Access to Educational and Cultural materials Following the 2006 Amendments: Are the reforms achieving their intended goals?

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Introduction

A. 200AB - Maximisation of what we have
   - Different approaches to interpretation

B. Key remaining issues with legislation including key impediments to A. above
   - Contracts
   - TPMs
Background: Purpose of additional exceptions introduced by the Copyright Amendment Act 2006

- To allow copyright material to be used for socially useful purposes
- To update Australia’s copyright laws and to ensure that the law is better equipped to keep pace with developments in technology
- To ensure technological neutrality
- To ensure users have exceptions to allow them to fulfil their mandates and make socially beneficial uses
Exception or statutory licence?

Permitted purpose?

Not for commercial advantage / profit?

Conflict with normal exploitation?

Unreasonable prejudice?

Special case?

Educational instruction, maintenance of library or archive and assisting a person with a disability
Exception

No

Statutory licence (Education)

No

Education Instruction
Mandatory library archives / disability

Yes

Commercial advantage / profit

No

Conflict with normal exploitation

No

Unreasonable prejudice

No

Special case

200AB

Use exception

Use statutory licence

Yes

Cannot use provision

Yes

Contact copyright owner

Yes

Yes
Purpose based approach

- Regulation of works for exhibition
- Access to collection
- Promotion of collection
- Copying of works for creation of new educational website
- Access to subscription service
- Use of work in tender process
- Promotion of café
- Preservation
- Copying of artistic works for educational seminar at institution
Conflict with ‘normal exploitation’

- “whether the use closes off ways that copyright holders normally extract economic value from copyright in the Australian market or enters into economic competition with those ways, thereby ‘depriving copyright holders of significant or tangible commercial gains. Forms of exploitation which, with a certain degree of likelihood, could acquire Considerable economic or practical importance may also be considered”.

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Some remaining legislative issues / impediments to utility of exceptions
Licensor rights

User rights

Licensor

Exceptions

Technical and contractual restrictions

User

Technical restrictions can limit access to terms of contract

Contract may restrict access to exceptions

No obligation to allow access to exceptions
• High Court, per Kirby J: “To the extent that attempts are made to push the provisions of Australian copyright legislation beyond the legitimate purposes...the Parliament risk losing its nexus to the constitutional source of power. That source postulates a balance of interests such as have traditionally been observed by copyright statutes.”

• CLRC recommended exceptions be mandated where they are an “integral component of the copyright interest”.
Agreements excluding operation of certain provisions

SECT 47H

• An agreement, or a provision of an agreement, that excludes or limits, or has the effect of excluding or limiting, the operation of subsection 47B(3), or section 47C, 47D, 47E, or 47F, has no effect.
CLRC copyright and contract review findings - 2002

- copyright owners are contracting out of the exceptions & detrimentally affecting the copyright balance
- public interest in preservation of copyright balance takes precedence over public interest in freedom of contract
- Whether a particular exception should be mandated depends on the policy basis for the exception and whether it is ‘an integral component of the copyright interest’.
- The fair dealing exceptions and library and archive provisions should be mandated;
- The permitted purposes or exceptions to ban on circumventing TPMs should be mandated
### Copyright Regulations

- **s47D** (Interoperability)
- **Div. 2A, Part VB** (Edu. institutions)
- **Div. 3, Part VB** (Print disabilities)
- **s49** (Libraries or archives)
- **s50**
- **s51A**
- **s110A**
- **s110B**
- **s107** (Broadcasting sound recordings)
- **s109** (Malfunctioning technology protections)

### Additional Recommendations

- Fair dealing for criticism, review, news reporting, judicial proceedings
- Back-up copies
- If further non-infringing uses are introduced in the future, that the Government investigate appropriateness of introducing corresponding TPM exceptions;
  - 200AB
  - 51B, 110BA
Conclusions & Questions

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