

Australian Law Reform Commission Review

Final Report – Copyright and the Digital Economy

This information sheet provides detail about the Australian Law Reform Commission review and its recommendations, and in particular explains why the entire Australian education sector — the school sector, the university sector and the TAFE sector — supports these recommendations and is calling for urgent reform of copyright law.

What is the ALRC review?

In 2012, the Australian Law Reform Commission (ALRC) undertook an important review of whether existing copyright law is suitable in the digital environment, and in particular whether Australia needs a new fair use exception.

The ALRC review was an important opportunity for the school and TAFE sectors to seek reform that is urgently required to enable educators to move into the digital age. The recommendations made by the ALRC are significant and if implemented they will address many of the concerns the school and TAFE sectors have regarding Australia's existing inflexible and outdated copyright law.

The ALRC review proposed two reforms that will ensure Australia's copyright system is appropriate for teachers in the 21st century:

- **A new fair use exception** that would enable schools to engage in certain uses of content without payment, provided that the use does not unreasonably harm the interest of the copyright owner.
- **Simplifying the statutory licences** to make them much more flexible and appropriate for the digital environment. Schools would no longer be saddled with having to comply with the overly technical and complex obligations currently associated with the licences.

The changes recommended by the ALRC will not harm the interests of Australian authors, but will put Australian schools on an equal footing with schools in other countries, and allow teachers to make full use of the most up to date digital technologies in the classroom.

The school and TAFE sectors strongly support these recommendations as they will bring copyright law out of the age of the photocopier and into the age of the iPad and 3D Printer.

The fair use exception

The ALRC review recommended the introduction of a fair use exception. This broad and flexible exception would enable schools to engage in certain uses of content without payment, provided that the use is fair, which includes ensuring that the use does not unreasonably harm the interests of the copyright owner.

The fair use exception would replace most of the existing purpose based exceptions, including [fair dealing](#) and would also consolidate a number of educational exceptions including in [sections 28](#) and [200AB](#) of the Copyright Act.

Existing copyright law is focused on narrow purpose-based exceptions that can be complex and often exclude legitimate educational use. This results in Australian schools paying millions of dollars to use material, such as freely available internet content, that no one else in the world is required to pay to use.

A new fair use exception as recommended by the ALRC would fix this issue because it is a broad and flexible exception, which would recognise these sorts of uses as fair — it simply asks of any use: is the use fair?

A fair use exception would mean that Australian schools would no longer be required to spend public funds on activities that do not affect copyright owner markets, such as:

- Displaying an image of a cat on screen from www.petfinder.com.au;
- Taking a screenshot of a website that compares times in different cities around the world;
- Printing out a factsheet on head lice from the Department of Health and Ageing's website to hand out to students;
- Taking a screenshot of a yellow raincoat from an online Bunnings Warehouse advertisement to include as a graphic in a PowerPoint presentation.

As a fall-back the ALRC put forward adding education to the existing fair dealing exceptions. The ALRC stressed that compared to fair use, fair dealing is less flexible and less well-suited to the digital age and was only put forward as a second-best option. While fair dealing for education would resolve some issues, the school sector agrees that the introduction of fair dealing for education would be a less favourable reform.

The following Smartcopying Factsheets provide more information on fair use:

- Fair Use and why Australia schools need it: www.smartcopying.edu.au/law-reform/fair-use-and-why-australian-schools-need-it
- Fair Use and why Australia schools need it – Infographic: <http://www.smartcopying.edu.au/law-reform/fair-use-and-why-australian-schools-need-it--infographic>
- Mythbusting fair use: www.smartcopying.edu.au/law-reform/mythbusting-fair-use
- Answering teachers' common questions about fair use: <http://www.smartcopying.edu.au/law-reform/answering-teachers'-common-questions-about-fair-use>
- Myth: Fair use decimated educational publishing in Canada: <http://www.smartcopying.edu.au/law-reform/myth-fair-use-decimated-educational-publishing-in-canada>
- Myth: fair use would harm Australian authors: <http://www.smartcopying.edu.au/law-reform/myth-fair-use-would-harm-australian-authors>

Simplifying the Statutory Licences

The ALRC review also recommended substantially simplifying the [existing statutory licences](#) to make them more flexible and better suited to a digital environment. The recommended changes would reduce the regulatory burden on the education sector imposed by complex and outdated copyright laws.

The school sector strongly supports reform of the statutory licences. The current system is broken, imposes a significant administrative burden on educators, and results in millions of dollars of public money being paid each year for uses by schools that are free in other countries.

