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RESPONSE BY MACMILLAN SCIENCE AND EDUCATION AUSTRALIA TO THE PRODUCTIVITY COMMISSION ISSUES PAPER OCTOBER 2015: ‘Intellectual Property Arrangements’

Macmillan Science and Education believes that the statutory licence arrangements and copyright law as it currently stands as part of the intellectual property system provide appropriate incentives for innovation, investment and the production of creative works, while ensuring that further innovation, competition, investment and access to goods and services are not unreasonably impeded.

Australia’s statutory licence system is efficient and effective for educators and fair for content creators.

Our existing system is unique in the world. For a minimal cost, teachers can source, copy and share an incredible range of material without worrying about copyright permissions. This means that all Australian students, regardless of economic background, have unparalleled access to high quality, locally-produced educational resources, while rightfully compensating professional Australian content creators for their skills, services and expertise. This is not limited to authors, but editors, proof-readers, designers, illustrators, typesetters, digital content creators, not to mention in-house publishing professionals in a wide range of highly skilled roles. This essential copyright provision helps to drive the continued creation of innovative, quality educational content and delivery systems and supports a healthy Australian economy. The point regarding locally-created content should not be overlooked. Local content creators take care to understand the needs of local teachers and students, balancing this with the requirements of state and national curricula, ensuring that resources are not only accurate in subject matter but in curriculum coverage, updating the content as required to support teachers in their delivery of courses and support students as they learn.

Australia’s exceptionally efficient and simple copyright licensing system allows approximately 373,300 (www.abs.gov.au) teachers and school staff at 9,480 schools around the country to legally copy approximately 1.2 billion pages of content every year without having to seek permission. This is in addition to 40 universities and 1050 other educational institutions.

The statutory licence enables educators to copy and share all material available to them, from Australia's small specialist educational publishers, to the larger publishers and from a variety of other sources as they desire.

The ALRC's review, Copyright and the Digital Economy initially suggested the removal of the statutory licence but later recommended the system be retained as it discovered the major beneficiaries – teachers and educational content creators – would be greatly disadvantaged by such a change.

The educational systems to which those teachers belong pay a flat annual fee for the use of the copyright. This equates to just under \$17 per student per year, an amazingly cheap rate that allows copying of approximately 350 pages, per student, per year! That payment is collected by the government-appointed Copyright Agency and returned to the copyright owners. This system often takes the place of schools buying multiple copies of textbooks and is also useful for teachers wishing to cherry-pick from a wide range of resources and tailor-make lessons for their particular group of students. Under the statutory licence system Australian educators have access to an enormous range of content at about a quarter of the commercial cost of a textbook. Teachers can copy and share content at a far reduced rate than they would if they were required to purchase the textbooks included in the licence. Teachers are enabled to work within budgets while still providing students with the broadest possible educational experience through a range of quality-assured resources.

The costs associated with negotiating and managing separate licences for all this material would far exceed the licence fees currently paid.

There's nothing stopping educational institutions making alternative arrangements with publishers and content creators under current law. The statutory licence is available for them to use, if they choose, where they don't have these arrangements or are unable to manage the process. It should be noted that the system is already very well used by schools, and has been proven over time to work well and efficiently.

Based on the Gonksi Report, depending on the sector, it costs between \$10,000 and \$13,600 per year to educate a school student (excluding capital expenditure). The copyright fee to schools of \$60M for over 3.5 million school students represents approximately 0.1% of that cost, or less than 10 cents per school day per student.

A survey system samples schools' usage to determine how much and what has been photocopied and shared digitally. The system has been designed to operate with minimal burden on teachers. The data collected from this over many years is valuable in ensuring correct and fair compensation to content creators. The system is efficient, refined and will continue to improve over time with the right support and effective cooperation between Copyright Agency and educational authorities.

The statutory licence system is current, and evolves to stay that way

The statutory licence system has been modified numerous times to take into account changes in the way material is shared and copied to ensure the system remains fair. The licences are negotiated every three-to five years, and at that time, Copyright Agency considers and tries to accommodate education system requests for modifications to the system. In the event that discussions fail to achieve a mutually beneficial outcome, the rate and other licence terms can be set by the Copyright Tribunal. This has occurred rarely, however, in the 30-year history of the statutory licence.

The former Attorney-General, Lionel Bowen, explained the scheme to the Parliament in 1988:

'While copyright owners should not be called upon to subsidise the educational needs of the public, there should be as few obstacles as possible to access to educational materials.' The statutory licensing scheme in Part VB of the Copyright Act provided a mechanism 'whereby the interests of copyright owners will be balanced against the interests of educators in the most efficient manner possible.' (Hansard, 3 Nov 1988)

This statement still applies today, as the statutory licence processes evolve over time to meet the type of copying including digital that is now being done in schools, and copying will be done into the future regardless of formats.

