

Submission to the Productive Commission's Report re copyright.

I am writing as an author who receives royalties that would very likely be lost if fair use was introduced into Australia.

If fair use is adopted there would be less Australian content on our screens, on our bookshelves and in our schools and universities. Price Waterhouse Coopers recently estimated that introducing fair use in Australia could result [in a loss of GDP of more than \\$1 billion](#).

Would creators prefer to spend time creating, or going to court?

One of the consequences of exceptions like US fair use is uncertainty and unpredictability for content creators.

The filing of copyright court cases in the US is vastly greater per capita than in Australia, and the fair use exception is raised in a significant and growing proportion of them. An analysis of copyright cases filed in the US in 2014 alone showed a defence of 'fair use' was raised in 43% of the defended cases. By contrast, an analysis of reported cases of the Australian Federal Court between 2006 and 2012 showed that 94 involved copyright, but only four of those referred to a copyright exception as a key issue.

Adopting a fair use doctrine in Australia could lead to universities and schools refusing to pay licence fees for the vast amount of copyright material they now have access to. This would have an adverse effect on the production of Australian educational resources, opening the door for materials dominated by US and British creators.

Canada – a case of what not to do

This situation occurred in Canada and has had an immediate and [profound effect](#) on the production of Canadian-specific material for schools and universities. Critically, schools and universities [will start to rely on US and British educational resources](#).

Evidence from Canada has informed a [report](#) by professional services firm, Price Waterhouse Coopers Australia, in February 2016, which reviewed the costs and benefits of changing to 'fair use'.

The PwC report shows:

- Australian-produced works will decline – with a \$1b+ loss to GDP
- Litigation will rise permanently
- Fair Use could undermine Australia's effective and fit-for-purpose licensing system, providing teachers with unfettered access to global content for less than the cost of a book

Please take note of the thorough and cogent work the Copyright Agency is doing to achieve sensible reform.

Australia's copyright system is world-leading and has proven it can evolve to encompass developments in technology, business practices and consumer behaviour.

There are sensible reforms to the Copyright Act that are already well advanced in an unprecedented collaboration between rights holders, libraries and education institutions.

At the invitation of government, the education sector, together with the Copyright Agency and [Screenrights](#), developed a joint proposal for simplification of the statutory licence for education, and the government has released a draft bill that would implement that joint proposal. This will create solutions that benefit teachers, libraries and people with disabilities, and are also fair to content creators.

Other sensible developments would include the introduction of a regulatory framework for 'extended collective licensing' (ECL) to enable better licensing solutions. ECL originated in Scandinavia, and has been introduced in the UK, France and Germany. It's also recommended by the US Copyright Office as a mechanism for enabling mass digitisation, which is preferable to the outcome of the [decade-long Google books litigation](#).

The forced adoption of a US-style fair use exception is not fair and will damage Australia's world-leading fit-for-purpose copyright system, harming the future creation and dissemination of Australian stories and content.

As an Australian creator I support Australia's copyright laws and exceptions. I reject a change to US-style copyright exceptions.

Yours sincerely,

Dr. Alison Lyssa

Member:
Australian Writers' Guild
Australian Society of Authors