

Submission in comment on the Productivity Commission's *Intellectual Property Arrangements, Draft Report*, dated April 2016

Australian War Memorial

The Australian War Memorial refers to its previous submissions in respect of reform of the *Copyright Act* (1968) (being AWM Submission on the *Copyright & The Digital Economy Issues Paper 42*; AWM Submission on the *Copyright & The Digital Economy Discussion Paper 79*; and AWM Submission on the *Copyright Amendment (Disability Access and Other Measures) Bill 2016 (Exposure Draft)*, dated 12 February 2016, all attached), and consistent with these prior submissions, makes the following specific comments on the Productivity Commission's *Intellectual Property Arrangements, Draft Report*, dated April 2016.

Draft Recommendation 4.1 / Unpublished official records

The Australian War Memorial welcomes and strongly supports Draft Recommendation 4.1, which would bring the duration of copyright subsisting in unpublished works – currently perpetual – in line with that of published works. This recommended amendment would create a major efficiency for the Memorial.

We seek clarification as to how Draft Recommendation 4.1 would apply to unpublished works in which the Crown is the owner of the copyright. We draw the Productivity Commission's attention to Schedule 3, Section 9 of the *Copyright Amendment (Disability Access and Other Measures) Bill 2016 (Exposure Draft)*, which repeals s180 of the *Copyright Act* (1968), with the effect of limiting the duration of Commonwealth or State Crown copyright in unpublished original works, which is currently perpetual, to 50 years after the calendar year in which the work is made – the same duration as for Crown copyright in published works.

We strongly support such a limitation of the duration of the Crown's copyright in its unpublished works and the Bill's proposed term of 50 years after the calendar year in which the work is made. The proposed amendments would end the perpetual copyright in unpublished official documents and would thereby create a major efficiency for the Memorial and the Department of Defence, which currently expend significant resources in dealing with copyright permissions.

Draft Recommendation 5.3 Fair Use

The Memorial is supportive of Draft Recommendation 5.3, which would see the current fair dealing exceptions replaced with a broad exception for fair use. In our view, a fair use exception should be broad and flexible, with defined fairness factors and a non-exhaustive list of illustrative purposes. It is understood that the fair use exception would be available for appropriate internal administrative and preservation uses and for making the Memorial's collection available to the public.

Any adoption of fair use should be carefully framed so as to avoid inadvertent removal or watering-down of uses currently available under existing exceptions. Fair dealing provides clear and guaranteed use of copyright material that does not have to be assessed against fair use. With the introduction of fair use, any list of illustrative uses must be as clear and at least as encompassing as the current fair dealing exceptions.

Whilst the draft report reads as though the Commission intends for a broad and flexible fair use exception to replace existing exceptions, in our view, specific exceptions for libraries and archives should remain. There should be libraries and archives exceptions that are guaranteed and do not have to be assessed against fair use. Uses not covered by specific libraries and archives exceptions should be considered under a fair use exception. For example, the capacity to quote from published and unpublished works is a use not adequately covered by specific libraries and archives exceptions and should be included under a ‘fair use’ exception with illustrative uses as a guideline.

Fair use should expand on the flexibility and uses currently available under s200AB. It should include the capacity for cultural institutions and the public to more broadly manage and use orphan works held in National Collections. The ‘reasonably diligent search’ should be flexible according to the use and should be defined by the cultural institution managing the work.

Another way the adoption of a fair use exception would assist the Memorial is that it would free up the significant resources we currently expend as the public use us as a first port of call for copyright information in relation to the collections we hold. Please also see our further comments on this point in respect of ‘orphan works’, below.

Fair Use and Orphan works

In relation to ‘orphan works’, the Memorial supports the Commission’s preference for a ‘fair use exception’ approach over that of a licensing system. In the view of the Memorial, licensing would add a prohibitive layer of costs, without any reduction in the staff time necessary to perform a diligent search for any copyright holder. From the users’ perspective – authors, researchers and publishers – they will be able to research and utilise the collection more efficiently and with less anxiety. A vast majority of the collections held at the Memorial are orphan works that are unable to be used by authors and publishers due to copyright constraints.

