



AUSTRALIAN PUBLISHERS ASSOCIATION

Ms Sabina Wynn
Executive Director
Australian Law Reform Commission
GPO Box 3708
SYDNEY NSW 2001

freedoms@alrc.gov.au

Dear Ms Wynn

**RE: Traditional Rights and Freedoms – Encroachments by Commonwealth Laws
Interim Report**

The Australian Publishers Association (APA) welcomes the opportunity to provide comment on the interim report on Traditional Rights and Freedoms – Encroachments by Commonwealth Laws.

The APA is the peak industry body in Australia for publishers of books and journals, hard copy and electronic publications. Established in 1948, the APA represents all Australian publishers large or small, commercial or non-profit, educational or popular, locally or overseas owned. The Association represents over 90% of the industry based on turnover.

The ALRC would be familiar with the perspective of the APA on matters of copyright through our submission, and the submissions of our members, to the inquiry into *Copyright and the Digital Economy*. As an affiliate of the Australian Copyright Council (“the ACC”), the APA fully supports the analysis and conclusions of the ACC to this and the previous inquiry. We support the comments made by the Copyright Agency in their submission. The APA is nonetheless making a separate submission to draw the ALRC’s attention to two key points: first that copyright does not impinge on the freedom of expression and secondly that property rights are important to the freedom of enterprise in a market economy and the foundation of the publishing industry.

Copyright supports freedom of expression. The publishing industry, more perhaps than any other, has a proud history of supporting freedom of expression and has nurtured and promoted the myriad voices of individual writers. Australia has a different legal tradition to the United States, however, it is worth noting the remarks of the US Supreme Court in *Eldred v Ashcroft*, 537 U.S. 186 in a jurisdiction where the Constitution includes explicit First Amendment rights to freedom of expression, that copyright’s limited monopolies are compatible with free speech principles: “the

First Amendment securely protects the freedom to make - or decline to make - one's own speech; it bears less heavily when speakers assert the right to make other people's speeches."¹

Copyright creates the markets that enable individual freedom. It is the property rights created by traditional copyright laws that provide the means for artists, musicians, writers and creative professionals to be remunerated for their effort. This does not compromise their freedom of expression; it is the foundation of the legal and economic system that facilitates it.

Current limitations, exceptions and statutory licenses allow access under Australian law that fulfil Australia's obligations under international treaties and address national concerns such as public interest and education.

The publishing industry is an economically and culturally important industry that is based on copyright. According to recent statistics, copyright industries contribute \$111.4 billion to the Australian economy². Copyright is not an example of Commonwealth law encroaching on rights or freedoms, it is the essential foundation for freedom of writers to ask a price for the use of their creations. Technologies have made it easier, in the words of the US Supreme Court "to make other people's speeches". That has made the principles of copyright more rather than less important to traditional rights and freedoms. There is a significant threat to traditional rights and freedoms, not from the inclusion of copyright in Commonwealth laws, but from the possibility of new exceptions that allow untrammelled free use of works and cut into the sustainability of an industry that has traditionally supported and expanded the freedom of expression that is a core tenet of our common law heritage.

Yours sincerely,

A handwritten signature in black ink, appearing to read "M. Gordon-Smith". The signature is fluid and cursive, with a large, stylized initial "M" and a long, sweeping underline.

Michael Gordon-Smith
Chief Executive

¹ <https://www.law.cornell.edu/supct/search/display.html?terms=copyright&url=/supct/html/01-618.ZS.html>

² PwC *The Economic Contribution of Australian Copyright Industries 2002-2014*