



**Submission to Review of Australia's  
innovation system  
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## **1 SUMMARY OF SUBMISSION**

In this submission, we have addressed some aspects of Australia's copyright system relevant to matters under consideration by the review:

- objectives of copyright law
- copyright and innovation
- provisions in copyright system for education and research

## **2 ABOUT COPYRIGHT AGENCY**

Copyright Agency is a not-for-profit copyright management organisation (CMO). It has more than 26,000 members, who include writers, artists and publishers.

Copyright Agency is appointed by the Australian Government to manage statutory licences in the Copyright Act for educational and government use of text and images, and to manage the artists' resale royalty scheme. It also offers a range of other licences as non-exclusive agent for its members, including to the corporate sector.

Copyright Agency also manages Viscopy's licensing and membership services. Viscopy is a CMO whose members are visual artists.

Both Copyright Agency and Viscopy are affiliated with similar organisations in other countries, enabling the licensing of foreign content in Australia, and the collection of royalties for the use of Australian content overseas.

The terms of licences managed by Copyright Agency and Viscopy are usually negotiated with licensees but can be determined by the Copyright Tribunal if negotiations fail.<sup>1</sup> The Copyright Tribunal can also determine distribution arrangements.

## **3 OBJECTIVES OF COPYRIGHT**

The purpose of copyright is to provide an environment that fosters the creation of new content for the benefit of society as a whole. It does this by:

- providing an incentive for the creation of new content, by enabling those who create and invest in new content to set the terms on which others can use the content, which can (but may not necessarily) include payment directly associated with the consumption of content; and
- enabling reward to people who have created content that others find valuable, but lack the skill or time to produce for themselves.

In order to achieve its objectives, the copyright system treats different types of uses of content in different ways. Some uses require the permission (licence) of the copyright owner, enabling the copyright owner to set the terms of use. Some uses do not require permission, but do require fair compensation under statutory licences. Some uses do not require permission or payment because they are covered by special 'exceptions' (defences to copyright infringement).

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<sup>1</sup> [www.copyrighttribunal.gov.au](http://www.copyrighttribunal.gov.au)

Copyright applies only to certain forms of expression, not the underlying information or ideas. It thus enables the free flow of information and ideas, but provides opportunities for those who create and invest in the expression of information and ideas, for example in writing or images, to be rewarded and recoup investment.

#### **4 COPYRIGHT AND INNOVATION**

Encouraging innovation is a core objective of intellectual property systems, including copyright.

Those seeking to develop businesses based on content produced by others sometimes portray copyright as a barrier to innovation. A number of submissions to the recent review of copyright law by the Australian Law Reform Commission (ALRC), for example, asserted that current copyright law inhibits innovation.

There was, however, no evidence of actual instances in which copyright had unreasonably impeded an innovation that would otherwise have benefited Australian society as a whole. To the contrary, there was evidence of innovative products and services supported by the copyright system.

A report by PwC, *The Startup Economy: How to support tech startups and accelerate Australian innovation* (commissioned by Google) says:

*Australia has one of the best regulatory environments for entrepreneurship, and an engaged and strengthening culture of inclusion and openness. However, we have a considerably higher 'fear of failure' rate than many other innovative countries (e.g. US & Canada) which is constraining the growth of our tech startup sector.*

There is no reference in the report to any constraints from the copyright system.

Similarly, a recent report from StartupAUS, *Crossroads: An action plan to develop a vibrant tech startup ecosystem in Australia* (April 2014) makes no reference to copyright as an impediment. To the contrary, its recommendations include enhancing government funding programs that support entrepreneurs, including through protection and exploitation of intellectual property.

The 2011 Hargreaves Review in the UK considered the role of the copyright system in the development of technology companies, and whether (as had been suggested by some), a US-style 'fair use' exception would have made a difference in the UK:

*Does this mean, as is sometimes implied, that if only the UK could adopt Fair Use, East London would quickly become a rival to Silicon Valley? The answer to this is: certainly not. We were told repeatedly in our American interviews, that the success of high technology companies in Silicon Valley owes more to attitudes to business risk and investor culture, not to mention other complex issues of economic geography, than it does to the shape of IP law.<sup>2</sup>*

It is also worth noting that of the top 20 countries for the 2014 Global Innovation Index, only two have a broad 'fair use' provision: United States, in sixth position, and South Korea, in sixteenth position.<sup>3</sup>

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<sup>2</sup> <http://www.ipo.gov.uk/ipreview.htm> at [5.17].

<sup>3</sup> [http://www.wipo.int/econ\\_stat/en/economics/gii/](http://www.wipo.int/econ_stat/en/economics/gii/)

## **5 PROVISIONS IN THE COPYRIGHT SYSTEM FOR EDUCATION AND RESEARCH**

The Australian copyright system has world-leading provisions for research and education that operate more broadly than similar arrangements in other developed countries.

These include provisions for libraries that allow digital and print copies to be supplied to researchers and other libraries. These provisions were substantially extended in 2000 to cover digitisation of print materials and provision of copies online and by email.

Australia also has a statutory licence system for education that is more comprehensive and flexible than arrangements elsewhere. The system provides for compensation to the creators of the resources copied and shared under the system in recognition of the extensiveness of the use and the importance of continued creation of educational resources for Australia.

The flexibility of Australia's current system is demonstrated by its application to the Massive Open Online Courses (MOOCs) developed by some universities. Australian universities are in a better position compared to their US counterparts, because the Australian statutory licence for education enables the use of any text and images for education without the permissions processes usually required.

## **6 FURTHER INFORMATION**

We would be happy to provide any further information that may be of assistance to the Review, including on copyright-related issues raised by other submitters to the Review process.

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