596.\_org\_ACCESS ministries

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**Subject:** Online submission to DP79

Submitted on Wednesday, July 31, 2013 - 14:58

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Proposal 4-1:

A broad, fllexible exception for fair use appears to require court defininition of fair use for each particular case (para278, p73). This would be time consiuming and costly for the one wanting to use the copyrigthed material. It is likely to deter rather than encouarage a wider and creative use of copyright material becuase of the difficulty of determining fair use and therefore whether one is acting within copyright law.

It also makes it very difficult for publishers, key players in the copyright world. They rely on the payments via the current system for monies to keep on investing in new and updated products. Why would a publisher invest in new and creative works when the use of it is very open and flexible with little opportunity to receive recompense for such use?

The current system also provides a snapshot, albeit limited of the use of one's material by end users.

Proposal 4-2:

If the list is non-exhaustive, an arbiter is required in each case not represented by the non-exhaustive list; a time consuming, frustrating and costly process.

in order not to infringe copyrigth, such an express statement will need to define fait use, an exceedingly difficult task. Better to expand the current definitions to incorporate the digital context.

Proposal 4-3:

Proposal 4-4:

A significant number of publishers in this country are in the educational sector. To include education in such a list threatens and even jeopardises their viability and ability to keep on being innovative.

A distinction needs to be kept between instruction and private study; the latter referring to an individual engaging in their own study and research. This is very different from a large institution making copies of a copyrighted work for whole classes of students. Such institutions rely on the production of material able to be copied; why would a publisher develop such material in the first place? Part of the role of the publishers is to ensure accuracy and currency in the material they publish. This is a very different relationship with content than the relationship between user-generated, free to use material where moderation and accuracy is not provided by a body with a financial interest in its veracity.

Question 4-1:

See above.

Question 4-2:

From a publisher's perspective and from the ease of understanding on the part of the user, no such fair use shoud be enacted.

Proposal 6-1:

Voluntary negotiations would be time consuming, frustrating and onerous for each individual user. Licences although limiting, give a great deal of freedom within the provided paramenters. The users do not need to check each time they want to use material, becuase of the freedoms afforded by the licences.

Question 6-1:

See above.

Proposal 7-1:

Proposal 7-2:

No, these exceptions provide limited freedoms for these users of copyrighted material. They remind the users that the material is copyrighted and that their use if governed by law.

Proposal 7-3:

Proposal 7-4:

Proposal 8-1:

We suggest that a licencing system be engaged to cover these uses so that the organisations creating these collections of data and material have paid for the right to do  so and the owners of the material are recompensed for the use of their material, in a similar way to other current licencing schemes.

Proposal 8-2:

Proposal 8-3:

Yes

Proposal 9-1:

Private and domestic use of copyrighted material needs to be allowed in a limited way, but not at the expense of those who rely on payments from the purchase of their copyrighted material to make a living.

Proposal 9-2:

Proposal 9-3:

No. They recognise that this is how individuals make use of copyrighted materials using modern technology. The format and time shifting is only for non-commercial purposes.

Proposal 9-4:

Back up and data recovery should be allowed where the original has been purchased and where the extra copy is not transferred or onsold to a third party, but is only used for this purpose.

Proposal 9-5:

Only when the original program was not purchased on eg a disc or other tangible piece of computer ware.

Proposal 10-1:

Those that use the intellectual property of another, even in a transformative manner, need to at least acknowledge the owner of the original material and receive written permission to do so. Otherwise there is the danger that material is transformed in a way that is unacceptable to the owner of the original material.

Again the commercial rights of the owners of the original material need to be protected under legislation.

Proposal 10-2:

Proposal 10-3:

Yes

Proposal 11-1:

Proposal 11-2:

Proposal 11-3:

yes

Question 11-1:

Not voluntary collective licencing but the establishment of a new body or an exension of the existing bodies to charge for and make recompense for such digitisation.

The rights of the onwers of the copyrighted material need to be balanced against the desires of such players as Google in this process.

Proposal 11-4:

Yes, whereby the copies may be accessed but not copied or downloaded by any third parties. There needs to be a limit of the number of copies- one copy and one back up copy.

Proposal 11-5:

yes

Proposal 11-6:

Yes

Proposal 11-7:

Yes, by allowing online reading access only, not the storage or copyiing of that material.

Proposal 12-1:

All orphan works need to be registered with a copyright collection agency, who are required to conduct a diligent search for the copyright owner/s of each work.

These are advertised for a period of say 6-12 months,seeking the response of the rightful owners of the copyright to this material.

Users of the material need to pay for the right to use this material via licences.

If after the advertised period, the owner is not established, the monies collected during licences is kept for say 3 years and then disbursed as grants to developers of new content. Thereafter, use of the material is free from payment but acknowledgement is required.

Proposal 12-2:

Yes, see above.

Proposal 12-3:

yes.

Proposal 13-1:

No see above.

Proposal 13-2:

No, see above.

Proposal 13-3:

No

Proposal 14-1:

No. a government needs the freedom to source any information it requires for it to carry out its legitimate tasks and not be hampered by restrictions applying to other persons and institutions.

Proposal 14-2:

yes

Proposal 14-3:

No

Proposal 15-1:

No. this change would take a lot of time and effort for each individual instanace; the parties have better things to do with their time. Exceptions provide limits but also freedoms to get on with the business in which you are concerned, rahter than the legalities of each instance of use of copyright material.

Proposal 15-2:

Question 15-1:

Proposal 15-3:

Question 15-2:

Proposal 16-1:

Yes, in this way, the changing use of technology is acknowledged and catered for in the legislation.

Question 16-1:

Proposal 16-2:

Question 16-2:

Question 16-3:

No, see above re the onerous nature of such voluntary schemes.

Proposal 17-1:

Additional comments?:

In the desire to increase the production of creative, innovative and digital material, it is important that the rights of creators are protectred. If they are not, and access to their works is too easy and their works are made too resdily available, and in a context where terms have to be negotiated each time, we are in danger of suffocating the very creativity that the reforms hope to engender.

The role of the creator, the user and the publisher need to be carefully balanced so that all players in the industry are valued and represented equitably by the legislation.

File 1:

File 2:

The results of this submission may be viewed at:

<http://www.alrc.gov.au/node/5296/submission/4910>