The education system may not like having to pay the licence fees, but in reality it offers them incredible value for money and flexibility. If there was no copying being done there would be no need for the licence. It has been argued that copyright regulations stifle innovation. We would say the opposite is true – fees that publishers and other content creators receive for educational products are used to invest in new educational resources, online and in print. Any reduction or elimination of payment for usage will potentially stifle innovation as the funds available to re-invest reduce. This especially impacts small publishers but also larger ones who have a long history of success in supporting Australian education.

At this point in time Macmillan Education considers the compensation it receives from the Statutory Licence to be fair and equitable for the use of its resources in schools and the sales forfeited.

There are various incorrect assumptions that are often made about the way in which remuneration has been set at an 'equitable' level. A submission to the ALRC by the Copyright Agency explained some of these inaccuracies. Macmillan endorses this view.

Misunderstanding	Fact
Schools pay up to four times more in copyright fees to deliver education using digital technologies than using paper copies	'technical copies' are not 'remunerable'; compensation to creators is based on 'consumption'; the value of a copy displayed to many students through a learning management system to an electronic whiteboard or individual tablets is greater than the value of a photocopy used by one student.
Schools have to record technical copies in surveys of usage	Copyright Agency has never sought this; The survey design, and the processing of usage data, is agreed between Copyright Agency and the educators' Copyright Advisory Group.
Schools pay millions of dollars to use content freely available on the Internet	Only content used in reliance on the statutory licence taken into account for compensation to creators; Content available under 'open' licences like Creative Commons is excluded; The proportion of overall compensation relevant to internet content is 6%.

Writing a quote from a book on an interactive whiteboard must be paid for out of education budgets	Copyright Agency has never sought payment for this, even if there were a way to measure it.
Equitable remuneration is determined according to how much material is available rather than how much is consumed	Flat fees negotiated for agreed periods are based on estimates of consumption;

Online is not always 'free'

Just because material is online, does not automatically make it free. In fact, website copyright notices often state what can and can't be reproduced. Changing the Australian system to a US-style interpretation of use may mean that publishers and other content creators have to 'lock up' their content behind firewalls, making access for teachers more complicated. This goes against the need for easy-to-access local resources for teachers to use flexibly. Hence any proposed system change will potentially be self-defeating.

The statutory licence scheme does not require payment for content that is identified as free for educational use or available under creative commons licences.

Copyright enables the continued investment in world-leading Australian educational content

Australian educational publishers are world class and their products are highly valued.

Macmillan Education engages authors who are practising Australian teachers to create first-class content that is current, cutting edge and local. Macmillan also engages hundreds of local freelance editors, illustrators, designers, photographers, animators and other professionals to help us produce our products. Our products are focussed on Australians, Australian issues and local curricula. These materials are highly valued as shown through their use in schools, and the creators should be duly compensated, equitably, just as any other goods or service provider would be.

The Australian Publishers Association 2014 Industry Report stated that Copyright Agency payments contributed 7.3% of revenues to the schools sector, but equivalent to 43.4% of net profit. In a highly competitive industry where net profit margins average 7.7%, this is a significant contribution to sustainability of the industry. Much of these Copyright Agency payments are reinvested in development of further resources. It is clear to those in the industry that without Copyright Agency payments many publishers would not exist, and neither would many of the freelance professionals that they use to produce published resources for schools.

Current copyright law helps sustain a diverse range of content producers and publishers. This creates a competitive market where publishers strive to stay ahead, raising the bar for quality, driving innovation, in developing products and services to the benefit of the education sector, allowing teachers to select the best resources for their local school and curriculum needs. All parents and all teachers want students to have access to the best Australian educational resources and the statutory licence system ensures content creators are fairly remunerated so that they can continue to invest in and provide high quality educational resources.

How the schools publishing industry works

In summary, Macmillan Education believes that the following estimates are accurate, as compiled by the Australian Publishers Association Schools Committee:

1500+	...staff directly employed by Australian School publishers
800+	...staff have direct classroom teaching, or other school based education experience
2000+	...current practising teachers and education specialists to author and review curriculum matched, age appropriate, pedagogically sound teaching and learning resources
10,000+	local freelance editors, illustrators, designers, photographers, animators, typesetters, proof-readers, developers, printers, academics, researchers, literacy and numeracy experts, consultants, assessment providers, professional development consultants, and other professionals to help us produce and implement our products.
200+	separate subjects have published resources for 13 year levels matched exactly to the Australian Curriculum and often with resources adapted and republished for state based curricula
To ensure relevance to current teaching and learning trends, and technology innovation in schools, the Education Publishing industry has at least 200,000 direct teacher touch-points each and every year via focus groups, workshops, subject conferences, school based displays, product pilots, professional development, training and school visits to the 9,389 schools in Australia.	
At about \$250m p.a. revenues, the Schools Publishing industry provides spectacular value and support to improving the education outcomes of students and implementation of the Australian Curriculum – a cornerstone to improving the overall knowledge, capability and ongoing prosperity of our nation.	

