



Stakeholder consultation: proposed reform of the *Copyright Act 1968*

Guiding questions – December 2015

Overview

1. The exposure draft of the Copyright Amendment (Disability and other Measures) Bill (Bill) sets out proposed amendments to the *Copyright Act 1968* (Act) that would:
 - streamline and simplify the existing copyright exceptions and limitations for the use of copyright material by the disability sector
 - simplify the preservation exceptions for copyright material in libraries, archives and prescribed 'key cultural institutions'
 - consolidate and modernise the statutory licences that allow educational institutions to use and pay licence fees for works and broadcasts
 - allow copyright materials to be incorporated into educational assessments conducted online
 - expand the scope of the "safe harbour" scheme to include online service providers
 - introduce new standard copyright terms for published and unpublished works and for Crown copyright in original works.
2. The Productivity Commission commenced an inquiry into Australia's intellectual property arrangements in August 2015 and is scheduled to report in August 2016. It is appropriate to proceed with the amendments contained in the Bill before the Commission reports as those amendments simplify the operation of the Act and are likely to be consistent with the recommendations (if any) made by the Commission in relation to limitations and exceptions to copyright.
3. The material below provides an explanation of the proposed changes and seeks views on particular aspects of the changes. Comments on any other aspect of the Bill are welcomed.

Disability access

4. The proposed amendments for disability access consolidate the various existing exceptions and limitations in the Act that help to provide access to copyright material for certain authorised organisations and individuals. The draft legislation also proposes two separate standalone exceptions, one for institutions assisting persons with a disability and one for use by individuals (fair dealing).

Definition of 'person with a disability'

5. The proposed amendments introduce a consolidated definition of 'person with a disability' modelled on the existing s200AB(4) of the Act as *a person with a disability that causes the person difficulty in reading, viewing or hearing copyright material in a particular form.*

Authorised organisations

6. The proposed amendments replace the existing statutory licences for institutions that assist persons with a print or intellectual disability with a streamlined single exception that applies to institutions assisting a person with a disability in relation to all copyright material.
7. The proposed single exception first requires an organisation to seek to purchase material before a copy can be made. The proposed measure clarifies that this occurs on a *format-specific* basis, not *title-specific*. In practice, this would mean that copies could be made in a format that provides comfortable access to information even if the particular book requested is already available in a different, but unsuitable, format for the person requesting the copy.
8. The proposed single exception removes the requirement that certain institutions be declared by the responsible Minister to be an institution assisting persons with a print or intellectual disability, and administrative requirements relating to providing a remuneration notice to the collecting society. The proposed exception does not require notification of copying to a collecting society, but also does not prevent the current arrangements from continuing, should institutions wish to maintain a central register of accessible format copies. This could also help with cross-border transfer of copies for the purposes of the Marrakesh Treaty.
9. The proposed single exception covers an educational institution (as currently defined) or any other institution which provides assistance to persons with a disability as a principal function or one of its principal functions.
10. The Department proposes to prepare guidelines in consultation with affected stakeholders that would identify best practice approaches to dealing with accessible copies and other relevant matters relating to the practical application of the amendments.

Q 1: Do you think the proposed provisions are sufficiently clear and will operate effectively to meet the objective of ensuring access to accessible format copies of works?

Q 2: Do you prefer the terminology 'organisation assisting a person with a disability'?

Fair dealing for disability access

11. The proposed amendments replace the existing exception in s200AB(4) with a fair dealing exception. The proposed fair dealing exception applies to the same types of copyright material and the same categories of uses. The key change to the proposed exception is that the criteria in s200AB(1) no longer apply, instead fair dealing will apply.

Print Disability Radio Licence Scheme

12. The Print Disability Radio Licence Scheme provided for under section 47A of the Act states that it is not an infringement for licensees to make a sound recording of certain copyright material including books and plays for broadcasting purposes. The Bill proposes that the copyright aspects of the Licence Scheme will be consolidated into the broader exception for institutions assisting persons with a disability.

Q 3: Will the proposed exception allow providers of print disability radio to continue operating as they currently do?

