



31 August 2013

Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Committee Secretary,

BSA | The Software Alliance (**BSA**) takes this opportunity to comment on the Copyright Legislation Amendment (Fair Go for Fair Use) Bill 2013 (the Bill).

The Bill would make a number of changes to the Australian Copyright Act which we find premature, and in some instances concerning. In light of the comprehensive review of copyright law and its implications for the digital economy now under way by the Australian Law Reform Commission (ALRC) review of *Copyright and the Digital Economy*, and the ongoing inquiries by the Attorney-General's Department into safe harbours and exceptions to the technological protection measures (TPM) regime, we believe that these reviews should be completed before considering legislative changes to the copyright law.

BSA members develop and offer software and other creative content to users. As such, BSA members are well-placed to comment from the perspective of rights holders and incentives to create and disseminate copyright material. BSA members also develop technologies and services that enable copyright users to enjoy, access, use and interact with copyright material online, including cloud computing.

While we agree with the stated goals of this Bill – that is, providing greater clarity in the law to the benefit of creators and users, and ensuring the law keeps pace with changes in technology – we believe the reforms proposed in the Bill do not further these goals. Great care needs to be taken in formulating a fair use exception to copyright infringement to ensure that this change does not result in unproductive levels of uncertainty. We are also concerned that the Bill includes provisions which seem to overlap with and detract from existing provisions in the Copyright Act. As a result, we foresee the possibility that the Bill, if passed, could create ambiguity and uncertainty in Australian copyright law. This would not benefit either creators or users.

The issues raised by the Bill are now properly under review by the ALRC and the Attorney General's Department. We support the ALRC process of rigorous review, consultation and analysis, and it is right and appropriate that that work be concluded before proceeding with specific legislation. BSA has submitted comments in response to the ALRC Issues Paper and Discussion Paper, specifically on fair use and contracting issues, as well as to the Attorney General's inquiry into TPM exceptions. The Bill raises complex issues with many implications: each needs to be weighed and all of the drafting issues carefully considered to ensure changes in the law produce balanced and positive results.

BSA does not support the Bill in its current form or at this time.

Yours faithfully,

Boon Poh Mok
Director, Government Relations and Policy, APAC
BSA | The Software Alliance