Potential repercussions of a repeal of the statutory licence for schools

Should a recommendation to repeal the statutory licence go ahead, there will immediately be a higher administrative burden for teachers and principals who need to ensure compliance with a range of different ‘voluntary’ licences for content their teachers need to access and copy. Schools currently do not have to check whether what they are copying and sharing requires copyright permission or payments.

Voluntary licences will also create an environment of litigation as authors, publishers, illustrators, animators, photographers and others fight against copyright breaches. Only those with enough resources to fight will be successful. Others risk being put out of business.

The ALRC Commissioner on the Copyright and the Digital Economy inquiry, Jill McKeough, said herself on June 7, 2013[\[1\]](#): “So, if we introduce reforms, there won’t be a lot of case law, there won’t be a lot of precedent, and it’s the difficulty of adjusting to that new environment that copyright owners fear.”

Who then, will develop the case law and set the new legal precedents? Who will mount the challenges and who will benefit from those legal cases? Most likely those large content providers with enough money to do so, while the smaller publishers struggle to survive.

We support the view of the Oxford University Press Australia and NZ Submission that highlights the severe impact seen on businesses in Canada due to the change to a ‘fair use’ approach to copyright. We believe the same result would occur in Australia if ‘fair use’ was to go ahead. ‘Fair use’ does not provide protection for a sustainable local publishing industry.

The ALRC previously has claimed that a voluntary system of licensing will be more efficient. But the reality at schools will be far different.

In this proposed environment, teachers would need to seek permission before copying, and possibly pay a licence fee themselves or from school budgets, or attempt to copy under 'fair use', which will mean necessary testing in the courts to develop benchmarks for what is allowable. Imagine 259,000 teachers around Australia having to stop what they have been doing all their working lives, and rethink whether they can use every resource they now have at their fingertips!

So, teachers will likely go ahead and copy without permission and that situation will be repeated time and again. Which means publishers, authors, illustrators and photographers will inevitably miss out on fair payment for the rights they hold in their work. This is an unfair dilution of the value they contribute to the Australian school education system – considered a robust and advanced system globally.

Potential repercussions of a repeal of the statutory licence for the publishing industry

Without the statutory licence, the industry will shrink, incomes will be eroded and the education system will be faced with diminished quality local content which will be increasingly replaced by foreign material of a more generic nature. The proposed changes could create the potential for cheap overseas imports less tailored and less appropriate for the unique Australian culture we have developed and hold so dear.

If publishers and authors are not paid for their products, many will be unlikely to provide them in future. The photocopying is not just a small thing; a huge part is a substitute for buying a book. Because schools have the licence system, content creators lose real sales – and the statutory licence gives them some recompense for this.

A large proportion of statutory licence income is used by Macmillan to reinvest in future product development, and without the revenue it would be hard to continue business. In this day and age lots of things have become 'free' which might be acceptable in the short-term, but will undoubtedly have long-term effects, especially to individual creators who take risks. Fewer people choosing a creative path and less quality Australian educational content are likely to be two such long-term effects, which is a great concern for future generations.

Publishers, authors and content creators are all passionate about providing good educational outcomes. But that doesn't mean they can do it for free.

They must also be protected with strong copyright laws, that create respect for Copyright in the community, while remunerating producers and copyright and IP owners of content or their efforts and investments so that they can create new high quality content in future,

About Macmillan Education Australia:

Macmillan has been operating in Australia for over 100 years. Macmillan's school publishing business Macmillan Science & Education Australia is one of the leading educational publishers in Australia.

Formally established over 45 years ago, it has a vigorous publishing program catering to the needs of primary and secondary schools both locally and globally. Our head office is in Melbourne, with sales offices in Sydney, Brisbane, Adelaide, Perth and New Zealand.

Dedicated to working 'With learners for life', Macmillan Education collaborates with educators, authors and curriculum specialists to develop content of the highest quality in both print and digital formats. All



of our resources have been written and developed by experts, including practicing teachers, to meet the requirements of Australian education systems.

Macmillan Education was named Primary Publisher of the Year at the Australian Educational Publishing Awards for eight years in a row (2007-2014). This award is voted for by teachers and is highly coveted.

Along with its authors, Macmillan relies extensively on the revenue flows from CA to help fund its forward publishing and to ensure their unique local qualities can be maintained.

Peter Saffin, Managing Director