

# JUDGMENT IN COPYRIGHT CASE

JUDGMENT HAS BEEN handed down in the case in the Supreme Court of New South Wales of the Copyright Agency Limited and Ors. V Haines and Anor. (No 3521 of 1981). The effect of the judgment is to find that the plaintiff (normally the Director General of Education), by issuing a memorandum, gave rise to an

'infringement, or a threat of infringement, (of the copyright) of certain of the plaintiffs by authorisation because they misrepresented the effect of the Act in certain material respects and conveyed a policy of encouragement to teachers to make copies of works subject to copyright in purported reliance on provisions of the Act which did not require record-keeping or result in payments being made to copyright owners, in circumstances to which those provisions properly interpreted did not apply, and thus commit acts of infringement.'

It was found that the Director General's memorandum contributed to this particularly by suggesting that s.40 of the Act (the section which deals with fair dealing for purposes of research or private study) could be used in schools to achieve all the effect of ss.53B and 53D, (sections which relate to the multiple copying of a reasonable portion, or in certain circumstances more than a reasonable portion, of a copyrighted work and involve the possibility of paying a fee). The Director General is required to withdraw the offending section of the memorandum and to indicate that s.40 does not permit all the copying which ss.53B and 53D do.

In discussing his decision, the Judge demonstrates that there are at least some cases, specifically the copying of multiple copies of whole works, where the conditions set out in s.40 would not permit the type of copying allowed by s.53B.

He also draws attention to the 'effect of the dealing upon the value of the work', arguing that the use of s.40 in certain circumstances would affect that value.

More significantly he states:

'But independently of any such argument based on paragraph (d) of s.40(2), the availability to schools of the right to make

copies under s.53B upon compliance with conditions designed to provide "equitable remuneration" to the owners of copyright, must necessarily have an influence upon what amount and type of copying done in a school could properly be regarded as "fair dealing" under s.40.'

While librarians would not, in my view, normally wish to use s.40 where they had other sections available, this judgment does nothing to interfere with the librarian's rights, as I understand them, to use s.40 for copying in certain circumstances.

## Self copying

The plaintiffs had also criticised a statement by the Director General commenting on self copying (s.39A).

'This notice effectively removes any liability whatsoever, on both the body administering the library and the officer in charge of the library, that could arise simply because copying was done on such a machine. A librarian then need not be concerned to enquire as to what is being copied.'

The Judge did not believe that there was significant risk of infringement of copyright occurring in reliance on the statement. Where the officer-in-charge knows that an infringing copy is going to be made on the machine and does nothing to prevent it he still bears a responsibility.

## Inspection

The Director General had expressed the view that on the basis of s.203E(4) which gives the right of inspection of declarations, or in the case of s.51A inspection of the collection that these rights were limited to cases where the library had relied on the sections mentioned in s.203E, ie 49, 50, 51A, 53B and 53D.

The judgment stated 'it is difficult to resist the conclusion that the purpose of conferring a power of inspection of the collection was to enable a copyright owner (by himself or his agent) to see for himself whether the library had made copies of any of his published works for inclusion in its collection, at the same time as he could inspect whatever declarations (if any) had

been made in relation to any such copies. Such a purpose would not be fully achieved if the power of inspection of the collection were limited to cases where copying under s.51A (or ss.49 and 50) had in fact occurred. No such limitation is expressed in the terms of s.203E nor in my opinion is there any sufficient basis for the implication thereof.'

## Relevant records

The view had been expressed by the Director General that the right of inspection of declarations conferred by s.203E (5) pursuant to a notice, is exercisable in respect only of relevant records of the class in question which relate to works in which the person giving notice is the owner of the copyright or his agent.

The judgment states 'that the right of inspection under sub-s. (5) extends to all the records to which the notice relates and therefore, unless the notice so specifies, is not limited to records relating to works in respect of which the person giving the notice is the owner of the copyright or his agent.'

The final question which arose in the case in relation to s.203E was whether the right of inspection conferred by sub-s. (5) includes a right to take copies or notes of all the records inspected, and in particular of those relating to works in respect of which the person carrying out the inspection is neither the copyright owner nor his agent.

The decision was that 'in respect of all records which may be inspected the *prima facie* rule applies that a right to inspect documents carries with it an incidental right to record the contents thereof.'

Alan Horton

## Margaret Stiller continued from p2

also reviews for the SA Education Department's *Review* and for five NT newspapers.

In 1972 Margaret became the first advisory teacher librarian in the NT and in 1974 she was appointed Education Adviser in charge of School Library Services in the NT Department of Education.

After Cyclone Tracey, Margaret Stiller was seconded in 1975 to the SA School Libraries Branch as an Advisory Teacher Librarian. During that year she conducted a survey on the effectiveness of libraries in open space secondary schools, as compared with traditional secondary school libraries.

She returned to the NT Education Department in 1976 in her previous position as Officer-in-Charge of School Library Services, and over the years helped train teacher-librarians, established the Department's film library, wrote over 50 articles for periodicals, edited two periodicals and had several books of interest to teacher-librarians published.

In 1979 she was requested by the Schools Commission to do a survey of reviewing for school libraries throughout Australia. The survey was published in 1980.

In 1979 Margaret resigned from the NT Department of Education to take up a position with the NT Library Service. Her present position is Audiovisual Librarian with responsibility for supervision of the NT Film Library and the establishment of a State Music Library.

Margaret Stiller should be congratulated on her services to librarianship and the resulting MBE award, which expresses the Territory's appreciation.

Gil Jennex

PEO Educational Resources

## Middle East Conference

THE RECENTLY ESTABLISHED Australasian Middle East Studies Association (AMESA) will be holding its first conference in Canberra at the ANU 21-22 May.

The information session of the conference is being organised by the Footscray Institute of Technology, Melbourne. 'A highlight of this session' says FIT Chief Librarian Alan Bundy 'will be a paper presented by the bibliographer of Oxford University's Middle East Studies Centre Dr Derek Hopwood'.

The session will also contain a preliminary report by the National Librarian's Chief Selection Librarian, Richard Stone, on his survey of Middle East information resources in Australia. This project is a co-operative venture between AACOBs, the National Library and the Footscray Institute of Technology.

Further details of the conference can be obtained from Dr Beverley Male, Department of Government, Royal Military College, Duntroon 2600. Telephone (062) 63 3726.

Announcing a new publication from the Library Association of Australia.

### Local Government Records in New South Wales: Control, Management, Preservation and Use.

Occasional paper no6 from the LAA NSW Branch.  
Cost: \$10 (\$7 to LAA & ASA members).

This publication is the result of a two-day workshop and seminar, held in October 1981 and jointly sponsored by the LAA NSW Branch and the Sydney Branch of the Australian Society of Archivists.

Available from the LAA, 473 Elizabeth Street, Surry Hills NSW 2010.