



Submission to

**Department of Communications and the Arts
Copyright Law and Policy Section**

Subject

Reforms to the Copyright Act 1968

Date

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1. Introduction

The Interactive Games and Entertainment Association (**IGEA**) welcomes the opportunity to respond to the proposed reforms to the *Copyright Act 1968* (Cth) (the **Copyright Act**) and related regulations aimed to ensure certain institutions and the Australian community can reasonably access content as set out in the Guiding Questions 2015 published by the Department of Communications and the Arts (the **Guiding Questions**).

In our submission we have set out a brief description of IGEA and an overview of the interactive games industry in Australia, together with a general section on the proposed amendments and a section focused on the proposed expansion of the scope of the “safe harbour” scheme to include broader classes of online service providers.

By way of background, IGEA also refers the Department of Communications and the Arts to its submissions to the Productivity Commission on Intellectual Property Arrangements of 30 November 2015 and to the Attorney General’s Department on the Safe Harbour Scheme of 22 November 2011.

2. Executive Summary

In summary, IGEA:

1. Broadly welcomes the proposed changes to the Copyright Act that aim to simplify the Copyright Act and ensure that copyright material is more accessible for the disability, educational, library and archive sectors in Australia.
2. More specifically, supports the proposed expansion of the current ‘safe harbour’ provisions in the Copyright Act to cover a broader range of entities, including online service providers such as search engines, cloud storage services and educational institutions. The proposed changes are in line with Australia’s international agreement obligations.

3. About IGEA

IGEA is the peak industry association representing the business and public policy interests of Australian and New Zealand companies in the interactive games industry. IGEA’s members publish, market, develop and/or distribute interactive games and entertainment content and related hardware.

The following list represents IGEA’s current members.

- 18point2
- Activision Blizzard
- All Interactive Distribution
- Big Ant Studios
- Disney Interactive Studios
- Electronic Arts
- Five Star Games
- Fiveight Distribution
- Gamewizz Digital Entertainment
- Mindscape Asia Pacific
- Namco Bandai Entertainment
- Google
- Microsoft
- Nintendo
- Sony Computer Entertainment
- Take 2 Interactive
- Total Interactive
- Ubisoft
- VR Distribution
- Well Placed Cactus
- ZeniMax Australia

4. Overview of the interactive games industry

The interactive games industry is the fastest growing entertainment industry globally¹ and is considered to be highly innovative both in terms of its creative content and business models. In 2014, the industry worldwide was estimated to be worth approximately US\$77 billion and forecast to grow to US\$96 billion by 2018.² By way of comparison:³

- The film industry (including box office, home entertainment, sell-through, video on demand and rental, but excluding actual advertising and rental) was estimated to be worth US\$107 billion (with a 4.4 percent compound annual growth rate).
- The music industry (incorporating physical distribution, digital distribution and live music) is estimated to account for US\$52 billion by 2019, with a compound annual growth rate of 0.8 percent.

In 2014, Australia's interactive games industry reached AU\$2.46 billion in retail sales (excluding revenue generated from interactive games development or exports), a 20 percent increase from its previous year.⁴ That figure incorporated traditional retail sales of AU\$1.214 billion and AU\$1.248 billion in digital sales, with the latter increasing by 39 percent. Mobile games, digital downloads and subscriptions also continued to grow significantly in 2014. The growth in digital came primarily from a 56 percent jump year-on-year in mobile game downloads. More than half of all mobile app revenue in Australia was from interactive games, of which the majority were generated through in-app purchases.

For further market data for Australia in 2014 refer to **Appendix A** of this submission.

To demonstrate the levels of engagement with interactive games by the Australian population, IGEA's Digital Australia 2016 Report released on 28 July 2015 relevantly found that:⁵

- 98 percent of Australian homes with children under the age of 18 have a device for playing interactive games
- 68 percent of Australians play interactive games, with 78 percent of the game playing population aged 18 years or older
- Older Australians continue to make up the largest group of new players over the past four years. Australians aged 50 and over now make up 23 percent of the interactive game playing population - increasing their essential digital literacy for the digital economy

¹ Entertainment Software Association of Canada, "Levelling Up: Winning Strategies to Support Canada's Dynamic Video Game Industry", March 2014, page 3 (the **ESAC Submission**).

² DFC Intelligence, *Worldwide Video Game Forecast*, cited in Makuch, E, "Report: Xbox One and PS4 will sell 100 million units each by 2020" *Gamespot*, 12 February 2014, at <http://www.gamespot.com/articles/report-xbox-one-and-ps4-will-sell-100-million-units-each-by-2020/1100-6417687/> (accessed 3 August 2015).

