I’d like to begin tonight by illustrating the beauty of open access to intellectual property. I am going to borrow a thought from Lawrence Lessig, who in turn is borrowing from someone else. I think it contextualises my comments.

Lawrence wrote this of the US Republican Party a couple of years ago:

Increasingly, the party – as conservative columnist Bruce Bartlett says of George Bush in his book, Impostor – is “incapable of telling the difference between being pro-business and being for the free market. It favors specific competitors rather than favoring competition. What’s good for the US is more and more often translated into what’s good for powerful friends. Or so policy in America could be summarized today. Such pro-business and anti-efficiency policies will continue to prevail until someone in our political system begins to articulate principles on the other side. And given the way money talks in capitals around the country, this is a stance only those out of power can afford to take.

Now, me being me.

All political parties have difficulty lifting their thinking above the interests of entrenched incumbents within markets. More so now than probably at any time since the Great Depression.

The rise of organised corporate interest groups has created a tremendous imbalance in the volume of the voices in debates around public policy. That is not a mischief on the

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part of the voices that are organised. They are just doing their job. But it does create a problem for policy makers.

When there is a considerable imbalance in power and influence, never underestimate how self-fulfilling it can become.

This is a potentially controversial thing to say, but this has been no more evident than in the debate about around intellectual property, and especially copyright. I don’t want to give the impression that the problem is a party-political one. But it is a simple fact that those representing the case for the expansive and expanding use of copyright to protect their interests have all but drowned out alternative voices representing the broad public interest.

For example, routinely, pejorative terms like “pirate” have entered the vernacular to describe the people breaching what copyright owners claim to be their rights, even if no crime has been committed. This is despite the detailed and ongoing legal challenges from both sides about personal use. This is a reflection of the power and influence of these incumbent interests.

The observation I make is that the debate is decidedly one-sided. Perhaps more so here in Australia that the US, where there at least appears to be a more sophisticated debate around the purpose and merit of IP and copyright law in relation to rights protection in the digital age.

This concerns me greatly and if I can make a difference, I want it to be ensuring that the public debate is balanced and well-informed. I want to see that both sides in the copyright and IP debates have a voice, are heard in Parliament and their respective positions are equally understood and considered when decisions are made.

The first step to rectifying the imbalance in the public debate is to ensure that policy decision making is open: open to scrutiny and open to participation. It requires, in fact, a new openness in our democracy. The Labor Government is acting to restore confidence in democratic processes by opening up the operation of government and public sector information and removing the frustrating ‘unknowns’ of political and bureaucratic decision making that lead to cynicism and apathy.

It is a chance – maybe the last this generation will have — to give form and substance to the concept of, and I quote another famous American: “Government of the people, by the people, for the people..., (shall not perish from the earth)”. (Abraham Lincoln)

A quick read of a my colleague Senator Faulkner’s Speech at the launch of “Information Awareness Month” will inspire you, as a dramatic change has occurred in the attitude of the Australian federal Government since the last election when Labor came to office.
The program for building the national broadband network provides the time frame and platform to reset the operating system of government. It will close the digital divide. Never has there been a greater genuine opportunity for positive and progressive change for active participation in our democratic processes.

The NBN combine with a raft of cross-portfolio initiatives to usher in a new era of greater freedom of information, earlier access to archived records, open government initiatives, more interactive citizen and business services online and the next steps in the digital deluge project, Australia is well and truly on the cusp of transformational change in how we function as a society. It’s a chance to raise accountability through openness and transparency.

HOWEVER, working against a new way of making policy are the same old militating factors that in the past have inhibited participation by the broadest cross section of interests.

I have personal experience in just how pervasive the influence of sectional interest groups operating in a closed decision-making environment can be.

No-one, not even legislators are safe! While the Australian democratic system is free of some of the blatant corporate donation culture that is rife the US, power and influence is still very real and operates in a range of ways.

Not least of these is in the negotiation of trade agreements, where deals can be negotiated in virtual secrecy, and usually only legislated with the openness afforded by institutional parliamentary debate once signed.

I want to share with you some observations in relation to the Australia-US Free trade agreement.

In the lead up to the 2004 election, the Howard Government was in the throes of the final negotiations of the AUSFTA. The Labor Opposition was under the pump to declare a position on the proposed agreement. To help inform its view, Labor instigated a Senate Inquiry into the proposed agreement.

The Senate Select Committee embarked upon a detailed exploration of the issues, including the ramifications on IP law in Australia, including patent law and copyright.

