

# 10 Principles for Public Rights in Australian Copyright

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*Please note: These draft Principles are intended to reflect public rights in copyright only, and not to reflect authors'/private rights, which they assume. Some possible short-term goals are in italics, distinct from the more general Principles.*

## Definitions

“Public rights” are all those aspects of copyright law and practice that provide the ability of the public to use works without obtaining a licence on terms set (and changeable) by the copyright owner. (*Note: ‘Public rights’ is used in preference to ‘public domain’ or ‘commons’.*)

“The public” includes a class of the public, the members of which are not determined by the copyright owner. (*Note: Rights created by many statutory licences are therefore included.*)

## Draft Principles and possible current goals

1. Copyright laws should **balance** effective protection of the interests of private rights-holders (including moral rights) against the wider public interests in innovation, the advancement of learning, research, and access to knowledge that are supported by public rights in works. Australia’s copyright laws should reflect our national interests, not the interests of other countries where they conflict. Indigenous peoples’ interests require special protection. The proponents of any expansion of the scope of copyright protection or its methods of enforcement should have the onus of proving the need for change. Australia should contribute to the global sharing of public rights, enriching all.
2. Copyright protection should be **limited** strictly to the **protection of expressions** and should not extend to facts (except original compilations), ideas, procedures, methods of operation or similar matter. The exclusive rights of copyright owners should not be expanded.
3. The term of copyright protection should be limited to the **minimum duration** achievable, and should not be extended further.
4. Australian publications should be **preserved** in a manner which ensures that they are available to the public for re-use when copyright expires, and are **available** for the appropriate exercise of public rights before then.

*Goal: Legal deposit requirements should be extended appropriately to digital and audio-visual works, following completion of the current review.*

5. Exceptions to copyright law should allow **fair use of works by the public in a flexible manner** which can adjust to changes in technology and social practices while preserving the appropriate balance.

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## *Greenleaf - 10 Principles for Public Rights in Australian Copyright*

*Goal: Legislative ‘safe harbours’ should be extended to give appropriate protection for intermediaries (including ISPs and Universities), including in relation to UGC, social networking and scholarship repositories.*

*Goal: A system for **orphan works** should be developed which both supports innovation and creativity and is fair to rights-holders.*

6. **Collecting societies and statutory licences** should operate to give appropriate protection to public rights, to prevent anti-competitive conduct, and to provide maximum effectiveness and fairness to both public and private rights-holders.

*Goal: Collecting societies must not impede their members’ use of voluntary licences, and if necessary legislation must ensure this.*

*Goal: Collecting societies must not collect in relation to content intended to be fee-free, and if necessary legislation must ensure this.*

*Goal: The operation of all collecting societies and statutory licences should undergo a thorough review.*

7. Copyright law should support and not impede the role of **voluntary licensing systems** in expanding public rights in works.

*Goal: The Copyright Act should establish or clarify how copyrights may be surrendered in full to the public (‘public domain dedications’).*

8. **Technological or contractual measures** should not be allowed to reduce public rights, nor distort the balance of rights. Nor should they disproportionately affect other interests such as privacy.

*Goal: The Copyright Law Review Committee’s recommendations in relation to contracts and copyright support this principle and should be implemented.*

9. Copyright should generally be enforced through the civil law, with penalties for breaches that are proportional to the damage to the interests of private rights-holders. **Criminalisation** of copyright law should be minimised, and there should be no offences of strict liability.

*Goal: Offences of strict liability in relation to copyright should be repealed.*

10. Australian **publicly-funded content** should be available for free public access and wherever possible should have appropriate re-use rights. Public Sector Information (**PSI**) should be made available by governments as open content unless there are compelling reasons otherwise. Governments should facilitate effective access to both PSI and any non-copyright information that they hold, and should not use any other measures to impede access to it.

*Goal: The Cutler Report recommendations that Australian PSI should be released under creative commons licences to the maximum extent possible should be implemented.*

*Goal: The Cutler Report recommendations that Australian research, and content such as national collections, ‘should be freely available over the internet as part of the global public commons’, should be implemented.*