³ PriceWaterhouseCoopers, *The Australian Entertainment and Media Outlook 2015-2019*, 14th Edition, 2015.

⁴ Research based on The NPD Group Australia, Time period December 31 2012 – Dec 29 2013, December 30 2013 – Dec 28 2014 and Telsyte, *IGEA Digital Market Monitor*, 2014, cited at IGEA, "Australian game sales surge in 2014", *Media Release*, 4 March 2015, at <http://www.igea.net/2015/03/australian-game-sales-surge-2014/> (accessed 3 August 2015).

⁵ IGEA, *Digital Australia Report 2016*, at <http://www.igea.net/wp-content/uploads/2015/07/Digital-Australia-2016-DA16-Final.pdf> (accessed 29 July 2015) (**DA16**).

- The average age of those engaged in Australian interactive games has increased from 32 to 33 years old since 2013 and nearly half (47 percent) of this population is female
- As part of normal media usage, the daily average time spent playing interactive games is 88 minutes by Australians
- 27 percent of players have tried making interactive games using software and 9 percent have studied or plan to study interactive games subjects

Interactive games are increasingly identified for their ability to serve other purposes in addition to simply entertainment. Researchers, educators, businesses and journalists have observed the importance of serious and related interactive games. Importantly, 24 percent of Australian adults have used interactive games at work for training purposes and 35 percent of parents say that interactive games are embedded in their children’s school curriculum. Games can also be beneficial for healthy ageing, with 89 percent of older Australians saying that playing interactive games improves thinking skills, 76 percent agreeing that interactive games increase mental stimulation, 79 percent finding that interactive games help improve coordination and dexterity, and 61 percent stating that interactive games help fight dementia.

A contemporary analysis of the Australian interactive games industry is provided in the IGEA’s *Digital Australia 2016* Report.⁶ A historical overview of the interactive games industry in Australia can be found in a number of previous reports including Screen Australia’s *Playing for Keeps*,⁷ the Australian Centre for Moving Images’ *History of Games Development in Australia*⁸ and the CCI’s *Working in Australia’s Digital Game Industry: Consolidation Report*.^{9 10}

5. General Submission

As stated in its submission to the Productivity Commission, IGEA believes that copyright is essential to encourage innovation and creativity in the interactive games industry for the benefit of both Australian creators and consumers. Within that framework, access to copyright material for consumers is of course, critical.

⁶ A copy of the report at <http://www.igea.net/2015/07/games-are-present-in-almost-all-australian-family-households/> (accessed 29 July 2015).

⁷ Screen Australia, *Playing for Keeps: Enhancing Sustainability in Australia’s interactive games industry*, 2011, at http://www.screenaustralia.gov.au/about_us/pub_gamesreport.aspx (accessed 27 July 2015) (**Screen Australia Report**).

⁸ Knight, S and Brand, J, *History of Game Development in Australia*, ACMI, 2007.

⁹ Australian Research Council Centre of Excellence for Creative Industries and Innovation (CCI) and Queensland University of Technology in partnership with the Games Developers’ Association of Australia, *Working in Australia’s Game Development Industry, A Consolidated Report*, May 2011, at <http://www.cci.edu.au/sites/default/files/shaukka/Working%20in%20Australia%27s%20Digital%20Games%20Industry%20Consolidation%20Report%20May%202011.pdf> (accessed 27 July 2015).

¹⁰ Another resource is Department of Communications, Information Technology and the Arts, *From Cottages to Corporations:*

Building a Global Industry from Australian Creativity – Report on Access to Overseas Markets for Australia’s Creative Digital Industry, 2003.

The intention of the proposed amendments to the Copyright Act are stated as follows:¹¹

The changes are designed to:

- Streamline the educational statutory licence provisions, making it easier and simpler for educational institutions and copyright collecting societies to agree on licensing arrangements for the copying and communication of copyright material.
- Provide simple, clear rules for libraries, archives and key cultural institutions to make preservation copies of copyright material.
- Align the terms of protection for unpublished works with those for published works to provide libraries, archives and other cultural institutions with greater opportunities to use, and provide public access, to unpublished works.
- Ensure that search engines, universities and libraries have ‘safe harbour’ protection if they comply with conditions aimed at reducing online copyright infringement.

IGEA broadly welcomes the simplification of the Copyright Act and the intention to ensure that copyright material is made more accessible for the disability, educational, library and archive sectors in Australia. Particularly in light of the *Marrakesh Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities* of 28 June 2013 and the ongoing deliberations of the World Intellectual Property Organization (**WIPO**) Standing Committee on Copyright and Related Rights, it is clear that access to copyrighted material for many of these sectors remains an important challenge.

