



PO Box 580, Moorabbin, Victoria, 3189, Australia  
2/47 Wangara Road, Cheltenham, Victoria, 3192, Australia  
Phone: +61 3 8558 2444 Fax: +61 3 8558 2400 Email: [dbrownlow@hbe.com.au](mailto:dbrownlow@hbe.com.au)

130

## Facsimile Message

To:	ALRC	From:	Hawker Brownlow Education
Fax No.	02 8238 6363	Date:	15 November 2012
No of Pages:	6	<i>(including header)</i>	
Subject:	ALRC Inquiry: Copyright & The Digital Economy		

The Executive Director  
Australian Law Reform Commission  
SYDNEY NSW 2001

Please find following our submission to the ALRS Inquiry: Copyright & The Digital Economy.

David Brownlow  
Hawker Brownlow Education Pty. Ltd.

## HAWKER BROWNLOW EDUCATION (HBE)

### SUBMISSION

#### ALRC INQUIRY: COPYRIGHT & THE DIGITAL ECONOMY

##### **Background.**

The current owners, David and Elaine Brownlow, established Hawker Brownlow Education Pty. Ltd (HBE) in 1985. HBE is one of Australia's largest, privately owned, educational publishers specialising in the creation, publishing, marketing and distributing an extensive list of K-12 teacher and student resources.

##### **HBE Business Model.**

HBE identifies, researches and commissions the writing of a wide range of educational materials for teachers and K-12 students in all areas of the curriculum and socially relevant school concerns such as bullying, sexism, homophobia and poverty.

HBE has International License Agreements with a number of prominent USA and UK educational publishers to publish edited Australian editions of many of their books for both teachers and students. The HBE editorial staff ensures all content is in 'The Queen's English' is metric and, where necessary, rewrites content to properly reflect Australian society and experience.

The profitability and ongoing viability of HBE is reliant on income from three streams-

- Printing and publishing K-12 teacher and student resources.
- Professional Development – organising, promoting and managing the annual HBE conference and subject related workshops and seminars.
- Annual distribution from the Copyright Agency Limited of payments made by schools and educational institutions under the terms of the statutory licensing scheme in pt VB of the Copyright Act 1968.

##### **Submission.**

In this submission it is our intention to only respond to Questions 2 and 29 as the questions of most relevance to the continuing success and survival of HBE.

##### **Question 2. Guiding principles for reform.**

**Hawker Brownlow Education (HBE) respectfully submits that the ALRC Inquiry retains the *Copyright Act 1968* without further amendments.**

We respectfully submit that of most concern to us is the perceived underlying sub-text for the establishment of this inquiry. It is our submission that the forces behind the formation of this inquiry reflect a particular political, social and economic ideology that is antithetical to the preservation of the legal rights of copyright owners and those individuals who have the moral and legal right to assert their work to be their Intellectual Property.

## 2.

We submit that an **unintended** consequence of the amendments to the Copyright Act 1968, that permit the reproduction of 10% of a copyright product under an educational statutory license so long as fair payment was made, has been to encourage governments, state and national, to attempt to stem the growing cost of the statutory license payments by further extending the percentage of allowable reproduction of copyright material and greatly reducing the amount of 'fair payment' paid to the copyright owners.

**HBE strongly opposes any further amendments to the *Copyright Act 1968* to extend the permissible percentage of photocopying of copyright publications and, or, reduces the amount of 'fair payment' to the copyright owners.**

We submit that the **positive** consequences of the amendments to the *Copyright Act 1968* were to first, legalise a fixed percentage (10%) of the known, and widespread, practice of teachers photocopying material for classroom use in return for fair payment to the copyright owners. While, in our opinion, the amendments violated the strict interpretation of the legal construct 'copyright', publishers and authors finally received financial compensation for the loss of sales and royalty income as a consequence of the illegal photocopying. And second, the amendments reduced the likelihood of continuing infractions of the *Copyright Act 1968* resulting in legal actions by publishers for compensation against teachers, principals and state education departments.

- We therefore respectfully submit that the ALRC Inquiry retains the *Copyright Act 1968* without further amendments.
- We submit that failure to do so will result in the certainty of publishers and authors commencing legal action for damages against all copyright violators.
- We also submit that if the ALRC Inquiry fails to recognise the need to protect the viability of the publishing industry then there will be an inevitable reduction in the number of educational resources being published. In our view this would ultimately lead to the reduction, or even collapse, of the nations' knowledge platform that is the foundation of all learning. Teachers, their students and ultimately the whole community will suffer as a consequence.

**Question 29.**

**Hawker Brownlow Education (HBE) respectfully submits that while an argument could be made for an increase in the 'equitable remuneration' distributed to Australian publishers and authors the current education statutory licensing scheme is adequate and should not be amended.**

## 3.

HBE submits that if it were not for the income distributed by CAL to HBE through the statutory license scheme the Company's profitability, and ongoing viability, could be threatened. We invite the ALRC to request CAL to provide the Commission members with a copy of the HBE 2012 distribution so that members could see the scale of the photocopying of HBE's publications. HBE's publishing list is extensive and is widely photocopied. However, in this submission we wish to bring to the Commission's attention only two products that best exemplify the challenges faced by HBE by the extent of photocopying of the Company's most popular and most successful publications.

