

Copyright and that trade agreement: what the United States wants from us

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Impatient with the lack of progress in international trade negotiations, the United States has embarked on a series of bilateral treaties with individual countries, of which Australia is the latest, after Chile and Singapore. In return for lowering some of its trade barriers to Australian commodities, manufactured goods and services, the United States seeks concessions from us in a number of areas, including intellectual property, the protection of our cultural industries, and the lowering of barriers to genetically modified foods and crops.

Australia consumes far more information than it produces and imports most of its copyright-owned material. United States, European and multi-national companies are major copyright owners. Copyright owners in the United States have strongly influenced the US Congress to extend copyright-owner protections and penalties. The ability of Australian libraries to share resources and to access information for users for the purposes of study and research will be affected by the pressures of United States trade negotiators in the following areas:

Extension of the term of copyright

Australian law follows the Berne Convention in protecting text during the life of the author plus fifty years. At the instigation of large publishing companies, the European Union extended this to seventy years and the United States followed. However, copyright owners in the United States are now lobbying for permanent extension of copyright which will block information from free access forever.

Prohibition on devices to circumvent otherwise lawful use of information

Australian libraries are permitted to circumvent digital locks for the purposes of lawful access to information. United States copyright owners want that access removed.

ISP liability for breaches of copyright

The United States position is that internet service providers should shoulder more responsibility for breaches of copyright by their users. So far, in Australian law, ISPs are responsible for responding to illegal use of their services when they become aware of the use.

Statutory penalties for copyright breaches

Under Australian law penalties may be punitive and/or compensatory. Judges have discretion in deciding how serious the copyright breach is and what financial damage has been suffered by the copyright owner. US copyright owners favour statutory damages, which would remove judicial discretion and result in large financial penalties for minor breaches.

Prohibitions or reductions on temporary copying and caching

Libraries make temporary copies of digital material in the course of document supply. They destroy the copies as soon as the information is communicated. School library networks may retain information for a short time in order to ensure that various schools have access to it for lessons. They have paid for the access to the information, but copyright owners want licences for the caching itself, a double-dipping approach.

There is no exception for temporary

copying in the US/Singapore trade agreement, which at least theoretically therefore bars the viewing of digital information.

Digital rights management systems

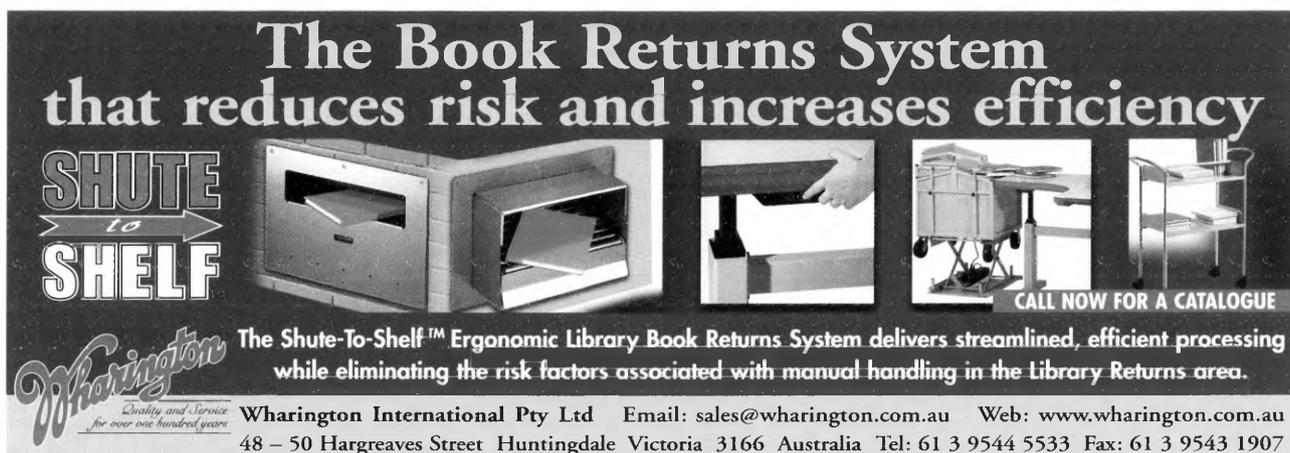
The digital rights management (DRM) systems attached to digital material may determine what you get, how you get it and how you pay for it. Such systems should not over-ride fair dealing, library exceptions and statutory licence information access and Australian libraries should be able to rely on legal protection of their access.

Australian librarians and library users will not win anything from the trade negotiations with the United States. We will be fortunate if we retain our present access under the *Copyright Act*.

ALIA has had two meetings with officers from the Department of Foreign Affairs and Trade, the Department of Communications, Information Technology and the Arts and the Attorney-General's Department on Australia's current trade negotiations with the United States and the possible changes to copyright law which the United States may pursue, with negative consequences for library and information services.

ALIA also supports the broad aims of the Australian film and television industry in preserving the right of an Australian government to continue to regulate for the encouragement of our cultural industries. To that end ALIA is a member of the Australian Coalition for Cultural Diversity, also a lobbyist in the trade negotiations. See <http://alia.org.au/advocacy/usfree.trade.html> for details.

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