

Inquiry by House of Representatives Standing Committee on Legal and Constitutional Affairs into the Copyright Amendment (Digital Agenda) Bill

Supplementary submission by Australian Copyright Council, Australian Publishers Association, Australian Society of Authors, Copyright Agency Limited and Screenrights

Proposed amendments to Part III, Division 5 of the Copyright Act 1968

Amended sections

10 Interpretation

library does not include a library that is maintained mainly or solely for the purposes of a business.

manuscript means the document embodying the work as initially prepared by the author, whether the document is in hardcopy form, electronic form or any other form

Amended sections

~~48 Interpretation~~

~~In this Division, a reference to an article contained in a periodical publication shall be read as a reference to anything (other than an artistic work) appearing in such a publication.~~

48 Interpretation

In this Division:

- (1) a reference to an article contained in a periodical publication shall be read as a reference to anything (other than an artistic work) appearing in such a publication;
- (2) copy” does not include a reproduction which is in a digital or other electronic machine-readable form;
- (3) “electronic reproduction” means an electronic reproduction of an electronic version of a work, and does not include a reproduction of a hardcopy version of a work which is a conversion into a digital or other electronic machine-readable form
- (4) “commercial collection” includes a library maintained for the purposes of a business or businesses conducted for profit.
- (5) “collecting society” means a body that is, for the time being, declared to be a collecting society under section ##.
- (6) “relevant collecting society”, in relation to a remuneration notice, means a collecting society for owners of copyright of the same kind of work or other subject-matter as that to which the remuneration notice relates.
- (7) “remuneration notice” means a notice referred to in section ##.
- (8) “rules”, in relation to a collecting society, means the provisions of the memorandum and articles of association of the society.

49 Copying by libraries and archives for users

- (1) A person may furnish to the officer in charge of a library or archives:
 - (a) a request in writing to be supplied with a copy of an article, or a part of an article, contained in a periodical publication or of the whole or a part of a published work other than an article contained in a periodical publication,

being a periodical publication or a published work held in the collection of a library or archives; and

- (b) a declaration signed by him or her stating:
 - (i) that he or she requires the copy for the purpose of research or study and will not use it for any other purpose; and
 - (ii) that he or she has not previously been supplied with a copy of the same article or other work, or the same part of the article or other work, as the case may be, by an authorized officer of the library or archives.
- (2) Subject to this section, where a request and declaration referred to in subsection (1) are furnished to the officer in charge of a library or archives, an authorized officer of the library or archives may, unless the declaration contains a statement that to his or her knowledge is untrue in a material particular, make, or cause to be made, the copy to which the request relates and supply the copy to the person who made the request.
- (2A) A person may make to an authorized officer of a library or archives:
 - (a) a request to be supplied with a copy of an article, or part of an article, contained in a periodical publication or of the whole or a part of a published work other than an article contained in a periodical publication, being a periodical publication or a published work held in the collection of a library or archives; and
 - (b) a declaration to the effect that:
 - (i) the person requires the copy for the purpose of research or study and will not use it for any other purpose;
 - (ii) the person has not previously been supplied with a copy of the same article or other work, or the same part of the article or other work, as the case may be, by an authorized officer of the library or archives; and
 - (iii) by reason of the remoteness of the person's location, the person cannot conveniently furnish to the officer in charge of the library or archives a request and declaration referred to in subsection (1) in relation to the copy soon enough to enable the copy to be supplied to the person before the time by which the person requires it.
- (2B) A request or declaration referred to in subsection (2A) is not required to be made in writing.
- (2C) Subject to this section, where:
 - (a) a request and declaration referred to in subsection (2A) are made by a person to an authorized officer of a library or archives; and
 - (b) the authorized officer makes a declaration setting out particulars of the request and declaration made by the person and stating that:
 - (i) the declaration made by the person, so far as it relates to the matters specified in subparagraphs (2A)(b)(i) and (ii), does not contain a statement that, to the knowledge of the authorized officer, is untrue in a material particular; and
 - (ii) the authorized officer is satisfied that the declaration made by the person is true so far as it relates to the matter specified in subparagraph (2A)(b)(iii);an authorized officer of the library or archives may make, or cause to be made, the copy to which the request relates and supply the copy to the person.
- (3) Where a charge is made for making and supplying a copy to which a request under subsection (1) or (2A) relates, subsection (2) or (2C), as the case may be, does not apply in relation to the request if the amount of the charge exceeds the cost of making and supplying the copy.
- (4) Subsection (2) or (2C) does not apply in relation to a request for a copy of, or parts of, 2 or more articles contained in the same periodical publication unless the articles relate to the same subject matter.

