AUSTRALIAN
DIGITAL ALLIANCE

Australian Productivity Commission Intellectual Property Arrangements Inquiry Final Report

Response by the Australian Digital Alliance

The Australian Digital Alliance (ADA) welcomes the opportunity to comment on the final report of the Productivity Commission's Intellectual Property (IP) Inquiry.

The ADA is a non-profit coalition of public and private sector interests formed to provide an effective voice for a public interest perspective in the copyright debate. ADA members include universities, schools, disability groups, libraries, galleries, museums, technology companies and individuals.

Whilst the breadth of ADA membership spans various sectors, all members are united in their support of copyright law that balances the interests of rights holders with the interests of users of copyright material.

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A. General comments about the Report

The ADA strongly supports the principal copyright findings of the report. The ADA agrees with the Commission that “Australia’s copyright arrangements lack balance and have been slow to adapt to technological change, imposing costs on the broader community.” (103) This results in them being “skewed too far in favour of copyright owners, to the detriment of consumers and intermediate users.” (7)

To address this imbalance, the ADA strongly supports the keystone of the Commission’s copyright recommendations - the introduction of a modern fair use provision to add flexibility to Australia’s copyright system and more adequately protect user rights. A fair use provision is essential to enhance Australia’s economic growth and provide both the incentives and flexibility needed for creativity in the digital age. Fair use will future-proof copyright and encourage innovation. New uses that benefit society but do not harm copyright owners will be able to proceed immediately, without having to wait years for the legislation to catch up.

In addition, the ADA supports the following recommendations of the Commission also designed to address the current system’s lack of adaptability and balance:

- protection of copyright exceptions against exclusion by contract or technologies;
- limitation of liability for good faith use of orphan works;
- clarification of user rights to circumvent geoblocking technologies;
- extension of the existing ISP safe harbor provisions to other online service providers;
- strengthening of the governance and transparency arrangements for collecting societies, starting with a review by the ACCC;
- mandating of open access publication of publicly funded research;
- promotion of a coherent and integrated approach to IP policy;
- development of guiding principles for IP provisions in international treaties;
- adoption of a more active role in international forums by Australia to identify and progress reforms that would strike a better balance in respect of copyright; and
- introduction of a specialist IP small claims list in the Federal Circuit Court.

If implemented, these proposals from the Productivity Commission will provide major benefits for all Australians, fixing a number of outstanding problems with our copyright system. Schools and universities, libraries and other cultural institutions, disability organisations and companies working with new technologies all support these recommendations.

Copyright Amendment (Disability Access and Other Measures) Bill

Although not a numbered recommendation of the report, the ADA also strongly supports the Commission's call in the body text for the immediate introduction and passage of reforms included in the Copyright Amendment (Disability Access and Other Measures) Bill. The Commission identified and supported significant benefits arising from the Bill's proposed amendments, including:

- the consensus reforms for simplification of the educational statutory licence, which the Commission found would increase the efficiency of our current copyright system and reduce costs for educational institutions and collecting societies alike (163);
- the ending of perpetual copyright in unpublished works, which the Commission found there is no case for maintaining (103); and
- the extension of the current ISP safe harbours to all service providers, including schools, universities, libraries and online platforms. The Commission found that this amendment would align our system with international norms; reduce barriers for online service providers, such as cloud computing firms, to establish operations in Australia; and facilitate innovation by making our system more adaptable as new services and technologies are developed (551).

We note that the Bill also makes substantial reforms to the disability provisions of the *Copyright Act 1968*, which would provide "much greater access to copyright material specifically for people with disability and proposes to provide much more flexibility to individuals and organisations to access copyright material in alternative formats."[1] The ADA joins the Australian Blindness Forum in expressing disappointment that the Commission did not look more closely at the benefits Australians with a disability would obtain from a more balanced copyright regime.

[1] Australian Blindness Forum Submission 390 Part B

B. Comments on New Copyright Recommendations

With respect to the specific recommendations on which the Government has invited comment, our position is as follows.

