

31 July 2013

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

***By email: [web@alrc.gov.au](mailto:web@alrc.gov.au)***

Dear Sirs

## **COPYRIGHT AND THE DIGITAL ECONOMY (DP 79)**

This submission is made on behalf of the Copyright Advisory Group – TAFEs (CAG TAFE), the peak body responsible for copyright policy and administration for the Australian TAFE sector (other than in Victoria), including the management of obligations under educational statutory licences. CAG represents the TAFE authorities in all states and territories other than Victoria.

This submission is supplementary to the submission that was made by CAG TAFE in response to the ALRC's Issues Paper 42.

### **Endorsement of CAG Schools submission**

CAG TAFE has had the opportunity to review the submission made by CAG Schools in relation to the Discussion Paper. CAG TAFE agrees with that submission and endorses the recommendations of CAG Schools.

In particular, CAG TAFE agrees with and endorses the following submissions by CAG Schools (together with the more detailed comments made on each point by CAG Schools):

1. The proposal by the ALRC for a new flexible fair use exception would dramatically improve and future-proof Australian copyright law.
2. Concerns among owner groups regarding the potential uncertainty of a new fair use exception are vastly overstated, particularly in light of the considerable uncertainty inherent in the existing system of exceptions and statutory licences.
3. CAG TAFE would be well equipped to provide guidance to TAFEs in relation to the new fair use exception, and to negotiate voluntary collective licences with owners in respect of uses that require remuneration.

4. Although the introduction of an exception for fair dealing for education would be a significant advancement on the status quo, and is supported by CAG TAFE as a policy alternative to fair use, this should be considered as a second best reform option.
5. As the ALRC has recommended, the statutory licences should be repealed. The perceived benefits of statutory licences are in fact benefits of *collective* licences and would easily be replicated (and even improved) under a system of voluntary licences supported by fair use.
6. The benefits of the proposed fair use exception will be seriously compromised if the provision is left open to be overridden by contract. To be meaningful, fair use (including for educational purposes) must be protected from contractual override.

### **Additional TAFE issues**

As was noted by Universities Australia in its submission in response to the Issues Paper, inflexible exceptions are affecting the ability of Australian universities to create and disseminate knowledge. The same is true in relation to TAFEs. CAG TAFE is particularly concerned that the existing copyright system is seriously hampering the ability of TAFEs to use innovative teaching options such as Massive Open Online Courses (MOOCs). CAG TAFE endorses University Australia's submissions in this regard.

### **Further information**

If you have any questions or we can provide any additional information in relation to this submission, please do not hesitate to contact me.

Yours faithfully



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