
The Parliament of the Commonwealth of Australia

Advisory Report on Copyright Amendment (Digital Agenda) Bill 1999

House of Representatives
Standing Committee on Legal and Constitutional Affairs

November 1999
Canberra

© Commonwealth of Australia 1999

ISBN [Click **here** and type ISBN Number]



Contents

Foreword.....	vii
Membership of the Committee.....	viii
Terms of reference	x
List of abbreviations.....	xi

THE REPORT

1 Introduction.....	1
Background to the Copyright Amendment (Digital Agenda) Bill 1999	1
Relationship between the Bill and the Copyright Law Review Committee's Report	2
Future review of the legislation.....	3
Committee's ongoing inquiry into enforcement of copyright.....	3
Differences between the Exposure Draft and the Bill as introduced.....	4
The approach of the Committee	6
Policy.....	6
Separating the print and digital environments.....	8
First Digitisation.....	8
Evidence.....	10
The inquiry process	10
Scope and structure of the report	11
2 Fair dealing and exceptions for libraries and archives.....	12
Introduction.....	12

Fair dealing	12
What is a 'fair dealing' in the digital environment?	13
The Committee's conclusion – 'first digitisation'	16
Reasonable portion test	19
The Committee's conclusion	21
Exceptions for archives and libraries	22
Definition of 'library'	23
The Committee's conclusion	26
Extension of section 49 to electronic reproduction and communication	27
The Committee's conclusion	32
Inter-library supply of copyright material	34
The Committee's conclusion	38
Reproducing and communicating works for preservation and other purposes	40
The Committee's conclusion	42
Preservation reproduction of artistic works	42
The Committee's conclusion	43
3 Educational statutory licences	45
Introduction	45
Part VA – Copying of broadcasts	46
Scope of the extension of Part VA statutory licences	46
Part VB – Reproducing and communicating works etc	49
Remuneration notices	49
Copyright material in electronic form	51
Illustrative artistic works	55
4 Enforcement measures	57
Introduction	57
Technological safeguards	57
Electronic rights management information	57
Effective technological protection measures	59
Circumvention device and service	62
How should technological safeguards be protected?	63
Enforcement provisions in relation to electronic rights management information	64

Enforcement provisions in relation to effective technological protection measures	65
When may effective technological protection measures be circumvented?	68
Permitted purposes	69
Other possible permitted purposes	71
Implementation of permitted purposes exception	76
General concerns about enforcement provisions	77
Civil remedies	77
Criminal sanctions	79
5 Retransmission and broadcast issues	81
Introduction.....	81
Unauthorised reception of broadcasts	82
Free-to-air broadcasts	82
Personal use of decoding devices.....	84
Retransmission of free-to-air broadcasts	85
Scope of retransmission scheme	86
Number of collecting societies.....	89
Record keeping requirements	91
Remuneration of directors	92
Commencement of Part VC	94
Conversion of analogue to digital broadcasts	94
Subsistence of copyright in non-broadcast communications	96
6 Remaining issues	98
Introduction.....	98
Liability of Internet Service Providers.....	98
Definition of 'communicate'	99
Direct liability	99
Authorisation liability.....	102
Communication using the facilities of a carrier or Internet Service Provider.....	104
Exception for temporary reproductions.....	106
No exception.....	106
Not a reproduction	107
Provisions of the Bill	107

Browsing and using computer programs.....	108
Temporary reproductions in other contexts.....	109
Committee's conclusion.....	110
Schedule 2 — Transitional Provisions.....	111
Item 3(1).....	111
Item 3(2).....	114
Minor drafting errors.....	115

APPENDICES

Appendix A - List of submissions.....	116
Appendix B - List of exhibits.....	121
Appendix C - List of witnesses.....	124
Canberra, 23 September 1999.....	124
Canberra, 30 September 1999.....	124
Brisbane, 5 October 1999.....	124
Canberra, 14 October 1999.....	125
Canberra, 21 October 1999.....	126
Sydney, 22 October 1999.....	127
Appendix D - Suggested amendments from FACTS.....	130
Appendix E - Relevant United Kingdom legislation.....	133
Appendix F - Suggested amendments from ARIA and PPCA.....	134
Appendix G - Suggested amendments from ARIA.....	137



Foreword

The introduction of digital technology has a major impact on many aspects of modern life, especially the enhanced communication of ideas and information.

