccuracies, controversial contributors, defamation and copyright infringement.

Introduction to Wikipedia

Wikipedia began in early 2001, following the collaboration of Jimmy Wales and Larry Sanger on Nupedia, which was created with the aim of producing an open, free encyclopedia. According to the "Wikipedia:About" page on Wikipedia, Sanger convinced

Wales to create a new encyclopedia based on the collaborative "wiki" format.³ Wikipedia was launched on 15 January 2001, which is now sometimes referred to as "Wikipedia Day."⁴

Since the creation of Wikipedia, Jimmy Wales has arguably become the public face of this open encyclopedia.⁵ Wales has been described as becoming to the Internet "what Bob Geldof was to famine relief: an almost saintly guru, a visionary who has pooled the talents of many for the greater good."⁶ Indeed, when Wales visited Australia for a week of seminars in April 2007, he became part of television history when he was subjected to *The Chaser's War on Everything's* "Ten Questions", indicating that both Wales and Wikipedia have permeated the pop culture psyche both in Australia and internationally.⁷

The attractiveness of Wikipedia is two-fold: for individuals searching for information, it can be used as a research tool, while others eager to disseminate information on a specific topic can edit the relevant Wikipedia page. There are also non-English Wikipedias, with many introduced only a few months after the launch of the English-language Wikipedia.⁸

Unlike traditional print-based encyclopedias, Wikipedia is continually updated "within minutes or hours" of an incident or even occurring.⁹ No topic is too small or too large for Wikipedia; for example, it provides a collective resource for many popular television shows, with detailed episode and character

descriptions. At the same time, Wikipedia also features medical, biographical, historical and scientific pages that are also commonly found in traditional encyclopedias.

Wikipedia has grown significantly in both success and content since its creation. As of 4 June 2007:

"There are more than 75,000 active contributors working on some 5,300,000 articles in more than 100 languages. As of today there are 1,815,828 articles in English; every day hundreds of thousands of visitors from around the world make tens of thousands of edits and create thousands of new articles to enhance the knowledge held by the Wikipedia encyclopedia."¹⁰

There is also evidence of Wikipedia's success as both a website and encyclopedia. As it was noted in *The Sydney Morning Herald*, in February 2007, Wikipedia received over 192 million individual visits after a survey conducted by United States rating agency comScore World Metrix.¹¹ This result made Wikipedia "the world's 6th most visited website-behind those run by giants such as Microsoft, Google and Yahoo."¹² In terms of the most popular Wikipedia content, a 2007 study by Anselm Spoerri revealed that, perhaps not surprisingly, entertainment and sexuality-based pages tend to receive the most visits.¹³

Like many Internet-based success stories, however, Wikipedia has not been able to escape the legal controversies that often accompany popularity. Whether the attention given to each of these controversies is