

Submission to the Copyright Review Committee

In this response I will address some of the questions raised in your paper. However, as with my previous submission to you, it must be noted that I am not competent in matters legal and so may have missed various subtleties in both existing legislation and your paper. I have numbered my responses to match your questions in the hopes that it makes your life a little easier.

- 1) The relentless focus on economic impact at the expense of blue-skies thinking is a common feature of the current times. The recent Research Prioritization exercise in 3rd level is another example of this. During a financial crisis I guess it is only to be expected, but it would be nice for the Committee to have had the freedom to look at all elements of copyright.
- 3) Yes, if for no other reason than readability.
- 4) As long as the committee accepts that actors may wear more than one hat at a time, then this division is appropriate.
- 5) I would favour the creation of such a Council only if there was sufficient representation of citizens and that it was not just a platform for the copyright industry to make pronouncements from.
- 23) Not exactly answering your question, but if evidence such as the Aslan downloads mentioned in the EMI v UPC judgement is accepted, then the Committee will be doing itself a great disservice.
- 40) I would be wary of conflating hosting with caching and internet access. There is a world of difference between O2's 3G network and, say, Megaupload. Modern IT equipment does not function without making transient copies of data and so caching and conduits should be given immunities.
- 45) No, in the same way that a physics book outlining the process for making enriched uranium does not warrant the same attention as making a dirty bomb.
- 46) Yes.
- 47) That is for wiser people than me to determine.
- 55) Despite creating more employment for lawyers I would say the section should be amended as proposed.
- 56) Yes to all of (a) – (i). Specifically, the proposed 106B is most welcome.
- 57) Yes.
- 58) Given some immunity for ISPs and the proposed changes in 57, is there really a need for further sections? With your use of the phrase "For the avoidance of doubt" I guess not, but better safe than sorry so I would include this.
- 67) If heritage institutions are meant to be the long term custodians of culture and heritage then they should be given as much leeway as possible when acting in the common good. Recall that copyright is a contract between the artist and the people and these heritage institutions are acting in the interests of the second party to the agreement.
- 68) – 75) Yes to these but I have no specific thoughts on them more than outlined in the previous paragraph.

- 86) I would like some clarity surrounding the issue of onward sale or transfer of digital objects. If I purchase a digital object (mp3, movie, game, book etc) do I have the right to sell this object on once I am finished using it? I can certainly sell my physical CDs, DVDs and books in 2nd hand stores and I am not breaching any copyright. Would I be doing so with electronic copies of same? Can I transfer or sub-assign the rights and obligations of my contract with, say, iTunes and if not, why not?
- 86) I have a second issue that I am also not clear on. Again, perhaps it is outside the terms of reference of the committee, and if so I apologise. The issue is the whole can of worms surrounding DRM, circumvention of copy protection (possibly as a result of the rights granted in question 56), and the deployment of rootkit-type trojans by copyright holders on equipment owned by end users. If rights are granted to me by question 56, what right does a rights holder have to restrict my ability to carry out format shifting of the material? And in what way are rights holders permitted to install software on IT equipment without the knowledge of the owners such as was done by Sony several years ago? An end user should not be committing an offence by holding down the shift key or disabling autoplay on the media devices.