

SUBMISSION TO THE SENATE STANDING COMMITTEE ON ENVIRONMENT AND COMMUNICATIONS LEGISLATION

INQUIRY INTO THE COPYRIGHT AMENDMENT (SERVICE PROVIDERS) BILL 2017

30 January 2018

Committee Secretary

Senate Standing Committees on Environment and Communications

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Universities Australia

Universities Australia is the national peak body representing Australia's 39 comprehensive universities in the national and international interest.

Australia's universities contribute substantially to the country's economic and social well-being. All Australians benefit from investment in education and the nation's progress in the modern world will depend upon having a high quality and accessible higher education system.

As the peak body for the sector, Universities Australia seeks to ensure that policy and regulatory settings are conducive to a strong and vibrant university system. This is essential if Australia is to continue to be a \$21.8 billion powerhouse in delivering international education and export income.

The Copyright Amendment (Service providers) Bill 2017

Universities Australia warmly welcomes the *Copyright Amendment (Service Providers) Bill 2017* (the Bill) and appreciates the opportunity to provide comments on the Bill.

Australian universities provide Internet access to more than one million students, and more than 50,000 academic staff, for public interest, educational purposes. That inevitably puts them at risk of being sued if a staff member or student inadvertently uses university systems to infringe

copyright. Regardless of the steps taken to prevent infringement, and regardless of how quickly they respond when notified of an infringement, they do not have the same legal protection as a commercial ISP in the same situation. Australian universities are good copyright citizens and supporters of the rights of creators, both philosophically and financially. For many years universities have been treated less favourably than for-profit ISPs in being legally exposed to substantial damages if users infringe copyright.

The proposed expansion of the safe harbours contained in the Bill is long overdue. When implemented it will ensure that universities who follow the safe harbour rules have the same legal protection and certainty that is currently available only to commercial ISPs. This reform will also benefit rights holders by providing them with a streamlined and cost-effective process to send a “takedown” notice to a university.

Universities Australia recommends that the Parliament support these important steps to update the nation’s copyright laws for the digital era and pass the legislation.

Minor drafting issue

Universities Australia wishes to raise a minor drafting issue.

In the digital age, many universities rely on third party, cloud-based providers to carry out some or all of the activities that fall within the scope of the safe harbours. Universities Australia is concerned that the current drafting could potentially be construed as limiting the protection of the safe harbours to activities that are carried out “**by**” a university itself, which could potentially leave universities outside the scope of the safe harbours in the event that the relevant activities were carried out by a third-party provider “**on behalf of**” the university.

We understand the legislative intention to be that universities (and other entities that fall within the expanded definition of “service provider” in the Bill) would have the benefit of the safe harbours regardless of whether or not the relevant activities were carried out “by them” or “on their behalf” by a third-party provider. We wish to avoid the potential for universities to be exposed to costly litigation in the event that any uncertainty is thought to arise with respect to Parliament’s intention in this regard. We respectfully urge the Committee to **recommend the inclusion of a provision that makes it abundantly clear that the safe harbour extends to activities that are carried by a third-party provider “on behalf” of an entity that is a “service provider” under the Bill.**