Information Request 5.3 – Education and Statutory Licensing Schemes

The Memorial supports the Commission’s Information Request 5.3 looking at the effectiveness and efficiency of the education and government statutory licensing schemes. The Memorial considers any extension of licensing over its collections, where no licensing currently exists, and whether by statutory license or by voluntary collective licensing, as prohibitive to the management and use of those works. Works held in the cultural institutions are often of little economic value but have high cultural value and are of public interest. The majority of the Memorial’s National Collection is characterised by these works. Extending licensing over these collections imposes an economic value

that is artificial and inflated and would put digital preservation of and digital access to these collections beyond the Memorial's resources.

The Memorial's current dealings with copyright owners of unpublished written works in the collection for a major digital preservation project *Anzac Connections* has provided good evidence on how owners would like the Memorial to manage and use its collection. In this project hundreds of individual private records (personal letters and diaries) held by the Memorial are being made available to the public free of charge online for research and study purposes. When copyright permissions were sought for these collections, in each case, permissions were given and the economic value and remuneration for this material was not of concern. These collections were generally donated as a memorial to the creator and of most concern to the descendants is the Australian War Memorial's ability to preserve the collection for posterity and make it available for research.

The Australian War Memorial feels the sentiment that we have received from copyright owners regarding *Anzac Connections* can be extended to unpublished orphan works in the collection. Extending licencing over works implies that the most important aspect in the use of a collection is remuneration. The Memorial, however, considers its relationship with creators of these works or their descendants as most important. Licencing of works would only achieve a prohibitive layer of costs in royalty fees for the Memorial. The Memorial would still have to perform a reasonably diligent search for the copyright owner.

The Memorial's view is that exceptions should apply to collections held in cultural institutions whether a license is in place or not. Acquisition and preservation of collections by cultural institutions should not be subject to a statutory license and royalties.

Exposure Draft

The *Copyright Amendment (Disability Access and Other Measures) Bill 2016 (Exposure Draft)* proposed specific amendments to the *Copyright Act (1968)* that would have significant impact on the preservation, administration, and research and other access and use of the material held in the National Collection of the Australian War Memorial. Our attached submission on that draft makes detailed comment on the specific amendments made in the *Exposure Draft*. Rather than repeat these here, we respectfully request that the Commission review this submission as it proceeds to finalise its report on Australia's Intellectual Property Arrangements.

Draft Recommendation 15.1

The Memorial would like to ask how Draft Recommendation 15.1, which recommends 'free access through an open access repository for all publications through governments, directly or through university funding, within 12 months of publication' would affect research projects conducted by cultural institutions. We note that the Commission restricted its discussion in Chapter 15 to 'research agencies and universities', and the Memorial is neither of those; it is nonetheless a research institution as evidenced by its role in the production of the official histories of Australia's

conflicts and peace-keeping operations and its other research outputs and research collaborations. Our research collaborations are frequently with universities – for example, we are currently in two ARC-funded research projects with the Australian National University – and we understand that other cultural institutions form similar partnerships.

Tim Sullivan
Assistant Director, Branch Head National Collection

List of Attachments:

Attachment 1: AWM Submission on the *Copyright & Digital Economy Issues Paper 42*

Attachment 2: AWM Submission on the *Copyright & the Digital Economy Discussion Paper 79*

Attachment 3: AWM Submission on the *Copyright Amendment (Disability Access and Other Measures) Bill 2016 (Exposure Draft)*



Copyright and the Digital Economy (IP 42)

The Australian Law Reform Commission (ALRC) is to consider whether existing exceptions and statutory licences in the *Copyright Act 1968* are adequate and appropriate in the digital environment and whether further exceptions should:

- recognise fair use of copyright material;
- allow transformative, innovative and collaborative use of copyright materials to create and deliver new products and services of public benefit; and
- allow appropriate access, use, interaction and production of copyright material online for social, private or domestic purposes.

