

14 December 2012

BY EMAIL

Ms Sabina Wynn  
Executive Director  
Australian Law Reform Commission  
GPO 3708  
SYDNEY NSW 2001

copyright@alrc.gov.au

Dear Ms Wynn

## **Submission on ALRC Issues Paper 42 (IP 42) Copyright and the Digital Economy**

The National Film and Sound Archive of Australia (NFSA), a statutory authority established by the *National Film and Sound Archive of Australia Act 2008* (Cth), is Australia's national audiovisual archive, responsible for collecting, preserving and providing access to the nation's moving image and recorded sound heritage (the National Audiovisual Collection).

The NFSA has considered the Issues Paper<sup>1</sup> and is grateful to the Australian Law Reform Commission (AGD) for the opportunities to consult directly with the Commissioner on 5 November 2012 and to provide written comments. The NFSA is making this submission specifically in relation to copyright and collection development, which is relevant to Issues Paper questions 2, 19, 21, 25, 26, 27, 34, 54 and 55. The NFSA intends to make further written submissions in relation to many other areas where copyright exceptions are relevant to the cultural institutions and their collections in the digital economy.

The ability for the NFSA to develop the National Audiovisual Collection is limited by the absence of a national legal deposit scheme for electronic and audiovisual materials.<sup>2</sup> The existing scheme in s 201 of the *Copyright Act 1968* (Cth) provides for print publications to be delivered to the National Library of Australia. It is currently the subject of a proposal under consultation to extend coverage to electronic "library materials".<sup>3</sup> The *Extending Legal Deposit* consultation by the Attorney-General's Department (AGD) is without prejudice to further consultation to be conducted by the

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<sup>1</sup> <http://www.alrc.gov.au/inquiries/copyright-and-digital-economy>

<sup>2</sup> see NFSA Collection Policy (May 2011), <http://nfsa.gov.au/collection/collection-policy/>

<sup>3</sup> <http://www.ag.gov.au/Consultationsreformsandreviews/Pages/Extending-Legal-Deposit.aspx>

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### **canberra headquarters**

McCoy Circuit  
Acton ACT 2601

GPO Box 2002  
Canberra ACT 2601

Freecall: 1800 067 274  
F: +61 2 6248 2222

### **sydney**

Level 1, 45 Murray Street  
Pyrmont NSW 2009

PO Box 397  
Pyrmont NSW 2009

Freecall: 1800 157 705  
F: +61 2 8202 0101

### **melbourne**

Level 3, 114 Flinders Street  
Melbourne VIC 3000

GPO Box 4317  
Melbourne VIC 3000

Freecall: 1800 057 274  
F: +61 3 86381501

Office for the Arts (OFTA), in the Department of Regional Australia, Local Government, Arts and Sport, on legal deposit of audiovisual material to the NFSA.

Similarly, there are no specific copyright exceptions providing for cultural institutions to develop collections through harvesting, mining, or automatic registration of culturally significant material. For the reasons stated in the NFSA's submission on the *Extending Legal Deposit* Consultation Paper, the NFSA considers that these types of activities should be enabled in every way possible through exceptions to content regulation, including through copyright exceptions, for the efficient functioning of cultural institutions like the NFSA with the statutory mandate for collection development.

Although the ALRC is not intending to duplicate the work being undertaken by other review bodies, the NFSA considers that submissions to the Consultation Paper *Extending Legal Deposit* warrant consideration for the purposes of making recommendations on the broadening of copyright exceptions to support legal deposit schemes or similar collection development activities. The NFSA notes that the extension of legal deposit in the United Kingdom has the support of copyright exceptions as detailed in the *Legal Deposit Libraries Act 2003* (UK).<sup>4</sup>

The NFSA appreciates the ALRC's consideration of this brief submission and will welcome further opportunities to comment on copyright exceptions which support the collection development activities of the NFSA.

If you have any questions, please contact Adam Flynn, Principal Legal Counsel, by phone on 02 6248 2056 or by email at [adam.flynn@nfsa.gov.au](mailto:adam.flynn@nfsa.gov.au).

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Michael Loebenstein', is written over a light blue rectangular background.

Michael Loebenstein  
Chief Executive Officer

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<sup>4</sup> Ss 8-9