This report of the House of Representatives Standing Committee on Legal and Constitutional Affairs is the result of a brief, but intense, study of the Copyright Amendment (Digital Agenda) Bill 1999. The Committee recognises that this Bill presents the most significant amendment to Australia's copyright law since the passage of the Copyright Act itself in 1968. Redefining the bundle of property rights that is copyright, in the context of emerging digital technologies, is a complex task.

The Committee endorses the stated aim of Australia's copyright legislation in seeking to support an appropriate balance between the competing public interests of promoting creative endeavour and allowing reasonable access to copyright material. The Committee supports much of the Bill as it was introduced to Parliament. However, the Committee recommends some readjustments to the balance of interests, as suggested by the Bill, because of the perceived increased risk of copyright infringement within a digital environment.

The decision to provide a work in a digital form, should be a considered decision of the copyright owner. The Committee considers that the ability to control the first digitisation of a work, at the frontier between the print and digital environments, is a fundamental principle that should be given special recognition under copyright law. The measures proposed in this report not only provide a statement of support for copyright owners, but recognise the special access needs of users.

Kevin Andrews MP
Chair



Membership of the Committee

Chair Mr Kevin Andrews MP

Deputy Chair Ms Nicola Roxon MP

Members Ms Julie Bishop MP
 Hon Alan Cadman MP
 Hon Duncan Kerr MP
 Ms Kirsten Livermore MP
 Mr John Murphy MP
 Hon Michael Ronaldson MP
 Mr Stuart St Clair MP
 Mrs Danna Vale MP

Committee Secretariat

Secretary Claressa Surtees

Research Officers Jennifer Cochran

Sara Cousins

Andrew Grimm

Administrative Officers Jane Sweeney

Frances Wilson



Terms of reference

The Copyright Amendment (Digital Agenda) Bill 1999 was introduced into the House of Representatives on 2 September 1999.

The Attorney-General wrote to the House of Representatives Standing Committee on Legal and Constitutional Affairs referring the Bill for inquiry, and requesting it to report during the week beginning 6 December 1999.



List of abbreviations

ABC	Australian Broadcasting Corporation
ACA	Australian Consumers' Association
ACC	Australian Copyright Council
ACCESS	Architects, Construction and Consulting Engineers Specialist Services
ADA	Australian Digital Alliance
AGD	Attorney-General's Department
ALCC	Australian Libraries Copyright Committee
ALIA	Australian Library Information Association
ALLG	Australian Law Librarians' Group
APA	Australian Publishers Association
APRA	Australasian Performing Right Association
ARIA	Australian Record Industry Association
ASA	Australian Society of Authors
ASDA	Australian Screen Directors Association
ASDAC	Australian Screen Directors Authorship Collecting Society

AVCC	Australian Vice-Chancellors' Committee
BSA	<i>Broadcasting Services Act 1992</i>
BSAA	Business Software Association of Australia
CAL	Copyright Agency Limited
CASL	Council of Australian State Libraries
CAUL	Council of Australian University Librarians
CCG	Copyright Convergence Group
CLRC	Copyright Law Review Committee
DCITA	Department of Communications, Information Technology and the Arts
EC	European Community
ELR	Educational Lending Right
FACTS	Federation of Australian Commercial Television Stations
FARB	Federation of Australian Radio Broadcasters
GATT	General Agreement on Tariffs and Trade
iffro	International Federation of Reproduction Rights Organisation
IIPA	International Intellectual Property Alliance
ISP	Internet Service Provider
MCEETYA	Ministerial Council on Education, Employment, Training and Youth Affairs
MPA	Motion Picture Association
NLA	National Library of Australia
PPCA	Phonographic Performance Company of Australia
SAGE-AU	System Administrators Guild of Australia
SISA	Supporters of Interoperable Systems in Australia

SPAA	Screen Producers Association of Australia
TRIPS	Trade Related Aspects of Intellectual Property Rights
WIPO	World Intellectual Property Organisation
WCT	WIPO Copyright Treaty
WPPT	WIPO Performances and Phonograms Treaty