In response to the government's intention to review the current exceptions in the *Copyright Act 1968* outlined in Issues Paper (IP 42), this paper will outline some of the main issues that the Australian War Memorial faces when managing public access to the National Collection in the digital environment and how we have used the flexible exception Section 200AB (S.200AB) as part of our digital preservation program.

Introduction

The Australian War Memorial is an experienced leader in digitisation for preservation and access. The Memorial has a digital preservation program that has now been in place for over a decade. We have digitised over two million pages of archival records to preservation level and for some time pursued a program of publishing these documents on our website. This serves to preserve the original documents from handling and decreases the amount of staff resources required to service public enquiries for the most commonly used items.

Cultural institutions are required to comply with the *Copyright Act 1968* and this often places them in direct conflict with their mandates to manage, preserve and provide access to collections using digital technologies. Until S.200AB of the *Copyright Act* was introduced in 2006, the Memorial only provided web access to those documents for which there was clear copyright ownership. This has skewed our digital preservation program in the past towards official records or collections where the Memorial owns the copyright. The Memorial has found that the use of S200AB in part has addressed the conflicting requirement to digitally preserve its collections while adhering to our obligations under the Copyright Act. With the introduction of S200AB the Memorial now has more scope to broaden the ways in which copyright material can be used for socially beneficial purposes.

Digitisation for the purpose of storage, preservation and access:

The Copyright Amendment (Digital Agenda) Act 2000 confirmed that converting a work into, or from, a digital form reproduces the work. This has significant implications for libraries and archives wishing to digitise collection material in order to preserve it, store it or provide greater access. The following example illustrates this point: While one digital copy of an original work may be created under the existing exceptions, Digital Asset Management

Systems (DAMS) that conform to appropriate preservation standards generally require two separate storage devices to constantly compare against each other for notification of any change or corruption. If S200AB does not apply to this preservation requirement there is no other provision in the Act that covers the making of a second preservation copy.

To date the Internet is our most expedient tool for conveying collection material to remote users. While the *Copyright Act 1968* provides for some communication of specifically requested material, general collection material can only be displayed on the Memorial's web site if permission from the copyright owner has been obtained or if S200AB applies.

Presently, this permission is sought at the point of donation however the retrospective investigation required to seek permission for the vast majority of the National Collection is impractical, and while the Memorial's objective is not to recreate all of its collection as a virtual museum or archive, it does wish to provide comparable access to its collections to remote users as mandated under our Act.

Copyright protects equally works of economic value as well as those of no economic value. Due to the Free Trade Agreement (FTA) with the US all works are now protected for an extended period of 70 years after the death of the creator or, if unpublished, protection is granted in perpetuity. Works of little economic value however often have cultural value and are of interest to the public at large. It is true to say that majority of the Memorial's National Collection is characterised by these works.

Where a copyright owner is unknown and/or the work is very old the resources involved to attempt to trace them can be prohibitive and the investigation is often fruitless.

In the case of Private or Official Records in the Memorial's care, the problem is usually compounded by the presence of embedded works belonging to additional unknown parties. Since 2009 the Memorial has begun using S.200AB to make some of these works available online for non-profit research purposes. However, the exception S.200AB is limited and therefore the full potential of how our collections can be used is also limited.

