

Submission to Senate Standing Committees on Environment and Communications on Copyright Legislation Amendment (Fair Go for Fair Use) Bill 2013

31 August 2013

Thank you for the opportunity to comment on the Copyright Legislation Amendment (Fair Go for Fair Use) Bill 2013 (the Bill).

SUMMARY OF SUBMISSION

This submission is written on behalf of Copyright Agency and Viscopy (Copyright Agency|Viscopy). Copyright Agency|Viscopy opposes the Bill.

All of the matters affected by the Bill are being considered in other forums: technological protection measures and safe harbours by the Attorney General's Department, and a 'fair use' exception by the Australian Law Reform Commission (ALRC). We see little justification for pre-empting the outcomes of those processes.

In any event, we think that the proposed amendments are ill-considered both in policy and drafting.

While we appreciate the attractive title of the Bill, its contents would not operate in a way that Australia's creative community regards as fair.

Australia's creators are facing significant challenges. The digital environment could provide new opportunities for them to reach their audiences, be rewarded for their contribution to Australian society, and sustain their professional practice, but this Bill would diminish those opportunities.

SUPPORT FOR OTHER SUBMISSIONS

Copyright Agency and Viscopy are members of the Australian Copyright Council and the Australian Content Industry Group, and support the submissions of those organisations.

REASONS FOR OPPOSING A 'FAIR USE' EXCEPTION

In our response to the proposal in the ALRC Discussion Paper for the introduction of a new 'fair use' exception, we opposed the ALRC's proposal for a 'fair use' exception for reasons that include:

- it provides an unfair advantage to businesses that are consuming and repurposing content, particularly those with greater bargaining power than creators;
- it incorporates unnecessary uncertainties, including by:

- leaving open the possibility that it might apply to a use already allowed under a licensing solution or a statutory licence;
- listing purposes that are covered by other provisions, such as public administration and education, without specifying (as s200AB does) that it only applies where those provisions don't;
- it does not include acknowledgement of the creator and source as a condition;
- it is based on fundamental misunderstandings about the historical development of the Australian copyright system, as well as its current operation in practice;
- it effectively outsources the hard decisions from the Parliament to the courts; and
- the ALRC has not considered the significant disruption that would be caused by transition from the current system – which has not been demonstrated as failing – to its proposed regime.

These reasons apply equally to the amendments proposed in the Bill.

We also draw the Committee's attention to the opposition to fair use in submissions to the ALRC by creators and other participants in Australia's creative community.

ABOUT COPYRIGHT AGENCY AND VISCOPY

Copyright Agency is a not-for-profit company, with more than 26,000 members. They include writers, artists and publishers. Copyright Agency is appointed by the Australian government to manage statutory licences that allow educational and government use of content subject to fair compensation, the statutory licence for people with a disability, and the artists' resale royalty scheme. Copyright Agency is also authorised by its members to license their content (for example, in licence schemes for corporations).

Viscopy is a not-for-profit company, representing more than 10,000 Australian artists. Its services, including the licensing of its members' works, are managed by Copyright Agency.