



## *Express law* fast track information for clients

18 April 2012

### Copyright inquiry draft terms of reference released for public comment

**On 30 March 2012, the Attorney-General's Department in consultation with the Australian Law Reform Commission (ALRC) released draft terms of reference for the ALRC inquiry into the operation of copyright exceptions in the digital environment. The inquiry is to consider whether the exceptions to copyright infringement in the *Copyright Act 1968 (Cth)* are adequate and appropriate in the digital environment.**

The inquiry's draft terms of reference are available on the Attorney-General's Department's [website](#). Further information on the background, purpose and scope of the inquiry is provided below.

#### ***Background and purpose of the inquiry***

---

The Attorney-General, Nicola Roxon, stated that the inquiry's draft terms of reference are intended to reflect 'the fact that technology is constantly evolving and testing the boundaries of copyright law'. The inquiry will examine a broad range of exceptions, including those concerning 'time-shifting', which has been the focus of recent litigation (see [Singtel Optus Pty Ltd v National Rugby League Investments Pty Ltd \(No 2\) \[2012\] FCA 34](#)). The Attorney-General's Department has also said that the inquiry will consider whether exceptions should allow the legitimate non-commercial use of copyright works for uses on the internet such as social networking. Further comments by the Attorney-General and the Attorney-General's Department on the focus of the inquiry can be found in the following [media release](#).

The inquiry's terms of reference have been drafted to consider both the purpose of copyright law to promote the production of copyright materials and the need for an appropriate balance between the rights of creators and the rights, interests and expectations of users and the public. The terms of reference also consider the importance of the digital economy and the opportunities for innovation created by the emergence of new digital technologies as well as Australia's international obligations.

Given this background and these considerations, the draft terms of reference direct the inquiry to examine whether further exceptions are needed to:

- facilitate legitimate use of copyright works to create and deliver products and services for public benefit
- allow legitimate non-commercial use of copyright works for uses on the internet such as social networking.

## ***Scope of the inquiry***

---

The draft terms of reference state that the scope of the inquiry will take into account the impact of any proposed legislative amendments on domestic laws and Australia's international obligations. The inquiry will also consider the recommendations from related reviews, specifically the Government's convergence review. Information on the convergence review and its interim report is available on the Department of Broadband, Communications and the Digital Economy's [website](#).

The draft terms of reference specifically state that the inquiry will not consider the unauthorised distribution of copyright materials using peer to peer networks, the scope of the safe harbour scheme for ISPs, the exceptions for technological protection measures or increased access to copyright works for blind and visually impaired people. Some of these issues have already been examined (or are currently being examined) through previous or current inquiries or reviews. Further information on previous or current inquiries into or reviews of copyright can be found on Attorney-General's Department's [Copyright – Issues and Reviews website](#).

## ***Submissions and comments***

---

The Attorney-General's Department is now seeking public comment on the inquiry's draft terms of reference. Submissions and comments on the draft terms of reference should be directed to the Attorney-General's Department by **27 April 2012**. Further information on how to make a submission can be obtained from the Attorney-General's Department's [website](#).

AGS can assist agencies with any submissions and comments on the scope of draft terms of reference.

AGS will also be able to assist agencies with preparing and drafting any submissions to the inquiry once the terms of reference have been finalised. We will provide a further update to agencies when the Attorney-General's Department releases the inquiry's final terms of reference. The inquiry's final report is due by no later than 30 November 2013.

*For further information please contact:*

**Rachel Chua**  
Senior Executive Lawyer  
T 02 6253 7086  
[rachel.chua@ags.gov.au](mailto:rachel.chua@ags.gov.au)

**Alex Readford**  
Lawyer  
T 02 6253 7103  
[alex.readford@ags.gov.au](mailto:alex.readford@ags.gov.au)

**Adrian Snooks**  
Senior Executive Lawyer  
T 02 6253 7192  
[adrian.snooks@ags.gov.au](mailto:adrian.snooks@ags.gov.au)

**Tony Beal**  
Deputy General Counsel  
T 02 6253 7231  
[tony.beal@ags.gov.au](mailto:tony.beal@ags.gov.au)

---

**Important:** The material in *Express law* is provided to clients as an early, interim view for general information only, and further analysis on the matter may be prepared by AGS. The material should not be relied upon for the purpose of a particular matter. Please contact AGS before any action or decision is taken on the basis of any of the material in this message.

This message may contain confidential or legally privileged information. Only the addressee has the right to use or disseminate this information. If you think it was sent to you by mistake, please delete all copies and advise the sender. For the purposes of the *Spam Act 2003*, this email is authorised by AGS. Find out more about AGS at <http://www.ags.gov.au>.

If you do not wish to receive similar messages in the future, please reply to: <mailto:unsubscribe@ags.gov.au>