

Appendix A

List of submitters and acronyms

Sub no.	Submitter	Abbreviation/ acronym
1	Monash University	
2	Federal Libraries Information Network	FLIN
3	Ministerial Council on Education, Employment Training and Youth Affairs Taskforce on Copyright	MCEETYA Taskforce
4	Patricia & Tony Barry	
5	International Intellectual Property Alliance	IIPA
6	Deakin University	
7	Australian Library & Information Association	ALIA
8	Supporters of Interoperable Systems in Australia	SISA
9	Australian Consumers' Association	ACA
10	Council of Australian University Librarians	CAUL
11	Australian Record Industry Association	ARIA
12	Phonographic Performance Company of Australia Ltd	PPCA
13	Australian Vice-Chancellors' Committee	AVCC
14	Australian Publishers Association	APA
15	Australian Digital Alliance	ADA
16	National Library of Australia	NLA
17	Australian Information Industry Association Limited	AIIA
18	Copyright Agency Limited	CAL

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Sub no.	Submitter	Abbreviation/ acronym
19	Department of Defence	Defence
20	Department of Communications, Information Technology & the Arts	DCITA
21	Australian Copyright Council	ACC
22	International Federation of Phonographic Industries	IFPI
23	Council of Australian State Libraries	CASL
24	Screenrights	
25	Australian Libraries Copyright Committee	ALCC
26	Business Software Association of Australia	BSAA
27	Australian Broadcasting Corporation	ABC
28	Law Council of Australia	
29	Australasian Performing Right Association Limited and Australasian Mechanical Copyright Owners' Society Limited	APRA and AMCOS
30	Federation of Australian Commercial Television Stations	FACTS
31	Adam Gatt, RMIT Masters of eBusiness	
32	Visual Arts Copyright Collecting Agency	Vi\$COPY
33	Copyright Agency Limited	CAL
34	Australian Copyright Council	ACC
35	Australian Digital Alliance	ADA
36	Prof Brian Fitzgerald	QUT

Appendix B

List of attendees at the Committee's Consultative Forum – 4 October 2001

No.	Attendee	Association
1	Charles Alexander	MCEETYA Taskforce
2	Anthony Barry	
3	Libby Baulch	ACC
4	Delia Browne	Arts Law Centre of Australia
5	Margy Burn	NLA
6	John Corker	Communications Law Centre
7	Peter Coroneous	Internet Industry Association
8	Brett Cottle	APRA and AMCOS
9	Janice Fewin	APA
10	Anne Flahvin	AVCC
11	Michael Fraser	CAL
12	Adam Gatt	RMIT
13	Maurice Gonsalves	BSAA
14	Craig Grimison	ALIA
15	Hans Groenewegen	Monash University
16	Sonya Kilkenny	Screenrights
17	Bridget Larsen	AIIA

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No.	Attendee	Association
18	Fides Lawton	CAUL
19	Pam Longstaff	FACTS
20	Alex Malik	ARIA, PPCA and IFPI
21	Jill McKeough	University of New South Wales
22	Simon Pelling	DCITA
23	Adriana Salerno	Deakin University
24	Dagmar Schmidmaier	CASL
25	Nick Smith	ADA and ALCC
26	Marie-Louise Symons	National Copyright Industry Alliance
27	Georgina Waite	ABC
28	Anna Ward	Vi\$copy
29	Jamie Wodetzki	SISA
30	Mary Wyburn	Sydney University

Appendix C

List of the abbreviations

ABC	Australian Broadcasting Commission
ACA	Australian Consumers' Association
ACC	Australian Copyright Council
ACCC	Australian Competition and Consumer Commission
ADA	Australian Digital Alliance
AGIS	Attorney-General's Information Service
AIIA	Australian Information Industry Association Limited
ALAI	Association Littéraire et Artistique Internationale
ALCC	Australian Libraries' Copyright Committee
ALI	American Law Institute
ALIA	Australian Library and Information Association
ALRC	Australian Law Reform Commission
AMCOS	Australasian Mechanical Copyright Owners' Society Limited
APA	Australian Publishers' Association
APAIS	Australian Parliamentary Affairs Information Service
APRA	Australasian Performing Right Association Limited
ARIA	Australian Record Industry Association
Art.	Article
Arts.	Articles

