



Roundtable on uses of copyright by government

On 30 April 2018, we hosted a roundtable on government uses of copyright material as part of our Copyright Modernisation consultation. We have listed the attendees below.

Summary of roundtable

In the past, the Australian Law Reform Commission (ALRC) recognised that governments should not have to pay for some uses of copyright material. For example, they said that tribunals, royal commissions or statutory inquiries should not have to pay to use copyright material. Like courts, they deserve an exception to ensure smooth functioning of the legal system. Also, some state or territory governments had raised concerns about the risk of having to pay to use copyright material when complying with freedom of information laws. There are more examples in the ALRC's [Copyright and the Digital Economy Final Report](#). As a result, the ALRC proposed a number of exceptions relating to government uses, including tribunal and public inquiry proceedings, where statutes required public access, and use of correspondence sent to government.

We said we were holding a number of roundtables to find areas of consensus for meaningful reform. This roundtable on government use of copyright material was one of them. We also welcomed ongoing meetings and submissions on all areas of the Copyright Modernisation consultation. We noted that this consultation came after the [government response to the Productivity Commission Inquiry into Australia's Intellectual Property Arrangements](#) and also built on the previous work of the Productivity Commission and ALRC.

Rightsholders noted that existing law already addresses part of the problem. The *Copyright Act 1968* allows for statutory licences for government copying of copyright material (such as books, music, images and films). A statutory licence gives governments broad copyright access for a fair price. Rightsholders noted that statutory licences provide more certainty than a copyright exception, which might require governments to apply a 'fairness' test. They recognised that government should not have to pay for some uses covered by statutory licences. They recognised that the statutory licences did not cover all uses. Currently, it covered only copying of copyright material but not communicating or other uses. They also recognised that running surveys to estimate Government copyright sometimes cost more than the licence fees they collect.

Attendees noted that negotiating a statutory licence can be complex, takes a long time and can be expensive. It would be helpful for governments to have more clarity on when they did not have to pay to use copyright material, such as when a use might be covered by an implied licence (e.g. where a copyright owner would probably agree to the use, but there was nothing in writing). Government attendees pointed to a need for clarity in the legislation in relation to governments and the fair dealing exceptions.

The roundtable discussed a number of related, potential changes:

- extending the declared society provisions in relation to the government statutory licence (ss 183A-183D) to include communication and performance (not just copying)



- extending the government statutory licence (s 183A) to allow communication (not just copying)
- making notifications of government uses to copyright owners simpler and easier (by amending s 183(4))
- enabling parties to agree to estimate a fair price for government uses without a survey or other kind of sampling (by amending ss 183(3) and 183C)
- providing more clarity on equitable remuneration.

The roundtable discussed whether there would be benefit to having more alignment between agreements for the federal and each state and territory government. Some attendees noted that it could assist with improving information sharing across government.

The roundtable did not reach agreement on the best option for dealing with the problem. Instead, the roundtable agreed to further explore what government uses should not need payment. We agreed to circulate further material to support ongoing discussion and timely submissions, due by 4 June 2018. This included a list of government uses that could be unremunerable. We also agreed to circulate a list of possible related amendments. We noted that we planned to appoint an external reference group. This would represent diverse views across copyright and improve the Department's advice to government.

Attendees

The attendees of the roundtable were:

- Cara Gould, Senior Manager, Victorian Government (by teleconference)
- Clare Hoey, Manager, Queensland Government (Teleconference)
- Robert Bradshaw, Director, Northern Territory Government (by teleconference)
- Catherine Bond, Senior Lecturer, UNSW Law
- Libby Baulch, Policy Director, Copyright Agency
- James Dickinson, Head of Licensing & Regulatory Affairs, Screenrights
- Grant McAvaney, CEO, Australian Copyright Council
- Helen Owens, Assistant Secretary, Content and Copyright Branch
- Sam Ahlin, Director, Content and Copyright Branch (by teleconference)
- Erin Driscoll, Assistant Director, Content and Copyright Branch
- Alan Hui, Assistant Director, Content and Copyright Branch
- Hari Sundaresan, Senior Policy Officer, Content and Copyright Branch (by teleconference)

