



Copyright reform wound back

The Copyright Law Review Committee's terms of reference have been narrowed to a exclude a substantive revision of existing laws

The Copyright Law Review Committee (CLRC) convened the Forum on Access to Copyright Materials on 30 April 1997 in conjunction with the Commonwealth Attorney-General's Department. The CLRC is conducting a review of the *Copyright Act 1968*.

The Forum was particularly directed to exceptions to the rights of copyright owners provided for in the Act - fair dealing, copying by libraries, archives and educational institutions, copying for people with disabilities and the requirement for legal deposit of certain copyright material.

The Attorney-General and Minister for Justice, Daryl Williams, described the Forum as a key development in the way copyright law reform should be developed. While recognising the role of the CLRC, he warned that the Government might need to act on some aspects of reform before the Review was complete and announced that he would be introducing further amendments to the *Copyright Act 1968* in coming months.

Simplification

Prior to the election, Prime Minister Howard identified copyright laws as a crucial area for reform. However, the CLRC is now operating under narrower terms of reference than those given to it by the previous government. In February 1995 it commenced a wide-ranging review and it was due to make its final report on 30 November 1997. In December last year, the terms of reference were narrowed to focus on simplification

of the Act. The "fair dealing" issues paper released by the CLRC in February describes shortening the Act as "fundamental to the Committee's task". However the terms of reference refers to ways to simplify the Act in order to allow people to *understand their rights and obligations*. While a shorter Act may be "simpler" in one respect, it does not necessarily follow that it will be easier to understand "by people who need to understand" it. It would be unfortunate if this approach to "simplification" were to result in inappropriate changes to existing rights or the creation of inequitable rights and obligations.

The Attorney-General also suggested that an on-going forum would be a good way to facilitate the exchange of views between copyright owners and users and expressed a hope that these groups might subordinate their strongly held views to a wider public interest.

Opposing interests

However, the ensuing discussion revealed that there was little chance of agreement at this stage on most issues. Calls from representatives of publishers and collecting societies for reducing fair dealing exceptions or expanding the coverage of existing protections were vigorously rejected by representatives of the library and educational sectors. For example, Representatives of the Copyright Agency Limited and the Australian Publishers Association argued that the current "reasonable portions" for copying of works should

be reduced substantially. The current provisions set out certain factors to be taken into account, most of which are qualitative. However, in the case of non-periodical publications, the Act states that a reasonable portion may be copied for research or study (s 40(3)(b)). "Reasonable portion" for published editions of literary, dramatic or musical works means not more than 10% for published editions of 10 or more pages, or one chapter where the work is divided into chapters (s10(2)).

CLC submission

In its submission regarding the fair dealing provisions, the CLC noted its concern that, before any changes are made to the copyright regime, it is should be clear that those changes are in the interest of the Australian public. The Act exists to promote learning, culture and the free flow of information, knowledge and ideas in the interests of all Australians. While protecting the rights of copyright owners is an important element in achieving this goal, these rights have always been qualified. Fair use or fair dealing principles have been one mechanism whereby the rights of the public to have access to copyright material is addressed. The CLC would oppose any alteration that resulted in a lessening of the rights of the public to make use of copyright material by broadening or strengthening rights of copyright owners unless there is a very clear need for broader protection in the public interest.



While new technologies may make it easier to reproduce and disseminate copyright material it would be inappropriate to create a regime whereby users of copyright were required to pay for every means of accessing information - many digital "copies" are ephemeral in nature. If uses such as browsing, reading or making short extracts in the digital environment are removed from the fair dealing exception, the costs to the public in gaining access to information is likely to increase. The fair dealing exception resulted from the public policy judgement that certain uses of copyright material by the public were appropriate and desirable in the public interest, not because they were uses that were impossible to police.

