



# Roundtable on quotation and educational uses of copyright

On 1 May 2018, we hosted a roundtable on quotation and educational uses as part of our Copyright Modernisation consultation. We have listed the attendees below.

## Summary of roundtable

We noted the Productivity Commission (PC) and Australian Law Reform Commission (ALRC) have recommended a fair use exception to copyright. The Government had noted the PC's fair use recommendation, and asked the department to consult further. We noted the purpose of this and other roundtables was to find areas of meaningful reform, not to repeat previous submissions. We recognised the ongoing work of many stakeholders on other copyright policy areas. This included the [Copyright Amendment \(Service Providers\) Bill 2017](#), the review of [Copyright \(Online Infringement Amendment\) Act 2015](#) and the [Review of Code of Conduct for Copyright Collecting Societies](#).

## Quotation

We explained that we had decided to cover quotations and educational uses in one roundtable because they are mentioned together in the [Berne Convention](#). Existing copyright exceptions for criticism, review, research or study might not permit some quotations. This could include images used in a presentation to illustrate a point being made, or a quotation in an exhibition catalogue for a museum or gallery. We also recognised that existing copyright exceptions might not allow some education uses and some education uses would require payment. We noted that the Berne Convention placed some conditions on any exceptions for quotations or educational uses. We also recognised that rightsholders want to protect their investments and pay their creators fairly.

The roundtable did not agree on how much quotation current exceptions allow. Some attendees believed Australia needs either a fair dealing exception for quotation or a fair use exception to comply with the [Berne Convention](#). Some wanted to know what quotations would not be covered under existing exceptions, such as the exception for criticism and review. We suggested that a retweet might not be covered by existing exceptions. Others believed that existing exceptions were sufficient.

There was a discussion about the uses a quotation exception might cover. The roundtable agreed that an exception would need to allow a use of a 'substantial part' to be meaningful, but not be so broad that it undermines the substantial part test in copyright which provides a basis for making a claim for copyright infringement where a substantial part of copyright material has been copied. There were concerns about appropriation art being covered by the exception. Many participants thought there should be a fairness test. Some thought any exception should consider fairness in context. What is fair for quoting music might be different to what is fair for quoting a part of a book. Some rightsholders were more open to a quotation exception if it only covered copyright works (such as books, musical works and art), but not films and sound recordings.

Some participants asked whether quotation needed to be defined. Some believed that quotation was not a purpose in itself, unlike purposes for other fair dealing exceptions. For others, they agreed



why someone was quoting was relevant to how much could be quoted but thought quotation could itself be a purpose and might not need to be defined. Some noted it is mentioned but not defined in the Berne Convention, which implies quotation is a purpose.

The roundtable discussed which factors a fairness test for quotation should include. Some rightsholders advocated for the five factors from 'research and study' whilst user groups argued for the four factors from 'disability access'. The fifth factor from the 'research or study' exception looks at the possibility of obtaining an alternative copy of the work within a reasonable time at an ordinary commercial price, thereby enabling markets for the distribution of copyright content to operate where they can. Education representatives opposed inclusion of this factor.

## Educational use

There was a discussion about the existing exception for some library, archive and educational institution uses (s 200AB). Cultural, collecting and educational institutions noted that the exception is limited in several ways. One is that it only allows uses by an institution, not uses with parents, non-educational institutions such as NASA, private sector or non-governmental organisations or use by clients or patrons of cultural and collecting institutions. Some rightsholders asked whether the exception could be amended. Cultural, collecting and educational institutions confirmed they would prefer a fair dealing exception for educational use. From their point of view, s 200AB was difficult to use, both for educators and for lawyers. Some rightsholders noted their members wanted to continue to receive licence payments and oppose a fair dealing exception.

There was a discussion about non-legislative options. We noted one option for government uses was for collecting societies to publicly state when no payment is required. We suggested the option might also be useful for education uses. The roundtable recognised discussing this option would be difficult now because education institutions and collecting societies are negotiating a new agreement under the educational statutory licensing scheme.

## Summary and next steps

We recognised the roundtable showed more common ground for quotations than educational uses. We committed to come back to stakeholders with further material they could take to their members as part of the consultation. This would help us advise government on policy options, the pro and cons, and the level of consensus between different groups. We asked for submissions by 4 June. We noted that we planned to appoint an external reference group. This would represent diverse views across copyright and improve the Department's advice to government.

## Attendees

The attendees of the roundtable were:

- David Brennan, Associate Professor, University of Technology, Sydney
- Isabella Alexander, Associate Professor, University of Technology, Sydney
- Grant McAvaney, CEO, Australian Copyright Council
- Libby Baulch, Policy Director, Copyright Agency
- Paul Muller, CEO, Australian Screen Association
- Bronwyn Dowdall, Manager Licensing and Rights, National Film and Sound Archive
- Delia Browne, National Copyright Director, Copyright Advisory Group to the COAG Education Council



- Lucinda Edwards, Legal Counsel, Special Broadcasting Service
- Jessica Coates, Executive Officer, Australian Digital Alliance
- Rebecca Harris, Policy Director, Universities Australia
- Sarah Waladan, Head of Legal and Regulatory Affairs, Free TV
- Sarah Runcie, Strategy and Policy Manager, Australian Publishers Association
- Lynne Small, General Manager, PPCA
- Jonathan Carter, Head of Legal, Regulatory and Policy, APRA AMCOS
- Simon Lake, CEO, Screenrights
- Helen Owens, Assistant Secretary, Content and Copyright Branch
- Sam Ahlin, Director, Content and Copyright Branch (by teleconference)
- Erin Driscoll, Assistant Director, Content and Copyright Branch
- Alan Hui, Assistant Director, Content and Copyright Branch
- Hari Sundaresan, Senior Policy Officer, Content and Copyright Branch (by teleconference)

