



Australian Libraries' Copyright Committee

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Ms Helen Daniels
Assistant Secretary
Copyright Law Branch
Attorney-General's Department
Robert Garran Offices
National Circuit
BARTON ACT 2600

8 July 2005

Dear Ms Daniels,

Response to Issues Paper: *Fair Use and Other Copyright Exceptions: An examination of fair use, fair dealing and other exceptions in the Digital Age*

1. The Australian Libraries' Copyright Committee (ALCC) thanks the government for this opportunity to comment on the exceptions to copyright infringement. Australian libraries have in some ways been well served by the library and archive provisions contained in Division 5 of the *Copyright Act 1968* (the Act), and welcome the Government's timely review seeking to ensure that exceptions to infringement remain relevant in the digital age.

2. The following comments reflect the ALCC's perspective as the main consultative body and policy forum for the discussion of copyright issues affecting Australian libraries and archives. It is a cross-sectoral committee with representatives from the following organisations:

- Australian Library and Information Association
- Council of Australian State Libraries
- Australian Council of Archives
- Australian Government Libraries Information Network
- Council of Australian University Librarians
- National Library of Australia

3. The ALCC endorses in full the submission of the Australian Digital Alliance (ADA), including the main recommendation that a 'hybrid' fair dealing model to be adopted. In addition to the responses to issues put forward in the ADA's submission, the ALCC would like to emphasise the following points:
4. The ALCC views both the fair dealing provisions and the library and archive exceptions as essential to the copyright balance. The ALCC understands that the Government also intends to respond the Philips Fox Digital Agenda Review Report and Recommendations later in the year and would welcome the opportunity for further consultation in relation to the libraries and archives exceptions at that time. However, due to the nature of libraries and archives and their functions in assisting the public to access information, the ALCC see the fair dealing exceptions as equally important to their roles. On this basis, the ALCC supports the ADA's recommendation that in assessing whether a dealing is 'fair', the users purpose should be assessed as the relevant purpose.
5. The ALCC is not in favour of removing from the Act, the certainty that the library and archives exceptions, and the fair dealing provisions provide.
6. The ALCC supports the introduction of exceptions which enable copying of institutions' collection materials for users irrespective of the type of work that is being copied, and irrespective of the particular purpose of the user as long as that purpose falls within 'fair dealing'.
7. The ALCC sees no reason to restrict libraries to copying for research and study purposes when different users require libraries to assist them for various purposes. Sections 49 & 50 of the Act apply only to published works requested for purposes of research and study. They do not account for works requested to be used for other legitimate fair dealing purposes such as criticism and review. This should be amended.
8. The restriction within sections 49 & 50 of the Act to 'published works' does not account for the large amount of unpublished cultural material contained in libraries and archives. The ALCC notes particularly data from the National Archives of Australia indicating that approximately 90% of its collection is unpublished. Unpublished and older material is often valuable and sought after. The ALCC notes the comments contained in the submission of the Copyright In Cultural Institutions (CICI) group to this review in relation to the libraries and archives provisions. The ALCC supports the comments and recommendations of the CICI group in relation to amendment to these provisions of the Act.
9. There are no equivalent provisions (to sections 49 & 50) for subject matter other than works, namely, audio-visual items. Whilst section 110B permits copying of 'first copies' for 'other purposes', this does not appear to cover copying by libraries to assist users in utilising fair dealing. The ALCC submits that there should be no distinction of this kind between works and subject matter other than works, and supports amendment accordingly.
10. The ALCC supports consolidation of the library and archive provisions relating to works (ss48-53) with the provisions which relating to subject matter other than works

(ss 110A-110C). As discussed in the report of the Copyright Law Review Committee (CLRC) entitled “Simplification of the Copyright Act 1968”, such an amendment would remove any possible confusion to users caused by different standards set for different types of copyright material, would simplify the structure of the Act, and would remove any unnecessary duplication.

11. The ALCC supports the ADA’s recommendations in relation to preservation copying and here reaffirms that there should be no restrictions on copying for preservation purposes. Restrictions allowing preservation of ‘original’ and ‘first’ copies are not useful. For example, this is particularly problematic in instances where works strictly speaking are not the ‘original’ and/or ‘first’ copies, however they are the only known available copies.

Yours Sincerely,

Sarah Waladan
Australian Libraries’ Copyright Committee