AVCC	Australian Vice-Chancellors' Committee
Berne Convention	The Berne Convention for the Protection of Literary and Artistic Works
CAL	Copyright Agency Limited
CASL	Council of Australian State Librarians
CAUL	Council of Australian University Librarians
CBDTPA	A bill for the <i>Consumer Broadband and Digital Television Promotion Act 2002 US</i>
CGMS	Copyright Generation Management System
CLRC	Copyright Law Review Committee
Computer Programs Act	<i>Copyright Amendment (Computer Programs) Act 1999(Cth)</i>
Computer Programs Bill 1999	Copyright Amendment (Computer Programs) Bill 1999
Computer Programs Directive	Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs
Consumer Contracts Directive	Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts
Copyright Directive	Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society
CTEA	<i>Sonny Bono Copyright Term Extension Act 1998 (US)</i>
CRA	<i>Contracts Review Act 1980 (NSW)</i>
CSS	Content Scrambling System
Database Directive	Directive 96/9/EC of the European Parliament and the Council of 11 March 1996 on the legal protection of databases

DeCSS	De-Content Scrambling System
<i>De Garis</i>	<i>De Garis v Neville Jeffress Pidler Pty Ltd</i> (1992) 37 FCR 99
Digital Agenda Act	<i>Copyright Amendment (Digital Agenda) Act 2000</i> (Cth)
Digital Agenda Bill 2000	Copyright Amendment (Digital Agenda Bill) 2000
DCITA	Department of Communications, Information Technology and the Arts
DIVX	Digital Video Express
DMCA	<i>Digital Millennium Copyright Act 1998</i> (US)
DMCA Report	Report by the US Register of Copyrights and the Assistant Secretary for Communications and Information of the US Department of Commerce on the DMCA
Draft Hague Convention	<i>Draft Convention on Jurisdiction and Enforcement of Foreign Judgments in Civil and Commercial Matters</i> developed by the Hague Conference
DRMS	Digital Rights Management Systems
DVD	Digital Video Disc/Digital Versatile Disc
EFF	Electronic Frontiers Foundations
Electronic Commerce Directive	Directive 2000/31/EC of the European Parliament and the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, 17 July 2000
Electronic Signatures Directive	Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures
EC	European Community

EEC	European Economic Community
EFF	Electronic Frontiers Foundation
Ergas Committee	Intellectual Property and Competition Review Committee
Ergas Report	Intellectual Property and Competition Review Committee 2000, <i>Review of Intellectual Property Legislation under the Competition Principles Agreement</i> , Commonwealth of Australia Canberra.
ETA	<i>Electronic Transactions Act 1999</i> (Cth)
EU	European Union
European Convention of Human Rights	Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November 1950
EUS	Electronic Use System
FLIN	Federal Libraries' Information Network
Foreign Judgments Act	<i>Foreign Judgments Act 1991</i> (Cth)
Franki Committee	Copyright Law Committee on Reprographic Reproduction
Franki Report	Copyright Law Committee on Reprographic Reproduction 1976, <i>Report of the Copyright Law Committee on Reprographic Reproduction</i> , AGPS, Canberra.
Gregory Report	Copyright Committee of the British Board of Trade 1952, <i>Report of the Copyright Committee</i> , United Kingdom, Cmd. 8662.
Hague Conference	Special Commission of the Hague Conference on Private International Law
Human Rights Act	<i>Human Rights Act 1998</i> (UK)

Homestyle case	<i>United States - Section 110(5) of the Copyright Act, Report of the WTO Panel/WT/DS160/R, 15 June 2000</i>
HTML	Hypertext mark-up language
IFPI	International Federation of Phonographic Industries
IIPA	International Intellectual Property Alliance
Internet Treaties	WCT and WPPT
IPCRC	Intellectual Property and Competition Review Committee (Ergas Committee).
ISO	International Organization for Standardization
Long Distance Selling Directive	Directive 97/7/EEC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts
MCEETYA	Ministerial Council on Education, Employment Training and Youth Affairs
Moral Rights Act	<i>Copyright Amendment (Moral Rights) Act 2000 (Cth).</i>
NCC	National Competition Council
NCCUSL	National Conference of Commissioners on Uniform State Laws
NLA	National Library of Australia
NOIE	National Office for the Information Economy
OC	Official Comment
Pacific Gaming	<i>Pacific Gaming v Aristocrat Leisure Industries Pty Limited</i> [2001] FCA 1204 26 November 2001
r.	Regulation
RAM	Random Access Memory
RPC	Regional Playback Control

ROM	Read Only Memory
s.	Section
SCMS	Serial Copyright Management System
Sega case	<i>Sega Enterprises Ltd v Accolade Inc</i> 977 F.2d 1510 (9th Cir. 1992)
SISA	Supporters of Interoperable Systems in Australia
Simplification Report Part 1	Copyright Law Review Committee 1998, <i>Simplification of the Copyright Act 1968, Part 1: Exceptions to the Exclusive Rights of Copyright Owners</i> , Attorney-General's Department, Canberra.
SMEs	Small to medium sized enterprises
Spicer Committee	Committee Appointed by the Attorney-General of the Commonwealth to Consider what Alterations are Desirable in the Copyright Law of the Commonwealth.
Spicer Report	Committee Appointed by the Attorney-General of the Commonwealth to Consider what Alterations are Desirable in the Copyright Law of the Commonwealth 1959, <i>Report</i> , AGPS, Canberra.
ss.	Sections
Statute of Anne	The Act of 1709 (UK)
the Act	<i>Copyright Act 1968</i> (Cth)
the Copyright Act	<i>Copyright Act 1968</i> (Cth)
TPA	<i>Trade Practices Act 1974</i> (Cth)
TPMs	Technological Protection Measures
TRIPS	Trade Related Aspects of Intellectual Property

TRIPS Agreement	Agreement on Trade Related Aspects of Intellectual Property
UCC	<i>Uniform Commercial Code</i> (US)
UCITA	<i>Uniform Computer Information Transactions Act</i> (US)
UNCITRAL	United Nations Commission on International Trade Law
URL	Uniform Resource Locator
US Act	US Copyright Act, Title 17 of the United States Code.
Washington Treaty	WIPO draft Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits
WCT	WIPO Copyright Treaty (1996)
WIPO	World Intellectual Property Organisation
WPPT	WIPO Performances and Phonograms Treaty
WTO	World Trade Organisation

Appendix D

Table of Exceptions

Section	Exception	Historical / Policy Justification
ss. 40, 103C	<p>FAIR DEALING (FD)</p> <p>Research or study</p>	<p>The concept of fair dealing has evolved as an integral part of copyright as understood in the common law tradition.</p> <p>The Digital Agenda Act applies the current FD exceptions to the new right to communicate to the public to ensure that as far as possible, the exceptions replicate the balance struck between the rights of owners and the rights of users that has applied in the print environment.</p> <p>Introduced as a 'matter of principle', in terms of promoting the public interest in a free flow of information in education and research.</p> <p>The 1980 amendments were influenced by the Franki Report and removed the limitation on copying for private study so as to facilitate education generally. The previous distinction between private copying for research and study, and copying for educational purposes was removed on the grounds that it was seen to be artificial and difficult to maintain.</p>
ss. 41, 103A	Criticism or review	<p>Policy basis is mainly found in the common law, with 'fairness' assessed on the facts of each case.</p> <p>The exception is designed to provide information and comment for possible consumers and audiences. It is considered that copyright owners ordinarily expect to have their works, or parts of them, used for criticism and review.</p>
ss. 42, 103B	Reporting news	<p>Policy basis is derived from the case law, which acknowledges</p> <ul style="list-style-type: none"> - the public interest in promoting the free flow of knowledge, ideas and information; and - the difficulty in protecting only the 'expression' and not the underlying information in relation to news.

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Section	Exception	Historical / Policy Justification
s. 43(2)	Giving professional advice	The exception is designed to facilitate the administration of justice and to assist people to gain a greater awareness of their legal rights and obligations.
	COPYING BY LIBRARIES AND ARCHIVES	<p>Initial copying provisions adopted the recommendations of the Spicer Committee. These largely followed similar UK provisions designed to remove the potential for librarians to be held liable for copyright infringement by copying material for alleged fair dealers.</p> <p>These exceptions were also initially introduced to facilitate education and scientific research (including the then need to access specialist research material from overseas) given the geographical constraints to accessing material in Australia.</p> <p>It was considered that access to copyright material would be increased by improving the traditional role of libraries as repositories of copies of research material.</p> <p>The Digital Agenda Act updated the library and archives provisions to allow them, in response to user requests, to copy electronic material, reproduce hard copy material in electronic form, and to communicate electronic material forming part of the library's and archive's collection. These amendments are seen to allow the use of new technology to provide the general community with access to copyright material without unreasonably prejudicing copyright owners.</p>
s. 48	Copying by Parliamentary Libraries for MPs	Public interest in having an informed political process.
s. 49	<p><i>Reproducing and communicating works for:</i></p> <p>Users for research and study (user requests)</p>	In order to ensure that research and education are not unduly hampered, it was considered logical to extend the permission granted to a student to make a FD copy of a work to that of a librarian acting on a student's behalf.
s. 50	For other libraries or archives (inter-library copying for document supply)	The exception was justified on practical grounds. The Franki Committee argued that Australia's geographical constraints made the lending of books and periodicals (via inter-library loans) impractical on cost and efficiency grounds.

