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# Response by Macmillan Education Australia to the ALRC Discussion Paper: ‘Copyright and the Digital Economy’

## Australia’s statutory licence system is fair for educators and fair for content creators.

Our existing system is unique in the world. For a minimal cost, teachers can source, copy and share an incredible range of material without worrying about copyright permissions. This means Australian students have unparalleled access to high quality educational resources – and at the same time, our creators are compensated. This, in turn helps further drive the creation of innovative, quality educational content and delivery systems.

This exceptionally efficient and simple copyright licensing system which allows 259,000 teachers at 9,400 schools around the country to copy 1.2 billion pages of content every year without having to seek permission.

The statutory licence enables educators to copy and share all material available to them, from Australia’s small specialist educational publishers, to the larger publishers and from a variety of other sources as they desire.

The problem is, in recommending the contentious removal of the educational statutory licence system, the ALRC has ignored the licence’s major beneficiaries: teachers and educational content creators.

The educational systems to which those teachers belong pay a flat annual fee for the use of the copyright. This equates to just under $17 per student per year, an amazingly cheap rate that allows copying of approximately 350 pages, per student, per year! That payment is collected by the government-appointed Copyright Agency and returned to the copyright owners. This system often takes the place of schools buying multiple copies of textbooks and is also useful for teachers wanting to cherry pick from a wide range of resources and tailor-make their lessons. Under the statutory licence system Australian educators have access to an enormous range of content at about a quarter of the commercial cost of a textbook. Teachers can copy and share content at a far reduced rate than they would if they were required to purchase the textbooks included in the licence.

## The costs associated with negotiating and managing voluntary licences for all this material would far exceed the licence fees paid.

There’s nothing stopping educational institutions making alternative arrangements with publishers and content creators under current law. The statutory licence is available for them to use, if they choose, where they don’t have these arrangements or are unable to manage the process. It should be noted that the system is already very well used by schools, and has been proven over time to work well and efficiently.

(Based on the Gonksi Report) Depending on the sector, it costs between $10,000 and $13,600 per year to educate a school student (excluding capital expenditure): the copyright fee of $60M for over 3.5 million school students represents approximately 0.1% of that cost. (i.e. one tenth of 1%) or less than 10 cents per school day per student.

Licence fees have remained stable over the last 10 years and under the recently concluded agreement for 2013–15, the rate per school student is fixed at the 2012 rate ($16.93), but (unlike in previous agreements) without an annual increase for the Consumer Price Index (CPI). This means that, in real terms, the per-student rate will decrease over the next three years.

A survey system samples schools’ usage to determine how much and what has been photocopied and shared digitally. The system has been designed to operate with minimal burden on teachers. The data collected from this over many years is valuable in ensuring correct and fair compensation to content creators. The system is efficient, refined and will continue to improve over time with the right support and effective cooperation between Copyright Agency and educational authorities.

## The statutory licence system is current, and evolves to stay that way

The statutory licence system has been modified numerous times to take into account changes in the way material is shared and copied to ensure the system remains fair. The licences are negotiated every three-to five years, and at that time, Copyright Agency considers and tries to accommodate education system requests for modifications to the system. In the event that discussions fail to achieve a mutually beneficial outcome, the rate and other licence terms can be set by the Copyright Tribunal. This has occurred rarely, however, in the 30 year history of the statutory licence.

The former Attorney-General, Lionel Bowen, explained the scheme to the Parliament in 1988:

'While copyright owners should not be called upon to subsidise the educational needs of the public, there should be as few obstacles as possible to access to educational materials.' The statutory licensing scheme in Part VB of the Copyright Act provided a mechanism 'whereby the interests of copyright owners will be balanced against the interests of educators in the most efficient manner possible.' (Hansard, 3 Nov 1988)

This statement still applies today, as the Statutory licence processes evolve over time to meet the type of copying including digital that is now being done in schools, and copying will be done into the future regardless of formats.

