



The University of Queensland Library

UNIVERSITY LIBRARIAN
Janine Schmidt BA, Mlib, AALIA

The University of Queensland
St Lucia Campus Qld 4072 Australia
Telephone +61 7 3365 6949
Facsimile +61 7 3365 1737
Internet cybrary.uq.edu.au

JS/tj

10 May 2004

RECEIVED
13 MAY 2004

BY:

Committee Secretary
Joint Standing Committee on Treaties
Department of House of Representatives
Parliament House
CANBERRA ACT 2600
AUSTRALIA

Dear Committee Secretary

RE: PROPOSED FREE TRADE AGREEMENT - COPYRIGHT IMPLICATIONS

I am aware that the Committee has already received numerous submissions relating to the Free Trade Agreement's treatment of copyright issues and the flow-on negative impact this will have on the educational sector.

These are very serious matters and I take the opportunity to add my voice to those concerns. These are as follows:

- the extension of the copyright term to life plus 70 years;
- increased use of criminal enforcement in place of civil remedies;
- the likelihood of greatly increased intrusive powers in the hands of copyright owners, including the use of non-judicial warrants;
- the possible extension of owners' rights to matters such as caching and browsing;
- unreasonable impositions on ISPs.

However, the Agreement also presents an opportunity to align Australian copyright laws with those in the U.S. in a manner which will benefit the University sector and the general public at large. If there is to be alignment in a range of ways that diminish the rights of copyright users, it seems reasonable to consider alignment in other areas that will add to users' rights and help maintain some semblance of 'balance' between the interests of copyright owners and users.

Specifically, amendments should be made to Australia's 'fair dealing' provisions to mirror more closely the U.S. doctrine of 'fair use'. Fair use permits a broad range of copying for creative, personal and educational uses. It is analogous to 'fair dealing', but the latter doctrine is far more restrictive and, in significant ways, out-of-date. Unlike its American counterpart, fair dealing does not permit educational institutions to copy, without fee, limited amounts of copyright material for distribution to students. Instead, the Australian university sector is required to pay almost \$20 million annually for this 'privilege' under statutory licences.

There is no fairness or logic in the Australian approach. The copying for which universities pay these sums is no more than the sum of the individual fair dealing copying that each of the students could carry out themselves, but our fair dealing laws do not recognise the right of a third-party - such as a university or school - to carry out this copying on their behalf. American fair use laws do recognise this right and their educational institutions are able to apply the moneys that their Australian counterparts pay for statutory licences on providing a better standard of education.

Apart from its impact on the educational sector, the fair dealing doctrine does not recognise the legal right of ordinary Australians to record broadcast television programs for later personal viewing. This domestic practice has been occurring for 25 years. It makes a nonsense of our laws and engenders cynicism about their operation and relevance, that the practice remains illegal. The American fair use doctrine has long permitted personal copying of this type and amendments should be made to our laws to reflect this sensible approach.

I urge the Committee to consider carefully the current operation of the fair dealing doctrine and its impact on the educational sector and the wider community, and to include in its report a recommendation that Australian copyright laws be amended to reflect the fairer and more liberal approach of the American fair use doctrine.

Yours sincerely



Janine Schmidt
University Librarian