

## **Educational use and the Internet – does Australian copyright law work in the web environment?**

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### **Draft paper**

#### ***The Digital Education Revolution***

- Over the past 20 years the World Wide Web made possible through digital technology and the Internet has revolutionised the way we live. It has also revolutionised the way we educate our children. The classrooms of the 21<sup>st</sup> century provide resources never imagined when we were at school. The capacity for sharing of ideas and collaboration between students in the same classroom, between classrooms in the same school, and between classrooms in different schools in Australia or around the world, is unlimited. The Australian Government has labelled its plans for bringing education into the 21<sup>st</sup> century the ‘Digital Education Revolution’.

#### ***Copyright and the classroom - the statutory licences***

- Australia’s *Copyright Act 1968* contains statutory licences that permit educational institutions in Australia to do certain acts with copyright material that would otherwise breach copyright.
- The statutory licences, enacted in 1989, provided a solution to the needs of educational institutions to be able to take advantage of new technologies (at that time, the photocopier) while at the same time rewarding the author of a creative work.
- The scheme was intended to provide a balance between the public interest in ensuring a free flow of information in education and the private interests of copyright owners.
- The statutory licences **work well** in the analogue world. It permits educational institutions to copy and communicate copyright material for educational purposes while at the same time ensuring that copyright owners’ receive some remuneration for the use of their material.
- The statutory licences also **work well** in the digital world for creators and publishers of e-books, CD-ROMs and other non-web based electronic resources, enabling them to receive copyright licence fees for educational use of their material.
- The statutory licences **work even better** for the millions of website owners in the world who put material on their websites for free public consumption with

no expectation of ever receiving a brass razoo in copyright royalties and receive a windfall at the expense of Australian educational institutions and Australian taxpayers whose taxes fund the education system. It is at this point that one must ask whether the 'balance' intended by the enactment of the statutory licences is seriously out of wack.

### ***The statutory licences and the Internet – a misfit?***

- The statutory licences do NOT work well in the context of the Internet and the World Wide Web.
- Application of the Part VB licence (which covers, literary, dramatic, musical and artistic works) to material made freely available to the world on websites effectively means that educational institutions pay for downloading and printing a webpage unless the webpage owner has specifically made that material 'free for education use' or free for 'non-commercial use within your organisation'.
- In the context of material made freely available on the Internet, the statutory licence is not protecting a market – it has created a market – a very targeted market that means that educational institutions in Australia are the only educational institutions in the world that pay for the use of this material.
- It is ironic that a network that was originally created by universities for sharing information for research and education and on which commercial use was forbidden until 1988, has been hijacked to create a new market for those who never expected to be paid for making their information freely available on the Web.
- As the law currently stands increased use of the internet in Australian schools will result in increasing commitment of public funds to pay copyright fees for use of freely available internet material. Schools will have little option but to limit Internet usage to contain copyright costs.

### ***Is reform needed?***

- In the view of Australia's educational institutions, the answer to this question is an emphatic 'yes'!
- Schools, TAFEs and universities believe that, as a matter of policy, educational institutions should be able to use publicly available information on websites for non-commercial educational purposes without having to pay copyright fees and that such information should be excluded from the statutory licences.
- Exclusion of material available to the world for free on the Internet would not affect the underlying copyright and the source of the material would still need to be appropriately acknowledged whenever the material is used for educational purposes.

- The exclusion should clearly not apply to ‘pirated’ copyright material such as music and movies uploaded onto the Internet without the copyright owner’s authorisation. Nor should it cover any copyright material, access to which is by subscription or protected by a password or some other means.
- It should cover text, images and sound that have been legitimately put on the net for anyone to freely use - material that has been made public with no expectation of attracting copyright royalties.
- Schools believe that a system that effectively penalises educational use of the Internet is contrary to the goals of effective education and stymies innovation. The issue presents a real threat to the Australian Government’s Digital Education Revolution initiative and innovation agenda.
- The Australian Education Senior Officials Committee (a Committee of CEOs for education and training from all Australian jurisdictions that provides policy advice to the Ministerial Council on Employment, Education and Youth Affairs) has written to the Australian Government seeking an amendment to the Copyright Act to exclude material made freely available information on the Internet from the educational statutory licences in the Act. The Government is currently considering the issue.