

COMMONWEALTH OF AUSTRALIA

Copyright Act 1968

IN THE COPYRIGHT TRIBUNAL

FILE NO. CT 2 of 2021

COPYRIGHT AGENCY LIMITED (ABN 53 001 228 799)

Applicant

**DEPARTMENT OF EDUCATION (QUEENSLAND) AND THE BODIES LISTED IN
SCHEDULE A**

Respondents

ORDER

TRIBUNAL: O'BRYAN J (Deputy President)

DATE: 21 MARCH 2024

WHERE MADE: MELBOURNE

THE TRIBUNAL ORDERS BY CONSENT THAT:

1. Order 2 of the orders made by the Tribunal on 14 December 2023 be vacated.
2. The parties may conduct (including by use of any third party) each of the survey pilots set out in Annexures A, B, C and D to these orders, in accordance with the steps outlined in those annexures (**Survey Pilots**), in (or in relation to) a number of schools administered or represented by the Respondents, such schools to be selected by the Respondents in consultation with the Applicant (**Selected Schools**).
3. The parties confer regarding the conduct of the Survey Pilots between the date of these Orders and the next case management hearing.
4. The matter be listed for a further case management hearing at 9.30am on 11 July 2024.

Date stamped: 21 March 2024



ANNEXURE A

ADCS Modified Pilot

Defined Terms

For the purposes of this Annexure A:

Confidential Information means information that is marked as confidential, treated by the disclosing party as confidential, or is otherwise by its nature confidential, but excludes information that is public knowledge.

Personal Information means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not, and includes Sensitive Information.

Sensitive Information means information or an opinion about an individual's racial or ethnic origin, political opinion, membership of a political association, religious beliefs or affiliations, philosophical beliefs, membership of a professional or trade association or trade union, sexual preferences or criminal record, health, genetic and biometric information and templates.

Statutory Licence means the licence contained in section 113P of the *Copyright Act 1968* (Cth) (**Copyright Act**)

Data Capture

Photocopying and Scanning

1. Someone uses a multifunctional device (**MFD**) located on the school's premises to photocopy or scan a document, which may or may not contain Confidential Information or Personal Information (together, **CP Information**).
2. The software installed on the MFD captures an image of the document (the **Image**), and metadata relating to that Image (**Associated Metadata**).
3. The Image and Associated Metadata are sent to:
 - (a) Either or each of:
 - (i) a secure laptop or similar device capable of storing data locally (the **Secure Drive**);
 - (ii) a cloud environment operated by a third party service provider engaged by or on behalf of the Respondents (the **Respondents' Cloud**); and/or
 - (b) a cloud environment operated by a third party service provider engaged by or on behalf of the Applicant (the **Applicant's Cloud**).



Printing

4. Someone sends a document to an MFD located on the school's premises for printing.
5. The software installed on the MFD captures an Image of the document, and the Image and Associated Metadata are sent to:
 - (a) Either or each of:
 - (i) the Secure Drive;
 - (ii) the Respondents' Cloud; and/or
 - (b) the Applicant's Cloud.

Review process

The Secure Drive

6. All Images and Associated Metadata are reviewed by a staff member at the selected school, who identifies any Images that contain CP Information.
7. If any CP Information is identified, the staff member adds additional metadata to the Associated Metadata for the Image, classifying the Image as containing CP Information.
8. If the Images and Associated Metadata are reviewed on the Secure Drive, each of the Images and Associated Metadata are transferred to the Respondents' Cloud, or the Applicant's Cloud, or both.

The Respondents' Cloud

9. All Images and Associated Metadata sent to the Respondents' Cloud are reviewed by a consultant engaged by the Respondents (the **Respondents' Consultant**).
10. The Respondents' Consultant reviews all Images and Associated Metadata, and:
 - (a) (if relevant and where possible) identifies any Images that have not been copied or communicated in reliance on the Statutory Licence and adds additional metadata to the Associated Metadata for the Image, classifying the Image as such;
 - (b) identifies any Images and Associated Metadata that contain CP Information and, where not already done so by the staff member (if applicable), adds additional metadata to the Associated Metadata for the Image, classifying the Image as containing CP Information; and
 - (c) prepares a report that:
 - (i) lists the filenames of all Images (and Associated Metadata) reviewed;
 - (ii) clearly indicates (if relevant and where possible) which Images have been classified as not having been copied or communicated in reliance on the Statutory Licence; and
 - (iii) clearly indicates which Images have been classified as containing CP Information (**Report**).