- (5) Subsection (2) or (2C) does not apply to a request for a copy of the whole of a work (other than an article contained in a periodical publication), or to a copy of a part of such a work that contains more than a reasonable portion of the work unless:
 - (a) the work forms part of the library or archives collection; and
 - (b) before the copy is made, an authorized officer has, after reasonable investigation, made a declaration stating that he or she is satisfied that a copy (not being a second-hand copy) of the work cannot be obtained within a reasonable time at an ordinary commercial price.
- (6) The copyright in an article contained in a periodical publication is not infringed by the making, in relation to a request under subsection (1) or (2A), of a copy of the article, or of a part of the article, in accordance with subsection (2) or (2C), as the case may be, unless the copy is supplied to a person other than the person who made the request.
- (7) The copyright in a published work other than an article contained in a periodical publication is not infringed by the making, in relation to a request under subsection (1) or (2A), of a copy of the work, or of a part of the work, in accordance with subsection (2) or (2C), as the case may be, unless the copy is supplied to a person other than the person who made the request.
- (8) The regulations may exclude the application of subsection (6) or (7) in such cases as are specified in the regulations.
 - ~~(a) In this section, **library** does not include a library that is conducted for the profit, direct or indirect, of an individual or individuals.~~

49A Electronic reproduction and communication by libraries and archives for users

- (1) A person may furnish to the officer in charge of a library or archives:
 - (a) a request in writing to be supplied with an electronic reproduction of the whole or a part of a work (including an article contained in a periodical publication); and
 - (b) a declaration signed by him or her stating:
 - (i) that he or she requires the electronic reproduction for the purpose of research or study and will not use it for any other purpose; and
 - (ii) that he or she has not previously been supplied with an electronic reproduction or copy of the same work, or of a part of the same work, by an authorized officer of a library or archives.
- (2) Where an officer in charge of a library or archives (the requesting library) has received a request and declaration in relation to a published work under subsection (1), the officer may furnish to the officer in charge of another library or archives or of a commercial collection:
 - (a) a declaration that:
 - (i) he or she has received a request and declaration under subsection (1) in relation to the whole or part of a published work; and
 - (ii) a remuneration notice given by or on behalf of the requesting library or archives is in force, and
 - (b) a request in writing to be supplied with an electronic reproduction of the work, or part of the work, requested under subsection (1).
- (3) Subject to this section, where a request and declaration referred to in subsection (2) are furnished to the officer in charge of a library, archives or commercial collection, the officer may make and supply to the person who made the request an electronic reproduction of the work or part of the work referred to in the request and declaration provided:

- (a) the work was purchased in electronic form by that library, archives or commercial collection, or was donated in electronic form to that library, archives or commercial collection;
 - (b) the work has been published,
 - (c) before the electronic reproduction is made, an authorized officer of the library, archives or commercial collection has, after reasonable investigation, made a declaration stating that he or she is satisfied that the work, or the part of the work, as the case may be, is not available within a reasonable time at an ordinary commercial price;
 - (d) the electronic reproduction is not supplied to a person other than the person who made the request;
 - (f) no charge is made for the making or the supply of the electronic reproduction;
 - (g) before or when the electronic reproduction is supplied to the person, the person is notified in accordance with the regulations:
 - (i) that the reproduction has been made under this section and that the work is subject to copyright protection under this Act; and
 - (ii) about such other matters (if any) as are prescribed; and
 - (h) as soon as practicable after the electronic reproduction is supplied, any electronic reproduction made by the supplying collection under this section and held by the supplying collection is destroyed.
- (4) Subject to this section, where a request and declaration referred to in subsection (1) are furnished to the officer in charge of a library or archives, an authorized officer of the library or archives may, unless the declaration contains a statement that to his or her knowledge is untrue in a material particular, make, or cause to be made, the electronic reproduction to which the request relates and supply the electronic reproduction to the person who made the request, provided:
- (a) the work:
 - (i) was purchased by that library or archives in electronic form, or was donated to that library or archives in electronic form; or
 - (ii) was supplied to that library or archives under subsection (3);
 - (b) before the electronic reproduction is made, an authorized officer has, after reasonable investigation, made a declaration stating that he or she is satisfied that the work or the part of the work, as the case may be, is not available to the person who made the request within a reasonable time at an ordinary commercial price;
 - (c) if the work is unpublished:
 - (i) it is, subject to any regulations governing the collection of the library or archives, open to public inspection; and
 - (ii) it is a thesis or other similar literary work; or
 - (iii) at the time of the request, more than 50 years had elapsed since the end of the calendar year in which the author of the work died;
 - (d) the electronic reproduction is not supplied to a person other than the person who made the request;
 - (e) a remuneration notice given by or on behalf of the library or archives is in force,
 - (f) no charge is made for the making or the supply of the electronic reproduction;
 - (g) before or when the electronic reproduction is supplied to the person, the person is notified in accordance with the regulations:
 - (i) that the reproduction has been made under this section and that the work is subject to copyright protection under this Act; and
 - (ii) about such other matters (if any) as are prescribed; and