Final Recommendation 5.1

The Australian Government should amend the Copyright Act 1968 (Cth) to:

- make unenforceable any part of an agreement restricting or preventing a use of copyright material that is permitted by a copyright exception
- permit consumers to circumvent technological protection measures for legitimate uses of copyright material.

The ADA strongly supports this recommendation. We agree with the Commission that "copyright exceptions are an essential component of the balance between incentives to create new works, and the benefits to consumers from those works" and "[t]he use of contracts to override exceptions effectively enables the rights holder to rewrite the limits that the law has set on the extent of the right conferred by copyright." (p.140)

As the examples provided in our submissions to the Commission show, the use of contractual terms that override copyright exceptions has become prevalent in Australia. Our members have had longstanding concerns about their effects in education and the library sector, but these same practices represent a large and growing problem across all sectors. Consumers, for example, are regularly faced with website or application terms of service that purport to override consumer copyright protections. This is particularly concerning given the evidence that people do not read terms of service[2] and are unable to understand them even when they do.[3]

We also strongly support the Commission's extension of this recommendation to include technological protection measures (TPMs) as well as contracts. As the Commission and other experts have demonstrated, Australia's anti-circumvention laws are currently broken. They restrict the circumvention of TPMs even where the activity to be undertaken is legal or the materials being protected are in the public domain. Regular reviews intended to update the provisions and allow for further uses to be exempted from the ban have failed to occur, with the last completed review more than a decade ago.[4] And even when the act of circumvention is allowed, the supply or manufacture of a device to allow this circumvention is still banned.

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[2] Obar, Jonathan A. and Oeldorf-Hirsch, Anne, The Biggest Lie on the Internet: Ignoring the Privacy Policies and Terms of Service Policies of Social Networking Services (August 24, 2016). TPRC 44: The 44th Research Conference on Communication, Information and Internet Policy 2016. Available at SSRN: https://ssrn.com/abstract=2757465 or http://dx.doi.org/10.2139/ssrn.2757465

[3] UK Children's Commissioner Growing up Digital Taskforce Report (2016)

[4] A review of circumvention exceptions not specifically provided for in Article 17.7 at least every four years is a condition under the Australian-US Free Trade Agreement (see Article 17.7.b.viii http://dfat.gov.au/about-us/publications/trade-investment/australia-united-states-free-trade-

We believe that both an improved review process and legislative amendments are necessary to make our TPM laws work effectively. We provided detailed comments on this issue in our submission in response to the Commission's draft report, but in summary our principal recommendations were:

- the current exemptions to the circumvention ban should be expanded to include all exceptions in the Copyright Act (including fair dealing and any future fair use exception);
- the circumvention exemptions should be amended to include the supply of TPM devices and services, not just the act of circumvention (if possible under Australia's international agreements)[5]; and
- the prohibition on circumvention should be linked to the prevention of copyright infringement, so that it does not apply where the material being protected is in the public domain or the user has a legitimate right to access the work.

Final Recommendation 5.4

The Australian Government should strengthen the governance and transparency arrangements for collecting societies. In particular:

- The Australian Competition and Consumer Commission should undertake a review of the current code, assessing its efficacy in balancing the interests of copyright collecting societies and licensees.
- The review should consider whether the current voluntary code: represents best practice, contains sufficient monitoring and review mechanisms, and if the code should be mandatory for all collecting societies.

The ADA strongly supports this recommendation. We agree with the Commission that there are many benefits of collective licensing, and that there are many circumstances in which it provides the most efficient and effective means of both facilitating use of works and remunerating rights holders for this use. However, we share the Commission's concerns that:

- statutory licence users are not able to access the information needed to allow them to effectively negotiate directly with rights holders; and
- the arrangements for reviewing and amending the code are deficient.

Too often, Australian collecting societies appear to act on the basis that their only consideration in negotiating licences should be the maximisation of licensing revenue, without regard to:

- the public interest;
- appropriateness of licences and licensing terms ;
- fairness to licensors; and

agreement/Pages/chapter-seventeen-intellectual-property-rights.aspx) however the last completed Australian review was undertaken in 2006.

