

Australian Law Reform Commission Inquiry into Copyright and the Digital Economy



Response to Discussion Paper 79, released May 2013

National & State Libraries Australasia (NSLA) supports the response to Discussion Paper 79 submitted by the **Australian Digital Alliance** (ADA) and the **Australian Libraries Copyright Committee** (ALCC). NSLA is a member of, and is represented on the boards of, these two industry-wide organisations and has contributed issues, data and examples to their substantial submission.

In addition, NSLA has briefly listed below our responses to some of the key issues raised in the Discussion Paper. These are expanded within the ADA/ALCC submission.

The responses from NSLA stem from our shared principles on the rights of the community. NSLA supports the shift to a copyright framework that allows the fair access and use of materials, contributes to the creation of new knowledge and ideas, and benefits our cultural and economic lives. Australians should have the right to access information, past and present, and to participate, explore and engage in cultural, civic and intellectual life.

The copyright framework should strive to remove unnecessary barriers to access and use, to protect commercial and creative interests, and to address the issues of the digital environment, including through technologically-neutral and workable, easy-to-understand legislation. Reform to current legislation is necessary to ensure Australians are able to contribute and compete in a digital economy.

1. Fair use exception

- A. NSLA supports the introduction of a fair use exception [Proposal 11-2] for published and unpublished works, replacing specific exceptions and repealing statutory licenses for government and education;
- B. NSLA proposes that provision for disabled users is considered in the fairness factors; and
- C. Notes that NSLA has been developing standard practices and industry guidelines for several years and would support this approach to effective understanding of the fairness factors.

2. Contracting out

- A. NSLA recognises the importance of protecting exceptions [Proposal 17-1] and strongly supports the ADA/ALCC position that exceptions in the Copyright Act should be protected from contractual override. The exceptions were created to protect public policy objectives and it should not be possible to contract these out for commercial purposes.

3. Orphan works

- A. NSLA supports orphan works being dealt with under the fair use exception [Proposal 12-1], replacing previous provisions;
- B. NSLA supports the limitation of remedies for infringement of copyright if a reasonably diligent search has been carried out prior to use and as far as possible the work was attributed to the author; and
- C. NSLA proposes that when a rights holder comes forward, remedies should be limited to the amount of the applicable licence fee for the work, or if unknown, a reasonable licence fee [Proposal 12-2].

4. Voluntary extended collective licensing (VECL)

In response to [Question 11-1], NSLA proposes:

- A. VECL should not be applicable to orphan works. This would introduce a further layer of cost and process for items where ownership is unlikely to be established. Orphan works should be managed by the fair use exception;

National & State Libraries Australasia

- B. That VECL is available for particular applications, including for mass digitization purposes where the administrative burden of considering each item individually is unworkable; and
- C. If VECL is to be administered by collecting agencies, improved transparency and accountability is required.

5. Preservation

- A. NSLA supports the proposal that an unlimited number of 'copies' in any format can be made for preservation purposes [Proposal 11-4], repealing earlier provisions [Proposal 11-5]; and
- B. NSLA proposes new wording is considered to replace 'copies' [Proposals 11-4], to better represent the processes that may be required for effective preservation .
- C. NSLA does not support the proposal that extra copies of in-copyright material required for preservation purposes should be commercially purchased if available. [Proposal 11-6]. Acquisition of additional copies of the commercial product is not appropriate as this is the acquisition of a new work and not the preservation of the existing work. Further explanation of this issue is included in the ADA/ALCC submission.

6. Lending

- A. NSLA does not support the proposal that libraries must take measures to implement the three conditions of document supply [Proposal 11-7]. The fair use exception should override these factors. The proposal that libraries enforce a time limit and other access conditions is unworkable.
 - Many small libraries do not have the technology or capability to enforce the conditions;
 - Limits do not allow normal research or scholarly practice where users need to return to materials at a later time;
 - Cost would far-exceed the impact even for the largest libraries. Note that only a limited percentage of requests for copies are for in-copyright material and the total number is not large. Data for the National Library of Australia Copies Direct service is included in detail in the ADA/ALCC submission.

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, a New Zealand government department. The views expressed in this letter should not be taken to reflect the views of the National Library of New Zealand nor of the New Zealand Government.

Thank you for the opportunity to respond to this discussion paper, and also the ALRC Inquiry for the open process that has been conducted into these complex issues.

The members of NSLA can expand on this response or provide any further information required at any time.

Yours sincerely,



Ms Margaret Allen
Chair, National & State Libraries Australasia
30 July 2013

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

National & State Libraries Australasia
328 Swanston St Melbourne VIC 2000
Ph. 03 8664 7512
nsla@slv.vic.gov.au
www.nsla.org.au



Response to the **Australian Law Reform Commission Inquiry into Copyright and the Digital Economy** by [National & State Libraries Australasia](http://www.nsla.org.au) ©2013, is licensed under a [Creative Commons Attribution 3.0 Unported Licence](http://creativecommons.org/licenses/by/3.0/).