



## **Submission to the ALRC Copyright and the Digital Economy Inquiry**

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# Introduction

Pirate Party Australia thanks the Australian Law Reform Commission for providing the opportunity for interested and affected individuals and stakeholders to make comment on this issues paper.

## About Pirate Party Australia

Pirate Party Australia is an unregistered political party, based on similar principles to that of other members of the international Pirate Party movement that have seen electoral success in Sweden, Germany, Austria, Switzerland and the Czech Republic. Pirate Party Australia campaigns for intellectual property reform to reflect contemporary social trends and expectations.

## General remarks on this issues paper

At many points in this submission, Pirate Party Australia encourages a technologically-neutral approach to reforming copyright and/or copyright exceptions. Pirate Party Australia believes that in order for laws to achieve their maximum flexibility and reactivity to emerging challenges, copyright law should be applied universally to technologies. There should be no exceptions for specific technologies: the treatment of the Internet (and anything that emerges as a result of, or following, the Internet) as being anything other than an improved communication network should be discouraged. The Internet, radio, television and other broadcast mediums and communication networks should all be governed by the same copyright law.

## The Inquiry

**Question 1. The ALRC is interested in evidence of how Australia's copyright law is affecting participation in the digital economy. For example, is there evidence about how copyright law:**

- (a) affects the ability of creators to earn a living, including through access to new revenue streams and new digital goods and services;**
- (b) affects the introduction of new or innovative business models;**
- (c) imposes unnecessary costs or inefficiencies on creators or those wanting to access or make use of copyright material; or**
- (d) places Australia at a competitive disadvantage internationally.**

Pirate Party Australia agrees with the points made in paragraphs 1–5 of the issues paper.

Pirate Party Australia also agrees with the discussion of the purpose of copyright law as set out in paragraphs 6–11, and takes the view that current copyright laws are incompatible with the realities of the digital environment. The Party does not, however, agree with Barlow (in paragraph 11), as it believes copyright may be redeemable given adequate reform.

Pirate Party Australia agrees with the premises set out in paragraphs 12—18, particularly the need for clarity and coherence in copyright law and the need for community practice to be considered.

While Pirate Party Australia realises that the ALRC is bound by the terms of reference, it would like to pass criticism on the segmented nature of copyright reform. The issues paper speaks in numerous places about the need to simplify and consolidate the law so that it can be more easily understood. Despite this, the ALRC has been prevented from taking a holistic approach to this review — by cordoning off the scope of the review, the Attorney General's terms of reference only reinforce the fragmented nature of the *Copyright Act*, and the Party believes that any future inquiries into copyright reform should be permitted to examine the Act in full, allowing for a more substantial and structural reform of copyright.

## Guiding principles for reform

**Question 2. What guiding principles would best inform the ALRC's approach to the Inquiry and, in particular, help it to evaluate whether exceptions and statutory licences in the *Copyright Act 1968* (Cth) are adequate and appropriate in the digital environment or new exceptions are desirable?**

Pirate Party Australia agrees with the introductory paragraphs to this section (paragraphs 26–28).

### **Principle 1: Promoting the digital economy**

***Reform should promote the development of the digital economy by providing incentives for innovation in technologies and access to content.***

Pirate Party Australia believes this is an important consideration and supports this principle.

### **Principle 2: Encouraging innovation and competition**

***Reform should encourage innovation and competition and not disadvantage Australian content creators, service providers or users in Australian or international markets.***

Pirate Party Australia has found no evidence that "all rights reserved" copyright is necessary to encourage innovation and competition in general, and the justification for maintaining this position appears to stem from the belief that pre-Twenty-First Century modes of production and distribution are still relevant.

Prior to ubiquitous computing and networking technologies, producing and distributing innovative materials was more often than not too expensive for any single individual to finance themselves. Yochai Benkler, a Law professor at Harvard Law School, asks the question "Why can fifty thousand volunteers successfully co-author *Wikipedia*, the most serious online alternative to the *Encyclopedia Britannica*, and then turn around and give it

away for free?"<sup>1</sup> *Wikipedia* is one of the most innovative platforms that has resulted from the ability for volunteers to contribute on projects they care about. Similarly, BitTorrent is a widely implemented open-source protocol for transferring large amounts of data via distributed, decentralised networks. It is implemented by many free applications, and has not required a commercial incentive to be innovative.

The reason for such innovation is because the cost of producing and distributing content has been drastically reduced: digital technologies allow individuals and groups with hobbyist budgets to produce quality content and distribute it at low cost. This implies that the link between economic protectionism and innovation is tenuous at best.

There are some exceptions where copyright does provide some incentive to innovate, and these are primarily projects involving large financial investments, which is why Pirate Party Australia believes that maintaining copyright at the commercial level should continue.

With these statements in mind, Pirate Party Australia supports an approach to reform that ensures innovation and competition are encouraged, however the Party feels it is important to note that copyright, as a statutory monopoly, is in opposition to competition in the strictest sense. This conclusion was also reached by the US Republican Party's Study Committee in a recent policy brief.<sup>2</sup> Copyright is, by its very nature, anti-competitive, as it is a monopoly.

### **Principle 3: Recognising rights holders and international obligations**

***Reform should recognise the interests of rights holders and be consistent with Australia's international obligations.***

Pirate Party Australia believes that the interests of rights holders and international obligations should only be considered where they do not unduly impact on:

- (1) The rights of individuals to communicate in private,
- (2) The ability of communications providers to guarantee private communications,
- (3) The ability of companies to offer services that are content-neutral,
- (4) The right to participate in cultural life, and
- (5) Australian sovereignty.

The right to private communications is protected by international law.<sup>3</sup> However, there has been an increased expectation for Internet service providers to assist copyright holders in identifying potentially infringing acts and subscribers, and failure to do so may be considered to be endorsing copyright infringement.<sup>4</sup> It is unreasonable for telecommunications providers to assist, without a court order or warrant being issued, private businesses in identifying individuals and compromising subscribers' privacy. The right to privacy should almost always trump the interests of rights holders.

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<sup>1</sup> Benkler, *The Wealth of Networks*, 5.

<sup>2</sup> Lee, "Influential GOP group releases, pulls shockingly sensible copyright memo."

<sup>3</sup> United Nations, Universal Declaration of Human Rights, article 12.

<sup>4</sup> Roadshow Films Pty Limited vs iiNet Limited [2011] FCAFC 23 (24 February 2011).

Rights holders should not have any influence over how data is delivered to subscribers. Access to technologies that are able to distribute copyrighted materials should not be prevented for the sake of rights holders' interests, as this would stifle innovation. For example: because YouTube contains millions of videos that are uploaded by users, frequent copyright infringement occurs. The interests of rights holders should not be considered if it would interfere with the vast amount of content available via YouTube that does not infringe. Nor should services be required to discriminate and favour content provided by registered rights holders' organisations. A service should be permitted to act neutrally.

There should also be no impact on the right to participate in cultural life. Under the United States' *Digital Millennium Copyright Act (1998)*, the ability of rights holders to issue automatic takedown notices for infringing content has been abused in several cases. Techdirt, a popular and regular critic of copyright, has documented extensive abuse of this system, including the removal of public domain videos taken by NASA of Mars,<sup>5</sup> performances of public domain works by musicians,<sup>6</sup> and a video "about the benefits of remix culture" that used copyright material in a fair use scenario.<sup>7</sup> Such a system, if introduced in Australia, would likely be abused by rights holders and their representatives (as, for example, the Australian Federation Against Copyright Theft, for example, represents the interests of US-based organisations).<sup>8</sup> Pirate Party Australia recommends that rights holders' interests be placed second to the right enshrined in article 27, paragraph (1), of the Universal Declaration of Human Rights, to which Australia is a signatory: "Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits."<sup>9</sup>

Despite this, the ability for Australia to reform its own laws, suitable to its own economic and social realities, should be of paramount importance. Pirate Party Australia recognises that while international obligations are often necessary, Australia needs laws that are suitable for Australian citizens. If this requires the renegotiation of trade agreements and treaties, then it would be a detriment to our society if we maintained obligations that were only beneficial to other nations. The effects of bowing to international pressure over copyright laws are described by Matt Mason in 2008:

The Pirate Bay was raided by the Swedish authorities in May 2006, after the White House threatened the Swedish government with trade sanctions, and the laws there pertaining to [BitTorrent] tracker sites were changed. But this was not a good idea. The site was back up in just three days, and the raid catapulted support for the [Swedish] Pirate Party to new heights, so much so that the Swedish government is now planning to repeal its laws against tracker sites.<sup>10</sup>

If Australia is to be successful in the Twenty-First Century, then Australian law must move out of the Twentieth Century. Laws and agreements drawn up prior to, not anticipating, or

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<sup>5</sup> Masnick, "Curiosity's Mars Landing Video Disappears".

<sup>6</sup> Masnick, "Major Labels Claim Copyright Over Public Domain Songs".

<sup>7</sup> Masnick, "Video About Fair Use, Remix & Culture".

<sup>8</sup> Australian Federation Against Copyright Theft, "About Us".

<sup>9</sup> United Nations, Universal Declaration of Human Rights, article 27, paragraph (1).

<sup>10</sup> Mason, *The Pirate's Dilemma*, 57.

not taking into consideration, modern technology, society, culture and commerce, are not going to be suitable for today's Australia, and should therefore have a reduced impact on the recommendations of the ALRC.

**Principle 4: Promoting fair access to and wide dissemination of content**

***Reform should promote fair access to and wide dissemination of information and content.***

Pirate Party Australia agrees wholeheartedly with this principle. It should be noted, however, that often those technologies that best promote fair access to and wide dissemination of content are the most difficult to regulate.

It is essential that access to culture, information and knowledge is equitable, enabling the broadest possible cultural and economic participation by all people. Ensuring wider dissemination encourages learning and inquiry, as well as promoting creativity.

**Principle 5: Responding to technological change**

***Reform should ensure that copyright law responds to new technologies, platforms and services.***

Pirate Party Australia agrees with this principle, and makes the following remarks in relation to the ALRC's notes:

- In regard to paragraph 36: in responding to new technologies, copyright law must take into account that interaction with copyrighted materials has been heightened, and that it is an accepted socio-cultural practice to do so and share the results of one's efforts. Reform should take into account the vast amount of non-commercial derivative works that are being made. Additionally, there must be clear boundaries concerning copyright holders' ability to enforce their copyrights — the challenges posed by new technologies should not allow copyright holders to enforce copyright at the expense of fundamental civil rights.
- In regard to paragraph 37: Pirate Party Australia supports reform that increases the certainty of copyright law, making it more defined and accessible to both rights holders and users of copyright material.

**Principle 6: Acknowledging new ways of using copyright material**

***Reform should take place in the context of the 'real world' range of consumer and user behaviour in the digital environment.***

Pirate Party Australia agrees entirely that reform should acknowledge changes in attitudes towards dissemination and interaction with knowledge, culture and information regulated or enclosed by copyright. Where a significant shift in behaviour can be observed, this behaviour should not be ignored, and analysis of such behaviour should look to structural determinants of such behaviour as well trends or changes in what is considered to be ethical or normal behaviour.

The Party welcomes increased clarification regarding what is infringing behaviour, as well as the opportunity to discuss those shifts, and how copyright law may be amended to legalise, accommodate or encourage such beneficial changes in behaviour.

**Principle 7: Reducing the complexity of copyright law**

***Reform should promote clarity and certainty for creators, rights holders and users.***

Pirate Party Australia agrees with this principle. Copyright law should be both thorough, but also accessible, logically laid out, and coherent. Uncertainty in law should be reduced as much as possible, especially in relation to copyright which already has numerous variables. Complicated legal structures and mechanisms or vague concepts encourage non-productive litigation and create a chilling effect that inhibits innovation, especially in the small and medium enterprises sector where entrepreneurial activity can test the limits of existing legal structures.

**Principle 8: Promoting an adaptive, efficient and flexible framework**

***Reform should promote the development of a policy and regulatory framework that is adaptive and efficient and takes into account other regulatory regimes that impinge on copyright law.***

Pirate Party Australia encourages the ALRC to recommend reforms that are positioned within, and take into account, the broader context of contemporary Australian issues, laws and regulations.

## **Caching, indexing and other Internet functions**

**Question 3. What kinds of internet-related functions, for example caching and indexing, are being impeded by Australia's copyright law?**

The legality of caching and other transient copying (such as indexing or file retrieval) is currently unclear and untested under the *Copyright Act 1968*. However, because several common and increasingly vital digital technologies regularly perform this function as part of normal operating procedure, explicit exceptions should be made to freely (in terms of both cost and restriction) permit these uses. Most broadcast mediums convert one signal to another as part of their function. Television, for example, converts an electromagnetic signal into visible light, which could be considered both transient copying and transformative use. The Internet, being a vast network of computational devices, operates by copying — a packet of data is copied from one device to another, usually very quickly. To complete all functions, including serving a web page to a requester, copying in some form is needed. As the Internet becomes increasingly efficient at providing access to information, copying, often of copyright material, plays a vital role. It would not be possible, for example, for Google to direct users to legitimate content if it could not cache and index websites.

**Question 4. Should the *Copyright Act 1968 (Cth)* be amended to provide for one or more exceptions for the use of copyright material for caching, indexing or other uses related to the functioning of the internet? If so, how should such exceptions be framed?**

For practical purposes, Pirate Party Australia believes an open-ended blanket exception for all transient copying is an appropriate means of dealing with such a legal lacuna.

## **Cloud computing**

**Question 5. Is Australian copyright law impeding the development or delivery of cloud computing services?**

Australian law has impeded, and will continue impeding, development and delivery of cloud computing services. A recent ruling against Optus by the High Court regarding their TV Now service (which allowed users to have a broadcast recorded and made accessible to them at a more convenient time or on a more convenient device than a television) highlights the *Copyright Act 1968*'s inability to adequately provide for technological changes. Under exceptions put in place in 2006, TV Now should have been legal under the Act, as the service was a simple step forward from the video cassette recorder (VCR). It is illogical to disallow cloud computing services from developing and/or operating because they deploy an existing concept on a new platform. Optical media vendors and manufacturers of recording devices (DVD burners, hard disk recorders, VCRs) are not considered to infringe copyright, as the act of recording is initiated by the operator, who is assumed to be exercising their rights to timeshift content under the relevant exception in the Act. In the case of TV Now, despite the user of the service initiating the recording of a broadcast, Optus was held responsible for carrying out the recording. *Any* service provided that involves, could involve, or is likely to involve, the storing or transmission of copyrighted material where the service's role is to carry out an action initiated or requested by a user/subscriber of the service is potentially liable under this recent precedent because it does not recognise the evolutionary nature of technology.

**Question 6. Should exceptions in the *Copyright Act 1968 (Cth)* be amended, or new exceptions created, to account for new cloud computing services, and if so, how?**

Pirate Party Australia is not in favour of modifying or creating exceptions for the explicit purpose of permitting cloud computing services to operate. The Party believes that this is a flawed premise to approach the issue from: adding new exceptions for changing business trends and technologies will cause the *Copyright Act 1968* to continually lag behind advances and require reform each time a new technology opens up a grey area in the law. This is a far from ideal situation for any Australian law to be in.

The Party instead believes that any amendment to the Act to allow for cloud computing services should be approached from a technologically-neutral perspective. Users and service providers, regardless of medium or technology, should have the same rights to record a broadcast to cloud-based storage as they do for recording it to a device in their



home, and this should apply to any future developments. Opposition to technological development can be summed up by the comments of Jack Valenti, former President of the Motion Picture Association of America (MPAA), in his 1982 testimony to the US Congress:

I say to you that the VCR is to the American film producer and the American public as the Boston strangler is to the woman home alone.<sup>11</sup>

The past century has seen an exponential increase in the ability to home record for convenience of the consumer, and in none of those cases has there been a substantially detrimental effect. Technologies that assist in balancing the rights of society to benefit from the works it grants a protectionist monopoly on have been opposed by copyright holders and their representative organisations, and, as can be demonstrated by Valenti's comments above, none of those technologies have strangled industries based on copyrighted materials. Similarly, the British Phonographic Industry's (BPI) "Home Taping Is Killing Music" campaign against recording radio broadcasts in the 1980s proved misguided; in 2012 it is evident that home taping did not kill music.

In order to increase reactivity to changes in technology, the law should be reformed to be technologically-neutral, so that future advances are also protected by default. This will encourage the development of new technologies and services, providing greater accessibility for consumers.

## Copying for private use

**Question 7. Should the copying of legally acquired copyright material, including broadcast material, for private and domestic use be more freely permitted?**

Pirate Party Australia believes that all private and domestic copying of copyright material should be freely permitted without any restrictions, as attempts to prevent this may interfere with rights to privacy and private communication, and places unfair financial burden on consumers.

**Question 8. The format shifting exceptions in the *Copyright Act 1968 (Cth)* allow users to make copies of certain copyright material, in a new (eg, electronic) form, for their own private or domestic use. Should these exceptions be amended, and if so, how? For example, should the exceptions cover the copying of other types of copyright material, such as digital film content (digital-to-digital)? Should the four separate exceptions be replaced with a single format shifting exception, with common restrictions?**

Increasingly consumers are expecting to be able to purchase a single license for content and access that content on any number of devices they may own or have access to. Exceptions should be introduced to permit such format shifting. The exceptions should be amended to a single, open-ended fair dealing exception that is completely technologically-neutral. This would make the law more efficient, as it would not need to be modified each time a new

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<sup>11</sup> Castonguay, "50 Years of the Video Cassette Recorder".

technology became available. There is no reason why, for example, a consumer should be required to purchase multiple licenses if all they want to do is convert a DVD to be playable on a tablet computer.

**Question 9. The time shifting exception in s 111 of the *Copyright Act 1968* (Cth) allows users to record copies of free-to-air broadcast material for their own private or domestic use, so they may watch or listen to the material at a more convenient time. Should this exception be amended, and if so, how? For example:**

**(a) should it matter who makes the recording, if the recording is only for private or domestic use; and**

**(b) should the exception apply to content made available using the internet or internet protocol television?**

As per previous answers, Pirate Party Australia believes that only intent should be considered in relation to the recording of free-to-air broadcast material, and that exceptions must be technologically neutral. Only the intent should be taken into account when determining whether an act or service is infringing copyright. An act that involves pressing a button on a phone should not be considered any different to pressing a button on a VCR; the device or format should be considered irrelevant and an improper metric by which to judge copyright infringement. All that should matter is the input and output, and who initiates the recording process, not the device or service that carries it out.

**Question 10. Should the *Copyright Act 1968* (Cth) be amended to clarify that making copies of copyright material for the purpose of back-up or data recovery does not infringe copyright, and if so, how?**

As Pirate Party Australia noted in its 2012 submission on technological protection measure exceptions, “it is generally accepted, though not necessarily legally permitted, in Australia, that making a backup copy of material (such as duplicating a CD or DVD) for which a person is authorised to access is a legitimate act.”<sup>12</sup>

Such behaviour should be permitted by the *Copyright Act 1968*, as it represents the expectations of Australian consumers. While end-user license agreements (EULAs) often permit this for software, without a license agreement that expressly permits the making of back-up copies they may not do so legally. Many consumers have automated back-up copies of their entire hard drives made for data recovery purposes (and Apple’s OS X includes software specifically for this purpose). The negative effect that prohibiting this has on consumers is far greater than any perceived negative impact on copyright holders that might be experienced if it were permitted. The Party agrees with the statement in paragraph 94 of the issues paper that mentions TPMs have the potential to “prevent users from making copies of the content for their own private and domestic use.”

In practice, it is near impossible for a copyright holder to take action against an individual or body for making backup copies without severely compromising their privacy. It is also impractical for copyright holders to enforce their copyright at this level.

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<sup>12</sup> Pirate Party Australia, submission for the “Review of Technological Protection Measures,” 3.

An exception could easily be included alongside existing fair dealing exceptions. This would simply need to state that the making of backup copies does not infringe copyright.

## Online use for social, private or domestic purposes

### **Question 11. How are copyright materials being used for social, private or domestic purposes—for example, in social networking contexts?**

There are many instances where copyright materials are used for social, private, or domestic purposes.

Arguably, one of the most prevalent of these is the “Internet meme” in which typically a short piece of copyright material (often slightly or substantially modified) is shared within a community. This might be a set of film stills accompanied by captions, used as a response to something within that community, or the stills might have original captions that alter the intent of the material. There are websites devoted to the sharing and creation of these memes<sup>13</sup>, as well as websites that explain the history behind them.<sup>14</sup>

Beyond this basic-level interaction with copyright materials, there are remixes, mashups, compilations and synchronisation. Soundcloud, YouTube and Vimeo are repositories of user-generated content where works created by combining original and copyright material (or copyright content with other copyright content in original ways) are common. Amateur filmmakers combine their footage with pre-recorded sounds and share them via such websites, amateur musicians do likewise with pre-recorded footage, music fans might make a tribute compilation of images relating to an artist and combine them with a song by that artist. These are a form of self-expression, and are produced without a commercial incentive or gain, and there is evidence to suggest that they may improve the reputation and income of an artist.<sup>15</sup>

At a much higher level of interaction, copyright material might be used for the interpretation of a musical work (such as a cover version), or a film scene might be recreated by amateur actors.

More often than not, the uses of copyright material as described above do not involve commercial intent: it is the creation of derivative works that are unlikely to impact on the ability of the copyright holder to monetise a work. For example, a performance of Rogers & Hammerstein's “Edelweiss” on electric guitar (such as this version<sup>16</sup>) is unlikely to be competitive against the original piece of music or recordings. It is a form of expression, it is publicly viewable, and yet it does not cause any measurable economic impact (neither a benefit for the user of the material, or economic harm to the copyright holder). This sort of behaviour is a sign of a healthy culture, and maximum self-expression and engagement should be encouraged as digital technologies increasingly allow maximum participation.

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<sup>13</sup> <http://www.9gag.com>, <http://www.tickld.com>, <http://www.quickmeme.com>.

<sup>14</sup> <http://www.knowyourmeme.com>

<sup>15</sup> Mason, *The Pirate's Dilemma*, 97.

<sup>16</sup> Masanoriutsumi, “Edelweiss Rock!!”.

There is concern that while this sort of non-commercial use with a geographically distinct community has been previously permitted and not interfered with, the globalising effects of digital communications technology has made it difficult to isolate communities in physical or geographic terms. A community may develop a broad culture as a result of differing backgrounds of its members. Pirate Party Australia can provide a working example of this in the form of PirateIRC – the Internet relay chat (IRC) network that various members of the international Pirate Party movement use to communicate. The network is divided into channels (much the same as chat rooms) for various purposes, and each Party on that network has their own channel for discussion, in addition to many side channels. The nature of the network is such that each channel may have more than ten different nationalities (and frequently do) represented at any given time. Increasingly, communities such as this are developing. Facebook networks are based on interests and friendships, and are not beholden to geographic boundaries. With this sort of cultural flux occurring, the issue of whether the assumed protection afforded to those sharing within a community still exist when that community is expansive, diverse and transient.

**Question 12. Should some online uses of copyright materials for social, private or domestic purposes be more freely permitted? Should the *Copyright Act 1968* (Cth) be amended to provide that such use of copyright materials does not constitute an infringement of copyright? If so, how should such an exception be framed?**

Pirate Party Australia believes private and transformative use exceptions should be able to cover this matter sufficiently. Pirate Party Australia advocates the legalisation of all non-commercial uses of copyrighted works.

In a broader sense, the proliferation of the Internet has enhanced what has always been accepted custom of sharing cultural works in what may be perhaps best described as non-commercial or non-market transfers of culture, information and knowledge. Generally, these transfers should be considered to be legitimate, ethical and excepted from the statutory monopoly afforded by copyright legislation, which currently potentially criminalises such behaviour, even where it is of a non-commercial nature.

The scope of such networks of non-market or non-commercial sharing of culture, information and knowledge is transformed by increased connectivity where social networks expand beyond what has traditionally been acknowledged. Advancement in storage capacity and technology raises even further questions regarding the operation of copyright. For instance 'sneakernet' or physical transfers of electronic media will soon mean that humanity's entire cultural history may be shared with anyone almost instantaneously on a portable storage medium.

There is also a consideration of other new technologies such as 3D printing, that touch not only on aspects of copyright law, but also include other areas of intellectual property rights, like patent law. New technologies such as these have tremendous potential and may prove to be hugely beneficial both socially and economically, however legal frameworks that are overly prescriptive or do not adequately accommodate the innovative and disruptive nature of such technology may serve to inhibit or crush development.

Enforceability of a maximalist copyright philosophy, where any distribution or reuse is an infringement, becomes problematic in terms of necessity for such enforcement in order to further the stated goals of such legislation in furthering innovation or creativity, or its effectiveness in fostering such goals. It also raises issues of proportionality, when enforcement of such legislation necessitates, for instance, the monitoring of all electronic communication or involves the termination, suspension or the limitation of access to the Internet, which almost certainly violates fundamental human rights.

It should be noted, that while there should be some consideration within copyright to accommodate such legitimate activity, much of this activity can augment or sustain commercial arrangements and models of financing or promoting creative industries. However due to a legal framework that suppresses or threatens such behaviour and reinforces a maximalist philosophy, there is significant resistance to disruptive change which is manifesting itself in unwanted litigious behaviour by incumbent industry and represents a deadweight economic loss that is precluding or inhibiting innovation where necessary to adapt to significant and structural changes in distribution and market demands.

Much of the justification for maintaining a restrictive, conservative copyright regime is often made by studies or reports that are biased, make incredulous claims of economic harm with very little grounding in economic reality, yet ignore the net benefits of a more flexible approach to copyright for both society and industry. Indeed we see that at times such studies can underpin legislative reactions to consumer behaviour or market responses, which raises questions of governmental approaches to policy making, an issue beyond the scope of this inquiry.

**Question 13. How should any exception for online use of copyright materials for social, private or domestic purposes be confined? For example, should the exception apply only to (a) non-commercial use; or (b) use that does not conflict with normal exploitation of the copyright material and does not unreasonably prejudice the legitimate interests of the owner of the copyright?**

Pirate Party Australia believes the exception should apply to both. All non-commercial uses and commercial uses that do not conflict with normal exploitation should be permitted.

## **Transformative use**

**Question 14. How are copyright materials being used in transformative and collaborative ways—for example, in ‘sampling’, ‘remixes’ and ‘mashups’. For what purposes—for example, commercial purposes, in creating cultural works or as individual self-expression?**

Please see Pirate Party Australia’s response to question 11.

**Question 15. Should the use of copyright materials in transformative uses be more freely permitted? Should the *Copyright Act 1968* (Cth) be amended to provide that transformative use does not constitute an infringement of copyright? If so, how**

## **should such an exception be framed?**

Broad exceptions for the transformative use of works need to be in place to ensure that new and inventive uses are not unnecessarily prevented. Remixing in its various forms is a modern phenomenon facilitated by the proliferation of computer technologies. It does, however have a longer history, with hip-hop DJs using dance-breaks from old albums to create new works. Current exceptions are not broad enough to enable remixing without the remix producer running the risk of being sued for breach of copyright.

Any exception for transformative use needs to ensure the original artist receives proper attribution for their work. Anyone interested in the transformed work may be interested in the original and listing the source can bring a new audience to that artist. This approach benefits the original creator while allowing for cultural freedom.

### **Question 16. How should transformative use be defined for the purposes of any exception? For example, should any use of a publicly available work in the creation of a new work be considered transformative?**

A transformative work must include a new creative element that was not contained in the original artwork. The example in the ALRC issues paper cited using a song in the background of a video as a demonstration of the type of content excluded from the transformative work definition. Pirate Party Australia believes that this is a good distinction.

Using the terminology of a 'new creative element' is sufficiently broad to cover the wide array of new works that are made using original works in new contexts. A song being used as part of a soundtrack is not covered by this exception because the music itself is not being altered.

### **Question 17. Should a transformative use exception apply only to: (a) non-commercial use; or (b) use that does not conflict with a normal exploitation of the copyright material and does not unreasonably prejudice the legitimate interests of the owner of the copyright?**

Any transformative use exception should not be limited to only non-commercial use. As stated in the ALRC's discussion paper, the distinction between commercial and non-commercial use has been blurred with websites such as YouTube allowing content creators to take a cut of any advertising revenue their video attracts. Where a substantial part of an original work is used, a proportion of any commercial revenue should be paid to the original artist (see the response to question 47 where this issue is discussed in more detail).

A transformative work can prejudice the original creator of the copyrighted work by being too similar to the original and thus being in direct competition for a possible audience. Issues with transformative works are adequately dealt with under the moral rights of the author of the original work.

### **Question 18. The *Copyright Act 1968* (Cth) provides authors with three 'moral rights': a right of attribution; a right against false attribution; and a right of integrity. What amendments to provisions of the Act dealing with moral rights may be desirable to**

## **respond to new exceptions allowing transformative or collaborative uses of copyright material?**

The moral rights covered in the *Copyright Act 1968* are adequate to deal with any issues arising from transformative use of creative works. The right to attribution covers the original artist should anyone attempt to claim a transformed work as completely their own. The right against false attribution means that the transformed work has to be labelled as different to the original work.

The right of integrity covers the original artist from other forms of misuse. An example of this being used to protect an artist is found in the case of *Perez & Ors v Fernandez [2012]*<sup>17</sup> where Mr Fernandez put in a vocal overdub inferring that he worked on a track called Bon-Bon with US based artist known as Pitbull (Mr Perez). The transformed work consisted of some of the words at the start of the song being removed and replaced with "Mr 305 (Mr Fernandez) and I am putting it right down with DJ Suave (Mr Perez)." This implied that Mr Fernandez contributed to the original work.

Mr Perez sued claiming that his work had been subjected to 'derogatory treatment' and won. The magistrate concluded that there were a group of listeners who, due to the original track not being released in Australia would reasonably conclude that Mr Fernandez's version was in fact the original, and another group, more intimate with the music and the failed tour the transformed work was intended to promote, would conclude that the treatment of the original was mocking Mr Perez's reputation.

## **Libraries, archives and digitisation**

### **Question 19. What kinds of practices occurring in the digital environment are being impeded by the current libraries and archives exceptions?**

The current exceptions allowances for libraries and archives infer that documents are considered on an individual case-by-case basis. This creates difficulty for archivists who may gain access to large collections that include documents submitted by outside bodies. The current system requires that each document be checked and cleared for use which become impractical for archives that contain literally millions of articles.<sup>18</sup>

### **Question 20. Is s 200AB of the *Copyright Act 1968* (Cth) working adequately and appropriately for libraries and archives in Australia? If not, what are the problems with its current operation?**

As stated above (question 19), the consideration of each individual document for collections of archives creates unnecessary cost in storing and archiving materials. Removing such a restriction would enable more efficient cataloguing and storage of collections.

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<sup>17</sup> *Perez & Ors v Fernandez [2012] FMCA 2* (10 February 2012).

<sup>18</sup> Australian Society of Archivists, submission on "Copyright and the Digital Economy," 1.

**Question 21. Should the *Copyright Act 1968 (Cth)* be amended to allow greater digitisation and communication of works by public and cultural institutions? If so, what amendments are needed?**

Libraries and digital archives require specific exceptions to allow for digitisation of their collections. Separate from the issue of access (dealt with below), digitisation creates a quality backup of otherwise physical objects. This guards against loss of the physical copies of works, should the library or archive be damaged (through fire, for example).

Considering that principle four of the inquiry states: “reform should promote fair access to and wide dissemination of information and content,” allowing digital copies of works currently under copyright to be made available by libraries and archives gives them the tools to carry out their role of making information available to the public in the modern context. This exception should only apply to explicitly not-for-profit libraries or archives.

An increasing number of books are being published exclusively digitally, and access to digital copies of works still under copyright will become an ever increasing problem for libraries. Addressing this problem now, through allowing digitisation of copyrighted material, will allow libraries to continue to fulfil their role in society long into the future.

**Question 22. What copyright issues may arise from the digitisation of Indigenous works by libraries and archives?**

Pirate Party Australia believes this is an issue that should be further explored and consensus reached through broad consultation with indigenous communities, libraries and archives. However any exceptions or legislative mechanisms considered should not impinge upon or diminish established fair dealing rights or extend economic rights beyond current limitations.

## **Orphan works**

**Question 23. How does the legal treatment of orphan works affect the use, access to and dissemination of copyright works in Australia?**

Australian copyright law is ineffective at dealing with the issue of orphan works.

By not mandating a process for how to treat orphan works, current laws prevent the use, access to and dissemination of works for which no copyright holder can be found. This raises several concerns, including the following:

- In situations where locating a copyright holder to obtain a license or similar agreement is impossible, a person wanting to use a work may face legal penalties from a copyright holder.
- Similarly, a person may assume a work is in the public domain, leaving them open to later ramifications.
- Works of high cultural value cannot be reproduced unless a license can be obtained; in cases of orphan works this is not possible.
- Derivative works cannot be legally made.



- Audiovisual recordings, images, software, and literature cannot be reproduced legally.
- Analogue works cannot be legally digitised for potential commercial use.
- A copyright holder may be found after copyright infringement of the orphan work has occurred, making the infringer liable for effectively reminding the copyright holder that they are responsible for enforcing their rights.

Currently, Australian copyright law poses a serious threat to cultural proliferation by providing lengthy copyright terms with no mechanism for handling works that have been essentially abandoned by the copyright holder. Requiring permission for the use of copyrighted works where the copyright holder is not contactable creates a stagnant culture, and negatively impacts industry where commercial use of an orphan work is desired.

**Question 24. Should the *Copyright Act 1968* (Cth) be amended to create a new exception or collective licensing scheme for use of orphan works? How should such an exception or collective licensing scheme be framed?**

Pirate Party Australia recommends an approach to dealing with orphan works whereby the National Library of Australia has the power to determine if a work is orphaned. The National Library, after reasonable attempts to contact a copyright holder have failed, could announce that the work has entered the public domain.

## Data and text mining

Question 25. Are uses of data and text mining tools being impeded by the *Copyright Act 1968* (Cth)? What evidence, if any, is there of the value of data mining to the digital economy?

Question 26. Should the *Copyright Act 1968* (Cth) be amended to provide for an exception for the use of copyright material for text, data mining and other analytical software? If so, how should this exception be framed?

Question 27. Are there any alternative solutions that could support the growth of text and data mining technologies and access to them?

## Educational institutions

Question 28. Is the statutory licensing scheme concerning the copying and communication of broadcasts by educational and other institutions in pt VA of the *Copyright Act 1968* (Cth) adequate and appropriate in the digital environment? If not, how should it be changed? For example, should the use of copyright material by educational institutions be more freely permitted in the digital environment?

The statutory licensing scheme concerning the copying and communication of broadcasts in pt VA of the *Copyright Act* is neither adequate nor appropriate in the digital environment. It does not include Internet content, and as educational institutions and students move evermore towards digital learning platforms and distribution, this must be remedied. Educational institutions should be afforded the ability to use and distribute copyright material to students and staff without restriction. Current methods to limit copying might benefit copyright holders, but may work to the detriment of education in Australia. Inefficiencies and archaic restrictions should not be necessary in modern institutions.

**Question 29. Is the statutory licensing scheme concerning the reproduction and communication of works and periodical articles by educational and other institutions in pt VB of the *Copyright Act 1968* (Cth) adequate and appropriate in the digital environment? If not, how should it be changed?**

See Pirate Party Australia's response to question 28.

**Question 30. Should any uses of copyright material now covered by the statutory licensing schemes in pts VA and VB of the *Copyright Act 1968* (Cth) be instead covered by a free-use exception? For example, should a wider range of uses of internet material by educational institutions be covered by a free-use exception? Alternatively, should these schemes be extended, so that educational institutions pay licence fees for a wider range of uses of copyright material?**

Pirate Party Australia believes educational institutions should be provided with a free-use exception that encompasses the use of all materials, regardless of the medium.

**Question 31. Should the exceptions in the *Copyright Act 1968* (Cth) concerning use of copyright material by educational institutions, including the statutory licensing schemes in pts VA and VB and the free-use exception in s 200AB, be otherwise amended in response to the digital environment, and if so, how?**

Pirate Party Australia believes that all issues arising from the use of copyright material by educational institutions could be avoided if a technologically-neutral, blanket exception was provided.

## Crown use of copyright material

**Question 32. Is the statutory licensing scheme concerning the use of copyright material for the Crown in div 2 of pt VII of the *Copyright Act 1968* (Cth) adequate and appropriate in the digital environment? If not, how should it be changed?**

**Question 33. How does the *Copyright Act 1968* (Cth) affect government obligations to comply with other regulatory requirements (such as disclosure laws)?**

**Question 34. Should there be an exception in the *Copyright Act 1968* (Cth) to allow certain public uses of copyright material deposited or registered in accordance with**

statutory obligations under Commonwealth or state law, outside the operation of the statutory licence in s 183?

## Retransmission of free-to-air broadcasts

**Question 35. Should the retransmission of free-to-air broadcasts continue to be allowed without the permission or remuneration of the broadcaster, and if so, in what circumstances?**

The nature of free-to-air broadcasts is similar to claims made about Facebook — a free service is provided, making the receiver of that service the product.<sup>19</sup> Pirate Party Australia does not object to this, and recognises the value that advertising has. Commercial, free-to-air television and radio have survived with this business model for the greater part of a century. Pirate Party Australia feels that there is benefit in exclusive commercial licenses for the broadcast of audiovisual material. This maximises the incentive for broadcasting the material, and coupled with global communications networks, provides an impetus for broadcasters to make the material available as timely as possible to capitalise on interest.

However, there are some cases where retransmission is necessary to make content available to an audience who are not able to access it for reasons such as location. Therefore, Pirate Party Australia sees no reason to reform this aspect of law.

**Question 36 Should the statutory licensing scheme for the retransmission of free-to-air broadcasts apply in relation to retransmission over the internet, and if so, subject to what conditions—for example, in relation to geoblocking?**

In answering this question, Pirate Party Australia would like first remark that geoblocking is a technological attempt to enforce region segregation on the Internet. The Internet is a transnational network where cultures and communities that are not defined or bound by geographical limitations gather. The Internet has also allowed for increased competition in the global marketplace. Geoblocking is an artificial method to promote the continuation of economic segmentation and protectionism despite shifts in consumer expectations and changes in business practices. Pirate Party Australia does not believe that geoblocking promotes a healthy social environment, competitive marketplace, and an incentive for broadcasters or copyright holders to make content available in a timely fashion.

With this in mind, Pirate Party Australia supports a technologically-neutral scheme that permits retransmission regardless of the medium.

**Question 37. Does the application of the statutory licensing scheme for the retransmission of free-to-air broadcasts to internet protocol television (IPTV) need to be clarified, and if so, how?**

Pirate Party Australia feels clarification could be obviated by repealing parts of the Act that discriminate between mediums.

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<sup>19</sup> Hon, "You are Facebook's product: that's why you don't pay to use it."

**Question 38. Is this Inquiry the appropriate forum for considering these questions, which raise significant communications and competition policy issues?**

Pirate Party Australia believes that it is certainly something the Inquiry should consider, but that reform should occur in consultation with other inquiries.

**Question 39. What implications for copyright law reform arise from recommendations of the Convergence Review?**

Pirate Party Australia has no position on this question.

## **Statutory licences in the digital environment**

**Question 40. What opportunities does the digital economy present for improving the operation of statutory licensing systems and access to content?**

**Question 41. How can the *Copyright Act 1968* (Cth) be amended to make the statutory licensing schemes operate more effectively in the digital environment—to better facilitate access to copyright material and to give rights holders fair remuneration?**

**Question 42. Should the *Copyright Act 1968* (Cth) be amended to provide for any new statutory licensing schemes, and if so, how?**

**Question 43. Should any of the statutory licensing schemes be simplified or consolidated, perhaps in light of media convergence, and if so, how? Are any of the statutory licensing schemes no longer necessary because, for example, new technology enables rights holders to contract directly with users?**

**Question 44. Should any uses of copyright material now covered by a statutory licence instead be covered by a free-use exception?**

## **Fair dealing exceptions**

**Question 45. The *Copyright Act 1968* (Cth) provides fair dealing exceptions for the purposes of:**

- (a) research or study;**
- (b) criticism or review;**
- (c) parody or satire;**
- (d) reporting news; and**
- (e) a legal practitioner, registered patent attorney or registered trade marks attorney giving professional advice.**

**What problems, if any, are there with any of these fair dealing exceptions in the digital environment?**

While the fair dealing exceptions listed are undoubtedly necessary, there is significant concern that the vagueness of what these exceptions allow leaves those exercising fair dealing for the listed purposes may be liable. Lawrence Lessig writes of the US fair use system:

In theory, fair use means you need no permission. The theory therefore supports free culture and insulates against a permission culture. But in practice, fair use functions very differently. The fuzzy lines of the law, tied to the extraordinary liability if lines are crossed, means that the effective fair use for many types of creators is slight. The law has the right aim; practice has defeated the aim.<sup>20</sup>

However, as Commercial Radio Australia have noted:

Although the current purpose-based fair dealing exceptions have been criticised for being too narrow and prescriptive (and therefore being unable to be adapted to changing circumstances)...[t]he certainty provided by having very specific exceptions is one of the strengths of the current system.<sup>21</sup>

Pirate Party Australia is not against narrow exceptions for the commercial use of copyrighted material, provided there is adequate definition for those exceptions. The concerns Lessig raises about the US system still applies to fair dealing, particularly as the cost and difficulty of publishing works that exercise what might be considered fair dealing is now often negligible, thus broadening the scope of the current exceptions.

For example: would a small-scale blog (perhaps less than 500 monthly readers) that reviews various forms of media and uses album artwork, book covers, or cinematic posters be covered by fair dealing? The *Copyright Act* does not provide criteria for where these exceptions could be applied. Additionally, there is little legal protection against bogus claims of copyright infringement where a copyright holder accuses an individual or organisation regardless of whether the use is justified under fair dealing. This can be used to force out-of-court settlements. Normally this would not be an issue for a major newspaper or magazine who would have the funds to take the matter to court, but when dealing with small-scale outlets this is generally not an option. This may stifle the ability for fair dealing exceptions to be exercised.

**Question 46. How could the fair dealing exceptions be usefully simplified?**

Pirate Party Australia believes the recommendations for simplification made by the CLRC, as outlined in paragraph 252 of the ALRC's issues paper are appropriate. The Party supports the consolidation of all exceptions into one section of the *Copyright Act*.

**Question 47. Should the *Copyright Act 1968 (Cth)* provide for any other specific fair dealing exceptions? For example, should there be a fair dealing exception for the purpose of quotation, and if so, how should it apply?**

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<sup>20</sup> Lessig, *Free Culture*, 99.

<sup>21</sup> Commercial Radio Australia, submission on "Fair Use and Other Copyright Exceptions," 5.

Pirate Party Australia strongly advocates an exception be made that provides creators with quotation rights. The Party has adopted policy based on that of the the Greens-European Free Alliance, a parliamentary group in the European Parliament with 59 seats. Their position paper states:

Today's ever more restrictive copyright legislation and practice is a major obstacle to musicians, film makers [sic], and other artists who want to create new works by reusing parts of existing works. We want to change this by introducing clear exceptions and limitations to allow remixes and parodies, as well as quotation rights for sound and audiovisual material modelled after the quotation rights that already exist for text.<sup>22</sup>

Pirate Party Australia does not advocate, however, that commercial works involving extensive use of any particular work be permitted without remuneration being paid to the copyright holder. For example, a film adaptation of a literary work that is held under copyright should require some sort of license. But the use small portions of works should be permitted.

While artistic movements have been developing faster, copyright terms have been increasing. Pirate Party Australia notices the effects of this particularly in relation to music, but also recognises that it occurs in other art forms; the following paragraphs discuss the need for quotation rights in relation to musical works.

An example of where this is problematic is the Verve's recording of the song "Bitter Sweet Symphony," which sampled approximately five seconds of an obscure instrumental recording of an arrangement by Andrew Loog Oldham of "the Last Time,"<sup>23</sup> <sup>24</sup> a song credited to Mick Jagger and Keith Richards of the Rolling Stones.<sup>25</sup> ABKCO Records (who owned the rights to the Rolling Stones' 1960s catalogue) claimed that the Verve had sampled more than the agreed amount, and after legal proceedings, no proceeds from "Bitter Sweet Symphony" are given to the Verve, except songwriting credits which are shared between Richard Ashcroft, Jagger, and Richards<sup>26</sup> . It is important to note that "the Last Time" features a four second melodic hook that is identical to the song "This May be the Last Time,"<sup>27</sup> an African-American gospel song of unknown authorship. Had copyright terms been the same as they were in 1965, and an author been identifiable, the Rolling Stones could have been themselves liable. Speculation is not ideal, but as musicologist Kembrew McLeod writes:

Starting in the 1930s, Woody Guthrie drew direct inspiration from a lot of songs associated with the Carter Family, recycling their melodies to write his own pro-union songs. For example, Guthrie wrote in his journal of song ideas: "Tune of 'Will

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<sup>22</sup> The Greens-European Free Alliance, *Creation and Copyright in the Digital Era* (September 2011), §30.

<sup>23</sup> Verve, "Bitter Sweet Symphony".

<sup>24</sup> Andrew Oldham Orchestra, "The Last Time".

<sup>25</sup> Rolling Stones, "The Last Time".

<sup>26</sup> Ashcroft, Jagger & Richards, "Bitter Sweet Symphony".

<sup>27</sup> Negro Sprituals, "This May be the Last Time".

the Circle Be Unbroken' — will the union stay unbroken. Needed: a sassy tune for a scab song." Guthrie also discovered that a Baptist hymn performed by the Carter Family, "This World Is Not My Home," was popular in migrant farm-worker camps, but he felt the lyrics were counterproductive politically. The song didn't deal with the day-to-day miseries forced upon the workers by the rich and instead told them they'd be rewarded for their patience in the next life.<sup>28</sup>

In folk music, adapting previous works and creating derivative pieces is commonplace and part of the folk tradition. This tradition has extended into the modern "folk musics" like hip-hop (including many derivative genres such as Grime and Garage), and electronic music. Beginning in the 1960s it became possible to interact directly with recordings, and with the reduced costs of digital technology it is now increasingly easy and common to remix other people's works:

As samplers, synthesizers, software, and mixers shaped music, tools have developed in tandem that let you sample, cut up, and overdub film footage in the same way. When video found itself at the mercy of two turntables and a crossfader, the way film was both produced and consumed was revolutionized.<sup>29</sup>

As it stands, regardless of quotation size, any unlicensed use of copyrighted material is an offence. This seems unnecessary for small-scale projects, and is a burden for artists such as DJ Danger Mouse who extensively (and illicitly) use samples. There is suggestion that such use benefits the original artists somewhat:

When Def Jam Records released [Jay-Z's] LP *The Black Album* late in 2003, he insisted they make the a cappella versions of every track available on vinyl, sparking a host of fans and other artists to remix the entire project. The most notable was DJ/producer Danger Mouse's *The Grey Album*, which threw Jay's lyrics over samples from the Beatles' *The White Album*. This may seem crazy, but the stunt hyped Jay-Z's album to new levels, broadening his appeal as it introduced new fans to his lyrics.<sup>30</sup>

Quantifying the size of the quote that should be permitted for commercial works is a difficult task. A percentage may be too small for short works, while a fixed amount might be too long. Pirate Party Australia suggests the ALRC look into the appropriateness of a scaling system that allows the quotation of up to 10% of copyrighted material without a license. Regardless of the determination of size, such an exception must be clearly defined.

## Other free-use exceptions

Question 48. What problems, if any, are there with the operation of the other exceptions in the digital environment? If so, how should they be amended?

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<sup>28</sup> McLeod, *Freedom of Expression*®, 22-23.

<sup>29</sup> Mason, *The Pirate's Dilemma*, 85.

<sup>30</sup> *Ibid.*, 97.

Question 49. Should any specific exceptions be removed from the *Copyright Act 1968* (Cth)?

Question 50. Should any other specific exceptions be introduced to the *Copyright Act 1968* (Cth)?

Question 51. How can the free-use exceptions in the *Copyright Act 1968* (Cth) be simplified and better structured?

## Fair use

**Question 52. Should the *Copyright Act 1968* (Cth) be amended to include a broad, flexible exception? If so, how should this exception be framed? For example, should such an exception be based on ‘fairness’, ‘reasonableness’ or something else?**

Pirate Party Australia does consider a fair use-like exception to be a viable option to apply where other exceptions do not, and in situations where it would be difficult to create explicit exceptions. This would prevent possible future legislative bloating where specific exceptions would need to be added to existing legislation.

Several factors must be taken into consideration, among them are the two contained within this question, but others could include duration and context. An excerpt from a film played on a television in a scene in another film, for example *Shrek* in the film *I am Legend*, might be considered reasonable within the context.

Regardless of how it is framed, the more important issue is to protect those exercising such a broad exception from legal action. As has been demonstrated in the United States, the issue of what fair use actually encompasses is a matter of debate, leading to extortionate licensing and exploitative legal blackmail by forcing out-of-court settlements. What is key is that, while a copyright holder has, and should have, every right to exploit their work commercially, a lack of clarity in legislation should not be allowed to be used as legal mechanism to prevent the exercising of fair use-like rights.

**Question 53. Should such a new exception replace all or some existing exceptions or should it be in addition to existing exceptions?**

Pirate Party Australia recommends this be an additional exception.

## Contracting out

**Question 54. Should agreements which purport to exclude or limit existing or any proposed new copyright exceptions be enforceable?**

Pirate Party Australia generally agrees with the Copyright Law Review Committee’s remarks as summarised in the issues paper. However, the Party believes that agreements which



would prevent the exercising of any copyright exceptions should not be enforceable. The right to benefit from copyright exceptions should be treated with the same, if not more, importance than the copyright itself. Preventing the exercising of copyright exceptions is contrary to the intent of the *Copyright Act*.

**Question 55. Should the *Copyright Act 1968 (Cth)* be amended to prevent contracting out of copyright exceptions, and if so, which exceptions?**

Pirate Party Australia believes the contracting out of all exceptions should be prevented by the *Copyright Act*.

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