



Jenna Priestly
Assistant Secretary
Content and Copyright Branch
Office for the Arts
Department of Infrastructure, Transport, Regional Development and Communications
By email: copyright.consultation@communications.gov.au

Friday February 25, 2022

Dear Ms. Priestly,

The Digital Industry Group Inc. (DIGI) thanks you for the invitation and opportunity to contribute our views on the copyright access reforms as advanced in the exposure draft of the Copyright Amendment (Access Reforms) Bill 2021.

By way of background, DIGI is a non-profit industry association that advocates for the interests of the digital industry in Australia. DIGI's founding members are Apple, eBay, Google, Linktree, Meta, Twitter, Snap and Yahoo, and its associate members are Change.org, Gofundme, ProductReview.com.au and Redbubble. DIGI's vision is a thriving Australian digitally-enabled economy that fosters innovation, a growing selection of digital products and services, and where online safety and privacy are protected.

DIGI welcomes the objectives of the reforms to update provisions in the Copyright Act 1968 to better support the needs of Australians when accessing content digitally. Now more than ever, through the course of the pandemic, it has become apparent the extent to which technology supports small and large business, and enables education, community and meaningful connections.

DIGI broadly supports many of the proposals that aim to increase access to a wide range of creative works. We welcome the scheme relating to the limitation on remedies for use of orphan works, which will open up such materials for uses in the public interest while ensuring an appropriate balance with copyright owners' interests. DIGI believes that consumers and businesses alike should have rights to use orphan works legally following a diligent search. The use of orphan works can create social and economic value, and such schemes should enable use by both commercial and non-commercial entities.

The new fair dealing exception for non-commercial quotation is welcomed, however it provides an iterative improvement, as it is extremely narrow in only enabling individuals and organisations to avail of the exemption for research purposes. We are disappointed that the opportunity has been missed through this reform process to introduce a "fair use" exception, consistent with the views of many stakeholders, including the Australian Law Reform Commission and Productivity Commission following their comprehensive reviews. A fair use provision would future proof the Copyright Act for innovation – moving away from Australia's existing system of fixed, technologically-specific copyright exceptions – and aligning with the Government's goal under its Digital Economy Strategy for Australia to be a leading digital economy by 2030.

We are concerned that the fair dealing exception will leave a wide range of quotation activities outside of the scope of the new provision, most notably quotation by members of the public using digital services. Specifically, we note that the discussion paper lists retweeting or quoting small amounts of copyright material on social media as falling outside the scope of the provision. We believe this is an example of the kind of use that the general public assumes would be permissible under copyright law.

This exemption therefore needs to be wider to align with public expectations, and it is our view that the proposed “fairness factors” provide sufficient protection from harmful use.

DIGI is also concerned that the library and archives exceptions are limited to the “private and domestic use” of a copy supplied by a library or an archive, and does not extend to the sharing of material more broadly, for example on social media. We posit that Australians would be extremely surprised if they were restricted from borrowing a book from the library and sharing a passage to social media. Not only is this antithetical to consumer behaviour and expectation, limiting such promotion is at odds with the promotion of literature that is arguably in the commercial interests of many rights holders.

We are very supportive of the new provision covering educational instruction, and welcome the “classroom teaching” exception as an extremely important provision to enable distance learning. We encourage further consideration of whether this exemption is wide enough to encompass the broader array of online learning environments for students of all ages and walks of life, in a range of settings. In a digital economy, skills and training are by no means limited to the classroom.

With further attention to the scope of these reforms to ensure that they are consistent with consumer activity and expectation in a digital economy and society, we believe that the copyright access reforms can be a positive iterative step in modernising the Copyright Act 1968.

We thank you for your consideration of the matters raised in this submission. Should you have any questions, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink, appearing to read 'Sunita Bose', written over a light blue rectangular background.

Sunita Bose
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