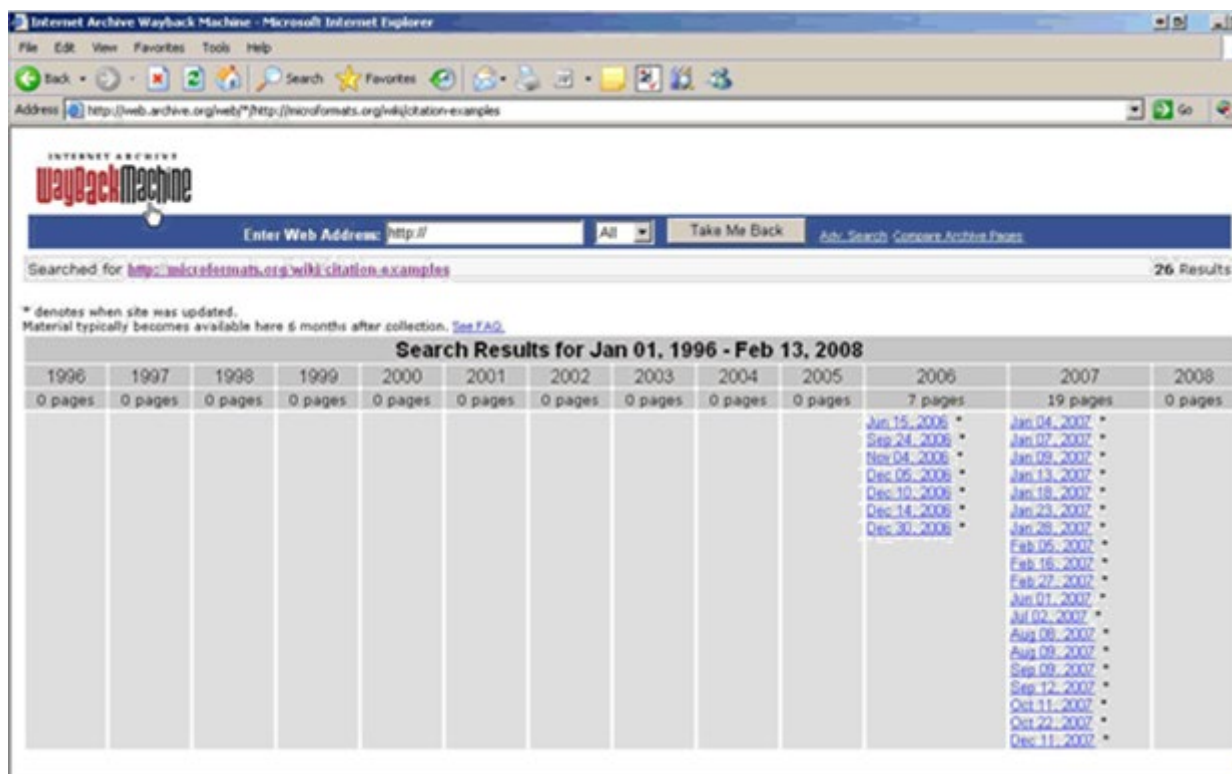


Annex L – Establishing Publication Dates and Capturing Internet Citations

Note: In *Voxson Pty Ltd v Telstra Corporation Limited (No 10)* [2018] FCA 376, Perram J found that pages obtained from the Wayback Machine were hearsay evidence. This does not affect the ability of examiners to use the Wayback Machine, but attorneys may use this argument in an attempt to discredit the Wayback Machine. A full discussion of hearsay evidence is found in 3.5.2 Admissibility of Evidence. If in any doubt about how to respond to such an argument, examiners should consult their supervising examiner and/or Patent Oppositions.

The Internet Archive (<http://www.archive.org/index.php>) simplifies determining the publication date of a web page. The Archive can provide a list of archived versions of most web pages (pictured below). Simply click on the date and that document will have an associated electronic capture date.



You may then cite the web page using the Internet Archive URL, e.g. <http://web.archive.org/web/20071211032119/http://microformats.org/wiki/citation-examples>

Issues arise when the publication date cannot be established using the Internet Archive because the website has prevented its own archival. In situations where the Internet Archive does not have an entry for the required web page, then the Google cache may still provide a publication reference.

For example, if you wanted to cite the web page <http://microformats.org/wiki/citation-examples> and an Internet Archive reference could not be obtained, you could search for the URL in Google and click on the [Cached](#) link that appears next to the search result to view the version of the web page Google has in its cache. However, the “[Cached](#)” link will be missing for sites that have not been indexed, as well as for sites whose owners do not want their content cached, in which case the Google cache cannot be used.

For the cached web page in this example, the following information is displayed at the top of the page:

This is Google's cache of <http://microformats.org/wiki/citation-examples>. It is a snapshot of the page as it appeared on 6 Aug 2008 10:21:30 GMT. The current page could have changed in the meantime.

