



Australian Library and
Information Association



Joint response to the Australian Law Reform Commission discussion paper relating to Copyright and the Digital Economy

31 July 2013

Introduction

The Australian Library and Information Association (ALIA) and Australian Law Librarians' Association welcome the opportunity to respond to the Australian Law Reform Commission's discussion paper relating to the proposed reform of Australia's copyright law to benefit the digital economy.

Copyright law impacts on most of what libraries do. It affects the services that libraries can provide to their users and the conditions under which they provide access to copyright materials. It affects the way in which libraries can undertake effective archival and preservation activities. Librarians have traditionally been guardians of copyright. Now they have also become creators of copyright materials, both with digital content and organisational websites.

About ALIA and ALLA

The Australian Library and Information Association (ALIA) is the professional organisation for the Australian library and information services sector. We seek to empower the profession in the development, promotion and delivery of quality library and information services to the nation, through leadership, advocacy and mutual support. Our 5500 members represent the library and information profession, Australian library and information services, and the interests of over 12 million library users.

The Australian Law Librarians' Association is a national association with over 700 members in all states and territories. ALLA represents librarians and information professionals working in courts, universities, government departments, law firms and professional associations. The Association aims to promote and provide a national focus for law librarianship and to support the interests of law libraries, collections and legal information services to both legal and public communities.

Our joint position on copyright reform

We believe in a balanced approach that sees creators justly rewarded for their work, while promoting the free flow of information and ideas in the interest of all Australians and a thriving culture, economy and democracy. We are committed to the preservation of the published and documentary record in all formats, and to ensuring enduring access to information.

Copyright is an area that most librarians are familiar with and, for many, their in-depth understanding of the legal requirements is one of the values they bring to their organisation. However copyright is complex and ALIA receives enquiries every month from people employed in libraries seeking advice about copyright issues and licenses for digital material.

Copyright and the Digital Economy discussion paper

ALIA and ALLA endorse the ADA and ALCC response

We endorse the response provided by the Australian Digital Alliance (ADA) and the Australian Libraries Copyright Committee (ALCC) to this discussion paper. ALIA is a member of both organisations and the ADA and ALCC submission deals with the issues of concern to both ALIA and ALLA members.

We commend the ALRC on its thorough examination of copyright and the digital economy, and its thoughtful and practical proposals. In common with the ADA and ALCC, we strongly support the ALRC's proposals to introduce a broad, flexible fair use exception and to repeal the statutory licences, in order to make copyright law more reflective of the rapidly changing technological environment.

We also wish to register our strong support for the ALRC's proposals in regards to orphan works which provide a sensible solution to an issue of great importance for many libraries.

While we are very pleased that the ALRC has recognised the importance of libraries' needs in the areas of preservation copying and document supply, we are concerned that the proposals, if enacted in the current form, would be practically unworkable for many institutions. The ADA and ALCC submission sets out these concerns in greater details, and also addresses our concerns in regards copyright and contract.

For further detail of ALIA and ALLA's response, please refer to the ADA and ALCC submission to the discussion paper on the topics of:

- Fair use
- Statutory licences
- Fair dealing
- Non-consumptive use
- Private and domestic use
- Libraries, archives and digitisation
- Orphan works
- Broadcasting
- Contracting out

Document supply

ALIA and ALLA would like to make specific mention of document supply. We support the submissions of ADA and ALCC on document supply and inter library loans, and also seek clarification of whether the current provisions are to be repealed or amended, if proposal 11-7 is adopted. With materials moving into a digital format, or published only in digital format, any time restrictions on the 'use' of those copyright works should not be supported, particularly where the use is for research purposes.

Proposal 14-3(b) copying for members of Parliament

We are also aligned with our colleagues in Parliamentary Libraries and draw the ALRC's attention to the following response to a particular element of its discussion paper:

Proposal 14-3 paragraph (b) of the ALRC Discussion Paper proposes that the *Copyright Act 1968* be amended to repeal sections 48A and 104A, the parliamentary library copyright infringement exceptions. The discussion paper justifies this repeal on the grounds that copying by parliamentary libraries would generally fall within a more general fair use exception.

The Parliamentary Library strongly opposes this proposal and disputes that a fair use exception would provide a suitable alternative to the existing parliamentary library exceptions.

The existing parliamentary library copyright infringement exceptions recognise the importance of unimpeded access to information by parliaments and parliamentarians. The Parliamentary Library submits that without these exceptions, parliamentary libraries would be compromised in their capacity to respond to confidential, time critical requests, to provide access to critical information and to monitor developments in the print and electronic media.

The protection afforded by sections 48A and 104 is extremely broad. The phrase 'anything done' encompasses printing, downloading, saving to disk, e-mailing and long term electronic storage. In practical terms, these exceptions are critical for the provision of affordable and timely services by the Library. Unlike other libraries, parliamentary libraries are not required to keep extensive document copying records, seek signed declarations from clients, or seek permission from copyright owners prior to copying and are not required to pay fees to copyright collection agencies.

The Parliamentary Library disputes that a fair use exception could adequately replace these provisions. Fair use is a flexible concept to be determined on a case-by-case basis. In every case, the fairness factors must be explored, and the results weighed together, in light of the purposes of copyright.

In contrast, the parliamentary library exceptions provide certainty with no need for a case-by-case assessment of the facts.

Parliament is a small clientele with specialised and unique needs that can only be met by a specialised copyright exception. The Parliamentary Library therefore submits that should a general and broad fair use exception be adopted, then it would be necessary and appropriate to also retain a specific exception for parliamentary libraries.

Such an exception enables parliamentary libraries to fulfil their core public service mission of providing parliamentarians with unlimited and timely access to quality information and research.

Summary

In summary, ALIA and ALLA join with the ALCC and ADA in commending changes to the Copyright Act, which will introduce the concept of fair use and help 'future-proof' the law. We also support the Parliamentary Library's submission advocating for the retention of a specific exception for parliamentary libraries.



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