- (h) as soon as practicable after the electronic reproduction is communicated to the person, any electronic reproduction made under this section and held by the library or archives is destroyed.
- (5) The copyright in a work is not infringed by the making, in relation to a request under subsection (1) or (2), of an electronic reproduction or communication of the work, or of a part of the work, in accordance with subsection (3) or (4).
- (6) The regulations may exclude the application of subsection (5) in such cases as are specified in the regulations.
- (7) If a published work (including an article contained in a periodical publication)
(a) is held in the collection of a library or archives in electronic form; and
(b) was purchased by the library or archives in electronic form, or was donated to the library or archives in electronic form,
the officer in charge of the library or archives may make it available online within the premises of the library or archives in such a manner that users cannot, by using any equipment supplied by the library or archives:
(c) make an electronic reproduction of the article or work; or
(d) communicate the article or work.
- (9) Where an electronic reproduction made under this section:
(a) is supplied to a person other than in accordance with subsection (3) or (4);
(b) is used for a purpose other than the purpose specified in subsection (1) or (2);
subsection (5) does not apply, and shall be taken never to have applied, to the making or communication of the reproduction.
- (10) In this section:
supply includes supply by way of a communication.

50 Copying by libraries or archives for other libraries or archives

- (1) The officer in charge of a library may request, or cause another person to request, the officer in charge of another library to supply the officer in charge of the first-mentioned library with a copy of an article, or a part of an article, contained in a periodical publication, or of the whole or a part of a published work other than an article contained in a periodical publication, being a periodical publication or a published work held in the collection of the other library:
- (a) for the purpose of including the copy in the collection of the first-mentioned library;
 - (aa) in a case where the principal purpose of the first-mentioned library is to provide library services for members of a Parliament—for the purpose of assisting a person who is a member of that Parliament in the performance of the person's duties as such a member; or
 - (b) for the purpose of supplying the copy to a person who has made a request for the copy under section 49.
- (2) Subject to this section, where a request is made by or on behalf of the officer in charge of a library to the officer in charge of another library under subsection (1), an authorized officer of the last-mentioned library may make, or cause to be made, the copy to which the request relates and supply the copy to the officer in charge of the first-mentioned library.
- (3) Where, under subsection (2), an authorized officer of a library makes, or causes to be made, a copy of the whole or a part of a work and supplies it to the officer in charge of another library in accordance with a request made under subsection (1):
- (a) the copy shall, for all purposes of this Act, be deemed to have been made on behalf of an authorized officer of the other library for the purpose for which the copy was requested; and