The Applicant's Cloud

11. All Images and Associated Metadata sent to the Applicant's Cloud are reviewed by a consultant engaged by the Applicants (the **Applicant's Consultant**). The Applicant's Consultant may have personnel who work remotely from an overseas location.
12. The Applicant's Consultant reviews all Images and Associated Metadata, and:
 - (a) (if relevant and where possible) identifies any Images that have not been copied or communicated in reliance on the Statutory Licence and adds additional metadata to the Associated Metadata for the Image, classifying the Image as such;
 - (b) identifies any Images and Associated Metadata that contain CP Information and adds additional metadata to the Associated Metadata for the Image, classifying the Image as containing CP Information; and
 - (c) prepares a Report (the **Applicant's Consultant's Report**).

Access to Data

13. Following the review conducted on the Respondents' Cloud by the Respondents' Consultant, the Respondents' Consultant securely sends:
 - (a) each of the Images and Associated Metadata reviewed, *excluding* those containing CP Information, and the Report, to the National Copyright Unit; and
 - (b) the Report to Copyright Agency.
14. Following the review conducted on the Applicant's Cloud by the Applicant's Consultant, the Applicant's Consultant securely sends:
 - (a) each of the Images and Associated Metadata reviewed, *excluding* those identified as containing CP Information, and the Applicant's Consultant's Report, to Copyright Agency; and
 - (b) the Applicant's Consultant's Report to the National Copyright Unit.
15. For the avoidance of doubt, Copyright Agency and the National Copyright Unit must keep the Report and Applicant's Consultant's Report confidential, but may share them with:
 - (a) the Respondents;
 - (b) the parties' external legal advisors; and
 - (c) any consultant engaged by the parties.



ANNEXURE B

DTE Modified Pilot

Defined Terms

For the purposes of this Annexure B:

Confidential Information means information that is marked as confidential, treated by the disclosing party as confidential, or is otherwise by its nature confidential, but excludes information that is public knowledge.

Personal Information means Information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not, and includes Sensitive Information.

Sensitive Information means information or an opinion about an individual's racial or ethnic origin, political opinion, membership of a political association, religious beliefs or affiliations, philosophical beliefs, membership of a professional or trade association or trade union, sexual preferences or criminal record, health, genetic and biometric information and templates.

Statutory Licence means the licence contained in section 113P of the *Copyright Act 1968* (Cth) (**Copyright Act**)

Report production

1. The body administering or representing the selected school (the **Body**) generates a report (in excel format or otherwise) from Google Classroom or another digital teaching environment (**DTE**), which lists all of the documents that have been uploaded by staff to the DTE within a particular period, along with metadata relating to those documents (together, the **Files**) (the **Original Report**).
2. The Body provides the Original Report to (or gives access to, as the case may be) an external consultant engaged by the Respondents (the **Respondents' Consultant**).
3. The Respondents' Consultant accesses or downloads and then reviews the Original Report to:
 - (a) Redact any Confidential Information or Personal Information (**CP Information**) visible in the Original Report; and
 - (b) Annotate the Original Report to make clear where any information has been redacted.
4. The Original Report is thereafter referred to as the '**Annotated Report**'.
5. The Respondents' Consultant provides the Annotated Report to:
 - (a) Copyright Agency; and
 - (b) the National Copyright Unit.



6. The Respondents' Consultant conducts the following process with respect to the entries listed in the Annotated Report for each of the Files:
 - (a) (if relevant and where possible) identifies Files that are *likely* to **not** have been copied or communicated in reliance on the Statutory Licence;
 - (b) identifies Files that are *likely* to contain CP Information; and
 - (c) makes a note identifying which entries were identified, and on what basis.
7. The Annotated Report is thereafter referred to as the '**Pre-Exclusion Report**'.
8. The Respondents' Consultant provides the Pre-Exclusion Report to:
 - (a) Copyright Agency; and
 - (b) the National Copyright Unit.

