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A NEWS CORPORATION COMPANY

 HarperCollins *Publishers*
Australia

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BY EMAIL (copyright@alrc.gov.au)

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

Dear Executive Director

**SUBMISSION IN RESPONSE TO THE ALRC'S COPYRIGHT AND THE DIGITAL
ECONOMY DISCUSSION PAPER 79**

HarperCollins Publishers Australia Pty Ltd (HarperCollins) is grateful for this opportunity to respond to the Australian Law Reform Commission's Discussion Paper 79, "Copyright and the Digital Economy", released on 5 June 2013.

HarperCollins is a leading Australian publisher. Established in 1989, with the amalgamation of Harper and Row (USA), Williams Collins (UK) and Angus & Robertson Publishers (Australia), HarperCollins is part of a global network and has affiliates in the United Kingdom, United States of America, Canada, India and New Zealand. HarperCollins provides a full range of services to book retailers and publishes extensively in all major sections of the book market. HarperCollins' strength in the Australian market is defined by its strong local publishing list which includes authors of adult fiction, non-fiction as well as children's and illustrated books. The core of our business is the intellectual property of our authors and illustrators which we strive to maximise and protect at all times.

HarperCollins supports the submissions of the Australian Publishers Association, International Publishers Association and Copyright Agency Limited, and highlights the following:

1. "Fair Use" exception

HarperCollins opposes the replacing of the specific exceptions to copyright infringement with an open-ended "fair-use" exception.

In our view, the introduction of the doctrine would create much uncertainty and unpredictability. It would likely require a sustained and expensive period of litigation to create legal precedence and establish its meaning. It is also uncertain whether Australian Courts would make use of legal precedents of foreign jurisdictions. Any potential benefit, in our view, would be substantially outweighed by the expense, time, energy and effort that Court proceedings would require in order to determine its meaning and parameters.

We note that the ALRC has not put forward any evidence to justify how the “fair-use” exception would assist and encourage innovation in Australia’s digital economy.

2. Voluntary licence scheme

HarperCollins opposes the repealing of the statutory licensing scheme and the introduction of a voluntary scheme.

It is important to recognise that creators and publishers invest much time, effort and skill in creating an original work. The current statutory licensing scheme establishes a balance between the rights of creators and publishers and the needs and expectations of consumers. The current scheme is transparent, fair and efficient and enables institutions to access and use works, whilst acknowledging and remunerating the creators and publishers. In our view, there is no reason for its proposed repeal.

The repealing of the statutory licensing scheme and introduction of a voluntary scheme would undermine the rights of copyright owners and licence holders and would cause a reduction in fees paid to authors and publishers. It would inevitably lead to reduced economic efficiency, particularly in the education sector, and place a significant burden on teachers in determining whether a proposed use would be considered to be a “fair-use” and whether it would be covered by a voluntary licence. In addition, teachers may be required to negotiate with each individual copyright owner or owners.

Despite the ALRC’s reliance on the assertion that a voluntary licence system is better suited to a digital age, it has not provided any evidence to support this proposition. It has also not offered any evidence to suggest that the voluntary scheme would be more efficient.

Ultimately, copyright in a work is owned by its creator or creators and it is they who should be entitled to determine how they wish to exploit it and for what fee (if any). Creators and publishers should be acknowledged and valued for it is they who create. We must continue to ensure that our authors and publishers are supported and rewarded for their creativity, time, effort and skill, so that they are encouraged to continue to create and contribute to Australian literature.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'S. Conomos'.

Sophia Conomos
Company Lawyer

