

Copyright Law and Policy Section
Department of Communications and the Arts
GPO Box 2154
Canberra ACT 2600

By email: copyright@communications.gov.au

Friday, 12 February 2016

Dear Copyright Law and Policy Section

Copyright Amendment (Disability Access and Other Measures) Bill 2016

We write as the peak representational bodies for Australia's galleries, libraries, archives and museums. Australia's cultural institutions have a proud history of enabling access to and use of the nation's history and cultural heritage and of preserving it for future generations.

Thank you for the opportunity to comment on the exposure draft of the Copyright Amendment (Disability Access and Other Measures) Bill 2016. We strongly support the proposed changes which update a number of provisions of the Act that are currently onerous or unworkable. The simplification objectives of the Bill are particularly welcome and will assist in achieving a more efficient, effective and adaptable copyright regime for the benefit of creators, publishers, holding institutions and users.

In particular, we support the Bill's move to:

- simplify and expand current disability provisions, particularly the replacement of s200AB with a new fair dealing provision and current disability statutory licences with one exception for institutions to provide access by persons with a disability;
- replace the current preservation copying exceptions for libraries and archives with simplified specific exceptions that are uniform across all materials, do not restrict format or number of copies, and apply to all activities necessary for preservation;
- simplify and modernise the Part VA and Part VB educational statutory licences by consolidating them and removing onerous administrative requirements that undermine the ability of parties to negotiate suitable and flexible solutions for licence management;
- expand the ISP safe harbour regime to include other service providers, including libraries and archives, educational institutions, institutions assisting those with a disability and online services such as Facebook and YouTube;

- end perpetual copyright in unpublished works and offer some guidance on the use of orphan works where the author is unknown.

There are, however, several concerns collectively GLAM members have, which if addressed will enhance and strengthen the proposed Bill. GLAM members support:

- Extending the preservation copying amendment provisions to include all library and archives collections that form part of an institution with collections not available to the public, regardless of whether public or privately held, are covered under the new Act. This will allow all library and archive institutions to preserve at-risk collections in advance of loss, and avoid potential impacts to future research and investigation work involving non-public institutions, including university libraries, charitable organisations, etc. (point 15 and question 4 of the Guiding Questions).
- Changing the responsibility from the Library/Archives/Cultural Institution to the user of an electronic preservation/research copy not to use the material in a manner that infringes copyright (113H(2)(d), 113J(2)(d) and 113M((2)(d)). This would maintain consistency with other parts of the Copyright Act where the burden is on the user of the copyright material to not breach copyright, and not on the agent that makes it available. The current proposed amendments place a considerable burden and expense on institutions to ensure digitised versions of records cannot be further copied and communicated to the public.
- Amending the term of protection for unpublished works by generally "unknown authors" to cover "orphan works" where the author is not generally known and/or cannot be identified from their name alone. This will address the issue of copying 'orphan works' in collections held by Governments as records/archives, such as those that include letters, submissions and reports from members of the public, where the author is named but, as an ordinary member of the community, that person or their heirs are not able to be identified or traced.

With these concerns addressed the Bill will be further strengthened and Copyright Laws in Australia greatly improved.

These amendments are important and long overdue and will provide significant benefits for copyright users in Australia, including libraries, galleries, museums and archives, and their clients, educational institutions and the disability and technology sectors.

Please do not hesitate to contact me for further information on any aspect of this letter.

Yours sincerely

A handwritten signature in black ink that reads "Alex Byrne". The signature is written in a cursive, slightly slanted style.

Dr Alex Byrne

Chair, National & State Libraries Australasia

On behalf of Australian Digital Access to Collections: An initiative of the GLAM peak bodies:

- Australian Library and Information Association (ALIA)
- Australian Society of Archives (ASA)
- Council of Australasian Archives and Records Authorities (CAARA)
- Council of Australasian Museum Directors (CAMD)
- Council of Australian Art Museum Directors (CAAMD)
- Council of Australian University Librarians (CAUL)
- Federation of Australian Historical Societies (FAHS)
- International Council of Museums (ICOM)
- Museums Australia (MA)
- National Research Collections Australia (NRCA)
- National and State Libraries Australasia (NSLA)
- University Art Museums Australia (UAMA)





Australian Digital Access to Collections

An initiative of the GLAM peak bodies

Terms of reference

1. This is a core group of collection sector peak bodies, plus invited representatives from major institutions already running national infrastructure (or those not easily represented by the peak bodies) and organisations representing smaller institutions.
2. Our focus is digital access.
3. The primary purpose is to clarify a shared vision and approach to digital access to Australia's cultural collections through the development of a national framework.
4. The secondary purpose is to enable dialogue and nurture partnerships across all three tiers of government and with the private and not-for-profit sectors.
5. Within the scope of the group, we will advise and advocate on issues that are relevant to all, or the majority of, participants.

Peak bodies

The initiative has been driven by Museums Australia and National and State Libraries Australasia, with support from the Australian Library and Information Association. Participants include:

- Australian Library and Information Association (ALIA)
- Australian Society of Archives (ASA)
- Council of Australasian Archives and Records Authorities (CAARA)
- Council of Australasian Museum Directors (CAMD)
- Council of Australian Art Museum Directors (CAAMD)
- Council of Australian University Librarians (CAUL)
- Federation of Australian Historical Societies (FAHS)
- International Council of Museums (ICOM)
- Museums Australia (MA)
- National Research Collections Australia (NRCA)
- National and State Libraries Australasia (NSLA)



CAARA

Council of Australasian Archives and Records Authorities

CAMD
COUNCIL OF AUSTRALASIAN MUSEUM DIRECTORS



National participating institutions

The peak bodies' members include state, territory and local institutions as well as major national institutions: the Australian Institute of Aboriginal and Torres Strait Islander Studies, CSIRO, the National Archives of Australia, National Film and Sound Archive of Australia, National Gallery of Australia and National Library of Australia.

Other participating institutions

Active participants include Museums Victoria (MV), the Queensland Museum and Science Centre (QM), Queensland Art Gallery and Gallery of Modern Art (QAGOMA), State Library of New South Wales (SLNSW) and Australian Academy of the Humanities (AAH).

Activities

The first meeting took place at the Queensland Museum, Brisbane, on 12 June 2015. This was followed by meetings at the State Library of New South Wales, Sydney, on 30 July and the National Library of Australia, Canberra, on 9 October. The next meeting is planned for February 2016, in Melbourne.

The round table has used these opportunities to explore and discuss existing models for improved public access to digital collections, with presentations from Trove, Atlas of Living Australia, Victorian Collections and National Digital Forum (NZ).

At the meeting of Cultural Ministers on 1 October, the establishment of this GLAM peak bodies group was acknowledged and supported. The round table looks forward to working with government at all three levels to improve public access to collections.

A key action point for the round table is to develop a national framework for digital access to cultural collections. This will be developed with reference to international projects such as Europeana, Digital New Zealand and the Digital Public Library of America.

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