[Learn more](#)

[Text-only version](#)

These search terms are highlighted: [date](#) [citation](#) [google cache](#)

The Google cache date will usually be the most recent date, while the page itself may have clues to when it was posted (e.g. A copyright notice or publication date). In some cases the Google cache date may be sufficient, as Google may not have indexed that web page for a few months or longer.

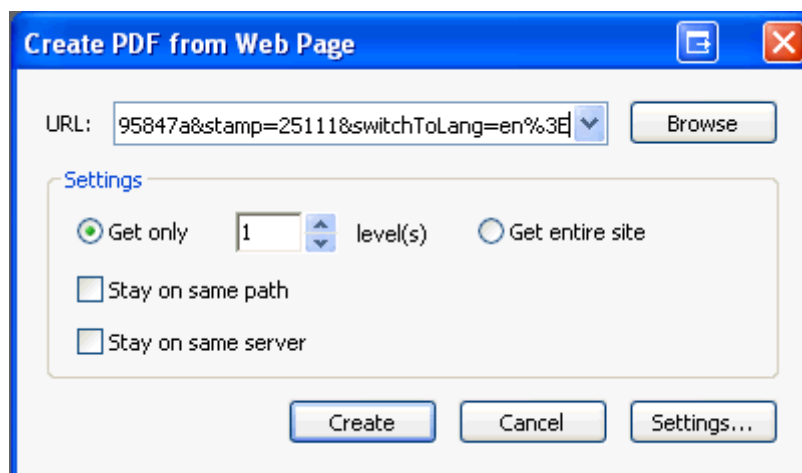
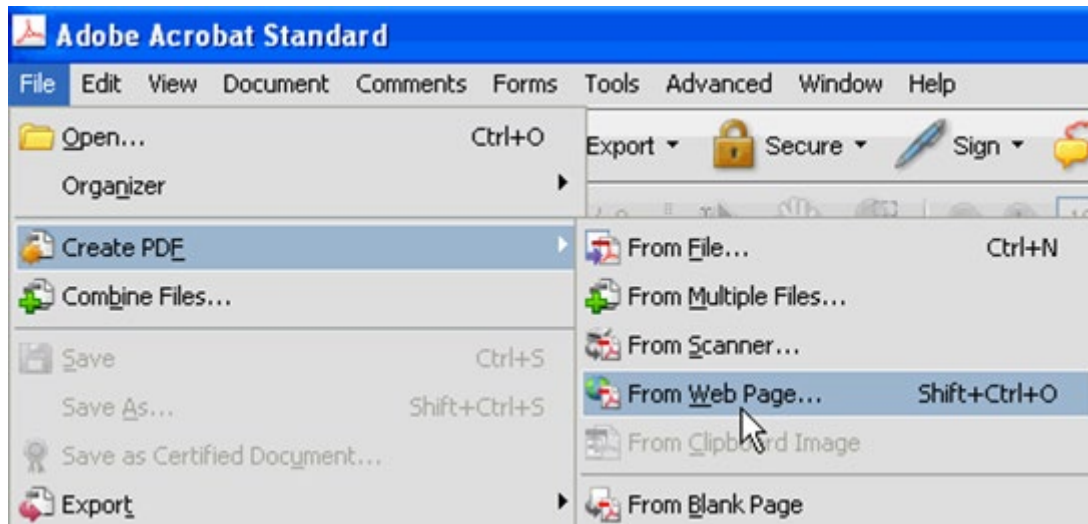
However keep in mind, as detailed under “Which NPL sites and databases should be searched?” that it is preferable to rely on material from sources in the first category of Internet sources (e.g. The Internet Archive) rather than the second category (e.g. Google cache).

In all cases where a cited document was found on the internet and no relevant printed version (or PDF file) exists with a publication date, the web site should be captured before citing. This is particularly important when citing from the Internet Archive as pages may be removed from the archive at any time if the owner of the content desires. This follows the WIPO recommendation as follows:

“Office copies of an electronic document should be retained if the same document may not be available for retrieval in the future. This is especially important for sources such as the Internet and online databases”

Therefore at the time you choose to cite the document, you must create an office copy. You can do this a number of ways:

- In Internet Explorer use **File | Print** and select to print to the Adobe printer. This will produce a PDF of the web page, however the URL may be truncated if it is long. In which case a screenshot of the browser window may also be necessary.
- In Adobe Acrobat you can capture an entire website using **File | Create PDF | From Web Page** and pasting the URL of the web page from Internet Explorer into the URL field.



For guidance on long URLs

see: http://www.wipo.int/edocs/mdocs/scit/en/scit_sdwg_1/scit_sdwg_1_6-annex1.doc