Some of the problems identified with S.200AB include:

- The Act assumes that everyone has commercial intent with copyright.
- There is confusion as to how S.200AB overlaps with existing exceptions.
- Exceptions need to be used or you lose them. S.200AB has not been widely taken up – many institutions still don't know how to use it and instead are doing a risk analysis and ignoring the exception all together.
- S.200AB doesn't allow commercial use – where as if we had a US style 'Fair Use' exception it would allow commercial purposes.
- The exception is only available to archival and education institutions.
- Institutions are too focussed on exceptions being about protection against infringements – where as we tend to overlook the fact that the exceptions are an important part of the Act and should consider them more as a public right.
- S.200AB is a flexible exception – with flexibility comes uncertainty.
- There is a growing stake in transformative uses (remixes) of material for museums, libraries and archives. How does 200AB help/not help this?
- Why are our cultural institutions so risk averse in using the exceptions?
- US style 'Fair Use' is also a flexible exception – and would involve risk analysis and interpretation.

Thoughts on an open-ended 'fair use' style provision:

- Uncertainty for copyright owners and users due to emphasis on judicial precedent, until development of Australian case law

- Expensive for copyright owners and users to defend
- Fair use is technologically neutral
- An open ended provision may not fix all of the problems outline above - It may not be enough to address those particular deficiencies which libraries and archives wish the law to address
- The emphasis on precedent requires case law to be built up which takes time and money for both copyright owners and users
- Less frequent need for legislative review (as courts address changes in society and technology)
- The Judiciary may be reluctant to take over what has been up until now in Australia the traditional legislators' role of determining what is "fair".
- "Fair use" is in line with the US law and therefore in harmony with the FTA
- Addresses private copying issues (i.e. time and format shifting)

Collecting Societies

Existing Collecting Societies have approached cultural institutions in recent times offering licences for orphan works as a means of copyright protection. This is generally seen as an unworkable solution. Licensing adds a prohibitive layer of costs in fees for institutions and it does not mean that institutions are no longer required to perform a diligent search for the copyright owner. Therefore licensing adds to the production cost of any digitisation project without reducing the staff time in researching copyright.

The ideal reform of the *Copyright Act 1968*

The ideal reform of the *Copyright Act 1968* would be to have a provision whereby an individual unpublished literary work moves into the public domain following 50 years of donation into a public institution.

Conclusion

The *Copyright Act 1968* as it currently exists imposes unnecessary costs on cultural institutions, interferes with day to day management of our collections, and puts the cultural institutions in a position between serving the needs of the creator and the user. Using unpublished literary works held in archival institutions can lead to a great deal of expense to pursue permission when it is not required. The costs are often born by the cultural institution in making available collections through expending resources on onerous research to establish rights.

There is a climate of uncertainty around how cultural institutions can use the copyright exceptions. This leads to overcautiousness on behalf of the cultural institutions, which has a direct impact on the public who use the collections. Museums, libraries and archives would feel more secure when providing access to orphaned works in their respective collections, or creating copies for the purpose of preservation, storage or access, knowing that there are provisions in the Copyright Act that are very defined. However, the more black and white we make the exceptions the less they will fit the majority of purposes. The Australian War Memorial requires a flexible exception, such as S.200AB, to manage and digitally preserve our orphan works and make them available to the public.



Copyright and the Digital Economy (DP 79)

The Australian War Memorial is pleased to provide the following submission to the Australian Law Reform Commission's (ALRC) Second Discussion Paper (*DP79*) on *Copyright and the Digital Economy*.

The Memorial makes this submission to ensure it can continue its mandate to manage, preserve and provide public access to its collections using digital technologies under the *Copyright Act 1968* and also to improve this ability by broadening the exceptions in the Act.

Introduction

The ALRC inquiry has offered in (*DP79*) two main solutions for managing copyright into the future - the implementation a US style fair use exception and extending copyright licencing.

The use of digital technologies plays a vital role in the Memorial's mandate to manage, preserve and provide access to its collections. Any reform to the *Copyright Act 1968* must take into account the financial and ongoing impact on cultural institutions to comply with the Act. Copyright treats and protects equally works of economic value as well as those of no economic value. National Collection material does not always have great economic value but does have highly significant cultural value and not all uses of copyright material should be remunerable.

