

Appendix B – Overview of libraries and archive provisions

Section no.	Application	Issues for the AFC	AFC proposal
s49 (1)	<p><i>Copy and communicating published works for research or study of user.</i></p> <p>Applies to article (or part thereof) in a periodical publication or other published work held in the archives' collection.</p> <p>Requires the requesting party to provide a declaration that purpose is for 'research and study' and to have not previously been supplied the material.</p> <p>Archives who have made an electronic reproduction in accordance with ss49(2) or (2A) to destroy the electronic copy as soon as possible after communication. (s49(7A))</p>	<p>Limited to 'published works' – many of the AFC's collection items are unpublished and sought by researchers from the AFC for this reason.</p> <p>Section does not provide for instance where researcher's copy is destroyed or lost and therefore needs to be replaced.</p> <p>Some unwarranted administration involved.</p> <p>Requires the AFC to repeatedly digitise frequently requested collection items resulting in excess handling and potential deterioration of collection items.</p>	<p>Make applicable to all material (works and subject-matter other than works)</p> <p>Removal of sub-section (7A) allowing archives to contribute incrementally to the digitisation of their collection and therefore:</p> <ol style="list-style-type: none"> 1. increasing ease of access to collection items; and 2. preventing unnecessary digitisation handling leading to deterioration.³ <p>Amend to allow further copies to be provided if the first copy provided</p>

³ It should be noted that by virtue of s49(5) this is only applicable in relation to whole works or more than a reasonable portion of works where the material is not available within a reasonable time at an ordinary commercial price.

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			is lost or destroyed.
s49(2A)	<p><i>Copy and communicating published works for research or study – of remote user</i></p> <p>As above (s49(1)) but declaration not required in instance of requesting party's remoteness.</p> <p>Archives who have made an electronic reproduction in accordance with ss49(2) or (2A) to destroy the electronic copy as soon as possible after communication. (s49(7A))</p>	<p>Limited to 'published works' – many of the AFC's collection items are unpublished and sought by researchers from the AFC for this reason.</p> <p>Section does not provide for instance where researcher's copy is destroyed or lost and therefore needs to be replaced.</p> <p>AFC believes this should be retained as it ensures a lack of access to email and/or facsimile does not prevent the AFC being able to discuss and locate collection items for remote users.</p> <p>Some unwarranted administration involved.</p> <p>Requires the AFC to repeatedly digitise frequently requested collection items resulting in excess handling and potential deterioration of collection items.</p>	<p>Make applicable to all material (works and subject-matter other than works)</p> <p>Removal of sub-section (7A) therefore allowing archives to contribute incrementally to the digitisation of their collection and therefore:</p> <ol style="list-style-type: none"> 1. increasing ease of access to collection items; and 2. preventing unnecessary digitisation handling leading to deterioration.⁴ <p>Amend to allow further copies to be provided if the first copy provided is lost or destroyed.</p>

⁴ It should be noted that by virtue of s49(5) this is only applicable in relation to whole works or more than a reasonable portion of works where the material is not available within a reasonable time at an ordinary commercial price.

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s49(5A)	<p><i>Electronic material may be displayed electronically</i></p> <p>Allows archives that receive material in electronic form to display within premises on dumb terminals.</p>	<p>Limited to material received electronically and therefore does not consider pressing issues of storage and display and preservation for archives.</p>	<p>Propose allowing all collection items to be displayed in this manner.</p>
s50	<p><i>Provision of copy published article to another archive</i></p> <p>Another library may request the AFC's library to provide a copy of an article (or part thereof) from a publication or a work (or part thereof) held in the AFC's library for the purpose of:</p> <ol style="list-style-type: none"> 1. including the material in the other libraries collection; 2. assisting a member of parliament; or 3 to assist a person who has made an application under s49 (i.e. a researcher) <p>Supply must be on a non-profit basis.</p> <p>Unless for member of parliament, can only be supplied if copy (other than second hand) cannot be obtained within reasonable period of time at an ordinary commercial price.</p> <p>Reproduction in electronic form must be</p>	<p>Applicable to archives by virtue of s50(7B)(9).</p> <p>Applicable only to published material thus excluding substantial portions of the AFC's collection.</p> <p>Link to s49 bring in the limitations of s49</p>	<p>Clarify applicability to archives.</p> <p>Make applicable to published and unpublished material in all formats.</p> <p>It should be noted that under s50(2) a subsequent copy may be supplied if the first copy has been lost, destroyed or damaged (cf. 49(1)).</p> <p>Remove obligation on archives to destroy digital copy made.</p>

