

## ***Submission for the Fair Use and Other Copyright Exception Review***

**1. On the operation of the exceptions in the Copyright Act (particularly the fair dealing exceptions in ss 40-43(2) and ss103A-103C) in providing a balance between the interests of copyright owners and copyright users.**

It is my belief that, in general, the current exemptions to the Act strike a good balance between the stakeholders' interests. However, it does not contain exemptions for personal reproductions such as parody, time-shifting and format-shifting. These forms of reproduction cause the copyright owner no discernible financial loss and it is my belief that they should be exempted.

**2. On whether the Copyright Act should be amended to consolidate the fair dealing exceptions on the model recommended by the CLRC.**

I do not believe that the CLRC recommendations should be implemented. I agree that it would "[offer] greater flexibility in allowing courts to determine new circumstances to which fair dealing could apply in response to changing technology" which will cause copyright users using future technology to operate in a "grey area" until the matter in question goes to court (paragraph 14.5).

**3. On whether the Copyright Act should be amended to replace the present fair dealing exceptions with a model that resembles the open-ended fair use exception in United States copyright law.**

As stated above, I believe an open-ended exception is not desirable because "a user considering relying on this exception would need to weigh the legal risk of possible litigation" (paragraph 14.8).

**4. On whether the Copyright Act should be amended to include a specific exception for time-shifting television and radio broadcasts including underlying works, films, sound recordings and live performances - and if so, under what conditions.**

I agree that the Act should be amended to explicitly allow time-shifting, pursuant to the following conditions:

- The copyright user has a legal right the access the original transmission where a legal right is as defined under preexisting laws.
- The reproduction is not sold for commercial gain.
- The reproduction is not for 'Librarying' (paragraph 11.2)

Example: You forgot that *The Simpsons* was on Free To Air last night but a friend of yours has taped it. You can legally borrow the recording because you both had legal access to the transmission and there is no financial gain. However, if your friend has Pay TV and you do not, you may not borrow (or buy) anything recorded from Pay TV.

**5. On whether the Copyright Act should be amended to include a specific exception for format-shifting, and if so, for what materials and under what conditions.**

I agree that the Act should be amended to explicitly allow format-shifting for all media, pursuant to the following conditions:

- The copyright user legally owns at least one original copy.
- The reproduction is for private use only

Format shifting allows copyright users to purchase a copyrighted work once (respecting the copyright owner's rights) and then, for example:

- Transfer a hard-copy to an e-book so that they can transport it conveniently in a durable form
- Transfer audio recordings to a portable MP3 player
- Transfer recordings from obsolete media (such as transferring an 8-track collection to CD)
- Transfer DVDs to a Home Theatre PC

It does not seem appropriate that copyright users should have to pay again for a copyrighted work that they have already paid for once.

**6. On whether the Copyright Act should be amended to include a specific exception for making back-up copies of copyright material other than computer programs, and if so, for what materials and under what conditions.**

I agree that the Act should be amended to explicitly allow backing up of all media for the same reasons and with the same conditions as given in the previous response, namely that the copyright user owns an original and that the reproduction is for private use. Allowing back-up copies of copyrighted audio-visual media will mean that collectors will be able to listen to 'rarities' whilst keeping the original in pristine condition.

Adding such an exemption would greatly simplify the procedure undertaken when backing up personal data digitally. As more and more data is stored digitally, it has become routine and commonplace to back up one's "hard drive" to protect against data loss in the case of mechanical failure or natural disaster. This can be quite difficult to accomplish without unwittingly infringing the copyright of e-mails or legally downloaded music stored on the computer.

**7. On whether the Copyright Act should be amended to include a statutory licence for private copying, and if so, for what materials and under what circumstances**

I do not believe that a statutory licence is a good idea for the reasons given in paragraph 12.6b, namely that it would unfairly burden "individuals and organisations who purchase blank media or devices for other business or private uses". Media such as blank paper, CDs and DVDs have substantial non-copyright infringing uses and it would not be equitable to levy/tax someone who, for example, only buys blank CDs to backup their digital photographs.

**8. On whether the Copyright Act should be amended to include other specific exceptions or statutory licences, and if so, under what conditions.**

I believe that the Act should contain a specific exemptions for the following:

- Reproduction of a 'reasonable portion' of a copyrighted work for parody, using the definition of 'reasonable portion' defined in s 10(2) of the Act
- Reproduction of small portions of a song ("sampling") for non-commercial use.

**10. On any other matters arising out of this Issues Paper.**

As discussed in paragraph 10.3, "digital content is increasingly protected by technological protection measures designed to prevent unauthorised access to, or use of, copyright material". If time-shifting, format-shifting and backing-ups were exempted under the Copyright Act, these technological protection measure would prevent copyright users from copying the data even though there are authorised to. This is currently the situation in the US - "users may be permitted to copy digital material for private purposes as a fair use but have no practical means of obtaining the tools necessary to make a copy if that material is copy protected" (paragraph 10.4).

Any amendments to the Copyright Act, whether they be regarding fair use, time-shifting, format-shifting or backing up, will be moot unless this problem is addressed. Paragraph 10.7 points out that "circumvention devices" may not "supplied, made or imported" except for "certain `permitted purposes'". Should the Copyright Act perhaps be amended to define an example of a `permitted purpose' as being 'the ability to be able to lawfully access copyrighted works that have been rightfully purchased'?