



AUSTRALIAN INDUSTRY

GROUP

**AUSTRALIAN INDUSTRY GROUP SUBMISSION**

Australian Law Reform Commission

*Inquiry into Copyright and the Digital Economy – Discussion Paper*

**2 August 2013**

## Submission to Copyright and the Digital Economy Discussion Paper

The Australian Industry Group (Ai Group) welcomes the opportunity to make a submission to the Australian Law Reform Commission's (ALRC) Discussion Paper released as part of the ALRC's inquiry into copyright and the digital economy.

Ai Group is a peak industry association in Australia which along with its affiliates represents the interests of more than 60,000 businesses in an expanding range of sectors including: manufacturing; engineering; construction; automotive; food; transport; information technology; telecommunications; call centres; labour hire; printing; defence; mining equipment and supplies; airlines; and other industries. The businesses we represent employ more than 1 million employees.

Our comments on the discussion paper are generally confined to the direction proposed by the paper rather than particular recommendations.

Australia's copyright law framework will play an important role in determining the level of innovation that can occur in the digital economy and the type of activities that are permitted. Current exceptions to the *Copyright Act 1968* (the Act) are often technology specific. This is likely to be an impediment to innovation and subject to increasing legal, technological and commercial challenge as technologies and user behaviour evolves.

As the Discussion Paper notes, this approach does not provide the optimal foundation for Australia to succeed in the digital economy as copyright law should "support individuals and enterprises as they establish new ways of doing business and seek out new commercial opportunities", particularly in a competitive, global context.<sup>1</sup> Reform may reduce instances of copyright infringing behaviour by consumers as providing convenient and legal means for consumers to access content has been associated with reduced demand for illegal downloading and piracy.<sup>2</sup> Encouraging use of digital technologies and services may also have economic benefits. For example, a recent Ai Group survey of around 350 CEOs found that 33% of businesses that invested in new technologies reported labour productivity improved compared with 16% of businesses that did not invest.<sup>3</sup>

Ai Group therefore supports the ALRC's recognition of the need to move to a more flexible and less technology specific model for copyright law, whilst respecting the rights of copyright creators and rights holders and avoiding undercutting the commercial incentive to create.

Ai Group supports the five principles articulated in the discussion paper, and in particular principle four which endorses rules that are flexible and adaptive to new technologies.

We also support modernisation of Australia's copyright framework where current exceptions are shown to prevent routine or critical aspects of Internet and digital functionality that do not undermine potential commercial markets for content creators. We regard exceptions based on the types of uses that are non-infringing, such as private and domestic copying and non-consumptive uses, as more likely to provide flexibility and adaptability in the future than exceptions based on particular technologies or applications which may quickly become redundant.

However, there are complex issues associated with these reforms, such as the ability of third parties to make copies for private and domestic use on behalf of individual users. Great care is needed to strike the right balance in allowing innovative new services and fair access to legitimately acquired content in a multi-device environment, without undermining new commercial markets. Our

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<sup>1</sup> Australian Law Reform Commission (2013), *Copyright and the Digital Economy Discussion Paper*, p. 29

<sup>2</sup> Ericsson (2012), *TV and Video: An analysis of evolving consumer habits*, p. 10.

<sup>3</sup> Australian Industry Group (2013), *Ready or Not? Technology Investment and Productivity in Australian Businesses*, p. 7.

members have different views on whether this is best addressed by specifically legislating what is permitted or by leaving this to the courts to determine based on principles set out in amendments to the Act. We suggest that the final proposals recommended by the ALRC to the Government include an assessment of the impact of reforms on different stakeholders. Should the Government accept the recommendations and proceed to try and legislate them, further consultation will be needed on the drafting of the provisions.

In our submission to the Issues Paper released by the ALRC last year, we argued that the current inquiry is not the appropriate forum to determine issues related to the treatment of retransmission of broadcasting signals under the Act because any reform to current arrangements would have impacts beyond copyright policy and should not be made in isolation from these broader effects. We still consider that to be the case.

The Discussion Paper acknowledges that the issue raises “complex questions at the intersection of copyright and communications and media policy. The options for reform are largely dependent on assumptions about matters not within the ALRC’s remit.”<sup>4</sup> This is consistent with the findings of the Senate Environment and Communications References committee in its *Final Report in the inquiry into the effectiveness of regulatory arrangements in dealing with simultaneous transmission of radio programs using broadcasting services bands and Internet*, which recommended that “the Minister for Broadband, Communications and the Digital Economy and the Attorney-General fully and urgently address in a comprehensive and long-term manner all of the related broadcasting and copyright issues identified in numerous reviews, and by many stakeholders, following receipt of the ALRC review later this year.”<sup>5</sup>

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<sup>4</sup> ALRC (2013), *Op cit*, p. 300.

<sup>5</sup> Senate Environment and Communications Committee (2013), *Final Report in the inquiry into the effectiveness of regulatory arrangements in dealing with simultaneous transmission of radio programs using broadcasting services bands and Internet*, p. vii.