

ABC© 2018 Copyright CONFERENCE

USER RIGHTS ADVOCACY: THE AUSTRALIAN EXPERIENCE

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www.smartcopying.edu.au
<https://www.slideshare.net/nationalcopyrightunit>



National copyright unit

- The Ministers' Copyright Advisory Group (CAG), through the NCU, is responsible for copyright policy and administration for the Australian school and TAFE sector. This involves:
 - Managing the obligations under the educational copyright licenses
 - Advocating for better copyright laws on the School and TAFE sector's behalf
 - Educating the School and TAFE sector regarding their copyright responsibilities

Smartcopying website

www.smartcopying.edu.au

- National Copyright Guidelines for Schools and TAFEs
- Practical and simple information sheets and FAQs
- Interactive teaching resources on copyright
- Search the site for answers to your copyright questions

[home](#)

[copyright guidelines](#)

[faqs](#)

[information sheets](#)

[open education](#)

[educational resources](#)

[law reform](#)



NATIONAL COPYRIGHT GUIDELINES

A guide to copyright issues affecting schools and TAFE

- What can i copy/communicate?
- Education Licences (Statutory and Voluntary Licences)
- How to clear rights (where there is no Statutory Licence or Voluntary Agreement in place)
- Hot Topics

[More... ➔](#)



FAQS

The most commonly asked questions about copyright in schools and TAFE

- Artistic Works and Photographs
- CD-ROM
- Commercial Activities in TAFE
- Computer Programs

[More... ➔](#)



INFORMATION SHEETS

A series of information sheets providing useful facts and scenarios on copyright for schools and TAFE

- Schools
- TAFE

[More... ➔](#)



OPEN EDUCATION

Smart ways of managing copyright costs and dealing with copyright material

- Open Education Resources
- Creative Commons

[More... ➔](#)



EDUCATIONAL RESOURCES

Survey training material and other educational resources on copyright

- NCU PowerPoint Presentations
- P2PU Copyright 4 Educators course
- Copyright Teaching Resources
- Copyright Notices for Schools and TAFE
- Copyright Survey Brochures for Schools

[More... ➔](#)



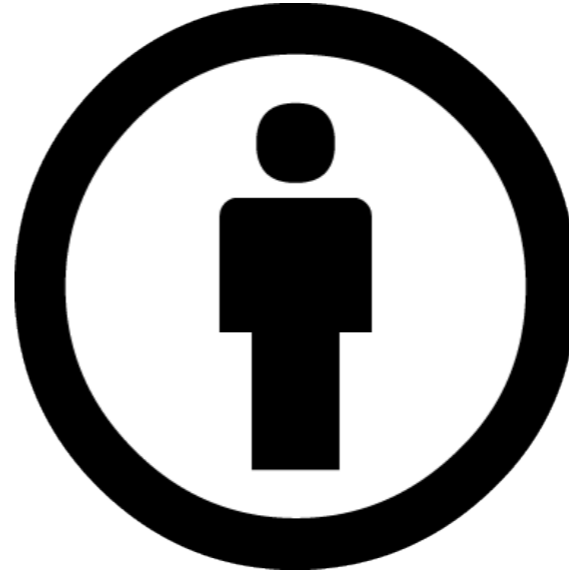
LAW REFORM

New material and information on copyright

- Fair Use And Why Australian Schools Need It
- Australian Law Reform Commission Review - Copyright and the Digital Economy
- Mythbusting fair use
- Answering teachers' common questions about fair use
- Yes, Australian schools do pay to use free online content
- Creationistas & Copocrisy

SLIDES

- Slides available @ <http://www.slideshare.net/nationalcopyrightunit/>

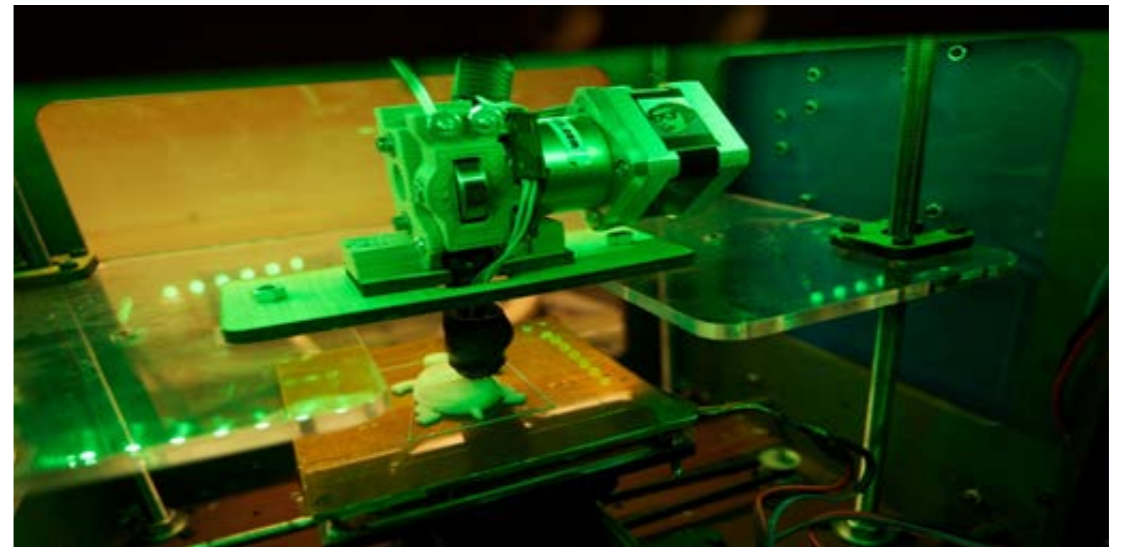


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Copyright laws are outdated and inconsistent

- Outdated laws are holding back innovation in schools; laws designed in the age of the photocopier are not working in the age of the iPad, 3D printer and data/text mining.



