



GARVIN MORGAN & COMPANY



INCORPORATING TURNIDGE & ASSOCIATES & RYAN FIRTH & Co.
CONSULTING SURVEYORS & PLANNERS

SURVEYS FOR:

- Conveyancing
- Subdivisions
- Strata Plans
- Community Plans
- Engineering
- Topography
- Construction
- Control (GPS)
- Accidents

15 November 2012

The Executive Director
Australian Law Reform Commission
GPO Box 3708
SYDNEY NSW 2001

Via e-mail: info@alrc.gov.au

Copyright and the digital economy: submission in respect of Question 34

LAND INFORMATION

- Asset Capture
- Data Brokerage
- Data Collection

Our firm is a professional services firm working in the area of land development, including the creation of survey plans, engineering drawings and other documents that are registered or deposited with government bodies.

PLANNING SERVICES

- Estate Design
- Development Applications
- Subdivision Applications
- Environmental Impact Statements
- Rezoning Applications

Question 34 of the Issues Paper for the *Copyright and the digital economy* asks whether there should be a free exception to allow governments to make copyright material registered with them available outside the terms of the s.183 statutory licence. As creators of survey plans and other documents, that are registered or deposited with governments, we strongly oppose such an amendment. We support the existing copyright regime in section 183 of the Act.

PROJECT MANAGEMENT

- Feasibility Studies
- Overall Management
- Construction Supervision

Survey plans are highly valued copyright works. Registered Land Surveyors have a high level of education and training and must keep abreast of a vast array of ever changing regulations. A survey plan then is the end result of the efforts of a well-skilled individual who brings to the creation of a survey plan a high level of technical expertise with a high level of professional judgement. Similar considerations apply to the creation of other documents, such as environmental plans; design plans and as constructed plans, that are held by governments under statutory obligations. **The recent High Court decision in favour of Surveyors' rights supported this notion.**

DESIGN FOR:

- Roads
- Drainage
- Sewer
- Water
- Flood Studies

The advent of the digital economy has brought with it increased commercialisation of survey plans and other documents. State governments now authorise information brokers to sell survey plans and other documents to the public. Both government and information brokers make a profit from these sales. It is only fair and equitable that the creator of the content – for example surveyors – should be entitled to a fair payment for this new type of use. **For example, in New South Wales, Land and Property Information regularly makes a significant profit for the Government from the sale of Deposited Plans created by Surveyors.** LPI hold these Plans under their statutory obligation under the Conveyancing Act and also as a bulwark for the state's guarantee of title to land.



CERTIFIED COMPLIANT
ISO 9001:2008

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The Commission also needs to consider the gambit of any change to the current legislation. How far would any statutory license go? Would the license cover, for instance, library books and other publications? Would it cover evidence submitted for parliamentary hearings and other quasi-judicial activities? How would any change impact upon Privacy requirements? How would a small business owner seek redress? Governments have a mandate to provide services to the public but when they start charging for these services is it rightful that the providers of base material for the services be taken advantage of? Many people make a living from the creation of this base material. In fact, creation of base material is standard for all professionals.

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This latter point also raises the prospect of professionals work falling into the hands of people that may misuse the material. As you may be aware, professional indemnity insurance premiums have risen significantly above the cost of living over the past decade or so. Does allowing governments to charge for statutory material encourage further distribution of professionals' material thereby making liability a more significant problem? Often this material is prepared for a particular purpose or brief and misuse by the uninitiated or ignorant can lead to unanticipated outcomes and claims. This is not fanciful. The example of the LPI providing copies of registered Plans and documents for a profit was a process of initially providing copies at cost that slowly metamorphosed into making a profit.

Any free exception, as set out in question 34 of the inquiry, would lead to information brokers and the government unfairly free-riding on the skill and effort of numerous copyright creators and their clients.

Yours sincerely

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Consulting Surveyors and Planners

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