- (b) an action shall not be brought against the body administering that first-mentioned library, or against any officer or employee of that library, for infringement of copyright by reason of the making or supplying of that copy.
- (4) Subject to this section, where a copy of the whole or a part of an article contained in a periodical publication, or of any other published work, is, by virtue of subsection (3), to be deemed to have been made on behalf of an authorized officer of a library, the copyright in the article or other work is not infringed by the making of the copy.
- (5) The regulations may exclude the application of subsection (4) in such cases as are specified in the regulations.
- (6) Where a charge is made for making and supplying a copy to which a request under subsection (1) relates, subsection (4) does not apply in relation to the request if the amount of the charge exceeds the cost of making and supplying the copy.
- (7) Where:
 - (a) a copy (in this subsection referred to as the *relevant copy*) of, or of a part of, an article, or of the whole or a part of another work, is supplied under subsection (2) to the officer in charge of a library; and
 - (b) a copy of the same article or other work, or of the same part of the article or other work, as the case may be, has previously been supplied under subsection (2) for the purpose of inclusion in the collection of the library;subsection (4) does not apply to or in relation to the relevant copy unless, as soon as practicable after the request under subsection (1) relating to the relevant copy is made, an authorized officer of the library makes a declaration:
 - (c) setting out particulars of the request (including the purpose for which the relevant copy was requested); and
 - (d) stating that the copy referred to in paragraph (b) has been lost, destroyed or damaged, as the case requires.
- (7A) Where a copy of the whole of a work (other than an article contained in a periodical publication), or of a part of such a work that contains more than a reasonable portion of the work, is supplied under subsection (2) to the officer in charge of a library, subsection (4) does not apply to or in relation to the copy unless:
 - (a) in a case where the principal purpose of the library is to provide library services for members of a Parliament—the copy is so supplied for the purpose of assisting a person who is a member of that Parliament in the performance of the person's duties as such a member; or
 - (b) as soon as practicable after the request under subsection (1) relating to the copy is made, an authorized officer of the library makes a declaration:
 - (i) setting out particulars of the request (including the purpose for which the copy was requested); and
 - (ii) stating that, after reasonable investigation, the authorized officer is satisfied that a copy (not being a second-hand copy) of the work cannot be obtained within a reasonable time at an ordinary commercial price.
- (8) Subsection (4) does not apply to a copy of, or of parts of, 2 or more articles that are contained in the same periodical publication and that have been requested for the same purpose unless the articles relate to the same subject matter.
- (9) In this section, a reference to a library shall be read as ~~a reference to a library other than a library that is conducted for the profit, direct or indirect of an individual or individuals, and~~ as including a reference to archives.

51 Copying of unpublished works in libraries or archives

- (1) Where, at a time more than 50 years after the expiration of the calendar year in which the author of a literary, dramatic or musical work, or of an artistic work being a photograph or engraving, died, ~~and more than 75 years after the time at~~

~~which, or the expiration of the period during which, the work was made, copyright subsists in the work but:~~

- (a) the work has not been published; and
- (b) a copy of the work, or, in the case of a literary, dramatic or musical work, the manuscript of the work, is kept in the collection of a library or archives where it is, subject to any regulations governing that collection, open to public inspection;

the copyright in the work is not infringed:

- (c) by the making of a copy of the work by a person for the purpose of research or study or with a view to publication; or
 - (d) by the making of a copy of the work by, or on behalf of, the officer in charge of that library or archives if the copy is supplied to a person who satisfies the officer in charge of that library or archives that the person requires the copy for the purpose of research or study or with a view to publication and that the person will not use it for any other purpose.
- (2) Where a manuscript, or a copy, of a thesis or other similar literary work that has not been published is kept in a library of a university or other similar institution or in an archives, the copyright in the thesis or other work is not infringed by the making of a copy of the thesis or other work by or on behalf of the officer in charge of the library or archives if the copy is supplied to a person who satisfies an authorized officer of the library or archives that he requires the copy for the purpose of research or study.

51A Copying of works for preservation and other purposes

- (1) Subject to subsection (4), the copyright in a work that forms, or formed, part of the collection of a library or archives is not infringed by the making, by or on behalf of the officer in charge of the library or archives, of a copy (including a microform copy) of the work:
 - (a) if the work is held in manuscript form or is an original artistic work—for the purpose of ~~preserving the manuscript or original artistic work, as the case may be, against loss or deterioration or for the purpose of~~ research that is being, or is to be, carried out at the library or archives in which the work is held or at another library or other archives;
 - (b) if the work is held in the collection in a published form but has been damaged or has deteriorated—for the purpose of replacing the work; or
 - (a) if the work has been held in the collection in a published form but has been lost or stolen—for the purpose of replacing the work.

