

Copyright

MORE COPYRIGHT REFORM FOR LIBRARIES IN 2019

Copyright is complex, and changes are ahead, as JESSICA COATES of the Australian Libraries Copyright Committee explains.

2018 was a big year for copyright in Australia. It saw the start of several major changes that directly affect libraries, including improved provisions for providing access to people with a disability; simplified educational statutory licences; and a 'fixed' preservation exception.

Which is why it's hard to believe that there are still more changes this year that are equally significant. Two to be precise: the extension of the copyright safe harbour scheme to libraries and archives, and new, simplified copyright duration terms.

Safe Harbours

The commencement of the *Copyright Amendment (Service Providers) Act* (bit.ly/2Sb56sU) in December 2018 saw the beginning of new legal protections for libraries in their important role as online service providers.

Essentially, the copyright safe harbour is a scheme which guarantees that online service providers don't have to pay damages if their clients use their systems to infringe copyright if the service providers take certain steps designed to help copyright owners battle infringement online.

Until now, 'online service provider' was narrowly defined, only covering commercial internet service providers. But the new laws follow the rest of the world by extending the scheme to cover educational, disability and cultural

organisations providing the same services such as internet access, caching, linking, content hosting.

The most important thing about the safe harbours is that they are entirely voluntary – you don't have to comply unless you think the extra protection is worth the effort. However, the compliance steps generally include simple things like having a designated copyright contact on your website, so if you provide online services it's worth considering.

To help libraries decide whether they want to access the safe harbours, we've put together a guide on the scheme, including some simple flowcharts that spell out the steps to comply, depending on which services you provide. You can find the guide along with our other libraries copyright resources at (bit.ly/2Qn4GIG).

Duration

The really big change this year is the new copyright duration rules. These amendments passed way back in 2017, as part of the *Copyright Amendment (Disability Access and Other Measures) Act 2017* (bit.ly/2DJstFJ), along with the aforementioned 2018 changes. Due to a delayed transition, they didn't come into force until 1 January 2019.

The primary, and long overdue, goal of the amendments is to put an end to the outdated concept of perpetual copyright for unpublished works. As those who took part in *Cooking for Copyright* (bit.ly/1JNvNx9) will remember, before these amendments unpublished materials essentially remained in copyright indefinitely, meaning that the Captain Cook diaries and the Jane Austen letters held at the National Library of Australia are technically still protected by copyright.



More to come

With all these recent copyright changes it may be hard to believe, but there is (hopefully) more to come. For most of last year the government was consulting on steps to modernise the Copyright Act, particularly around orphan works, contractual override, and ensuring the copyright exceptions work in the digital era.

While there hasn't been any final word on amendments at the time of writing, there are some great proposals on the table, including new fair dealings (or even fair use) to cover things like quotation and text and data mining; an orphan works exception for libraries and (possibly) their clients; and the protection of all library exceptions from being overruled by contracts (like e-resource licences).

We're also hoping to fix document delivery and interlibrary loans in the same way we fixed preservation. But with the election getting closer, it's not clear if or when we'll hear about the outcome of the review. Fingers crossed we'll have even more to celebrate in 2020. 🍀

The new duration laws end this distinction, so that unpublished works now have the same term as their published counterparts. As of 1 January, literary, artistic, musical and dramatic works will all have a copyright term of 70 years from the death of the author, and audio-visual materials will have a term of 70 years from their creation or when they were made public.

The new term provisions also provide a partial solution for the problem of orphan works. For the first time, works for which you don't know the author, now have a fixed copyright term of 70 years from creation or when they were made public.

However, applying the laws to your existing collection won't be quite as simple as you might hope, thanks to some complicated transition provisions, designed to allow those who still have unpublished works they were hoping to exploit to gain a few more years' copyright.

If a copyright owner published their unpublished materials after the death of the author, but before 1 January 2019, they have protection until 2089. To add further complications, there are some slight variations about how the laws apply to different types of materials.

If you're still confused, that's ok. We have a fact sheet (bit.ly/2QoAc2G) that summarises the complete changes, and National and State Libraries Australia has published a guide (bit.ly/2RdTzZg) on applying them to collections.

For the definitive cheat sheet on copyright term, we recommend the one produced by the Department of Communications and the Arts (bit.ly/2zqSoPz).

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