The Memorial considers the introduction of a US style fair use exception as potentially broader and more useful than the existing flexible and fair dealing exceptions. This exception should be used for both internal administrative and preservation uses and for making the collection available to the public. However, any proposed extension of voluntary licencing will make fair use unworkable if it negates the exception or what is currently available under the free exceptions.

Fair use exception

One of the key ALRC proposals is the repeal of the existing fair dealing and flexible exceptions and adoption of a general and flexible fair use exception.

The Australian War Memorial currently relies on the use of fair dealing to carry out its day to day business in communicating its collections to the public. The Memorial also uses the flexible exception S.200AB to accommodate new technological uses of copyright material

(such as, digital preservation, social media and search), to deal with copyright material when the creator cannot be located and to provide use of copyright material for research and educational purposes.

The Memorial supports proposal 4.2, 4.3 and 4.4 that the *Copyright Act 1968* should provide a broad, flexible exception for fair use with defined fairness factors and the non-exhaustive list of illustrative purposes. The adoption of fair use should not water down what is currently available under existing exceptions. Fair dealing provides clear and guaranteed use of copyright material that does not have to be assessed against fair use. With the introduction of fair use the ALRC's proposed list of illustrative uses must be as clear and at least as encompassing as the current fair dealing exceptions.

Fair use should expand on the flexibility and uses currently available under S.200AB. It should include the capacity for cultural institutions and the public to more broadly manage and use orphan works held in National Collections. The 'reasonably diligent search' should be flexible according to the use and should be defined by the cultural institution managing the work.

Using the existing exceptions in the Act the Memorial currently supplies digital copies of its collections on CD for research and study purposes. Proposals that cultural institutions take measures to enforce limiting further communication of material by the public (Proposal 11-7) would place an unreasonable economic and resource burden on the Memorial. To use technology to limit further communication of this copyright material by the public, or limit the time accessible would be prohibitively expensive and logistically impossible. Notifying the user of the requirements of copyright law should be considered sufficient.

The capacity to quote from published and unpublished works is a use not adequately covered by specific libraries and archives exceptions and should be included under a 'fair use' exception with illustrative uses as a guideline.

The Memorial supports proposal 11-2 and 11-3. Specific exceptions for libraries and archives should remain. There should be libraries and archives exceptions that are guaranteed and do not have to be assessed against fair use. Uses not covered by specific libraries and archives exceptions should be considered under a fair use exception.

Licencing

The ALRC proposes reform of the statutory licence schemes under the Act which allows for certain uses of copyright material without the permission of the rights holder, subject to the payment of reasonable remuneration. The discussion paper (79) proposes the repeal of the statutory licences for government, educational institutions and institutions assisting persons with a print disability and recommends that licences for use by these institutions be negotiated voluntarily with the copyright holders.

The Memorial considers any extension of licencing over its collections, where no licencing currently exists, as prohibitive to the management and use of those works. Works held in

cultural institutions are often of little economic value but have high cultural value and are of public interest. The majority of the Memorial's National Collection is characterised by these works. Extending licencing over these collections imposes an economic value that is artificial and inflated and would put digital preservation of and digital access to these collections beyond the Memorial's resources.

The Memorial's current dealings with copyright owners of unpublished written works in the collection for a major digital preservation project *Anzac Connections* has provided good evidence on how owners would like the Memorial to manage and use its collection. In this project hundreds of individual private records (personal letters and diaries) held by the Memorial will be made available to the public free of charge online for research and study purposes. When copyright permissions were sought for these collections, in each case, permissions were given and the economic value and remuneration for this material was not of concern. These collections were generally donated as a memorial to the creator and of most concern to the descendants is the Australian War Memorial's ability to preserve the collection for posterity and make it available for research.

