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Senator the Hon. Mitch Fifield
Minister for Communications
Minister for Arts
Manager of Government Business in the Senate

Parliament House
CANBERRA ACT 2600

cc

The Hon. Malcolm Turnbull MP, Prime Minister
The Hon. Scott Morrison MP, Treasurer
Senator the Hon. Arthur Sinodinos AO, Minister for Industry, Innovation and Science
The Hon. Craig Laundy MP, Assistant Minister for Industry, Innovation and Science
Senator the Hon. Simon Birmingham, Minister for Education and Training

Dear Minister Fifield

Support for the Productivity Commission's fair use recommendation

The 47 signatories to this letter have joined together to write to you to express our strong support for the Productivity Commission's recommendation, in its inquiry into Australia's Intellectual Property Arrangements, that Australia should introduce a fair use exception into the *Copyright Act 1968*. This is a critical reform to ensure that the Australian economy is best placed for a strong digital future.

In today's rapidly evolving digital environment, a fair use exception is the only tool dynamic enough to allow Australia's copyright laws to respond to new technologies, services and consumer practices. As the Productivity Commission found, the adoption of fair use would mean:

Australia's copyright system will better adapt to technological change and new uses of copyright material, without compromising incentives to create. Improved access to copyright works would increase economic activity and community welfare. [p.28]

The Commission also found:

there are firm grounds now, and even stronger grounds looking to the future, for amending the Copyright Act to replace Australia's current exceptions with a broader fair use exception. The key policy question for Government should be how to design exceptions that maximise the net benefit to the community. Importantly, fair use ... reinforces that user interests should also be recognised by Australia's copyright system. [p.18]

Australia's existing system of fixed, technologically-specific copyright exceptions has led to the situation where many socially beneficial new uses of copyright works remain presumptively unlawful in Australia unless and until an exception is introduced to permit them. This is the case even where there is strong public interest in allowing these uses, and where there is no harm caused to copyright owner markets. It has resulted in Australia's copyright laws being out of date and not fit for purpose in the digital economy.

Fair use would future proof the Copyright Act by enabling an examination of new uses of copyright materials to be considered under the fair use provision instead of requiring incremental reform to copyright laws.

The benefits that fair use reform would provide for Australia's economy and society are significant:

- **For consumers**, fair use would allow Australians to use lawfully acquired content in technology neutral ways. For example, existing exceptions allow format shifting of lawfully acquired films on videotape, but not DVD. Fair use would fix the problem of millions of Australians accidentally breaching copyright laws every day.
- **For industry**, fair use would provide much needed confidence for the providers of new technological services such as cloud computing in Australia (The Department of Communications' *Cloud Computing Regulatory Stock Take report* identified copyright as a roadblock to cloud computing in Australia).
- **For higher education**, fair use would assist Australian universities to take advantage of innovative teaching technologies such as MOOCs. Currently, none of the existing educational exceptions or statutory licences apply to these learning tools.
- **For research and innovation**, fair use would enable Australian researchers to use cutting edge digital technologies such as data mining and text mining, which currently infringe copyright in Australia.
- **For schools**, fair use would allow teachers to use a wider range of digital technologies in classrooms, and address a significant flaw in the current educational copying regime that has resulted in Australian schools paying millions of dollars a year to access freely available internet content that no one ever expected to be paid for.
- **For cultural institutions**, fair use would enable Australia's libraries, archives, museums and galleries to open up their collections and digitise historical works where copyright owners cannot be found. Everyday Australians could take advantage of our cultural heritage to use these works in projects from family histories to memes.
- **For creators**, fair use would spur creativity by enabling Australian artists to legally use small amounts of copyright content when creating new and transformative artistic works (that do not compete with the original work and cause no harm to the copyright owner). Artistic genres such as remix and mashups are flourishing on the internet, but infringe copyright in Australia.

- ***For the economy as a whole***, recent research commissioned by the government found that the introduction of fair use would be beneficial for Australia's economy. In particular, it found that the flexibility of fair use was critical for continuing economic benefits in a rapidly changing digital environment (see the Department of Communications and the Arts *Cost benefit analysis of changes to the Copyright Act 1968*, produced by Ernst & Young).

We call on the Government to introduce a fair use exception as a priority.

Yours faithfully

Australian Blindness Forum
 Australian Catholic University
 Australian Digital Alliance
 Australian Information Industry Association
 Australian Libraries Copyright Committee
 Australian Library and Information
 Association
 Australian National University
 Australian Society of Archivists
 Catholic Education Commission NSW
 CHOICE
 Council of Australian University Directors of
 Information Technology
 Council of Australian University Librarians
 Creative Commons Australia
 DIGI
 Digital Rights Watch
 eBay
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 Griffith University
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La Trobe University
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 National Copyright Unit (Australian schools
 and TAFEs)
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