

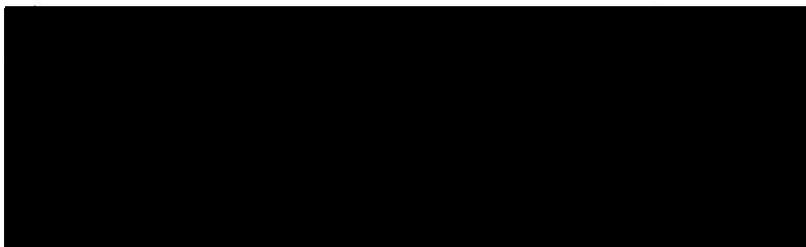
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To: ALRC
Copyright and the digital economy (IP79)

Fax No: 02 82386363

SENDER: Brenton Hill

ORGANISATION: Independent producer/ cinematographer



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Australian Government
Australian Law Reform Commission

Copyright and the Digital Economy

DISCUSSION PAPER

You are invited to provide a submission
or comment on this Discussion Paper

Submission by Brenton Hill

Copyright Inquiry - Discussion Paper

Published on 23 May 2013. Last modified on 19 July 2013.

The closing date for submissions is **Wednesday 31 July 2013**. [Top of Form](#)

Page 1 of 4

Full name: *

Brenton Hill

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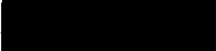
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Contents

pg 3.....table of contents
pg 4, 5.....Summary introduction
pg 6, 7, 8.....Q&A

Summary-introduction

Brenton Hill – Cinematographer

There is no longer an excuse in our digital environment, for difficulties of communications between creators and/or authors, and users of copyright materials. Free exceptions and Fair dealings were created for a non-digital world, and lazy people with long pockets. There is no longer a purpose for these exceptions or dealings, with the world at our fingertips, our creators and /or authors are only a web away.

Purpose of copyright act

I believe the purpose of the copyright act is firstly to protect the abuse of infringement of creators and /or authors original works. It should state clearly who the creators and /or authors are, and there rights of protection. It should promote the strength of consent, and the transfer of personal property, that consent being essentially given directly in writing from the creator and/or author. It should be clear not only of the right of consent, but of the right to revoke that consent.

Creators and/or authors works are "private and personal" and it is their right what they wish to release, and how that material is used. In the case of the cinematographer it is their right to hold any or all parts of the film as stock footage. I believe the term "private and personal" should replace the term "private and domestic", as it better expresses what is personal works, and the necessity that these works not be exposed to "free exception or fair dealing". Upon license or assignment these copyright works can be released for commercial use, at the original creator and/or authors discretion.

WIPO AV Beijing treaty Article 12(1) Transfer of Rights.

(1) A Contracting Party may provide in its national law that once a performer has consented to fixation of his or her performance in an audiovisual fixation, the exclusive rights of authorization provided for in Articles 7 to 11 of this Treaty shall be owned or exercised by or transferred to the producer of such audiovisual fixation subject to any contract to the contrary between the performer and the producer of the audiovisual fixation as determined by the national law.

This article is undeniably clear of who owns the film of a live performance. Once authorised by the performer, the creator and/or author of the film have claim of copyright ownership on the film. The new performers rights in our copyright act threatens that right, and the ownership of our personal property. Cinematographers filming "privately and personally" (being producer of that film) without the intentions of commercial sale or release to the public domain, should be exempt from performer protection. Under the circumstances, the performance would most likely be not of commercial quality, or not suitable for commercial release. An amendment to include direct cinematograph films of a performance, would save an enormous amount of unnecessary legal action, leaving the performer with their moral rights should any part of the film be required to be used commercially, at a later time.

I submit that the following section be amended;

from;

s248A Interpretations

exempt recordings means:

(a) an indirect cinematograph film of a performance, being a film made solely for the purpose of the private and domestic use of the person who made it; or

Amended to;

(a) a direct or indirect cinematograph film of a performance, being a film made solely for the purpose of the private and domestic use of the person who made it; or

direct. in relation to a sound recording or cinematograph film of a performance. means made directly from the live performance.

Copyright registration of America

With respect for our fellow owners of copyright in America, you must have to believe that their registration system for copyright ownership is sensible. It's time the ALRC pulled there head out of the sand and establish a copyright registration office for Australia. Copyright owners are tired of having to prove ownership of personal property in a court of law or tribunal. I don't believe it will totally eliminate the requirement of courts, but it would considerably reduce it. Please, let's stay out of court.

European Federation of Cinematographers

Commonly know as "Imago" this organisation represents cinematographers of the world. Imago have successfully established the acknowledgement of authorship of cinematographers in many countries around the world. Australian cinematographers do have the same authorship, unfortunately the Australian courts refuse to acknowledge it, even though the copyright act 1968 does. Due to the nature of our industry, it is rarely recognised in the commercial world that cinematographers have authorship, being that in a cinematographers contract the right of authorship is assigned or licensed to the producer, or commonly known as a deal memo. This is not so with most independent producers, as they perform the duty of director, and cinematographer as well. In the event of independent production the cinematographer most certainly holds his right of authorship. If authorship is transferred to a producer, (in accordance to the act) the cinematographers authorship remains underlying. I submit that the ALRC acknowledge the authorship of cinematographers, and relieve the courts of any doubt. And let there be another day out of court.

Q&A

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

Answer:

I disagree. All exceptions should be repealed from The Copyright Act 1968 . All exceptions are not an incentive to creators and/or authors. All free exceptions only make the author and/or artists work vulnerable to abuse, and a detriment to the earning potential of that work.

