



Australian Law Reform Commission Inquiry into Copyright and the Digital Economy

Submission from National and State Libraries Australasia

National & State Libraries Australasia (NSLA) supports the submission to this inquiry developed by the **Australian Digital Alliance and the Australian Libraries Copyright Committee**. NSLA is a member of, and is represented on the boards of, these two industry-wide organisations, and has contributed data, issues and examples to their substantial submission.

In addition, NSLA would like to highlight the following issues that go directly to our shared principles on the rights of Australians and New Zealanders:

- to access information, current and past;
- to participate in shaping the cultural, civic and intellectual life of the community and contribute ideas as global citizens;
- to enjoy their documentary and cultural heritage knowing that its collection, preservation and transmission are secure; and
- to explore and engage in the world's culture and knowledge.

1. Orphan works

Providing access to orphan works is recognized as a worldwide problem and enormously expensive. Onerous search processes, complex regulation and lack of understanding are locking up this vast and important body of knowledge and culture. NSLA supports the implementation of an exception for libraries and cultural institutions to enable use of orphan works. In the unpublished collections held in NSLA Libraries, an average of 37% of photographs, 26% of manuscript materials and 18% of maps are orphan works, with much higher percentages in some libraries.

Most of these are “out-of-commerce” works, they were not produced for commercial gain. The European Union Directive of 25 October 2012 (Directive 2012/28/EU) outlines permitted uses of orphan works by libraries and other organisations that promote learning and the dissemination of culture, where the use “fulfills their public interest missions, in particular the preservation of, the restoration of, and the provision of cultural and educational access to, their collections”.

We do not support a collective or other licensing scheme for use of orphan works as this introduces a further layer of cost and process for items where ownership is unlikely to be established.

2. Access to the “long tail”

NSLA Libraries hold the “long tail” of published material for Australia and a wide-ranging international published collection, collected over more than 150 years. Much of this material is out of print with no copies available for purchase, no active publisher or vendor, originally published in limited print runs, and very low current use and demand. There is no natural market for this material. Examples are sheet music, military unit histories, local histories, family histories.

The use requested for this material is generally personal, with little or no potential commercial use or intent, and not currently covered by exceptions.

3. Perpetual copyright for unpublished materials

Unpublished materials given to library collections to protect and make them available for future access, research and study are subject to perpetual copyright in Australia. This is out of step with other countries. For libraries with extensive collections dating back hundreds of years, perpetual copyright restricts and encumbers access and use.

The act of lodging with a public collection could be used as a trigger point for initiating a 70-year copyright period in line with international agreements, unless further provisions are stipulated at the time of lodging with the libraries.

4. Libraries in the digital environment

The role of libraries in preserving born-digital and turned-digital materials requires a new approach to both the number of copies allowed to be made for preservation purposes to allow technical flexibility, and mandatory destruction provisions governing disposal of digital copies. Publicly-funded libraries should be able to efficiently make copies, without repeating the work for multiple users, and to allow effective digital preservation systems to be developed to ensure future access.

Legislation should support transformative use of digital items, recognizing the reality of contemporary creative approaches. Digitisation of the historical record also has “flow-on” benefits in opening up new avenues of research and enabling new uses of this material. For example, the use of a wide range of digitized historical documents and archival materials in recent cross-disciplinary research by the Australian Research Council Linkage project, *Reconstructing South-East Australian Climate History*.

Legal deposit provisions should not restrict access to archived websites to a level beyond their original purpose and access conditions. The internet is an open information environment for the most part and where material has been made openly available on the web, this access should continue as the creators intended for archived web pages.

Australian government, research, education and business communities and the broader public are restricted in their access to information and knowledge by the current copyright legislation. Creative and commercial copyright interests are vital, but where the commercial potential of information or cultural materials is low or non-existent, or where copyright ownership is unknown, the imperative shifts to providing the access that will both contribute to and enrich our cultural and economic lives.

The ALRC review of Copyright and the Digital Economy is a critical opportunity to reshape the parts of copyright legislation that unnecessarily restrict engagement by the community. NSLA trusts this review will go further than ameliorating the main barriers to effective use in the digital environment, and will establish a fair, balanced and usable framework for the future.

We recognize the importance of evaluating the impact on other stakeholders and assessing the downstream and future implications of changes to the Act but nevertheless see great potential for improvement that will materially benefit the community.

Overall, NSLA Libraries support: the introduction of a broad flexible fair-use exception for use by the general public and by cultural institutions; the further recognition of the specific role of libraries in providing access to information; and the shift to technologically-neutral and easy-to-understand copyright legislation.

Yours sincerely,



Mr Alan Smith
Chairman, National & State Libraries Australasia

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About NSLA

National & State Libraries Australasia (NSLA) represents the State, Territory and National Libraries of Australia and New Zealand. These ten major public research libraries work together to enable people to access, use and share local and global knowledge and ideas.

During the 2011-2012 financial year:

- 12 million people visited our library buildings
- 217 million pages were viewed on our websites
- 1,703 terabytes of digital collections were stored
- \$37 million was the total spend on collections
- \$5.2 billion was the asset value of our collections
- \$1.02 billion was the asset value of our buildings/sites

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Please note: Each of the ten NSLA member libraries works within different government jurisdictions. The National Library of New Zealand is part of the Department of Internal Affairs. The views expressed in this letter do not reflect New Zealand Government Policy.