Communications Law BULLETIN

CAMLA

Communications & Media Law Association Incorporated

Print Post Approved PP: 100001546

The ALRC Inquiry into Copyright and the Digital Economy

The ALRC published its report on the inquiry into 'Copyright and the Digital Economy' earlier this year. Professor Jill McKeough provided an overview of the ALRC Inquiry at a recent CAMLA seminar addressing the ALRC's considerations in this crucial report including the key issues, feedback and decisions made through the Inquiry process. This is the edited transcript.

Thank you very much and thank you all for coming on a cold wet night. It's lovely to see some familiar faces here as well. Thanks again for the invitation.

As you know, I'm going to talk about the recent ALRC Inquiry on 'Copyright and the Digital Economy' and give you a snapshot of what we did and what we concluded, including a little overview of the timetable for the Inquiry. There were three documents issued during the Inquiry; the Issues Paper, Discussion Paper and of course the Report. Submissions were called for both after the Issues Paper and Discussion Paper. Furthermore, unusually but not uniquely for an ALRC Inquiry, the terms of reference also went out for consultation before the Inquiry began and there were some minor changes made as a result of that consultation.

We received a total of 870 submissions and conducted 109 consultations. The context of the review is captured by the issues contained in Chapter 3 of the Report. One of the things we were asked was whether or not the role of copyright had changed. We asked the question, we didn't presuppose anything, we wanted to know what the community and stakeholders thought. Of course the role of copyright has not changed and we try to give a snapshot of that in the Report. What we try and do is to ensure that copyright can continue to fulfil its role within its broader context.

The Issues Paper contained 55 questions based on the issues identified through research and stakeholder consultation. However, the Inquiry was only half of the equation. We were asked not to replicate work being done on enforcement, technological protection measures, Internet service provider liability and international developments, such as the Marrakesh Treaty for readers with visual impairments, which actually was concluded during the course of the Inquiry. So we were really only considering half of the copyright issues in a sense and not the other half. There were independent discussions and negotiations going on around all those issues I've just mentioned. Some stakeholders were concerned that we didn't look at these issues and felt that it was a bit one-sided. However, the Inquiry's terms of reference explicitly said not to consider those issues. Now of course one of the big issues was fair use. This was explicitly referred to in the terms of reference. In particular, we were asked to review whether an exception for fair use should be introduced into Australian copyright law and the Report does recommend the introduction of fair use.

There is much anxiety about 'freeing up' copyright. We don't actually see our recommendations as doing this. We see fair use as being a way of asking the right questions to allow copyright to do what it should be doing. Of course fair use does have a very good reputation for having served well in this country and we know that the main objections to law reform

Volume 33 N°3
September 2014

Inside This Issue:

The ALRC Inquiry into Copyright and the Digital Economy

Open Justice versus Suppression Orders: A Battle of Attrition

US Supreme Court Turns Off TV Streaming Service

Profile: Michael Rowe and Tim Holden

Also read more about:

- How to get the CLB Electronically
- Young Lawyers Networking Event - October
- CAMLA Function - 18 September Paul Fletcher MP
- CAMLA Cup 2014 - Winners & Thankyou

Contents

The ALRC Inquiry into Copyright and the Digital Economy
The ALRC published its report on the inquiry into 'Copyright and the Digital Economy' earlier this year. Professor Jill McKeough provided an overview of the ALRC Inquiry at a recent CAMLA seminar addressing the ALRC's considerations in this crucial report including the key issues, feedback and decisions made through the Inquiry process. This is the edited transcript.

Open Justice versus Suppression Orders: A Battle of Attrition
Larina Mullins considers the impact of recent legislation and court practices in granting suppression orders on the public interest in 'open justice'.

US Supreme Court Turns Off TV Streaming Service
The US Supreme Court recently handed down its decision in the Aereo case, making the television streaming service illegal under US copyright law. Jesse Gleeson and Flora Ma provide a summary of the Supreme Court's decision and compare it with the Optus TV Now decisions in Australia.

