



## *Express law* fast track information for clients

26 July 2012

### **FINAL ALRC TERMS OF REFERENCE FOR REVIEW OF COPYRIGHT EXCEPTIONS AND AGD REVIEW OF EXCEPTIONS TO LIABILITY FOR CIRCUMVENTING TECHNOLOGICAL PROTECTION MEASURES**

On 29 June 2012, the Attorney-General's Department (AGD) released the final terms of reference for the Australian Law Reform Commission's (ALRC) inquiry into the operation of copyright exceptions, including in the digital environment.

AGD also recently announced a separate review of exceptions to liability for circumventing technological protection measures (TPMs) which are protected by the *Copyright Act 1968 (Copyright Act)*.

These reviews may result in amendments being made to the Copyright Act and the *Copyright Regulations 1969 (Copyright Regulations)* which broaden or adjust the legitimate uses of copyright material. As such, the outcome of these reviews may have significant implications for the use of copyright material in the digital environment and more generally.

The ALRC inquiry's final terms of reference are available from the AGD [website](#).

An outline of AGD's review of TPM exceptions is available from the AGD [website](#).

#### ***Scope of ALRC inquiry into copyright exceptions***

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AGD previously released draft terms of reference for the ALRC inquiry into copyright exceptions. They have now been amended and finalised to address issues raised during the public comment period.

A discussion of the background, purpose and scope of the proposed inquiry following publication of the draft terms of reference is available from our previous update: [AGS Express Law](#).

#### **Final ALRC terms of reference**

The final terms of reference of the ALRC inquiry cover whether the existing copyright exceptions and statutory licences under the Copyright Act are adequate and appropriate in the digital environment and more generally.

The inquiry will consider the concepts of 'fair use', 'transformative, innovative and collaborative use' to create and deliver new products and services of public benefit.

The inquiry will also consider whether exceptions should allow further 'appropriate' use of online copyright material for social, private and domestic purposes.

In conducting its review of copyright exceptions, the ALRC will have regard to:

- the objective of copyright law in providing an incentive to create and disseminate copyright material
- the general interest of the public in accessing, using and interacting with copyright content in the advancement of education, research and culture
- Australia's international obligations, international developments and previous copyright reviews
- the importance of the digital economy and opportunities for innovation leading to economic and cultural development as a result of new digital technologies.

### **Submissions and reporting time frames**

The ALRC is currently working towards releasing an issues paper in **August 2012**. It will call for submissions from interested parties at that time.

The ALRC's final report and recommendations for reform are due by no later than **30 November 2013**.

Further information on the inquiry and regular updates can be obtained from the ALRC's [website](#).

### ***Review of technological protection measure exceptions***

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#### **Overview**

AGD is undertaking a review of the exceptions to liability for circumventing TPMs protected by the Copyright Act.

TPMs are technological locks which:

- prevent copyright material from being read, listened to or watched (i.e. 'access control' TPMs) or
- allow copyright material from being read, listened to or watched, but prevent copies from being made (i.e. 'copy control' TPMs).

They can include passwords, encryption software and access codes.

Civil remedies and criminal penalties apply to the circumvention of TPMs.

The review will seek submissions on whether existing exceptions to liability for circumventing TPMs should be broadened or adjusted, or whether new exceptions should be added.

TPM exceptions will not be considered by the ALRC inquiry referred to above.

#### **The TPM exceptions under review**

The review will only cover exceptions relating to bypassing, disabling or otherwise circumventing an *access control* TPM.

It will cover exceptions contained in the Copyright Regulations; namely, the additional exceptions in Sch 10A of the Copyright Regulations.

The review will not cover the exceptions set out in ss 116AN(2)–(8) and 132APC (2)–(8) of the Copyright Act.

## Amendments to the Copyright Regulations

The submissions received by AGD in conducting the review will be used by the Attorney-General to inform any decision to amend the TPM exceptions covered by the Copyright Regulations.

### Submissions and reporting time frames

Interested parties are invited to provide submissions detailing their views on existing exceptions or new exceptions by **17 August 2012**.

After submissions have been received and published on AGD's website, parties may submit further written comments on published submissions by **5 October 2012**.

Further information can be obtained from AGD's [website](#).

### *What can AGS do to help?*

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AGS can assist agencies in preparing and drafting submissions and comments for both the ALRC inquiry on copyright exceptions and AGD's review of the TPM exceptions.

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