In relation to question 11-1 in the discussion paper voluntary extended collective licensing should not be introduced to facilitate mass digitisation projects for preservation and public access online. The Australian War Memorial feels the sentiment that we have received from copyright owners regarding *ANZAC Connections* can be extended to unpublished orphan works in the collection. Extending licencing over works implies that the most important aspect in the use of a collection is remuneration. The Memorial, however, considers its relationship with creators of these works or their descendants as most important. Licencing of works would only achieve a prohibitive layer of costs in royalty fees for the Memorial. The Memorial would still have to perform a reasonably diligent search for the copyright owner.

Licencing places an economic value on every item which most likely did not previously exist. The payment of royalties would prohibitively add to the production cost of any digital preservation and public access project without reducing the staff time in researching copyright.

Free exceptions should apply to collections held in cultural institutions whether a licence is in place or not. Acquisition and preservation of collections by cultural institutions should not be subject to a statutory licence and royalties (Proposal 6-1). Any new exception should permit libraries and archives to make copies of any copyright material for the purposes of preservation, without limits based on on format or number.

Collecting societies

Greater transparency and accountability is required of collecting societies, especially if extended licensing is introduced. In particular access to their membership databases and clarity around how members' claims to copyright are ascertained would be of great benefit. Perhaps also of benefit would be the eventual return to the cultural institution of licence fees applied to orphan works for which an owner does not come forward.

Expiry of copyright in unpublished works

Unpublished works are in perpetual copyright until published. This is an issue for older unpublished works in the National Collection and particularly for orphan works as institutions holding the materials often cannot publish them because the authors are unknown or untraceable. Current laws of most countries set a standard limit on the duration of copyright in unpublished works. Reform to the Act should consider aligning Australian Copyright Law with the copyright statutes of most other countries in relation to unpublished works.

The Memorial supports the ALRCs model for fair use of unpublished works. Under the fair use exception proposed (11.36), unpublished does not rule out the case for fair use. Whether a use is fair will be determined by the fairness factors, including the nature of the use; the amount that is copied; and the impact on any potential market for the material.

For question 4.1 –‘what additional uses or purposes, if any, should be included in the list of illustrative purposes in the fair use exception?’ The Memorial proposes an additional illustrative use for using unpublished works deposited in cultural institutions for over 50 years to enable digital preservation and public access online. This would facilitate the long term preservation of culturally and historically significant material held in cultural institutions and enable broad public access to those collections.

Given the enormous amount of resources cultural institutions put into the ongoing management of unpublished works, including conservation, housing, cataloguing, digital preservation and facilitating ongoing public access any reform to the Act could also consider an exception whereby an individual unpublished work moves into the public domain following a period of time after donation into a public institution. The Memorial proposes 50 years duration.

Conclusion

The Australian War Memorial in its response to Copyright and the Digital Economy (IP 42) outlined its main concerns with the Copyright Act 1968 in preserving and managing the National Collection in the digital environment. It discussed that Act, as it currently exists, imposes unnecessary costs on cultural institutions, interferes with day to day management of its collections, and puts cultural institutions in a position between serving the needs of the creator and the user. Establishing rights in order to use works held in cultural institutions can lead to a great expenditure of resources in pursuing permissions, these costs are born by the cultural institution.

In response to (DP79) the Australian War Memorial considers the introduction of a US style fair use exception as potentially broader and more useful than the existing flexible and fair dealing exceptions. However, the illustrative uses must be as clear and at least as encompassing as the current fair dealing and flexible exceptions. Any proposed extension of voluntary licencing will be unworkable for cultural institutions particularly if it negates the fair use exception or what is currently available under the free fair dealing exceptions.

The Memorial asks that the ALRC consider an exception whereby an individual unpublished work moves into the public domain following 50 years of donation into a public institution.

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BY EMAIL - copyright@communications.gov.au

Ms Kirsti Haipola
Director
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Dear Ms Haipola,

Submission on Exposure Draft: Copyright Amendment (Disability Access and Other Measures) Bill 2016

The Australian War Memorial welcomes the release of the Exposure Draft of the Copyright Amendment (Disability Access and Other Measures) Bill 2016 and appreciates the opportunity to comment to the Department of Communications and the Arts.