Profile: Michael Rowe and Tim Holden
Alex Morrissey recently caught up with two experienced lawyers working in sports broadcasting, Michael Rowe and Tim Holden to chat about how they came to work in the area, some key issues facing the industry and some tips for young lawyers wanting to move into sport or media organisations.

Michael Rowe is a senior sports media rights consultant with 22 years' experience including four years as the Head of Broadcast for the Women's Tennis Association Tour.

Tim Holden is the Senior Legal Counsel (Commercial) with Football Federation Australia.

are transaction costs and uncertainty. The key question is how much uncertainty does fair use introduce as compared with fair dealing, which is discussed in the Report.

1. Statutory Licences

Another big issue is of course statutory licences. We were explicitly asked to look at whether statutory licences were standing up in the digital environment. I know there are some people here from collecting societies this evening, and I want to say that we were enormously well served by those and other stakeholders in terms of submissions. I feel quite guilty about some of the work that stakeholders have put in. We also know that many of the same stakeholders also have to engage with the Privacy Inquiry that's going on at the moment as well as the previous Classification Inquiry, so let me apologise to you on behalf of the ALRC. The government gives us the references. We don't set out to torture you and we know it's a lot of work to prepare submissions, but we did appreciate it. So of course statutory licences is one of the big issues. In the Discussion Paper we asked the question 'what would it be like if we didn't have statutory licences?' In the Report we did not recommend the abolition of statutory licences but we did recommend a great deal of freeing up of some of the conditions around them.

Okay, so one of the important questions of course is what does success look like? What does a successful digital economy look like? We needed to engage with stakeholders to know what was thought here and what I've got up on the presentation are some of the comments that were made to us in consultations leading up to the Issues Paper.

Now let me just tell you a little bit about what the Hargreaves Review said about these three points in the UK. One of the things about this Inquiry of course was that it was taking place in the context of a lot of discussion around the world. The UK Hargreaves Review was conducted. Our Inquiry started at just about the time they reported. The Irish Review of copyright was also released in October last year. We reported to the Attorney-General at the end of November giving us a chance to make sure we had referenced the Irish Review correctly. The European Community announced a review at the beginning of this year and the US is also reviewing copyright in a number of ways, so it's all happening. In the UK it's been said that reform is necessary to allow increased access to information, knowledge and cultural resources, and to make full use of the opportunities created by new technologies.

The Hargreaves Review was told, as we were, that substantial quantities of knowledge are inaccessible due to copyright law. A lot of that is around author works and that copyright is losing credibility in the absence of reform. All of these comments can be found in the Hargreaves Review which we also found reflected to our Inquiry and stakeholder input.

2. Fair use

So let me show you something about fair use. How do we know if use of copyright material is 'fair'? Well, as you would all know, there are five or six fair dealing exceptions currently in the Copyright Act. I say five or six because conduct of judicial proceedings is not actually classified as fair dealing in the Act, but you would know of course that reporting the news, research and study, parody and satire, criticism and review and the giving of professional advice by lawyers or patent attorneys are already regarded as fair dealing in the Act. There are also some specific exceptions which allow, for example, the parliamentary library to copy for the purposes of Parliament and for libraries to supply documents for research purposes. Many of these exceptions, including fair dealing of course, have developed around an understanding of what is 'fair'; so we say fair use allows the right questions to be asked, not 'is this particular purpose fair?', but 'is this use generally fair given the considerations to be applied?'

So there are four factors here. They already exist in the Act as relevant to an assessment of whether research and study is fair dealing. These four factors are shared by a number of successful hi-tech economies who have introduced fair use into copyright law. This includes Singapore, Israel, South Korea. the United States and also the Philippines.