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	destroyed as soon as possible after being supplied (s50(7C)).		
s51	<p><i>Copy and communication of unpublished works. 50 years after death of author</i></p> <p>If after 50 years from the death of an author a work in the archive's collection has not been published the archive may make a copy and communicate the work for:</p> <ol style="list-style-type: none"> 1. research and study; 2. view to publication; 3. to provide to a person for the purposes of research and study 	<p>All material within an archive should be available for the purposes of research and study. Therefore it should be clarified that this section is only relevant to publications of materials and therefore provide for an archive to publish the material or copy and communicate for the purposes of publication.</p> <p>Need a deeming provision where can not identify or locate author.</p>	<p>Amend to be applicable to all unpublished materials in an archive's collection.</p> <p>Amend to be applicable to the publication of the material or supply of the material for publication.</p> <p>Include deeming provision where author can not be located or identified.</p>
s52	<p><i>Publication incorporating unpublished work 50 years from death of creator.</i></p> <p>A publication incorporating a work that is unpublished 50 years after the death of the creator is not considered an infringement of the copyright in the unpublished work provided:</p> <ol style="list-style-type: none"> 1. the prescribed notice of publication was made; 2. the identity of the author of the 	<p>This section refers to unpublished material to which s51(1) applies, however, for s51(1) to apply the identify of the creator must be known to calculate 50 years from their death. Therefore this section is unusable.</p>	<p>Clarify that if can not identify author then may publish material incorporating material whose authorship is unknown 50 years after the creation of the material.</p>

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	unpublished work was not known.		
s110A	<p><i>Copy and communication of unpublished film and sound recordings. 50 years after making</i></p> <p>If, 50 years after it is made, a film or sound recording within the collection of an archive is unpublished then the film or sound recording may be copied or communicated for:</p> <ol style="list-style-type: none"> 1. the purpose of research or study; or 2. with a view to publication; or 3. to supply a copy to a person for the purposes of research and study. 	<p>All material within an archive should be available for the purposes of research and study. Therefore it should be clarified that this section is only relevant to publications of materials and therefore provide for an archive to publish the material or copy and communicate for the purposes of publication.</p> <p>Need a deeming provision where can not identify or locate author.</p>	<p>Amend to be relevant to all unpublished material within an archive's collection.</p> <p>Amend to be applicable to the publication of the material or supply of the material for publication.</p> <p>Include deeming provision where author can not be located or identified</p>
s110(1)	<p><i>Communication to the public of old newsreel</i></p> <p>Where a cinematographic film includes images that are primarily communicating the news then copyright in the film is not infringed by showing the film in public provided such showing occurs 50 years after the news event depicted in the images.</p>	<p>Given the public policy issues involved 50 years seems excessive.</p>	
s51(2)	<p><i>Copy of unpublished manuscript for purposes of research and study</i></p>	<p>Limited to literary works – thus excluding multi-media research projects.</p>	<p>Expansion to all unpublished materials.</p>

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	Where a manuscript (or copy thereof) of an unpublished thesis or similar literary work is within the AFC's collection the AFC may copy and communicate the thesis to any person for the purposes of research and study.		If limitation is necessary it should be that any use under fair dealing provision does not equate to publication.
s51A(1) (a)	<p><i>Copy & communication of manuscript or original artwork for research and study</i></p> <p>A manuscript or original artwork may be reproduced or communicated for the purposes of:</p> <p>1. research and study (at the AFC or another archive);</p> <p>Applicable to published works only if a copy (not being second hand) can not be purchased at an ordinary commercial price within a reasonable time.</p>	Unclear what is the effect of the caveat regarding published versions of manuscripts? Also manuscripts is not defined? Would this include film scripts?	Amend to clarify that all collection items may be made available for the purposes of research and study.
s110B (1)(a) & s110C(2)(a)	<p><i>Copy & Communication of 'first copy/first record' for research and study</i></p> <p>If a cinematographic film held within the archive's collection is a 'first copy' or a sound recording held within the archive's collection is a 'first record' the film or sound recording may be copied and communicated for:</p>	<p>Under this section the AFC may digitise a collection item for provision to a researcher at the AFC or another institution, and, to other AFC officer's but may not digitise the collection item for general purposes of access/storage.</p> <p>Therefore the AFC may make a copy for a</p>	

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	<p>1. research at that archive or another archive.</p> <p>Applicable to published film/sound recording only if a copy (not being a second hand copy) can not be purchased at an ordinary commercial price within a reasonable time (s110B(3)).</p> <p>It is not an infringement of copyright to communicate a copy made under this section to other officers of the archive or to make it available on-line within the archive's premises. (s110B(2A)).</p> <p>Another archive that is provided with the copy of the film or sound recording may make it available on-line within their premises (s110B(2B))</p>	<p>client acting under fair dealing (ie. research and study) provided the client applies through another institution (this provision), or, the client attends AFC premises and makes the copy themselves (s103C) but that the AFC may not make a copy of behalf of a research in response to a direct request from a researcher.</p> <p>Further the AFC may provide a digital copy to researcher within another institution but not to researcher within the AFC premises.</p>	
s51A (1)(a)	<p><i>Copy & communication for preservation against loss</i></p> <p>A manuscript or original artwork may be reproduced or communicated for the purposes of:</p> <p>1. preservation against loss or deterioration;</p> <p>Applicable to published works only if a copy (not being second hand) can not be</p>	<p>Unclear what is the effect of the caveat regarding published versions of manuscripts? Also manuscripts is not defined? Would this include film scripts?</p>	<p>Clarify that this may occur in relation to all collection items.</p>