The education system may not like having to pay the licence fees, but if there was no copying being done there would be no need for the licence. The ALRC argue that copyright regulations stifle innovation. We would say the opposite is true – fees that publishers and other content creators receive for educational products are used to invest in new educational resources, online and in print. Any reduction or elimination of payment for usage will potentially stifle innovation as the funds available to re-invest reduce. This especially impacts small publishers.

Smaller publishers and content creators under the proposed voluntary licence regime will also not have the resources to chase and enforce these licences to ensure fair remuneration.

At this point in time Macmillan do consider the compensation they get from the Statuatory Licence as fair and equitable, for the usage being made of their resources in schools and the sales forfeited.

There are various incorrect assumptions made in the ALRC paper that The Commission has accepted without adequate research about the way in which remuneration has been set at an ‘equitable’ level. We refer you to the submission from Copyright Agency and endorse the contents of their submission including the following:

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| **Misunderstanding** | **Fact** |
| Schools pay up to four times more in copyright fees to deliver education using digital technologies than using paper copies | 'technical copies' are not 'remunerable'';compensation to creators is based on 'consumption';the value of a copy displayed to many students through a learning management system to an electronic whiteboard or individual tablets is greater than the value of a photocopy used by one student. |
| Schools have to record technical copies in surveys of usage | Copyright Agency has never sought this;The survey design, and the processing of usage data, is agreed between Copyright Agency and the educators’ Copyright Advisory Group. |
| Schools pay millions of dollars to use content freely available on the Internet | Only content used in reliance on the statutory licence taken into account for compensation to creators;Content available under 'open' licences like Creative Commons is excluded;The proportion of overall compensation relevant to internet content is 6%. |
| Writing a quote from a book on an interactive whiteboard must be paid for out of education budgets | Copyright Agency has never sought payment for this, even if there were a way to measure it. |
| Equitable remuneration is determined according to how much material is available rather than how much is consumed | Flat fees negotiated for agreed periods are based on estimates of consumption; |

## Online is not always ‘free’

 Just because material is online, does not automatically make it free. In fact, website copyright notices often state what can and can’t be reproduced. Opening up to fair use may mean publishers and other content creators have to ‘lock up’ their content behind firewalls, making access for teachers more complicated. This goes against the need for easy to access local resources for teachers to use flexibly. Hence the proposed system change will potentially be self-defeating.

The Statutory Licence scheme weeds-out and does not pay for use of content that should be used ‘free’ to schools, and does not require remuneration.

## Copyright enables the continued investment in world leading Australian educational content

Australian content creators are world class and their products are highly valued.

Macmillan engage authors who are practicing Australian teachers, to create first class content that is current, cutting edge, and local. We also engage hundreds of local freelance editors, illustrators, designers, photographers, animators and other professionals to help us produce our products. Our products are focussed on Australians, Australian issues and local curriculum(s). These materials are highly valued as shown through their use in schools, and the creators should be duly compensated, equitably.

Current copyright law helps sustain a diverse range of content producers and publishers. This creates a competitive market where publishers strive to stay ahead, innovating and extending their offerings and products to the benefit of the education sector, allowing teachers to select the best resources for their local school and curriculum needs. All parents and teachers want their child to have access to the best Australian educational resources and the statutory licence system ensures content creators are fairly remunerated so they can continue to invest in and provide high-quality educational resources.

## Potential repercussions of a repeal of the statutory licence for schools

The repeal of the statutory licence will mean a higher administrative burden for teachers and principals who need to ensure compliance with a range of different voluntary licences for content their teachers need to access and copy. Schools currently do not have to check whether what they are copying and sharing requires copyright permission or payments.

Voluntary licences will also create an environment of litigation as authors, publishers, illustrators, animators, photographers and others fight against copyright breaches. Only those with enough resources to fight will be successful. Others risk being put out of business.

