



RESPONSE TO  
THE AUSTRALIAN LAW REFORM COMMISSION  
DISCUSSION PAPER ON  
COPYRIGHT AND THE DIGITAL ECONOMY

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## Introduction

The Association of Consulting Surveyors Victoria represents the private sector of the land surveying profession in Victoria. Our member firms are leaders in an industry that is broad-based, multi disciplinary and technologically advanced.

ACSV currently has over one hundred & ten member surveying firms spread across Victoria and these firms stay at the forefront of industry, planning and legislative updates primarily thanks to their membership, monthly newsletter, seminars and training courses run by ACSV.

The Association takes pride in its ongoing working relationships with industry, government departments such as Land Registry and infrastructure bodies dealing with the provision of land services. It sees its role to advise member firms to develop, maintain and provide an efficient service for the benefit of the community.

## ALRC Discussion Paper

ACSV wishes to respond to the ALRC Discussion Paper released on June 5 2013 which made the following recommendations in respect of government use of copyright material:

- the statutory licence for government (ss183 and 183A) be repealed;
- an open-ended free exception for “public administration” purposes be introduced;
- that any use of copyright material by government on a commercial basis, or that conflicts with the market for the work, should be licensed on a voluntary basis;
- the new free exceptions to apply to local councils

The paper also questions if a rightsholder won't or can't offer voluntary licences to suit government, whether there should be a further free exception for that use.

ACSV supports the current regime in s.183 of the Act and strongly opposes any free exception that would allow government agencies to make copyright material,

Association of Consulting Surveyors Victoria

registered in accordance with statutory obligations under Commonwealth or State law, available outside the terms of s.183 of the Copyright Act 1968.

The repeal of the statutory licence was not sought by anyone and the ALRC does not seem to understand the detrimental effects of its proposals for our member firms.

### **Surveyors Plans**

Australians have always had a strong desire for property ownership and this dream has been fulfilled for so many generations through the banking sectors confidence to support loan transactions on the basis of the security inherent in our land titling system. The confidence in land ownership allows the financial sector to accept property as security for an extraordinary range of development and infrastructure projects. It is this security that underpins the economy.

The Land Titling system is supported by a highly regulated process that ensures all property boundaries are well considered and accurately defined.

Registered Surveyors are responsible for producing every single title in the country and their plans provide the description, dimensions and area for each parcel. It is the skill and integrity of surveyors that supports our land tenure system which underpins economic and investment confidence nationally.

To achieve registration in Victoria, candidates must complete a bachelor degree followed by a minimum two year period in a training agreement under a Registered Surveyor. During their training agreement, candidates must satisfactorily complete a number of projects and ultimately demonstrate to the Surveyors Board their skill, ability and competency to contribute to the evolution of the cadastre and to maintain its integrity.

Association of Consulting Surveyors Victoria

To maintain registration in Victoria, surveyors must continually engage in further education and professional training and constantly demonstrate their competency through the audit program.

The ultimate generation of survey plans is the product of detailed historical research, interpretation of evidence, complex title re-establishment, mathematical computation and the skilled presentation of this work in planimetric form. Highly professional work, by extensively trained people, with an understanding of the importance their role plays in the economic stability of the nation.

### **Copyright and the Digital Economy**

Whilst survey plans have always provided the underlying data that supports the cadastre, it is really only with the advent of digital technology that government bodies commenced commercialising survey plans. This now includes using third party information brokers to sell plans to the public for a profit which provides returns to Land Registry and the information broker but not the creator of the content – the surveyor.

Surveyors do not expect remuneration for internal use of their survey plans by government for registration purposes, but they do expect respect for their content and a return when government commercialises their works. To legislate to remove the rights of surveyors to receive royalties for their plans seems highly inequitable when government agencies and other third parties derive considerable income from selling that information.

This demonstrates a complete lack of respect for the reliance the community places on the information and of the capabilities and responsibilities of surveyors.

Surveyors have spent the last 16 years (the last ten of which in court) struggling with government to have their copyright recognised. Including having arguments with

Association of Consulting Surveyors Victoria

government over originality, ownership, implied licence, and value. Over the last 10 years the Courts have made numerous determinations around surveyors copyright and government use of plans and surveyors are concerned about the status of these determinations should the proposed amendments be introduced.

Our Association and its members are concerned that government will see any legislative change as an opportunity to resile from any findings of the Courts on surveyor's copyright . In particular, we note that in the most recent case before the Copyright Tribunal the State of NSW argued that the for-profit sales made by third-party service providers (as authorised by them) were for public administration purposes.

The surveyor in preparing plans, is not able to predict at the time of creation, what commercial use will be made of their works and products derived from them. Consequently there is no opportunity to set a fee for preparation that is commensurate with the subsequent 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.

Surveyors accept that certain government uses of their works should not attract payment (e.g., copying for registration purposes) and have agreed this with government accordingly. This has all been done within the ambit of the statutory licensing regime. Surveyors should be fairly compensated for other uses and our members and their clients, should not have to subsidise government use of their plans.

Association of Consulting Surveyors Victoria

It seems completely unjust and unfair that a free exception would be considered for surveyors copyright material alone, particularly in the face of the Copyright Tribunals recent decision on royalties in NSW.

Under the proposed amendments government will self-determine whether their copying falls under a free exception. Given our history with government, surveyors are sceptical about government ever determining a use of a plan not being free. Under the current statutory licensing system creators, via the declared collecting society, can access information about internal government copying. Under the proposed amendments it would seem that creators will only ever be able to access information about internal government use via subpoenas in an infringement action. Given the rhetoric of government regarding transparency it seems odd that these amendments would give the opposite effect.

The replacement of the current statutory licensing regime with an open ended free exception will bring uncertainty to all copies made by government. Any copy relying on the proposed new exception will be open to be contested. The ALRC's proposals will create an environment of uncertainty which will require litigation to resolve, as even the ALRC acknowledges.

## **Conclusion**

The Association of Consulting Surveyors, Victoria strongly believes in the equity inherent within s.183 of the Copyright Act 1968. We consider it to be highly relevant in the digital economy that has an even greater potential to exploit the rights of copyright creators through the ease of distribution and increased commercial use made of registered material.

To implement free exception for surveyor's plans, in an environment where only the creators themselves are denied a benefit, while many others profit from their skill and professionalism, is simply unjust.