



30 October 2006

Ms Jackie Morris  
Senate Standing Committee on Legal and Constitutional Affairs  
Parliament of Australia  
[LegCon.Sen@aph.gov.au](mailto:LegCon.Sen@aph.gov.au)

Dear Ms Morris

**Re: Inquiry into the Copyright Amendment Bill 2006**

Thank you for the invitation to the Council of Australian University Librarians (CAUL) to respond to the Copyright Amendment Bill 2006. The response by CAUL is provided below and highlights the issues of significance for university libraries. In addition to this response CAUL also supports the submissions provided by the *Australian Libraries Copyright Committee* (ALCC), the *Australian Digital Alliance* (ADA) and the *Australian Vice-Chancellor's Committee* (AVCC).

**Definition of 'library'**

The proposed definition of 'library' in Part 5 subsection 49(9) and 50(10), which moves from stating which libraries are *excluded* to a statement of *inclusion* narrows the definition. The Explanatory Memorandum recognises the importance of the inter-library loan network, and while the new definition will include CAUL libraries there are libraries which will fall outside this definition eg possibly school libraries. The exclusion of these libraries from using sections 49 and 50 will reduce access to information accordingly. The previous definition was easy to apply and effectively excluded those libraries which were not part of the information infrastructure of the nation as a whole. The revised definition has the capacity to exclude some sectors which would benefit from the use of s49 and s50.

**Fair Dealing for 'research and study'.**

CAUL is particularly opposed to the narrowing of the scope of the copyright exception for research and study.

The removal of s40(2) eliminates the flexibility and associated 'fairness' which serves to balance interests and encourage innovation. If the intention is to make the 10% exhaustive then this seriously impacts on research and study. A student or researcher collecting information or evidence to produce an academic paper or theses will require a full chapter or article to be able to make sense of the information. Should the 10% be applied exhaustively then the researcher or student may be unable to utilise key publications, eg those out-of-print or rare, and miss significant information through this limitation. As stated by the ADA submission the unintended consequence of the removal of s40(2) will be an increased demand for requests under s49 and s50.

The narrowing of fair dealing also contradicts the recommendation from the Copyright Law Review Committee (CLRC) simplification report which proposed increased flexibility via a fair use style provision. The ADA submission provides a detailed argument against the new drafting of the Fair Dealing for Research or Study section which CAUL supports and urges reconsideration of this position in the interests of higher education.

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**President: Eve Woodberry**, *University Librarian, University of New England*

LPO Box 8169  
Australian National University  
Canberra ACT 2601

Telephone +612 6125 2990  
Fax +612 6248 8571

[caul@caul.edu.au](mailto:caul@caul.edu.au)  
[eve.woodberry@une.edu.au](mailto:eve.woodberry@une.edu.au)  
<http://www.caul.edu.au/>

## **200AB Use of works and other subject-matter for certain purposes**

CAUL has significant concerns regarding the implementation of this section. The conditions in the Copyright Act 1968 were deemed by experts to be TRIPS compliant as outlined in the ADA submission. The application of a TRIPS-Plus provision which is more limiting than the three step test required under international law is detrimental especially as it applies to only a limited range of stakeholders and purposes.

While highlighting its serious concerns regarding the above sections of the Bill CAUL also notes that it supports the applications made regarding other sections as highlighted by the AVCC, ADA and ALCC submissions.

### **Contact Details**

Evelyn Woodberry  
University Librarian  
University of New England  
Armidale NSW 2351 Australia  
phone +61 2 6773 2165 fax +61 2 6773 3943  
email: [eve.woodberry@une.edu.au](mailto:eve.woodberry@une.edu.au)

President, Council of Australian University Librarians [www.caul.edu.au](http://www.caul.edu.au)

Diane Costello  
Executive Officer,  
CAUL (Council of Australian University Librarians),  
LPO Box 8169, ANU, Canberra ACT 2601 Australia  
Tel: +61 2 6125 2990 Fax: +61 2 6248 8571  
[diane.costello@caul.edu.au](mailto:diane.costello@caul.edu.au) <http://www.caul.edu.au/>

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[caul@caul.edu.au](mailto:caul@caul.edu.au)  
[eve.woodberry@une.edu.au](mailto:eve.woodberry@une.edu.au)  
<http://www.caul.edu.au/>