- **Inconsistent rules for educational use around the world:** Most countries have minimum copyright protection and enforcement provisions in their domestic copyright law (required by multilateral treaties such as TRIPS, GATT, WCT), but there are no minimum standards for educational use or other non harmful public interest uses.

Copyright laws are outdated and inconsistent

- The statutory licence did not keep up with the change in digital technology but expanded to cover digital practices.
- Since 2005 schools have been required to participate in the EUS Survey – a copying survey that from its earliest iteration showed that 90-95% of the material recorded was Freely Available Internet Material.

New Learning

Schools are increasingly focusing on real life scenarios that combine skill-based challenges, innovative hands-on practical work and motivational game-like activities.



"Tallinn Digital Summit. Introduction for elementary school children to coding through a robotics programme Rene Ämarik" by Arno Mikkor (EU2017EE) is Licensed under CC BY 2.0



New learning, technologies & outside experts

- Improve critical and creative thinking, problem solving and communication skills
- Use new equipment, explore new concepts and learn new techniques
- New assessment and data analytics help teachers to quickly evaluate the impact of teaching and learning strategies and allow teachers to constantly create new resources for student engagement and learning
- Many schools invite specialists and businesses to work with students

Australian copyright laws: complex, inflexible & outdated

- Current copyright laws penalise teachers for using new technologies in Australian classrooms.
- Complex mix of statutory licences for educational use where non prejudicial/non consumptive and technical uses are remunerated alongside some free educational use exceptions.



"Learning with iPads" by Michael Coghlan is licensed under CC BY-SA 2.0

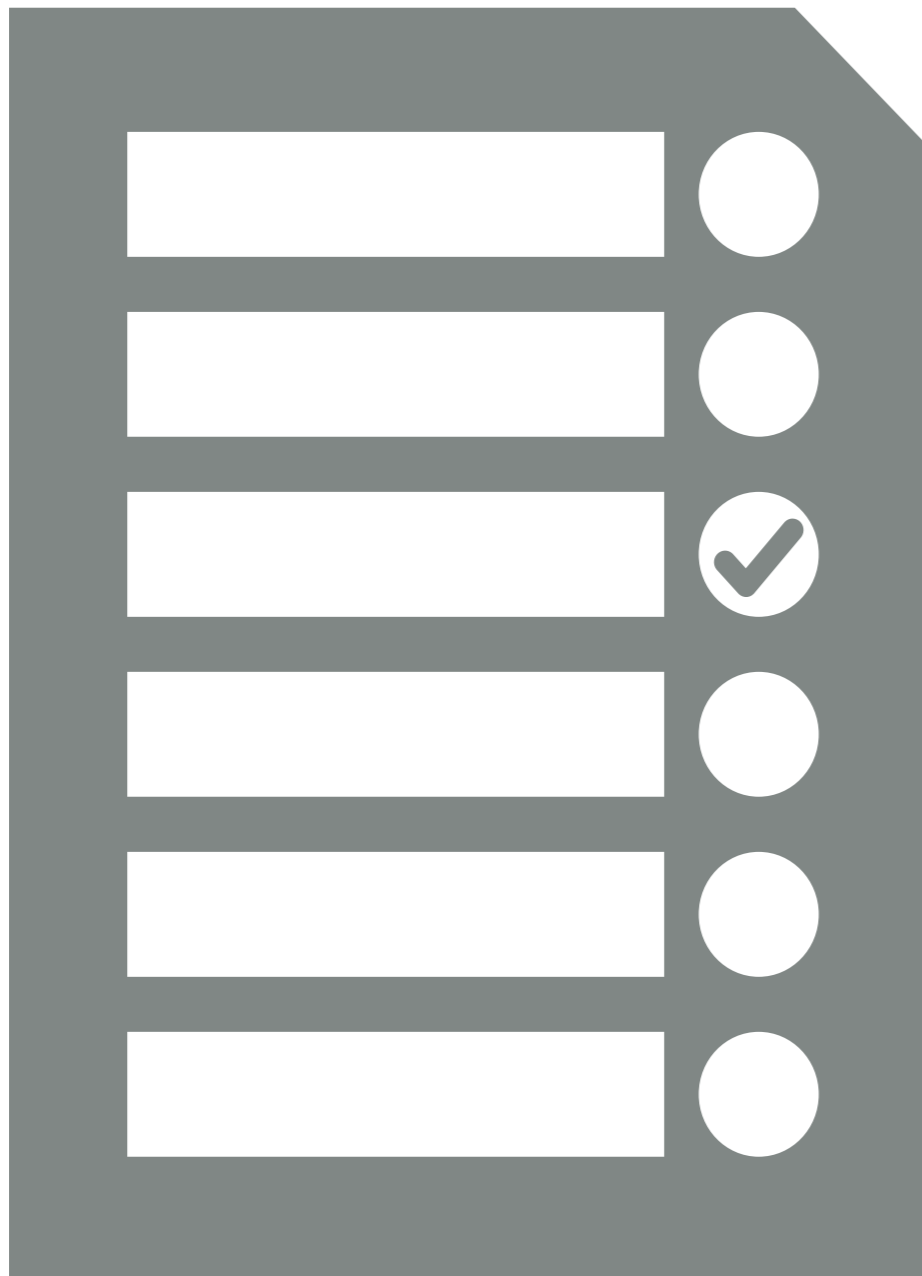
(<https://www.flickr.com/photos/mikecogh/7691519996>)



