



RANDOM HOUSE AUSTRALIA

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Australian Law Reform Commission: Copyright & the Digital Economy Submission from Random House Australia Pty Ltd

Random House Australia Pty Ltd is part of the recently formed Penguin Random House. We publish hundreds of local titles a year and employ over 200 people. We publish a variety of books including fiction and non-fiction titles.

As a publishing company, our core business relies on our ability to invest in writing and writers and copyright protection allows such investment. We invest a great deal of time and skill to produce and publish our books and invest a great deal of value in our books. As such we have the utmost respect for copyright and believe that copyright owners must be allowed the right to choose how their copyright material is used by third parties regardless of the format of their material. Further since we are the exclusive licensee for the copyright that subsists in the works of our authors we are also responsible for its protection.

As a commercial organisation that publishes books, our income is predicated on copyright and its protection. A hundred per cent of our income is copyright based and our authors' income is a result of their copyright material. We understand the need to evolve with the changes in the market and particularly the digital market and we recognise the necessity of balancing various rights however we believe that the digital market is too unpredictable at this early stage to make any beneficial or balanced changes.

We have invested and continue to invest resources and money into protecting our author's copyright from infringement and we monitor our titles for breaches of copyright and territorial rights infringements. We currently have over 1000 local eBooks available and these are heavily protected with Digital Rights Management in order to prevent any breaches of copyright or territorial infringements. We are constantly investing in our books to ensure their quality and protection.



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The ALRC's proposal for 'fair use' exceptions to be included in The Copyright Act 1968 (Cth) (the Act) we submit, are too broad. The Act's current fair dealing exceptions are already quite extensive. Further there exists a body of case law regarding these exceptions. We submit that the implementation of US style 'fair use' provisions will result in uncertainty and this uncertainty will in turn lead to litigation. Further this uncertainty will potentially discourage legitimate use of content. The US 'fair use' exceptions are a result of many decades of case law and despite this case law these exceptions have resulted in a high degree of litigation.

PriceWaterhouseCoopers undertook a study into fair use exceptions as a result of the Hargreaves Review in the United Kingdom. This study demonstrated the economic impact of these fair use exceptions and the potential for significant losses to authors and publishers¹.

While innovation and flexibility are important, they should not come before copyright protection and at the expense of content creators and publishers. Rather than fostering innovation these 'fair use' exceptions will act as an impediment to innovation and creativity as content creators feel increasingly less protected by copyright laws.

We further submit that the changes proposed by the ALRC will have the potential to undervalue digital content simply because it is in the digital realm. As more and more content delivery systems become digital, we must resist the notion that such content should automatically be free or is of less value.

The Copyright Agency plays an important role in our business and we believe that the current Copyright Agency system is working well in providing fair and balanced payments to content creators and publishers. The ALRC's proposal to repeal the statutory licensing schemes in Parts VA, VB and VII, Division 2 of the Act and replacing these with a mixture of free exceptions, direct licences from content creators and collective licensing we believe will lead to a reduction in licence fees to authors and publishers and result in increased administrative burden for content creators, publishers and teachers. Not only will this lead to increased administrative burden but may also lead to an unfair advantage for licensees with more bargaining power than content creators. The current system ensures that content creators receive balanced and fair remuneration.

We submit that the current system that allows copyright owners to specify usage which is then efficiently monitored by the Copyright Agency is a balanced approach to the needs of content

¹ *An economic analysis of education exceptions in copyright* http://www.pwc.co.uk/en_UK/uk/assets/pdf/an-economic-analysis-of-education-exceptions-in-copyright.pdf



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providers while also allowing access to the content by the educational sector. Under the statutory licence system Australian educators have access to a wide variety of content at a low commercial cost. At an average cost of \$17 per student per year, in the context of the total education cost per annum which is roughly \$10k per student and the costs of purchasing the full work, this is a very small price. Further the Act does not preclude copyright owners and educational institutions from entering into direct licenses for the use of copyright material. At present government and education statutory licenses contribute over \$100 million a year in licence fees to rights holders, of which 70% is paid to authors and publishers of books in Australia and internationally².

Any decrease in these statutory licences will impact the rights holder's income. We submit that if the ALRC's recommendations are accepted these will likely have a negative impact on the book industry, leading to less income for creators and publishers and diminish the quality of local content.

In relation to the ALRC's proposal regarding preservation of material in library collections and digitisation of printed materials in collection while we generally support improved archiving and digitisation of cultural works we believe that there should be strong controls on any subsequent access to material to ensure such access does not interfere or impact commercial exploitation in any way.

We are constantly adapting our business to meet the needs of a rapidly evolving digital era. In order to protect our investment and protect our author's copyright we need to be supported by strong, clear and effective copyright law. Our success as a global publishing company has been a result of the current copyright laws and our investment in quality content and creativity. While we understand the need for copyright law to adapt to meet the needs of a rapidly evolving digital era we do not believe that this should be at the expense of content creators and publishers.

Yours sincerely,

Andrew Davis

Joint Managing Director

Karen Ferns

Joint Managing Director

² Book Industry Collaborative Council: Copyright Expert Reference Group, 'Australian Law Reform Commission Inquiry', page 9.