

EXECUTIVE SUMMARY

The education sector is of critical importance to the success of the digital economy. A strong digital economy requires people to have the best digital education.

The internet has fundamentally changed the nature of teaching and learning in a digital age. Australian teachers have access to a range of digital tools and resources, from online resources to e-learning apps. The new Australian Curriculum is presented solely online.

Students are not passive recipients of knowledge but active participants at the centre of the learning process. In 'flipped' classrooms, rather than the teacher teaching in class and the students doing homework at home, students study a topic at home using online resources and apply their knowledge in the classroom by solving problems and doing practical work.

Educational copyright provisions written in the age of the photocopier don't work in the age of the iPad. Flipped classrooms need fresh thinking.

Educational exceptions

Australia's educational copyright exceptions set different rules for different types of copyright materials and apply differently depending on the technology used. This does not make sense in a digital age. For example:

- Showing an artwork on screen in class is treated differently than showing a poem on the same screen.
- Writing a quote from a book on a blackboard is covered by an exception - but not writing the same quote on an interactive whiteboard.

Section 200AB has not achieved the flexibility it was designed to create and has proved of little practical value for digital materials.

Educational statutory licences

Australia's statutory licences are unsuitable for a digital age and must be repealed.

The statutory licences discourage uses of new technologies

At the same time as governments are encouraging greater use of digital materials in Australian schools, the statutory licences create strong disincentives to do so. For example:

'Old technology' would see a teacher print copies of a scene from a play to hand out in class.

'New technology' might see a teacher save a scene from a play found on a website to their laptop's hard drive, email it to their school email account, upload it to the school's learning management system and display it on an interactive white board in the classroom.

Using old technology would involve one remunerable act under a statutory licence. Using new technology would involve 4 separately recorded remunerable activities.

Australian schools should not be penalised by the Copyright Act for using new technologies for the benefit of Australian students.

Australian schools pay millions of dollars just to use the internet

The application of the statutory licences to all digital materials means that Australian schools pay millions of dollars of public funds to use freely available internet materials (such as online health fact sheets or free tourism maps of Australia).

The same content is available on the internet around the world, every day, for free - but must be paid for in Australian schools.

The statutory licences are very expensive

School copyright costs in Australia are significantly higher than comparable countries:

Country	Schools price per FTE (Part VB or equivalent)	Schools price per FTE (Part VA or equivalent)
Australia	\$16.93	\$5.14
UK	Band 1, age 5-11: £1.90 = AU\$2.95 Band 2, age 11-15: £1.70 = AU\$2.64 Ban 3, age 16-18: £4.43= AU\$6.89	Primary: 32p = AU\$0.50 Secondary: 57p = AU\$0.89
Canada	CAD\$5.16 = AU\$5.04	CA\$1.73 = AU\$1.69
New Zealand	Primary: NZ\$1.50 = AU\$1.19 Secondary: NZ\$3.00 = AU\$2.38	NZ\$4.19 = AU\$3.33

This means Australian schools pay 14 times more per student to use copyright works than schools in New Zealand.

The statutory licences do not reflect the public interest

The Copyright Act fails to provide for virtually any non-remunerable public interest uses in Australian schools. Schools pay for things that individuals can do for free, such as copying short extracts of materials for students' research or study, or copying off air broadcasts to watch later during school hours.

65% of pages copied and paid for in Australian schools in 2010 under the Part VB licence would have been free to use in the United States or Canada.

The statutory licences are economically inefficient

The statutory licences were designed as a solution to market failure in a photocopying age. They are now being used to create 'false markets' in digital works - markets that would not exist 'but for' the statutory licences, and markets that do not exist anywhere else in the world.

They also sit uncomfortably with public sector obligations regarding expenditure of public funds. For example, public monies paid for orphan works under the licence are not returned to education budgets, but result in windfall gains to other copyright owners.

Statutory licences create unacceptably high administrative burdens

'Smart copying' practices implemented by schools to contain copyright costs are increasing the burden of administering the licences. This is bad for schools, collecting societies and rights holders (in the form of reduced amounts available for distribution if administrative costs increase).

One out of every two records collected under the Part VB survey is now excluded from the licence and will not attract a fee, merely impose an administrative cost. This is an unacceptably high burden and contrary to the intentions of the Franki Committee, which recommended setting up Part VB in part to reduce transaction costs.

How to fix the problems

1. Australia's educational exceptions and statutory licences are completely broken and must be repealed.
2. The Copyright Act must be amended to replace the existing educational exceptions and statutory licences with either:
 - A general open-ended provision based on a fairness analysis that could apply to all users of copyright materials
 - A new fair dealing exception for education.

A general open ended provision may better meet the broader policy considerations set out in the ALRC's guiding principles than a fair dealing for education provision.

3. Introducing a flexible exception does not mean that all educational uses of copyright materials would be free. Many uses that are currently paid for under the statutory licences would continue to be paid for under voluntary licensing arrangements (similar to those currently in place with music collecting societies).
4. Replacing the statutory licences and moving to a system of a flexible fair dealing/fair use provision supported by direct and/or collective voluntary licensing is the most appropriate

way to ensure the appropriate remuneration for Australian creators, the continued creation of educational content and ensuring public interest uses of copyright materials are adequately recognised.

The Schools are not asking for a free ride – simply a fair ride.

Reform is also required on a range of other issues, including:

- Governance arrangements for collecting societies – ensuring that existing flaws in governance are not replicated in a new framework
- Copyright and contract – rights under existing and new exceptions should not be capable of being excluded by contract
- Technological protection measures – any new exceptions should be accompanied by a recommendation for a corresponding ‘TPM exception’ to the anti-circumvention regime
- Any scheme to solve the problem of orphan works should not be limited to personal uses. Statutory licensing should not be considered as a solution.
- Any ‘transformative use’ provision should not be limited to ‘private’ or ‘non-commercial’ uses but be assessed against principles of fairness.
- Temporary and transitional communications – an exception for ‘temporary communications’ may be needed, analogous to existing ‘temporary reproductions’ provisions.

OVERVIEW OF SUBMISSION

Part 1 of this submission describes the role played by Australian schools in Australia’s copyright system, the changing nature of teaching and learning in an internet age and the pivotal role the education sector will play in Australia’s digital economy (as well as the need for an up to date copyright framework to achieve our digital economy goals).

Part 2 provides a detailed analysis of the many significant problems created by the current educational exceptions and statutory licences.

Part 3 sets out our preferred reform options to solve the problems identified in Part 2.

Part 4 addresses additional issues relevant to the ALRC’s issues paper, including copyright and contract, technological protection measures, the Convergence Review, orphan works, cloud computing, transformative use, the need to consider the issue of ‘temporary communications’ and Australia’s approach to copyright issues in international fora.