

# Copyright Amendment (Disability Access and Other Measures) Bill 2017

The [Copyright Amendment \(Disability Access and Other Measures\) Bill 2017](#) (the **Act**) was passed on Thursday 15 June 2017 and will become law sometime in late December this year (six months from Royal Assent).

See [here](#) for a copy of the Act.

See [here](#) for a copy of the Explanatory Memorandum (**EM**).

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

- a 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).

## Streamlined statutory licence

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

- 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 Act 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 Act 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.

## Outstanding Law Reform issues

While the Act 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. Education's remaining outstanding law reform issues are:

- introduction of a flexible fair use as recommended by the Australian Law Reform Commission and supported by the Productivity Commission;
- expansion of safe harbour provisions to include education and libraries.

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

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 a teacher:
  - is writing on a blackboard or an interactive whiteboard;
  - 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 Act 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.

### **What's not in the Act: 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 set 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.

The Exposure Draft of the Act included a provision that would have fixed this, however the provisions were removed from the Act prior to its introduction to “enable the Government to consider feedback received on this proposal whilst not delaying the passage of other important reforms”.

The proposed reform would give Australian schools the same legal protections as a commercial internet service provider like Telstra or Optus, when they provide internet access to staff and students. It would ensure 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.

The Government is expected to complete its consultation with stakeholders over the coming weeks.