585.\_org\_ State Records Office of Western Australia

**From:** ALRC [<mailto:web@alrc.gov.au>]   
**Sent:** Wednesday, 31 July 2013 12:23 PM  
**To:** Marie-Claire Muir  
**Subject:** Online submission to DP79

Submitted on Wednesday, July 31, 2013 - 12:23

Submitted by user: SROWA

Submitted values are:

Full name:

State Records Office of Western Australia

Email:

[sro@sro.wa.gov.au](mailto:sro@sro.wa.gov.au)

I wish this submission to be treated as:

Public

If you are making this submission on behalf of an organisation, please provide the name:

If you are submitting as an individual, please leave this field blank.State Records Office of Western Australia

Address:

Alexander Library Building, Perth Cultural Centre, Perth, 6000

Contact phone number:

08 9427 3600

Proposal 4-1:

The SROWA is broadly supportive of the inclusion of a ‘broad, flexible exception for fair use’, as identified in proposal 4.

Proposal 4-2:

Proposal 4-3:

Proposal 4-4:

Question 4-1:

Question 4-2:

Proposal 6-1:

Question 6-1:

Proposal 7-1:

### 7. Fair Dealing

 If fair use is not enacted then a fair dealing exception should be created for public administration purposes, which includes local government entities, and provides for such things as:

* Normal recordkeeping/administration actions (e.g. digitising incoming correspondence and electronically filing it); and,
* Releasing information under FoI, or to meet other legislative requirements.

Proposal 7-2:

Proposal 7-3:

Proposal 7-4:

Proposal 8-1:

Proposal 8-2:

Proposal 8-3:

Proposal 9-1:

Proposal 9-2:

Proposal 9-3:

Proposal 9-4:

Proposal 9-5:

Proposal 10-1:

Proposal 10-2:

Proposal 10-3:

Proposal 11-1:

Agreed

Proposal 11-2:

Proposal 11-3:

Question 11-1:

The question has to be asked, who would benefit from such collective licensing and under what circumstances? Where a mass digitisation project is undertaken with a particular author, creator or set of authors, then the appropriate fees can be paid as required by the creator/s. No amendment of the Act would be necessary.

As the National Archives of Australia noted in their original submission:

Government archives hold large amounts of copyright material which has significant cultural, historical and evidentiary value but not commercial value as intellectual property.  Its wide dissemination through the use of new digital technologies can bring great benefits to the public in terms of understanding of their government, history and culture.  No economic disadvantage to the copyright owners would result from making this material available online.

Proposal 11-4:

Agreed

Proposal 11-5:

Proposal 11-6:

This may be problematic when applied to a commercially available product where the item has been amended, say by an inscription by the author, and it is this that prompts the requirement for preservation. Similarly, there may be differences between editions or versions of material which are of significance.

Preservation and replacement are not the same and should not be equated in this manner.

Proposal 11-7:

This provision would essentially make libraries, archives and museums policemen for copyright.  As identified by the Public Records Office of Victoria:

A challenge for an archive is that any access to a record is likely to involve access to third party copyright material. The only way this would be feasible is if it was automated – metadata in archival systems would flag third party material and automatically apply the restricted access.

Such automation would be difficult and expensive to implement and would have minimal benefit to either the archives or the creators.

Proposal 12-1:

If every letter written to a government agency or private organisation by an individual or organisation is to be considered a literary work, then the number of orphan works in Australian collections must number in the millions, if not billions.  Add in family and work photographs, often where the creator is unknown or unacknowledged, home movies (including digital videos) and works including oral histories, audio memos and the like, and the problem is even more immense.

The SRO supports the concept of an exception for lawfully obtained materials, for archives and libraries, and to meet business needs for recordkeeping purposes. Linking such an exception to a collecting society or a register of orphan works implies that such works are created for commercial gain and that the creators and their descendants are sufficiently aware of the work and of the way in which copyright works to regularly check whether or not a letter they or their ancestors wrote may be being digitised for an archive or library, or for storage in an Electronic Recordkeeping system. The same is also true for a ‘diligent search.’  This is clearly unworkable.

Changes to the Copyright Act should consider distinguishing between works created for or intended for commercial exploitation by their creators, and those which were not, and should include an exception for the copying of works where the public benefit might be said to outweigh or over-ride the private.

Proposal 12-2:

Proposal 12-3:

Proposal 13-1:

Proposal 13-2:

Proposal 13-3:

Proposal 14-1:

Proposal 14-2:

Proposal 14-3:

Proposal 15-1:

Proposal 15-2:

Question 15-1:

Proposal 15-3:

Question 15-2:

Proposal 16-1:

Question 16-1:

Proposal 16-2:

Question 16-2:

Question 16-3:

Proposal 17-1:

Additional comments?:

File 1:

File 2:

The results of this submission may be viewed at:

<http://www.alrc.gov.au/node/5296/submission/4927>