Australian copyright laws: complex, inflexible & outdated

- Different copyright rules apply depending on whether teachers use blackboards or interactive whiteboards.
- Australian schools pay an estimated 8-12 Million dollars each year simply to use freely available Internet materials such as health fact sheets or overseas free teaching resources.

Australian schools pay millions of dollars to use freely available internet materials



- Displaying a Spanish translation using a translation app to a Spanish class;
- Taking screenshots of course offerings on a number of universities' websites;
- Telling students to print an information sheet on malaria from The Royal Commonwealth Society's website;
- Telling students to print a web page from the RSPCA's website giving information about how to be an animal foster carer.

Real life examples

- Displaying an image of a cat on screen from www.petfinder.com.au; *not free*
- Taking a screenshot of a website that compares times in different cities around the world; *not free*
- Printing a factsheet on head lice from the Department of Health and Ageing's website to hand out to students; *not free*
- Taking a screenshot of a yellow raincoat from Bunnings website's to include as a graphic in a PowerPoint presentation. *not free*

Australian copyright exceptions are not fit for the digital age

- Many traditional educational uses (such as playing a movie to students in a classroom) are no longer permitted or attract additional licence fees - if teachers choose to use digital technologies or provide online alternatives to traditional classroom activities instead of the older 'chalk and talk' approaches.
- It is not clear what educational use of educational apps is allowed
- Schools pay for the use of "Orphaned Works"

The lack of a fair use exception means

Australian schools pay millions of dollars to use freely available internet material in their classes

- A teacher copying a page from a blog that was headed “Over 180 FREE speech therapy worksheets, activities, and flashcards for speech-language pathologists, teachers, and parents.”
- A teacher copying an image from a publicly accessible Facebook page.

These would be a fair use in the US and other comparable jurisdictions as they do not harm copyright owner.

The lack of a fair use exception means

Australian schools cannot use copyright material in the same ways as their counterparts in the US and other countries. e.g

- MOOCs
- Data and text mining
- A school wanted to use five seconds of a film clip in a school performance.
- A school wanted to send parents thumbnail images of books, along with an excerpt from the book, to inform them on what their children were reading in class.
- A teacher wanted to submit student projects into a competition.

NONE OF EXISTING EXCEPTIONS OR STATUTORY LICENCES APPLY

Things Australian Schools are prevented from doing because we don't have fair use

A teacher used one minute of the music from Gangnam Style and created a video using his own lyrics for a classroom activity.

- This classroom use was covered by one of the existing educational exceptions.
- But when the teacher was nominated for a teaching award, and media outlets wanted to show the video, none of the existing educational exceptions or statutory licences clearly applied.



"PSY 'Gangnam Style' at Seoil College, Seoul" by Korea.net / Korean Culture and Information Service (Jeon Han) is Licensed under CC BY-SA 2.0



Australia pays significantly more than comparable countries

- Australia has around 9500 schools and approximately 3.8M school children

Country	Schools price per FTE (Educational statutory licence or equivalent)
Australia	\$16.93
UK	\$A3.26
New Zealand	\$A1.60 - primary \$A3.20 - secondary
Canada	\$A2.41

The rate Australia pays is between 4 and 8 times more per student than comparable Commonwealth Countries.

Who else shares the cost of educational material in Australia

- It is estimated that \$700M is spent by Schools annually buying educational material.
- Schools are buying materials for their teachers and libraries directly from publishers.
- Teachers are buying materials to assist in their day to day teaching practice from new players like Edmodo, iTunes and Google.
- This is on top of the 100 million paid to Australian Collecting Societies.
- In addition, Parents buy hard copy and/or digital textbooks from publishers which include a direct licence from the publisher to access materials online eg Pearson Places, Oxford Digital. Parents also buying educational apps to load onto devices as part of BYOD policies.

FAIR USE

And Why Australian Schools Need It

Outdated, inflexible & confusing copyright laws hold schools back from providing quality education.



Writing a quote from a book on a blackboard is covered by an exception - but not writing it on an interactive whiteboard



Showing an artwork on a screen in class is treated differently than showing a poem on the same screen



Innovative new teaching technologies are often out of reach for Australian schools due to copyright implications

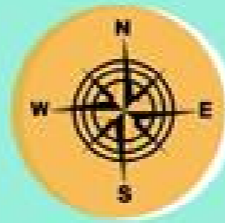


Schools are paying millions of dollars to use internet materials that the rest of the world can use for free

Without fair use, schools are forced to pay for things like:



Printing a Department of Health info sheet on how to treat headlice



Making a copy of a Google Map for a Geography class



Reproducing a Twitter feed to stimulate class discussion



Printing a free colouring sheet from a website for use in a kindergarten class

Fair use would help schools without harming creators

Schools spend over \$700 million each year on purchasing education content. This would be unaffected by fair use.

