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**Central Queensland
UNIVERSITY**

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Ms Claressa Surtees
Secretary
House of Representatives
Standing Committee on Legal and Constitutional Affairs
Parliament House
Canberra ACT 2600

Dear Ms Surtees,

Thank you for the invitation to make a submission on the Copyright Amendment (Digital Agenda) Bill 1999 (Digital Agenda Bill). Central Queensland University Library has the following comments to make in relation to the Bill:

Item 11 Subsection 10(1) - Library definition.

The Library considers the proposed definition to exclude "libraries operated by for-profit organisations" and "lending libraries owned by business organisations" for the purposes of relying on the libraries and archives exceptions to the exclusive rights created by the Act as being unnecessarily restrictive. Australian libraries, from all sectors, have a long and successful history of sharing and cooperation. The acceptance of the proposed definition will have a serious impact on the functioning of the library system within Australia. For example:

Not-for-profit libraries will no longer be able to request documents from corporate libraries under section 50 (eg if a university law library requires an article held only in a law firm library, or if a Parliamentary library needs a copy of an article held only in a corporate library), and vice versa. This will have a detrimental impact on the cost and timeliness of the exchange of knowledge particularly where a for-profit library is the only available site within Australia that holds the particular publication.

Scientists and researchers in private sector companies will no longer be able to make copying requests of their own internal libraries under section 49, even though they may have a right to make copies themselves under fair dealing. This will be a particular problem for employees carrying out research in remote areas, eg a geologist carrying out field research for a mining company, and it will be extremely difficult where for-profit organisations are

undertaking research in collaboration with publicly funded institutions such as CSIRO or universities.

All other library exceptions (eg copying for preservation purposes) will no longer apply to corporate libraries. For-profit libraries holding unique material will not be able to copy for preservation purposes. Publications and information of scientific and cultural value may be lost to the nation if for-profit libraries are unable to make preservation copies under the same conditions as not-for-profit libraries.

Item 45 Subsection 43 - Temporary Copies

Section 43 permits the temporary making of a copy as part of the technical process of making or receiving a communication. Although stated in the Explanatory Memorandum the section is intended to include browsing, the section does not permit this explicitly. Furthermore, Section 43A only permits temporary copying "as part of the technical process of making or receiving a communication". Temporary copies may also be created as a result of the technical processes of using electronic devices, eg works temporarily stored in computers during use, playback buffers, and digital photocopying. Under Section 43 these exceptions are not covered and therefore place the user at risk of breaching the Act due to technical processes beyond their control.

Item 54 Subsection 49(5A) - Library to User Copying

The Library is pleased the Government has created a new exception allowing libraries and archives to make articles/other works acquired in electronic form available online to users. However by including the provision that access must take place within the premises of the library or archive, and that library equipment does not allow users to communicate or make electronic reproductions of the work is restrictive in the modern environment.

The provision restricts access to take place only during the opening hours of the library or archive thereby placing students studying by on-line or distance education modes at a particular disadvantage. As universities increasingly offer courses in an on-line mode this provision will reduce the amount of information students can readily access. The inclusion of permitting hard copy printing facilities to be provided by the Library is an improvement on the exposure draft but the failure to permit communication or making an electronic copy restricts users from working with an electronic copy of the document.

Articles from periodical publications or published works acquired electronically may contain multi-media components, eg sound and video clips. While the subsection permits making a hard copy of the material on the library or archive's premises it will not permit the user to have similar access to those components of the article or publication that cannot be printed.

To ensure compliance with the Act, libraries will need to develop two systems for the electronic provision of information. One system will cater for electronic information the library has acquired on a contractual basis permitting remote viewing and remote printing. The other system, for articles and publications acquired under the Copyright Act, will only permit electronic access and printing on library premises. This is an unnecessary barrier for a society hoping to take advantage of modern technology.

Item 54 Subsection 49(7) - Library to User Copying

The Library welcomes the inclusion of permitting libraries to supply works under section 49 by way on online communication. Section 49(7B) permits libraries to communicate material acquired in electronic form to users. Although this may appear to be complementary with Subsection 49(5A) it will be the cause of additional work and inconvenience for libraries, it will be inconvenient for users, and it may be the cause of additional costs for users. If a user requires an electronic copy of an article or publication and can only view the material or print a hardcopy on library premises they will request the Library to communicate a copy to them. It would be much more efficient to enable users to communicate a copy to themselves under Subsection 49(5).

Item 64 Subsection 50(7B) - Library to Library Copying

The Library welcomes the inclusion of permitting libraries to supply works under subsection 50 by way of online communication. This Library is concerned, however, with the commercial availability test for works in electronic form.

Unlike the hardcopy test, the test for works in electronic form applies to all works (including journal articles), and applies no matter how much of the work or article is to be copied. Thus, if a request is made by a library for a copy of a single article from an electronic copy held in another library (or even a single page of some other work), the supplying library cannot reproduce and supply from the electronic source material unless the library officer makes a declaration that, after reasonable investigation, he or she is satisfied that 'the work' cannot be obtained within a reasonable time at an ordinary commercial price.

This new test gives rise to a number of questions. What is 'the work' to which the commercial availability test applies? If a publisher is prepared to sell a 'bundled' version of a work at great expense (which is nonetheless the 'ordinary' cost of that bundle), does this mean that the 'work' is commercially available and cannot be copied? What happens if a particular 'work' is commercially available, but the rightsholder will not sell a smaller part of the work (eg a chapter) requested by the user. Does the user have to buy the entire work?

Item 75 Subsection 51A(2) and (3) - Preservation

The Library welcomes being able to make an electronic reproduction of a work for preservation purposes. However, 51A(3) permits copies to be made available through computer terminals on library/archives premises, but only to officers of the library/archives (ie material copied under this 'administrative purposes' exception can not be made available to other library users, even within the library premises). Material copied for preservation purposes by university libraries, regardless of format, is primarily done to facilitate research and study by students and staff of the institution. To restrict access to only library officers is extremely restrictive and unnecessary. Normal viewing and access rights should apply to this material.

This submission acknowledges the assistance provided by The Australian Libraries Copyright Committee (ALCC), and the Australian Digital Alliance (ADA) through

the *Commentary on the Copyright Amendment (Digital Agenda) Bill 1999* prepared
by Jamie Wodetzki (<http://www.alia.org.au/copyright/news/1999.09b/>)

Yours faithfully,

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