Copyright Regulations

13. The Department is separately preparing amendments to Copyright International Protection Regulations to include a positive statement that it is not an infringement of copyright to exchange literary and artistic works across borders for the purposes of compliance with the Marrakesh Treaty. The Department is also preparing amendments to the *Copyright (International Protection) Regulations 1969* to ensure authorised users of the disability scheme can circumvent technological protection measures where necessary.

Preservation copying

14. The proposed amendments contained in the Bill simplify and streamline the existing preservation copying provisions to allow libraries, archives and 'key cultural institutions' greater flexibility in copying and digitisation of copyright material, whether published or unpublished, to preserve their collections.
15. The proposed preservation exceptions apply to *public* libraries and archives, parliamentary libraries and prescribed key cultural institutions. It is envisaged that this will generally include a library or archives that forms part of an educational institution, but that there may be library or archival material held by an educational institution (or another institution such as a museum) that is not accessible to the public either directly or through interlibrary loans. This means that, potentially, the exception would not apply to library or archival material held by an educational (or other type of) institution that is not accessible by the public (please see Question 4, below).
16. The proposed preservation exceptions contains the following elements:
 - a) It harmonises the provisions for libraries, archives and key cultural institutions. For example, libraries and archives will no longer be required to wait for published material to be damaged or deteriorate, or to have been lost or stolen, before making a preservation copy.
 - b) There will be no limit on the number, version or format of copies that can be made for preservation purposes, consistent with best practice.
 - c) No specific commercial availability test will be imposed, but the exception does require that the authorised officer is satisfied that a copy of the material cannot be obtained in a version or format that is required for preservation.
 - d) Digital preservation and research copies will be required to be made available to people at libraries, archives or key cultural institutions, but on a restricted basis so that a person cannot electronically copy the material or communicate it to the public. These provisions are intended to complement other provisions in the Act relating to use of copyright material in libraries and archives.

Q 4: Should the proposed preservation provisions apply to a library or archives that forms part of an educational (or other type of) institution if its collection is not available to the public?

Educational Measures

Statutory Licences

17. The proposed amendments consolidate and simplify the existing statutory licences for the use of copyright material by the educational sector.
18. The proposed new statutory licence would provide that copyright is not infringed by the copying and communication of work by educational institutions provided a number of conditions are met:
 - a) A remuneration notice, given by or on behalf of the body administering an educational institution, to the relevant collecting society, is in force.
 - b) The copying or communication is carried out solely for the educational purposes of the institution or of another educational institution covered by the remuneration notice.
 - c) The amount that is copied or communicated does not unreasonably prejudice the legitimate interests of the owner of the copyright of the work.
 - d) The copying or communication complies with any other terms as are agreed between the body administering the educational institution and the collecting society, or any other determination made by the Copyright Tribunal.
19. The proposed amendments would make similar provision for broadcasts by education institutions, allowing use of broadcasts provided these conditions were met and that the use complies with any other terms as are agreed between the body administering the educational institution and the collecting society specifically relating to the broadcasting.
20. The proposed amendments seek to extend the meaning of a broadcast to cover:
 - a) A communication of the content of a free-to-air broadcast by the broadcaster making the content available online at or after the time of the broadcast.
 - b) A communication by electronic transmission using the internet of the content of a broadcast at, or at substantially, the same time as the broadcast.
21. The proposed amendments also consolidate the existing provisions relating to the Part VA and VB statutory licences.

Q 5: Does the proposed statutory licence appropriately extend the coverage of broadcasts to the types of broadcast content used by educational institutions?

Q 6: Does the Copyright Tribunal have adequate jurisdiction to determine all necessary matters?

Q 7: Will the proposed statutory licence reduce the administrative burden on parties to the licence?

Q 8: Do the proposed transitional provisions adequately protect current arrangements for the life of their term?

Q 9: While the transitional provisions provide that existing notices, agreements and determinations will continue, the new provisions would govern these existing arrangements. Are there any arrangements that the new provisions should not apply to?