On top of this, they pay \$100 million to copyright collecting societies for copying of content. To the extent fair use impacts this number at all, this would only be to:

1. address the unfair outcomes set out above; and
2. ensure educational licence fees actually go to authors who are writing to earn a living.

Australian Schools Need Fair Use

Copyright and education in Australia

- Prior to December 22, 2017 – a statutory licence scheme outlined in two parts of the Copyright Act – Part VA for Broadcasts and Part VB for Text and Artistic Works.
- Accompanied by remuneration agreements with the collecting societies, Screenrights, Copyright Agency Limited (CAL).
- Voluntary Licences for Music with the music collecting societies – APRA, AMCOS and ARIA

For more information see: [http://www.smartcopying.edu.au/copyright-guidelines/education-licences-\(statutory-and-voluntary-licences\)](http://www.smartcopying.edu.au/copyright-guidelines/education-licences-(statutory-and-voluntary-licences))



Copyright and Education in Australia

- Post 22 December 2017, a streamlined Statutory Licence for Broadcasts/Text and Artistic works now contained in one section of the Copyright Act s113P.
- Remuneration agreements still required and due for re-negotiation.
- Voluntary Licences for music remain the same.

How did we get to 22 December 2017?



Copyright amendment act 2006

- New Exceptions and clarification
 - New Flexible Dealing (s200AB(3))
 - Digital Agenda
 - Proxy Caching (s200AAA)- clarified proxy caching by schools not a reproduction and not remunerable under the CA licence
 - Reading from the Internet (s22(6A))- confirmed that student reading from the internet or accessing a hyperlink is not a communication to the public and there not remunerable under the CA licence
 - Section 28 (subsections (5)-(7))-expanded performance to class to include communication of material to a class

Flexible Dealing

- Allows schools to do things not covered by the statutory licence like:
 - convert VHS to DVD if the VHS was no longer commercially available, or use small extracts of a work for teaching purposes.
 - compiling short extracts of audio-visual material for use in class (such as making a DVD of short extracts of several films for an English class) when it is not possible to buy a similar teaching resource
 - copying a French language song that is not available for purchase in digital format to a digital file for inclusion in a podcast for a French language class
 - including short extracts of music in PowerPoint teaching aids
 - translating an extract of an Australian novel into Japanese (where you cannot buy a copy in Japanese) for use in a Japanese language class

S28 – Display and project

This amendment extended the performance of copyright material to include communication of copyright material to the class:

- literary, dramatic musical works;
- Film and sound recordings;
- television and radio broadcasts (including works embodied in those broadcasts); and
- artistic works.

The new provision allows teachers and students to display or project material in the classroom, for example on an electronic whiteboard or using a data projector.

However Copyright Agency argues that displaying and projecting text material is still remunerable and this position has impacted law reform and licence negotiations since.

For more information see: <http://www.smartcopying.edu.au/information-sheets/schools/performance-and-communication-of-works-and-audio-visual-material-in-class---what-am-i-allowed-to-do->



Freely Available Internet Material Exception Advocacy 2008-2010

- Due the broad scope of the Part VB Statutory Licence , Australian Schools are paying millions of dollars (estimated 8-12 million annually) to use freely available internet material
- many uses of freely available internet material attracts multiple remuneration under Part VB(downloading, displaying to a classes, emailing a copy to a students etc).
- Canada Law Reform Proposal included a new exception for educational use of “publicly available internet material”.
- Australian school sector sought a similar copyright exception.
- ALRC review commenced in 2012, Schools decided the introduction of a flexible fair use exception was the better policy solution rather than additional specific exceptions.

ALRC: 2013-2014

- [Australian Law Reform Commission report into Copyright and the Digital Economy](#)
 - Significant and extremely extensive review of copyright law --- largest in 25 years.
 - 18 month inquiry, 109 consultations, 870 submissions.
 - Report strongly supported the copyright reforms sought by the education sector.
 - 30 recommendations for reform.
 - **key recommendation introduction of a flexible fair use exception**

For more information see:

<http://www.smartcopying.edu.au/copyright-law-reform/historical/australian-law-reform-commission-review-final-report-copyright-and-the-digital-economy>

ALRC: findings & recommendations

- Copyright Act exceptions have not kept pace with changes in technology and practice, and are no longer fit for purpose.
- Central recommendations
 - Simplification and streamlining of statutory licences (removing outdated administrative burdens)
 - Introduction of a flexible ‘fair use’ exception to copyright

ALRC: Flexible Fair Use Model

Recommended new Fair Use exception that contains:

- an express statement that a fair use of copyright material does not infringe copyright;
- a non-exhaustive list of the factors to be considered in determining whether the use is a fair use ('the fairness factors'); and
- a non-exhaustive list of illustrative uses or purposes that may qualify as fair use ('the illustrative purposes').

