Other resources on the ALCC website

libcopyright.org.au/content/resources
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creativecommons.org/licenses/by/4.0
Copyright basics:

- Most things you want to use are covered by copyright
- Most things you want to do are covered by copyright
- Getting permission is hard
- You have rights
PART 2 – COPYRIGHT EXTENDED
THE ART I WANT TO MAKE IS ILLEGAL!

HOLD ON WHILE I GO REFORM THE LAW!
Disability and Other Measures Act

Copyright Amendment (Disability Access and Other Measures) Act 2017

Ratified the Marrakesh Treaty

to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled

First treaty to focus on user rights
- education and libraries next?
Disability and Other Measures Act

Disability and Other Measures Act:

- Broadened exceptions for providing access to a person with a disability.
- Simplified the Statutory Education Licence scheme.
- Fixed the exceptions for preservation.
- Ended perpetual copyright for unpublished works (and partial solution for orphan works).
Disability Access
Disability Statutory Licensing schemes

s 200AB(4)
Disability Statutory Licensing schemes

s 200AB(4)
Disability and Other Measures Act / Disability access

Introduced:

- An exception for the use of copyright material by organisations assisting persons with a disability.
- Fair dealing for purpose of access by persons with a disability.
Disability and Other Measures Act / Disability access

any use - any material - any disability

Disability Discrimination Act 1992 definition of disability
s 113F – Use of copyright material by organisations assisting persons with a disability
Disability and Other Measures Act / Disability access

- Declared organisation only
- Reporting to collecting society
- Destroy copies after made
- Only if not available in any accessible format
Disability and Other Measures Act / Disability access

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Disability and Other Measures Act / Disability access

It is not an infringement if:

- The use is to assist one or more people with a disability access the format they need.
- And the organisation is satisfied that the material cannot be obtained in that format within a reasonable time at an ordinary commercial price.
Disability and Other Measures Act / Disability access

- Focuses on client’s needs – eg the specific format needed.
- Encourages the building of libraries of accessible material.
- Permits import and export of accessible material.
- No reporting or record keeping required (though still a good idea)
But only educational institutions and non-profits with a ‘principal function’ of assisting people with a disability.
s 113E – Fair dealing for the purpose of access by persons with a disability
Can do anything that is:

- Fair
- For the purpose of providing access to one or more persons with a disability

Can be used:

- By anyone.
- For anyone (with a disability).
But fairness factors apply:

■ The purpose and character of the dealing.
■ The nature of the work.
■ Effect on the potential market or value.
■ The amount and substantiality of the part copied.
No need to apply the commercial availability limitation.

(though can still be good idea)
“Section 113E is intended to ... enable a person with a disability to enjoy equitable access to ... a person without a disability ... [it] is deliberately flexible and is intended to encourage creativity, innovation and responsiveness to relevant technological advances within the disability sector.”

- Explanatory Memorandum
Making Content Accessible: Navigating Australia’s Copyright Law for Disability Access

http://libcopyright.org.au/content/resources
Disability and Other Measures Act / Disability access

Preliminary Questions

- Is the client a “person with a disability”?
- Does the disability cause the person difficulty in reading, viewing, hearing or comprehending copyright material?
- Is there another form that will allow that person to better read, view, hear or comprehend the material?
- Is the material already available in the form the person needs?
- Do you have a fair process for identifying and recording client requirements?
Is your use permitted under the non-profit exception (s113F)?

■ Are you from a qualified organisation?
■ Is the use for the sole purpose of enabling the client to access the material in the form they need?
■ Have you checked that the material is not commercially available in the form the client needs?

Is your use permitted under the fair dealing for disability access (s113E)?

■ Is the use for the purpose of a person or persons with a disability accessing material?
■ Is it fair?
Disability and Other Measures Act / Disability access
Disability and Other Measures Act / Education

Educational Statutory Licence
Part VA statutory licence
Part VB statutory licence
Disability and Other Measures Act / Education

Part VA statutory licence
Part VB statutory licence
Disability and Other Measures Act / Education

‘10% or one chapter’ rule
Disability and Other Measures Act / Education

‘10% or one chapter’ rule
Disability and Other Measures Act / Education

Introduced a single scheme:

- With no express limits on copying or communicating copyright material by an educational institution.
- With no specific reporting and monitoring.

