



## Submission in response to the Exposure Draft Copyright Amendment (Access Reform) Bill 2021

### 1. Introduction

The Australian Library and Information Association (ALIA) welcomes the Government's proposed modernization of Australian copyright legislation for libraries and archives. The proposed changes will increase the Australian community's access to our cultural collections, support creators, researchers, students and policy makers in their endeavors, and reduce redundant administrative processes for library staff.

During the COVID-19 pandemic, libraries have seen an exponential growth in demand for online resources and support. Libraries have been agile in reimagining services and access,<sup>1</sup> working with publishers and authors on innovative solutions such as Online Storytime<sup>2</sup> and seeing a growth in the secure loan of ebooks and audio books. However the restrictions on physical access have thrown into stark relief the limitations of library and archive copyright provisions largely untouched since the days of card catalogues, especially for access to historical and special collections. These issues require legislative solutions and we strongly support the Government's recognition of this and proposed action.

In preparing this response, ALIA has conferred with other book industry stakeholders and appreciates their time on this matter. In the finalization of the legislative drafting, ALIA would support a continued process of stakeholder engagement and discussion, to ensure that the legislation enables libraries to fulfil their mission and provide access to the community, while protecting the legitimate commercial markets for authors and publishers.

ALIA has also consulted with other key library and information stakeholders, and broadly endorses the submissions from National and State Libraries Australasia (NSLA), the National Library of Australia (NLA), the Australian Libraries and Archives Copyright Coalition (ALACC)/Australian Digital Alliance(ADA), Open Access AuJstralasia and CAVAL.

We have explored the issues raised in the exposure draft in more detail below, and make the following recommendations:

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<sup>1</sup> Jane Garner, Philip Hider, Hamid R. Jamali, Jessie Lymn, Yazdan Mansourian, Holly Randell-Moon & Simon Wakeling (2021) 'Steady Ships' in the COVID-19 Crisis: Australian Public Library Responses to the Pandemic, *Journal of the Australian Library and Information Association*, 70:2, 102-124, DOI: [10.1080/24750158.2021.1901329](https://doi.org/10.1080/24750158.2021.1901329)

<sup>2</sup> See <https://onlinestorytime.org.au/> Supported by the Australian Government RISE Fund and the Australia Council, and aligned with book industry collaboration under the Books Create Australia banner alongside Australia Reads.



1. That the orphan works scheme be enacted as drafted
2. That the fair dealing for quotation be enacted in amended form to remove the restrictions to works made public and specific users and uses.
3. That the proposed changes to library and archive provision are enacted.
4. That the proposed changes to the government license are enacted.
5. That Technological Protection Measures (TPM) exemptions are created to correspond with library copyright exceptions.

## 2. About ALIA

ALIA is the professional organisation for the Australian library and information services sector. We provide the national voice of the profession in the development, promotion and delivery of quality library and information services to the nation, through leadership, advocacy and mutual support. ALIA is the peak body for public, school, university, TAFE and special libraries. We work closely with CAUL and NSLA.

Through our Australian Public Library Alliance (APLA), we connect public libraries across all states and territories. Australia has more than 1600 central, branch and mobile public libraries, with 9.3 million registered members and, in a non-COVID year, more than 110 million physical customer visits. Offering books, magazines, newspapers, DVDs, WiFi, PC internet access, learning programs, fun activities and expert staff help, they are a much loved, highly regarded and trusted community resource. Over the last 20 years, public libraries have increased their role in the digital space, enhancing people's online experiences, helping people connect to this new virtual world, and providing a safety net for those who are in danger of being left behind.

## 3. Orphan Works

ALIA strongly supports the scheme to allow the use of works whose copyright holder cannot be determined, otherwise known as 'orphan works'. Works can be orphaned for a number of reasons, from unclear authorship to original ownership by companies or community organisations that have no longer exist. Some practical examples might be the newsletters of a 1920s gardening club, long since dissolved, held in a public library's local history collection, or letters sent to a person whose papers are held in a special collection. With no rightsholder discoverable to seek permission from, many libraries do not have the administrative or inhouse legal capacity to assess requests for access to these works, or increasingly during the pandemic, their ability to make a digital copy accessible.

The orphan works scheme, where after conducting a diligent search the materials can be used, and if the rightsholder comes forward, negotiate for future use, is welcome. For many libraries, their experience in making special and historical collections available is that when a rights



holder, or at least a creator, is identified they are excited to be reconnected with a piece of the past and fully support the works being made available.

We support the use of factors to consider when searching, as from experience we know that different search strategies yield different results for different collections. We are also happy to continue to work to library guidelines, especially to support smaller libraries in their search strategies. We are cautious about any move to require a particular search strategy, such as consulting with specified databases. A significant portion of orphan works are original, unpublished works which would never appear in any database. Librarians who work with these collections are in the best position to be able to identify the best search strategies for particular collections, with knowledge of the strongest links and leads, or key people/communities to approach for information. As an example, some public libraries with local history collections have a network of volunteers who have lived in the area for a long time and have personal connections to materials who may be able to identify names not discoverable in any online database. Any move to create a compulsory and most likely futile step for all collections would simply add to administrative overheads for no real benefit. We refer to the submissions from NSLA/ALACC for further detail to this point. We also support the comments from NSLA in relation to ensuring some of the clarifying commentary is incorporated into the Explanatory Memorandum.

