



Australian Government

**Australian Government response to the
Senate Environment and Communications
Legislation Committee report:**

Copyright Amendment (Service Providers) Bill 2017

May 2018

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Overview

In light of the ongoing entrenched and polarised views of stakeholders on safe harbour reform, the Government supports the Committee's recommendation to expand safe harbour to the educational, cultural and disability sectors. These sectors provide valuable services to the community and already demonstrate a comprehensive approach to managing and protecting copyright content.

Submissions to the Committee demonstrate that there is strong support from a wide variety of stakeholders to extend the scheme, at least, to these sectors.

Australian Government's Response

The Australian Government's Response to the Senate Environment and Communications Legislation Committee report on the Copyright Amendment (Service Providers) Bill 2017 is set out in detail below.

Senate Environment and Communications Legislation Committee Report

Recommendation 1:

The committee recommends that the Senate pass the bill.

The Government **supports** this recommendation.

The Australian Greens' Dissenting Report

Recommendation 1:

The Australian Greens recommend implementing the definition of service providers as proposed in the Government's 2015 Exposure Draft of the Copyright Amendment (Disability Access and Other Measures) Bill 2016, which defined 'service provider' as a provider of transmission, routing or connections for digital online communications without modification of their content between or among points specified by the user of material of the user's choosing.

The Government **does not support** this recommendation.

A full extension of the safe harbour scheme to all carriage and service providers remains a highly contested copyright reform. This view was made clear in the 2017 public consultation process on safe harbour conducted by the Department of Communications and the Arts (the Department), and was reflected in the submissions to the Committee.

During the Department's consultations stakeholders agreed that extending the scheme to educational, cultural and disability sectors was an appropriate and proportionate reform at this time.

The Bill provides some momentum to a long standing and contentious issue which has seen no movement, despite numerous reviews over the last 10 years. The Government's intention by progressing this Bill is to ensure those sectors that are recognised as providing highly beneficial community services to the Australian community are afforded protection sooner rather than later.

Recommendation 2:

The Australian Greens recommend that the intent and language related to activities that are carried by a third-party provider 'on behalf' of an entity that is a 'service provider' be clarified in consultation with stakeholders.

The Government **supports in-principle** the recommendation to clarify the language related to activities that are carried out by a third-party provider 'on behalf' of an entity that is a 'service provider'.

The Government has consulted further with stakeholders on this issue and will table an addendum to the Explanatory Memorandum.

The addendum clarifies the Government's intention that institutions that will come within the definition of "service provider" in the Bill may engage third parties, such as cloud service providers, to carry out some or all of system and network activities on their behalf. By doing so that institution will retain safe harbour protection.

Recommendation 3:

The Australian Greens recommend that the Government continues to review copyright legislation to introduce a Fair Use exception and to remove geocodes that enforce different prices and conditions of use of content by Australian consumers.

The Government **notes** the recommendation to review copyright legislation to introduce a fair use exception. On 19 March 2018 the Government announced that it was seeking stakeholder views to establish whether there is general stakeholder support for some of the options for copyright reform proposed by the Productivity Commission in its Report on Australia's Intellectual Property Arrangements, in particular:

- flexible exceptions, including fair use;
- access to orphan works; and
- contracting out of copyright exceptions.

These consultations address the Greens' recommendation to review copyright legislation.

The Government **does not support** a review of geocodes that enforce different prices and conditions of use of content by Australian consumers. This is in line with the Government's Response to recommendation 5.2 of the Productivity Commission's Report on Australia's Intellectual Property Arrangements.

The full Government's Response to the Report can be found at:

<https://www.industry.gov.au/innovation/Intellectual-Property/Documents/Government-Response-to-PC-Inquiry-into-IP.pdf>