The four 'fairness' factors:

(a) the purpose and character of the use;

(b) the nature of the copyrighted work, adaptation, audio visual item or performance;

(c) the effect of the use upon the potential market for or value of the copyright work, adaptation, audiovisual item or authorised recordings of the performance; and

(d) the amount and substantiality of the portion of the copyright copied in relation to the whole work, adaptation, item or performance.

Fair use does not require any specific purpose. The question is, would this use be fair, given the four factors. The market is also a very important consideration. Asking whether there is a market for the material is essential. However, humans love certainty and even the people that love fair use the most responded by saying 'yes, but when can we use it?' The Report therefore gives 11 illustrative purposes which reflect a distillation of what is needed and what would be useful in Australian copyright law.

11 illustrative purposes for fair use:

(a) research or study;
(b) criticism or review;
(c) parody or satire;
(d) reporting news;
(e) professional advice;
(f) quotation;
(g) non-commercial private use;
(h) incidental or technical use;
(i) library or archive use;
(j) education; and
(k) access for people with disability.

You will see there is no mash-up use, social media purpose or transformative use purpose. The 11 illustrative purposes are at a higher level of abstraction than that and indicate what stakeholders said to us would be really useful for policy reasons to have as indications of where fair use might apply. You'll notice that the first five already exist in the form of fair dealing albeit in a slightly more specific formulation in the Act.

We have proposed an alternative to fair use which is an expanded fair dealing. A lot of stakeholders said fair dealing is wonderful, we're used to it, we know how to apply it, why don't you just tidy that up and recommend that instead. So we have provided an alternative set of recommendations to introduce the 11 prescribed purposes as expanded fair dealing. It is felt that this would make the Copyright Act more useful and relevant. However, in our view fair dealing is not the gold standard for reform as it is less flexible and less adaptable to technological change than fair use. In other words, it's not technology neutral.

Some argue that fair use is less uncertain than fair dealing. In fact, the Law Council of Australia said to us in a submission that uncertainty comes from pigeonholing particular uses and a piecemeal approach is a very poor alternative which is likely to lead to much greater uncertainty. So, rather than asking whether a purpose is fair, asking whether these four factors mean that any *use* would be fair would be less uncertain according to the Law Council as well as many stakeholders.

3. Specific exceptions

The Report is not all about fair use. There are some specific exceptions to be retained and some more recommended. In the Discussion Paper we suggested that the parliamentary library exceptions might be dealt with under fair use. This provoked quite a reaction and we have gone back in the Report to recommending that many existing sections might just be retained. In theory, these are all fair. Some of these are suggested as just being covered under fair use. What is the difference between fair use and a specific exception? This really just results in a lower transaction cost in the sense that rather than going through the process of finding the four factors, let's just say it's fair. In addition, there are also some public policy reasons as well. Again, these are referred to in the Report; but this is along familiar lines that we've seen for fair dealing so in the interests of the administration of justice, running our democracy and making things that are obviously fair available, we just have some specific exceptions. Again we think this adds a little bit more certainty.

One of the purposes that we've proposed is incidental or technical use. We did talk a lot about how many times in writing the Report we should repeat, over and over again, the phrase 'this purpose may indicate that it is fair but it is not prescriptive, it does not mean it will necessarily be fair'. You will find that phrase quite a lot in the Report. With the proviso that this is not necessarily going to be fair, the four factors have to be applied. We were guided with these illustrative purposes by overseas discussions as well as stakeholder views and what we've done really is adopt very much of what the Hargreaves Review said. So the incidental or technical use purpose would allow for some level of data or text mining which does not depend on the expression of the ideas or the information. In other words, it's non-expressive use and we agreed with Hargreaves that technological processes of analysis for non-commercial purposes and also the technical processes for running a computer should be allowed. Also you'll be aware, at the moment schools have a specific exception to allow this. It was agreed with collecting societies that this was needed because of uncertainty in the Act about whether this is actually copyright infringement or not. So there is some uncertainty around the copying processes that occur with allowing computers to work.

