

VIRTUAL WAREHOUSING

Now let me tell you an example why this started. It started with a company in Memphis, Tennessee called Auto Zone. Auto Zone had 300 auto parts stores and 3,000 vendors. They never knew from one day to the next what orders were going to what stores, what was in each order when it showed up. Now with Full View capabilities hooked up with the Internet they place an order, they can track an

order from their headquarters in Memphis to all their vendors, to all their stores. They know exactly what's inside each box that's moving in that purchase order, and if necessary, can re-direct the order by communicating to Fed Ex to redirect that shipment for them. This allows them to virtually manage their business - and this is about the closest you're going to get to a virtual warehouse where you're going directly from the supplier, directly to the end destination, with no warehousing in between.

So it was a breakthrough that we're making, and we're very proud about that.

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The Government's Proposals for Copyright Reform and the Digital Agenda

David Rees of the Attorney-General's Department explains the latest proposals for reform of the Copyright Act.

INTRODUCTION

On 30 April 1998 the Attorney-General, the Hon Daryl Williams AM QC MP, and the Hon Senator Richard Alston, the Minister for Communications, the Information Economy and the Arts, announced the Government's decision to reform the *Copyright Act* to improve the protection of copyright material to meet the challenge posed by new technologies. These reforms, referred to as the 'Digital Agenda Copyright reforms', largely implement the proposals contained in the Discussion Paper, *Copyright Reform and the Digital Agenda*, which was released in July 1997. The Digital Agenda copyright reforms are an important part of fulfilling the Government's commitment to encouraging the growth of the new information economy.

Advances in communications technology, in particular, have overtaken many of the existing provisions in the *Copyright Act* which are technology specific. For example, the right to authorise or prohibit the broadcasting of copyright protected material is limited to "wireless telegraphy" to the public. This definition takes no account of developments such as the Internet or cable pay TV. Therefore, owners of copyright are not able to comprehensively control the use of their work on these systems.

The need for copyright reform has also been recognised internationally. In late

1996, two new World Intellectual Property Organisation (WIPO) treaties were agreed to, and the Digital Agenda reforms are in part a response to these treaties. The new treaties updated international copyright standards in relation to the on-line environment.

The Government has decided that the new rights in the *Copyright Act* will be "technology-neutral", so that new developments such as "web TV" or "Internet broadcasting" will not require repeated technology-specific changes to the Act.

KEY ELEMENTS

There are four key elements in the Digital Agenda copyright reforms, and they are as follows:

- a new right of communication to the public;
- a package of exceptions;
- two new enforcement remedies; and
- limitation on liability of carriers and ISPs.

COMMUNICATION RIGHT

The centrepiece of the Digital Agenda copyright reforms is a new technology-neutral right of communication to the public, which will replace and extend the existing broadcasting right, and which will also replace the limited cable diffusion right. This new right will remove the uncertainty surrounding the

operation of the existing transmission-type rights in the new communications environment, as recently demonstrated by the various judgments in the *APRA v Telstra* litigation.

This new right of communication to the public will address current deficiencies in legislation by substantially improving copyright protection for books, computer software, art, film, sound recordings and broadcasts on the Internet and on cable pay TV.

EXTENSION OF EXCEPTIONS

At the same time, the reforms ensure that users of copyright material, including libraries and educational institutions, continue to have reasonable access to copyright material in the on-line environment. As far as possible, existing exceptions for libraries, archives and educational institutions have been extended to the on-line environment. The conditions regarding these exceptions will be similar to those applicable to hardcopy copyright materials. The exceptions include fair dealing for the purposes of research and study.

The Government has decided that there should be exceptions for certain temporary copies made in the course of the technical processes of transmission and browsing on the Internet.

The Government is concerned to replicate, as far as appropriate, the

balance between the rights of owners and the rights of users that exist in the print environment.

LIABILITY OF CARRIERS AND ISPS

The Government's decision on the Digital Agenda copyright reforms also addresses the concerns expressed by carriers and ISPs about liability for infringements of copyright on their facilities. The Government has decided that ISPs and telecommunications carriers will not be liable for copyright infringements on their customers' web sites by reason only of the fact that the infringement occurs on the facilities of the carrier or ISP. If, however, the carrier or ISP has had a greater role in regard to that infringement than just providing the physical facilities for the website, then the question of possible liability for authorisation of the infringement will be determined by the principles of authorisation, which will be inclusively set out in the new legislation.

ENFORCEMENT MEASURES

The Digital Agenda copyright reforms also include two new enforcement

measures. First, the Government has agreed to introduce criminal sanctions and civil remedies against the abuse of technological copyright protection measures such as program locks and encryption. The technological measures remedies include banning commercial dealings in circumvention devices such as unauthorised decoders to receive pay TV signals. Secondly, the Government has decided to introduce new sanctions against those who tamper with rights management information (RMI), which is electronically attached to copies of copyright material. RMI usually includes details about the copyright owner and the terms and conditions of use. These two new enforcement measures are critical in defending new and existing rights against piracy, which is often made easier by new technology.

CLRC RECOMMENDATIONS

The Government has also agreed to adopt many of the recommendations contained in the Copyright Law Review Committee (CLRC) report, *Computer Software Protection*. The Government is still considering the CLRC recommendations on decompilation of computer programs.

Both the Digital Agenda Discussion Paper and the CLRC report received widespread industry approval and were the subject of extensive consultation with the community. Over 70 written submissions were received on the Discussion Paper proposals, and many community consultations were also held. Those consulted included bodies representing owners of copyright, such as the Australian Copyright Council and copyright collecting societies; users of copyright, such as libraries, universities and schools; telecommunications carriers such as Telstra and Optus; and Internet Service Providers, such as OzEmail. The wide ranging Digital Agenda reforms to the *Copyright Act* approved by the Government take full account of this consultation.

These important copyright reforms will be included in an exposure draft *Copyright Amendment Bill* that the Government hopes to release for public comment in the coming months.

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“Convergence”: Reforms for New Media Technologies or, just another Plug-in?

Tim Dwyer from the ABA examines the utility of the term “convergence” and the complex factors to be considered when formulating a regulatory response.

“With digitalisation all of the media becomes translatable into each other - computer bits migrate merrily - and they escape from their traditional means of transmission... if that's not revolution enough, with digitalisation the content becomes totally plastic - any message, sound, or image may be edited from anything into anything else... digital is a noise-free medium, and it can error-correct” comments Negroponte... ‘I can see no reason for anyone to work in the analog domain anymore - sound, film, video. All transmission will be digital.’”

One of the difficulties with explanations of this kind is that while the broad trend has proved to be true enough, when you

monitor the hyperbole you notice that the changes described are far from revolutionary: they've actually emerged in an orderly, piecemeal fashion that typifies technical developments based on scientific research and development in modernity.

NETWORK INTELLIGENCE

What has occurred is that certain advances have facilitated developments such as ‘network intelligence’. In this particular example it was incremental technical developments in software programming which allowed increases in ‘intelligence’ functionality. This is not to deny the force of convergent technologies, a contemporary reality which has

emerged with a powerful momentum, and which continues to generate unabating investment in the communications and information sector of the economy.

A recent Green Paper released by the European Commission frames the convergence issue in terms of the new business and market phenomena which are being enabled by technical developments, and how these are affecting relations between service providers and audiences/users. The paper offers some useful new evidence on ‘network convergence’ (eg. XDSL, ISDN, ATM and IP), market developments in services, and in relation to mergers and alliances between different segments of the services provision value chain.²