(1A) Subject to subsection (4), the copyright in a work held in the collection of a library or archives as a manuscript is not infringed by the making, by or on behalf of the officer in charge of the library or archives, of a copy or an electronic reproduction of the work for the purpose of preserving the manuscript against loss or deterioration.

- (2) The copyright in a work that is held in the collection of a library or archives is not infringed by the making, by or on behalf of the officer in charge of the library or archives, for a purpose other than a purpose for which a copy may be made under subsection (1), of a single microform copy of the work so held.
- (3) Subsection (2) does not apply in relation to the making of a microform copy of a work held in the collection of a library or archives unless, as soon as practicable after the copy is made, the work from which the copy is made is destroyed.
- (4) Subsection (1) and (1A) do ~~does~~ not apply in relation to a work held in published form in the collection of a library or archives unless an authorized officer of the library or archives has, after reasonable investigation, made a declaration stating that he or she is satisfied that a copy (not being a second-hand copy) of the work cannot be obtained within a reasonable time at an ordinary commercial price.

- (5) Where a copy (including a microform copy) of an unpublished work is made under subsection (1) by or on behalf of the officer in charge of a library or archives for the purpose of research that is being, or is to be, carried out at another library or archives, the supply of the copy by or on behalf of the officer to the other library or archives does not, for any purpose of this Act, constitute the publication of the work.

New provisions

Remuneration notices

- (1) A library or archives may, by notice in writing given to the relevant collecting society by, or on behalf of, the library or archives undertake to pay equitable remuneration to the society for electronic reproductions and communications made under section 49A while the notice is in force.
- (2) A remuneration notice comes into force on the day on which it is given to the collecting society, or on such earlier day as is specified in the notice, and remains in force until it is revoked.

Equitable remuneration

- (1) If a remuneration notice is given by, or on behalf of, a library or archives, the amount of equitable remuneration payable to the relevant collecting society by the library or archives for electronic reproductions and communications made by it, or on its behalf, under section 49A while the notice is in force is an amount (whether an amount per year or otherwise) determined by agreement between the library or archives and the collecting society or, failing such agreement, by the Copyright Tribunal on application made by either of them.
- (2) The matters and processes constituting the system for assessing equitable remuneration (the assessment system), and any matters that are necessary or convenient to be assessed or taken into account for the purposes of the system, must be determined by agreement between the administering body and the relevant collecting society or, failing such agreement, by the Copyright Tribunal on application made by either of them.
- (3) If:
 - (a) a remuneration notice is given by, or on behalf of, an administering body to a collecting society; and
 - (b) during any period the library or archives does not comply with one or more of the requirements of the assessment system determined under this section in relation to the notice;section 49A does not apply to any reproduction or communication of a work made during that period, by, or on behalf of, the library or archives, being a reproduction or communication to which the electronic use notice applies.

Revocation of remuneration notice

A remuneration notice may be revoked at any time by the relevant library or archive by notice in writing given to the collecting society to which the remuneration notice was given, and the revocation takes effect at the end of 3 months after the date of the notice, or on such later day as is specified in it.

Request for payment of equitable remuneration

- (1) Subject to this section, where a remuneration notice is or has been in force, the collecting society to which the notice was given may, by notice in writing given to the relevant library or archives, request the library or archives to pay to the society, within a reasonable time after the date of the notice, the amount of equitable remuneration specified in the notice, being an amount payable under section 135ZZM for retransmissions made by, or on behalf of, the library or archives while the remuneration notice is or was in force.
- (2) If an amount specified in a request under subsection (1) is not paid in accordance with the request, it may be recovered from the library or archives by the collecting society in the Federal Court of Australia or any other court of competent jurisdiction as a debt due to the society.