[5] This may require renegotiation of the Australia-United States Free Trade Agreement (AUSFTA) eg to align its terms more closely with the updated language proposed in the Trans Pacific Partnership Agreement (TPP).

- the fair and equitable reward of individual creators.

In contrast, the European Commission requires its members to ensure minimum standards in collecting society regulation and management.[6] An example of the implementation is the UK, which has regulations[7] requiring that the collecting societies code include obligations to:

- take the interests of licensees into account when negotiating with licensee;
- ensure that their dealings with licensees or potential licensees are transparent;
- consult and negotiate fairly, reasonably and proportionately in relation to the terms and conditions of a new or significantly amended licensing scheme; and
- provide to licensees, and to any potential licensees who have requested it, information about licensing schemes, their terms and conditions, and how royalties are collected.

We endorse the submissions of Copyright Advisory Group to the COAG Education Council (CAG) and Universities Australia on the need for improved transparency and governance for collecting societies - particularly in relation to the need for improved governance arrangements to address the current situation where the Copyright Agency appears to be using funds collected under the statutory licence for which no copyright owner can be identified (such as orphan works), in order to fund the Agency's highly public campaign against the Commission's fair use recommendation.[8]

Final Recommendation 6.2

The Australian Government should enact the Australian Law Reform Commission recommendations to limit liability for the use of orphan works, where a user has undertaken a diligent search to locate the relevant rights holder.

The ADA supports this recommendation as a complementary measure to use of orphan works under a flexible fair use exception.

As the Commission noted in its report, freeing up orphan works for reuse is one of the most effective ways to reduce the costs of and increase the public benefits from our current copyright system (174). The recent economic report commissioned by the Department of Communications and the Arts and prepared by Ernst & Young estimated that the diligent search costs and coinciding benefits alone would be between $10.3 million and $20.6 million per annum. The report went on to note:

> [T]hese are just the cost-based benefits. Enabling the use of orphan works to be unlocked for commercial and non-commercial purposes could assist the growth of Australian copyright industries.[9]

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[6] 2014, Directive on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, 26 February, Brussels, Belgium.

[7] See Copyright (Regulation of Relevant Licensing Bodies) Regulations 2014

[8] See Copyright Agency Directors' Report And Financial Report for the year ended 30 June 2016 p26

[9] Ernst & Young, Cost benefit analysis of changes to the Copyright Act 1968, April 2016 p72

A work that is sitting on a shelf or in a filing cabinet, unable to be used because it remains in copyright but its copyright owner is uncontactable, is not meeting its full value to society. Society should not be prevented from benefiting from works because they are old or abandoned by their copyright owner.

As noted in our submission to the Commission, other proposed methods for dealing with orphan works, such as collective licensing options, have proven to be inefficient and ineffective. International experience has shown that the costs of setting up and administering a licensing scheme inevitably outweigh royalties paid, meaning that the licence fees become a tax on users rather than a benefit for creators.[10] A limitation on liability without a corresponding exception would also be manifestly inadequate, especially for high volume uses such as library or archival mass digitisation projects, as it would leave institutions taking advantage of the limitation technically breaking the law - a situation that would be unacceptable to the majority of good faith users.[11]

The ADA therefore strongly believes that the adoption of a fair use exception is the best and most effective way of freeing up this valuable resource for all Australians, and we urge the government to explicitly include orphan works as an illustrative use in the fair use exception.

However, we agree that the addition of a limit on liability to complement a fair use exception is a commonsense move that would provide an additional level of support to risk management decisions. Those acting in good faith and using best practice standards to increase the value of and benefits to society from material should be given certainty as to the level of risk they are undertaking. Parties such as libraries or educational institutions that have low tolerance to risk and high usage of orphan works will find the limitation particularly useful.

