

COPYRIGHT UPDATE

The Copyright Amendment Bill, 1986 has passed through Senate and is in the House of Representatives. Its major purpose is to increase the penalties when action is taken in the criminal courts against illegally imported copies of copyright works. Action can also be taken in the civil courts in which case the aggrieved party can get some compensation. Fines imposed in the criminal courts go to the Crown.

The new provisions impose very heavy penalties, the heaviest (in the world) falling on illegal imports of films or videos, but also quite substantial penalties on other copyright works. The penalties are, of course, aimed against **pirate** copies. The interest to libraries is that the law does not distinguish between pirate copies and parallel imports, that is, copies which are imported into Australia other than through the Australian copyright licensee, for instance by library suppliers, but also by bookshops or record import shops.

Traditionally action against such importers has been taken in the civil courts but the avenue exists for aggrieved copyright licensees to instigate criminal prosecution. The question whether the restrictions on parallel imports should be relaxed is presently being considered by the Importation Sub-committee of the Copyright Law Review Committee of both of which I am a member.

The Bill also includes some changes which

are intended to assist libraries. Some other changes were signalled in the Attorney-General's speech which would help, in particular, educational institutions and their libraries.

First to the Bill, there are several provisions relating to literary works (original literary, dramatic, musical and artistic works) which, as the law now stands, do not apply to 'other than works' (which comprise sound recordings, films, videos, broadcasts). The Bill extends several of these provisions to 'other than works', specifically:

- the fair dealing provisions (other than fair dealing for study or research)
- the copying of unpublished sound recordings and cinematograph films in libraries and archives
- copying of sound recordings and cinematograph films for preservation and other purposes.

It should be noted that these provisions parallel the existing arrangements for literary works. They do not, for instance, sanction the creation of a copy of a film or sound recording in order to ensure that there is always a perfect master from which a new copy can be generated. For **published** films and sound recordings a copy cannot be made if one can be obtained within a reasonable time at a normal commercial price.

It has become clear through long discussions at which I have been present in various capacities that the only workable solution to the need for educational institutions to record off-air or make copies from a/v materials is a

statutory licence. A statutory licence permits certain actions to be done without reference to the copyright owner and may or may not be associated with a requirement to compensate the copyright owner.

Some time ago the Attorney-General's Department drafted a proposal for a statutory licence to permit educational institutions to copy audio-visual materials subject to equitable remuneration of the copyright owner. It would have required the institutions taking advantage of the statutory licence to keep records and pay royalties, if demanded. The record keeping requirements would not necessarily have been similar to those required at present for multiple photocopying.

The proposal was accepted by the tertiary education institutions and seemed acceptable to the representatives of copyright owners. It was rejected by the representatives of schools. In his speech introducing the present Bill the Attorney-General stated:

It seems from recent discussions with schools representatives that common ground has been found. I am pleased to say that schools have acknowledged that the use of that material does require payment. This follows on the important concession from most copyright owners that because of the social importance of education they are prepared for their right to withhold their material to be removed and not to have the benefits of payment under a statutory scheme without joining an approved collecting society.

This suggests that the statutory licensing proposal will be revived.

The Attorney-General also forecast limitation of collecting of copyright fees on behalf of owners to one collecting society. This would mean that educational institutions would not be open to unlimited numbers of copyright owners requiring access to their records or photocopying.

One other matter, forecast by the Attorney-General, might touch libraries. A previous proposal to solve the domestic copying problem was to impose a levy on blank tape. This ran into difficulty because it could be constitutionally a tax. An alternative now being considered is a 'rental right'. There is already a large rental market for videos and, with the coming of the compact audio-disk, a similar rental market may develop for these.

This matter is still under consideration but it is not at all clear whether, if such a rental right was brought in, it would only affect commercial renting agencies or whether it might apply to libraries lending film, video or sound recordings. This matter needs to be kept under review.

F.D.O. Fielding

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