Provided:
- A remuneration notice is in place between the educational institution and the relevant collecting society.
- Does not unreasonably prejudice the interests of the copyright owner.
Disability and Other Measures Act / Education
Disability and Other Measures Act / Education
Keep everything the same until you hear from the National Copyright Unit / Universities Australia
Disability and Other Measures Act / Preservation

s 51A

s 110B
Disability and Other Measures Act / Preservation

s51A
s110B
s 113H – Use for the purpose of preserving the collection
Disability and Other Measures Act / Preservation

- **Applies to:**
  - Any material.
  - Any activity.
  - Any format.

- **Can be:**
  - Any number of copies.
  - Any library officer – eg. experts at other libraries with specialist knowledge and/or equipment.
  - Done by / for another library
Disability and Other Measures Act / Preservation

Provided:

- The use is for the purposes of preserving the collection.
- For published works, the version cannot be obtained.
- The library is ‘open to the public’, including institutions that:
  - Are open to a subcategory of the public – eg. students.
  - Are open part-time, on a temporary basis, or on request.
  - Only make their materials available via interlibrary loan.
- The archive is nonprofit.
Disability and Other Measures Act / Preservation

And you can:

- Provide onsite access to an electronic preservation copy, as long as you take reasonable steps to prevent it from being used to infringe copyright.

- Once you have made a preservation copy, it can be used as the source to provide access to material under any of the other provisions – eg. document delivery, interlibrary loan, s 200AB
Disability and Other Measures Act / Preservation
Unpublished works are protected perpetually
Copyright Term
Unpublished works are protected perpetually
Published or unpublished:

Life of the author + 70 years

If “make public” before 1 January 2019, get 70 years
Copyright duration / Orphan works

Copyright duration for orphan works:

Year made or made public + 70 years

If “made public” within 50 years of creation
Copyright duration / Orphan works
As of 1 January 2019 default rule will be:

■ Works - life of the author plus 70
■ If you don’t know the author, 70 from creation / made public
■ Films and sound recordings - 70 years from creation / made public

Transition - if “made public” before 1 January 2019, get 70 years from “made public”
Copyright duration / Orphan works

When is author unknown?

- Spectrum from anonymous to John Smith

When made public?

- Only with creator’s authorisation ie not under exception
On 1 January 2019, millions of works are going to fall into the public domain. What are we going to do about it?
Copyright duration
Copyright Amendment (Service Providers) Act 2018

What is a safe harbour?
Online service providers avoid financial remedies for infringements by others on their services.
Courts cannot award financial remedies against ‘carriage service providers’ that:

- Provide access to the internet
- Cache material automatically
- Store material online at the direction of the user
- Link to third-party material.
Service Providers Act / Extending safe harbour

Carriage service providers
Carriage service providers

Internet service providers (ISPs)
What is changing with the Service Providers Act?
Service Providers Act / Extending safe harbour

Carriage service providers
‘Service providers’ are:

- Carriage service providers.
- Organisations assisting persons with a disability.
- Bodies administering:
  - A library.
  - An archive.
  - A key cultural institution.
  - An educational institution.
BUT only apply if:

- Acting as a service provider - depends on services
- Comply with requirements
Compliance is voluntary.

- Compliance lowers exposure to risk in relation to safe harbour activities.

- Non-compliance does not make you liable

- The Service Providers Act applies from Friday 29 December 2018.
What library and archive activities relate to safe harbour?
A library or archive providing public access computers or public wi-fi means it is providing access to the internet.

Automatic caching occurs if a library or archive provides computers or servers to search online.

Allowing users to upload materials means a library or archive is storing material online.

Links to other websites in a collection, catalogue, directory or database means a library or archive is linking to third party materials.
Most libraries and archives provide internet access
Most libraries and archives automatically cache material
Most libraries and archives link to third-party material
Some libraries and archives host third party material (eg NED)
Service Providers Act / Compliance

How do you comply?
Copyright Safe Harbour Flowchart for All Institutions

Do you provide public access computers or wifi, or public access services that use caching?

- Yes
  - Are these services automatic ie the material is not modified by your staff?
    - Yes
      - The copyright safe havens cover your services. You should consider taking the compliance steps below to access additional legal protections.
    - No
      - Do you provide services that link to external websites eg a custom search engine or reference list?
        - Yes
          - Are these services free?
            - Yes
              - You do not provide services covered by the copyright safe havens. You do not need to take any action.
            - No
              - No

- No
1. Provide the title of and contact details for a designated person to receive copyright notices on your website

2. Have a policy for termination, in appropriate circumstances, of the accounts of repeat infringers

3. Remove material from your cache if it has been removed from the original site for being infringing - as soon as practicable after receiving a takedown notice from the copyright owner/licensee (usually within 3 working days)

4. Remove any links from your system that point to infringing material - as soon as practicable after receiving a takedown notice from the copyright owner/licensee (usually within 3 working days)

5. Comply with any relevant industry codes (none currently exist)
Copyright Safe Harbour Flowchart for Hosting Institutions

Do you host other people's materials on your servers (eg as part of a user generated content project, or e-legal deposit)?

- **Yes**
  - Do you allow clients or users to upload material directly to this service, without your approval or selection?
    - **Yes**
      - Is this service free?
        - **Yes**
          - The copyright safe harbours cover your hosting service. You should follow the takedown process below in relation to any potentially infringing content uploaded by third parties.
          - **Next**
        - **No**
          - The copyright safe harbours do not cover your hosting service. You can determine your own takedown process.
    - **No**
      - Have you received a takedown notice from a copyright owner/licensee alleging that material on your hosting service infringes copyright?
          - **Yes**
            - Is the notice credible? eg Is the material correctly identified? Does the person sending it appear to be the copyright owner/licensee or their agent?
              - **Yes**
                - Have you found material on your hosting service you believe infringes copyright?
                  - **Yes**
                    - **Next**
                  - **No**
                    - **Next**
              - **No**
                - **Next**
          - **No**
            - **Next**
1. Remove the material from your service as soon as practicable, usually within 3 working days.

2. Notify the person who uploaded the material that it has been removed, and inform them that they have 3 months to issue a counter-notice challenging the claim that the material is infringing. Include a copy of any takedown notice you received from the copyright owner/licensee for information.

3. If you receive a counternotice, send it to the copyright owner/licensee and inform them they have 10 days to commence legal action.

4. If the copyright owner/licensee does not inform you they have commenced legal action in 10 days, or if the action is unsuccessful, restore the material.
Safe Harbours Compliance Checklist for Libraries and Archives

libcopyright.org.au/content/resources
Service Providers Act
Modernisation Consultation
“Australia’s copyright arrangements lack balance and have been slow to adapt to technological change, imposing costs on the broader community.” (p.103)

“They are skewed too far in favour of copyright owners, to the detriment of consumers and intermediate users.” (p.7)
Modernisation Consultation

PC recommendations:

- Key - fair use for balance
- Controversial - statements about term, allowing parallel importation for books
- Less controversial - end geoblocking, end perpetual copyright, mandate open access

Vocal campaign by rights holders against the report, and particularly fair use
Modernisation Consultation

In response, Gov is currently consulting on:

▪ Copyright and contract – protect exceptions from being overruled by contracts

▪ Orphan works – exception and/or limitation of liability to enable use of orphan works

▪ Limitations and exceptions – increase flexibility through fair use or fair dealing, and fix the rest of the GLAM exceptions
<table>
<thead>
<tr>
<th>What we want</th>
<th>What the gov is suggesting</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fair use</td>
<td>Fair dealings for: quotation; private use; incidental and technical copying (including TDM); libraries and archives; illustration for the purpose of instruction</td>
</tr>
<tr>
<td>Protect all exceptions from contractual override</td>
<td>Protect fair dealings and cultural institution exceptions from contractual override</td>
</tr>
<tr>
<td>Orphan works exception for non-commercial use by cultural institutions, and for other uses subject to higher test (eg fairness)</td>
<td>Orphan works exception for non-commercial use by cultural institutions, limitation on liability for others</td>
</tr>
<tr>
<td>Fix document delivery and interlibrary loan like preservation</td>
<td>Fix document delivery and interlibrary loan like preservation</td>
</tr>
</tbody>
</table>
What will it mean?

- Fair use / fair dealing for libraries and archives – create flexibility for new technologies, innovation, collaboration, commercial activities
- Orphan works exception – will at minimum make use of orphan works by GLAM less risky, hopefully others
- Contractual override – will mean e-resource contracts can’t exclude library and archive exceptions
- Document delivery and interlibrary loan = fixed!
Modernisation Consultation

Any of the above will be an improvement but still need to survive election, lobbying etc.

Without fair use, the law will still have gaps, become outdated and need further review.
Modernisation Consultation

Why do libraries and archives want fair use?

▪ Broader than s200AB (eg allows some commercial uses)
▪ Helps solves dilemma re providing material to users for technically infringing uses
▪ Increases flexibility, acts as a safety valve
▪ More intuitive for lay person, less confusing than complex exceptions
▪ Gives institutions confidence to be innovative
▪ Empowers clients, not just institutions
▪ Only way to have a future-proofed copyright system
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