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	purchased at an ordinary commercial price within a reasonable time (s51A(4)).		
s110B (1)(a) & s110C(2)(a)	<p><i>Copy & Communication of first copy/first record for preservation</i></p> <p>If a cinematographic film held within the archive's collection is a 'first copy' or a sound recording held within the archive's collection is a 'first record' the film or sound recording may be copied and communicated for:</p> <p>1. preservation against loss or deterioration;</p> <p>Applicable to published film/sound recording only if a copy (not being a second hand copy) can not be purchased at an ordinary commercial price within a reasonable time (s110B(3)).</p> <p>It is not an infringement of copyright to communicate a copy made under this section to other officers of the archive or to make it available on-line within the archive's premises. (s110B(2A)).</p> <p>Another archive that is provided with the copy of the film or sound recording may make it available on-line within their</p>	<p>Under this section the AFC may digitise a collection item for provision to a researcher at the AFC or another institution, and, to other AFC officer's but may not digitise the collection item for general purposes of access/storage.</p> <p>No definition of 'first copy' 'first record'. However it seems incongruous that a 'first copy' should not be preserved even if it has subsequently been published and therefore is available? Presumably what makes a first copy special is that it is first?</p>	<p>Clarify that all collection items may be copied and communicated for purposes of preservation.</p>

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	premises (s110B(2B))		
ss51A(1)(b), (c)	<p><i>Copy & communication of published works for preservation or replacement</i></p> <p>A published work that has been:</p> <ol style="list-style-type: none"> 1. damaged or deteriorated; or 2. lost or stolen <p>may be reproduced or communicated for the purposes of replacing the work.</p> <p>Applicable to published works only if a copy (not being second hand) can not be purchased at an ordinary commercial price within a reasonable time (s51A(4)).</p>	<p>Only applicable once work has been damaged or deteriorated. Not able to be relied upon to prevent this occurring.</p> <p>Clarification of ‘published work’ as this may not be relevant as collection items may be a different edition or valuable b/c of how it has been used or marked by an owner. Therefore replacement by another ‘copy’ is not appropriate.</p>	<p>Clarify to allow for preservation of all collection items.</p>
ss110B(1)(b),(c) & 110(2)(b), (c)	<p><i>Copy & communication of published film/sound recording for preservation or replacement</i></p> <p>A published film or sound recording that has been:</p> <ol style="list-style-type: none"> 1. damaged or deteriorated; or 2. lost or stolen <p>may be reproduced or communicated for the purposes of replacing the work.</p> <p>Applicable to published film/sound recording only if a copy (not being a</p>	<p>Only applicable once work has been damaged or deteriorated. Not able to be relied upon to prevent this occurring.</p>	<p>Clarify that provision should be amended to provide for preservation prior to deterioration.</p> <p>Amend this to allow for copying and communication to be possible for the purposes of storage, preservation or loss.</p>

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	<p>second hand copy) can not be purchased at an ordinary commercial price within a reasonable time (s110B(3)).</p> <p>It is not an infringement of copyright to communicate a copy made under this section to other officers of the archive or to make it available on-line within the archive's premises. (s110B(2A))</p>		
ss51A(2), (3)	<p><i>Reproduction & communication for administrative purposes</i></p> <p>Works in an archive's collection may be copied and communicated for the purposes of administration:</p> <ol style="list-style-type: none"> 1. to other officers of the archive 2. on-line within the premises of the archive <p>Applicable to published works only if a copy (not being second hand) can not be purchased at an ordinary commercial price within a reasonable time (s51A(4)).</p>	<p>Limited to works</p> <p>Administrative purposes is not defined.</p>	<p>Clarify administrative purposes and make applicable to allow material. Therefore allowing internal copying and communication for functions of the archive.</p>
ss51(3A), (3B)	<p><i>Display of 'preservation copy' on dumb terminal</i></p> <p>A copy may be made of an original artistic work in an archives collection for the</p>	<p>Only applicable to artistic works and only in circumstances where the material has deteriorated not solely to prevent deterioration.</p>	<p>Make applicable to all collection items.</p>

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	<p>purpose of preserving the work against loss or deterioration and the copy may be communicated to allow:</p> <ol style="list-style-type: none"> 1. the copy to be displayed via a dumb terminal within the premises of the archives provided: <ol style="list-style-type: none"> a. the work has been lost or deteriorated since the copy was made: or b. the work is too unstable to be displayed. <p>Applicable to published works only if a copy (not being second hand) can not be purchased at an ordinary commercial price within a reasonable time (s51A(4)).</p>		