

Copyright Amendment (Disability Access and Other Measures) Bill 2017

The [Copyright Amendment \(Disability Access and Other Measures\) Bill 2017](#) (the Bill) was introduced into the Parliament on 22 March 2017.

The Bill includes a number of reforms that have been sought by the education sector for years. These include:

- simplified, streamlined educational statutory licences;
- the introduction of a new exception to enable the use of copyright materials in online assessments and digital exams; and
- the introduction of a new fair dealing exception for people with disabilities (Including organisations assisting people with disabilities).

It is likely the Bill will be passed in the Winter Sittings in mid-June. See below for additional information on the Bill.

Streamlined statutory licence

The new provisions implement the practical agreement between the education sector (schools, TAFEs, universities) and collecting societies (Copyright Agency and Screenrights) (**the joint stakeholders**):

- There will be one licence scheme to replace the existing VA and VB licences.
- There will no longer be an express limit on the amount of a work that can be copied/communicated. The only limitation will be that the amount copied/communicated “does not unreasonably prejudice the legitimate interests of the owner of copyright”.
- The prescriptive rules in the existing statutory licences - ie rules regarding marking, anniversary copying, limits on the amount of a work that can be made available online, surveys/record keeping, methods of determining remuneration etc - will be removed. There will be flexibility for schools to reach agreements with the collecting societies as to what administrative arrangements will apply. If no agreement can be reached, the Copyright Tribunal will have power to determine these matters.

Exam copying exception

The Bill corrects a long standing anomaly that Australian copyright law allowed schools to include certain kinds of copyright works in hardcopy examination papers, but not to include the same content in online exams.

Schools will now be able to use any kind of copyright material in exams (including broadcasts, sound recordings and films) - and may use these materials in exams conducted online.

Disability copying provisions

The Bill contains a new fair dealing exception for people with disabilities, which will allow teachers to make format-appropriate versions of educational materials for students with disabilities.

What's not in the Bill: safe harbours

Background: What are the safe harbours?

The Copyright Act contains a “safe harbour” scheme that sets up a simple scheme for copyright owners to send takedown notices for online copyright infringements, and protects certain online service providers from being sued for damages for copyright infringement by their users, provided that they comply with the obligations in the safe harbour scheme.

Unfortunately, due to a drafting error, commercial ISPs like Telstra were included in the safe harbour scheme, but there is no equivalent protection for schools, universities, libraries and other online services such as search engines and social media platforms.

This has led to Australian schools facing unintended exposure to legal risk for providing internet access to students and staff.

Why didn't the Government proceed with the reform?

An Exposure Draft of the Bill that was released for consultation in 2016 included a provision that would have fixed this, however this provision was removed from the version of the Bill that was introduced into Parliament. Minister Fifield said that these provisions were removed from the Bill to “enable the Government to consider feedback received on this proposal whilst not delaying the passage of other important reforms”.

The Government has announced that it intends to conduct further consultation on the need for this reform. This is despite the fact there have been 7 previous public reviews into this question!

The arguments that have been raised against this reform - including that it would increase the risk of piracy - are without merit. Schools are included in safe harbours in jurisdictions such as the US, the EU, Singapore and Japan.

Why do schools need safe harbours?

Safe harbour reform would simply mean that Australian schools would receive the same legal protections as a commercial internet service provider like Telstra or Optus, when they provide internet access to staff and students. This is critical to Australian schools being able to deliver the best education for Australian students in the internet age.

This reform is critical to ensuring that schools are not exposed to unnecessary legal risk from providing Australian students with the tools to ensure they are fully equipped for the demands of an innovative digital workforce.

Myth: safe harbours increase the risk of piracy.

Some opponents of this reform have suggested that it would encourage piracy. The opposite is true. In order to be protected by the safe harbour, schools would need to meet the conditions set out in the Copyright Act, which include adequately responding to take-down notices from copyright owners regarding infringements by staff or students using school networks.

It is difficult to see why copyright owners would object to a scheme which rewards schools for assisting them with their anti-piracy efforts.

This is not a radical reform – it has been recommended in numerous public reviews and it is required by Australia's international treaty obligations.

What's not in the Bill: a flexible fair use exception

While the Bill represents an important first step in reforming the educational provisions in the Copyright Act, it does not fix all of the problems faced by Australian schools.

The [ALRC](#) and the [Productivity Commission](#) have recognised that copyright law is standing in the way of Australian schools using innovative, digital technology in the classroom. For example:

- there are different copyright rules depending on whether:
 - the teacher is writing on a blackboard or an interactive whiteboard;
 - a teacher is projecting an artwork or text onto a screen or interactive whiteboard.
- Australian schools are paying to use freely available internet content such as free tourism maps, online health fact sheets, and the home page of a corporate website. Schools in other countries use this content without payment.

While the Bill will simplify the way teachers can use digital technologies, it does not solve these fundamental issues. Both the [ALRC](#) and the [Productivity Commission](#) recommended that the Government enact a fair use exception to ensure copyright is flexible enough to meet the needs of Australian education in a way that does not harm copyright owners markets. The Government is still considering whether to implement a fair use exception.

More Information

If you would like to know more about why the Australian education sector supports the Bill, you can 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.