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4. Contracting out

Now, contracting out is another hot button topic. It's always an issue. In effect there's very little prohibition on contracting out in the present Act. The main scope for prohibition of contracting out is in the computer sections of the Act, and again this is something that stakeholders are very divided over. We noted that the US does not prohibit contracting out of their fair use exception and it seems important to a market based approach not to exclude it. Based on mediation of what is fair, the contractual provisions should be allowed to operate. Fair dealing of course is more closed, it's more prescriptive and the list of purposes is prima facie fair and so we felt there was more scope for prohibiting contractual arrangements denying fair dealing. Bright lines are very difficult here but we did hear the message that uncertainty is worse than bad law in some ways, so we said alright, we'll draw a line. We'll say you can contract out of fair use but you can't contract out of fair dealing. It's always a fraught question and as I said stakeholders are very divided. On one side it is said that if contracting out was allowed, that renders nugatory any exception. On the other hand, we do recognise that we want the market to operate and the four factors to apply in the section on fair use.

5. Orphan works

With respect to orphan works, this is another area where the Report makes some recommendations. On the whole, apart from photographers there's not really much commercial significance with respect to the use of orphan works. However, because by definition no one knows who owns them, they're often very old and it's often quite low value material if you could find the owner, but this is a major issue for cultural institutions as well as of course for broadcasters. Some examples given to us in the Inquiry include World War I diaries, a very popular topic of discussion given the centenary of World War I starting this year. Another example is ration cards. Whether ration cards can be protected by copyright or not, I'm not sure given that the form and the expression might be too close together but the National Archives felt that their big stash of ration cards, which somebody had filled in, were not able to be as digitised as freely as they would like to because they might have to think about whether they were protected by copyright and if so who might have filled them in. They are orphan works, old posters and documentary material.

We received some examples of orphan works which are discussed in the Report. It was stressed to us quite heavily that we should not require a diligent search, but most jurisdictions have it and we thought that it would be appropriate to require a diligent search. So what would this mean? It would vary depending on different factors. For cultural institutions it could be 'oh let's think about it and then let's not do anything', so it could be very minimal. As I said, the main problems here are for photographers whose works appear online and have the metadata stripped out so that identifying material is removed. We do acknowledge that this is a problem and we are not in any way condoning this practice, we're just saying that most orphan works really have very little commercial value. However if an owner does pop up there should be some recompense and we discuss in the Report that there should be some assessment of damages. We note that section 153 already limits damages if the infringement was unknowing, so we discuss some alternatives. We look at what the US does and we say that there should be a reasonable return as if there had been a licence arrangement rather than making exemplary damages available.

6. Retransmission of broadcast content

As you know, retransmission is simultaneous and unaltered relaying of broadcast content, mainly for self-help purposes or in other words, to allow better reception. The ALRC therefore did not recommend any change to this, but the Report notes and discusses the fact that discussions on reform of retransmission are dependent on broader media policy which is outside the scope of the Inquiry. The Report discusses some anomalies with Internet retransmission, but we don't suggest any particular recommendations. We have some discussion and make some observations which we hope will be useful for government, but basically we backed away from making any particular recommendations about most of broadcasting and retransmission. I think we recommend that the government should think about it in light of our discussion. We do discuss whether some specific exceptions relating to broadcasters in the Copyright Act should be repealed but we do note that there is a lot of media policy about which is not concerned with copyright law. For example, Free TV asked that we recommend the introduction of a 'must carry' regime along with some other amendments that they would like. That is not really for us to do and we did not enquire into whether or not that would be a good idea. In fact, we think it's probably not, we think that's out of line with our market based approach on the whole. We all know that requirements for carrying Australian content apply to broadcasters and we are all aware of course of the anti-siphoning rules but again that's outside our terms of reference so for those reasons we did not interfere too much with the proposals. I mean some people say that whatever we recommend is not going to interfere at all in anything, but we didn't go so far as to make many recommendations about broadcasting or retransmission. We did look at them very seriously, we received a lot of submissions, we thought about it and we hope we have achieved some useful discussion about these issues.