Proposal 4-2: The new fair use exception should contain:

1. an express statement that a fair use of copyright material does not infringe copyright;
2. a non-exhaustive list of the factors to be considered in determining whether the use is a fair use ('the fairness factors'); and
3. a non-exhaustive list of illustrative uses or purposes that may qualify as fair uses ('the illustrative purposes').

Answer: none of the above are appropriate as fair.

Proposal 4-3: The non-exhaustive list of fairness factors should be:

1. the purpose and character of the use;
2. the nature of the copyright material used;
3. in a case where part only of the copyright material is used—the amount and substantiality of the part used, considered in relation to the whole of the copyright material; and
4. the effect of the use upon the potential market for, or value of, the copyright material.

Answer: none of the above. This list is prejudicial to what copyright material should be exploited for free. It will only encourage and increase litigation to extreme levels. Artistic works holds copyright whether it is of artistic quality or not, and that is in the eyes of the beholder.

The only fairness factors are.

- 1. Does the user wish to use or exploit the copyright material***
- 2. Is the user willing to pay a fee for the copyright material***
- 3. Is the user willing to contact the copyright owners website to pay the fee.***
- 4. If not, the user should not be using it, should they? That's fair! no exceptions.***

Proposal 4-4: The non-exhaustive list of illustrative purposes should include the following:

1. research or study;
2. criticism or review;
3. parody or satire;
4. reporting news;
5. non-consumptive;
6. private and domestic;
7. quotation;
8. education; and
9. public administration.

Answer: none of the above. Private and domestic would have to be the most unfair. Why should everybody have the right, to use some ones private and personal work without paying for it? As for the others, I would say all the organistions listed above are well funded, and are more than capable of managing a fee for a creator and/or author. Most creators don't have money to begin with, and cannot afford legal action to defend their personal property.

Question 4-1: What additional uses or purposes, if any, should be included in the list of illustrative purposes in the fair use exception?

Answer: None.

Question 4-2: If fair use is enacted, the ALRC proposes that a range of specific exceptions be repealed. What other exceptions should be repealed if fair use is enacted?

Answer: All exceptions.

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.

Answer: I agree. All transfers of rights should be voluntary, by written consent via direct licensing or assignment. Statutory employment along with statutory licensing should be repealed under s17(copyright act 1968). Employers should not have any claim to an employees copyright works, unless by written contract consenting release of that work by license or assignment.

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?

Answer: No. This suggestion is prejudicial to others requiring licenses.

Proposal 7-1: The fair use exception should be applied when determining whether a use for the purpose of research or study; criticism or review; parody or satire; reporting news; or professional advice infringes copyright. 'Research or study', 'criticism or review', 'parody or satire', and 'reporting news' should be illustrative purposes in the fair use exception.

Answer: I disagree. Essentially all infringe copyright, and should require consent. These exceptions only permit organisations that use these purposes to abuse the creator/or authors rights, and profit from what belongs to, and profit should go to, the original owner of copyright.

Proposal 7-2: The *Copyright Act* should be amended to repeal the following exceptions:

1. ss 40(1), 103C(1)—fair dealing for research or study;
2. ss 41, 103A—fair dealing for criticism or review;
3. ss 41A, 103AA—fair dealing for parody or satire;
4. ss 42, 103B—fair dealing for reporting news;
5. s 43(2)—fair dealing for a legal practitioner, registered patent attorney or registered trade marks attorney giving professional advice; and
6. ss 104(b) and (c)—professional advice exceptions.

Answer: I agree

Proposal 7-3: If fair use is not enacted, the exceptions for the purpose of professional legal advice in ss 43(2), 104(b) and (c) of the *Copyright Act* should be repealed and the *Copyright Act* should provide for new fair dealing exceptions 'for the purpose of professional advice by a legal practitioner, registered patent attorney or registered trade marks attorney' for both works and subject-matter other than works.

Answer: If fair use, and exceptions are removed from the copyright act, you won't need the services of these legal practitioners. Ofcourse, they lose a lot of money without issues going to court, but let's not pay lawyers or the courts, let's just pay the creator and /or authors for there works.

Proposal 7-4: If fair use is not enacted, the existing fair dealing exceptions, and the new fair dealing exceptions proposed in this Discussion Paper, should all provide that the fairness factors must be considered in determining whether copyright is infringed.

Answer: All copyright is infringed, unless released by it's owner. Fair dealing is just another name for fair use exception. Call it what you want, restructure it, but it still does the same thing. It forces matters into court, because users abuse the privilege, and creators and/or authors lose there personal property, and there money.

Proposal 8-1: The fair use exception should be applied when determining whether uses of copyright material for the purposes of caching, indexing or data and text mining infringes copyright. 'Non-consumptive use' should be an illustrative purpose in the fair use exception.

Answer: We all know the difference between right and wrong, and this is wrong. If it's not yours' and you haven't payed for it, or gained consent, you should not be storing anything. No exception.

Proposal 8-2: If fair use is enacted, the following exceptions in the *Copyright Act* should be repealed:

1. s 43A—temporary reproductions made in the course of communication;
2. s 111A—temporary copying made in the course of communication;
3. s 43B—temporary reproductions of works as part of a technical process of use;
4. s 111B—temporary copying of subject-matter as a part of a technical process of use; and
5. s 200AAA—proxy web caching by educational institutions.

Answer: I agree

Proposal 8-3: If fair use is not enacted, the *Copyright Act* should be amended to provide a new fair dealing exception for 'non-consumptive' use. This should also require the fairness factors to be considered. The *Copyright Act* should define a 'non-consumptive' use as a use of copyright material that does not directly trade on the underlying creative and expressive purpose of the material.

Answer: I disagree. The only fairness factor is written consent of the release of copyright material for "non-consumptive use"