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From: Ms Lillian Lawson Geddes

Date: 21st May 2012.

Topic: Fair Dealing Clauses in any future Trade Agreements.

My submission relies on the veracity of two Federal Government Documents.

- (1) [Attorney Generals Department] (Copyright Act) "Are there any exceptions to infringement?"
- (2) AUSFTA Free Trade Agreement's List of Amendments to Copyright Law (late 2004) which became law 1 January 2005.

My concern is that the current Copyright Law/s will be further amended to accommodate demands made from other signature countries if those amendments water down the rights currently in place.

I personally consider that the existing definitions of Fair Dealing meet the needs of most citizens. If any Amendments are to be made as a response to ACTA having been signed then I would expect the right to be informed, and the opportunity to protest.

Yours sincerely,

Lillian Lawson Geddes (signed 21.5.12)



Are there any exceptions to infringement?

To balance the rights of copyright owners with the needs of the public to have access to copyright materials, the Copyright Act provides a number of exceptions to the general rules regarding infringement of copyright.

Fair dealing

There are a range of exceptions that enable the exercise of certain copyright rights without constituting copyright infringement. They may be raised in answer to a claim of infringement. The most important of these exceptions permits 'fair dealing' for certain specified purposes. A fair dealing with a copy work, sound recording, film or broadcast will not amount to an infringement of copyright if done for the following purposes:

- research or study
- criticism or review
- reporting of news
- giving of professional advice by a lawyer or a patent or trade marks attorney, or
- parody and satire.

Whether an exercise of copyright rights amounts to a fair dealing is a matter to be determined on the facts of each case. Many factors may be taken in account. In the case of reproduction for research or study the factors include: the purpose and character of the use, the nature of the work or other subject matter, the amount and substantiality of the portion copied, the possibility of obtaining the work within a reasonable time at an ordinary commercial price and the effect on the commercial value of the work or other subject-matter.

The 10 per cent rule

In the case of fair dealing copying for the purposes of research or study the Copyright Act specifically provides that it is a fair dealing:

- to make a single copy (all or part) of a journal article in a periodical publication,
- to make a single copy (all or part) of multiple journal articles from the same periodical publication, providing they are for the same piece of research or coursework
- to copy up to one chapter or 10% of the number of pages of a published work more than 10 pages long, or
- to copy up to one chapter or 10% of the number of words of a work published electronically.

It is a fair dealing to copy one chapter even if it is longer than 10% of the pages or words in the work.

Exceptions for private copying

There are some exceptions for private copying. The main exceptions are format-shifting, time-shifting and uses of copyright material for special purposes.

Format-shifting

The format-shifting exceptions allow a person to copy certain types of material that he or she owns for **private and domestic use** into a different 'form'. Types of format shifting include:

- copying a book, newspaper or periodical to use in a different format
- copying a photograph from hardcopy form into an electronic form (eg by scanning into a computer), or from electronic form into hardcopy form (eg by printing a digital file)
- copying a video into an electronic form (eg to a DVD).

Format-shifting of music

A person who owns a legitimate copy of a sound recording, such as a CD, can make a copy of that recording **solely for the person's private and domestic use**. The exception allows a person to use an earlier copy to make later copies for all the players that person owns regardless of format (eg copying a CD to two MP3 players) and can make sequential copies (eg copying a CD to a personal computer and copying the content again to an iPod). Limits on format-shifting of music include:

- the original copy must not be a pirate copy
- the later copy must be solely for private and domestic use
- the later copy must be made for use with a playing device that the person making the copy owns
- a copy must not be made from a 'podcast' of a radio broadcast or similar program (unless the podcast is licensed for private use)
- the copy cannot be sold, swapped, lent or given away to someone else (however, a person can loan it to a member of his or her family or household)
- where a person disposes of, gives away, sells or swaps the original copy of a sound recording, they must not keep any copy made from the original
- a business cannot use this exception to make a copy of a sound recording for a person unless it has permission to do so from the relevant copyright owners
- uploading a copy of a song to the Internet is not allowed, and
- the new exception does not authorise the removal of any technological access control measures applied to the sound recording (many CDs and all vinyl records do not have access controls).

Time-shifting

The time-shifting exception allows a person to record a television or radio broadcast and watch or listen to it later. This exception does not apply to material from a DVD or from an Internet download or webcast. There is no fixed time for keeping the copy. However, the recording cannot be kept indefinitely or repeatedly used. Further limits to the time-shifting exception include:

- the recording must be made solely for personal and domestic use
- time-shift recordings cannot be sold, swapped, lent or given away (however, the maker can loan it to a member of their family or household)
- the recording cannot be used to make a further copy of the material broadcast, and
- uploading a recording to the Internet to share with others is not permitted.

