



Roundtable on libraries and archives use

On 11 May 2018, we hosted a roundtable on libraries and archives 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 Amendment \(Online Infringement\) Act 2015](#) and the [Review of Code of Conduct for Copyright Collecting Societies](#).

Libraries and archives uses

We noted that copyright law does not currently permit some uses of copyright material by libraries, archives and Key Cultural Institutions. Often, they are required to undertake these uses by law or government policy. We highlighted examples they raised in submissions to previous reviews. These include:

- providing access to collection materials for personal uses beyond research or study (such as for memorabilia purposes),
- using collection items in institutions' exhibitions, public programs and outreach functions (including publications),
- allowing remote browsing of collection items on digital databases, and
- allowing institutions to acquire born digital material directly for inclusion into the collection.

Library representatives noted copyright laws need to have 'specific' provisions for 'everyday' activities and a 'flexible' provision for other activities undertaken by libraries, archives, museums and galleries. Everyday activities include the preservation and care and control of the collection, supplying clients with copies and direct access to collection items (document supply), and supplying copies to other libraries for their collections (inter-library loans).

Flexible exception for library and archive use

Library and archive representatives sought a flexible exception that would cover activities beyond the everyday preservation, document supply and inter-library loan functions.

There was a discussion about whether the existing exception for some library and archives use (section 200AB) could sufficiently enable a broader range of activities outside of their everyday activities. The library, archive and cultural institution representatives preferred a new, flexible exception to amending section 200AB. They noted institutions took ten years to understand how to use section 200AB. Even then, many uses could not rely on section 200AB. In their view, it was not fit for purpose for modern practices undertaken by institutions. Two modern practices are providing digital access to collections and undertaking collaborative projects. Section 200AB has limited usefulness because it is:



- too narrow – it can only be used if no other exception is available, and it can only be used by institutions not their clients, patrons or collaborators. Also, it only applies to ‘special cases’
- too complex – for example, users need to apply the ‘special case’ requirement from the Berne Convention’s ‘three-step test’.
- doesn’t apply to Key Cultural Institutions (such as broadcasters), to the extent that their collection could not otherwise be defined as a library or archive
- inflexible – it does not apply to activities which may have a commercial element but might still be fair. These include
 - using collection materials in social media and in publications
 - curated exhibition catalogues or publications that reproduce collection items (such as a book of diaries and letters that would be difficult to view in an exhibition context).

In principle, rights holder representatives supported making collections more accessible. They were concerned that a flexible exception would discourage some people from getting copyright permission. They were also concerned that it might weaken the statutory licences for governments, including Commonwealth and state and territory institutions. Downstream use of collection materials might also be harmful to rightholders. For example, a cultural institution might provide works to its clients for use that was not research and study, including commercial use. Rights holder representatives asked for examples of uses that would be allowed by a flexible exception but not section 200AB.

There was also discussion around the types of ‘core’ and ‘non-core’ activities of libraries, archives, museums and galleries. The idea was that core activities are more likely to deserve more access to copyright material. Representatives from these institutions called for a flexible exception for uses fulfilling their core functions. These core functions might be set out in the law establishing them or in their governance framework.

The roundtable agreed use of copyright material should be allowed for documenting and preserving aspects of Australian heritage and culture for future generations and allowing Australians to experience items in these collections. The attendees differed on whether to permit outreach projects and programs undertaken by institutions.

There was discussion around which fairness factors should apply if there was an exception. Library and archive representatives preferred to omit ‘possibility of obtaining... within a reasonable time at an ordinary commercial price’ (the third of the five fairness factors from ‘research or study’ exceptions). This factor may discourage institutions from pursuing their core functions by increasing legal risk and financial stress. They preferred the four fairness factors from the ‘disability access’ exception.

Streamlining and modernising existing libraries and archives exceptions

There was some discussion around the limitations of existing exceptions permitting ‘everyday’ functions of libraries, archives, museums and galleries. Institutions are concerned exceptions only allow:

- delivering works (books, compositions, art) to clients and other libraries for their collections but not audio-visual material (sound recordings, films, broadcasts). These institutions suggested this could be fixed in a similar way to preservation, research and administration provisions for libraries, archives and Key Cultural Institutions (Part IVA, Division 3 of the Copyright Act)
- published works and old unpublished materials, but not published audio-visual material or new unpublished materials



- can be made available to clients for their research and study purposes, but not any other purpose (such as for memorabilia, where a direct connection can be established to the material, or to allow the institution to reproduce the material in an exhibition catalogue).

The roundtable also discussed other ways to streamline existing exceptions. Currently, libraries and archives need to provide and keep a lot of information for library requests and providing access to collection items. The roundtable agreed that there is a need to streamline and modernise these requirements which are supposed to provide a record of uses but not burden users or rights holders.

Summary and next steps

We recognised that the roundtable showed consensus on streamlining and modernising the existing provisions for libraries and archives. While the roundtable agreed Australians could benefit from broader access to cultural and collecting institutions' collections, we acknowledged that was no consensus reached on the merits for, or details of, introducing a flexible exception for use by libraries, archives and Key Cultural Institutions.

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 pros 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:

- Libby Baulch, Policy Director, *Copyright Agency*
- Kate Boesen, Reference Librarian, *National and State Libraries Australasia*
- Jessica Coates, Executive Officer, *Australian Digital Alliance*
- Bronwyn Dowdall, Manager Licensing and Rights, *National Film and Sound Archive*
- Lucinda Edwards, Legal Counsel, *Special Broadcasting Service*
- Kate Gilchrist, Team Leader, Acquisitions & Productions, Legal Services, *Australian Broadcasting Corporation*
- Simon Lake, CEO, *Screenrights*
- Grant McAvaney, CEO, *Australian Copyright Council*
- Roxanne Missingham, Executive Committee member, *Council of Australian University Librarians*