The CLC strongly supports and endorses the detailed submission made by the Australian Council on Library and Information Services (ACLIS) in September 1995 (available at www.nla.gov.au/aclis/clrc.html). It agrees with ACLIS that it is appropriate to make the fair dealing provisions more flexible without cutting back on the rights of users. It supports the suggestion that a fair dealing provision similar to that in the United States *Copyright Act 1976* be adopted. The Centre also agrees that it would be appropriate to include *guidelines* in the Regulations to assist in interpreting which uses are fair to assist the many users of the Act, particularly at a time of considerable change in recording and distribution technologies.

Disability breakthrough

The only point of agreement at the forum came in discussions regarding copying for people with disabilities. William Jolley, speaking on behalf of the National Federation of Blind Citizens of Australia, argued for a radical

CLRC

SIMPLIFICATION REFERENCE

TERMS OF REFERENCE

The CLRC having regard to Australia's international obligations as a member of the relevant international multilateral conventions for the protection of copyright is to inquire into and report on:

- (a) how to simplify the Copyright Act 1968 to make it able to be understood by people needing to understand their rights and obligations under the Act, with particular attention to simplification of the various provisions and schemes that provide exceptions to the exclusive rights comprising copyright;
- (b) whether the existing rights comprising copyright in works and other subject matter under the Copyright Act 1968 can realistically be reduced to a smaller number of broadly based rights and, if so, what those rights should be;
- (c) whether a more practical and suitable categorisation of protected subject matter can be devised and, if so, how those categories should be described;
- (d) outstanding issues identified by the Copyright Convergence Group in its report *Highways to Change* to the extent that they are not the subject of a specific request for consideration under this reference or of other processes of Federal Government inquiry; and
- (e) incidental matters arising from the examination of points (a) to (d) and which are able to be addressed by the CLRC within the time frame for the reference.

In undertaking the inquiry the CLRC will have regard to:

- (a) Any amendments to the Copyright Act that are introduced into Parliament, or which the Government announces are proposed to be introduced or are being considered;
- (b) the recommendations and reports made to Government by other relevant expert or advisory bodies in intellectual property;
- (c) ongoing developments in the relevant international copyright forums;
- (d) technological developments;
- (e) the effect of any proposed changes on the structure and operation of relevant public and private sector organisations;
- (f) the possible effect of changes in the nature of rights under the Copyright Act 1968 on other intellectual property regimes;
- (g) the history and nature of amendments to the Copyright Act 1968 since 1968 and the effect these changes have had on the understanding, use and operation of the Copyright Act 1968; and
- (h) the possible effect on the operation and complexity of any future copyright legislation as result of the need to introduce new transitional provisions to the Copyright Act 1968

simplification and reform to facilitate copyright clearances. He pointed out that copyright owners were not immune from the reach of the *Disability Discrimination Act*, which makes discrimination, including less favourable treatment on the basis of disability, unlawful. While the denial and delay of access to goods and services falls fairly within the category of 'unfavourable treatment', it was not uncommon for those producing alternative format copies (such as braille, large print and audiotapes) to experience extensive delays, which were particularly unacceptable for material where topicality was its main value, like newspapers and fashion/lifestyle periodicals. In one case, a request for permission to make an audiotape of a recipe book was denied. The copyright owner then suggested it would give permission to use an old book. Mr Jolley noted that those people with print disabilities were just as interested in contemporary cuisine as anyone else and the offer of a 1950's style book was a very offensive response. Similar concerns were raised by the Australian Caption Centre and other representatives on behalf of those people with other disabilities. There appeared to be a general acceptance by most present of the desirability of amending the Act to facilitate the timely conversion of published editions into alternative formats.

Members of the CLRC were not forthcoming with their views on the issues under discussion and the Chairman, Professor Dennis Pearce, noted that they had reached no settled position at this point.

The CLRC is due to make its final report to the Attorney-General by 30 June 1998. Those wishing to comment should contact: The Director, CLRC Secretariat, Attorney-General's Department, Robert Garran Offices, Barton ACT 2600, tel 06 250 6076, fax 06 250 5989.□

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