

Spotlight on copyright: 'first digitisation' rides again

Colette Ormonde, ALIA copyright advisory service

Just when you thought it was safe to relax, the promised review of the operation of the digital agenda amendments has begun and intellectual property is also up for negotiation in the proposed United States/Australia bilateral agreement and the Doha round of the General Agreement on Trade in Services.

The Attorney-General Daryl Williams has appointed the law firm Phillips Fox as the Digital Agenda review consultant. The consultant will handle consultation with the Australian community, including the library and information sector, and undertake legal and economic research and analysis into the Act.

The review directly concerns the

operations of library and information sectors at all levels. A complete list of the terms of reference is available at the Attorney-General's Department website <http://www.ag.gov.au>.

They include:

- examination of the operation of the libraries and archives exceptions and their impact on copyright markets;
- the extent to which circumvention devices are used legally and illegally;
- the impact of technological protection devices in conjunction with restrictive licence terms on reasonable access to copyright material;
- the definition of libraries and the potential exclusion of non-profit libraries in for-profit organisations;
- the operation of the VB educational statutory licences and 'whether they provide an effective means of allowing reasonable access to copyright material by educational institutions whilst providing equitable remuneration to copyright owners.

Of great concern is the re-introduction of consideration of a 'right of first digitisation', especially since it is referred to as *the* right of first digitisation. This concept was floated last time around and, one would have thought, effectively demolished. If adopted, it would require libraries and others to seek permission from copyright owners if transmitting print material in electronic form. Document supply would virtually cease to exist. All Australians who can read will be adversely affected by the introduction of this concept — a great vote-catcher.

ALIA has been surveying libraries about the impact of the digital agenda amendments and licensed information on library services. The National Library is also about to conduct a survey on behalf of the Australian Libraries' Copyright Council. Survey

evidence will be very important in presenting the case for the library and information sector, so it is important for relevant library staff to take part in the surveys.

In the lead-up to the digital agenda amendments, some copyright owners argued that libraries would become de-facto electronic publishers and would compete with commercial publishers. Please tell me if there are any examples of this.

Copyright also features in the Doha round of the General Agreement on Trade in Services and in the bilateral US/Australia trade negotiations. The Australian government has made a commitment to maintaining its authority in determining the balance between copyright users and owners. Certainly co-operation on the detection of illegal operations will be a feature of the negotiations.

However, the term of copyright ownership is likely to be a contentious issue for our sector. The United States seems attracted to extending copyright ownership indefinitely. The European Union directives call for seventy years after death of author, although national treatments within the Union differ on this and other matters. Australia's term is death of author plus fifty years. Is there a financial advantage to creators in extending our legal term? Does such an extension encourage innovation? Is it in the public interest to lock up information indefinitely? And how is it, that companies which press for extension of terms of copyright are also companies which seek to extend copyright from ownership of the expression of an idea to ownership of the idea itself (see Matthew Rimmer's article, *The wind done gone?* in April *inCite* for an account of how threatened the copyright owners of Margaret Mitchell's *Gone with the Wind* were when Alice Randall decided to re-tell this classic from the black slave perspective).

And some people think copyright is dull! ■



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Contact: Barbara Sandeman

Tel /Fax: 03 9380 6446

barbara@vicnet.net.au

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