



AUSTRALIAN
DIGITAL ALLIANCE

Potential \$600m Annual Economic Boost From Copyright Reform

ABOUT THE TWO REPORTS

This is a snapshot of two reports written and researched by leading consultancy Lateral Economics whose CEO is Dr Nicholas Gruen. Dr Gruen chaired the internationally acclaimed Government 2.0 Taskforce.

The two reports, released in September 2012, are:

- **Excepting the Future** –
The economic case for flexible copyright exceptions and extended safe harbour provisions
- **Exceptional Industries** –
The economic contribution to Australia of industries relying on limitations and exceptions to copyright

Australia needs a more flexible and technology neutral copyright regime to meet the digital reality of the 21st century and the evolving needs of society.

Currently Australia's outdated copyright laws condemn online services such as web hosts, search engines and social media to a less conducive innovation and investment environment than in comparable countries.

These findings are contained in two new reports prepared by Lateral Economics for the Australian Digital Alliance.

The reports provide a rigorous economic analysis of both the economic contribution and the activities of the copyright 'exceptions' sector. The copyright 'exceptions' sector comprises those

relying on 'exceptions' to copyright, including education and research institutions, libraries and cultural institutions, digital, internet and web hosting providers as well as producers of copyright enabling devices such as mp3 players. The reports found a consistent picture of the "enormous value" of the internet to all Australians.

THE REPORTS FOUND THAT:

- flexible copyright 'exceptions' and better crafted 'safe harbours' would make a substantial contribution to Australia's economic growth and innovation with negligible downsides for rights holders; and
- the recommended changes would improve productivity growth. Over time the additional value added to the Australian economy is conservatively estimated to grow to around \$600 million annually.

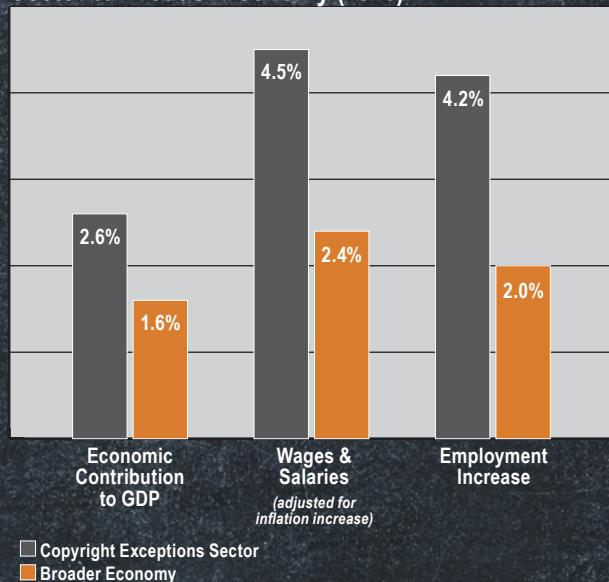
ECONOMIC CONTRIBUTION

It is important to note that in 2010 the copyright 'exceptions' sector already:

- contributed 14% to Australia's GDP, an amount of \$182 billion
- employed 21% of our paid workforce, almost 2.4 million people
- paid wages and salaries of \$116 billion.

These figures all grew significantly faster than the rest of the economy from 2007 to 2010 as shown in the illustrations to the right.

Comparison of the Growth of the Copyright Exceptions Sector to Broader Economy (2010)



Source: *ABS: Australian Industry 2009-10 (excludes division K Financial and Insurance Services)

