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**ADDRESS AT THE OPENING OF THE
AUSTRALIAN DIGITAL ALLIANCE
FAIR USE FOR THE FUTURE:
A PRACTICAL LOOK AT COPYRIGHT REFORM FORUM**

CANBERRA, ACT – 14 FEBRUARY 2014

Thank you very much, indeed, Derek. It's a great privilege to be here. I begin by paying my respects to the traditional custodians of the land on which we meet. I pay my respects to the continuing cultures of all of Australia's Indigenous peoples.

To you, Derek Whitehead, Chair, Australian Digital Alliance; Professor Jill McKeough, Dean, Faculty of Law UTS; my Parliamentary colleague, The Hon Ed Husic MP, Federal Member for Chifley; other distinguished guests; ladies and gentlemen.

On the 5th of February 1841, Thomas Macaulay, the famed historian and Whig politician, spoke to the House of Commons on the great topic of copyright. It was, I believe, the first occasion that copyright law had been debated by the House of Commons.

While the reasons for his remarks is now largely forgotten, Lord Macaulay's speech is justly recalled for its anticipation of the fundamental principles that underpin the modern system of copyright protection.

His central insight is to remind us that copyright is a monopoly – a necessary monopoly – but a monopoly nonetheless. *“The advantages arising from a system of copyright are obvious,”* he said.

“It is desirable that we should have a supply of good books; we cannot have such a supply unless men of letters are liberally remunerated; and the least objectionable way of remunerating them is by means of copyright,” so said Macaulay

Much has changed in the nearly 175 years since Macaulay made those observations. The men of letters are more than likely to be women of letters for starters, and we no longer desire only a supply of good books but also quality films and television, inspiring music, informative and entertaining radio, and innovative computer programs and mobile apps.

Nonetheless, the fundamental purpose of copyright remains unchanged – to ensure that those who take on the risks of creation are appropriately rewarded for their abilities and efforts.

One of Charles Dickens's reasons for travelling to the United States that same year, in 1842, was to advocate for copyright law reform. Dickens was acutely aware of how much money he was losing because his works were being pirated, at the time legally, under American copyright law which permitted publishers to reprint British books at will.

He is reported to have described it as the "*the exquisite justice of never deriving sixpence from an enormous American sale of all my books.*"

In his letter to his friend John Forster on the subject of international copyright, Dickens complained that as a result of the absence of international copyright law, "*It is nothing that of all men living I am the greatest loser by it.*"

The Value of Creation

In my dual role as Attorney-General and Minister for the Arts, the promotion and protection of Australian content developed by our creative industries is very important to me.

Australian art, music, literature, film and television all contribute to the fabric of our society and the copyright framework is central to ensuring their ongoing success.

This involves valuing and encouraging that which is excellent in the arts and enabling practitioners and audiences alike to participate fully in the opportunities that the digital environment provides.

The creative industries are also a major driver of economic growth.

For example, a 2012 report by PricewaterhouseCoopers found that the creative content industries generate over six per cent of gross domestic product and account for eight per cent of employment in the Australian workforce.

For a modern economy, creativity is no longer something that is nice to have – it is essential to our continued prosperity.

For these reasons the creative industries are clearly an area the Government will continue to support through strong copyright protection.

The Shape of Reform

Of course, as Lord Macaulay noted all those years ago, copyright is a monopoly and, as we all know, monopolies are presumptively a bad thing.

The challenge for us today is how to balance the benefits for creators against a range of other public interests including the interests of users, educators and other important public goods.

For example, as Minister for the Arts, I understand the importance of having copyright provisions that enable our collecting institutions, such as our hosts today, the National Library of Australia, to continue their vital work of preserving and making available our country's cultural heritage.

The National Library is a world leader in the digital library sector.

Its innovative programs include the PANDORA Archive which captures historical Australian online publications and the award-winning Trove, which makes millions of pages of historical newspapers and documents discoverable online.

There are those who would claim that technology has fundamentally changed the balance of interests in the creative economy.

It is true that we now consume, create and distribute content in ways that would have been beyond imagining when Macaulay introduced the first copyright law. It does not follow, I think, that the principles that underpin copyright are incapable of adapting.

They have adapted to cinema, radio, television and personal computers, why not to technologies of which we are still to dream.

As I have said on previous occasions, I firmly believe the fundamental principles of copyright law, the protection of rights of creators and owners, did not change with the advent of the internet and they will not change with the invention of new technologies.

The principles and values underlying intellectual property law and the values which acknowledge the rights of creative people are not a function of the platform on which that creativity is expressed.

However, this does not mean that I believe that Australia's copyright laws are not in need of reform. Quite the contrary.

The *Copyright Act* is overly long, unnecessarily complex, often comically outdated and all too often, in its administration, pointlessly bureaucratic.

As Derek mentioned in his opening remarks, this forum could not be more timely because it was only yesterday afternoon that I tabled in the Senate the Australian Law Reform Commission's report on the Copyright Act. The Government is now considering that report.

As you all know, the key recommendation of the Report is that Australia adopt a 'fair use' exception to copyright, and the business of the day, for you today, is to consider the 'fair use' extension.

I remain to be persuaded that this is the best direction for Australian law, but nevertheless I will bring an open and inquiring mind to the debate.

I am convinced that we can do much to improve how copyright works in this country.

As the Government considers what direction it wishes to take in response to the ALRC report, let me commit to a couple of things.