**Recommendation:** That the orphan works scheme be enacted as drafted.

#### 4. Quotation

Libraries provide access to materials so that the community is enriched. For this to occur, people need to be able to make socially beneficial uses of the material. The proposed fair dealing for quotation allows these uses, for example for researchers quoting from previous research in their PhD theses.

ALIA is however concerned by the narrowness of the fair dealing exception as currently constructed. It is notable that the provision currently has both specific limitations (only a certain group of people for certain uses and for certain works) as well as a fairness assessment. From a practical point of view this seems to double up, and we'd recommend that either a specific exception or a fair dealing exception would suffice, with the preference for the fair dealing exception where the judgement can be made on the circumstances to hand.

As drafted this provision may not, for example, cover writer of historical fiction who wants to quote from historical sources, or family members who may wish to put a quotation on a funeral sheet. These are uses that people wish to make from our historical collections, and that are permitted in many other countries with no harm, but much benefit.

We are also significantly concerned by the restriction to works 'made public'. The use of 'made public' continues to be unclear. It also rules out the use of many archival collections, meaning that researchers of historical collections would be disproportionately disadvantaged.



**Recommendation:** That the fair dealing for quotation be enacted in amended form to remove the restrictions to works made public and specific users and uses.

## 5. Library and archive provisions

ALIA strongly supports the proposal to modernize the library and archive provisions, which are long overdue for an update. With large collections and limited resources, the reduction in unnecessary administrative overheads - that were designed for analogue delivery - is welcomed. The retention of necessary safeguards, such as the requirements for requests and reasonable steps to ensure copyright is not infringed, provide confidence to libraries and rightsholders in the operation of these limited provisions. Some specific comments below.

### *Online Access*

During the pandemic, libraries worked to ensure that library users could still access a range of materials, with sharp increases in loans for ebooks and audiobooks<sup>3</sup>. Ebooks and audiobooks are an established part of many library collections, with borrowers in every state and territory able to register with their local public library and borrow items through established platforms, and students similarly able to register with school and educational institutional libraries to access resources. These secure loan systems are established parts of library services.

While ebooks and audiobooks were effective for many users, they did not address the issues faced by people who wished to access materials that were not available in electronic formats, especially older works. ALIA strongly supports a provision that would allow library visitors to visit a 'virtual reading room' and access these materials online, in the same way as they would be able to do in a physical library reading room. We would be very happy to work on drafting to ensure that this intention of the provision is maintained with appropriate safeguards.

As an additional note, while ebook and audiobook loans are well established in library services, unlike physical items they are not currently covered under the Government's lending rights scheme. ALIA continues to join with the Australian Society of Authors (ASA) to request a funded extension of these schemes to cover ebooks and audiobooks.

### *Document delivery and interlibrary loan*

ALIA welcomes the modernization of these provisions and the removal of obsolete administrative requirements. For example, the requirement that currently exists to destroy any electronic copies made during the provision of document delivery, requires the source document to be retrieved

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<sup>3</sup> Civica (2021) [Bookworms turn to mystery and thriller novels throughout COVID-19](https://www.civica.com/en-au/container---news-library/bookworms-turn-to-mystery-and-thriller-novels-throughout-covid-19/#:~:text=The%202021%20Civica%20Libraries%20Index,2020%20%E2%80%93%2031st%20March%202021.) accessed at <https://www.civica.com/en-au/container---news-library/bookworms-turn-to-mystery-and-thriller-novels-throughout-covid-19/#:~:text=The%202021%20Civica%20Libraries%20Index,2020%20%E2%80%93%2031st%20March%202021.>



and rescanned for each request, a complete waste of resources and a source of stress to the physical integrity of the original document.

ALIA also strongly supports the extension to cover private and domestic use. From experience we know how difficult it is for a librarian to tell a client that they cannot have a copy of material from a local publication in the 1960s, to share with family for a significant birthday or on the occasion of someone's passing. This extension will enable communities to better connect with their local and personal history.

ALIA also supports the discretion of libraries not to supply materials. Some examples of materials that may require special consideration include culturally sensitive materials or personally sensitive materials. Libraries have existing structures in place to deal with these sort of requests and these must be allowed to continue.

#### *Question 3.1 – reasonable steps*

Libraries have for decades been securely supplying materials in electronic formats, using safeguards to the types of materials and uses requested. ALIA supports a continuing responsibility for libraries to ensure adequate safeguards are taken, although notes that it must be clear that libraries are responsible for their actions, not the actions of others. ALIA would be concerned should there be rigid criteria or methods specified as our experience has shown us that technologies advance quickly and libraries should be able to innovate as new solutions present themselves.

**Recommendation:** That the proposed changes to library and archive provision are enacted.

### 6. Government use

The provision of accurate and timely information to policy makers, including through the provision of government library and information services, is essential to the development of good public policy.

ALIA recognizes that policy makers require the ability to use a range of materials in both internal policy making and in communication of those policies. We support the changes to the government statutory licenses.

**Recommendation:** That the proposed changes to the government license are enacted.

### 7. Technological protection measures

ALIA notes that with the increasing acquisition of archival material in digital format, it is essential that libraries are able to bypass technological protection measures (TPMs) for library uses. To this end, each library copyright exception should have a corresponding TPM exemption.

**Recommendation:** That Technological Protection Measures (TPM) exemptions are created to correspond with library copyright exceptions.



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