

Submission to the Australian Law Reform Commission inquiry into Copyright and the Digital Economy

30 November 2012

Introduction

The Australian Library and Information Association (ALIA) and the Australian Law Librarians' Association (ALLA) welcome the opportunity to contribute to the discussion of possible reform of Australia's copyright law to benefit the digital economy.

Copyright law impacts on most of what libraries do. It affects the services that libraries can provide to their users and the conditions under which they provide access to copyright materials. It affects the way in which libraries can undertake effective archival and preservation activities. Librarians have traditionally been guardians of copyright. Now they have also become creators of copyright materials, both with digital content and organisational websites.

About ALIA and ALLA

The Australian Library and Information Association (ALIA) is the professional organisation for the Australian library and information services sector. It seeks to empower the profession in the development, promotion and delivery of quality library and information services to the nation, through leadership, advocacy and mutual support. Its 5500 members represent the library and information profession, Australian library and information services, and the interests of over 12 million library users. ALIA makes the following main points:

- ALIA has a copyright advice service for its members and conducts workshops on copyright, so has considerable experience with members' issues with copyright law;
- our first objective is "to promote the free flow of information and ideas in the interest of all Australians and a thriving culture, economy and democracy"; and
- we are committed to the preservation of the published and documentary record in all formats, and to ensuring enduring access to information.

The Australian Law Librarians' Association is a national association with over 700 members in all states and territories. ALLA represents librarians and information professionals working in courts, universities, government departments, law firms and professional associations. The Association aims to promote and provide a national focus for law librarianship and to support the interests of law

libraries, collections and legal information services to both legal and public communities.

Libraries and copyright law as it currently stands

Copyright is an area that most librarians are familiar with and, for many, their in-depth understanding of the legal requirements is one of the values they bring to their organization. Library and Information Science students are well-equipped by the time they complete their courses:

- ALIA accredits courses that lead to eligibility for professional membership of the association at the Associate AALIA and Library Technician ALIATec Levels;
- we work with education providers and consult with other stakeholders to ensure courses equip graduates with the knowledge and skills to achieve excellence in practice; • a copyright unit of competency is a core unit for Diploma level CULRSK501A- Monitor compliance with copyright and licence requirements; and
- a core unit in the new CUL11- Library, Information and Cultural Services Training package at Certificate IV level BSBIPR401A-Use and respect copyright.

However copyright is complex and ALIA receives approximately 35 enquiries each month from people employed in libraries seeking advice about copyright issues and licenses for digital material.

Copyright Issues Paper consultation and response

ALIA and ALLA welcome the opportunity to make this submission in response to the Copyright Issues Paper.

ALIA and ALLA endorse the submission of the Australian Digital Alliance (ADA) and the Australian Libraries Copyright Committee (ALCC) to this inquiry. ALIA is a member of both organizations and surveyed its constituents for examples of their copyright issues to contribute to the ADA/ALCC submissions. The ADA and ALCC submission deals with many issues raised by our members.

Areas of specific concern in the Copyright Issues Paper

However, having closely examined the Copyright Issues Paper, we would like to draw particular attention to the issue of contracting out, to underline the conclusions of the ADA and ALCC.

Question 54. Should agreements which purport to exclude or limit existing or any proposed new copyright exceptions be enforceable?

Question 55. Should the *Copyright Act 1968* (Cth) be amended to prevent contracting out of copyright exceptions, and if so, which exceptions?

ALIA and ALLA support the 2002 recommendations of the Copyright Law Review Committee (CLRC) that the *Copyright Act 1968* (Cth) should be amended to prevent contracting out of fair dealing and library exceptions.

ALIA and ALLA consider these two questions particularly significant for the future of libraries and information. In the past, copyright legislation in Australia has promoted an equitable balance between the rights and interests of the owners and users of copyright. However, as the world of information is moving from print to digital, there is growing pressure to accept licences which exclude library copyright exceptions. This is tending to destroy the balance between these two interests.

The proportion of queries to the ALIA copyright advice service relating to digital licences has risen to half of all queries. This situation is likely to worsen when Electronic Resources Australia (ERA) - the organisation that helped libraries to operate through consortia in licence negotiations – ceases to operate on 30 June 2013. Many libraries have no access to the legal advice necessary to negotiate licence agreements. Contracts should also include terms that would allow libraries to continue their traditional support of the community's information needs, for example allowing 'walk-in' users to access digital material in the way they previously accessed paper-based material. In their submission, the ADA and ALCC caution that the effectiveness of any new exceptions introduced in Australia could be significantly impeded by issues like contracts overriding copyright.

We would also like to highlight the digital information access concerns of a national organisation Independent Scholars Association of Australia (ISAA). The ISAA approached ALIA about the problems it was having in gaining access to much needed research material now that it was in electronic form rather than paper.

The ISAA is a nation-wide, non-profit organisation established to encourage and support individuals who undertake independent scholarly work outside formal institutes of education and research. Its members need to use libraries extensively for their research, and report many problems with access to the material they need now that it is in electronic form:

“One of the problems as a researcher is that - even when you can physically go to a university library - access to electronic databases and electronic journals is restricted. This would never have happened with hard copy journals which anyone could physically look at.”(a Queensland member);

“Many libraries no longer have hard copies of journals and many journals are no longer printed at all. I think that public access to the documents held in publicly funded institutions is actually the critical issue for ISAA as well as for the general public.” (a South Australian member); and

“Independent scholars are reliant on the contract made between the libraries they use and the publishers. It is possible to access an e-journal from one library with access rights that allow printing of an article; while, from another library, access to the same article may be restricted to read-only. Further, one library may allow printing for recent years and not for back copies, and another library may allow printing of back copies of the same journal, but not of recent copies.” (a New South Wales member).

Recommendations

In summary, we join with the ALCC and ADA in recommending:

- The introduction of an open-ended, flexible exception to better keep pace with new technologies and digital services, as well as evolving consumer practices. We support the introduction of an exception modelled on the US 'fair use' provision, or some other analysis of 'fairness'. This is a critical reform for Australia's digital future; and
- If the ALRC should consider that some certainty is beneficial for particular groups or uses of content, the revision of some existing purpose-based exceptions, and possible introduction of others

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