

COPYRIGHTAGENCY

Submission on Copyright Amendment (Service Providers) Bill 2017

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INTRODUCTION

Thank you for the opportunity to comment on the Copyright Amendment (Service Providers) Bill 2017.

We support the passage of the Bill.

We note the acknowledgement in the Second Reading Speech of productive discussions and collaboration between copyright owners and representatives from the education, library and disability sectors to resolve issues of concern to those sectors. The Second Reading Speech notes that those sectors are regarded as 'responsible players in the copyright space'.

We have set out below our understanding of the concerns that those sectors seek to address through the amendments in the Bill. They are different in a range of respects from the issues raised by other sectors seeking expansion of the safe harbor provisions, such as the Digital Industry Group Inc (DIGI).¹

ABOUT COPYRIGHT AGENCY

Copyright Agency is a not-for-profit copyright management organisation that manages copyright licensing arrangements for writers, artists and publishers.² It collects and distributes more than \$100m a year in copyright fees and royalties. It is affiliated with similar organisations in other countries, enabling the licensed use of content from other countries in Australia, and revenue to Australian creators from the use of their content in other countries.

OBJECTIVES OF BILL

The Second Reading Speech notes that the 'education, cultural and disability sector[s] generally take a very risk averse approach to protecting and managing the copyright of others' and that the Bill will 'provide greater certainty ... about their responsibilities in engaging in the online space'.

The Bill will reduce the potential exposure of these sectors to legal liability for authorising copyright infringement when third parties use their networks or services in a way that breaches copyright. This amendment will provide certainty to a group of institutions and organisations which provide services that are in the public interest and will support them in being more innovative in the online environment. This will therefore encourage these institutions and organisations to create and deliver enhanced online services for all Australians.

The Bill addresses the use, by 'third parties', of online services provided by institutions such as universities and libraries: that is, the use of those services by people other than the institutions providing the services.

THE SECTORS' CONCERNS

In its media release responding to the introduction of the Bill, Universities Australia said that 'Australian universities provide email accounts, internet access and online platforms to hundreds of thousands of students for educational purposes' and that the amendments would protect universities 'from legal action if a user on their server posts copyright-infringing material – and the institution takes reasonable steps to protect copyright owners'.³

¹ DIGI comprises representatives from Google, Facebook, Twitter, Microsoft and Yahoo

² Copyright Agency and Viscopy are separate legal entities, but Copyright Agency manages all Viscopy services under a services agreement.

³ <https://www.universitiesaustralia.edu.au/Media-and-Events/media-releases/UA-commends-Government-on--Safe-Harbour--copyright-protections-for-universities#.Wm5yPdWCypo>

In a submission to the Productivity Commission, the Copyright Advisory Group to the COAG Education Council (representing schools and TAFEs) said:

Schools, TAFEs, and their governing bodies - including State and Territory Departments of Education - are providing network access and online services to millions of students and staff every day. Schools and TAFEs provide transmission services and caching facilities to students and teachers. They host content on local networks. They also operate intranets and learning management systems through which students are referred to various online locations. Increasingly, consistent with community and government expectations, they also employ digital technology to engage more widely with parents and the community. TAFE colleges in particular have strong relationships with local businesses in the course of providing vocational education. By their very nature, these digital technologies involve making copies and communications, and that potentially exposes schools to a risk of copyright infringement that did not exist in a predigital classroom.

While schools and TAFEs take all reasonable steps to ensure, so far as possible, that their systems and facilities are not used to infringe copyright, they remain vulnerable to actions by copyright owners in respect of alleged infringing conduct by staff and students using school owned IT systems and computers for educational purposes.

The Australian Libraries Copyright Committee, in a submission to the Productivity Commission, said:

In NSW alone, there are more than 7.7 million internet sessions each year in public libraries. Yet these libraries receive less legal protection when their systems are used for illegal activities than commercial ISPs. Furthermore, libraries and archives do not have the resources or expertise to deal with copyright infringements on a case-by-case basis, and many are unclear what to do when they are alerted to alleged illegal activities undertaken over their systems. They would therefore benefit significantly from the clarity that the safe harbour scheme would provide regarding processes such as notice and takedown.⁴

The Australian Blindness Forum (ABF), in a submission to the Productivity Commission, said:

The development of new technology provides many new opportunities for organisations that assist people with disability to develop innovative online services and to distribute existing materials in more ways.

...

ABF members believe the broadened definition [of service provider] will provide greater protection for organisations that assist people with disability through online services.⁵

REGULATIONS

We understand that the Government will be releasing an Exposure Draft of Regulations relating to the amendments in the Bill, for consultation before the Bill is passed.

Please feel free to contact us if there is any further assistance that we can provide.

Libby Baulch
Policy Director

⁴ http://www.pc.gov.au/__data/assets/pdf_file/0019/202393/subdr602-intellectual-property.pdf

⁵ http://www.pc.gov.au/__data/assets/pdf_file/0013/201019/subdr390-intellectual-property-partb.pdf