



Law Council  
OF AUSTRALIA

*Business Law Section*

Copyright Law and Policy Section  
Department of Communication and the Arts  
GPO Box 2154  
Canberra ACT  
**Via email: [copyright@communications.gov.au](mailto:copyright@communications.gov.au)**  
2016

11 February

Dear Sir/Madam

### **Copyright Amendment (Disability Access and Other Measures) Act 2016 – Exposure Draft**

The Intellectual Property Law Committee of the Business Law Section of the Law Council of Australia (**IPC**) welcomes the opportunity to provide comments on the Exposure Draft of the proposed Copyright Amendment (Disability Access and Other Measures) Act 2016.

#### **Service providers and safe harbours**

The IPC welcomes the proposal to extend the ‘safe harbour’ provisions in Division 2AA of Part V from “carriage service providers” to “service providers” as defined.

The IPC notes that this has been proposed in a number of reviews now and encourages the government to implement the proposal.

The IPC notes that the definition of “service provider” proposed in item 4 is consistent with Australia’s obligations under the Australia-United States Free Trade Agreement.

The IPC notes further that the definition of “service provider” for the activities corresponding to sections 116AD, 116AE and 116AF in the United States Copyright Act is in slightly different terms. Section 513(k) provides:

(B) As used in this section, other than subsection (a), the term “service provider” means a provider of online services or network access, or the operator of facilities therefor, and includes an entity described in subparagraph (A).

It may be arguable that a provider of online services may not necessarily also be the provider or operator of the facilities by which the services are provided. For example, there are a number of telecommunications providers in Australia which “resell” either Telstra’s or Optus’ services. Boost Mobile for example uses, and promotes its services as using, the Telstra network. It is not clear to the IPC that a business such as Boost Mobile would qualify as a “service provider” under the proposed definition although they would under the definition in the US Copyright Act.

GPO Box 1989, Canberra  
ACT 2601, DX 5719 Canberra  
19 Torrens St Braddon ACT 2612

Telephone +61 2 6246 3788  
Facsimile +61 2 6248 0639

Law Council of Australia Limited  
ABN 85 005 260 622  
[www.lawcouncil.asn.au](http://www.lawcouncil.asn.au)

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## **Duration of copyright**

The IPC supports in principle the proposal to limit the term of copyright in works which have not been published before the author's death.

While the IPC welcomes the proposal, nonetheless it notes that the problem of so-called "orphan works" continues to remain pressing. The current proposal will ameliorate some aspects of the problem, but is not a full solution to that problem.

Finally, the IPC notes that the definition of when a work has been made public proposed by item 34 extends to works (or adaptations) which have been published, performed in public or broadcast.

It is unclear to the IPC why the definition of "made public" is limited to "broadcasts" and does not extend to any communication to the public. Acts such as making the work available on a website should qualify just as a performance in public does. The IPC notes that the corresponding UK provision, e.g. s 12(5) of the CDPA 1988, extends to causing a film embodying the work to be seen in public.

## **Proposed Part IVA**

In principle, the IPC supports rationalising the defences and statutory licences and amending our laws to implement the Marrakesh Treaty. The constraints of time, however, preclude the IPC from commenting in detail on these provisions.

If you have any questions in relation to this submission, in the first instance, please contact the Committee Chair, Sue Gilchrist, on 02 9225 5221 or via email: [sue.gilchrist@hsf.com](mailto:sue.gilchrist@hsf.com)

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Teresa Dyson', written in a cursive style.

**Teresa Dyson, Chairman**  
Business Law Section