

## Recent public statements by the entire Australian schools sector that schools would continue to pay under the statutory licence if fair use is enacted

- [CAG submission in response to ARLC Copyright and the Digital Economy Discussion Paper](#) (This submission was made in response to the ALRC's Discussion Paper, which included a draft recommendation to replace the educational statutory licences with voluntary licensing. In its final report, the ALRC recommended that the statutory licences be retained, but greatly simplified.)

1.1.3 CAG has made it clear from the start of the ALRC's enquiry that the Australian school sector does not anticipate that moving to a fair use environment would mean that all educational uses in Australian schools would be free. As CAG acknowledged in its Issues Paper submission:

*Introducing a flexible exception does not mean that all educational uses of copyright materials would be free. Many uses that are currently paid for under the statutory licence would continue to be paid for under voluntary licensing arrangements (similar to those in place with music collecting societies) ... The Schools are not asking for a free ride – simply a fair ride.*

It is important in this context to restate the membership of CAG: all State and Territory government education departments; the Independent Schools Council of Australia; the National Catholic Education Commission; and the Department of Education, Employment and Workplace Relations (DEEWR). The Australian Education, Early Childhood Development and Youth Affairs Senior Officials Committee (AEEYSOC) also endorsed CAG's issues paper submission.

In addition, a letter of support for the CAG issues paper submission was sent to the ALRC from the Standing Council on School Education and Early Childhood (SCSEEC) stating:

*The CAG proposal was recently considered and endorsed by SCSEEC Education Ministers, with the Minister responsible for school education in each State and Territory and the Australian Government expressing support for the submission and its recommendations.*

CAG's statements in relation to the impact of the introduction of fair use and the repeal of the statutory licences have been endorsed by Education Ministers of all levels of Australian government. It is astonishing that the ASA and Copyright Agency do not seem to have accepted these assurances.

- [CAG submission in response to Productivity Commission Draft Report](#)

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*Australian schools would still pay licence fees*

Copyright Agency/Viscopy has suggested - wrongly - that a fair use exception could lead to Australian schools and universities refusing to pay licence fees for the vast amount of copyright material to which they now have access. In support of this claim, they point to Canada, where they say the enactment of a fair dealing for education exception resulted in Canadian schools refusing to pay for any classroom copying.

Australian schools spend upwards of \$700 million per annum in purchasing educational content for students. The sector pays an additional approximately \$90 million each year on collectively negotiated copyright licences paid to copyright collecting societies.

There is no suggestion whatsoever that fair use would have any impact on the upwards of \$700 million that Australian schools spend acquiring educational resources. Schools will continue to acquire content - whether that be textbooks, software, educational games or apps. As the Commission has rightly noted in its draft report, a fair use exception - even one that listed education as an illustrative use as has been proposed by the ALRC - would not mean that all uses by schools or other educational institution would be "fair" and therefore no longer remunerable. ...

The education sector at the highest levels has given repeated assurances over a number of years that the sector would continue to enter into collective licensing arrangements if a fair use exception were to be introduced. These claims have been endorsed by the State, Territory and Commonwealth Education Ministers, as well as the National Catholic Education Commission and the Independent Schools Council of Australia. It is disappointing that organisations such as the Copyright Agency/Viscopy continue to make misleading claims on this issue. ...

There is absolutely no foundation to the suggestion that a fair use exception would apply to all - or even most - ways in which schools currently use content in reliance on the sector's collective licence with Copyright Agency. **As repeatedly guaranteed by the sector, these licences will continue to exist in a fair use environment.** (Emphasis in original.)

- [Statement on the Smartcopying website](#) (the official guide to copyright issues for Australian schools and TAFEs)

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.

*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.