



**AUSTRALIAN COPYRIGHT COUNCIL'S SUBMISSION IN RESPONSE TO
THE COPYRIGHT AMENDMENT (SERVICE PROVIDERS) BILL**

JANUARY 2018

A. VIEW OF THE AUSTRALIAN COPYRIGHT COUNCIL

1. The Australian Copyright Council (**ACC**) would welcome and support the introduction of the proposed Copyright Amendment (Service Providers) Bill 2017 as currently drafted (**Draft Bill**).
2. The Draft Bill acknowledges both the cultural importance of copyright protection, as well as the public importance of the sectors encompassed within the proposed definition of service providers, including educational and cultural institutions, libraries, and those organisations assisting individuals with disabilities. It is appropriate, in the view of the ACC, that the proposed definition remain narrowly drafted so that interests contrary to the spirit of the Draft Bill, including commercial interests, are not able to otherwise exploit a sensible safe harbour scheme.
3. In forming its view, the ACC has had regard to the objectives of the ACC set out in section B below, as well as Australia's international obligations summarised in section C below.
4. The ACC is thankful to the Environment and Communications Legislation Committee (**Committee**) for considering the terms of this submission.

B. ABOUT THE AUSTRALIAN COPYRIGHT COUNCIL

1. The ACC is an independent, non-profit organisation that represents the peak bodies for professional artists and content creators working in Australia's creative industries and Australia's major copyright collecting societies. A full list of our affiliates is available on our website, copyright.org.au.
2. We are advocates for the contribution of creators to Australia's culture and economy. Copyright is important for the common good.
3. As part of our activities, we wish to foster collaboration between content creators and content users. One of the ACC's core values is a belief that copyright laws should, among other things, balance the interests of creators, consumers and service providers. Indeed, such an understanding on the part of the ACC is only heightened by the fact that we offer our own educational programs for affiliates, members of the public, and libraries alike.

C. THE PROPOSED SAFE HARBOUR SCHEME AND ITS COMPLIANCE WITH INTERNATIONAL LAW

1. The ACC has previously provided the Department of Communications and the Arts with a paper dated 29 May 2017 entitled 'Safe Harbour and the Three-Step Test' (**Paper**) which outlines certain international obligations potentially relevant to the introduction of any legislative scheme that provides exceptions or limitations to the exclusive rights of copyright owners.
2. We do not intend to revisit the detail of that Paper in this submission, although a full copy of the Paper can be provided to the Committee upon request. In short, and by reference to the matters set out in the Paper, the ACC's view is that the exceptions/limitations of any safe harbour scheme should be carefully drafted such that they:
 - a. remain narrow and for a specific carefully defined purpose rather than introducing a wholesale encroachment on a copyright's owner's exclusive rights;
 - b. avoid conflict with a normal exploitation of the work by its owner and to that extent, regard must be had both to the existing and the potential uses of a work the copyright owner should be able to control; and
 - c. not unreasonably prejudice the legitimate interests of the author, including the potential to cause an unreasonable loss of income to the copyright owner.
3. With those requirements in mind, the ACC notes the Draft Bill appropriately envisages a restricted limitation on the remedies available against the proposed expanded list of service providers by:
 - a. adopting a narrowly defined class of deserving service providers who will have the benefit of a safe harbour scheme rather than, for instance, a more ill-defined definition that is wider in scope and reach and open to abuse;
 - b. requiring that those in the educational, cultural and disability sectors otherwise still comply with the obligations of the safe harbour scheme that already must be adhered to by carriage service providers; and
 - c. still allowing copyright owners to pursue the notice and take down system currently in place where infringing materials are identified, notwithstanding the extended scope of the safe harbour scheme.

D. CONCLUSION

1. Given the matters set out above, the ACC urges the Committee to recommend the passage of the Draft Bill as currently drafted.
2. Should the Committee have any queries or require any further information, please contact:

Grant McAvaney
Chief Executive Officer
Australian Copyright Council
Phone:
Email: