

**Chief Executive Officer:
Dr Glenn Withers AO**

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Ms Helen Daniels
Assistant Secretary
Copyright Law Branch
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Robert Garran Offices
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Dear Helen

Copying photographs and films in a different format for private use

I refer to the Government's review of the exceptions in the *Copyright Act 1968* concerning format shifting of photographs and films.

While Universities Australia recognises that the review is about private copying and not the provisions which allow universities to make copies for their education purposes, nevertheless, we do have a keen interest in ensuring that students as individuals have as wide a capacity to use fairly information materials they have purchased. Format shifting is a leading example of where people will rightly wish to keep using information purchased using more modern methods of viewing.

This argument has at least two aspects to it:

- the importance of students having the capacity to make best use of resources they have and/or choose to buy in the pursuit of their degrees; and
- restraining the call on universities to provide such access through our own purchases or licences to copy.

Generally, the university considers that unlicensed private copying for the purpose of time shifting and format shifting are each "special cases" as envisaged by the Berne Convention since it would be unreasonable to require consumers, including students, to purchase multiple licences to use copyright materials at different times and in different formats.

Accordingly, sections 47J and 110AA of the Copyright Act should be simplified and brought into line with section 109A.

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As to the particular issues raised in the paper:

- (a) Issues 1-3 - Photographs. Universities Australia believes the current regime under section 47J is overly restrictive in not permitting digital-to-digital reproduction or the "archival" reproduction in the event the original is lost or destroyed. Student learning materials should be available without new licences, but more often the problem is that new licensed reproductions are not available at any price. Serial reproduction is necessary to deal with the fragility of original photographs, the volatility of digital copy environments and the growing use of digital archives.
- (b) Issues 4-6 - Films. The current restrictions under section 110AA mean that only analogue-to-digital reproductions are allowed. Many films are now released in digital format, and the increasing use of Home Personal Theatres and digital repositories mean that this restriction is becoming prohibitive of the copying which should be properly allowed under this section. It is not proposed that there be a relaxation of the protection of Technical Protection Methods, however digital-to-digital copying which does not involve circumventing a TPM should be allowed.
- (c) Issue 7 - Visual images in computer programs. The exceptions in section 110AA and sections 47C-47F should be extended to cinematographic images in computer programs, subject to the same protection of TPMs. The Act can be made "future-proof" by reducing reliance on current technological methods in marketing copyrights in favour of general terms pertaining to the type of creative input such as sound or vision.
- (d) Consumer exceptions in the Copyright Act should be protected by inalienability, as for example back-up of computer programs. The proper balance of the rights of the creator and the consumer requires that the creator should not be permitted to impose higher restrictions on copying by licence terms. Consumers including Universities are entitled to a standard regime of copying rights, and not one which is subject to negotiation on a case by case basis - especially as licences to foreign-owned copyrights are rarely capable of individual negotiation.

In general, the Act should be consistent with section 109A in relation to other copyrights.

Yours sincerely



Dr Glenn Withers AO
Chief Executive Officer