The two subject areas of worldwide concern to educators are literacy and numeracy. HBE identified that this problem needed addressing many years ago and searched internationally for products that would be a potential solution for these concerns. HBE subsequently negotiated the exclusive Australian publishing licenses for two products that have proven to raise achievement scores in reading comprehension and the understanding of number. The introduction of these two programs into classrooms has resulted in raised NAPLAN scores. These two programs are Comprehensive Assessment of Reading Strategies (CARS) and Comprehensive Assessment of Mathematic Strategies (CAMS). These are two products that were developed in the USA in response to the 'No Child Left Behind' policy of the George W Bush administration. Both products are designed for students aged from 5 years, or Foundation entry into formal schooling, to students in year 9 of secondary schooling. To service each of these 10 class levels there is a Teacher's Guide, and individual student workbooks for each of five different levels of achievement, in each year, a total of 10 Teacher's Guides and 50 Student Workbooks.

For the last 6 years HBE has made a significant investment in the employment of experienced editorial and graphic design staff to edit, rewrite and design Australian editions of these 2 massive projects and to research, and then ensure, that all answers were 'normed' to Australian standards. The research into understanding the pedagogical processes necessary for student achievement levels to be raised required that each student work progressively through all the exercises in their own, individual workbook. This facilitated the monitoring of progress by both the teacher and the child's parents. The individual workbooks for each achievement level are sold in sets of 5.

In theory a teacher introducing CARS or CAMS into their class for the first time with 20 students in the class would purchase a Teacher's Guide (once only) and 4 sets of student workbooks. In following years only the sets of 5 workbooks would need to be purchased.

In practice, a disturbing number of schools, and individual teachers, buy one set of 5 workbooks and then photocopy enough additional workbooks for the rest of the class. They repeat this process yearly. HBE has evidence of the widespread and flagrant photocopying of all year and achievement levels of both CARS and CAMS and, to a lesser extent, the Teacher's Guide. The photocopying of the

4.

Teacher's Guide is usually where there are 2 or more classes in the same year in the same school – buy 1 and photocopy copies for all the other teachers.

In light of the above HBE submits the following observations:

1. The amendments to the Copyright Act 1968 have greatly increased the amount of photocopying of publishers' copyright material by schools. We attest that teachers have what we call 'a floating morality' when it comes to copyright issues. We would argue that a majority of teachers are either ignorant of, or misinformed about, how much of any copyright publication can be photocopied under the provisions of the education statutory license agreement. We would also argue that teachers believe that they are 'entitled' to photocopy as much of whatever publication they like because "*they are doing it in the best interests of the kids and they (the school) don't have enough money to buy more classroom resources*"

2. Teachers, supported by school principals, and regional and state administrators, deliberately photocopy **whole student workbooks** in the belief that under their, and their superiors, interpretation of the statutory license agreement, **they are entitled to do so**. HBE has both actual and anecdotal evidence that this practice is widespread across all states.

3. The cost of lost sales revenue to HBE, and all Australian publishers, as a result of the huge increase of photocopying in recent years is in the hundreds of thousands of dollars for HBE and hundreds of millions of dollars for the Australian publishing industry.

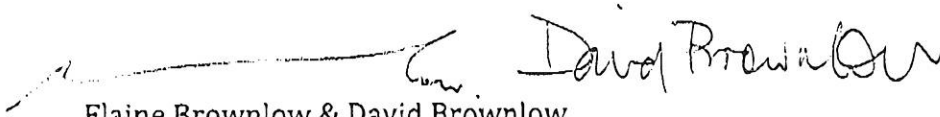
4. While the current level of 'equitable remuneration' paid to publishers by CAL is much needed and very welcome, **it does not adequately compensate publishers and authors** for the loss of sales as a consequence of the excessive and illegal photocopying undertaken by schools.

5. HBE submits that any recommendation by the ALRC that leads to the **reduction** of the value of statutory payments to publishers will inevitably also result in a **reduction** in investment by publishers. Research, writing, trialling and publishing of exciting, new, Australian educational products will diminish and ultimately cease.

6. HBE submits that if a recommendation as is posited in 5 (above) were enacted then a number of small and medium size educational publishers and booksellers would cease to operate. Inevitably schools would increasingly be forced to rely on imported publications to support their classroom practice. These would either be imported into Australia or purchased online through companies such as Amazon or the Book Depository. Either scenario sees an increasing flow of capital out of Australia and the introduction of classroom materials into

5.

Australian classrooms, the content of which will not reflect Australian culture and values, or Australian language, spelling or measurement.

A handwritten signature in black ink, appearing to read "David Brownlow". The signature is written in a cursive style and is positioned above the printed contact information.

Elaine Brownlow & David Brownlow  
Hawker Brownlow Education Pty. Ltd.  
2/47 Wangara Road  
Cheltenham VIC. 3192