ALRC: Non Exhaustive List of Factors

The non-exhaustive list of fairness factors should be:

- a) the purpose and character of the use
- b) the nature of the copyright material
- c) the amount and substantiality of the part used and
- d) the effect of the use upon the potential market for, or value of, the copyright material

ALRC: Illustrative Purposes

- The non-exhaustive list of illustrative purposes to include the following:
 - a) research or study;
 - b) criticism or review;
 - c) parody or satire;
 - d) reporting news;
 - e) professional advice;
 - f) quotation;
 - g) non-commercial private use;
 - h) incidental or technical use;
 - i) library or archive use;
 - j) education; and
 - k) access for people with disability.

ALRC: Replace existing exceptions with Fair Use

- The Copyright Act should repeal the following exceptions:
 - ss 40, 103C—fair dealing for research or study;
 - ss 41, 103A—fair dealing for criticism or review;
 - ss 41A, 103AA—fair dealing for parody or satire;
 - ss 42, 103B—fair dealing for reporting news;
 - s 43(2)—fair dealing for a legal practitioner, registered patent attorney or registered trade marks attorney giving professional advice; and
 - ss 104(b) and (c)—professional advice exceptions.

The fair use or new fair dealing exception would consolidate the above

ALRC: Fall back position Fair Dealing for Education

- 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.
- This was only put forward as a second-best option

Why education supports fair use

- Fair use replaces almost 30 existing complex and out dated technical exceptions
- Easier for teachers and the ordinary citizen to understand and comprehend, especially for lay people trying to work out the limits of exceptions available to them.
- Will promote innovation, match consumer expectations, be more flexible and protect the market for artists and creators. The world's largest exporter of cultural goods, **the USA**, has a **fair use system**, as do **Singapore, Israel and South Korea**.



Why education supports fair use

- Schools will not be penalised for using new technologies – for example displaying text on an interactive whiteboard rather than a blackboard
- Education will be able to offer online courses such as MOOCs when compared to overseas institutions;
- Graduate students will continue to have to remove quotes before their theses are made public, removing valuable content;
- Researchers will be denied access to critical research methods such as text and data mining;
- Australian taxpayers will no longer pay millions of dollars a year for schools to use websites that everyone else uses for free
- Schools and universities will no longer continue to pay collecting agencies to use orphaned works where the collecting agency cannot pay the money to a copyright holder.

Fair use PLUS Collective licensing

- Statutory Licensing for educational use will co-exist and cover educational uses not covered under the proposed new exception. For example - permanent digital storage of third party content in the cloud or learning management system.
- Schools would no longer:
 - be disincentivised from using digital technologies; or
 - pay for uses where no copyright owner ever expected to be paid, such as using freely available internet material.

Fair use does not mean a free for all

- Australian schools purchase more than \$700 million of educational content for students every year This does not include:
 - **\$100 million** paid by Australian schools to collecting societies under statutory and voluntary copyright licences every year; and
 - the **additional millions** spent by parents buying textbooks, apps and other educational material for their children every year .
- A Fair Use exception would have no impact on the **700 Million** spent by schools and/or the **additional millions** spent by parents purchasing their children's textbooks, apps and other educational materials.
- Fair Use helps means schools will no longer pay for uses of freely available internet material where no one expected to be paid.

Productivity Commission Report and EY Cost Benefit Analysis Report on ALRC recommendations

- Productivity Commission Report into Intellectual Property Arrangements
[<http://www.pc.gov.au/inquiries/completed/intellectual-property/report/intellectual-property.pdf>]
- Ernst & Young Cost Benefit analysis of ALRC proposed copyright reforms. impact of introducing of a Fair Use exception
[<https://www.communications.gov.au/documents/cost-benefit-analysis-changes-copyright-act-1968>]

For more information see: <http://www.smartcopying.edu.au/copyright-law-reform/historical/productivity-commission-report-into-intellectual-property-arrangements-and-the-ernst-young-cost-benefit-analysis-of-the-alrc-s-proposed-copyright-reform>



Productivity Commission Report Supports Fair Use and other reforms for education

- Supported and recommended the introduction of a fair use exception (ALRC model).
- the need for expanded copyright safe harbours to include educational institutions.
- the need for improved governance arrangements for copyright collecting societies.
- provisions ensuring contractual and technological means cannot be used to override educational copyright exceptions.
- the need for TPM exceptions to enable educational uses, including assisting students with disabilities.

EY Report – Supports Fair Use

- Introduction of Fair Use or fair dealing for education would have net positive impact on the economy and society
- More effective use of public funds as schools would no longer pay to use free internet materials or orphaned works
- Greater efficiency in the delivery of education as schools no longer disincentivised from using digital technology in the classroom
- Possible reduction of Part VB licence as some uses would fall under new exception (free internet material and orphan works)
- Little evidence Fair Use would increasingly uncertainty
- Fair use is adaptive and is relatively predictable
- Little evidence Fair use increases enforcement costs
- Rejected arguments that Fair Use would cause harm to educational publishers and reduce the incentives for the creation of educational content

The Copyright Reform agenda in Australia

WORK DONE

The Copyright Amendment Disability Access and Other Measures Act 2017



Disability access exceptions (for persons and organisations assisting persons with a reading, viewing, hearing or comprehension disability)



Exam Copying exception



Libraries and archives preservations exceptions



Simplification of the Educational statutory licence



TPM exceptions in Copyright Regulations 2017, educational institutions able to circumvent TPMs for when relying on (1) the statutory educational use licence (text, images, broadcasts (2) disability copying exceptions and (3) flexible dealing exception (audio/audio-visual)