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Section	Exception	Historical / Policy Justification
s. 51AA	Reproducing / communicating works in Australian archives	Assists in maintaining a library's collection by enabling published works to be replaced that have deteriorated, or been damaged, lost or stolen.
ss. 51A, 110B	Reproducing / communicating works for preservation and other purposes	The exception applies as above and includes cinematograph films and sound recordings.
s. 52	Publication of unpublished works kept in libraries or archives	The exception acknowledges the potential historical significance of unpublished documents and the reasonableness of allowing these documents to be copied so as to facilitate scholarship and research.
ss. 43A, 111A	OTHER - TECHNOLOGY BASED EXCEPTIONS	Introduced for practical reasons and to ensure that the technical processes underlying new technologies (such as those occurring naturally in the process of viewing, browsing and caching on the Internet), are not jeopardised.
	<i>Computer program exceptions</i>	
ss. 47AA, 110C	Temporary Reproductions	Allows broadcasters to comply with requirements under the <i>Broadcasting Services Act 1992</i> that material be simulcast in digital and analogue form as part of the phase-in of digital television in Australia.
s. 47B	Reproduction for purpose of simulcasting in digital form	The provision is aimed at facilitating the growth and competitiveness of the computer software industry.
s. 47D	Reproduction for normal use/study of a computer program	Specifically introduced to maintain the international competitiveness of Australia's software developers.
s. 47E	Reproduction for making interoperable products (decompilation)	Introduced on the basis of a particular concern at the time in relation to the year 2000 date / Y2K bug problem as a result of which error-free copies of computer programs might not have been available.
s. 47E	Reproduction for correcting errors	Introduced on the basis of a particular concern at the time in relation to the year 2000 date / Y2K bug problem as a result of which error-free copies of computer programs might not have been available.

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Section	Exception	Historical / Policy Justification
s. 47F	Reproduction for security testing	Security testing is seen as a legitimate activity.
s. 116A	Permitted purposes exceptions to anti-circumvention	The exceptions are designed to prevent digital lock-out in certain instances, considered vital to ensuring reasonable access to copyright material in electronic form.
ss. 47, 70, and 107	<p>STATUTORY LICENCES</p> <p>Ephemeral reproductions for the purpose of broadcasting</p>	<p>The justification of each licence differs.</p> <p>In general, statutory licences were introduced as a response to market failure. They are seen as a practical means of remunerating copyright owners, particularly where it is impossible to monitor usage in situations where technology (such as reprography) has made the reproduction of copyright material easier, cheaper and of better quality. They also provide a practical solution to the inefficiencies and high transaction costs involved in seeking permission from the copyright owner.</p> <p>Promotes efficiency in broadcast programming.</p>
Part III Division 6	Recording of musical works	Introduced for historical reasons as the statutory licence was seen as a means of moderating the feared high royalty demands of music copyright owners for consent to the recording of their works.
s. 47A	Sound broadcasts by holders of a print disability radio licence (s. 47A)	Introduced to assist those with a print disability.
Part VA	'Off air' copying by educational institutions and institutions assisting persons with a print or intellectual disability (Part VA)	<p>These statutory licence schemes were originally introduced to facilitate equitable access to information and to meet the demands of educational institutions for the making of multiple copies; and to reduce the inefficiencies and high transaction costs involved in individually seeking permission from copyright owners.</p> <p>1993 amendments were designed to provide institutions operating under Parts VA and VB licences with the flexibility to make off-air copies of all television programs for educational purposes.</p>

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Section	Exception	Historical / Policy Justification
		The Digital Agenda Act introduced amendments to both Part VA and VB to ensure that licence schemes are broad-based, flexible and capable of adapting to future technological developments.
Part VB	Copying of works etc. by educational institutions and institutions assisting persons with an intellectual or print disability (Part VB)	As above.
Part VC	Retransmissions of broadcasts (Part VC)	<p>Prior to this amendment, retransmitters (cable Pay-television operators) were able to retransmit free-to-air broadcasts without permission or payment of remuneration to either the owner of the copyright in the broadcast or the owner(s) of copyright in the underlying works, such as any music, written material or film.</p> <p>The Digital Agenda Act introduced a statutory licence scheme to allow owners of copyright in broadcasts to take full advantage of the new right to communicate to the public and to control the retransmission of their broadcasts.</p>
s. 183	Use of copyright material for the services of the Crown (s. 183)	Designed to promote the administration of justice and the procedures of government by providing an administratively simple means of remunerating copyright owners.
	MISCELLANEOUS FREE EXCEPTIONS	There is no one underlying rationale for the miscellaneous exceptions and they are not organised in a consistent way throughout the Act
ss. 44B, 112B	<p><i>Reproduction and Related Uses</i></p> <p>Reproduction of writing in approved labels on chemical products</p>	Introduced in the mid 1990's as part of Government policy on the marketing of generic agricultural and veterinary chemical products in Australia.

