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Copyright Law Section
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Consultation on draft Copyright Amendment (Service Providers) Regulations 2018

The Australian Libraries Copyright Committee welcomes the opportunity to provide comments on the draft of the *Copyright Amendment (Service Providers) Regulations 2018*.

We welcome the changes introduced by the recently passed *Copyright Amendment (Service Providers) Act 2018* as an important initial step in improving Australia's safe harbour arrangements. Its extension of Australia's copyright safe harbour scheme will provide significant benefits to our library and archive community, lowering the risk involved in digital engagement projects, and enabling ALCC members to more confidently fulfill their role as important service providers for all Australians.

However, to ensure these changes work as intended, it is equally important that the corresponding changes to the regulations are effective. With that in mind we have distributed the exposure draft widely to our members, and consulted directly with staff members working on the ground to ensure that the practical implications were considered. A number of concerns were raised, particularly with regards to the potential impact of any industry agreement on library and archives exemptions under the technological protection measures provisions, and the definitions of different activities and how they corresponded with library and archive functions (eg does web archiving amount to caching?). This indicates the breadth of issues that will need to be considered by the sector during implementation.

After this comprehensive consultation, we are pleased to say that we support the proposed changes to the regulations as drafted and do not recommend any further amendments. Our answers to the specific questions asked by the consultation paper are as follows.

Question 1: Are any additional amendments needed to the Regulations to facilitate service providers' compliance with the requirements in Division 2AA, Part V of the Act?

None that we have been able to identify.

Question 2: We seek views on the practical application of section 19 to service providers and whether additional clarification is needed for when a service provider administers a number of entities.

Our members feel comfortable with the Act's references to "the body administering" the cultural institution and the Regulations' reference to the service providers' own website. Both concepts appear to be well understood by the libraries and archives sector. We feel confident members of the sector will be able to determine the best location for the copyright contact on a case-by-case basis eg on the institutional website, or otherwise.

Question 3: Are any additional requirements necessary for the development of an industry code by the newly defined 'designated service providers'?

No. Our members place a strong emphasis on being best actors in the copyright space. We are therefore confident that as a sector we will be able to reach agreement on a code with other stakeholders should the need arise. Australia's libraries and archives have a strong preference for keeping the requirements for the industry code as light as possible, and agree that the proposed provisions will sufficiently guide the development of any code, should it be needed.

Question 4: Does the proposed designated service provider code scheme provide sufficient flexibility for designated service providers to work with copyright owners to develop a workable code?

Individual institutions apply similar but slightly different copyright and online service policies, based on their capacity, staff experience and expertise, and the role the services play in their client functions. Therefore, flexibility will be key in any industry code that is developed. However, we believe the current proposals are sufficiently flexible to accommodate these variations.

Question 5: Will the proposed amendments to section 18 of the Regulations (and consequently section 18A) have any unintended effects?

We have not been able to identify any unintended effects of the changes to section 18/18A. We strongly support the purpose of the proposed amendments to allow industry codes to be developed separately with different sectors. We believe these amendments are justified due to the breadth of the service providers which the new scheme seeks to cover and the variation in their functions and practices. Any single industry code which sought to meet the needs of (for example) both commercial ISPs and cultural institutions would need to be extremely complex and therefore difficult to conclude or apply.

Our contact on these matters is our Copyright and Legal Policy Adviser, Jessica Coates, who can be reached at [REDACTED]. Please do not hesitate to reach out if you have any questions.