



Australian Society of Authors
Suite C1.06 22-36 Mountain St
Ultimo NSW 2007 Australia

T: (02) 9211 1004 F: (02) 9211 0125
asa@asauthors.org | www.asauthors.org

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**Via email
ec.sen@aph.gov.au**

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

The Australian Society of Authors Ltd (ASA) is the peak organisation representing the professional rights and interests of Australia’s literary creators. The ASA was formed in 1963 and operates under Australian corporation law. Total membership in 2013 numbers 3,000+ nationwide.

The ASA works to establish minimum rates of pay and conditions for writers and illustrators; publishes books, contract templates, papers and information sheets for emerging and experienced authors; defends the legal rights of copyright holders. The ASA advocates to governments and cultural agencies at all levels on matters such as copyright and moral rights, contract law, literary funding, and business and taxation matters.

The ASA has formal Board representation on the Australian Copyright Council and on Australia’s principal collecting society for authors, the Copyright Agency. The ASA is a member of PEN International, supporting that organisation to secure release of authors imprisoned in their work for free expression. The ASA is also a sponsor of the Indigenous Literacy Foundation.

The ASA administers annually the Barbara Jefferis Award and the Ray Koppe Young Writer’s Fellowship. The Society also delivers, on behalf of the Commonwealth Government’s Australia Council, various support initiatives such as emerging writers’ fellowships and children’s book development programs.

The Australian Society of Authors is vigorously opposed to the proposed Bill. From the perspective of literary creators, this attempt to rework the Act represents a superficial and counter-productive approach to copyright law, with potentially damaging consequences for Australia’s literary culture and educational practices.

In focusing on the removal of ‘access control’ measures, for the apparent purpose of reducing the exposure of ISPs and users of ISPs to copyright breach claims, and in renaming universities as ‘service providers’ so as to

deflect responsibility for infringement, the Bill ignores the need to maintain an adequate safety and protection regime for literary creators and owners of copyright material.

To attempt a revision of the Copyright Act on a view that Australians may be 'paying more' than is right/proper/due for copyright materials, without reference to specific Australian economic conditions or capacities, and without reference to the income facts of the majority of our own copyright creators, is to be blind to important realities. Allowing for more 'free' use on a 'fair use' basis will particularly exacerbate an already poor remunerative situation for authors and other practitioners.

Similarly, the idea that 'geographic market segmentation' can somehow be controlled or wound back via the Australian Copyright Act does not make sense. Copyright is a world-wide system of laws and practices, commonly expressed in commercial rights agreements, and governed by international instruments. USA and UK book publishers, for instance, can not and will not remove their territorial copyright protections with regard to their own copyright materials; for Australia to try to go it alone and redefine markets and territorial copyright rules would be no more than a quixotic gesture.

The ASA sees the proposed Bill's terms as ill-considered and partial. In its current formulation this Bill:

Ignores the vital interests of Australian authors and copyright owners and undermine their ability – an ability authorised by international instruments such as the Berne Convention – to control their own work as a form of property right;

Likely conflicts with the current statutory licensing regulations which authorise and pay creators for use of their materials in schools and elsewhere;

Implies a 'problem' of user access, without an adequate, shared and indisputable definition of the problem;

Lacks supporting evidence on the scale or nature of any such problem;

Asserts the applicability of a US-style 'fair use' doctrine that is untried and untested in Australian law, without explaining how 'fairness' is to be determined when a dispute arises other than by expensive and uncertain litigation after the fact of a dispute arising;

Allows for the possibility of greater free or unpaid access to creators' and owners' material by commercial and institutional entities on an indeterminate basis, throwing the onus on creators and owners to prove such access is *not* fair;

Ignores that unpaid copyright material, even where freely uploaded by a creator, has copyright status and commercial value to other entities (As the Australian Competition and Consumer Commission (ACCC) explains: ‘... many users of Facebook publish photos and written copyright material for non-commercial purposes, however, the business of Facebook (an advertising funded business model) is dependent on its members producing these materials.’ (ACCC, Submission to ALRC Discussion Paper, p.23));

Valorises multinational commercial technology company commercial interests over those of Australian author copyright creators and owners;

Sidesteps the present and real damage caused by piracy and copyright infringement, as experienced by Australian literary creators and owners;

Further threatens Australia’s professional creative production and productivity (As the ACCC indicates: ‘Some empirical studies suggest that consumers benefit considerably in the short term from the availability of low cost copies. However, these studies do not consider the longer term dynamic effects of a potential reduction in incentives for investment in creative materials.’ (ACCC Submission to ALRC Discussion Paper, p.29));

Inappropriately and unnecessarily opens an alternative front to copyright review, at the same time as the Australian Law Reform Commission is in the middle of a major inquiry and gathering evidence and preparing recommendations to government;

Is not cognisant of the hundreds of objections from creative practitioners, including teachers, authors, illustrators, film producers and others, and as presented to the ALRC by the ASA, the Screen Producers Association, News Corporation, the ABC, the Directors Guild, the ABC and others, to more ‘exceptions’ under the Act.

In the fifty years during which the ASA has been involved in Australian copyright development – including working with governments and others to advance the Copyright Act according to the times and circumstances, and to the balanced benefit of owners and users – we have not seen a document so one-sided and potentially damaging to our literary creators as this proposed Amendment Bill. We recommend it be withdrawn forthwith.

Sincerely,
Angelo Loukakis
Executive Director