



THE UNIVERSITY OF  
**SYDNEY**

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Professor Jill McKeough  
Australian Law Reform Commission  
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SYDNEY NSW 2001

*Submitted via: [jill.mckeough@alrc.gov.au](mailto:jill.mckeough@alrc.gov.au)*

Dear Professor McKeough

**Australian Law Reform Commission: Copyright and the Digital Economy Issues Paper August 2012**

The University of Sydney welcomes this opportunity to comment on this ALRC inquiry into Copyright and the Digital Economy. The University is one of Australia's largest tertiary education institutions with a comprehensive education and research profile.

The University is a member of Universities Australia and the solicitors in our Office of General Counsel are individual members of the Society of University Lawyers (SOUL). In making this submission we wish to provide our support for the detailed responses made by Universities Australia and SOUL, and emphasise some key areas of concern to the University.

**Role of Education**

Universities play a diverse role in knowledge development, exchange and preservation. We are at once creators, consumers, and custodians of copyright materials. In this context, we have formed the view that current Copyright Act 1968 (the **Act**) is not flexible enough to promote innovation in the tertiary education sector and provide a cost effective framework for management of copyrights in the modern learning spaces consisting of learning studios, web conferencing, social technologies, class rooms, overseas excursions and other formal and virtual learning environments.

The special role of education is made clear in the way that policy and law makers around the world are taking steps to ensure that copyright laws do not impede education. The Commission's Issues Paper provides an excellent overview of recent case law developments in other jurisdictions that support this position. Today the challenges for educational institutions competing in a global market place include the need to use digital technologies to innovate in response to the changing educational environment and to meet student expectations. Massive Online Open Courses (MOOCs), professional training, continuing education, learning hubs, and open forums for discussion such as "Sydney Ideas" are examples where the statutory licences and "fair dealing" provisions in the Act do not appear to support the use of copyright protected material for such diverse educational purposes.



This situation arises from two important limitations. First, the limitations imposed by the statutory licences that require the University to take steps to ensure that material copied and communicated is only made available to persons entitled under the licence. Second, the limitations imposed by the “fair dealing” exemptions in the Act that do not provide for institutional copying and communication of material for research and study by our students and persons participating in our educational and research programs. In most instances, in order to copy and communicate copyright protected material, permission must be sought from each copyright owner and/or appropriate replacement material found that is available for use through Creative Commons licences or similar.

This places an additional administrative burden on University staff to ensure that copyrights are managed appropriately. This often results in many hours spent locating copyright owners and negotiating rights and/or revising presentations and teaching materials. **The University supports copyright law reform that will foster new and innovative ways of providing education to a wider audience and enable us to diversify our educational and research practices using the full range of digital media available today and in the future.**

#### **Questions 28 – 31 Statutory Licences in the Digital Environment**

As a result of these limitations (and others outlined below) we believe the statutory licences do not work well in the digital environment. Of particular concern are the communication limits that restrict the ability to teach our students in a way that is fair in other jurisdictions. For example, if the University wishes to make available electronically a reasonable portion of a published work (other than an article contained in a periodical publication) it can only do so if no other part of the same work continues to be made available at the same time. In other words, if a particular faculty has copied a chapter of a book (or less), and made this available on-line, no other faculty in the University can make another part of the same work available on-line in reliance on the Part VB licence until this first part is taken down (section 135ZMD(3) of the Act). Such limitations make no sense today and impede the effective delivery of course materials to our students.

We are also concerned that universities, through the statutory licences, are paying for content that is made freely available by the copyright owner or may, in the future, be a permitted use under a revised flexible exception and therefore, should be freely available for use by universities for prescribed purposes. It is important that any amendment made to the Act for the purpose of promoting educational use of copyright material is not muted by the existence of a statutory licence or overridden by private copyright licences that seek to exclude these exemptions.

#### **Questions 45 – 53 – Fair Dealing and Fair Use**

The existing Fair Dealing model with its closed list of specific exemptions to infringement of copyrights does not, in our view, provide sufficient flexibility to support innovation in education and the industries that education seeks to support. Each new situation that arises that is not within the scope of a specific exemption (or other exemption) requires legislative intervention. In order to strike the right balance between the rights of owners and the “rights of users” and to foster innovation we support the introduction of a more open-ended model featuring a flexible exemption.





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### **Open Access and Question 23 – Orphan Works**

Through the University's eScholarship and research data repository initiatives we support many activities that facilitate access to works of scholarship and research materials created by our students and staff. Through these activities we are becoming increasingly aware of a large amount of orphan works held in the University's collections. These works are generally quarantined from access due to the uncertainty associated with copyright ownership and rights of use. The University supports legislative reform that provides for the grant of a statutory licence to custodians of orphan works to enable access without infringement. This will ensure that important research and dissemination of information for the public good is not impeded by legal uncertainty.

We would be pleased to assist the Commission in this inquiry.

Contact: Anne Bell, University Librarian

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Yours sincerely

A handwritten signature in black ink, appearing to read 'Ann Brewer'.

**Professor Ann Brewer**  
Acting Vice-Chancellor