7. Industry considerations

Okay, so we're saying that fair use is a market based deregulated approach which allows the operation of competition factors. We note that much commercial behaviour is now agreed upon and we think that fair use allows greater scope for this. Of course, views differ as to whether transaction costs would be higher or lower if Australia moved into a fair use environment and I think the question would be how long would it take to get used to it? Another question is of course how would we know if something is fair use or not? There is a body of Australian case law which discusses some or all of the factors we discuss. Australian courts can and do have recourse to overseas precedent. Cogent guidelines have

been developed in the US and are already in place in some industries here, especially with regard to sport, for example. We heard a lot from sporting bodies about the fact that fair dealing is very uncertain. Peak sporting bodies use the phrase 'fair dealing creep' to reflect the fact that there is no settled understanding, except through agreement. There's a constant mediation and discussion about what is actually 'fair dealing' for the purposes of reporting the news amongst sporting entities and we see this continuing in a fair use environment. I would say it won't be any worse than it is in fair dealing. So it was interesting the number of consultations we had that started off with 'we understand fair dealing, we know it and love it but it's so uncertain, it's terrible, and fair use would be worse'. However, fair dealing is no panacea at the moment.

8. Inquiry process

I'm going to show you a bit about the process and how we went about what we did. We had 870 submissions plus 139 confidential submissions. We did get 400 form letters from teachers and I don't want to diminish the great amount of reading that you think I've done but 400 of the submissions or more were form letters. They were all very carefully and respectfully read. Some of them had more than just a form letter in them. Some of them went on to reveal even greater misapprehension and misunderstanding of what we were actually saying than the form letter did. But teachers and writers of educational materials were told quite a florid account, which in our view misrepresented what we were saying about how terrible their lives would be if we recommended fair use and also the abolition of statutory licences.

The ALRC received some criticism in this process. I think the Classification and Privacy Reviews were perhaps open to this as well but on the whole the ALRC is not usually criticised for its process. It has a 40 year long history of having developed a very good way of going about things. We did make a very conscientious effort to engage stakeholders and allow for submissions. We listened to everyone and our agenda was the terms of reference. However, some submissions included statements to the effect that the ALRC is dealing with a non-existent problem, is ideologically driven, has ignored evidence or has no evidence for the proposals in the Discussion Paper and is biased. As I said, the 'ideology' came from the terms of reference, which required us to enquire into amending copyright law so as to ensure the best interests of Australians and ensuring Australian creators, consumers, the business and the community are served in accessing copyright material and we tried to do just that. The Report discusses all of the available economic evidence that we found on fair use. All of it is partial, all of it relates only to certain industries, sectors or jurisdictions and most of it is commissioned by one stakeholder or another so we didn't ignore it, we looked at it, we assessed it, we couldn't necessarily follow all of it or any of it but we do note what we found.

As you'll see here we had 24 people on the Advisory Committee. This is the largest advisory committee ever for an ALRC Inquiry. The Advisory Committee was composed of people who are experts from a broad range of backgrounds. They are not meant to bring their own lobbying or representation to the Committee. They're meant to tell us whether or not what we're talking about is coherent and whether or not it hangs together and also to point out pitfalls to us. The Advisory Committee met three times and we did a lot of work leading up to those meetings. Members get a very short paper which has our proposals or our questions as the case may be and a very short comment on what we're thinking. Then we ask the Committee whether this is sensible, coherent and what we should be looking at or whether we have we missed anything.