Duration Unpublished Works

COMMENCED
DECEMBER 2017

COMMENCED APRIL
2018

COMMENCING
JANUARY 2019

WORK IN THE PIPELINE

Safe harbour reforms (expansion to cover organisations assisting persons with a disability, educational institutions, key cultural institutions, libraries and archives)



BILL INTRODUCED
DECEMBER 2017
BILL PASSED SENATE
MAY 2018

Collecting societies' Code of Conduct review



DRAFT REPORT
MARCH 2018
FINAL REPORT
DUE 2018

Review of the Copyright Online Infringement Amendment (Site blocking legislation)



COMMENCED
FEBRUARY 2018

Department of Communications and the Arts Copyright Modernisation Paper
Seeking consultation on:



Flexible exceptions
Contracting out of exceptions
Access to orphan works

RELEASED
MARCH 2018
SUBMISSIONS DUE
JUNE 2018



Copyright reform in 2017 a lot to celebrate

Copyright Amendment (Disability Access and Other Measures) Act

- New disability access exceptions
- New expanded copying for exams exception which includes online exams and covers all works
- Streamlined education statutory licences (Text & Artistic works and Radio/TV Broadcasts): one provision replaces pages of prescriptive provisions
- New TPM exceptions

New Disability Access Exception

- New fair dealing exception for providing access to copyright material to persons with a disability(s 113E)
- Includes disabilities that causes difficulty in reading, viewing or hearing copyright material e.g. enlarging text and graphics, making changes to formats
- New exception for organisations that assist persons with disability (s 113F) e.g educational institutions and not for profit organisations

Streamlined statutory licence

- One licence scheme replaces complex Part VA and Part VB licences
- There is no longer any express limit on that amount that can be copied and communicated.
- The only limit is that the amount copied does not unreasonably prejudice the legitimate interests of the copyright owner.
- Old rules in re marking, anniversary copying, limits on how much of a work can be made available to students online, surveys/record keeping, methods of determining remuneration are now gone. These issues are for the parties to agree or to be determined by the Copyright Tribunal.

Exam copying exception

- Corrects a long standing anomaly where educational institutions were only allowed to include certain types of works in hard copy exams.
- New exception now allows educators to use any kind of copyright material in exams including online exams.



New TPM Exception

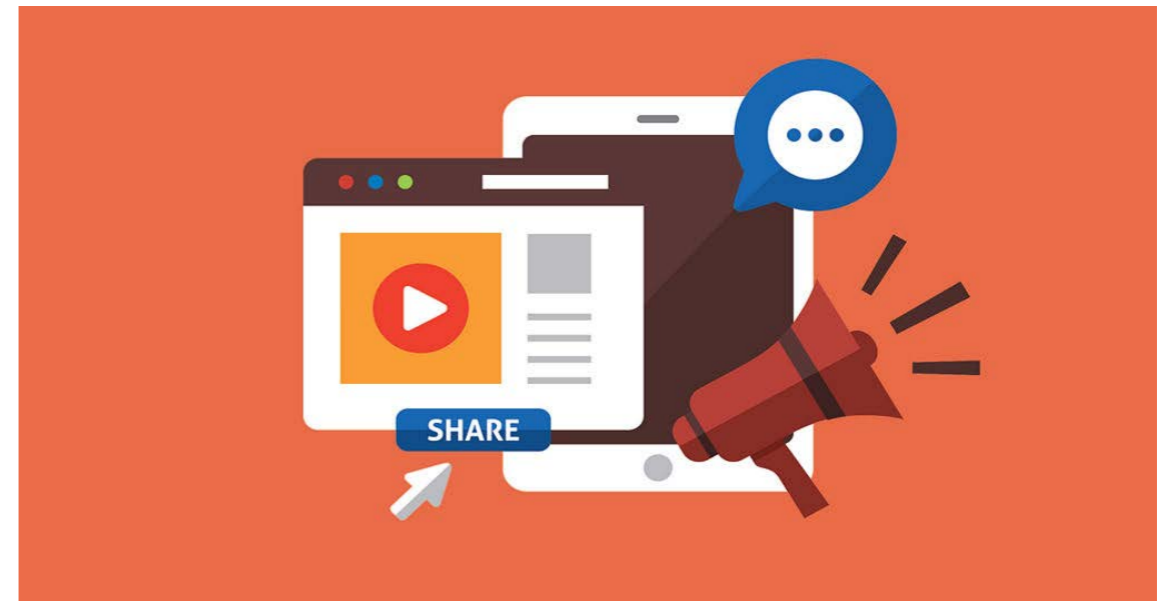
New regulations - allowing circumvention by educational institutions of TPMs when relying on:

- Education compulsory licences
- Flexible Dealing exception
- Disability Access Exception

TPM exceptions

Teachers can now

- Copy extracts of films to use in teaching e.g. including short extract of the film Gallipoli in a teacher's classroom presentation on WWI



For more information see: <http://www.smartcopying.edu.au/information-sheets/tafe/technological-protection-measures/technological-protection-measures-2018>

