



Australian Libraries Copyright Committee

November 2002

Secretary
Senate ECITA References Committee
Parliament House
Canberra ACT 2600.

Dear Mr McLean

INQUIRY INTO THE ROLE OF LIBRARIES IN THE ONLINE ENVIRONMENT

The Australian Libraries Copyright Committee

The Australian Libraries is the cross-sectoral body acting on behalf of Australian libraries and archives on copyright and related matters. It seeks to have the interests of users of libraries and archives recognised and reflected in copyright legislation, and in so doing, help build and sustain a copyright regime which promotes learning, culture and the free flow of information and ideas in the interests of all Australians.

The members of the Australian Libraries Copyright Committee are:

- The National Library of Australia;
- The Council of Australian University Libraries;
- The Federal Libraries Information Network;
- The Council of Australian State Libraries; and
- The Australian Council of Archives

The Significance of Intellectual Property Law to this Inquiry

Intellectual property, in particular copyright law, is viewed by some as an arcane branch of the law with little relevance to the daily lives of ordinary Australians. If this was ever true, it is certainly not true now.

As Australia heads into the 'Information Age', it is increasingly clear that copyright and related laws will have an important bearing on how we access and use information. Copyright is the chief legal mechanism by which the creation, distribution and reuse of data, knowledge and cultural material. It governs every type of information from software applications to poetry, from websites to broadcasts, and from films to maps.

Much emphasis has traditionally been put on ensuring that libraries (and schools etc) are equipped with appropriate digital technology such as network-connected PCs but little thought is often sometimes given to exactly what it is that these PCs will be connected to. The

Internet itself is a huge and valuable resource but it is important to remember that there are a great many very important information resources which are not available for free online.

If insufficient attention is paid to content and the legal regime governing its access and use, the library networked PC may represent nothing more than an empty pipe.

The Emerging Digital Regulatory Environment

Historically, a library patron could make use of a library without little regard to copyright. The core business of the traditional library: buying books, recording their bibliographic details, putting them on shelves and making them available to be read or borrowed, did not involve any aspect of copyright.

Today, libraries are increasingly becoming reliant on digital technology. (On 7 August 2002, a college in Iowa announced its intention to be the world's first completely paperless institution: 'Instead of a library, the school has a resource center equipped with computer workstations that can access the Web, e-books and online journals¹.'

One of the consequences of this engagement with digital technology is a much greater connection with intellectual property law. Almost no use of digital material is free from the effects of copyright. Every time an electronic article is copied or 'borrowed' or even just read, there are potentially multiple acts comprised in the copyright taking place. (Copyright law regards even ephemeral reproductions made on a computer screen as being caught within the copyright owners' right of reproduction.)

Licence Agreements

But the copyright law is just one of the restrictions that is increasingly placed upon libraries and their patrons. Contractual licence agreements are being used more and more to control usage of libraries material 'Unlike paper materials, digital information generally is not purchased by the library; rather it is *licensed* by the library from information providers. A license usually takes the form of a written contract or agreement between the library and the owner of the rights to distribute digital information.'²

Licences frequently take one of two forms: 'shrink-wrap or 'click-through'. Shrink-wrap licences are so-called because they are contained inside shrink-wrapped plastic around a physical article embodying intellectual property (such as a CD-ROM). 'Click-through' licences are typically used with respect to copyright material that is acquired online; before the user can access any part of the copyright material, they must first signal their agreement with a licence agreement (usually by clicking the 'I agree' button).

There are many reasons why a vendor may wish to use such a licence agreement and the ALCC is not per se opposed to the use of such agreements. However, there is a growing problem that such agreements are being used as 'unilateral legislation'; that is, licence agreements frequently override copyright exceptions and set a level of usage that is more restrictive than the law allows.

Some example the types of restrictions that licence agreements often impose include:

- restrictions on users printing or downloading or emailing copies of (parts of) the material;

¹ <http://www.wired.com/news/school/0,1383,53747,00.html>

² <http://www.library.yale.edu/~license/intro.shtml>

- restrictions on libraries performing Inter-Library Loan/Document Supply;
- restrictions on libraries copying the work for preservation purposes;
- restrictions on libraries networking the work across the premises of the library.

Technological Copyright Protection Measures

In addition to restrictions imposed by copyright law and contractual licence conditions, Technological copyright protection measures have showed themselves to be a problem for the operation of copyright exceptions. This is because such technological measures do not distinguish between uses which are not authorised by the copyright but are permitted at law, on the one hand, and those uses which are not authorised by the owner and also infringing. For example, the same copy-control mechanism which prevents a person from making infringing copies of a copyright work may also prevent a student from making legitimate fair dealing copies.

ALCC Recommendations

In March 2001, the *Copyright Amendment (Digital Agenda) Act 2000* (DAA) came into effect. This legislation updated Australia's copyright regime to meet the challenge of new digital technologies. It specifically amended a number of copyright exceptions to help libraries and their patrons gain reasonable access to copyright material in the networked world.

Because of the controversial nature of this legislation, the Government has announced that it will review this legislation within three years of commencement. The ALCC urges the Committee to look at this legislation which has profound implications for the operation of libraries in the online environment.

Specifically, the ALCC urges the Committee to adopt the view that:

1. the copyright exceptions in the DAA should not be rolled back as part of any review;
2. The 'reasonable portion test', which allows libraries and their student and researcher patrons to copy small portions of works for specific reasons, should be extended to other media such as music and artistic works; and
3. section 51A of the Copyright Act 1968 which supposedly allows libraries to digitise materials in their collections but is in fact deeply flawed, should be radically revamped to allow reproductions of library collection material and communication of such reproductions to patrons on-site only; and

If you wish to discuss any aspect of this submission, please contact the chair of the Australian Libraries Copyright Committee, Mr Tom Cochrane (Pro Vice Chancellor, Queensland University of Technology) on (07) 3864 2560 or at t.cochrane@qut.edu.au.

Yours sincerely

Nick Smith
Copyright Advisor