

## **Australian Computer Society Inc. (ACT)**

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## **ACS response to the Exposure Draft Copyright Amendment (Access Reform) Bill 2021 Discussion Paper**

11 February 2022

Dear Sir or Madam

Thank you for the opportunity to contribute to this critical discussion.

The Australian Computer Society (ACS) is the peak professional association for Australia's information and communications technology sector, with over 43,000 members.

While ACS appreciates that the government is trying to improve Australia's copyright laws – and the proposals in the new Bill are largely positive – we feel there is a fundamental flaw in the approach that stems from the government's rejection of a fair use system.

Instead of trying to carve out and hard code individual exceptions as is being done here and has been done historically with fair dealing, the government would find it worthwhile to go back to the drawing board and reconsider its approach.

Quite simply, the current approach is not keeping up with technology. The proposed rules being discussed in this paper are generally solving problems more than a decade old but leave little leeway for interpretation with respect to new technologies.

If we look at the proposed rules, for example, there seems little consideration given for software development, for web archival and transmission, for data mining and AI, for social media use or for copyleft licenses.

Some of the issues ACS members have identified with the proposed changes include:

- Very little consideration seems to have been given to how these changes interact with software development and web archival. Has the position of software within this framework been considered, and what are the implications for software development? What about web and online archives?



- The changes still lack any text/data mining exception, which is critical for many new technologies, particularly AI and data analysis. Text/data mining exceptions have been introduced in other countries at various levels of specificity. Numerous bodies such as the CSIRO argued for exceptions along those lines back in 2013 to the ALRC (and the ALRC thought fair use would allow some text/data mining). In 2018 the Business Software Alliance and Australian Information Industry Association both pointed out the need for text/data mining exceptions. This is a critical exclusion, which hampers AI research and conflicts with government research and investment initiatives in that field, and should unquestionably be covered under the updated laws.
- The new fair dealing exception for non-commercial quotation is exceedingly narrow. Academics are not the only ones who quote the works of others.
- The restored education exception is also exceedingly narrow. It should apply to all accredited institutions.
- It's unclear how these changes interact with 'copyleft' licences like the GNU Public Licence and the general process of open source development. We believe there should be provisions in the bill for such licences to remain in place even in instances where the original author is unknown or uncontactable.

Undoubtedly, those things could be resolved by bespoke changes to the Bill and in the absence of any other option we would recommend such reforms to address these longstanding, well-known problems.

In the longer term, however, we would recommend a holistic look at the core principles of copyright in Australia and the development of an open-ended principles-based exception regime.

Yours sincerely

Troy Steer

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Australian Computer Society