We also support the ALRC's recommendation, subsequently endorsed by the Commission, that the model proposed by the US Copyright Office in its Orphan Works and Mass Digitization report[12] be used as the starting point for designing such a system. We particularly endorse the model's equation of its limitation on liability to "reasonable compensation" eg a reasonable licence fee without any additional legal fees or damages. We also endorse the model's inclusion of a safe harbour that provides that no remedy at all is payable by nonprofit educational institutions, museums, libraries, archives, and public broadcasters for educational, religious, or charitable uses provided that after receiving a notice of the claimed infringement and investigating the claim,

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[10] See Katz, Ariel, 'The Orphans, The Market, and the Copyright Dogma: A Modest Solution to a Grand Problem (July 27, 2012). 27(3) Berkeley Technology Law Journal, 2012 <http://ssrn.com/abstract=2118886>; Australian Digital Alliance Submission 108 to the Productivity Commission Inquiry into Intellectual Property Arrangements 2014 <http://www.pc.gov.au/inquiries/completed/intellectual-property/submissions>

[11] See UK Intellectual Property Office Copyright, and the Regulation of Orphan Works: A comparative review of seven jurisdictions and a rights clearance simulation (2013)

[12] United States Copyright Office *Orphan Works and Mass Digitization: A Report of the Register of Copyrights* 2015 https://www.copyright.gov/orphan/

they cease using the work.[13] We acknowledge that many uses that would fall within this safe harbour would also most likely be fair use. However, an explicit safe harbour for risk-averse, 'public good' organisations would enable the reclamation of further cultural value that is currently wasted as a result of copyrights that outlast their owners' interests in them.

Final Recommendation 17.1

The Australian Government should promote a coherent and integrated approach to IP policy by:

- establishing and maintaining greater IP policy expertise in the Department of Industry, Innovation and Science
- ensuring the allocation of functions to IP Australia has regard to conflicts arising from IP Australia's role as IP rights administrator and involvement in policy development and advice
- establishing a standing (interdepartmental) IP Policy Group and formal working arrangements to ensure agencies work together within the policy framework outlined in this report. The Group would comprise those departments with responsibility for industrial and creative IP rights, the Treasury, and others as needed, including IP Australia.

We support the Commission's finding that copyright should remain with the Department of Communications and the Arts. The Department has a depth of knowledge and experience on copyright that is not replicated in other government bodies and we find the Department to be responsive and fair in its engagement with stakeholders.

We also support the recommendation that a standing interdepartmental working group on IP be established. We anticipate that this group would provide support to the Department in policy development. Copyright in particular has a wide base of stakeholders, and a formal IP working group should help ensure that all interests are being given the appropriate level of attention and that final decisions are made in the public interest. For example, given the critical importance of fair use to achieving the Government's innovation goals (for example, ensuring Australia's copyright system is not unduly impeding the development of cloud-based technologies or text and data mining developments), we support the Department of Industry, Innovation and Science playing a greater role in copyright policy development.

Finally, we support the Commission's finding that Australia should adopt a common strategy for IP policy, and urge that this include a clear commitment to ensuring the public interest is considered in all IP reform.

Final Recommendation 17.2

The Australian Government should charge the interdepartmental IP Policy Group (recommendation 17.1) and the Department of Foreign Affairs and Trade with the task of developing guidance for IP provisions in international treaties. This guidance should incorporate

[13] United States Copyright Office Orphan Works and Mass Digitisation (2015)

the following principles:

- avoiding the inclusion of IP provisions in bilateral and regional trade agreements and leaving negotiations on IP standards to multilateral fora
- protecting flexibility to achieve policy goals, such as by reserving the right to draft exceptions and limitations
- explicitly considering the long-term consequences for the public interest and the domestic IP system in cases where IP demands of other countries are accepted in exchange for obtaining other benefits
- identifying no go areas that are likely to be seldom or never in Australia's interests, such as retrospective extensions of IP rights
- conducting negotiations, as far as their nature makes it possible, in an open and transparent manner and ensuring that rights holders and industry groups do not enjoy preferential treatment over other stakeholders.

The ADA has regularly raised concerns that Australia's international IP commitments have not always been in the interests of the Australian public.[14] As such, we strongly support the Commission's recommendation that the IP Policy Group and DFAT jointly develop guidance for the inclusion of IP in international treaties.

