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Copyright and the Digital Economy: ALRC tables final report

Following an 18-month inquiry involving 870 public and 139 private submissions and 109 consultations with stakeholders, the Australian Law Reform Commission (ALRC) [Final Report on Copyright and the Digital Economy](#) was tabled in Parliament on 13 February 2014.

In conducting its inquiry, the ALRC was asked to examine the adequacy and appropriateness of current copyright exceptions and statutory licences in the digital environment.

The ALRC made 30 recommendations which seek to achieve the objectives of respecting authorship and maintaining incentives for creating copyright material while also enabling fair access to copyright material by providing rules that are flexible, clear, technologically neutral and compliant with international obligations.

Key recommendations

'Fair use' exception

The centrepiece of the report is the recommendation of a 'fair use' exception, which is intended to replace many of the current defences to copyright infringement such as the exceptions for 'fair dealing', libraries and archives, 'time shifting' and 'format shifting'.

The exception is subject to the application of non-exhaustive 'fairness factors', including:

- the purpose and character of the use
- the nature of the copyright material
- the amount and substantiality of the part used, and
- the effect of the use on the potential market for, or value of, the copyright material.

These fairness factors are similar to the factors considered in relation to the current fair dealing exception for 'research or study' and the US Copyright Act 'fair use' factors.

The ALRC recommends that the exception contain a non-exhaustive list of 'illustrative purposes' that may qualify as fair use, including:

- i. research or study
- ii. criticism or review
- iii. parody or satire
- iv. reporting news
- v. professional advice
- vi. quotation
- vii. non-commercial private use

- viii. incidental or technical use
- ix. library or archive use
- x. education, and
- xi. access for people with a disability.

The ALRC views this proposed exception as being in the public interest, as it is flexible and able to change with new technologies and understandings of what is 'fair use'. It considers that the exception is able to offer protection to rights holders while retaining sufficient certainty and predictability to encourage creation and innovation.

Alternative 'new' fair dealing exception

If the 'fair use' exception above is not enacted, the ALRC recommends the introduction of an 'alternative' new fair dealing exception. This alternative seeks to extend the range of 'purposes' covered by the current fair dealing exceptions.

Specifically, the 'illustrative purposes' listed at paragraphs (vi) to (xi) above would constitute additional categories of fair dealing.

However, the 'fairness factors' set out above should still be considered in determining whether the dealing is 'fair' along with any other relevant matter.

Other recommendations

The ALRC made various other recommendations, including the following:

- maintaining the statutory licences for government and educational institutions but making them less prescriptive by:
 - removing detailed provisions on the setting of equitable remuneration, record keeping and sampling
 - allowing governments to negotiate directly with rights holders on equitable remuneration
- clarifying that statutory licences for government and educational institutions do not apply where:
 - other unremunerated exceptions to infringement (including fair use or the new fair dealing exceptions) apply
 - an alternative licence applies, whether obtained directly from rights holders or a collecting society
- introducing specific exceptions for use of copyright material for the proceedings of a tribunal, royal commission or statutory inquiry or for reporting those proceedings or where statutes require governments to provide public access to copyright material
- limiting remedies available for use of 'orphan works' where the owner cannot be found from a reasonably diligent search and as far as possible the author has been clearly attributed
- allowing contracting out of the proposed fair use exception but not the new fair dealing exception
- clarifying that any term of an agreement that restricts uses otherwise covered by specific library and archives exceptions is unenforceable.

Implications for agencies

The Australian Government is currently considering the recommendations in the report.

If the recommendations are implemented, they will have far-reaching implications for how agencies deal with copyright material.

Following the tabling of the report, the Attorney-General gave an [address on copyright reform](#) at the Australian Digital Alliance Forum held on 14 February 2014.

AGS will be hosting its Intellectual Property Law, Policy and Practice Forum on 30 April 2014 at the National Portrait Gallery. The forum program will soon be available from the AGS website.

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