6. Safe Harbour

The Guiding Questions state:¹²

The proposed amendments expand the current ‘safe harbour’ provisions in the Act to cover a broader range of entities, including educational institutions and other online services (such as online search engines, bulletin boards and cloud storage services). The proposed definition of a service provider reflects the definition of a service provider in Article 17.11.29(xi) of the Australia-United States Free Trade Agreement and Article 18.81 of the Trans Pacific Partnership Free Trade Agreement.

IGEA supports replacing the term ‘carriage service provider’ with the term ‘service provider’ as defined in the new section 116AB, which states:

Service provider:

- (a) in relation to an activity mentioned in section 116AC—means a provider of transmission, routing or connections for digital online communications without modification of their content between or among points specified by the user of material of the user’s choosing; and

¹¹ Department of Communications and the Arts website at <https://www.communications.gov.au/have-your-say/updating-australias-copyright-laws> (accessed 11 January 2016).

¹² Paragraph 23 at page 6.

- (b) in relation to an activity mentioned in section 116AD, 116AE or 116AF— means a provider or operator of facilities for online services or network access.

This definition is clear, simple, appropriately technology neutral and remains largely reflective of the definition used in the Australia-United States Free Trade Agreement (**AUSFTA**) and Article 18.81 of the Trans-Pacific Partnership Agreement (**TPP**).

As stated in its submission in 2011, IGEA is of the view that the expansion of the “safe harbours” in the way articulated above has the capacity to generate tangible benefits to rights holders in that it creates greater incentives to a larger number of entities, including search engines (some of whom are members of IGEA) to respond to notices of copyright infringement and requests to take-down copyright infringing material through the notice and take-down scheme in the Copyright Act. This facilitates increased cooperation among a wider group of service providers and rights holders for effective measures to address online piracy.

7. Conclusion

In conclusion, IGEA and its members support copyright as essential to innovation and creativity in the interactive games industry in Australia. The proposed changes to the Copyright Act allow for increased access to copyright materials by the disability, educational, library and archive sectors in Australia is consistent with international focus in this area.

IGEA also supports the expansion of the “safe harbour” provisions to facilitate ongoing cooperation between a broader class of entities and rights holders through the notice and take-down scheme.

Finally, IGEA appreciates the opportunity to provide this submission to the Department of Communications and the Arts on the proposed amendments to the Copyright Act. It looks forward to the opportunity to discuss these in more detail through its ongoing participation in the process.

8. APPENDIX A – AUSTRALIAN MARKET DATA

The IGEA's commissioned research from NPD Group Australia showed that in 2014:¹³

- Growth was driven by console hardware, which had increased by 47 percent. New consoles, the PS4 and Xbox One, had the best sales within the first 12 months of launch of any console hardware
- Software sales were \$614.5 million in 2014, down 5.3 percent from the previous year, however PS4, Xbox One, Wii U and 3DS had experienced growth in software
- Two new franchises, Watch Dogs and Destiny entered the Top 10 games titles sold in 2014
- The PS3 and Xbox 360 continued to contribute a significant amount to the overall software sales
- Originally a digital only game, Minecraft increased in value by 114 percent in 2014
- Action was the number one genre in terms of the volume of sales in Australia
- 61 percent of all games sold (based on volume) received an unrestricted Classification

Further industry key highlights by independent research firm Telsyte evidenced:¹⁴

- The Australian mobile gaming market, incorporating smartphones & tablets exceeded \$700M in 2014, growing by 56 percent from 2013
- The majority of mobile games revenues was generated through in-app purchases
- 20 percent of new games sales in 2014 were digital downloads
- The fastest growing segment is the online, in-game purchase market driven by adventure games, which have extra levels, missions' campaigns and map packs

¹³ Research based on The NPD Group Australia, Time period December 31 2012 – Dec 29 2013, December 30 2013 – Dec 28 2014 cited at IGEA, "Australian game sales surge in 2014", *Media Release*, 4 March 2015, at <http://www.igea.net/2015/03/australian-game-sales-surge-2014/> (accessed 3 August 2015).

