**Copyright Modernisation Consultation – July 2018**

**What is the Copyright Modernisation Consultation?**

In recent years the Australian Law Reform Commission (ALRC) and the Productivity Commission (PC) have carried out in-depth reviews and put forward a range of recommendations aimed at modernising the Copyright Act, which in 2018 is now 50 years old.

The Department of Communication and the Arts informed by these prior reviews has commenced their own review into modernising Australia’s Copyright Law. This review commenced with the release of a consultation paper focussed on three main areas that might benefit from modernisation:

* flexible exceptions
* contracting out of exceptions
* access to orphan works

You can find the consultation paper [here](https://www.communications.gov.au/have-your-say/copyright-modernisation-consultation).

The Copyright Advisory Group (Schools) to the COAG Education Council (CAG) has submitted a response to the review on behalf of the Australian School sector. CAG comprises senior representatives from the State and Territory Departments of Education, the Catholic and Independent school sectors and represents over 9,500 schools.

**Why The Copyright Act 1968 needs to be modernised**

In March 2018, the Australian Government released a [report](https://www.education.gov.au/review-achieve-educational-excellence-australian-schools) of the review to achieve educational excellence in Australian Schools (**Gonski 2.0**).

A key finding of Gonski 2.0 is that a modern education system must be complemented by policies which support an adaptive, innovative and continuously improving education system.[1] However the Australian Law Reform Commission (**ALRC**) and Productivity Commission (**PC**) have found that Australia’s educational copyright system is not flexible, and recommended that Australia adopt a flexible fair use provision to enable the appropriate use of digital technologies in Australian schools.

**The Government’s Gonski 2.0 agenda cannot be fully implemented without reform to the Copyright Act**

The Government’s Gonski 2.0 agenda cannot be fully implemented without reform to the Copyright Act. This is because Australia’s current educational copyright system is simply not flexible enough to fully implement the Gonski reforms. Three examples are:

1.The Gonski 2.0 agenda is designed to move Australia’s education system away from 20th century thinking to adopt a 21st century approach to education – ensuring that all the technological advancements of the 21st century can be used for the benefit of all Australian students.

As the Government recognised in the context of the *Copyright Amendment (Service Providers) Bill 2018*: “*Classrooms are increasingly interactive and connected, with virtually every aspect of education today involving some use of digital technology.”*[2]

However Australia’s copyright laws are still stuck in the 20th century. Copyright laws designed for the age of the photocopier are wholly inadequate in the age of iPads, interactive whiteboards, virtual reality and 3D printers.

2. The Gonski 2.0 agenda focuses on tailored learning solutions and individual learning outcomes.

However Australia’s educational copyright provisions are still based on “chalk and talk” learning models and either disincentivise or simply do not permit many educational uses of new technologies in Australian schools.

3. The Gonski 2.0 agenda focuses on learning that occurs both inside and outside the school gates.

However Australia’s current educational copyright system is designed predominantly for an outdated learning model where all teaching happens inside the classroom. There are many copyright impediments preventing school and industry collaboration or parent engagement.

In its response to the PC’s report, the Government noted the ALRC and PC recommendations for fair use, and stated that its aim is to create a modernised copyright exceptions framework that keeps pace with technological advances and is flexible to adapt to future changes.[3]

CAG submits that introducing a fair use exception into the Copyright Act is the best way to achieve this modernised copyright exceptions framework, and to ensure that Australia’s copyright system is capable of supporting the Government’s vision for a 21st century school system as outlined in the Gonski 2.0 report.

A truly modern education system needs truly modern copyright laws.

Additional information

Copyright Advisory Group – Copyright Modernisation Consultation Submission, available [here](https://www.communications.gov.au/sites/g/files/net301/f/submissions/copyright_advisory_group_to_the_coag_education_council.pdf)

Copyright Advisory Group – Schools’ submissions to the Productivity Commission’s Review of Intellectual Property Arrangements:

* ​[Submission to the public inquiry](http://www.pc.gov.au/__data/assets/pdf_file/0010/194851/sub097-intellectual-property.pdf)
* [Submission to the draft report](http://www.pc.gov.au/__data/assets/pdf_file/0011/201116/subdr429-intellectual-property.pdf)

[**Australian Law Reform Commission Review Final Report – Copyright and the Digital Economy Information Sheet on Smartcopying**](https://smartcopying.edu.au/australian-law-reform-commission-review-final-report-copyright-the-digital-economy/)

[**Productivity Commission report into Intellectual Property Arrangements and the Ernst & Young Cost Benefit Analysis of the ALRC’s proposed Copyright Reform Information Sheet on Smartcopying**](https://smartcopying.edu.au/productivity-commission-report-into-intellectual-property-arrangements/)

[**“Fair use and why Australian schools need it” Information Sheet on Smartcopying**](https://smartcopying.edu.au/fair-use-and-why-australian-schools-need-it/)

[**“Myth: Fair use would harm Australian authors” Information Sheet on Smartcopying**](https://smartcopying.edu.au/myth-fair-use-would-harm-australian-authors/)

[**“Fair use and schools – setting the record straight” Information Sheet on Smartcopying**](https://smartcopying.edu.au/fair-use-and-schools-setting-the-record-straight/)

[1] Department of Education and Training, *Through Growth to Achievement: Report of the Review to Achieve Educational Excellence in Australian Schools*(2018) 13.

[2] *New copyright laws strengthen Australia’s digital landscape*, Senator the Hon Mitch Fifield, Media Release, 27 June 2018.

[3] Department of Industry, Innovation and Science, *Australian Government Response to the Productivity Commission Inquiry into Intellectual Property Arrangements*(2017) 7.