



Australian Libraries Copyright Committee

***Consultation Paper:
Digital Economy Future Directions***

Submission of the
Australian Libraries Copyright Committee

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1. About us

This submission is made on behalf of the Australian Libraries Copyright Committee (ALCC)

We thank the Department of Broadband, Communications and the Digital Economy (DBCDE) for the opportunity to comment on the Consultation Paper “Digital Economy Future Directions” (the **Consultation Paper**).

The ALCC is the main consultative body and policy forum for the discussion of copyright issues affecting Australian libraries and archives. It is a cross-sectoral committee which represents the following organisations:

- National and State Libraries Australasia
- National Archives of Australia
- The Council of Australasian Archives and Records Authorities
- The Australian Society of Archivists
- Australian Library and Information Association
- Council of Australian University Librarians
- Australian Government Libraries Information Network
- National Library of Australia

The ALCC considers the impact of copyright law reform on Australian libraries and archives and provides advice to the Federal Government on how to maintain a balance between reasonable access to creative works for copyright users on the one hand and an incentive for copyright creators and owners on the other.

2. Outline

A key tenet of the membership of the ALCC (broadly libraries, archives and related peak bodies) is enabling and promoting access to information for the public interest. The ALCC sees great potential in the digital economy and what it has to offer for increased access to information, and flowing from this, increased opportunities in the in the fields education, culture and innovation in Australia.

The availability of high speed broadband across Australia can reduce many problems of resourcing and access to information faced in Australia due to our dispersed population. People such as students and researchers in remote areas could be provided with equal access to quality resources and texts as those available in metropolitan centres. Any person with access to a computer and high speed broadband, regardless of socioeconomic status, can have access to knowledge.

We note however that putting the infrastructure in place (high speed broadband) is not enough. High speed broadband is of limited use if it is not coupled with access to high quality resources over the internet. The ALCC believes that in order to achieve this potential it is necessary to address factors such as legislative framework, and resourcing issues for cultural institutions, which are currently limiting the quality and quantity of materials available over the internet.

3. Open Access to Public Sector Information

The ALCC is strongly supportive of the proposal to increase access to public sector information (PSI).

We recognise the benefits that flow from opening up information and other copyright materials for use and re-use. In recent years, there has been an increasing movement towards open access, and recognition of the huge potential open access policies offer for research and innovation.¹ The movement is particularly strong in regards to publically funded materials. The Open Access to Knowledge (OAK) Law Project at the Queensland University of Technology is devoted to developing resources and suggested protocols for managing copyright issues in an open access environment, and has said:

Not all copyright material will, or should, be available for open access; however, we believe that copyright material that has been generated by public funding has a democratic heritage and as such should be open access in some broad or limited way.

In countries like Australia, with extensive crown copyright protection, an effective open access policy for government PSI would need to address copyright issues so that Australian individuals and organisations have a greater capacity to use and reuse these materials. We also note that the new Obama Administration has gone further than previous Administrations in providing that any third party content on the Whitehouse.gov website is licensed under the minimal Creative Commons Attribution license.² This is in addition to the fact that government materials do not obtain copyright protection in the US.

For members of the ALCC, the benefits that flow from opening up copyright materials for use and re-use is particularly apparent in the fields such as research, study and further education, but we recognise open access policies also encourage innovation more broadly in Australia, and can benefit all kinds of individuals and industries, and lead to economic gains.

The ALCC has a particular interest in increasing access to publically-funded cultural, educational and scientific collections. A number of our cultural institutions are pursuing or are in the process of pursuing increased access to their collections over the internet via digitisation projects. For example, the National Library of Australia, in collaboration with Australian State and Territory libraries is engaged in the Newspapers Digitisation Project, which makes older Australian newspapers available online, allows text search and incorporates Web 2.0 style functionalities such as allowing users to login and correct errors in computer generated text for articles.³ In addition, University libraries play a key part in the development and implementation of open access repositories for theses and academic publications.

We address below some specific questions in the Consultation Paper:

¹ See for example John Willinsky, *The Access Principle: The Case for Open Access to Research and Scholarship*, MIT Press, 2005. Full text available:

<http://mitpress.mit.edu/catalog/item/default.asp?ttype=2&tid=10611>.

² Copyright Notice, The White House website. Available: <http://www.whitehouse.gov/copyright/>.

³ Australian Newspapers beta <<http://ndpbeta.nla.gov.au/ndp/del/home>>, accessed 9 February 2009.

*What categories of Public Sector information are most useful to industry and other stakeholders to enable innovation and promote the digital economy?*⁴

In the ALCC's submission, it is often difficult to predict what particular kinds of information will be most useful. Some information might seem inherently useful, such as mapping data and its application in producing user-friendly maps. However, there will inevitably be uses which, for example, combine information from a range of sources to produce something which is wholly unexpected.

Because of the unpredictable nature of 'innovative' uses, the ALCC believes it is important to open up as much information as possible. The ALCC recommends Government develop a policy whereby there is a presumption that all information is appropriate for open access, unless it can be demonstrated that open access is inappropriate. In many cases the PSI will already have been made freely and publicly available, so the only remaining step is to ensure this material available under an open license which allows use and reuse by the public.

