

4 July 2018

Mrs Emma Shadbolt
Acting Director, Copyright Law Section
Department of Communications and the Arts
GPO Box 2154
CANBERRA ACT 2601

Dear Mrs Shadbolt

COPYRIGHT MODERNISATION CONSULTATION

On behalf of Charles Sturt University, I am pleased to provide this submission to the Department of Communications and the Arts' copyright modernisation consultation.

The legal framework for the governance and management of Australia's copyright system is under severe strain and is far from fit-for-purpose for the 21st Century digital-age. Existing copyright arrangements in Australia are an impediment to global teaching, learning and research quality, as well as international business success. Copyright barriers to teaching, learning and research at Charles Sturt University include:

- **Charles Sturt University Research Output (CRO) Open Access Mandate.** The University's Higher Degree by Research (HDR) students are required to publish their theses in an online repository, (CRO). While students can include third party materials in their thesis copy for examination under the fair dealing for research and study exception of existing copyright law, they are not permitted to include third party materials in their thesis copy to be placed in the repository without first obtaining copyright owner permission, including for even the smallest amounts of copyright material. This copyright barrier compromises the integrity of Charles Sturt University HDR student's work.
- **Sharing content with fellow academics for collaborative research.** Copyright barriers to efficient and effective research collaboration arise repeatedly. Copying material for the purpose of sharing content with a fellow academic falls outside the existing fair dealing exceptions of copyright law and must be addressed.
- **Sharing with industry collaborators, including partnerships with industry and community.** Fair dealing exceptions of existing copyright law, fails to cover use of copyright material for industry collaboration and community engagement, regardless of how fair it is.
- **Text and data mining projects.** There is a growing interest from academics and students in text and data mining sources and methodologies for research, with this field likely to grow exponentially through the digital age. No copyright exception applies for these sources and methodologies. Debate regarding possible exceptions for 'non-commercial purposes' in copyright law would not address this issue. Moving forward copyright modernisation must include reforms that permit open access of digital sources and technology methodologies for the research programs of the 21st Century.
- **Third-party contractual exceptions and limitations.** The *Australian Copyright Act (1968)*, must be amended to prevent the use of third-party contracts to override the exceptions and limitations set out in the Act, or any future amendments to the Act, including any new exceptions enacted as a result of this copyright modernisation consultation. This amendment to the Act is crucial as it will provide a baseline level of copyright protection and certainty for system players, especially teaching, learning and research organisations. Note that the terms and conditions of such third-party agreements can be very difficult to understand and often require academics to seek legal advice to understand the possible impact of the specific terms and conditions on their research activity.

- **Orphan works.** The adoption of a fair use exception will help support both the use of more material and prevent paying for material under an educational statutory licence, that is currently never directed to the rights holder anyway.

Charles Sturt University supports copyright modernisation that removes system barriers like the examples provided above, to strengthen global teaching, learning and research quality as well as boost international business success, including:

- maximises the opportunity to create new knowledge by building on existing knowledge, including **removal of all barriers to freedom of teaching, learning and research in the tertiary education and training system**;
- incentivises innovation and investment, including **academic and commercial freedom to build on existing innovation**;
- meets Australia's international trade obligations for **knowledge transfer and business competitiveness**;
- recognises the relative contribution and **value of intellectual property to the Australian economy in the digital age**;
- **facilitates the economy-wide and distributional consequences of the Productivity Commission's copyright reform recommendations** detailed in the *Intellectual Property Arrangements Report* of September 2016, see <http://www.pc.gov.au/inquiries/completed/intellectual-property/report>, including their impacts on trade and competition;
- ensures Australia's intellectual property system will be **efficient and robust through time, in light of future economic changes which are increasingly driven by advances in technology**; and,
- **maximises public good and private gain** from existing regulation or forms of assistance, including future changes in these areas.

To meet these objectives, Australia will need to do more than just modernise copyright law. We will need to future proof copyright law to avoid having the same policy conversation in five or ten years' time. This can only be achieved by injecting flexibility into the exceptions regime for copyright.

To this end, the Productivity Commission recommended in its *Intellectual Property Arrangements Report* of September 2016 to the Commonwealth, that the Government aim to "*create a modernised copyright exceptions framework that keeps pace with technological changes and is flexible to adapt to future changes*". With regard this goal, Charles Sturt University, supports the commentary and recommendations put forward in the submission prepared for the Department by Universities Australia on copyright modernisation.

Together with University Australia's submission, our submission provides a range of recommendations relating to copyright modernisation in Australia that will enhance higher education teaching, learning and research and allow for better outcomes for students and our communities across Australia

I would be delighted to provide further information to the Department and would be available to provide evidence at any proposed hearings that that Department may undertake in relation to considering the merits of copyright modernisation for the 21st Century digital age.

Yours sincerely

Professor Andrew Vann
Vice-Chancellor