The ADA also supports the principles proposed by the Commission. However, we recommend two additions to these principles, or perhaps slight amendment of the first and third principles, to provide:

- that IP provisions in treaties and trade agreements should be drafted in accordance with a principles-based approach (rather than using detailed, prescriptive text), to allow domestic IP law to be adapted for new technologies, business models, and creative and artistic practices, while also remaining consistent with international obligations;
- a requirement that analysis be performed and publicly released during negotiation and ratification regarding the effects of proposed treaties and any amendments flowing from them.

Detailed IP provisions of the level that we see in agreements like the Australia-United States Free Trade Agreement (AUSFTA) and the Trans Pacific Partnership (TPP) are inappropriate, as they bind Australia indefinitely to provisions designed for a specific time. As we stated in our submission to the Joint Standing Committee on Treaties Inquiry into the TPP:

> The highly prescriptive nature of the TPP's copyright provisions are likely to have a significant chilling effect on future copyright reform in Australia, locking us into aging and outdated laws as technology and society develops, and discouraging best practice amendments.
> ...

[14] See our submission to the 2014 Competition Policy Review (the Harper Review) at http://digital.org.au/our-work/submission/competition-review-issues-paper-submission

> We are concerned that these onerous provisions may have a detrimental effect on Australia's ability to adjust its copyright system in future. The last few decades have made it clear how vital it is for copyright law to adapt as technologies and social norms change. … 30 years ago we could never have predicted where we are now, in the world of Youtube, peer-to-peer file sharing and cloud storage. But prescriptive agreements like the TPP try to do exactly that - set rigid standards for future generations.

The ADA also believes that many of the issues that have arisen in regards to IP in international agreements may have been avoided with better analysis and consultation processes.[15] We would like to draw the government's attention to the fact that other jurisdictions do have in place more robust procedures to ensure meaningful public consultation, which could be used as a possible starting point for Australia's negotiating principles. The transparency measures used for the Transatlantic Trade and Investment Partnership negotiations are one such example. Although the execution of the measures has been criticised[16] they still represent a substantial improvement on past negotiations for agreements such as the TPP, with the publication of some position papers, textual proposals and, after pressure by the European Ombudsman, the EU's own negotiating mandate.[17] They also provide all members of parliament access to negotiation documents.[18]

Final Recommendation 18.2

The Australian Government should play a more active role in international forums on intellectual property policy — areas to pursue include:

- calling for a review of the TRIPS Agreement (under Article 71.1) by the WTO

...

- identifying and progressing reforms that would strike a better balance in respect of copyright scope and term.

The ADA supports this recommendation.

[15] See ADA & ALCC Joint submission to the Senate Standing Committee on Foreign Affairs Defence and Trade inquiry into the Treaty Making Process (March 2015)

[16] See https://www.theguardian.com/commentisfree/2015/aug/31/transparency-ttip-documents-big-business; https://www.access-info.org/ttip-transparency

[17] http://www.ombudsman.europa.eu/en/press/release.faces/en/54636/html.bookmark http://data.consilium.europa.eu/doc/document/ST-11103-2013-DCL-1/en/pdf

[18] http://ec.europa.eu/avservices/video/player.cfm?sitelang=en&ref=I095740

Final Recommendation 19.2

> The Australian Government should introduce a specialist IP list in the Federal Circuit Court, encompassing features similar to those of the United Kingdom Intellectual Property Enterprise Court, including limiting trials to two days, caps on costs and damages, and a small claims procedure. The jurisdiction of the Federal Circuit Court should be expanded so it can hear all IP matters. This would complement current reforms by the Federal Court for management of IP cases within the National Court Framework, which are likely to benefit parties involved in high value IP disputes. The Federal Circuit Court should be adequately resourced to ensure that any increase in its workload arising from these reforms does not result in longer resolution times. The Australian Government should assess the costs and benefits of these reforms five years after implementation, also taking into account the progress of the Federal Court's proposed reforms to IP case management.

The ADA supports this recommendation.

As the Commission notes, enabling lower cost enforcement of copyright cases would be of considerable benefit to creators wishing to enforce their rights under the Copyright Act. It would also provide benefits to those seeking to defend their rights to make legitimate use of material.

