**Myth: Fair use would harm Australian authors**

There’s an awful lot of confusion about the difference between fair dealing and fair use, and the likely impact of fair use on Australian authors.

Many authors, for example, have expressed support for the existing fair dealing regime (which they say is “clear”, and “fair”, and should be retained), and alarm at the proposal for fair use (which they say is “uncertain”, and “not fair”, and would erode their incomes). Some have even suggested that fair use would mean that they would no longer receive payments when their content was used by Australian school students.

In a debate as important as this one, it’s crucial that we get the facts straight. And the fact is that Australian authors have nothing to fear from fair use. They are being misled by people who should know better.

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| **Fact** | The US has had fair use since 1976 and has a flourishing publishing industry. Fair use has not eroded authors’ incomes in the US, and it would not do so in Australia. |
| **Fact** | The factors that a court or a user has to weigh up when determining if a use is “fair” under the existing fair dealing regime are effectively the same factors that would apply if Australia enacted fair use. So if something is not fair, this would be the case under fair dealing or fair use.  Both fair dealing and fair use require consideration of any harm to the author’s market. If a use harms an author’s market, it won’t be fair. |
| **Fact** | Australian authors will continue to receive payments when their works are copied by Australian schools.  Australian schools spend upwards of $700 million per annum in purchasing educational content for students. Fair use will have no impact on this.  Schools also pay approximately $95 million each year on collectively negotiated copyright licences. The education sector at the highest levels (ie the State, Territory and Commonwealth Education Ministers, as well as the National Catholic Education Commission and the Independent Schools Council of Australia) has given repeated assurances over a number of years that these licences will continue to exist in a fair use environment.  It is disappointing that organisations such as the Copyright Agency/Viscopy continue to mislead their Australian author members by telling them that fair use would see their licensing payments coming to an end. |
| **Fact** | Australian schools currently spend millions of dollars of public funds each year for uses that no one ever expected to be paid for. This includes use of freely available internet content and use of orphan works (ie works where the author is either unknown or not able to be located).  No reasonable person could suggest that the livelihood of Australian authors would be harmed if Australian schools could rely on fair use for these kinds of uses.  Schools are not asking for fair use in order to avoid having to pay when they copy the work of Australian authors.  Australian schools want to avoid this staggering waste of public funds, and ensure that copyright funds are directed appropriately – to Australian authors and publishers. |