Source Documents production

9. The Body provides (or gives access to, as the case may be) copies of the documents listed in the Original Report (**Source Documents**) to:
 - (a) The Respondents' Consultant; and
 - (b) A cloud environment operated by a third party service provider engaged by the Applicant (the **Applicant's Cloud**).

The Respondents' Consultant

10. The Respondents' Consultant accesses or downloads and then reviews the Source Documents and:
 - (a) identifies any Source Documents that contain CP Information, and for those that do, transfers those Source Documents into a separate file location;
 - (b) (if relevant and where possible) identifies any Source Documents that have not been copied or communicated in reliance on the Statutory Licence, and transfers those Source Documents into a separate file location; and
 - (c) creates a new report based on the Pre-Exclusion Report which clearly indicates (if relevant and where possible) which Source Documents have been classified as not having been copied or communicated in reliance on the Statutory Licence, and clearly indicates which Source Documents were classified as containing CP Information,

(the **File Review**).
11. The Pre-Exclusion report is thereafter referred to as the '**Final Report**'.
12. The Respondents' Consultant provides:
 - (a) the Final Report, as well as the Source Documents, *excluding* those containing CP Information, to the National Copyright Unit; and
 - (b) the Final Report to Copyright Agency.



The Applicant's Cloud

13. All Source Documents sent to the Applicant's Cloud are reviewed by a consultant engaged by the Applicant (the **Applicant's Consultant**). The Applicant's Consultant may have personnel who work remotely from an overseas location.
14. The Applicant's Consultant reviews **all** Source Documents, and:
 - (a) (if relevant and where possible) identifies any Source Documents that have not been copied or communicated in reliance on the Statutory Licence;
 - (b) identifies any Source Documents that contain CP Information; and
 - (c) prepares a report that:
 - (i) lists the filenames of all Source Documents reviewed;
 - (ii) clearly indicates (if relevant and where possible) which Source Documents have been classified as not having been copied or communicated in reliance on the Statutory Licence; and
 - (iii) clearly indicates which Source Documents have been classified as containing CP Information (the **Applicant's Consultant's Report**).
15. Following the review conducted on the Applicant's Cloud by the Applicant's Consultant, the Applicant's Consultant securely sends:
 - (a) each of the Source Documents reviewed, *excluding* those containing CP Information; and the Applicant's Consultant's Report to Copyright Agency; and
 - (b) the Applicant's Consultant's Report to the National Copyright Unit.
16. For the avoidance of doubt, Copyright Agency and the National Copyright Unit must keep:
 - (a) The Annotated Report;
 - (b) The Pre-exclusion Report;
 - (c) The Final Report; and
 - (d) the Applicant's Consultant's Report,

confidential, but may share them with the Respondents, the parties' external legal advisors, and any consultant engaged by the parties.



ANNEXURE C

CA Hard Copy Pilot

Defined Terms

For the purposes of this Annexure C:

Confidential Information means information that is marked as confidential, treated by the disclosing party as confidential, or is otherwise by its nature confidential, but excludes information that is public knowledge.

Personal Information means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not, and includes Sensitive Information.

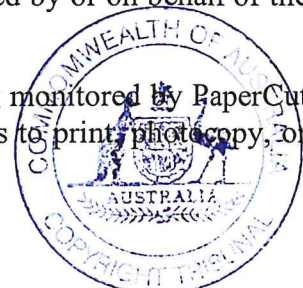
Sensitive Information means information or an opinion about an individual's racial or ethnic origin, political opinion, membership of a political association, religious beliefs or affiliations, philosophical beliefs, membership of a progressional or trade association or trade union, sexual preferences or criminal record, health, genetic and biometric information and templates.

