



Response to the Australian government's copyright modernisation consultation paper

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The Director, Copyright Law Section Department of Communications and the Arts

By email copyright.consultation@communications.gov.au

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About the AOI

The Association of Illustrators (AOI) was established in 1973 to advance and protect illustrators' rights and is a non-profit making trade association dedicated to its members' professional interests and the promotion of contemporary illustration. As the only body to represent illustrators and campaign for their rights in the UK, the AOI has successfully increased the standing of illustration as a profession and improved the commercial and ethical conditions of employment for illustrators. AOI offers members professional and business advice.

The IP our members create contributes considerably to the value of the UK's culture, economically and culturally, creating imagery for a large area of the creative industries across the world; book publishing, newspapers and magazines, merchandising, digital content for online and mobile platforms, fashion, design, cards and giftware, animation, storyboarding, character design and much more.

Today, the AOI has some 2000 self-employed members who consist of freelance illustrators, illustration agents, over 30 art colleges and individual students and commissioning bodies. Member illustration agents act for about a further 500 leading illustrators.

Thank you for the opportunity to comment on the copyright modernisation consultation paper issued by the Department of Communications and the Arts.

As members of the British Copyright Council (BCC) we're aware that the BCC commented in July 2013 on the Australian Law Reform Commission's discussion paper, "Copyright and the Digital Economy", and in particular on the discussions concerning "fair use". We consider that those arguments remain valid.

The Consultation is right to identify the fundamental importance of balancing "the interests of innovators, investors and creators with the health, economic and social welfare of

consumers and Australian society as a whole". We agree with the BCC for the need for both a fair balance in substance and a fairness of approach, and that strong, current and objective economic evidence should be the baseline when considering changes to the copyright system.

We have commented on questions 1, 3 and 5 below:

Question 1

To what extent do you support introducing:

- additional fair dealing exceptions? What additional purposes should be introduced and what factors should be considered in determining fairness?
- a 'fair use' exception? What illustrative purposes should be included and what factors should be considered in determining fairness?

We support the introduction or amending of existing fair dealing exceptions – Option 1

Fair use exceptions

As fair use would not be confined to 'a limited set of prescribed purposes', as fair dealing is, our concerns are that the lack of definition would undermine the controls that individual rights holders have over their copyrighted works. Fair use creates a lack of certainty as interpreting it is more complex, consequently detrimental to all businesses in the creative value chain.

The consultation paper says that fair dealing can be 'restrictive when compared with international counterparts', however fair dealing functions well in the UK.

Under Common law and statutory fairness factors (Figure 4 A comparison) we have concerns about the wording of: "Possibility of obtaining work or adaptation within reasonable time at ordinary commercial price" How would 'reasonable time' be assessed and what criteria would be used to decide 'ordinary commercial price'? There are number of variables that influence the fee for creative works, and it will be those within the various areas of the creative industries who will have an understanding of an appropriate fee.

Question 3

Which current and proposed copyright exceptions should be protected against contracting out?

We have concerns over copyright exceptions and contract override. What happens if an illustration which has been licensed for a particular use by the rights holder under an exclusive contract is used under an exception outside of that contract's terms? Illustrators often licence artwork on an exclusive basis, and contractually warrant that it is exclusive. The contract override proposal could raise problems for creatives under exclusive contracts.

Question 5 - Access to Orphan Works

To what extent do you support each option and why?

- statutory exception
- limitation of remedies
- a combination of the above

We do not support a statutory exception, and consider that the use of orphan works for commercial use should only be made available under a licensing scheme for commercial use.

The non-commercial use of orphan works is suitable for a focused exception for use by a publicly accessible library, educational establishment or museum, an archive, a film or audio heritage institution, or a public service broadcasting organisation.

Yours truly,
Derek Brazell, AOI Projects Manager