*If PSI is made open access, what licensing terms would best facilitate the use of PSI? Should licensing terms distinguish between commercial uses and non-commercial uses and reuses?*⁵

The ALCC supports use of the most minimal of Creative Commons licenses, the attribution only, or CC-BY, license. PSI which has been produced and/or collected using public funds should be made available for use and re-use in as broad terms as is possible. The license need not prohibit commercial use. If Government wishes to encourage novel uses of PSI, it should be possible for individuals and organisation to profit from their innovative use.

4. Ensuring Australia's regulatory framework enables the digital economy

*Does Australia's copyright law unreasonably inhibit the operation of basic and important internet services? If so, what are the nature of such problems and practical consequences? How should these be overcome?*⁶

Online Access to Collections

As previously noted, the ALCC believes a key element of an optimal 'digital economy' within Australia is open access to quality resources. The ALCC's constituency hold vast quantities of materials in their collections, including valuable manuscripts, out-of-print or rare books, newspapers, periodicals and special collections. It would certainly benefit the digital economy, including the digital education revolution agenda, if institutions could make as much of these materials available online as possible (provided it did not unreasonably prejudice the copyright holder).

⁴ Commonwealth Government, *Digital Economy Future Directions Consultation Paper*, 2008, 5.

⁵ Ibid.

⁶ Commonwealth Government, *Digital Economy Future Directions Consultation Paper*, 2008, 18.

The quantity of materials that institutions can make available online is limited by resources and by limitations imposed by copyright.

The flexible dealing provision (section 200AB *Copyright Act 1968* (Cth)), was introduced for libraries, archives and educational institutions in December 2006, and does have the potential for allowing institutions to do much more with copyright materials than they could previously. Previously an institution would need to take a risk management approach to making orphan works⁷ available online (or indeed for any use falling outside a specific exception). This section has lessened the copyright hurdle to some extent. However the flexible dealing provision is relatively uncertain in scope, and untested. It may be some time before collecting institutions fully utilise the potential of this provision, for example using it to provide online access to parts of the collection.

In addition, these procedures take significant resources to implement, so that any uncertainty and cost limit this potential further.

A number of institutions have sought to provide solutions to gaps in copyright law exceptions by including provision for online access and other uses as technology develops, as part of their acquisition policy. Some institutions also include an option for the item to be licensed under a creative commons license. However, for those materials acquired before the rise of the internet, permissions obtained will not include electronic uses, limiting institutions to that which is permitted under the Copyright Act, or to a risk management approach.

Preserving Access to Digital Resources

The Legal Deposit regime contained in the *Copyright Act 1968* currently only covers paper-based publications. At the end of 2007 the Department of Broadband, Communications and the Digital Economy and the Attorney-General's Department jointly released a discussion paper on the extension of Legal Deposit.⁸ The ALCC made a submission⁹ recommending extension to include audiovisual materials as well as online electronic materials.

Materials and resources available online are in some ways far more vulnerable than hardcopy materials. Information contained on a website one day may have disappeared the next. As noted in the National Library of Australia's submission to the discussion paper:

If not for the action already taken by the National Library, the 2000 Sydney Olympics website, the Centenary of Federation website, the website of the previous Prime Minister John Howard, and many other historically important electronic information resources would no longer be accessible to the public; indeed, it would be as if they had never existed.

⁷ Works whose owner is unknown or unidentifiable.

⁸ Commonwealth Government, Extension of Legal Deposit Discussion Paper, 2007. Available: http://www.arts.gov.au/public_consultation/submissions-closed/discussion_paper_on_the_extension_of_legal_deposit_of_library_material.

⁹ Available at: http://www.digital.org.au/alcc/submissions/documents/ALCC_LegDep_Sub.pdf.

While the approach used to build the PANDORA collection over the past 12 years has produced an important sample of Australian online publications, this has required labour intensive negotiation with each publisher for the rights to collect, preserve and provide access. The Library's experience over this period proves that it is not possible to scale the current negotiation-based approach to the level of collecting required for an adequate national collection. As a result, the vast majority of Australian online information will not be represented in the national collection of publications, and will not be preserved for future research and study, under the existing legal deposit arrangements.¹⁰

The current legal deposit provisions are restricting the ability of the National Library to properly collect, preserve and make accessible to the public a vast quantity of online materials.

*Should the existing copyright safe harbour scheme for carriage service providers be broadened?*¹¹

The ALCC supports the submission of the Australian Digital Alliance (ADA), and agrees the safe harbour scheme needs to be expanded in a technologically neutral way, in order to include bodies such as educational institutions who also offer internet services.

5. Measuring the Digital Economy and its impacts

The ALCC supports the submission of the ADA on this topic, and agrees there is a need for broad collection of data in the development of evidence-based policy.

6. Conclusion

We thank the Department of Broadband, Communications and the Digital Economy for the opportunity to comment on this important area.

The ALCC believes it is important that any discussion about the digital economy recognises the important role that libraries and archives play in ensuring access to quality resources. We strongly support measures being taken, including legislative amendments, that will increase the ability of institutions to provide quality access to information and resources over the internet.

¹⁰ National Library of Australia, *Submission to the Attorney's General Department and the Department of Broadband, Communications and the Digital Economy*, 2008, 4. Available:

http://www.arts.gov.au/data/assets/pdf_file/0005/80951/National_Library_of_Australia.pdf.

¹¹ Commonwealth Government, *Digital Economy Future Directions Consultation Paper*, 2008, 18.