The Australian Law Reform Commission proposes the dismantling of the system and its replacement with a combination of voluntary licencing and ‘fair use’ exceptions but with no practical explanation of how that will work. This will result in taking away a well-tested and efficient system, that currently allows great flexibility for teachers to create lessons by copying resources for classroom use on any occasion, and replacing it with an environment of uncertainty.

 ALRC Commissioner for this inquiry, Jill McKeough, said herself on June 7, 2013[[1]](http://au.artshub.com/au/news-article/opinions/publishing-and-writing/fair-use-not-fair-to-education-196096%22%20%5Cl%20%22_ftn1): “So, if we introduce reforms, there won’t be a lot of case law, there won’t be a lot of precedent, and it’s the difficulty of adjusting to that new environment that copyright owners fear.”

 Who then, will develop the case law and set the new legal precedents? Who will mount the challenges and who will benefit from those legal cases? Most likely those large content providers with enough money to do so, while the smaller publishers struggle to survive.

 The ALRC has claimed that a voluntary system of licensing will be more efficient. But the reality at schools will be far different.

 In this new proposed environment, teachers will need to seek permission before copying, and possibly pay a license themselves or from school budgets, or attempt to copy under ‘fair use’, which will mean necessary testing in the courts to develop benchmarks for what is allowable. Imagine 259,000 teachers around Australia having to stop what they have been doing all their working lives, and rethink whether they can use every resource they now have at their fingertips!

 So, teachers will likely go ahead and copy without permission and that situation will be repeated time and again. Which means publishers, authors, illustrators and photographers will inevitably miss out on fair payment for the rights they hold in their work. This is an unfair dilution of the value they contribute to the Australian school education system – considered a robust and advanced system globally.

## Potential repercussions of a repeal of the statutory licence for the Industry

Without the statutory licence, the industry will shrink, incomes will be eroded and the education system will be faced with diminished quality local content which will be increasingly replaced by foreign material of a more generic nature. The proposed changes could create the potential for cheap overseas imports less tailored and less appropriate for the unique Australian culture we have developed and hold so dear.

At 13.45 the Commission notes: ‘the importance of education does not mean creators should subsidise education in Australia. Although this Inquiry is about exceptions to copyright, the ALRC appreciates the need for copyright laws to help ensure authors, publishers, film makers and other creators have an incentive to create.’

Unfortunately, the proposal is to repeal what remains a scheme that balances ‘the interests of copyright owners ... against the interests of educators in the most efficient manner possible’, with an arrangement that will force copyright owners to choose between a larger burden compliance costs and higher transaction costs *or* higher unauthorized use, and at the same time removing equitable remuneration.

If publishers and authors are not paid for their products, many will be unlikely to provide them in future. The photocopying is not just a small thing; a huge part is a substitute for buying a book. Because schools have the licence system, content creators lose real sales – and the statutory licence gives them some recompense for this.

A large proportion of statutory licence income is used by Macmillan to reinvest in future product development, and without the revenue it would be hard to continue business.

 In this day and age lots of things have become ‘free’ which might be OK in the short-term but often has long-term effects – especially to individual creators who take risks. Less people choosing the creative path, and less quality Australian educational content could be two long-term effects, which is not great for future generations.

 Publishers, authors and content creators are all passionate about providing good educational outcomes. But that doesn’t mean they can do it for free.

### About Macmillan Education Australia:

Macmillan Publishers Australia has been operating in Australia for over 100 years. Macmillan’s school publishing business Macmillan Education Australia (MEA) is one of the best known educational publishers in Australia. It was formally established over 40 years ago and has a vigorous publishing program catering to the needs of Primary and Secondary Schools. All MEA resources have been written and developed to meet the curriculum requirements of the Australian education systems. Along with its authors, Macmillan relies extensively on the revenue flows from CA to help fund its forward publishing and to ensure their unique local qualities can be maintained.

Macmillan's publishing activities in Australia also include Pan Macmillan Australia, Macquarie Dictionary & Online, Palgrave Macmillan, Macmillan Professional Development, Flexibooks and Macmillan Distribution Services.