'Special' purposes

In some circumstances copyright material can be used for 'special' purposes. The 'special' purposes covered by the exception are:

- use by a library or archives – for maintaining or operating the library or archives or providing library services
- use by an educational institution – for giving educational instruction, and
- use by a person with a disability or someone else – for obtaining a copy of the material in a form which assists the person with a disability.

The use of the copyright material for 'special' purposes must:

- amount to a 'special case'
- not be made partly to obtain a commercial advantage or profit
- not conflict with a normal exploitation of the material, and
- not unreasonably prejudice the legitimate interests of the copyright owner.

The 'special' purposes exception is intended to cover cases where there is no other specific exception or statutory licence in the Act that authorises the particular use. For example, a school cannot rely on the 'special' purposes exception to reproduce copyright material for teaching purposes if the reproduction is covered by the statutory licence in Part VB of the Act.

Other specific exceptions

There are also exceptions to infringement in the Copyright Act that are specific to certain works. The following acts are permitted:

- the making of a copy of a computer program resulting from the process of normal use of the program or for back-up purposes
- the owner of a copy of a computer program decompiling the copy to make an interoperable product, to test its security, or to correct an error – if the required information the program, or an error-free copy, is not otherwise available
- the filming, photographing, drawing or painting of sculptures in public places and buildings, and
- the public performance of a literary, dramatic or musical work by playing a television, radio or record player to residents at guest houses or premises where people reside sleep.

Some exceptions also apply to specific uses or purposes. The main exceptions of this type are:

- the temporary reproduction of a work or adaptation made as part of the technical process of making or receiving a non-infringing communication (this covers reproduction occur automatically while browsing on the Internet and in certain types of caching)
- anything done for the purpose of a judicial proceeding or the report of a judicial proceeding
- the temporary reproduction of a work, film or sound recording made as part of the normal process of using the item, eg playing a legal CD or a DVD at home or at a private party and the player makes a temporary copy as part of its normal operation, and
- the reproduction or copy of a work (or adaptation of a work) that is contained in a broadcast, where the copy is made solely for the purpose of broadcasting the work or adaptation or simulcasting it in digital form.

Copying by libraries and archives

Copying may also be done in certain instances without infringement of copyright when done by libraries and archives for students, researchers, Members of Parliament, other libraries or administrative purposes. Copying of unpublished works and certain audio-visual materials for certain other purposes (eg publication) may also be done without infringing copyright. Reference should be made to the Copyright Act to determine the precise terms of these, and other, exceptions to copyright infringement.

Statutory licences

Certain educational institutions and institutions assisting persons who have a print or intellectual disability may make multiple reproductions and communications of works for educational purposes or for assisting people who have a disability, under a licence set out in the Copyright Act (a statutory licence). Such statutory licences give the copyright owner a right to be paid equitable remuneration through an approved collecting society.

Educational institutions and institutions assisting people who have a disability may for educational purposes, or for the purpose of assisting people who have a disability, also copy television and radio broadcasts under statutory licences. Again, the licences provide for a right for copyright owners to be paid equitable remuneration through an approved collecting society. Educational institutions do not have to pay the fee in relation to material reticulated through a central source player to a different location, eg a device in a library which displays material in classrooms.

AUSFTA Free Trade Agreement

The AUSFTA came into force on 1 January 2005.

A number of amendments were made to Australia's copyright law in late 2004 to meet particular obligations under the AUSFTA. The amendments are the following:

- performers were given economic and moral rights in their sound recordings and moral rights in their live and recorded performances
- criminal offences were broadened to target copyright infringements undertaken for commercial advantage or financial gain and significant infringement
- new provisions were introduced in relation to the unauthorised receipt and use or distribution of encoded broadcasts
- the term of protection for most copyright material was extended by 20 years
- a new scheme was introduced to limit remedies available against Carriage Service Providers who help copyright owners combat online piracy
- protection against a wider range of unauthorised reproductions was introduced
- protection for electronic rights management information was extended

Most of these changes came into effect on 1 January 2005.

- New performers' rights in sound recordings
- Amendments to criminal law provisions
- Amendments to encoded broadcast provisions
- Extension of Copyright Term
- Limitations on remedies for copyright infringement against carriage service providers
- Exception for the normal use of copyright material
- Electronic rights management information