What still needs to be done

- Flexible Fair Use or Fair Dealing;
- Expansion of copyright safe harbours to include educational institutions;
- Improved governance arrangements for copyright collecting societies;
- Provisions ensuring contractual and technological means cannot be used to override Copyright exceptions
- Fixing the current orphan works regime – recommendation for limited liability where a user has undertaken a diligent search to locate the relevant rights holder.
- TPM exception needs to include fair dealing for students and researchers

Australian Copyright reform in 2018 and beyond

3 Reform initiatives underway

- Copyright Modernisation Consultation Paper
- Review of the Code of Conduct for Collecting Societies
- Safe Harbours Bill



Copyright Modernisation Consultation

Three main areas of reform

- Flexible exceptions
- Contracting out
- Access to Orphan works

For more information see: <https://www.communications.gov.au/have-your-say/copyright-modernisation-consultation>



Copyright Modernisation Consultation

The paper suggested two reform options:

1. Additional Fair Dealing Exceptions
2. A Fair Use Copyright Exception

Copyright Modernisation Consultation

Option 1

Additional Fair Dealing Exceptions including the following purposes:

- Quotation
- Non-commercial private use
- Incidental or technical use
- Text and data mining
- Library and archive use
- Certain educational uses
- Certain government uses

The consultation paper suggests that these purposes could either be added to the Copyright Act or the Copyright Act could be amended to empower the Minister of Communications to add or remove purposes following consultations and with regular reviews

Copyright Modernisation Consultation

- The term “certain educational uses” is circular and confusing
- fair use, or fair dealing for education, would apply only to certain educational uses; ie those uses that are fair,
- That’s how fair use and fair dealing work. If a use is not fair, it does not come within the scope of the exception
- We understand the intention to be that the term “certain educational uses” is used to draw a distinction between uses that would be remunerable and uses that would be
- Take the research and study exception. It doesn’t apply to anything that a person does for the purpose of research or study: it only applies to certain uses; ie those uses that are fair. We don’t need the words “certain uses” to tell us that. We apply the fairness factors to determine which uses will come within the exception. If a use isn’t fair, you either can’t undertake the use, or you need to get a licence. paid for under the statutory licence.

Copyright Modernisation Consultation

- ALRC carefully considered how a fair use or fair dealing for education exception would interact with the statutory licence.
- Their message was clear - a fit for purpose educational copying regime would comprise two planks:
 - A flexible exception that could be relied on by educational institutions for uses that are “fair”; and
 - A statutory licence that users are only required to rely on for uses that go beyond what would be “fair”.
- the Government put the second plank in place when it enacted the new s 113P statutory licence: s 113Q(2) provides that a school need only rely on the statutory licence if the copying/communication cannot otherwise be done under another exception or licence.
- Now we need to put the first plank in place – a flexible exception that can be relied on by schools for uses that are fair.

Copyright Modernisation Consultation

Option 2

Fair use copyright exception

Open-ended Fair Use incorporating Fairness Factors from the existing Research and Study fair dealing exception which include:

- The purpose and character of the dealing
- The nature of the work or adaptation
- The possibility of obtaining the work or adaptation within a reasonable time for an ordinary commercial price
- The effect of the dealing upon the potential market for, or value of, the work or adaptation
- In a case where part only of the work or adaptation is reproduced, the amount and sustainability of the part copied in relation to the whole work or adaptation

Copyright Modernisation Consultation

Contracting and Copyright

Two options proposed

1. Make Unenforceable Contracting out of only prescribed purposes copyright exceptions
2. Make Unenforceable Contracting out of all Copyright Exceptions

Education supports option 2 No exceptions should be contracted out of.

Copyright Modernisation Consultation

Orphan Works

Three options proposed:

1. Statutory Exception
2. Limitation of Remedies
3. A hybrid of 1 and 2

Safe harbour Bill

- Expansion of Safe Harbours to include educational institutions
- Bill passed the Senate on 10 May 2018
- Provides protection from civil liability to that Australian schools, universities and libraries receive the same legal protections for providing internet access to staff and students as is provided to commercial ISPs such as Telstra and Optus.

For the text of the Bill see:

https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=s1115



Review of Code of Conduct for copyright Collecting societies

- Recommend by the Productivity Commission.
- Draft report called for increased transparency of collecting societies.
- Referred to the Productivity Commission's recommendation that s51(3) of the Competition and Consumer act be repealed – this section exemptions IP licensing from certain consumer law protections.
- The report referred to the Copyright Agency's "Future Fund" a 15M fund set aside to fight law reform and litigation – created by pooling licence fees that could not be distributed because the relevant rights holder could not be found(orphaned works).
- The use of freely available internet material is increasing and the current licence means that schools are paying millions of dollars to collecting societies that will likely never be distributed to creators.

For more information see: <https://www.communications.gov.au/have-your-say/reviewing-code-conduct-copyright-collecting-societies>

Canadian Law Reform



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2012 Canadian reforms

- 2012 Copyright Modernization Act
- Two reforms in this act greatly improved educators ability to use Copyright Material.
 - The addition of education, parody and satire as fair dealing purposes
 - Exceptions for publically available material on the internet for education

Myth: Fair dealing for education has decimated Canadian Publishing busting

- Copyright Agency and other Rightsholders groups have claimed falsely that their fair use (fair dealing for education) has decimated Canadian Education Publishing and that ALRC/PC recommended introduction of flexible fair use would do the same in the Australia.

