

Copyright Law and Policy Section
Department of Communications and the Arts
GPO Box 2154 Canberra ACT 2601

Via [online](#) submission

12th February 2016

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

Dear Sir/Madam,

Electronic Frontiers Australia (EFA) appreciates the opportunity to provide this submission in relation to this consultation. EFA's submission is contained in the following pages. EFA is happy to provide further information, if required.

About EFA

Established in January 1994, EFA is a national, membership-based non-profit organisation representing Internet users concerned with digital freedoms and rights.

EFA is independent of government and commerce, and is funded by membership subscriptions and donations from individuals and organisations with an altruistic interest in promoting civil liberties in the digital context. EFA members and supporters come from all parts of Australia and from diverse backgrounds.

Our major objectives are to protect and promote the civil liberties of users of digital communications systems (such as the Internet) and of those affected by their use and to educate the community at large about the social, political and civil liberties issues involved in the use of digital communications systems.

Yours sincerely,



Jon Lawrence - Executive Officer, on behalf of EFA's Policy Team

Proposed reform of the Copyright Act 1968

1. Introduction

EFA has long held the view that Australia's copyright laws are outdated, inflexible and no longer fit for purpose in the digital age. As such, EFA is a long-standing supporter of reform of Australia's Copyright Act.

EFA is a particularly strong supporter of the introduction of a broad, flexible fair use exception, as recommended by the Australian Law Reform Commission in their November 2013 report, *Copyright and the Digital Economy*.ⁱ

While the proposed amendments contained in this draft bill are very welcome, and include some steps towards a broad, flexible fair use exception, EFA believes that these amendments are wholly insufficient in introducing the flexibility that is clearly required if Australia's copyright regime is to enable innovations in the use of technology and of the provision of services that will support a vibrant and internationally-competitive digital economy.

2. People with disabilities

EFA strongly supports Australia's ratification of the Marrakesh Treaty to facilitate access to published works for persons who are blind, visually impaired or otherwise print disabled.ⁱⁱ As such, EFA strongly supports the amendments required to implement Australia's commitments under this Treaty. EFA also notes that these amendments represent a limited form of fair use entirely consistent with the introduction of a broad, flexible fair use exception.

3. Exemptions for fair dealing

The Bill expands on existing defences for alleged copyright infringement under existing 'fair dealing' provisions in the Copyright Act 1968 (the Act). These include defences for libraries, archives, 'key cultural institutions' and educational institutions.

While EFA welcomes these additional proposed defences, they fall well short of the introduction of a broad, flexible fair use exception which EFA believes is the key necessary reform to ensure the Copyright Act is fit for purpose in the digital age.

4. Safe Harbour provisions

EFA strongly supports the extension of the availability of Safe Harbour protections from the unnecessarily limited 'carriage' service providers to all service providers.

5. Guiding Questions

5.1: 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?

The proposed provisions go some way to modernising the legislation and helping it meet the requirements of contemporary Australian life. However, it defers some important specifics to the regulations, and requires a Ministerial declaration for organisations to benefit from the new

exception, an arrangement which seems unnecessarily cumbersome. EFA recommends that any organisation that is compliant with the terms of the exception should be able to benefit from it without the requirement to be declared by the Minister.

5.2: Do you prefer the terminology ‘organisation assisting a person with a disability’?

EFA has no firm opinion on this issue.

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

Section 113F(b)(ii) calls for speculation on behalf of the disability service provider. Decisions can only be based on the information and material available at the time. This provision should be removed completely.

If a service provider is making available material to a disabled person that the copyright holder has thus far failed to provide for there should be no punitive measures. The service provider is merely facilitating use of the material by those persons, which is arguably of benefit to the copyright holder.

5.4: 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?

Yes. While performing a valuable service for specialist areas of research there are many collections not available to the general public.

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

EFA does not have a firm opinion on this issue.

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

Yes. EFA sees no case for additional powers for the Copyright Tribunal.

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

Yes.

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

As the proposal tends to extend the protection period for works, retrospective damage to existing rights is negligible. Transitional provisions for existing rulings appear to be adequate.

5.9: 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?

EFA has no firm opinion on this issue.

5.10: 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.

Given the rapid pace of technological evolution, being prescriptive about the type of work or its media is likely to render the legislation outdated or open to misinterpretation sooner than necessary. EFA therefore supports the extension to all forms of media.

ⁱ <http://www.alrc.gov.au/inquiries/copyright-and-digital-economy>

ⁱⁱ <http://www.wipo.int/treaties/en/ip/marrakesh/>