Too often, those using copyright material under legitimate exceptions such as fair dealing are forced to remove their material from circulation, or alter it, due to copyright challenges that they do not have the resources or expertise to defend. An illustrative example are the problems faced by Juice Media in 2013 when they created a political parody video that included Julian Assange singing a small excerpt from John Farnham's *You're the Voice*. A takedown notice was issued to Youtube by the copyright owners of the song, and although there was a good case that the use was legitimate as a fair dealing for parody and satire, Juice Media was unable to afford to prosecute its case in court. They were instead forced to submit to the demands to remove the material.[19]

Of course, the precise model to be used for reduced-cost dispute resolution should be given careful consideration, informed by expert analysis of the models used in other jurisdictions. As the Commission has identified in its report, experience has highlighted both good and bad elements in the models used for such courts in the UK and Germany. In the implementation of this plan there will need to be both public and expert consultation, including consultation with experts familiar with developments in the UK, US and Germany, to ensure the Australian system is best practice, works efficiently and effectively, and avoids any pitfalls of systems overseas that have emerged with experience.

[19] See http://www.news.com.au/why-creating-memes-is-illegal-in-australia/news-story/bf35da7cc64cf2da9cbf2fb0843262af

C. Commission comments re reform

Finally, the ADA would like to draw attention to the Commission's comments re the need for strength to pursue balanced copyright reform that works for the benefit of all Australians. We agree with the Commission that "achieving reform will not be easy" and the "Government will need to show steely resolve to pursue a better balanced IP system in the face of strong vested interests." (27)

The amount of hyperbole and misinformation surrounding this report is deeply concerning, and indicates opposition by a group of organisations that are more focused on maintaining the status quo for select industries than engaging with the substance of the recommendations.

Misinformation that we have identified around the report includes:

- Frequently repeated claims in the media that the Commission recommended the reduction of copyright terms to 15-25 years and, in some cases, even claims that the government had already decided to adopt this change.[20] Both the government[21] and the Commission[22] have made efforts to clarify this, but this has not stopped these false claims continuing to be made.[23]

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[20] See Richard Flanagan, "Be under no illusion: Malcolm Turnbull wants to destroy Australian literature", *The Guardian* 4 June 2016 https://www.theguardian.com/commentisfree/2016/may/19/be-under-no-illusion-malcolm-turnbull-wants-to-destroy-australian-literature-election-richard-flanagan?utm_content=buffer23f62&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer Anna Funder "If proposed copyright changes are adopted, Australian literature could 'disappear'", *The Age*, 25 August 2016 http://www.theage.com.au/comment/if-proposed-copyright-changes-are-adopted-australian-literature-could-disappear-20160825-gr0t34.html; Greg Holfield "If you want Australian writers and illustrators to be treated fairly, you should be outraged" *Adelaide Now* 14 June 2016 http://www.adelaidenow.com.au/news/opinion/greg-holfeld-if-you-want-australian-writers-and-illustrators-to-be-treated-fairly-you-should-be-outraged/news-story/83424de98b5ef0a44cb397fb551909d2 ; Nikki Gemmell "Parallel Imports of Books will Cripple Australian Writing" *The Weekend Australian* 05/06/2016 http://www.theaustralian.com.au/life/weekend-australian-magazine/parallel-imports-of-books-will-cripple-australian-writing/news-story/7f05816a8536c3b0588b9c3e3e9b6074; Adam Suckling "Good for Lawyers, Bad for Creators" *ArtsHub* 23 May 2016 http://www.artshub.com.au/news-article/opinions-and-analysis/grants-and-funding/adam-suckling/good-for-lawyers-bad-for-creators-251347

[21] See http://www.mitchfifield.com/Media/MediaReleases/tabid/70/articleType/ArticleView/articleId/1179/Conjecture-on-copyright-changes-unfounded.aspx

[22] See http://www.pc.gov.au/inquiries/completed/intellectual-property/draft/intellectual-property-draft-factsheet.pdf

