

Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

To the Committee

I am writing on behalf of the Australian Libraries Copyright Committee to provide comments on the Copyright Amendment (Service Providers) Bill 2017.

The ALCC is the main consultative body and policy forum for the discussion of copyright issues affecting Australian libraries and archives. It is a cross-sectoral committee with members representing the following organisations:

- Australian Library and Information Association
- National and State Libraries Australasia
- Council of Australian University Librarians
- Australian Government Libraries Information Network
- National Archives of Australia
- Australian School Library Association
- Australian Society of Archivists
- Council of Australasian Archives and Records Authorities
- NSW Public Libraries Association

Our members in the libraries and archives communities welcome the amendments proposed by the Bill. As we have stated in previous communications with the government on the matter “A localised and universally applicable anti-piracy notice and takedown system for addressing local copyright infringements would increase clarity and reduce costs both for our members and for Australian creators.”¹

As the government acknowledged in its media statement announcing the Bill, libraries and archives provide vital connectivity services for the Australian community every day. Of Australia’s 1630 public libraries, all provide public access internet terminals (more than 13,000 in total), 70% provide free wifi

¹ ALCC response to the draft report of the Productivity Commission's IP Inquiry (<http://libcopyright.org.au/our-work/submission/alcc-submission-response-draft-report-productivity-commissions-intellectual>) p.7. See further comments in our submissions in response to the 2014 Online Copyright Infringement Discussion paper (<http://libcopyright.org.au/our-work/submission/submission-online-copyright-infringement-discussion-paper>) and the 2016 exposure draft of the Copyright Amendment (Disability Access and Other Measures) Bill (<http://libcopyright.org.au/our-work/submission/alcc-ada-joint-submission-exposure-draft-copyright-amendment-disability-access>).

and more than two thirds provide digital literacy classes.² NSW's public libraries alone host more than 7.7 million internet sessions each year.

In doing so, our members engage in a myriad of online activities on behalf of their clients - caching in response to user searches, hosting content through legal deposit and social media, and running intranets for clients and staff alike. As part of the innovation agenda, libraries and archives are also increasingly home to digital literacy projects such as innovation hubs and maker spaces. Of the 30 first-round Digital Hubs, 27 were located in libraries or archives. All of these activities expose libraries to potential legal liability for authorising third party infringements under Australia's current copyright law.

The safe harbour scheme was designed specifically to protect organisations such as ourselves in these situations, and similar schemes already protect our counterparts in countries such as the US, Japan and South Korea. The risk is not merely theoretical – universities have been sued in Australia for authorising infringement in the past, and in 2003 music companies again commenced proceedings against Australian universities alleging that their IT systems had been used to infringe copyright.³

The amendments proposed by the Bill will provide significant benefits to Australia's library and archive community. They will lower the risk involved in digital engagement projects, and enable our members to more confidently make use of the latest technologies and tools. The increased certainty with regard to procedures and legal requirements are particularly welcomed as most libraries and archives do not have the resources or expertise to deal with copyright infringements on a case-by-case basis. Many of our members are unclear about what to do when they are alerted to alleged illegal activities undertaken over their systems, and will therefore benefit significantly from the clear rules for notice and takedown provided by the scheme. The members of the Australian community utilising our services will also benefit from the legal protections against false claims of infringement that are included in the safe harbours.

In addition to supporting the proposed amendments, the ALCC also maintains its support for the further extension of the copyright safe harbours to all online service providers, including commercial platforms. This will ensure that the Australian safe harbour system works as intended - to increase the efficiency and reduce the cost of combatting online infringement, no matter where it appears. A safe harbour system that applies only to some players will only partially address the problems of infringing activity on Australian services and will remain unnecessarily complex and confusing for creators and users alike. Furthermore, our sector partners frequently with commercial players in our most innovative digital activities, and are strongly encouraged by the government to do so. Removing legal silos and creating standardised rules for all players will clarify potential liability and reduce risk for such joint projects. As

² For more information on digital engagement in Australia's libraries, see the Australian Library Information Association's 2017 report "Australian Libraries, the digital economy in everyone's reach" available at <https://www.alia.org.au/news/16361/new-alia-report-responds-digital-economy-consultation>.

³ See *University of NSW v Moorhouse* [1975] HCA 26; (1975) 133 CLR 1 (1 August 1975); see threatened 2003 suit at <http://www.theguardian.com/business/2003/mar/28/students.highereducation>; <http://www.smh.com.au/articles/2003/08/29/1062050658496.html>

currently drafted, it is unclear whether the scheme will cover interactive projects such as the State Library of Victoria's #createarthistory collaboration with Redbubble⁴ and the Google Cultural Institute, in which dozens of Australian institutions from the National Archives to the Sydney Opera House participate.⁵

In summary, we welcome the current changes as an initial step in improving Australia's safe harbour arrangements, but encourage further amendments to ensure that all local online service providers have the same legal certainty.

We welcome further questions on the Bill, and will be happy to present to the committee. Our primary contact on the issue is our Copyright and Policy Adviser, Jessica Coates, who can be reached at jessica@libcopyright.org.au.

Yours faithfully



Margaret Allen
Chair
Australian Libraries Copyright Committee

⁴ See <https://www.slv.vic.gov.au/state-library-victoria-redbubble-%E2%80%9Ccreatearthistory%E2%80%9D-together>

⁵ See more at <https://www.google.com/culturalinstitute/about/>