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As described by the "Fair Use and Other Copyright Exceptions" ("Issues Paper"), copyright is the right to control whether works and other subject matter may be copied and disseminated and the ability to give this authority to others.

The paper produced by the Attorney General's department calling for submissions on "Fair Use and Other Copyright Exceptions" (henceforth referred to as the "Issues Paper"), describes copyright and the rights it allows, as well as the current exceptions and some already suggested.

As technological progress has increased, laws including copyright law have often failed to address the changes that such advances have brought about and in doing so encourage people to question their appropriateness and relevance in current society.

Many would possibly consider Australian copyright law already out of date in regards to dealing more recent uses such as "time shifting" and "format shifting". Before writing this submission, the author discussed such uses (timeshifting - such as recording TV to watch later, and format shifting - e.g. converting CDs to MP3 files to use in a different media player) with friends and colleagues. Many did not know and were quite surprised (and sometimes incredulous) that such uses were not currently supported by the law. Nearly all would consider such things as fair and reasonable and would probably not consider themselves as lawbreakers for undertaking such activities. Obviously the perceptions of the general public of what is and what should be allowed is slightly different to the rights currently afforded by

the current laws. Hence the need for the Australian copyright law to be updated to maintain its relevance. This would require consideration of both the expectations of the public as well as the economic and moral rights of copyright creators.

The Issues Paper suggests a number of alternative models by which the copyright laws could be amended, if seen as appropriate. It is interesting to note that three separate committees (CLRC, JSCOT and the Senate Select Committee on the AUSFTA) recommended moving towards a more open-ended fair use model. This author would agree for the reasons outlined below.

Copyright laws should promote creativity and innovation not stifle it. We must be careful to not create laws that become less relevant or that cause new technologies or innovations to not fulfil their potential because of short-sighted laws restricting what could be achieved.

Current technology has made "time shifting" easily available, to the point where most people would consider it "normal" to be allowed to perform such actions. Most people would probably also argue that copyright creators are not losing potential revenue from timeshifting broadcasted works. Advertisers who funded the original broadcast would still be able to have their products promoted with the timeshifted broadcast. If the broadcast was not free-to-air then most subscribers would feel that their subscription fees should cover their viewing, even if it was at a later time than originally broadcast (via timeshifting). "Space shifting" or "format shifting" is another fair

use exception that should be strongly considered as a candidate for "copyright fair use exception". The importance of "format shifting" becomes obvious not only for entertainment purposes but also as a mechanism for dealing for media obsolescence. Most of the general public would feel that if they have "already paid for something", then they have the right to use it, even in another medium. As technology progresses, media format changes, such as converting CDs to digital media such as flash memory in portable will and already are becoming quite common. Because most people can only utilise the materials in one format at a time, that use of that material in another format is no different if the retain the original and can only use one at a time. Changing media to avoid obsolescence, such as when older media become unsupported will become necessary in the future as technological advances change the media in which users of copyrighted works obtain the works they desire access to. Tapes and LPs are already difficult to obtain and the equipment to play such media are also becoming rarer. Computer media such as tape drives seem to change standards every few years with early tape formats and drives often being almost impossible to find. Companies and individuals with copyrighted software and data on such media would, of course, be greatly concerned about the access to their data if they cannot transfer it to a newer medium. Few would consider it reasonable to pay for a new copy if just because they can no longer use the old when due to hardware obsolescence. Without such a "fair use" many individuals and companies would find themselves paying exorbitant fees to try and increase the life of old equipment, which generally contain moving

parts that wear out in a number of years. Some copyright creators may argue that they should be paid for every media that their work is used in, however the author would suggest that the general feeling for most of the public would be that once people have paid for access to a work, they should be allowed to keep using it, regardless of the media the use. Any other decision would be seen as a backwards step.

On a related issue, the ability for individuals and companies to make multiple backups (irrespective of copyright license terms) is another fair use that needs to be considered. When computer users (whether private individuals or companies) make backups they will often back up complete storage devices to another. Making partial backups to avoid certain software or data (such as sound tracks, images, etc.) is possible but would be very time consuming to identify all of the copyright pieces. If the storage device were to fail (most current hard drives have a mean time before failure of 5 - 10 years, so a not uncommon event), allowing the user to restore all of it complete to a new storage device is the logical option, rather than wasting time trying to find all the sources that they originally obtained their data (including software) from. Consequently "inactive" unlimited backups should be allowed as a fair use to avoid stifling users of copyrighted works in dealing with data recovery.

A final "fair use" that needs to be considered is that of using copyrighted works historical purposes where something may be considered relevant for future generations but perhaps not easily obtained. Such uses should also be considered to avoid our heritage

being lost.

While there are probably other issues that should be considered with regards to copyright, the author believes that these are the important ones that should be considered. A simplified, more open set of copyright laws would make understanding copyright rights and consequently compliance easier. Consequently this author suggests that model be followed.