

WHAT A US STYLE 'FAIR USE' EXCEPTION WOULD MEAN FOR AUSTRALIA

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CONTEXT

Australia's copyright law has a very large number of 'exceptions' that allow uses of copyright content without the permissions otherwise required. They apply to things like research, reporting news, parody, copying by libraries, accessible format material for people with disabilities, and copying for personal use. There are also special arrangements that allow teachers to copy and share content from anywhere in the world, in any format, while delivering fair compensation to content creators that is invested in new content.

US copyright law has some exceptions for specific activities (such as those done in libraries), but also has an 'open' exception that allows the use of content for *any* purpose, provided the use meets four criteria set out in the legislation. The exception is known as 'fair use', but it requires specialist technical knowledge to apply correctly, and it can be difficult to work out when it does and does not apply. US courts have expanded the exception significantly over the last decade, and there have been a series of conflicting and controversial court decisions.

WHY DO PEOPLE SAY AUSTRALIA SHOULD HAVE A US-STYLE 'FAIR USE' EXCEPTION?

The main reasons can be grouped as:

- 'legitimising' trivial uses of content that may be technical breaches
- reducing or eliminating licence fees that are paid under current arrangements
- enabling content inputs to online products and services without payment to the content creators

WHY DO PEOPLE OPPOSE IT?

People oppose the introduction of a US-style 'fair use' exception because:

- it will allow big technology companies to avoid licensing arrangements for content inputs
- it will impede licensing negotiations because its application will not be clear
- people will misunderstand and misapply the technical aspects of exception, resulting in increased infringement
- disagreements about application of the exception will need to be resolved by expensive litigation
- it is an 'all or nothing' approach that does not allow for orderly arrangements reflecting the value of content inputs

WHAT'S THE ALTERNATIVE?

Everyone agrees that there is room for improvement in Australia's copyright system. There are areas of improvement that have consensus support. The government's recently released draft copyright amendment bill will implement a number of consensus proposals for education, libraries and people with disabilities.

For the longer term:

- licensing (for payment, or other exchange of value) provides better solutions for the global environment, partly because it overcomes discrepancies in laws of different countries
- governments can help the development of licensing solutions by supporting industry-led initiatives, and providing a good regulatory framework for efficient arrangements
- the regulatory framework for 'public good' activities, such as the work of cultural institutions and governments, can be simplified in accordance with consensus proposals, as has recently occurred for education, libraries and people with disabilities.