714.\_org\_ Electronic Frontiers Australia

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Submission on behalf of: Electronic Frontiers Australia

Proposal 4-1:

Electronic Frontiers Australia (EFA) strongly supports the introduction of a broad, flexible exception for fair use into the Copyright Act and believes that this will be of great benefit to Australian consumers, educators, creators and content owners.

Proposal 4-2:

EFA supports this proposal.

Proposal 4-3:

EFA supports this proposal.

Proposal 4-4:

EFA supports this proposal.

Question 4-1:

EFA believes that the following should be included in the list of illustrative purposes:

- transformative uses

- other non-commercial uses, such as in the government or non-profit sectors

Question 4-2:

EFA supports this proposal.

Proposal 6-1:

EFA supports this proposal.

Question 6-1:

EFA generally supports this proposal, but believes that balance and media delivery neutrality should be important factors in the negotiation of any voluntary licences that may be required.

Proposal 7-1:

EFA supports this proposal.

Proposal 7-2:

EFA supports this proposal, but only if fair use is enacted.

Proposal 7-3:

EFA supports the enactment of fair use and believes that modification and extension of the existing fair dealing exceptions would be a very poor substitute.

Proposal 7-4:

EFA supports the enactment of fair use and believes that modification and extension of the existing fair dealing exceptions would be a very poor substitute.

Proposal 8-1:

EFA supports this proposal.

Proposal 8-2:

EFA supports this proposal.

Proposal 8-3:

EFA supports the enactment of fair use and believes that modification and extension of the existing fair dealing exceptions would be a very poor substitute.

Proposal 9-1:

EFA supports this proposal.

Proposal 9-2:

EFA supports the enactment of fair use and believes that modification and extension of the existing fair dealing exceptions would be a very poor substitute.  EFA further believes that private and domestic time and format shifting should be permitted regardless of whether the rights holder is willing to license this use.

Proposal 9-3:

EFA supports this proposal, but only if fair use is enacted concurrently.

Proposal 9-4:

EFA believes that activities relating to back-up and data recovery should not infringe copyright in any circumstances, particularly where it involves an individual backing-up their own legally acquired data.

Proposal 9-5:

EFA supports this proposal, but only if fair use is enacted concurrently.

Proposal 10-1:

EFA supports this proposal, but also offers the following example of the importance of transformative use being considered a fair use. Copyright images, video, and sounds, and concepts are often used by citizens in the creation of "crisis memes" - templateable and sharable content that comments on current or recent crises. These memes represent a reinvigoration of an active and unconstrained public voice. Such memes are an important new version of public comment--especially critique--and are inherently based on the transformative use of often copyright materials without payment or attribution to the creator, but by the same token without receiving payment or even attribution themselves. This is an excellent example of an innovation in freedom of expression that needs to be preserved at all costs.

Proposal 10-2:

EFA supports this proposal and believes that properly attributed quotations should never be considered to infringe copyright, subject to the test regarding the amount and substantiality of the part used, considered in relation to the whole of the copyright material.

Proposal 10-3:

EFA supports the enactment of fair use and believes that modification and extension of the existing fair dealing exceptions would be a very poor substitute. As noted in 10-2, EFA believes that properly attributed quotations should never be considered to infringe copyright, subject to the test regarding the amount and substantiality of the part used, considered in relation to the whole of the copyright material.

Proposal 11-1:

EFA offers no opinion on this proposal.

Proposal 11-2:

EFA offers no opinion on this proposal.

Proposal 11-3:

EFA offers no opinion on this proposal.

Question 11-1:

EFA offers no opinion on this proposal.

Proposal 11-4:

EFA offers no opinion on this proposal.

Proposal 11-5:

EFA offers no opinion on this proposal.

Proposal 11-6:

EFA offers no opinion on this proposal.

Proposal 11-7:

EFA offers no opinion on this proposal.

Proposal 12-1:

EFA supports this proposal.

Proposal 12-2:

EFA supports this proposal.

Proposal 12-3:

EFA supports this proposal.

Proposal 13-1:

EFA supports this proposal but believes that 'education' should be defined to include both formal (institution-based) and informal (self-learning) contexts.

Proposal 13-2:

EFA supports the enactment of fair use and believes that modification and extension of the existing fair dealing exceptions would be a very poor substitute.

Proposal 13-3:

EFA supports this proposal, but only if fair use is enacted concurrently, with a broad definition of education, as per the response to 13-1.

Proposal 14-1:

EFA supports this proposal.

Proposal 14-2:

EFA supports the enactment of fair use and believes that modification and extension of the existing fair dealing exceptions would be a very poor substitute.

Proposal 14-3:

EFA supports this proposal, but only if fair use is enacted concurrently.

Proposal 15-1:

EFA is not currently in a position to provide an opinion on this proposal.

Proposal 15-2:

EFA is not currently in a position to provide an opinion on this proposal.

Question 15-1:

EFA is not currently in a position to provide an opinion on this proposal.

Proposal 15-3:

EFA is not currently in a position to provide an opinion on this proposal.

Question 15-2:

EFA is not currently in a position to provide an opinion on this proposal.

Proposal 16-1:

EFA is not currently in a position to provide an opinion on this proposal.

Question 16-1:

EFA is not currently in a position to provide an opinion on this proposal.

Proposal 16-2:

EFA is not currently in a position to provide an opinion on this proposal.

Question 16-2:

EFA is not currently in a position to provide an opinion on this proposal.

Question 16-3:

EFA is not currently in a position to provide an opinion on this proposal.

Proposal 17-1:

EFA believes this proposal should be modified to include the full range of fair use defences, particularly including private and domestic copying and transformative uses.

Additional comments?:

EFA has been a long-standing supporter of the introduction of a broad, flexible fair use defence into Australia's copyright law.

Recent extensions to copyright periods have ensured that these periods now bear no resemblance to the original objectives of copyright, to provide protection for a limited period before returning materials to the public domain.  ​Combined with aggressive enforcement actions and inflexibility in the face of changing technological and market conditions, particularly within the music and movie industries, this has led to the discrediting of the entire copyright regime in the eyes of many Australians, particularly younger people. The complexity of the present regime and references to out-dated technologies increases disregard for copyright law as being “out of touch” with current realities. The implications of the discrediting of this area of law should not be underestimated as it feeds into a wider disenchantment with the legal system and a general lack of political engagement that has the potential for negative effects on the operation of Australian democracy.

EFA is very pleased that the ALRC is recommending the enactment of fair use and thanks all those who have worked on this review to date for their efforts.

File 1:

File 2: