

Parliamentary review of trade agreement begins

Colette Ormonde, ALIA copyright advisor

Australian library and information users will be significantly disadvantaged by the intellectual property provisions in Chapter 17 of the Australia United States Free Trade Agreement, ALIA representatives told the Joint Parliamentary Standing Committee on Treaties on 4 May.

Here are some of the points made:

- The proposed extension of the term of copyright from fifty to seventy years after the death of the author would close off access to information for creators, scholars, researchers and library and information users, without rewarding the original creators, ALIA told the committee. The extension profits US and European corporate owners of large amounts of information. Australians are users of information and need access to it.
- Australians are also disadvantaged when compared with Americans in their legal ability to access information because the US copyright law allows greater access to information under fair use principles than Australia's strictly defined 'fair dealing' provisions.
- The agreement does not require the United States to harmonise with Australia's moral rights regime, part of the international copyright regime.
- Proposed extra protections for digital information undermine the principle of technological neutrality on which Australian copyright law is based.
- Previous Australian inquiries have seen no advantage to Australians in extending the copyright term.
- The intellectual property provisions of the agreement were not analysed in terms of competition principles. Indeed, analysis by the Allen Consulting report and the Centre for International Economics could not determine the costs to Australians of signing up to the intellectual property provisions because of the lack of available data.
- US copyright owners have a stated ongoing agenda of copyright protection, including further term extensions. This is not in Australia's interests.

Appearing for ALIA were executive director Jennefer Nicholson and Colette Ormonde. With them was Evelyn Woodberry, university librarian of the University of New England, representing the Council of Australian University Librarians.

Mrs Woodberry pointed to the disadvantages and costs for

university libraries in trying to track down owners of copyright material over a long period, when creators become more difficult to track and publishing companies disappear.

Australian National University intellectual property specialist, Dr Matthew Rimmer, who is a member of ALIA's copyright and intellectual property advisory group, made a personal, separate submission on the disadvantages of extension of the copyright term with extensive examples from reports and cases to support his argument that the copyright term should remain at death of the author plus fifty years.

In her opening statement to the Committee, ALIA executive director, Jennefer Nicholson, said:

'The Australian Library and Information Association (ALIA), the national body for the library and information services sector, appreciates the opportunity to appear before this committee and to do so with our colleague from the Council of Australian University Librarians (CAUL) Eve Woodberry, who is also our nominated Australian representative on the International Federation of Library Associations and Institutions Committee on Copyright and other Legal Matters.'

'We are here today representing the Australian library and information services sector and all Australians who use these services. This includes those 10.7 million users of public library services and the one million university students and staff.'

'Our interests are not commercial, as there will be no commercial gain or benefit to libraries and our commentary is purely in support of equitable access to information for all Australians.'

'We seek to retain the balance of interests of copyright rights holders and users that is currently in the Copyright Act and was carefully preserved in the Digital Agenda amendments. The FTA expands protection for rights holders as so our interest is in retaining the balance for access to information. There are models for doing this, for example, through the extension of the US fair use provisions and the Canadian Free Trade Agreements with the US.'

'A further issue is the additional costs due to the copyright term extension from the current death of creator plus fifty years to death of creator plus seventy years.'

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Because of the term extension, users obviously will have to pay for a further twenty years to copyright owners who are predominantly overseas publishers. Australia is of course a net importer of copyright, by a long way. Increased costs include increased costs for collecting agencies statutory licences for universities and schools, and in voluntary licences such as those held by government departments.

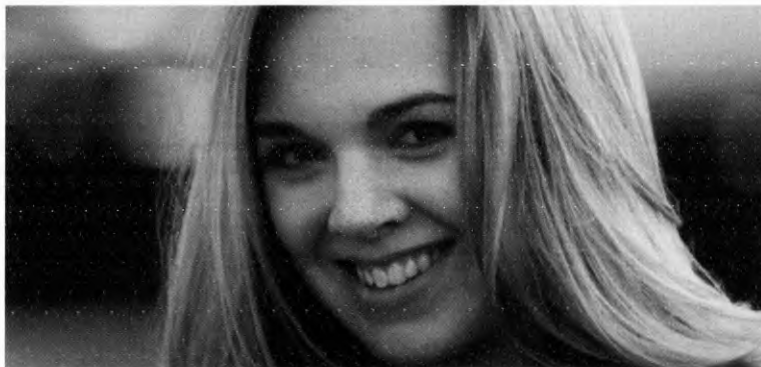
'On copyright term extension there has yet to be a clear identification of benefits to rights holders other than major corporations and we draw on the CIE, AEI Brookings, and Allen Consulting reports in this. However, these reports also do indicate that there will be increased costs to users, and the term will contribute to the shackling of creativity. We note that the United States has a history of extending its copyright term and are not convinced that it will remain at the seventy years. We also do not support the harmonisation argument as harmonisation is not applied consistently. Further, to minimise increased costs it is essential that the Australian Government not commit to the copyright term extension being retrospective.

'We believe that as these areas currently stand in the FTA they are not in the national interest and that further consideration needs to be given to mechanisms for restoring balance.'

Another trenchant critic of the intellectual property provisions is Dr Roger Clarke of Xamax Consultancy Pty Ltd, who gave evidence to the Joint Committee in Canberra on the same day as ALIA. Dr Clarke pointed out that the economics of innovation in the developing information industries of the 21st century depend on cross-fertilisation of ideas and incremental steps which require access to and the sharing of information. He opposes the copyright term extension because it does not promote innovation in his industry of software development, does not stimulate the generation of more content and benefits large corporations with substantial holdings of copyright material.

Also defending library interests before the Committee were Derek Whitehead and Robin Wright from Swinburne University of Technology at the Melbourne hearings in April. In addition to supporting an extension of user access through the adoption of fair use principles, they outlined concerns about potential restrictions on the use of new technologies in the delivery of information in relation to internet service providers. Ms Wright suggested that the industry code of conduct, currently in place, is the most appropriate way to proceed in such a rapidly-changing environment.

At the time of writing, ALIA has been invited to give evidence to the Senate Committee investigation into the text of the FTA and the consultative processes through the negotiations. ■



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