



# Submission to ALRC Inquiry – Copyright and the Digital Economy

Spatial Industries Business Association

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## Introduction

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The Spatial Industries Business Association (SIBA) has represented surveyors in private practice in Australia (including under previous names starting with Association of Consulting Surveyors) for 40 years.

In the last 20 years, technology has broadened the scope of the spatial or location information related industries to include aerial photography, remote sensing, Global Positioning Systems (GPS), Geographic Information Systems (GIS), and a range of application and support activities for those technologies.

SIBA is now the peak industry organisation representing private sector firms in all the spatial industries.

SIBA works closely with the three other sectors involved in the spatial industries (government, professions and academia) to ensure that the industry develops in a way that is beneficial to the industry practitioners, their clients and constituents, and the community generally.

SIBA has private practice members throughout Australia and New Zealand and those members range from micro-businesses to multi-national corporations such as Microsoft, Fugro Spatial Solutions and Sinclair Knight Merz.

SIBA has had an interest in copyright issues since the early 1990s and has assisted members in their correct application of copyright legislation and concepts — including the compilation of a comprehensive manual for the industry.

## Issues Paper

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SIBA wishes to address Question 34 of the Issues Paper for the ***Copyright and the Digital Economy*** inquiry.

SIBA strongly opposes any free exception that would allow government agencies to make copyright material registered or deposited in accordance with statutory obligations under Commonwealth or State law, outside the terms of s.183 of the Copyright Act 1968.

SIBA supports the current regime in s.183 of the Act.

## Survey Plans

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SIBA and its forerunner associations first became involved with copyright issues as they relate to survey plans which are lodged in the titles registries of the various jurisdictions in Australia. This occurred in the early 1990s when government's commercial use of survey plans began to accelerate with early digital technologies.

Survey plans are prepared by surveyors who must be licenced by the Surveyors Board of the relevant jurisdiction following completion of a four year degree and extensive on the job training and then further assessment by the Surveyors Board.

These surveyors have a quasi-judicial role in the determination of the original boundary locations on which to base new surveys and a responsibility to ensure that future surveyors can likewise locate their work by the information on the plan and the monuments left on the ground.

This process of “reinstatement” is a highly skilled process and goes far beyond the technical measurement processes of other types of surveying. In addition, the liability of the surveyor endures far beyond the normal limitation periods of other liabilities.

The signature of a surveyor on a survey plan endures until his/her death and surveyors, almost universally, maintain runoff professional indemnity insurance to cover errors that may only come to light many years after the survey is completed.

Consequently, the information contained in survey plans is the result of significant skill, judgment and labour and is very valuable to the community and individuals. To remove the right of surveyors to receive ongoing royalties when government agencies derive considerable income from selling that data seems inequitable.

## Survey Plans in the Digital Economy

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Digital technology has meant that survey plans are more easily distributed to purchasers and the returns to those able to sell this data are enhanced.

In addition, the information shown is even more valuable as a result of digital technologies. The data can now be manipulated for special purposes, including compilation into Digital Cadastral Data Bases (DCDB) which can be value added to produce new products of greater value.

The surveyor who prepared those plans is not able to predict at the time of creation, what commercial use will be made of his/her plans and derived products, so there is no opportunity to set a fee scale for preparation that is commensurate with the use of the plans.

In any event, such a procedure would mean that the initial client has to subsidise the subsequent commercial users of the information. The only equitable method of remuneration for surveyors is a fair fee for the work carried out in the first instance and a royalty for subsequent commercial use.

SIBA is of the view that basic recognition and respect of surveyors as content creators should not be removed from the Copyright Act through removal of the right to royalties for commercial use of their copyright.

## Surveyor's Copyright

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The Association has been active in promoting surveyor's copyright since the early 1990s. That support has led to numerous legal proceedings culminating in a hearing in the High Court in 2008.

The High Court determined that surveyors did own the copyright in their survey plans and that governments were bound, under s.183, to pay compensation for commercial uses.

Surveyors regard their role as a vital one in the creation and protection of the land titling system in Australia and they respect the Torrens Title in each jurisdiction. Accordingly, surveyors have not sought to receive remuneration for internal use by government for registration purposes. However, they do expect respect for their content when government commercialises their works.

## Legal Proceedings

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SIBA has supported the various actions in the Copyright Tribunal, the Full Court and the High Court by Copyright Agency culminating in the current matter before the Tribunal to determine a rate for fair payment when plans are sold for profit. SIBA understands that this case will set a precedent for other jurisdictions.

SIBA believes that the findings in relation to ownership of copyright in deposited or registered survey plans, and the findings that governments do not have an implied licence beyond the basic requirements of registration, have brought basic recognition and respect to the role of the surveyor as a content creator.

SIBA could not support a change which then removes the right to remuneration when further commercial use is made of those plans by governments and others.

## Other works

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While Question 34 directly attacks the rights of surveyors won over the past 12 years or so in relation to survey plans, it is broadly framed and would apply to a wide range of documentation that is deposited or registered under statutory obligations.

SIBA members — surveyors and others — are required to deposit a wide range of documents, for example, as constructed plans, environmental plans, design plans, disclosure plans, etc.

At no time are members able to control or predict the commercial uses of those plans beyond the initial requirements of the agency requiring the deposit. Creating

an exception beyond the original purpose of the material would apply to all those documents and perhaps many others in other sections of the economy.

Governments use many different types of works for the smooth running of government. To limit the exception to only one type of material only would also be inequitable for the creators of that material.

We understand from recent media announcements that the NSW government proposes to privatise the Land and Property Information agency (LPI) and "...find new apps and new ways to sell bits of the information that are commercial". This is clear acknowledgement that the information deposited in the LPI, or compilations derived from it, are being commercialised as well as used for the governance activities that the government is required to perform.

Clearly, it is entirely possible that these "bits of the information" will include survey plans and other items deposited by SIBA members and SIBA would regard it as entirely inequitable if the content authors were not remunerated for this additional and unforeseen commercialisation of their work.

SIBA is of the view that s.183 of the Copyright Act should apply to all activities within government as they relate to the use of material deposited or registered under statutory obligations in accordance with the High Court decision. While there are a small number of activities that may attract a zero rate of remuneration for copying, for example, registration of the items and other governance, all commercialisation or inclusions in compilations for commercial purposes should be remunerated to the content author in the normal way.

## Conclusion

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SIBA is strongly of the view that the current regime within s.183 of the Copyright Act 1968 is equitable and even more relevant in the digital economy where the potential commercial uses made of deposited material have increased dramatically and the ease of distribution has done likewise.

Please contact me if there are any questions about this submission.

## About SIBA

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The Spatial Industries Business Association (SIBA) is the **peak industry body** representing **private companies** that provide **spatial or location based services and products** to mining, land development, natural resource management, infrastructure and construction, emergency services, transport and **most other areas of daily activity** in modern society.

These **services and products include** surveying, mapping, satellite imagery supply and analysis, geographic information systems, software and systems development, asset management, design, project management, and many peripheral and support activities.

Members **provide** these services and products to **individuals, businesses** and **governments** at all levels.

SIBA represents **companies** ranging from **large** multinationals to **individual** private operators.

SIBA helps its members to drive **business success** through **collaboration, education, support and advocacy**.