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Australian Law Reform Commission
GPO Box 3708
Sydney NSW 2001

**Re: Copyright and the Digital Economy**

Dear Commissioners

You have asked for comment on your report on Copyright and the Digital Economy. As an author, your proposal outrages me as it will deprive me of income from use of my work by educational institutions. I reject it in its entirety. I respond specifically to some points:

***Proposal 4–1*** *The Copyright Act 1968 (Cth) should provide a broad, flexible exception for fair use.*

Why? This is highly specious. Your argument for this fails to convince me that you have considered the rights of creators of copyright material in any way, shape or form. You appear to have accepted that Google and the PRISM group, who bleat about freedom of information on the one hand while selling private details to spy agencies on the other, have some moral high-ground in the so-called digital economy. They do not – if anything, their activities demonstrate that the rules of capitalism remain the same regardless of how information and entertainment are delivered to the public. In fact, because of the insidious role these agents play, fair use should be limited even more to ensure that the rights of creators can be maintained. Making certain creator rights inalienable from the creator would seem much fairer than your complex, unjust and unworkable proposal.

***Proposal 4–2*** *The new fair use exception should contain:
(a) an express statement that a fair use of copyright material does not infringe copyright;(b) a non-exhaustive list of the factors to be considered in determining whether the use is a fair use (‘the fairness factors’); and (c) a non-exhaustive list of illustrative uses or purposes that may qualify as fair uses (‘the illustrative purposes’).*

As a teacher and an author, I consider your suggestions totally unworkable. As a teacher in the tertiary sector, at present I am able to rely on the very broad provisions of the statutory licences to use a range of material for teaching purposes with minimal bureaucratic pain. Your proposal would make my teaching life arduous, miserable and uncertain. As an author, I fail to see any fairness in the above for either creators or users of copyright material.

***Proposal 6–1*** *The statutory licensing schemes in pts VA, VB and VII div 2 of the Copyright Act should be repealed. Licences for the use of copyright material by governments, educational institutions, and institutions assisting persons with a print disability, should instead be negotiated voluntarily.*

I don’t understand why the Commission is so opposed to statutory licences. They work well when assessing copying of printed material but they are phenomenally better when applied to digital use. Your argument seems to be that statutory licences do not work in the digital environment, and that is simply false. I receive payments for digital use of my material, admittedly small but very welcome, and the data I receive with those payments are more accurate and clearer than any I received for print use of my material. Electronic use surveys are far more encompassing and ensure that full records can be scrutinised, unlike the surveys of photocopied material that permit only a snapshot.

If the statutory licences are revoked and ‘fair use’ is extended then we can anticipate a number of outcomes.

There will be years of litigation as writers and other rights holder organisations attempt to have ‘fair use’ defined. That will be hugely expensive – a lawyers’ picnic – and tie up many of our resources as well as denying income to rights holders.

I also believe there will be chaos in the classroom as teachers struggle with the notion of what is available for use. Currently the licences give them freedom to choose whatever they believe to be relevant. If the statutory licence goes, they will be unable to make the confident choices they are now able to.

And I question why you would want to deprive me of the tiny amounts I receive from the statutory licences and give away my rights for some “fair use”. It’s not fair to me. It’s usually called robbery!

***Question 6–1*** *If the statutory licences are repealed, should the Copyright Act be amended to provide for certain free use exceptions for governments and educational institutions that only operate where the use cannot be licensed, and if so, how?*

As I have made clear in my points above, the statutory licences should not be repealed. However, the Commissioners responsible for this report should descend from their ivory towers and make some connection with the real world before they start proposing changes to a workable system that has served and will continue to serve both users and creators well.

Yours sincerely



Dr Jeremy Fisher