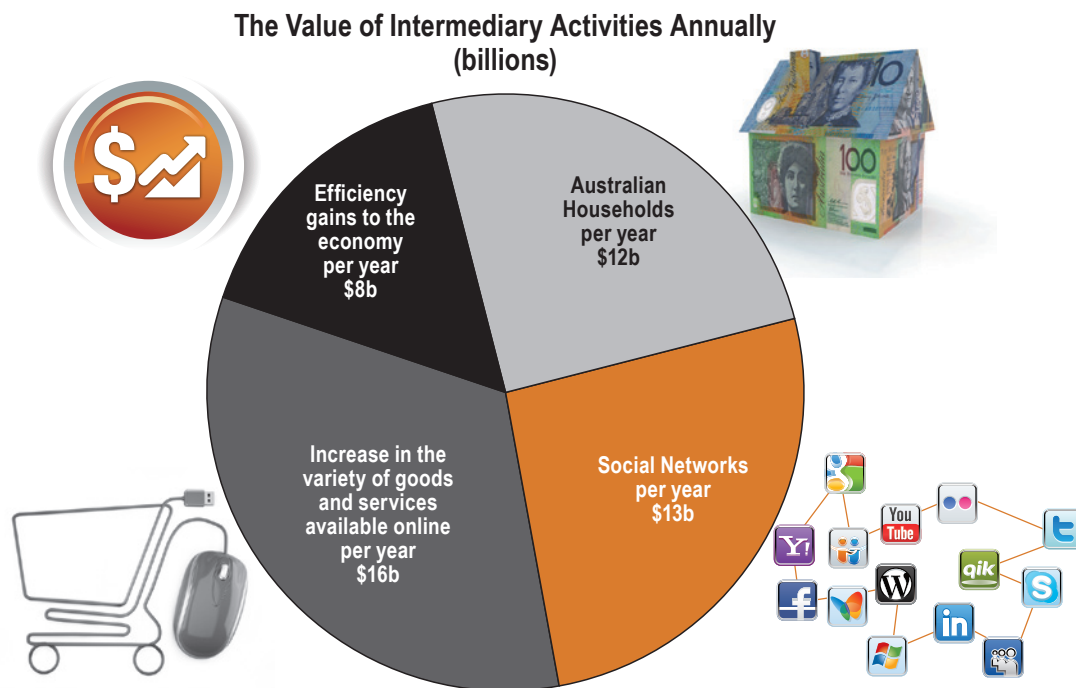
AUSTRALIA IN THE GLOBAL MARKET

One of the most revealing outcomes of the Lateral Economics reports is the snapshot they provide of Australia's place in the global marketplace. The analysis shows that Australia's net exports of services depending on copyright 'exceptions' reached \$14 billion in 2010.

In sharp contrast Australia had a net deficit of nearly \$3 billion from payments for use of intellectual property in 2010, a deficit that has grown by 9% annually since 2006.

As Lateral Economics concludes, the trade figures provide further evidence of the benefits that would flow from the recommended copyright reform by enabling some of Australia's most globally competitive industries to become even more competitive.

These reforms are important domestically as well, particularly in terms of productivity gains. The 'use value' of online activities to household internet users in Australia is calculated in the reports to be around \$60 billion a year. Of that value \$49 billion is contributed by internet services as illustrated below.



Source: Deloitte Access Economics (2011) *The Connected Continent*

ABOUT THE AUSTRALIAN DIGITAL ALLIANCE (ADA)

The ADA supports copyright laws that strike a balance between providing reasonable incentives for creators on the one hand, and the wider public interest in the advancement of learning, innovation and culture on the other. The ADA is a respected and active participant in Australian copyright reform debates, regarded for its depth of copyright expertise and advocacy efforts on behalf of a diverse membership. ADA members span various sectors and include cultural institutions, schools, universities, libraries, IT companies and individuals. (www.digital.org.au)

WHAT'S HOLDING AUSTRALIA BACK?

The current copyright regime fosters risk and uncertainty, which can have a substantial negative impact on investment and innovation especially in the following three areas:

1. RISKS AND COSTS ASSOCIATED WITH LEGAL CHALLENGES

It's sometimes argued that flexible exceptions could increase the amount of litigation in Australia. However the US fair use exception has delivered flexibility with relatively low rates of litigation.

Australia's tightly defined exceptions are relatively frequently contested. With rapid technological change, excessive specificity creates continual uncertainty as to whether new innovations are covered. Even if legal costs did marginally rise, this would most likely be the temporary result of test cases establishing boundaries. In any event those costs would be dwarfed by the downstream economic benefits of greater innovation and investment.

2. IMPACTS OF THESE RISKS ON INVESTMENT

How much does risk affect willingness to invest? Investors are valuing reduced risk and uncertainty from copyright limitations and exceptions at around \$2 billion a year.

3. POTENTIAL IMPACTS ON INNOVATION

In an era when future economic success is clearly linked to 'digital economic activity', the Australian copyright regime is one of the key conditions for investment and innovation.

With inadequate and inflexible copyright 'exceptions' and with safe harbour protections extending only to carriage providers there is substantially more risk to online services in Australia than in comparable countries.

The economic contribution possible under a more flexible regime is shown by the success of companies such as Apple, Facebook and YouTube. However in Australia, as the Lateral Economics reports demonstrate, these businesses are exposed to greater risk of liability for copyright violations. This means that Australia is not a natural home for innovation and it reduces our ability to compete globally.

WHAT ARE FLEXIBLE COPYRIGHT EXCEPTIONS?

Copyright exceptions allow uses of copyrighted works without express permission from or payment to the rights holder. Uses like shifting your content from CD to mp3.

The US doctrine of 'fair use' illustrates how a flexible exception works, though it need not be the only possible model. Under the US system, copyrighted works may be used without permission or payment where it's 'fair'. 'Fairness' depends on:

1. the purpose and character of the use, including whether it's for commercial purposes;
2. the nature of the copyrighted work;
3. the amount of the copyrighted work used;
4. the effect of the use on the potential market for, or value of, the copyrighted work.

WHAT ARE SAFE HARBOURS?

- The copyright safe harbour limits a person's liability under the law, on the condition that the person takes action in compliance with defined standards. The safe harbor encourages service providers to cooperate with rights holders to remove infringing content, whilst also protecting user rights.
- Currently in Australia safe harbours only apply to carriage providers (ie telcos). Elsewhere in the world safe harbours apply to all online service providers.