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Section	Exception	Historical / Policy Justification
s. 65	Certain reproduction and publication of works: - sculptures and certain other works in public places	Considered reasonable to allow the making of a painting, drawing, engraving or photograph of these works, and to include these works in a cinematograph film or television broadcast, as it is impractical to control this type of copying. It is also considered reasonable to allow the publication of legitimate reproductions of such works.
s. 66	- buildings and models of buildings	
s. 67	- incidental filming or televising of artistic works	
s. 68	- publication of artistic works	
s. 72	Reproduction of part of work (artistic) in later artistic work	Designed to accommodate copying of parts of an artistic work by an author in a later work.
s. 73(1), (2)	Reconstruction of buildings	Seen as practical to allow the reconstruction of a building by reference to drawings or plans relating to that building.
s. 111	Filming and recording broadcasts for private and domestic use	This provision allows the making of sound and audio-visual recordings of radio and television broadcasts for the private and domestic use of the person by whom it is made (ie, home copying). The exception is of limited application as it does not allow home copying of any underlying works included in the broadcast. The exception only extends to the copying of live, extempore broadcasts such as sporting events.
s. 112	Reproductions of editions of works	This section allows the reproduction of the whole or part of an edition without infringing copyright if the reproduction is made in the course of specific dealings exempted under the Act (ie, dealings exempted under ss. 40-43; ss. 49-50 and s. 51A; copying of works pursuant to the statutory licence under Part VB; and s. 182A).

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Section	Exception	Historical / Policy Justification
		The provision was introduced to provide consistency within the Act, as the drafting of the above exceptions do not apply to published editions.
s. 182A	Reproduction of statutory instruments and judgments	Allows a single copy of the whole or part of a prescribed work, such as statutory and judicial material to be made by or on behalf of a person for a particular purpose.
s. 28	<i>Performances, transmissions and broadcasts</i> Performance of works or other subject-matter in the course of educational instruction	Facilitates education.
s. 45	Reading or recitation in public / for a broadcast with sufficient acknowledgment	To assist in the public dissemination of information.
s. 46	Performance at premises where persons reside or sleep	The Spicer Committee argued that it is logical to allow this type of exception in situations where the type of performance given in a guesthouse is similar to the performance that a person might receive in their own home.
s. 106	Causing sound recording to be heard at a guest house or club	As above. However, the exception under s. 106(2)(b) is limited to non-profit organisations whose principle objects are charitable or are concerned with the advancement of religion, education or social welfare.
ss. 47, 70, 107	Reproduction for purpose of broadcasting	Necessary and desirable given Australia's dispersed geography and different time zones that operate.
s. 199(1)	Reception of broadcasts	As above.

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Section	Exception	Historical / Policy Justification
s. 105	Public performance of recordings that originate overseas	Aims to prevent performing and broadcasting rights being acquired by non-nationals merely by the fact of first publishing in Australia. Deals with non-members of the Rome Treaty.
s. 110	Provisions relating to cinematograph films: public performance of old news films (s. 110(1)); and public performance of works contained in old films (s. 110(2))	This provision covers the anomaly existing in the fact that copyright in a cinematograph film expires before the copyright in underlying works (script, music, and artwork).
s. 110(3)	OTHER USES Use of record embodying film soundtracks	Amendments simplify the consent requirements in relation to dealings with soundtracks.
s. 44(1)	Inclusion of copyright works in collections for use in education	Designed to facilitate education. However, the exception is heavily circumscribed, and has largely been superseded by the introduction of s. 135ZG which allows institutions under the Part VB statutory licence to make copies of works to include in materials to be distributed to students.
ss. 200(1), (2) & (2A)	Use of works and broadcasts for educational purposes	To assist in educational instruction.
ss. 44A, C & D and ss. 112A, C & D	Importation of infringing articles: - books and published editions (ss. 44A & 112A) - accessories to imported articles (ss. 44C & 112C) - sound recordings (ss. 44D & 112D)	These exceptions cover situations involving the indirect infringement of copyright and deal with acts done in relation to an article that is an infringing article rather than the doing, or the authorisation of the doing, of an act comprised in the copyright. Therefore, these provisions are not true exceptions to the exclusive rights of copyright owners arising under s. 31(1) (works) and ss. 85-88 (subject-matter other than works). Rather, they provide a defence to ss. 37 and 102 which state that copyright in works and subject-matter other than works will be infringed by the importation of an article into Australia without the licence of the copyright owner.