

Productivity Commission Draft Report on Intellectual Property Arrangements 2016

Firefly Education Submission 31 May 2016

This response to the Productivity Commission Draft Report April 2016 focuses on Draft Recommendation 5.3:

The Australian Government should amend the Copyright Act 1968 (Cth) (Copyright Act) to replace the current fair dealing exceptions with a broad exception for fair use.

About Firefly Education

Firefly Education is an independent publisher based in regional Queensland. Formed in 1994, Firefly Education publishes a range of numeracy and literacy student workbooks, teacher resources as well as digital programs for students and teachers. Firefly Education currently has 40 full-time and part-time employees, and works with many authors, freelance artists, photographers and designers. All our authors live and work in Australia.

The effect of change to the fair dealing provision for Australian publishers and authors

Publishers have long been the driving force of innovation in the educational system by providing a wide range of educational texts, resources and online materials for teachers and students. These products are written for current Australian Curricula which require Australian specific references and examples. The survival of educational publishers and authors is dependent on schools and parents purchasing these publications.

The Australian school market is small in comparison to other jurisdictions, and the many state syllabuses, state specific handwriting fonts and mathematical nomenclature make investing in innovative educational materials expensive. However, even in these conditions Firefly Education continues to create new and original materials that cover the requirements of Australian curricula for students and teachers. The ability to do this relies on a reasonable financial return from the sale of books, and royalties from statutory educational licences.

Many schools consider themselves as 'non-textbook' institutions in the hope that teachers will construct their own programs to suit their students. While this is pedagogically admirable, teachers generally photocopy resources that are available from publishers. The strength of the fair dealing provision and the education statutory licence is that it offers publishers and authors fair remuneration for their intellectual property and investment. A change to a 'fair use' system would see unrestricted photocopying and a significantly smaller financial return to publishers and authors.

The retail prices of student materials, particularly in primary education is relatively inexpensive and is driven by competition and common sense. However a change from 'fair dealing' to 'fair use' would see unrestricted photocopying on the quantities teachers can make of any published books. This will lead to fewer books being bought and smaller returns for publishers and authors.

Lack of clarity in the 'fair use' arrangement

The current 'fair dealing' provision provides simple rules for educators when using copyright materials. These rules or exceptions to the Act give educators guidelines about what and how much of copyright material they can copy for use in their classroom or for study. With the educational statutory licences publishers and authors get a fair payment for these copied materials.

The US style 'fair use' system does not provide any guidelines for teachers to copy copyright materials. Teachers and school administrators would interpret this as an unrestricted opportunity to copy any published product.

The Productivity Commission Report seems to infer that if a 'fair use' system is introduced, publishers will seek the courts to provide clarity on the new legislation. However, in reality, publishers will do their utmost to avoid expensive and often lengthy litigation. Instead, Australian publishers will not continue to publish those materials and the void will be filled with imported products. The people most at risk will be Australian teachers and students.

Conclusion

Innovative and high-quality content in educational resources lead to better and more resourceful teaching and greater student achievement. This content is provided by creative authors and sustainable and profitable publishers. The change from 'fair dealing' to 'fair use' as recommended in the draft report has the potential to destroy the financial viability of educational publishers and contributing authors. This could lead to the demise of the Australian educational publishing industry.

In summary, Firefly Education opposes Draft Recommendation 5.3 and fully supports the Australian Publishers Association submission. We believe that an introduction of a 'fair use' system would introduce uncertainty for educators when dealing with copyright materials, a rise in non-specific, generic content and financial uncertainty for publishers and authors.

Peter Stannard
Director
Firefly Education Pty Ltd
31 May 2016