[23] See Adam Suckling "The Productivity Commission's copyright changes would decimate Australia's creative industries" *The Canberra Times*, 20 December 2016 http://www.canberratimes.com.au/comment/the-productivity-commissions-copyright-changes-would-decimate-australias-creative-industries-20161220-gtevie and Jenna Price, "The innovation this government doesn't want", *The Canberra Times*, 19 Dec 2016

- Media statements that the safe harbour extension recommended by the Commission would "not impact teachers, libraries"[24] despite the fact that these are the two largest groups who would receive protection under the amended system;[25]
- The pervasive myth that fair use would solely benefit international corporations or that the Commission is giving in to the demands of such organisations. This ignores the fact that the largest benefits to be gained from the introduction of fair use identified in the Ernst & Young Cost Benefit Analysis would accrue to schools, universities and libraries, with the use of orphan works alone providing benefits of between $10.3 million and $20.6 million per annum.[26] It also ignores the existence of Australian-based technology companies such as Redbubble, Envato and 99Designs, which all currently operate at a regulatory disadvantage to their international peers.
- The claim that "if Australia adopts fair use, authors would make no money from their work."[27] This belief is driven both by media statements that fair use makes all use of copyright work free[28] and by the Price Waterhouse Coopers report commissioned by rightsholder groups which assumed that the introduction of a fair use exception would mean all statutory licence payments would cease.[29] The Commission itself pointed out the flaws in the modeling and conclusions of this report (179), as did other submitters[30] eg that other countries have adopted fair use without impacting their collective management systems.

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http://www.canberratimes.com.au/comment/the-innovation-this-government-doesnt-want-20161219-gte2ds.html

[24] This statement was made in an advertisement that appeared in the Australian on 29 August 2016, which was signed by18 stakeholder groups, including You can see the full text of the advertisement online here: https://twitter.com/CopyrightAgency/status/770423904187940865

[25] See, for example, the open letter signed by 25 organisations across the education, cultural and technology sectors supporting the safe harbour extension in February 2016: http://digital.org.au/content/education-cultural-and-tech-sectors-support-safe-harbour-extension-0

[26] Ernst & Young, Cost benefit analysis of changes to the Copyright Act 1968, April 2016 p.xi

[27] Quoted from Jenna Price, "The innovation this government doesn't want", Canberra Times, 19 Dec 2016 http://www.canberratimes.com.au/comment/the-innovation-this-government-doesnt-want-20161219-gte2ds.html

[28] See Greg Holfield "If you want Australian writers and illustrators to be treated fairly, you should be outraged" 14 June 2016 *Adelaide Now* http://www.adelaidenow.com.au/news/opinion/greg-holfeld-if-you-want-australian-writers-and-illustrators-to-be-treated-fairly-you-should-be-outraged/news-story/83424de98b5ef0a44cb397fb551909d2 ; Jenna Price, "The innovation this government doesn't want", Canberra Times, 19 Dec 2016 http://www.canberratimes.com.au/comment/the-innovation-this-government-doesnt-want-20161219-gte2ds.html; Adam Suckling "Good for Lawyers, Bad for Creators" *ArtsHub* 23 May 2016 http://www.artshub.com.au/news-article/opinions-and-analysis/grants-and-funding/adam-suckling/good-for-lawyers-bad-for-creators-251347

[29] http://www.pc.gov.au/__data/assets/pdf_file/0010/195850/sub133-intellectual-property-attachment.pdf

[30] See PC Inquiry submission DR149, "Evaluating the Benefits of Fair Use: A REsponse to the PWC Report on the costs and benefits of "fair use"" by Peter Jaszi, Michael Carroll, Sean Flynn, Michael Palmedo, Kim Weatherall & Ariel Katz http://www.pc.gov.au/__data/assets/pdf_file/0010/198361/subdr149-intellectual-property.pdf

Such statements, though incorrect, have had a strong impact on public perception of the report, especially among members of the arts community, raising fears that the Commission has effectively called for the removal of all copyright rights and the cessation of all royalty payments. This has understandably caused alarm for individual creators, and a degree of opposition that we believe would not have occurred if the Commission's recommendations were being accurately represented.