Now, one of the things that people say a lot is that copyright is very messy and when I said this at a conference once someone Tweeted hmm, the Commissioner says copyright is very messy, umm, isn't that a statement of the obvious. Well yes it is but that is also what we heard a lot of; that it's incoherent, the operation of the Act is bizarre as between different subject matters and different rights holders, it's not convergence proof, some sections are never used and others simply cannot be understood. We have not dealt with all of that but we have tried to deal with a lot of it. Now we do understand that there are difficulties with reform, there are transaction costs. We were told quite a lot about difficulties that stakeholders perceived. We do discuss this in the Report, but we fully acknowledge that law reform does have costs and whether it's worth the time or not, there has to be an assessment made. We do know that this Report is intended to offer some opportunities for the future as to how to make full use of new technologies, how to allow the building of new business models and allow property right laws to be restricted. The Report has gone to government and the costs and benefits to the community will now have to be considered in formulating options for reform. Any law reform in Australia has to be considered to be effective in addressing identified problems and must be efficient in terms of maximising the benefits to the community taking part. This is the fourth time that fair use has been recommended. It surprised me a little bit - I genuinely did not have any intention to come out with a Report that recommended fair use. We just went in, spent a lot of time thinking about the terms of reference and what they were asking and we looked at everything again, from the beginning. So we didn't just say 'oh well, this CLRC recommended it, let's do it again'. We actually did a genuine inquiring process that looked at all of this. So, thank you very much and I'm happy to answer any questions.

There's a constant mediation and discussion about what is actually 'fair dealing' for the purposes of reporting the news amongst sporting entities and we see this continuing in a fair use environment

9. Questions from the audience

(a) What has been the attitude of the liberal government?

Yes, well interestingly we're now on our fourth Attorney-General. Robert McClelland first announced the Inquiry and drafted the terms of reference. Then the Optus case was handed down and everyone thought 'oh, what's going to happen here? That's when I first started thinking 'what on earth have I done saying I will leave my job and go to the Law Reform Commission?' I think the Optus TV Now case delayed things. Then, Nicola Roxton became Attorney-General and she wanted to review the terms of reference. Then she stepped down, Senator Dreyfus became Attorney-General and things continued. And then, of course, we had en election. When the Report was tabled, Senator Brandis said 'I remain to be convinced about fair use' and the next day he made some other comments at the Australian Digital Alliance Conference. He said that he did think that copyright law needed reform and that it should be a lot shorter and a lot simpler, the Act should not be so complicated. So his aims are exactly, I think, what the aims of our terms of reference were. As you know, he is concerned about the things that we didn't inquire into, including enforcement and piracy, but there has been work done on those things and the Attorney-General's department has been doing a lot of work on that. So I think the government - the current government - is committed to the same aims as our terms of reference. Now, whether or not they think that our Report has any relevance in achieving that remains to be seen. It would be hard to know what else they are going to do and if they're going to make it shorter, more comprehensive and decrease the regulatory burden and so on.

(b) The one view of Senator Brandis' comments is that there is going to be a wholesale review of the Copyright Act. Has there been any feedback?

I haven't heard anything specific about that, no. He said in comments that the Review has been the most comprehensive review in recent years, but I don't actually think it is. It's a review of some of the stuff in the Act and, of course the CLRC did a fantastic job of reviewing lots of parts of the Act including the whole simplification inquiry and indeed the jurisdiction of the Copyright Tribunal also. That's a very interesting report and in 2006 there were amendments made which I think are so far unexplored in their possibilities. We actually spent a bit of time looking the Copyright Tribunal's jurisdiction and how it could be used to more effectively deal with some of the problems stakeholders told us about. This doesn't appear in the Report because we felt it went beyond our terms of reference and there has to be a limit on the size of reports and how much work is done, but I think there are fertile areas for investigation.

(c) What are your views on the transferability of precedent from other jurisdictions?

We do talk about this quite a lot in the Report and we think that the US has many valuable lessons, but what we do know is that our judges are very adept with sifting and analysing overseas precedents. I think there is a lot of useful information from the US, not just in terms of court cases and not all of them, but certainly in terms of the codes and guidelines that have been developed. We know that the fair use guidelines for the movie industry allow the movie industry to get insurance in terms of being sued for copyright infringement so they do create a high level of certainty in that context.

