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SBS Submission

Copyright Legislation Amendment (Fair Go for Fair Use) Bill 2013

SBS welcomes the opportunity to make a submission to the Senate Committee on the *Copyright Legislation Amendment (Fair Go for Fair Use) Bill 2013* (the Bill).

Background to this submission

SBS is Australia's national free to air multilingual and multicultural public broadcaster. Under its Charter, provided in the *Special Broadcasting Services Act 1991*, the principle function of SBS is to provide multilingual and multicultural radio, television and digital media services to inform, educate and entertain all Australians, and in doing so, reflect Australia's multicultural society.

SBS's Charter requires it to make use of Australia's diverse creative resources, which it does with a combination of in-house, commissioned and acquired content. Consequently, SBS is both a copyright owner and a user of copyright material under licence and through various important copyright exceptions such as fair dealing. As a copyright owner, SBS is a member of Screenrights and the Copyright Agency Ltd (CAL) and their affiliates.

SBS supports a balanced copyright regime which encourages innovation and investment while also maximizing public access to informative, educational and entertaining content on fair terms.

Proposed new fair use exception

Fair use is the subject of an extensive inquiry by the Australian Law Reform Commission (ALRC). The ALRC has released Discussion Paper 79 examining the reform of the Copyright Act, and is engaging in an ongoing process with extensive public consultation. SBS has made submissions to this inquiry. We acknowledge the view of Senator Ludlum that this Bill can be considered "in parallel" to the ALRC process. But this approach risks a two tier approach to reform, where any adopted change is vulnerable to review or addition once the ALRC process is complete. In SBS's view, the preferable approach is to use the ALRC process as the forum for considering any reform to the fair dealing provisions, and postpone any legislative proposal until it can be informed by the ALRC's proposals.

A story still growing: We thought six billion was a lot of stories to tell... until the world population officially clocked seven billion, and we re-set our sights on a brand new number. Seven billion stories (and counting) might seem like a big ask, but if anyone's up to the task, it's SBS, the world's most multicultural broadcaster, attuned to the diverse needs of a growing nation.

Seven Billion Stories and counting...



However, to consider the proposed amendments to adopt a fair use regime in the Bill, SBS's key concern is to ensure that the current fair dealing exceptions are not removed. SBS relies strongly on fair dealing exceptions in its news reporting and other programming activities on all platforms. SBS considers that the current fair dealing exceptions for reporting the news, criticism and review, and parody or satire are clear and well established in legislation and as a result of case law. Changes to this area of the law could mean increased litigation over the boundaries of these definitions, and could unintentionally decrease their utility or add restrictions to their operation.

Whilst the Bill does not repeal the current fair dealing exceptions, it is unclear how the proposed new section 251 on fair use will operate in relation to the existing fair dealing provisions. For example, the fair dealing exception for "reporting the news" at section 42 of the current Act, does not refer to any particular factors which are to be used in considering whether use is "fair" – and the exceptions for criticism and review, and parody and satire are similarly drafted. However, the new s251 exception for fair use also applies to news reporting, and applies a list of factors to be considered when deciding whether use is fair. This overlap is confusing, and clarification is needed of how these provisions will operate together.

Finally, we note that the proposed "fair use" provision provides broader exceptions for copying, particularly for the educational sector. To the extent that that the proposed fair use exception would undermine or overlap with the statutory licences such as the Part VA licence operated by Screenrights, we do not support such an amendment.

SBS hopes that this response is of use to the Committee in its consideration of the Bill.

Yours sincerely,

Lyn Kemmis

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