Collecting societies

- (1) Subject to this section, the Attorney-General may, by notice in the *Gazette*, declare the body named in the notice to be the collecting society for all relevant copyright owners, or for such classes of relevant copyright owners as are specified in the notice.
- (2) Where the Attorney-General declares a body to be the collecting society for a specified class of copyright owners and subsequently declares another body to be the collecting society for that class of copyright owners:

 - (a) the first-mentioned collecting society ceases to be the collecting society for that class of copyright owners on the day on which the subsequent declaration is made; and
 - (b) any remuneration notice given to that collecting society ceases to be in force to the extent to which it relates to relevant copyright owners included in that class of copyright owners.
- (3) The Attorney-General must not declare a body to be a collecting society unless:

 - (a) it is a company limited by guarantee and incorporated under a law in force in a State or Territory relating to companies; and
 - (b) all persons who are included in a class of relevant copyright owners to be specified in the declaration, or their agents, are entitled to become its members; and
 - (c) its rules prohibit the payment of dividends to its members; and
 - (d) its rules contain such other provisions as are prescribed, being provisions necessary to ensure that the interests of members of the collecting society who are relevant copyright owners, or their agents, are protected adequately, including, in particular, provisions about:

 - (i) the collection of amounts of equitable remuneration payable under section 49A; and
 - (ii) the payment of the administrative costs of the collecting society out of amounts collected by it; and
 - (iii) the distribution of amounts collected by the collecting society; and
 - (iv) the holding on trust by the collecting society of amounts for relevant copyright owners who are not its members; and
 - (v) access to records of the collecting society by its members.
- (4) If the Attorney-General has declared a body to be the collecting society for a specified class of copyright owners, the Attorney-General may refuse to declare another body to be the collecting society for that class of copyright owners unless satisfied that to do so would be in the interests of those copyright owners, having regard to the number of members of the first-mentioned society, the scope of its activities and such other considerations as are relevant.

Revocation of declaration

- The Attorney-General may, by notice in the *Gazette*, revoke the declaration of a body as a collecting society if satisfied that the body:
- (a) is not functioning adequately as a collecting society; or
 - (b) is not acting in accordance with its rules or in the best interests of those of its members who are relevant copyright owners, or their agents; or
 - (c) has altered its rules so that they no longer comply with paragraphs ##; or
 - (d) has refused or failed, without reasonable excuse, to comply with section ##.

Annual report and accounts

- (1) A collecting society must, as soon as practicable after the end of each financial year, prepare a report of its operations during that financial year and send a copy of the report to the Attorney-General.

- (2) The Attorney-General must cause a copy of the report sent to the Attorney-General under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after the receipt of the report by the Attorney-General.
- (3) A collecting society must keep accounting records correctly recording and explaining the transactions of the society (including any transactions as trustee) and the financial position of the society.
- (4) The accounting records must be kept in such a manner as will enable true and fair accounts of the society to be prepared from time to time and those accounts to be conveniently and properly audited.
- (5) A collecting society must, as soon as practicable after the end of each financial year, cause its accounts to be audited by an auditor who is not a member of the society, and must send to the Attorney-General a copy of its accounts as so audited.
- (6) A collecting society must give its members reasonable access to copies of all reports and audited accounts prepared by it under this section.
- (7) This section does not affect any obligations of a collecting society relating to the preparation and lodging of annual returns or accounts under the law under which it is incorporated.

Amendment of rules

A collecting society must, within 21 days after it alters its rules, send a copy of the rules as so altered to the Attorney-General, together with a statement setting out the effect of the alteration and the reasons why it was made.

Operation of collecting society rules

This Part applies to a collecting society despite anything in the rules of the society, but nothing in this Part affects those rules so far as they can operate together with this Part.

New provisions: Copyright Tribunal (Part VI)

Applications to the Tribunal under subsection ##

- (1) The parties to an application to the Tribunal under subsection ## for the determination of the amount of equitable remuneration payable to a collecting society by a library or archives for the making, by or on behalf of the library or archives, of an electronic reproduction or a communications under section 49A the society and the library or archives.
- (2) On an application to the Tribunal under subsection ##, the Tribunal must consider the application and, after giving the parties an opportunity to present their cases, make an order determining the amount that it considers to be equitable remuneration for the making of electronic reproductions or communications under section 49A.
- (3) In making an order, the Tribunal may have regard to such matters (if any) as are prescribed.
- (5) In this section, *collecting society* has the same meanings as in Part III Division 5.

Applications to Tribunal under subsection ##

- (1) The parties to an application to the Tribunal under subsection ## for the determination of an assessment system are the collecting society and the library or archives concerned.
- (2) On an application to the Tribunal under subsection ##, the Tribunal must consider the application and, after giving the parties an opportunity to present their cases, make an order determining the assessment system.
- (3) In this section, *collecting society* has the same meanings as in Part III Division 5.

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