For more information see: <http://www.smartcopying.edu.au/copyright-law-reform/current/myth-fair-use-decimated-educational-publishing-in-canada>



Mythbusted :Open, Second Hand/Rental and Digital

Any financial difficulties experienced by educational publishers are due to the following disruptions :

- Increased use of Open Education Resources by Canadian Education sector
- Students choosing to purchase second-hand textbooks
- A transition from traditional print books to digital products

These forces were well in play before the 2012 Canadian Copyright Reforms and have nothing to do with copyright.

For more information see: <http://www.smartcopying.edu.au/copyright-law-reform/current/myth-fair-use-decimated-educational-publishing-in-canada>



Myth busting fair use in Canada

An increase in the use of Open Education Resources by Canadian Schools

- A report by PriceWaterhouseCoopers that was commissioned by the Association of Canadian Publishers (**ACP**)^[1] listed publicly funded, open access educational content as “threat” to the Canadian publishing industry “as they provide textbooks and course materials for free”.

For more information see: <http://www.smartcopying.edu.au/copyright-law-reform/current/myth-fair-use-decimated-educational-publishing-in-canada>



Myth busting fair use in Canada

Students choosing to purchase second-hand textbooks

- The ACP has actually complained about this to university books shops, suggesting that Canadian students "deserve the choice of purchasing new books". The publishers appear to think that Canadian students should be "doing their bit" to ensure the continued profitability of large academic presses by forgoing the opportunity to save money by opting for dog-eared second hand books.

For more information see: <http://www.smartcopying.edu.au/copyright-law-reform/current/myth-fair-use-decimated-educational-publishing-in-canada>



Myth busting fair use in Canada

A transition from traditional print books to digital products.

- PWC reported that “media players such as Apple and Google” are emerging as a new source of disruption for Canadian educational publishers by “seeking to introduce new business models and alternative content distribution channels.”

For more information see: <http://www.smartcopying.edu.au/copyright-law-reform/current/myth-fair-use-decimated-educational-publishing-in-canada>



Review of Canada Copyright Law 2018

- Same myths and no evidence

Links to Michael Geist posts

- Access Copyright and Publishers submission ignore the real disruptions - ie open access publishing, student preferences for second-hand books, renting textbooks and increasing spending by education sector on digital products
- The purported financial difficulties that Canadian publishers claim to be experiencing are causally linked to the 2012 copyright reforms are simply not supported.
- Canadian and Australian Education sectors must encourage our Governments to adopt an evidence-based approach to assessing these claims.

Australia and Canada Education Publishers Revenue - pretty similar

Australian educational publishers and authors currently obtain revenue from **three** main sources:

- sales of textbooks, student workbooks and teacher resources etc
- direct licences with schools and parents for digital and web-based resources, including apps and e-books; and
- payments from Copyright Agency under the educational statutory licence. (65 M from Schools)

Australian Publishers changing sources of revenue - like Canada

- Schools pay approximately, \$100 M to Australian Collecting societies.
- \$65 M paid by Schools to Copyright Agency is a significant source of revenue for educational publishers.
- Increasing use and purchase of digital resources by schools and parents
- Simply less need for a collective licence when the content that schools are buying and directly licensing the digital content.
- This does **not** mean that educational publishers are not being paid when their content is used in schools. It simply means that Publishers are being paid **directly by schools and parents** and consequently there is less need for further copying (eg photocopying) of their content as students/parents are paying for direct access to the content.
- Less copying = less revenue to Copyright Agency



Education committed to Collective Licensing

- The COAG Education Council and Non Government has publicly committed to continue to enter into statutory and voluntary collective licences
- Many educational uses under the statutory licences and the voluntary collective licences will continue to be paid for under Fair Use or Fair Dealing for Education framework
- But some material and uses will no longer be remunerable under a Flexible Fair Use or Fair Dealing for Education
 - Freely available internet material
 - Orphaned works



Copyright Reform Essential for Innovation, Education and Digital Economy

- Australia's fight is getting the exceptions, Canada's fight is keeping the exceptions.
- Copyright Modernisation Consultation submissions are due 4 July 2018 (deadline extended)
- Australian Education policy focused on the future but our copyright policy appears stuck and wedded to the past.
- Vital to remind Government that Copyright Reform an essential component of Governments' Policies on Innovation, Education and the Digital Economy
- Our current blackboard era laws simply don't cut it in a world where students need to graduate as creative, innovative team players with a high level of digital proficiency.

More Information

- <http://www.smartcopying.edu.au/copyright-law-reform/current/fair-use-and-schools---setting-the-record-straight>
- <http://www.smartcopying.edu.au/copyright-law-reform/current/myth-fair-use-decimated-educational-publishing-in-canada>
- <http://www.smartcopying.edu.au/copyright-law-reform/current/why-australian-schools-need-fair-use>
- [http://www.smartcopying.edu.au/copyright-law-reform/current/the-copyright-amendment-\(disability-access-and-other-measures\)-act-2017](http://www.smartcopying.edu.au/copyright-law-reform/current/the-copyright-amendment-(disability-access-and-other-measures)-act-2017)
- <http://www.smartcopying.edu.au/copyright-law-reform/historical/mythbusting-fair-use>

more information

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