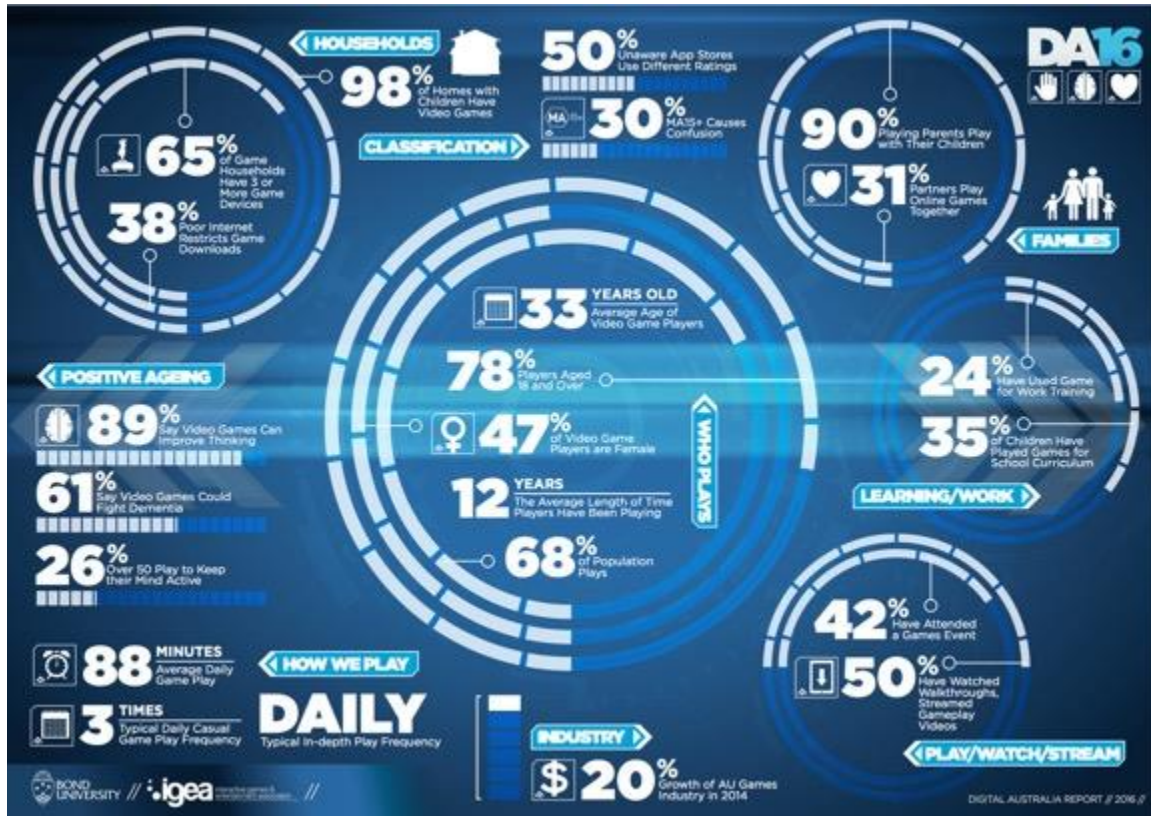
¹⁴ Telsyte, *IGEA Digital Market Monitor*, 2014 cited *ibid*.



IGEA commissioned research from:
*The NPD Group Australia.
Time period December 31 2012 – Dec 29 2013, December 30 2013 – Dec 28 2014.
**Telsyte – IGEA Digital Market Monitor, Q1-Q4 2014
***Revised 2013 estimate



Key Findings: Digital Australia 2016



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// Key Findings //

Games Households

98% of homes with children have computer games.
65% of game households have three or more game devices.
38% choose not to download games due to data limits.

Who Plays

68% of Australians play video games.
47% of video game players are female.
33 years old is the average age of video game players.
78% of players are aged 18 years or older.
39% of those aged 65 and over play video games.
12 years is the average length of time adult players have been playing.

How We Play

88 Minutes is the average daily total of all game play.
10 Minutes, three times a day is typical for casual game play.
1 Hour, daily is typical for in-depth game play.

Why We Play

To keep the mind active is the main reason older adults play.
To have fun is the primary reason PC and console players play.
To pass time is the main reason mobile players play.

Families and Play

90% of playing parents play with their children.
31% play online games with partners.
57% of adults are "Always present" for purchase of games for children.
66% are familiar with parental controls on game systems.

Classification and Media Concerns

30% indicate MA 15+ causes most confusion.
28% indicate M causes most confusion.
50% are unaware that app stores have different rating systems.
41% say ratings have "a lot of influence" on games purchased for children.

Game Play Culture

50% have watched walkthroughs or streamed gameplay videos.
42% have attended a games event.

Games and Benefits

89% say video games can improve thinking skills - health.
79% say video games can improve coordination and dexterity - health.
76% say video games increase mental stimulation - positive ageing.
61% say video games could fight dementia - positive ageing.

Learning and Work

24% have used video games at work for training.
35% say their children have used video games for school curriculum.

Game Business

20% is the amount of growth in the Australian game industry in 2014.

Methodology

Digital Australia 2016 (DA16) is a study of 1274 Australian households and 3398 individuals of all ages in those households. Participants were drawn randomly from the Nielsen Your Voice Panel in May 2015; research was designed and conducted at Bond University. The margin of error is $\pm 2.7\%$.