Statutory Licence means the licence contained in section 113P of the *Copyright Act 1968* (Cth) (**Copyright Act**)

Data Capture

PaperCut MF

1. Someone uses a multifunctional device (**MFD**) located on the school's premises, and on which PaperCut MF software has been installed, to print, scan or photocopy a document, which may or may not contain Confidential Information or Personal Information (together, **CP Information**).
2. In respect to:
 - (a) prints and scans, the Papercut software captures an image of the document that has been printed or scanned (the **Image**), and metadata relating to that Image (**Associated Metadata**).
 - (b) photocopies, the Papercut software captures Associated Metadata **only** in relation to the document photocopied.
3. The Papercut software stores the Images and/or Associated Metadata (whichever is applicable) at a server location (the **Folder Location**), and then sends these to a cloud environment operated by a third party service provider engaged by or on behalf of the Applicant (the **Applicant's Cloud**).
4. School staff members will be made aware of the MFDs being monitored by PaperCut MF, and will be instructed not to use those monitored devices to print, photocopy, or scan any personal information.



Capturing Images of photocopies

5. In relation to capturing Images of photocopies made using the MFD, either one or both of the following methods are used:
- (a) the ADCS Modified Pilot as set out in Annexure A; and/or
 - (b) the "manual photocopy" method, wherein each time a staff member uses the MFD (on which PaperCut MF software is installed) to photocopy a document, which may or may not contain CP Information, they are prompted to also scan the same document and;
 - (i) the Image scanned and Associated Metadata captured are then sent to the Folder Location, before they are sent to the Applicant's Cloud; and
 - (ii) a copy of the scanned document may be sent to the staff member's computer as it would in the normal course of scanning a document. In this instance, the scanned document is deleted by the staff member as soon as it appears on their computer.

Review process

The Folder Location and the Applicant's Cloud

6. All Images and Associated Metadata sent to the Folder Location are accessed or downloaded and then reviewed by a consultant engaged by the Respondents (the **Respondents' Consultant**) and all Images and Associated Metadata sent to the Applicant's Cloud are reviewed by a consultant engaged by the Applicants (the **Applicant's Consultant**) (together, the **Consultants**). The Applicant's Consultant may have personnel who work remotely from an overseas location.
7. Each of the Consultants separately review all Images and Associated Metadata, and:
- (a) (if relevant and where possible) identify any Images that have not been copied or communicated in reliance on the Statutory Licence;
 - (b) identify any Images and Associated Metadata that contain CP Information; and
 - (c) prepare a report that:
 - (i) lists the filenames of all Images (and Associated Metadata) reviewed;
 - (ii) clearly indicates (if relevant and where possible) which Images have been classified as not having been copied or communicated in reliance on the Statutory Licence; and
 - (iii) clearly indicates which Images have been classified as containing CP Information,
 - (iv) (a **Report**).

Access to Data

8. Following the review conducted via the Folder Location, the Respondents' Consultant securely sends:



- (a) Each of the Images and Associated Metadata reviewed, excluding those identified as containing CP Information, and their Report, to the National Copyright Unit; and
 - (b) Their Report to Copyright Agency.
9. Following the review conducted on the Applicant's Cloud by the Applicant's Consultant, the Applicant's Consultant securely sends:
- (a) each of the Images and Associated Metadata reviewed, excluding those identified as containing CP Information, and their Report, to Copyright Agency; and
 - (b) their Report to the National Copyright Unit.
10. For the avoidance of doubt, Copyright Agency and the National Copyright Unit must keep the Applicant's Consultant's Report, and the Respondents' Consultants' Report, confidential, but may share them with the Respondents or the Applicant (as applicable), the parties' external legal advisors, and any consultant engaged by the parties.



ANNEXURE D

CA Digital Pilot

Defined Terms

For the purposes of this Annexure D:

Confidential Information means information that is marked as confidential, treated by the disclosing party as confidential, or is otherwise by its nature confidential, but excludes information that is public knowledge.

Personal Information means Information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not, and includes Sensitive Information.

Sensitive Information means information or an opinion about an individual's racial or ethnic origin, political opinion, membership of a political association, religious beliefs or affiliations, philosophical beliefs, membership of a professional or trade association or trade union, sexual preferences or criminal record, health, genetic and biometric information and templates.

