

Copyright reform: into the digital future

Summary of a speech by Attorney-General, Daryl Williams to the Australian Key Centre for Cultural and Media Policy
Copyright futures seminar, 12 February 1998

We are not looking into the digital future, but living in the digital present. Internet usage is dramatically increasing, the growth of the Australian internet consumer market is unprecedented, and a host of new industries have been created. This extraordinary pace of development has the potential to disrupt the delicate balance that has existed between the rights of copyright owners and the rights of users of copyright materials.

In his address to the *Copyright futures seminar*, the Attorney-General focussed on two areas — the work of the Copyright Law Review Committee and the implementation of a comprehensive and technology-neutral set of copyright reforms.

Part 2 of the Copyright Law Review Committee's simplification report

The Attorney-General announced the release of the second part of the Copyright Law Review Committee's *Report on the Simplification of the Copyright Act*. Part 2 focuses on simplifying the rights and categories of material protected by copyright and provides a number of models that describe how the rights and categories can be reformed to accommodate future changes in technology.

The report sets out a model described as the 'technology-neutral' approach that refers to inclusively defined categories of subject matter and exclusive rights. Under the 'technology-neutral' approach, the current eight categories of protected subject matter — including literary, dramatic, musical and artistic works, films, and sound recordings — would be replaced by two broadly and inclusively defined categories — creations and productions. Different levels of protection would apply to these new categories. The eight exclusive economic rights — including the right to reproduce, publish, perform, broadcast, copy and adapt — would be replaced by two broadly and inclusively defined economic rights, the 'right of reproduction' and the 'right of dissemination to the public'.

The issue of moral rights is also addressed in the report, with a recommendation that both a right of attribution and a right of integrity should be introduced.

Digital agenda copyright reforms

In 1998 the government announced its decision to make a number of important reforms to the *Copyright Act*. These reforms, known as the Digital Agenda Copyright Reforms, will be implemented in the *Copyright Amendment (Digital Agenda) Bill*. The aim of the reforms is to ensure that copyright law continues to promote creative endeavour and, at the same time, allows reasonable access to copyright material on the internet and through new communications technology.

There are five key elements that will be implemented in the *Copyright Amendment (Digital Agenda) Bill*.

1. Right of communication to the public

The centre-piece of the *Digital Agenda Bill* will be a new technology-neutral right of communication to the public. The new rights will subsist as an exclusive right in literary, dramatic, musical, and artistic works, sound recordings, films and broadcasts. The new right will replace the technology-specific broadcasting right which currently only applies to 'wireless' broadcasts.

The right of communication to the public will also encompass the making available of copyright material on-line, so as to provide protection to copyright material made available through on-demand, interactive transmissions.

Exceptions: The exceptions for fair dealing will apply to the new right of communication to the public. The legislation will also include exceptions for temporary copies made in the course of technical processes of transmission and browsing on the internet. It will also extend the existing exceptions for libraries and archives, and education institutions, to enable them to provide reasonable access to copyright material online.

2. New enforcement measures

Enforcing copyright in the digital environment is a major concern for copyright owners. To address this, the *Digital Agenda Bill* will provide two new enforcement measures, one of which would ban the making of and commercial dealings in circumvention devices. The legislation will also provide for a ban on the intentional removal or alteration of rights-management information electronically attached to copyright material.

3. Carrier and internet service provider liability

Carriers and internet service providers (ISPs) have expressed concern about the uncertainty of the circumstances in which they could be liable for copyright infringements by their customers. The *Digital Agenda Bill* will make it clear that carriers and ISPs will not be liable for copyright infringements on the customers' websites by reason only of the fact that the infringements occurred on the facilities of the carrier or ISP.

4. Computer software protection

Computer software is an integral component of the information economy. The committee has recommended that the definition of 'computer program' be simplified; and a 'reproduction' of a computer program includes a version resulting from decompilation and, in the case of a program in source code, a version resulting from compilation.

Another proposed amendment affirms that a digitised version of any work is a reproduction of the work in its original form.

5 Back-ups of computer programs

Unlike other literary works, computer programs are designed to be used in the operation of a machine. As such, they are at greater risk of being accidentally destroyed or damaged in the course of being used than, say, a book is in the course of being read. Current legislation allows the making of a back-up copy of a computer program, subject to conditions. The committee has recommended that the back-up copying exception should be extended to address this concern. Another amendment will expressly recognise the almost universal practice of regular backing-up of the entire contents of office computer systems.

The Attorney-General announced that the exposure draft *Copyright Amendment (Digital Agenda) Bill* is being finalised and will be released for public comment in the coming weeks. He concluded by saying, 'The Digital Agenda reforms will play an important role in ensuring the successful development of the information economy which is vital to Australia's continued economic prosperity and creative endeavours.'

The full text of the Attorney-General's speech is available from: <http://law.gov.au/>