



25 February 2022

Mr Richard Windeyer  
Deputy Secretary  
Department of Infrastructure, Transport, Regional Development and Communications  
GPO Box 2154  
Canberra ACT 2601

Email: [richard.windeyer@communications.gov.au](mailto:richard.windeyer@communications.gov.au)

Dear Mr Windeyer,

**Re: Discussion Paper – Exposure Draft Copyright Amendment (Access Reform) Bill 2021**

The University of Melbourne welcomes the opportunity to respond to the Department of Infrastructure, Transport, Regional Development and Communications' *Discussion Paper – Exposure Draft Copyright Amendment (Access Reform) Bill 2021* (the Discussion Paper).

We recognise that the Discussion Paper is the latest in a series of public consultations that examine potential reform of Australia's copyright framework, and commend the Government for adopting a consultative approach to reform. We also acknowledge the role that Universities Australia has played in articulating the range of problems that the current arrangements present to Australia's university sector.

The University of Melbourne strongly supports Universities Australia's response to the Discussion Paper. Australia's existing copyright framework is not fit-for-purpose. We readily acknowledge the importance of ensuring that the interests of rightsholders are protected. However, the current arrangements go well beyond what is necessary to achieve this. The limits on the use of copyright material impede valuable teaching and research activity and generate substantial administrative costs. The reforms set out in the Discussion Paper go some way to addressing this imbalance, supporting the use of material for teaching and research purposes while safeguarding the interests of rightsholders. We also acknowledge and endorse the Council of Australian University Librarians (CAUL) response to the Discussion Paper.

The following comments expand on the problems associated with the current copyright framework, addressing Schedules 1 to 4 of the Exposure Draft. We also offer comment on Technological Protection Measure (TPM) exceptions.

**Schedule 1: Limitation on remedies for use of orphan works**

The University of Melbourne supports the proposed changes to the copyright arrangements for orphan works. The current arrangements are overly restrictive, preventing or discouraging the use of material where the copyright holder cannot be identified. The imbalance in these arrangements is particularly clear when noting that orphan works

that are drawn from in a university setting typically have been created without an expectation of a commercial return. The proposal to introduce a limited liability scheme for the use of orphan works will allow university staff and students to access these works while maintaining appropriate protection for the rightsholders where they are later identified. The change will have a significant effect given the large volume of university archives and collections that are orphan works.

The University of Melbourne also welcomes the commitment to allowing universities to rely on the orphan works provisions rather than on the s113P statutory licence, and to not require universities to register the use of orphan works.

### **Recommendation**

*The University of Melbourne recommends that the Australia Government introduce the proposed changes to the arrangements for orphan works that will allow works to be used for teaching and research purposes while also protecting rightsholders that are subsequently identified.*

### Schedule 2: New fair dealing exception for non-commercial quotation

The University of Melbourne strongly supports the proposed fair dealing exception to permit the quotation of copyright material for non-commercial purposes by public bodies, organisations, and individuals. While recognising the need to ensure the commercial value of copyright material is protected, the current legislative framework is overly restrictive, preventing uses of material that do not harm rightsholders.

Currently, a PhD student is permitted to include third-party content in her/his thesis, but the relevant university is required to remove this content from the thesis when making it available on an institutional repository, unless permission has been obtained from the copyright owner or if a fair dealing exception applies. Similarly, academics who include third-party copyright material in lectures or in conference papers and presentations are required to ensure that their use fits within a fair dealing exception or obtain permission. These constraints undermine the public value generated through university research: redacting sections of a PhD thesis undermines its integrity and usefulness for potential readers. The current settings also require a significant investment of time and effort for students and researchers, and place substantial administrative burdens on the universities. The proposed amendments go a long way to addressing these issues without compromising the commercial value of material under copyright. We also argue that the exceptions should cover open education resources (OERs) where no profit is to be gained. As noted in the Universities Australia response, the proposed quotation exception is narrower than that which applies in other jurisdictions.

The University also supports making the new exception applicable to unpublished material as well as published material. Limiting the application of the provision to material that has been previously published would unduly restrict its utility for libraries and archives which typically house vast amounts of unpublished material.

### **Recommendation**

*The University of Melbourne recommends that the Australian Government introduce the proposed fair dealing exception to permit the quotation of copyright material for non-commercial purposes by public bodies, organisations and individuals, and ensure that the exception applies to unpublished as well as published material.*

### Schedule 3: Update and clarify library and archive exceptions

The University of Melbourne supports the Discussion Paper's proposed changes to the library and archive provisions. These changes appropriately recognise the competency enjoyed by university libraries in ensuring copyright infringements do not occur when making material available online. University libraries are already accustomed to working with systems which require the proper application of levels of access to online works, and are therefore well-placed to adapt these systems to the new provisions.

The reforms will enable library services to be more responsive to requests for document delivery and to inter-library loans without adversely impacting the commercial market. Increased access to library collections enabled by the new s113KC will improve arrangements for remote access and allow for continuity in research activities and for more equitable teaching programs.

**Recommendation**

*The University of Melbourne recommends that the Australia Government introduce the proposed changes to the provisions relating to library and archive exceptions.*

Schedule 4: Update and restore education exceptions

The University of Melbourne strongly supports the changes to the education exceptions in ss28 and 10 of the Act. Universities have adopted online synchronous teaching and learning as the primary mode of delivering educational programs during the COVID-19 pandemic. However, ambiguity in the current legislation has prevented universities from including copyright material in lecture recordings for students who are learning asynchronously or remotely. The proposed reforms will enable universities to deliver equitable learning experiences for all students regardless of their location or technological limitations. It is important that these provisions are material- and technology-neutral to deliver the intended benefits.

**Recommendation**

*The University of Melbourne recommends that the Australia Government introduce the proposed changes to the provisions relating to updating and restoring education exceptions.*

Technological Protection Measure (TPM) exceptions

The University of Melbourne endorses the Universities Australia position outlined in its response to the Technology Protection Measure (TPM) exceptions. We support maintaining the current TPM exceptions, and pursuing the amendments proposed by Universities Australia to ensure alignment with the draft legislative changes. We also recommend that the university sector be given an opportunity to consider and respond to counter claims made in the course of this consultation relating to alleged problems with the TPM framework.

**Recommendation**

*The University of Melbourne recommends that the Australia Government:*

- *maintain the current TPM exceptions;*
- *pursue TPM amendments proposed by Universities Australia in line with the draft legislation; and*
- *allow the university sector an opportunity to consider and respond to counter claims made in the course of this consultation relating to alleged problems with the TPM framework.*

We would welcome the opportunity to continue working with the Government on the implementation of the proposed reforms. For further information, or to discuss the submission, Professor James McCluskey, Deputy Vice-Chancellor (Research) can be contacted at [dvc-research@unimelb.edu.au](mailto:dvc-research@unimelb.edu.au).

Kind regards,



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