It was clear from what the US was asking for that they were using FTA’s to propagate the recent changes in IP law, such as the so-called “Mickey Mouse” amendments, to extend copyright protection and the provisions of the DMCA to digital content, to other nations: particularly those where the content owners had a large and specific interest in the market.

While I was not a sitting member on that particular Senate Committee, I took a deep interest in my capacity as shadow minister for information Technology and the Arts. It was, after all, the IP, copyright and local content provisions that directly impacted on these sectors in Australia, and their ability to innovate and grow into the future.
It seemed these provisions were unchallenged by the then Howard Government and they ended up being the subject of fierce contention at the Senate Inquiry. The voices of both sides of the debate were heard thanks to the Senate committee process. It is a credit to many in this room that the implications of co-opting US-style IP and copyright law received a comprehensive airing. The difference between the interests of the market, in this case a thriving innovative Australian ICT sector, and business, being the incumbent corporate interests, WERE clearly articulated.

The 20-or so specific recommendations arising out of Chapter 3, which was devoted to intellectual property in the Senate Report, were prefaced by the following comment: A major concern of Labor Senators is that Australia entered into the IP obligations of the Agreement in a manner that cut across established processes for copyright law reform and which did not appear to be part of a strategic vision of intellectual property. Labor Senators were also concerned that it was difficult to get a comprehensive explanation from Government officials on many of the implications of the FTA on Australia’s IP regime.

Note that this second point starkly illustrates the lack of openness!

The big questions were these: were the reservations and concerns about the IP implications enough to have the ALP opposition either oppose or force modifications of the Proposed FTA? And, if so, would the Senate support the approach adopted by the ALP?

For my part, I spoke out about the innovation-inhibiting effects signing up to the AUSFTA would have on local content production, the local ICT industry, open source and other software development, scientific endeavour and related innovation and ICT procurement.

These comments received widespread coverage and a furore erupted in the media that gave a voice to the many citizens who had harboured concerns, but had not found a way to express them: and there was renewed interest in groups who had articulated concerns. Airing their views meant a spotlight fell on the intellectual property aspects of AUSFTA.

I can tell you now that the media interest in my comments did not endear me to the Leader. The AUSFTA had powerful support, on top of his concerns about being perceived as anti-American. But once the door was open to other voices, the balance of the debate shifted and the concerns with the agreement were seen as legitimate.

After lots of political machinations, the end result was that federal Labor successfully moved a series of amendments that modified at least some of the worst aspects of the Agreement.
I tell this story because it’s an issue I know you are familiar with, but also as an example of the challenges in accessing the information necessary to make informed policy decision as well as showing our democracy in action.

In my view it was the combination of the institutional scrutiny provided by the Senate Committee process, AND the unleashing of community opinion through the media once facts were at hand that led to the changes in the Agreement.

It is a great example of how greater openness and improved participation becomes mutually supportive of alternative views. In this case, they were expressed first inside a small, informed community, then in the Parliament, and then in the broader community.

Ladies and Gentlemen: we need each other. And that is how the system of democracy is supposed to work.

In my opening comments I reflected on the opportunity the NBN creates to close the digital divide and become the enabling network on which to reset our democracy in firm principles of open government and freedom of information.

It is with these aspirations in mind that we need to work together to make sure the public debate that informs this transformation is balanced, inclusive and informed. This is the approach espoused by the Rudd Labor Government before, during and after the 2007 election.

The value of openness, sharing ideas, collaboration and collective innovation need to be re-inserted into the debates about IP. There is an opportunity for the Government to lead the way with public sector information and the signs are good. We all have a role to play to ensure this direction is supported and encouraged through widespread discussion and debate.

The tension between open information and copyrighted material will once again be heightened as the public debate proceeds about the merits of openness for public sector information.

What needs to change is the voices on the alternative side of the copyright debate need to be loud enough, co-ordinated enough, supported enough and endorsed enough to balance the currently one-sided domination of the debate.

I commend those initiating and involved in the idea of bringing together a group concerned about these issues. I understand the aims and objectives to include:

“Raising the standard of awareness of the full range of copyright issues affecting the various stakeholder and constituent groups, such that robust discussions on relative priorities and aims could be held across a wide range of organisations.”

This development is essential and I look forward to supporting your application: well-organised and well-resourced representation of the public interest is long overdue.
It is also essential because the transformational effect of open and accessible public sector information will inform the benefits of open access and creative commons information across the private sector as well. We can lead by example. Let’s make the most of the opportunity it represents!

Thank you for listening.