

# Competition and copyright

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When you caught that bus to work this morning, did you compete for a seat? Did you jockey for position at that fantastic new café down the street when you sought an afternoon caffeine hit? Competition, it appears, is such a part of our everyday lives that to draw attention to it is akin to stating the obvious.

So much so that when the Intellectual Property and Competition Review Committee announced in late 1999 that they were to apply competition policy to copyright law, it did not seem out of place. And indeed it is not.

Copyright law can benefit from vigorous subjection to a competition policy analysis. It is particularly appropriate in light of the new digital age and the increasingly divergent interests of copyright users and owners. Intellectual property laws should not be over-protectionist in approach or in effect — the balance currently struck between user and owner interests should be retained and supported. Competition policy will be a strong factor in ensuring the retention of this balance into the digital world for the benefit of all Australians.

In considering the correlation between copyright laws and competition, Australia's position in the global marketplace should be kept firmly in mind. We are a net importer of copyright material, unlike major exporters such as the United States. The blanket application or assimilation of other countries' intellectual property laws and policies into the Australian regime is inappropriate. In recent times, a blatant attempt to do this has occurred in the debate regarding the *Digital Agenda Bill*. Lobbying of the Australian government by United States-based multi-national intellectual property bodies, fronted by local collecting societies and backed by wealthy movie and music industries, has exacerbated the digital copyright debate, and blurred the government's original vision of maintaining the balance between user and owner.

This balance, fragile as it might seem at times, is integral to the Australian copyright law system. Our librarians, students and researchers rely on the exceptions it provides to access material in limited circumstances for the generation of further innovation. Reshaping this balance should not occur under the guise of technological advancement. Many organisations are endeavouring to take the reshaping of the balance into their own hands, by using means to lock up material in the digital world (through encryption de-

vices) which might otherwise fall within one of the legal exceptions for free access. A device exists which can be used to circumvent or unpick this lock — an access device. Certain libraries require these devices in order to preserve electronic documents and information for future generations. They are incredibly valuable for systems administration, security checking and software development. They can also be used to get around an encryption device, allowing access then to copyright material without meeting the obligations set out in the virtual lock. Therein lies the difficulty. The Australian government does not propose to ban such devices as obviously there is a strong mandate for their legitimate use. What it has done is limit the sort of people who can purchase such a device, implement regulation procedures for the purchase of devices, and provided strong penalties for misuse or wrongful purchase. The copyright users support appropriate penalties for breaches of copyright, but recognise the need to ensure that access and use is regulated by the law — not technological devices designed to prevent legitimate free access.

Unfortunately this is not enough for the copyright owner lobby groups: according to them, Australia will become a 'hacker's haven' if provisions for broader access are allowed to go through. They advocate such devices not be available for any purpose, legitimate or otherwise.

Access devices, it could be argued, should actually be available for far more purposes than those prescribed above. There is the potential for creators to lock away their material with encryption devices, only to allow access once the user has paid a fee or agreed to the arrangements otherwise proscribed. In effect there is a real risk that a 'pay per view' system of information management will develop. Access devices have the potential to facilitate the viewing of digital information for fair dealing purposes — research, study, criticism and review. Paying to read information alters dramatically the current balance between copyright owners and users that exists in the print world. Access devices can redress this imbalance.

This is an example of technological advancement being used to alter the balance in copyright. It is in scenarios like this that competition policy in its application to copyright law, can be of assistance. Appropriate means should be established to retain access for users in an individually managed information environment. ■

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