



Education
Services
Australia

Wednesday 31 July 2013

Australian Law Reform Commission
GPO Box 3708
SYDNEY NSW 2001

To whom it may concern

Discussion Paper 79, Copyright and the Digital Economy

This submission is made on behalf of Education Services Australia (ESA), a national, not-for-profit company owned by all Australian education ministers. ESA was established to support delivery of national priorities and initiatives in the schools, training and Higher Education sectors.

Despite its clear educational purpose and objectives, ESA rarely falls within the copyright exceptions in the *Copyright Act 1968* (Cth). As a result, ESA is almost always required to seek permission to use copyright material even if that use is for clear, non-commercial educational purposes. This requires ESA to devote a large team and substantial resources to obtaining permissions from copyright owners for non-commercial educational uses of their works. ESA requires substantial extra funding to meet these obligations.

In ESA's experience, rights holders contacted by ESA are often surprised that the non-commercial educational uses of copyright works facilitated by ESA require permission. This has particularly been the case with US-based rights holders, who often express the view that use of the nature and extent proposed by ESA would amount to fair use under US copyright law.

In Australia, on the other hand, ESA has encountered a degree of opportunism among some publishers, who rely on the prescriptive nature of Australian copyright law to extract fees for public interest uses of small amounts of material in a non-commercial educational context, even in circumstances where those uses are clearly not harmful to the interests of the copyright owners.

ESA has reviewed and considered the submissions made by the Copyright Advisory Group for Schools (CAG) in response to the Discussion Paper, and strongly endorses those submissions. The ALRC's proposed flexible fair use exception would be a considerable improvement to Australia's technical and technology-specific copyright laws, and is essential to the continued success in the digital economy of public interest educational services such as those provided by ESA.

ESA would like to make clear that it expects to continue to obtain permissions for any uses that exceed the limits of the proposed fair use exception. However, ESA welcomes the proposed move to a fairness-based approach, which would remove the requirement to undertake onerous and expensive permissions processes in respect of uses that are properly regarded as fair and non-harmful to the interests of the copyright owners. As a result, the proposed reforms would enable ESA to focus on its mandate of delivering quality educational services to Australia's teachers and students.

ESA supports the ALRC's proposals and CAG's submissions in the strongest terms.

Yours faithfully,

Susan Mann
Chief Executive Officer