



AUSTRALIAN  
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COUNCIL



Mr Peter Young  
Assistant Secretary  
Film and Creative Industries  
Department of the Environment, Water, Heritage and the Arts  
GPO Box 787  
Canberra ACT 2601

10 September 2008

Dear Mr Young

**Comments on Cultural Ministers Council report, *Building a creative innovation economy***

We would like to comment on two copyright-related issues in the CMC report:

- “simpler” and “more flexible” copyright provisions, and
- rights management training

**About the Australian Copyright Council**

The Australian Copyright Council is a non profit organisation, partly funded by the Australia Council. The Copyright Council provides information about copyright via its publications, training and website ([www.copyright.org.au](http://www.copyright.org.au)), provides free legal advice about copyright, conducts research, and represents the interests of creators and other copyright owners in relation to policy.

**“Simpler” and “flexible” copyright provisions**

We are not sure from the Report what is meant by “simpler” in this context. We understand that the Report was addressing issues at a high level, but it would be helpful to know what issues the CMC was seeking to address with these recommendations. With that information, we would be in a better position to consider a range of options for addressing the issues of concern.

The CMC will be aware that in 1995 the government asked the Copyright Law Review Committee (CLRC) to make recommendations for the simplification of the Copyright Act. The terms of reference included “how to simplify the *Copyright Act 1968* to make it able to be understood by people needing to understand their rights and obligations under the Act”. The CLRC released two reports out of that inquiry, each of which made recommendations for substantive changes to the law, rather than mere simplification of the existing provisions.

In our view, if the objective is to enhance understanding of copyright law, and facilitate administration of rights, it is unlikely to be met by amending the Copyright Act merely to “simplify” its provisions. Copyright law includes court decisions that have interpreted the statutory provisions, and reference solely to a statutory provision without reference to court decisions that have interpreted it can give a misleading or incomplete picture of the law. For example, an understanding of whether a part of a work is a “substantial part” requires consideration of the court decisions in which that concept has been considered and applied.

If the objective is to enhance people's understanding of their copyright rights and obligations, it is better met by explanatory materials and guidelines about the application of the law than by amending the statute.

There are, of course, areas of the Copyright Act which could be clarified to remove ambiguity or uncertainty, but such amendments are unlikely to make the Act much more accessible or understandable to non-lawyers.

### **“Flexible” copyright provisions**

We note that the more “flexible” a provision in the Copyright Act, the less certain its application is. Section 200AB, introduced in 2006, is an example. It allows uses of copyright material by educators and collecting institutions in “special cases” if certain criteria are met. Although the uncertainty of its application is partly due to the way it has been drafted, it was intended to be a “flexible” provision that could apply in a variety of circumstances. Even if section 200AB were drafted more clearly, it is unlikely that a lay reader would correctly understand its operation by reading the Copyright Act. What is needed is explanatory guides to its operation (and such guides have now been produced).

### **Rights management training**

We support the Report's recommendation for training on copyright, including rights management. In our view, training on copyright and rights management should be a component of the technology training recommended on page 16. Copyright issues are relevant to sourcing content for websites and other forms of digital delivery, and protection of online content involves legal obligations as well as technological considerations.

New initiatives for training will be most effective if they build upon and complement existing training and resources.

Rights management training is important for both creators and users of copyright material. The objective of copyright law is to encourage new creative content, including digital content. That objective is more fully realised the more creators know about how to manage their rights, particularly in the digital environment.

### **Facilitation of access to copyright material**

In some cases, there is scope for developing more streamlined access to copyright material, particularly for rights managed by copyright collecting societies. We would be happy to provide more information about this.

Yours sincerely,

Libby Baulch  
Executive Officer