

## COPYRIGHT AWARD

Mr Justice Sheppard, sitting at the Copyright Tribunal, has decided that an appropriate award to copyright owners for multiple copying from books under Section 53B of the Copyright Act is 2 cents per page. The award was made in a test case in which the Copyright Agency represented copyright owners and the respondents were educational institutions of various levels. No evidence was advanced about copying of periodical articles and consequently the award applies only to multiple copying from books.

In his *Reasons for decision* Sheppard J. points out that technically the decision covers only those specific instances which were the subject of the Test case. Any copyright owner is entitled to seek a different rate by private agreement with an educational institution or to apply to the Tribunal for a specific decision in a particular case. Nevertheless because this was a test case it is anticipated that copyright owners and educational

institutions will adopt it as the norm. After a couple of years copyright owners and educational institutions may well agree on a different figure or may come back to the Tribunal for a new ruling based on experience with operation of the system.

Sheppard J. also makes it clear that the 2 cents has no relation to what students may expect to pay for copies. Charges can be based on the actual cost of making the copies and it is up to individual institutions whether, in the case of S.53B copies for which the user is charged, the 2 cents is added into the total per page cost.

Nor does the judgment help in deciding whether a poem, for instance, is a whole work. This is a matter which the judge suggests should be referred to the courts or decided by an amendment to the Act.

Arguments by the copyright owners that there was a 'going rate' already existing were rejected as were arguments that there was a 'most common' charge of 4 or 5 cents per page. These arguments were based on instances in which educational institutions have

recently sought permission from copyright owners. They were undermined by the fact that the specific instances given represented only a fraction of actual copying and because there were many cases in which no charge at all had been required when copyright owners were approached.

On the other side it was argued that authors' royalties were normally only 10% of the total cost of a book and that the per page rate should not be set so high that a copyright owner might earn more from an act of copying than from the sale of a book. These arguments also were rejected, as were those about the motivation of the many authors who are tertiary teachers who write with an eye to scholarly reputation and prospects of promotion rather than the receipt of royalties.

In making the award the factors taken into consideration were:

- an allowance for the cost of collecting the charges
- that copyright may be discouraged — to the detriment of both authors and educational institutions — if the award is set too high (but Sheppard J. makes it very clear that there is no justification for expecting authors to specially subsidise education)
- the transient nature of photocopies compared to a copy of the original work
- the general evidence introduced by both sides about the charges presently made (including the free permissions).

The judge refers to the fears by authors and publishers that photocopying is rife and affecting sales, fears which he allows are sincerely and genuinely held. While not saying that these fears are groundless he points out that the evidence indicates that book sales are increasing.

Finally a matter of ethics which librarians should bear in mind. There is considerable concern among copyright owners that photocopies often lack any attribution of authorship. The Act does not require such attribution but it is clearly morally inequitable for attribution to be omitted. Although 'moral rights' are not part of our legal tradition, in which we differ from many European countries, I suggest that librarians should take care to ensure that any photocopies which they make or which they acquire for holding in their libraries clearly state the authorship and the source from which they have been taken.

*Derek Fielding*  
University of Queensland

## Literary Competitions

The Australian Society of Authors has produced a set of guidelines for literary contests held in Australia. The ASA has given permission for these guidelines to be reprinted in *InCite*, and they appear below:

### The Australian Society of Authors Recommended Rules for Literary Competitions

#### Entry

- a) There should be no entry fee, the costs of conducting the competition, paying the judges, publishing the result etc. should be borne by the sponsoring body.
- b) More than one entry may be submitted by one author, but each entry should have an entry form attached.
- c) Entries should be returned if a stamped self addressed envelope is provided.
- d) The entry form should clearly state the terms of entry, the conditions and the rights situation.
- e) While accepting that some literary competition organisers will want to limit entry by age, sex, geography and so on, the Australian Society of Authors would prefer that possible entrants are not discriminated against.

The Society finds particularly obnoxious statements such as 'This contest is limited to people born in Australia.'

In general terms the Society believes that all contests should be open to all people, not for instance to 'women under 45 years of age living in Queensland.'

- f) The prizes should be clearly shown as being a sum of money (or other) over and above the normal rate of payment.
- g) The author's copyright in the entry should not be infringed. From this, the award of a prize should not allow multiple use of prize winning entries. Any publication or performance offered as part of the prize should claim only first publication or performance rights and must specify payment and publication or performance details. Any further licensing of rights by the author should be by subsequent negotiation.

#### The Manuscript

- a) Normally the entry form should state the presentation details of the MS. These should include length, etc. For instance,

'Entries should be typed, double spaced on A4 paper one side only and be not more than 3,000 words.'

#### Security

- a) A pseudonym should be used and should be included on the front page of the MS and the entry form. The entrant's real name should appear only on the entry form.
- b) The Society believes the names of the judges should be revealed before the contest.
- c) The decision of the judges shall be final and legally binding and no correspondence will be entered into regarding the awards.
- d) Judges should be paid.

#### Closing Date

- a) The closing date should be clearly indicated on the entry form and to safeguard entrants should Australia Post be involved in industrial activity, the closing date should refer to the postmark on the entry.
- b) There should be a reasonable time limit between the closing date and date of announcing the winners. This will of course vary depending upon the nature of the contest but the Australian Society of Authors believes it should never exceed three months.
- c) Manuscripts should be returned as soon as reasonably possible after the announcement of the winners and no later than two months.

#### Copyright

As stated above, the work submitted being the author's own work (whether previously published or performed or not depending upon the sponsor's decision) the author holds all copyright in it and in signing the entry form licences only that part of the copyright required by the sponsors as stipulated on the entry form. The prize should always be more than the normal commercial rate of payment for such copyright licence.

#### NOTE:

*Competition entry and publication/performance rights should always be kept quite separate. It should be the responsibility of competition sponsors to negotiate publication/performance rights after a prize has been awarded, and only then. Competitions should never be seen as quests for properties, but only as altruistic endeavours to promote quality writing.*

### SOUTH AUSTRALIAN COLLEGE OF ADVANCED EDUCATION LIBRARY

#### NEW PROCEEDINGS

National Workshop on ABN and Non-book/Teaching Resource Collection Materials 26-27th November 1984. \$25.00. Compiled by Margareta Nicholas.

National Seminar on Learning Resources for the Health Sciences in Australia 30th November 1984. \$25.00. Edited by Claire Clark.

Also available Libraries of South Australia 1984. \$15.00. Edited by Alan Bundy.

Orders to:  
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South Australian College of  
Advanced Education,  
Holdbrooks Road,  
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