

Access to Educational and Cultural materials Following the 2006 Amendments: Are the reforms achieving their intended goals?

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In 2006 the Australian Government of the day passed a number of amendments to the *Copyright Act 1968*. Amongst these amendments were various new copyright exceptions for the benefit of libraries, educational and cultural institutions which were targeted towards the following key purposes:

- to allow copyright material to be used for socially useful purposes; and
- to update Australia's copyright laws and to ensure that the law is better equipped to keep pace with developments in technology and consequently rapidly changing consumer behaviour.

In my paper I would like to consider whether, two years since the passage of these amendments, they are achieving their goals. In looking at this I would like to explore two key issues:

- how the provisions are being interpreted and used in institutions; and
- whether the ability to contract out of the exceptions and current anti-circumvention legislation impact on the usefulness of the new copyright exceptions.

In particular, I would like to consider whether institutions have changed their practices to implement the new copyright exceptions and if so how? How are the new exceptions, including the 'flexible dealing' provision (and the 'Australian version' of the 3 step test), being interpreted in institutions? What are their limitations? Have they enabled institutions to provide better access to copyright materials in order for them to fulfil their mandates? Have institutions encountered any parts of the legislation which are not 'working' (and if so, what parts)? And, if there is a perceived failure in the operation of the legislation, is this because of a failure of the legislative reforms themselves or because of a failure of institutions to utilise the reforms to their fullest extent (i.e. does the problem lie on the implementation side)? In summary, do the new exceptions provide sufficient protections for the role of Australian educational and cultural institutions?

I would also like to consider the impact of the anti-circumvention provisions (including any of the 2006 amendments to those provisions) and the absence of any provisions (or amendments) preventing contracting out of the copyright exceptions, on the usefulness of the new copyright exceptions and the operation of educational and cultural institutions more generally. Do the anti-circumvention provisions and the absence of any provisions (other than s. 47H) against contracting out of the exceptions diminish the extent to which institutions can function in providing access to copyright works in accordance with their mandates? Does this serve to defeat the benefit of the new exceptions?

Finally, I will conclude by commenting on the extent to which the exceptions are operating to fulfil the goals and aims of Government outlined in the explanatory memorandum to the *Copyright Amendment Bill 2006*. To the extent that the amendments are not meeting these goals, or that there is a perceived 'problem' with the amendments and/or their implementation, I would like to consider some approaches to a solution moving forward. Should a solution involve further legislative amendments (such as, for example, an amendment to introduce fair use or amendments to prevent contracting out of the copyright exceptions) or a change in institutional practices or both?