



Roundtable on incidental or technical uses of copyright

On 1 May 2018, we hosted a roundtable on incidental and technical use 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](#).

We noted the ALRC had recommended that if there was not fair use, there should be a fair dealing exception for incidental and technical use. This would replace existing exceptions for temporary copying and caching, which do not cover some incidental or technical uses. The exception would not favour any particular technology. We noted that technical copying is common in the digital world. We said we were interested to know how to make an exception without accidentally harming rightsholders.

Some rightsholders wanted to know what uses current exceptions did not allow. Other attendees said that the limited nature of existing exceptions made running a search engine in Australia illegal and that cloud computing is likely to be constrained. The Redbubble website was another example. They noted that fair use would enable many of these uses. The roundtable agreed that piracy, including by Napster and others, would never be fair and would not have access to any safe harbour. Most attendees also agreed that if there was an incidental and technical use exception, the fairness factors should apply. There was a discussion about the context for considering an exception for incidental and technical use. Some believed any exception should not weaken enforcement mechanisms for online copyright infringement. An exception for incidental or technical use might be too broad and could reduce effectiveness of any safe harbour scheme, which currently applies to carriage service providers.

We noted there is a bill before the Senate to extend safe harbour to some service providers. This did not include online service providers who make incidental and technical uses. Some saw safe harbour as more balanced, creating both responsibilities and protection for service providers. Others pointed out that a safe harbour scheme would enable some but not all fair incidental and technical uses. It would not apply to individuals. An example was given of a student who 'scraped' Transport NSW data to create an app. Some noted a text and data mining exception would allow some but not all incidental and technical uses.

There was a discussion about what concerns rightsholders have with an incidental and technical use exception. Several concerns were raised. Some were concerned that an exception would allow use



of snippets of copyright material. This could harm established markets for licensing of music and film clips. Another was that cyber or cloud lockers may house infringing content.

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. [Note: We also plan to appoint an external reference group. This would represent diverse views across copyright stakeholders and improve our advice to government.]

Attendees

The attendees of the roundtable were:

- Jessica Curtis, Manager – Policy & Regulation, *Communications Alliance*
- Grant McAvaney, CEO, *Australian Copyright Council*
- Kate Haddock, Chair, *Australian Copyright Council*
- Paul Muller, CEO, *Australian Screen Association*
- Jonathan Carter, Head of Legal, Corporate and Policy, *APRA AMCOS*
- Lynne Small, General Manager, *PPCA*
- Michael Cooley, Public Policy and Government Relations, *Google*
- 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*
- David Brennan, Professor, *University of Technology, Sydney*
- Kimberlee Weatherall, Professor and Associate Dean (Research), *University of Sydney Law School*
- Jessica Coates, Executive Officer, *Australian Digital Alliance*
- Nic Suzor, Associate Professor, *Queensland University of Technology (QUT) Law School* and Chief Investigator, *QUT Digital Media Research Centre*
- 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)