We do like the notion of transformative use that the US has developed based on that famous article in the Harvard Law Review which the courts have now picked up there. Then of course we have our four criteria which are much more explicitly spelled out than they are in the US legislation and the US. As we know, the Copyright Act derives some of its authority from the US Constitution and the purpose of copyright is stated in the Acts might or might not be different for us, but we think our judges can cope with all that and apply what's relevant and sort it out.

(d) I am interested in the reaction of the news media. Was any consideration given to aggregation of news items by websites?

Unfortunately that was really outside our terms of reference. We thought about that carefully. In the first chapter there is a section on what stakeholders would like as to what we talked about and we felt we shouldn't deal with. I think people felt that they'd been overlooked, including those who submitted to us on news aggregators, but we didn't feel the introduction of such a new right was something that was part of our remit. However, in the Report we do briefly refer to that as an issue that was raised.

(e) How do you deal with the fact that transmission, the way something's transmitted, actually makes a great difference in the way it's handled under the legislation and yet, just about everything that is transmitted can be transmitted in the same way now that it's all digital and it will all be transmitted in the same way and yet treated differently. Did you try to deal with that? Because that's going to be the implication of the digital economy.

Yes, we make quite a few observations about that, including about the fact that the Act at the moment distinguishes oddly between subject matter, rights and rights holders so we did observe that. In our recommendations we try and set out a platform that allows for technology neutrality and discuss that at some length not just with respect to fair use, but we think fair use is a major tool there. Of course that also allows for different contexts, so it might be fair in one context but not in another. The question of whether transmission over the Internet should be treated as broadcasts is discussed, but we do not make specific recommendations as broader issues of media policy are important here.

(f) So you assumed that social media uses were not considered, or considered in much detail?

No, we did consider them. It's just that we're not suggesting that there's any illustrative purpose of social use being an exemption from copyright infringement. That has always been a form of fair use, but we do talk about private, non-commercial use which would include that. As I said it's just pulled up a little bit, to a slightly higher level of abstraction so that there are not a thousand bullet points of examples. The Report does include a page and a half at least of examples that people would like included under fair use, but they are not all elevated to an illustrative purpose. Again this is something that some of the team thought we shouldn't include because it was just excess words, but I said that people want to see what other people think should be fair use so there is a list of bullet points of things that stakeholders would like to see. We're not saying they are or are not fair use, but certainly social media use is caught up in the private and domestic. Of course there's a big issue with that because of the anxiety we learnt about concerning fair use by a consumer, flowing on to fair use by a large corporation. We think we dealt with this. For example if your three year old is singing a One Direction song and you upload to the Internet, the issue becomes whether that then flows on to be fair use by that Internet service provider or specifically YouTube? So we have attempted a framework where it doesn't lead to prosecution of the person that loads it up, but it's not fair use by the platform.

(g) It's interesting that you've indicated the element of personal use. Sometimes where people use a blog for personal use, it may grow larger and become a commercial venture so then that timing would become important at some stage as well.

We have so many discussions about commercial and non-commercial and how to distinguish them apart. Basically, we haven't. At the end of the day one of the illustrative purposes refers to 'private non-commercial use' and that is a sort of belt and braces approach. We feel that non-commercial is inherent in the concept of fair use but we put it in there to give a bit of comfort because with respect to private use, we have some very big stakeholders who are very big copyright earners and they said to us 'we could live with fair use as long as it doesn't include private use because that means open slather and the public will read that as we can do whatever we want', so we tried to address that issue.

Professor Jill McKeough was previously Dean of the Faculty of Law at the University of Technology, Sydney and was appointed as Commissioner in charge of the ALRC's Inquiry into Copyright Law. Professor McKeough is a highly regarded academic, researcher and writer with a special focus on intellectual property issues.