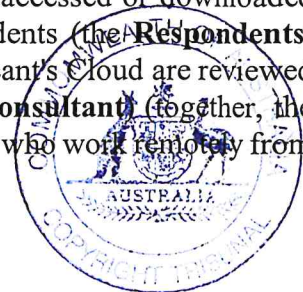
Statutory Licence means the licence contained in section 113P of the *Copyright Act 1968* (Cth) (**Copyright Act**)

DTE App

1. The selected school or the body administering or representing the selected school (the **Body**), whichever is applicable, arranges for software to be installed on selected staff members' computers, to monitor the digital teaching environment (**DTE**) used by the staff member (the **DTE App**).
2. The DTE App identifies, counts and copies the files (and associated metadata) that the staff member makes available to students on the DTE platform (which we refer to as the **Files** and **File Metadata**). The Files and File Metadata are stored on Google Cloud. Staff members will be made aware that that specific part of the DTE platform will be subject to monitoring, and will be instructed not to put any personal information in that part of the DTE platform.
3. The Files and File Metadata are then sent to a cloud environment operated by a third party service provider engaged by the Applicant (the **Applicant's Cloud**).

Review process

4. All Files and File Metadata stored on the Google Cloud are accessed or downloaded and then reviewed by a consultant engaged by the Respondents (the **Respondents' Consultant**) and all Files and File Metadata sent to the Applicant's Cloud are reviewed by a consultant engaged by the Applicant (the **Applicant's Consultant**) (together, the **Consultants**). The Applicant's Consultant may have personnel who work remotely from an overseas location.



5. Each of the Consultants separately review all Files and File Metadata, and:
 - (a) (if relevant and where possible) identify any Files that have not been copied or communicated in reliance on the Statutory Licence;
 - (b) identify any Files and File Metadata that contain Confidential Information or Personal Information (**CP Information**); and
 - (c) prepare a report that:
 - (i) lists the filenames of all Files (and File Metadata) reviewed;
 - (ii) clearly indicates (if relevant and where possible) which Files have been classified as not having been copied or communicated in reliance on the Statutory Licence; and
 - (iii) clearly indicates which Files have been classified as containing CP Information (a **Report**).
6. Following the review conducted via the Google Cloud by the Respondents' Consultant, the Respondents' Consultant securely sends:
 - (a) each of the Files and File Metadata reviewed, excluding those containing CP Information, and their Report, to the National Copyright Unit; and
 - (b) their Report to Copyright Agency.
7. Following the review conducted on the Applicant's Cloud, the Applicant's Consultant securely sends:
 - (a) each of the Files and File Metadata reviewed, excluding those containing CP Information, and their Report, to Copyright Agency; and
 - (b) their Report to the National Copyright Unit.
8. For the avoidance of doubt, Copyright Agency and the National Copyright Unit must keep the Applicant's Consultant's Report, and the Respondents' Consultant's Report, confidential, but may share them with the Respondents or the Applicant (as applicable), the parties' external legal advisors, and any consultant engaged by the parties.



SCHEDULE A

Department of Education (New South Wales)
ACT Education Directorate
Department of Education and Training (Victoria)
Department of Education Tasmania
Department for Education (South Australia)
Northern Territory of Australia (Department of Education)
Department of Education (Western Australia)
Catholic Schools NSW Limited
Catholic Education Commission of Victoria Limited
Trustees for Catholic Education Office Archdiocese of Canberra & Goulburn
Catholic Education Centre (Catholic Education Office Tasmania)
Catholic Education Office (South Australia)
Catholic Education Western Australia Limited
Catholic Education Office (Northern Territory)
The Corporation of the Roman Catholic Bishops of Queensland (Queensland Catholic Education, Commission)
The Association of Independent Schools of New South Wales Limited
Independent Schools Queensland Limited
Association of Independent Schools of the A.C.T.
Independent Schools Victoria Incorporated
Independent Schools Tasmania Incorporated
Association of Independent Schools of South Australia
Association of Independent Schools of the Northern Territory
Association of Independent Schools of WA Incorporated
Seventh-Day Adventist Church (Australian Union Conference) Limited (Adventist Schools Australia)
Christian Schools Australia Limited