First, when this process is finished, and it will be a thorough and exhaustive exercise in law reform, the Copyright Act, will be shorter, simpler and easier to use and understand.

Secondly, the Act will be technology neutral - no more amusing references to videotapes as we find in current section 110AA.

Thirdly, we will pay careful regard to the broader international legal and economic context, we all know that Australia's laws cannot exist in a vacuum, they must operate efficiently within a global copyright system. That is particularly important as the Abbott Government continues, to number among its signature achievements, the negotiation of free trade agreements with our major trading partners, which, as you all know, contain important provisions concerning copyright and other intellectual property issues.

We will do this in a way that ensures appropriate protection of copyright material in the digital age and encourages culturally and economically beneficial uses of material that do not undermine fundamental copyright principles. That of course is the balance to be struck and the merits do not lie entirely on one side of the scale or on the other.

As we go forward, I can assure you that we will continue to seek the assistance of all stakeholders in shaping our reforms.

Online Piracy

I want to use the opportunity of this address to make a few remarks about the issue of online piracy.

While, as I said before, I do not believe the fundamental rationale of copyright changed with the internet, I am of the view that the internet poses a particular challenge in the area of online piracy.

The illegal downloading of Australian films online is a form of theft. I say Australia films, but of course the illegal downloading of any protected content is a form of theft.

Some stakeholders have sought the introduction of laws aimed squarely at the scourge of online piracy.

While I am sympathetic to their views and am interested in examining new measures that will cut rates of online piracy in Australia, I am not unmindful of the policy challenges of developing the most efficacious regime to do so.

Let me give you an example. *The Great Gatsby*, Australia's most successful film at the local box office last year, is now centre stage after its haul of 13 AACTA Awards and an Oscar nomination.

Unfortunately the success achieved by *The Great Gatsby* can lead to piracy of the film, placing the sustainability of our screen industry at risk.

One area for potential reform of this problem may be section 101 of the Copyright Act.

This provision provides that an entity which authorises the infringement of copyright without the copyright owner's permission is liable for that infringement.

It was thought that these provisions were ‘technology neutral’ and applied to internet service providers, marrying up with the ‘safe harbour scheme’.

However, the High Court’s decision of 2012 in the iiNet case changed the position. The Government will be considering possible mechanisms to provide a ‘legal incentive’ for an internet service provider to cooperate with copyright owners in preventing infringement on their systems and networks.

This may include looking carefully at the merits of a scheme whereby ISPs are required to issue graduated warnings to consumers who are using websites to facilitate piracy.

This is a complex reform proposal, and how it is paid for is one of the principal unresolved issues.

It should also be noted that Australia has international obligations on this point and that the Government will not be seeking to burden ISPs beyond what is reasonably necessary to comply appropriate domestic and international obligations.

As well, I would like to emphasise that this would not put Australian ISPs at a disadvantage by comparison with their counterparts internationally as many overseas jurisdictions have the concept of authorisation liability, secondary liability or similar, which are intended to capture ISPs.

Another option that some stakeholders have raised with me is to provide the Federal Court with explicit powers to provide for third party injunctions against ISPs, which will ultimately require ISPs to ‘take down’ websites hosting infringing content.

Most importantly, in framing any enforcement reforms, my preference would be to facilitate industry self-regulation, as opposed to active and continuing government regulation.

Industry participants are in the best position to develop a flexible, cooperative self-regulatory approach tailored to particular industry needs. Industry cooperation is a key element in tackling online piracy, and I will continue to encourage industry participants to work together to overcome the outstanding issues in contention.

I believe in strong protections and enforcement mechanisms in support of Australia’s creative industries, but, as I indicated, I am also keen, as one of the achievements in the first-term of the Abbott Government, to modernise, reform and contemporise the Copyright Act.

The Challenge

There is no doubt in my mind that there is much to be gained from modernising Australia’s copyright laws.

A strong case has been made that the Copyright Act is unnecessarily restrictive in some of the beneficial uses of copyright material it potentially prohibits.

Earlier in this address I mentioned statistics that demonstrate the value of the Australian content industries to Australia’s economy.

I am also aware of research—some of which has been commissioned by the Australian Digital Alliance—that demonstrates the potential economic benefits of modernising Australia’s copyright laws.

In any copyright law reform process, we must ensure that the potential economic and social benefits of modernisation do not come at the expense of our creative industries. We must also ensure that such reform is relevant, contemporary and accessible.

Any major legislative change brings with it an element of risk.

In shaping its reforms the Government will engage with this risk, but it will be careful not to throw our copyright system into a state of uncertainty.

Any reforms will be based—and will build upon—the values that I have indicated in this speech.

They will properly balance the rights of creators and copyright owners with the need for consumers to have reasonable access to the books, films and other copyright material.

They will also be sufficiently certain to enable the public to adapt to them with a minimum of fuss.

If you will indulge me one last reference to Lord Macaulay – ‘the question of Copyright...is neither black, nor white, but grey.

The system of copyright has great advantages, but as a monopoly, it also has great drawbacks. It is our business to ascertain what these are, where the appropriate balance is in shaping public policy lie, and then to engineer law reform in which the advantages may, as far as possible, be secured, and the disadvantages, as far as possible, eliminated.

That is a challenge for the work of your day to consider the dimensions of that challenge, In opening your forum today, I wish you will in your deliberations and look forward to constructive engagement with you as we develop our law reforms in this very important area.

ENDS