Exam Copying

22. The current examination copyright exception in section 200(1)(b) is not broad enough to enable examinations to be conducted online. The proposed amendment will remedy this.

Safe harbour

23. The proposed amendments expand the current 'safe harbour' provisions in the Act to cover a broader range of entities, including educational institutions and other online services (such as online search engines, bulletin boards and cloud storage services). The proposed definition of a service provider reflects the definition of a service provider in Article 17.11.29(xi) of the Australia-United States Free Trade Agreement and Article 18.81 of the Trans Pacific Partnership Free Trade Agreement.

Term of protection

24. Currently, the Copyright Act provides for different copyright terms for published and unpublished works. Where copyright works are unpublished they remain in copyright in perpetuity and so their productive uses may be lost.

25. The proposed amendments seek to harmonise the copyright term for published and unpublished works by creating a new general protection period of life plus 70 years that does not differentiate between published and unpublished works.

26. The proposed general term of protection would apply to works made before 1 January 2018 that remain unpublished at that date. The delay in commencement of these provisions would enable a copyright owner of a work made by a deceased author to publish before commencement, which would extend the term of protection under the existing duration provisions. When the term of protection for unpublished works ends, this does not require or cause previously unpublished works to become published. It would still be a decision for the person who has physical possession of the work to decide whether they wish to publish the work.

Unknown authors

27. The proposed amendments also provide a protection period of 70 years from the year in which a work is 'made' (i.e. making plus 70 years) where the identity of the author is 'generally unknown' during this 70 year period. This will cover works currently referred to in s34 of the Act as 'anonymous or pseudonymous' works. However, if the work is published within 50 years of its

making, the proposed amendments provide a protection period of first made public plus 70 years. Where the author becomes known in the relevant protection period, copyright duration would default to the general protection period of life plus 70 years.

Copyright material made or first published by the Crown

28. It is also proposed to amend section 180 of the Act to provide a set term of copyright for works owned by the Crown of 50 years from the year in which the material is made (i.e. making plus 50 years), whether the material is published or unpublished.

29. The tables below set out the duration provisions that would apply to works from 1 January 2018.

Works made before 1 January 2018

Literary, dramatic, musical work, engraving

Factors affecting duration	Copyright expired IF	Otherwise, duration is
Published before death	creator died before 1 January 1955	life of creator + 70 years
Published after death but before 1 Jan 2018	made public before 1 January 1955	year made public + 70 years
Not published before 1 Jan 2018	creator died before 1 January 1948	life of creator + 70 years

Computer program

Factors affecting duration	Copyright expired IF	Otherwise, duration is
N/A	creator died before 1 January 1955	life of creator + 70 years

Artistic works other than photographs or engravings

Factors affecting duration	Copyright expired IF	Otherwise, duration is
N/A	creator died before 1 January 1955	life of creator + 70 years

Photograph

Factors affecting duration	Copyright expired IF	Otherwise, duration is
N/A	taken before 1 January 1955	life of creator + 70 years

Works where the author is unknown

Factors affecting duration	Copyright expired IF	Otherwise, duration is
Not published within 50 years of making	made before 1 January 1948	date of making + 70 years
Published within 50 years of making	published before 1 January 1955	year made public + 70 years

Works made on or after 1 January 2018

Works where the author is known

Factors affecting duration	Copyright expired IF	Otherwise, duration is
N/A	N/A	life of creator + 70 years

Works where the author is unknown

Factors affecting duration	Copyright expired IF	Otherwise, duration is
Not published within 50 years of making	N/A	date of making + 70 years
Published within 50 years of making	N/A	year made public + 70 years

Government works made before or after 1 January 2018

All works made, or first published, by a Commonwealth, State or Territory

Factors affecting duration	Copyright expired IF	Otherwise, duration is
N/A	made before 1 January 1955	date of making + 50 years

Q 10: The current proposal only applies to the duration of copyright in works. This could be extended to films and sound recordings. With this in mind, and given that the Act currently does not use the concept of the date of 'making' a film or sound recording for the purposes of determining duration, views are sought on the common industry understandings of when a commercial film or sound recording is made.