

Copyright and intellectual property news

Are your contracts and licences to copy cutting across your rights under the *Copyright Act*? Here's your chance to protect access to information!

The Commonwealth Attorney-General Daryl Williams has asked the Copyright Law Review Committee (CLRC) to investigate the balance between copyright and contract.

In this context, the term *copyright* represents the present balance in the *Copyright Act* between the need to encourage intellectual creativity by acknowledgement and reward and the need to promote education and culture, freedom of expression and the right of access to information. The term *contract* covers both negotiated and non-negotiable copying and communicating licences and other arrangements, such as the imposition of technological barriers to information access and circumvention device prohibitions.

The most restrictive contracts are the mass-market agreements, 'shrinkwrap' and 'clickwrap' deals which automatically impose non-negotiable terms, sometimes invisible until you commit to their acceptance. Other examples are the digital products, on which publishers impose different conditions of use from the same information they sell in print form.

After-sales service is another issue, such as knowing what specific protective coverage a copying licence gives, especially of overseas material.

The CLRC is calling for any evidence of contracts which diminish rights available through the library exceptions, the fair dealing and other provisions of the *Copyright Act*. This may involve the terms of a contract, unfair bargaining power and other matters. The committee is also looking at the impact of recommendations on our international treaty obligations. The CLRC issues paper, *Copyright and contract*, the terms of reference and guidelines for submissions are available on its website at <http://www.law.gov.au/clrc>. Submissions to the inquiry, preferably with recommended amendments to law and/or practice must be received by 10 August.

Here's a small example of the need for us to defend our right to information. ALIA compiled a member's brief and other educative material on the GST and libraries. The Australian Tax Office, funded substantially from taxpayers' revenues, put out a plethora of information freely avail-

able on the web and in print. They were eager to fulfil the government's aim of educating all Australians about the new tax system. Yet, when ALIA members wanted to disseminate some of this information, with due acknowledgement, the ATO told us that we had to obtain the permission of AusInfo, the government agency which handles government information copyright. The permission was a formality, but waiting for it delayed our response to members by several weeks. Why is this process necessary for this kind of government information?

Also investigating the balance between copyright and contract is the Canadian Copyright Forum, a coalition of universities, research institutions and libraries and the Canadian Library Association, similar to our Australian Digital Alliance (ADA) and ALCC. The forum's *Discussion paper on digital copyright* can be accessed at <http://www.cla.ca/resources/copyrightforum.htm>. One of its recommendations is that the user rights given by the Canadian Copyright Act should not be able to be unilaterally over-ridden by contract. The paper also raises the issue of rights being restricted by other legal jurisdictions and restrictions on digitally transmitted government information.

The CLRC inquiry is very important for our sector. Its outcome will affect every user of library and information services, with ramifications for future amendments domestic law and for ongoing international treaty negotiations. ALIA asks you to provide us with information and evidence to enable us to present the strongest possible case to the inquiry in support of the interests of researchers and library and information users.

ALIA's new Copyright and Intellectual Property Reference Group, chaired by Craig Grimison, will be gathering evidence for our main submission and liaising with other stakeholders, including Nick Smith, ADA executive officer. We are looking for any examples of licences where library copying rights under the Act are restricted by the licence, or where the terms of the licence or contract seem unclear or unfair, as in the 'clickwrap' examples. If possible send us your comments and case studies by the first week of August. Evidence after **10 August** will still be useful to support our case.

Please send your comments to Michelle Baird, ALIA policy officer and CIP support, phone 02 6285 1877, fax 02 6282 2249 or e-mail michelle.baird@alia.org.au.

CIP reference group: copyright committee changes

Copyright increasingly challenges librarians as we respond to changes in law, policy, information technology and user needs. ALIA has therefore strengthened its copyright committee by broadening its scope and changing its name. The ALIA Copyright and Intellectual Property (CIP) Reference Group has new terms of reference, approved by the Board of Directors on 22 June. They are as follows:

The CIP group is to advise the Board of Directors on:

- submissions to government and other bodies on matters relating to copyright and intellectual property. Submissions may be in response to a call for submissions or at the instigation of the reference group for lobbying or advocacy purposes.
- the development of policy statements or documents relating to copyright and intellectual property.
- policy matters of interest and concern to members. Such matters may be referred from or to the Board.
- representation on and liaison with appropriate bodies.
- other matters as determined by the Board.

The Board will review the group every two years.

Membership of the CIP group have expertise in copyright and intellectual property policy and practices. Membership contact details are available on our website, <http://alia.org.au/copyright>.

The group's primary task at this time is to respond to the CLRC inquiry on copyright and contract. ■