

Libraries and the Copyright Bill

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In the 1990s, Australian libraries have collectively shown greatly increased concern about the issue of copyright. Along with their counterparts around the world, they have been monitoring and responding to possible changes in the legislative arrangements for administering copyright which the government might contemplate. Indeed, concern with providing informed comment on the way users access materials in the nation's libraries, and library collections, led to a more organised process of analysis and comment, which libraries have been providing to government, particularly in the last five years.

In 1995, the Minister for Justice asked the Copyright Law Review Committee to advise on changes needed to the Copyright Act. In 1996, the chairing of the Committee was changed and the Committee was asked to reconsider its Terms of Reference, with a focus on simplification. This process of review was completed with the promulgation of the two-part report on Copyright Act Simplification.

At the same time, the government had indicated that it would develop an interim legislative approach, designed to amend the law to respond to what has broadly been called 'The Digital Agenda'.

When the government released its Exposure Draft and Commentary on the Bill earlier this year, the library community was, in general terms, supportive of the avowed intention to honour the principle of 'technology neutrality', and to see that principles which have taken many years of law making to develop and establish in legislation, in particular the concept of fair dealing uses of copyright material, would be preserved in legislating for the use of information in digital environments.

The library community argued that the Digital Agenda Bill in its exposure draft form generally maintained a balance which had been reflected in previous legislation. It made a particular point of saying this because of the well-articulated public views expressed by some of the publishing industry and certainly by the collecting societies – CAL in particular – that new technology should be used to provide new opportunities for the generation of income from the use of copyright material.

Put briefly, this argument sounds more reasonable if it is couched in context in which *current* copying activity can somehow be depicted as inappropriate, or denying justly derived income to those to whom it should be available, mainly the 'owners' of copyright. Without this point taking a detour into the troublesome issue of precisely what share of *current* income derived from the licensing of copying activity in Australia actually goes to authors, as distinct from publishers, there is an implication in the line of argument adopted by this viewpoint which libraries, and those responsible for their administrative establishment and running, find offensive.

For years after the Moorhouse case, the library community was vigilant in making sure that copyright regulation in Australia was actually carried out, often to the annoyance of their users, many of whom were frustrated by the libraries' position as sentinels upholding the intended process for seeing that copying activity did not breach rights of copyright owners. So the apparent original intention of the Digital Agenda Bill to merely preserve the scope of fair dealing in the digital environment seemed commonsense and appropriate from the library point of view.

Knowing the extent to which the view would be pressed that the Bill did not go far enough in rewriting the current balance in a way which would further diminish access, the library community, as represented by the Australian Libraries Copyright Committee, was vigilant in making a generally supportive submission of the Bill, and indeed following these up with supplementary comments which were provided after the process of exposure had led to contrary submissions.

The library community has been dismayed to see that there have indeed been significant changes made to the Bill as introduced, from the version which was released as the exposure draft. The principle of technology neutrality has been diluted, if not abandoned, and the provision which would effectively divide the national system of libraries in the interlibrary loan network into 'public' and 'private' gives rise to a result about which the library community at large expresses keen concern.

Put simply, the library community has the following issues with the Bill As released in September 1999:

- The national system of library cooperation which underlies the Australian interlibrary lending system should not be pulled apart through the exclusion of private sector libraries from the library provisions. This issues should, at the very least, be deferred for consideration in the context of overall simplification issues.
- There should be no ambiguity about any possible presumption that temporary electronic copies are reproductions in material from for copyright purposes. Any sections (eg 43A and 111A) which have that ambiguity should be changed.
- The concept of browsing must be preserved so that library users who browse electronic material on the premises are able to make reasonable copies under fair dealing in the case of both hard-copy and digital technologies.
- The interlibrary lending system should be preserved effectively in the new legislation, and this includes the ability of a library to request an interlibrary loan from an intermediary library, rather than directly from one library to another.
- There should be quantitative provisions applying to the need for a library to check the commercial availability of a work in electronic form, so that the principle is similar to that which applies in the hard-copy provisions.
- The sections which permit hard copies being made for digital preservation and administration purposes should ensure that they are available to all users within premises of a library or archives. This is surely the intention of these provisions, but it is currently worded so that only 'library officers' could access information.
- Finally, on the vexed issue of circumvention devices, the library community believes that devices should be available for non-infringing purposes, and the scope of permitted

purposes should be revised. This is an important part of the future environment, legal and actual, for library operation.

The changes that have been made between the exposure draft of the Bill and the Bill as introduced into Parliament, have a significant and essentially uniform direction. The avowed principles of technology neutrality and the preservation of the standards of access that currently prevail in Australian libraries have been infringed between versions.

The library community remains appreciative of the general policy thrust of the government in the attention to copyright reform. It is impressed by the detailed work on reform which has been undertaken in recent years, and in particular the Copyright Law Review Committee's work on simplification.

But it is also alert to the powerful exercise of lobbying pressure by rights-holder groups, especially where the rights-holding organisation is itself dependent on the generation of income through the collection of royalties and payments rather than first-sale revenues for the use of copyright material. The Australian library community believes that these changes have been made to placate some of these interests, and that the result is a lack of logic and consistency in a policy approach which can only harm the long-term information interests of Australians.

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