

21 February 2005

Mr Sean Applegate  
Advisory Council on Intellectual Property Secretariat  
PO Box 200  
WODEN ACT 2606

**ADVISORY COUNCIL ON INTELLECTUAL PROPERTY – PATENTS AND EXPERIMENTAL USE**

I am pleased to provide the University of Melbourne Response to the Options Paper from the Advisory Council on Intellectual Property entitled *Patents and Experimental Use*.

The University of Melbourne has considered the Options and supports the concept of a research exemption. As a result, Options C7 and C8 are favoured over Options B and C1, as discussed briefly in the following sections.

**Option B – *No Change***

This option is not considered ideal for universities since it still leaves the interpretation of 'patent infringement' very open. The University of Melbourne has a strong preference for the implementation of a research exemption. Given the large research base of the University and the 'independence' of its researchers, Option B provides very limited reassurance in terms of possible breaches by its researchers.

**Option C1 – *Modify the definition of exploitation to not include experimental use, without further defining the term***

The uncertainty of the term 'experimental use' still creates ambiguity. Option C1 is considered to be as undesirable as Option B.

**Option C7 – *Exemption for fair experimentation with inclusive permitted uses***

Option C7 is the preferred Option of the University of Melbourne as it provides a clear statement as to what constitutes 'fair experimentation'. An analogous situation exists with regard to the use of literary, artistic or musical works under the Copyright Act. The University considers that Option C7 allows for a suitably broad research exemption.

**Option C8 – *Exemption for experimenting on the subject matter of the invention, with inclusive permitted uses***

Option C8 focuses on experimentation being the sole or dominant purpose of the Act and has the virtue of being in harmony with European Law. Option C8 is also acceptable to the University.

The University of Melbourne confirms that consent is given to the Secretariat for this Submission to be made public.

The Contact Details for this Submission are:

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Yours sincerely,

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**Deputy Vice-Chancellor (Research)**

*on behalf of*

**The University of Melbourne**

cc. Professor Glyn Davis, Vice-Chancellor, The University of Melbourne  
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