The Memorial has provided input into the CICI submission and two submissions to the Australian Law Reform Commission review in 2012 and 2013. This submission addresses aspects of the Bill which are expected to affect the preservation, administration, and research and other access and use of material held by the Australian War Memorial.

Consideration should be given in the Bill as to whether it is necessary to maintain the distinction between the cultural institutions which are libraries or archives and galleries and museums. For example, a collection of First World War letters and diaries held by a local army museum should be treated in the same way as the private records collections held in the Memorial's archive. The Australian War Memorial like most cultural institutions is a museum, archive, gallery and library.

Duration of copyright

The duration of copyright rules ending copyright protection of many "works" from 2018 should partially address the Memorial's dealings with 'orphan works'. The Memorial, however, would recommend consistent rules for all 'works' and 'subject matter other than works' including audio visual material. Proposed amendments to end perpetual copyright in unpublished works, and changes to S.180 enabling official documents over 50 years to move out of copyright, would create a major efficiency for the Memorial and the Department of Defence which together expend a great deal of resources in dealing with approvals for copyright usage of First and Second World War records.

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Here is their spirit in the heart of the land they loved; and here we guard the record which they themselves made. C.E.W. Bean

Preservation and Access

The Memorial welcomes the changes to enable more than one preservation copy. While one digital copy of an original work may be created under the existing exceptions, Digital Asset Management Systems (DAMS) that conform to appropriate preservation standards generally require two separate storage devices to constantly compare against each other for notification of any change or corruption. Usually most cultural institutions will also require a third back up copy of its digital archive stored offsite.

Each section of the Bill appears to limit copyright dealings for preservation or research purposes by requiring that a "preservation copy" or "research copy" be in electronic form. The Memorial regularly provides paper copies of collections to members of the public who do not have access to computers. The Memorial requires flexibility to preserve and facilitate research in analogue form and/or electronic form.

A restriction to deal only with copyright subject matter existing in "original form" is not practical for preserving and providing access to the Australian War Memorial's collections. The Memorial holds many collections that would be considered non-original but are the only remaining copies in existence. Some examples include research papers that usually hold copies of third party material. This material may not be original but is now forming part of a whole collection and requires preservation and access equally with original material. For example, First World War letters and diaries copied by the Memorial in the 1920s and 1930s for the collection are in many cases the only known or surviving copies.

The introduction of the requirement of 'public accessibility' is not practical for the Memorial. The Memorial's collections include material not accessible to the public, for example, donated personal records embargoed for public access, usually by the donor for specified periods, and collections closed for public access under the Archives Act.

It is understood that s 113J(2)(d) limits copyright dealings for the purposes of research by requiring a "research copy" to have controls so that it cannot be copied electronically by any person or communicated to the public. The Memorial requires the capacity to communicate digital research copies of material beyond the limits of a dumb terminal in the library. Access to research material for veterans and the wider public should be affordable otherwise it is inequitable, and the ability to email research copies to members of the public is a benefit to the disabled and those who may be financially unable to make a trip to Canberra. The public requires broad access to the Memorial's collections beyond this institution's walls in Canberra.

Complexity of Copyright Act 1968

It seems that the Copyright Act 1968 is of far greater complexity than most copyright law in other countries. Australia's librarians and archivists are bound up in working through this unnecessary complexity in order to preserve, administer and provide access to the collections. We must work towards simplifying the Act rather than adding more and more exceptions.

The Australian War Memorial welcomes proposals to modernise Australia's copyright law to better reflect the ways in which Australians access and use collections held in our cultural institutions, and to reduce the excessive administrative burden of dealing with such a complex system and the consequent waste of resources should be better applied to enriching the collections themselves.

Yours sincerely,

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