The overly complex and technical rules in the statutory licences that apply differently depending on whether “old technology” (i.e. blackboards and handouts) or “new technology” (i.e. interactive whiteboards, learning management systems) is used, are standing in the way of Australian schools using innovative, digital technology. For example, there are different copyright rules depending on whether:

- the teacher is writing on a blackboard or an interactive whiteboard;
- an exam is a ‘seated’ exam or a distance exam;
- a teacher is projecting an artwork or text onto a screen or interactive whiteboard.

In fact, under the existing statutory licences Australian schools are actually being penalised for using the most efficient digital technology in the classroom. For example, when a teacher uses “old technology” to print copies of a scene from a play to hand out in class, there is only one instance of remunerable copying. But when the same teacher uses “new technology” such as saving a scene from a play found on a website to their laptop, emailing it to their school email account, uploading it to the school’s learning management system, and displaying it on an interactive whiteboard in the classroom — there are up to four separately recorded remunerable activities.

In addition, under the statutory licences Australian schools are paying not only for works that authors expect to be paid for; they are also paying millions of dollars of public money each year to use freely available internet material — no one ever expected to be paid for this content, nor are schools in other countries paying to use this content. It has been estimated that Australian schools pay between \$5.58 million and \$6.88 million a year to use this freely available content.

The statutory licenses also impose unnecessary and costly administrative burdens on Australian schools with no corresponding benefit to rights holders. Almost half the recording burden that falls on teachers during a Copyright Agency survey has no corresponding benefit for rights holders. It merely imposes a costly administrative burden. This is bad for schools, bad for collecting societies and bad for rights holders.

If these changes are made will Schools continue to pay to use content?

The Australian school sector spends over \$700 million each year purchasing educational content for students. This is in addition to the \$94 million dollars spent by the sector each year on licence fees paid to collecting societies to use copyright content in Australian schools.

If fair use was enacted, Australian schools would continue to pay for the significant proportion of educational uses that would not be covered by a fair use exception. Any use that caused unreasonable harm to an author or rights holder would not fall within a fair use exception.

Therefore, fair use would not impact in any way on the amount that the school sector spends buying educational resources. The school sector would never support reforms that would deprive creators of an ability to earn a living — schools do not want a free ride, simply a fair ride.

Australian schools need fair use not so they can avoid paying copyright fees, but so that teachers can get on with the job of using leading edge technologies for the benefit of their students.

Isn't this all about the money? Don't you just want to reduce your licensing fees? Won't the ALRC's proposals harm authors?

In its review the ALRC made it very clear that its proposals would not harm the market of copyright owners. Even with the proposed reforms a significant proportion of educational uses of copyright materials will continue to be paid.

There will be some activities that are identified as fair uses and would therefore no longer be remunerable and this may have some impact on licence fees. But this impact would be confined to uses that do not significantly impact on copyright owners.

Fair use would not be a complete “free for all” for schools. It would apply only to uses that did not unreasonably prejudice the interests of the author. A good example is content that the copyright owner has chosen to make freely available online with no expectation of payment, such as free tourism maps or government health fact sheets. Fair use would ensure that licence fees paid by Australian schools were better directed to authors who were trying to make a living from their works.

What about claims that schools will pull out of licensing arrangements with copyrights owners if the ALRC's reforms are implemented?

The ALRC's recommendations would not mean that all educational uses of copyright materials would be free. Any use that causes unreasonable harm to an author or rights holder would not fall within a fair use exception. Collective licensing arrangements would continue to exist for educational uses that were not covered by a fair use exception.

The reform would however resolve the issue where currently, as a direct result of the statutory licence and inflexible copying exceptions, Australian schools pay millions of dollars each year for uses that are free in comparable jurisdictions and for uses of content that no copyright owner ever expected to be paid.

The reforms recommended by the ALRC would not in any way impact on the amount that the school sector spends buying educational resources, which is estimated to be over **\$700 million** every year. They would simply ensure that licence fees paid by schools to copyright collecting societies — which in 2016 amounted to over \$94 million under statutory and voluntary licences — were appropriately directed to authors who are trying to make a living from their works.

The school sector supports the ALRC's proposals because they would simply ensure that educational licence fees are paid to use education content by authors who are writing to earn a living.

More Information

If you would like to know more about why Australian schools support the ALRC's proposed reforms, please read the Copyright Advisory Group – Schools' submissions in response to the Issues Paper and Discussion Paper issued by the ALRC:

- [CAG – Schools response to Issues Paper](#)
- [CAG- Schools response to Discussion Paper](#)
- [CAG- Schools supplementary response to Discussion Paper](#)

You can also contact the National Copyright Unit on (02) 9561 1204 or email at smartcopying@det.nsw.edu.au.

The National Copyright Unit provides, and will continue to provide, clear and straightforward guidance to teachers about how copyright materials can be used in Australia's classrooms.