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Queensland Parliamentary Library

House of Representatives Inquiry into technological measures ( tpm) exceptions

1. The current exemption regime of the Queensland Parliamentary Library

- The Queensland Parliamentary Library (QPL) exercises copyright exemptions or exceptions to infringement as provided for by the *Copyright Act 1968 ( Cth )* .
- The materials which QPL officers may copy and save under the current provisions of the Copyright Act 1968 are used for the purpose of supporting Members of the Queensland parliament in their legislative and representative functions. This is a permitted purpose under sections 48A and 104A of the Copyright Act 1968.
- Sections 48A and 104A of the Cth Copyright Act 1968 provide Parliamentary libraries with copyright exemptions or exceptions to infringement as follows:

**COPYRIGHT ACT 1968 - SECT 48A**

*Copying by Parliamentary libraries for members of Parliament* The copyright in a work is not infringed by anything done, for the sole purpose of assisting a person who is a member of a Parliament in the performance of the person's duties as such a member, by an authorized officer of a library, being a library the principal purpose of which is to provide library services for members of that Parliament.

**COPYRIGHT ACT 1968 - SECT 104A**

*Acts done by Parliamentary libraries for members of Parliament* A copyright subsisting by virtue of this Part is not infringed by anything done, for the sole purpose of assisting a person who is a member of a Parliament in the performance of the person's duties as such a member, by an authorized officer of a library, being a library the principal purpose of which is to provide library services for members of that Parliament.

- Protection afforded by ss 48A and 104A is extremely broad. The reference to 'anything done' would encompass printing, downloading, saving to disk, e-mailing and long term electronic storage.
- Further protection is provided by s 50 of the Copyright Act which permits other libraries to supply (including by electronic means) parliamentary libraries copies of published copyright works held by them, when the copies are supplied for the purpose of assisting members of a parliament in performing their duties as a member.
- Parliamentary library exceptions are further expanded through the anti-circumvention provisions of the Copyright Act (s 116A(3)). Section 116A prohibits the manufacture, marketing and supply of a device or service that is used to circumvent technological protection measures. However section 116A(3) provides that the supply of a circumvention device to a person, in a very narrow set of circumstances, is not illegal. These circumstances include the supply to a person in order for them to utilise the parliamentary library exception.

## **2. The exemption regime in practice**

- For QPL officers to be protected by the copyright exemption, assisting a Member in the performance of his or her parliamentary duties must be the **sole** use for which the copy is made.
- QPL officers may not make a copy for a Member for a use that does not relate to the performance of a member's **parliamentary** duties.
- The practical effect of the wording of the provision is that for QPL officers, the current exemptions apply only to dealings by library officers with Members of the Queensland Parliament.
- In such circumstances where material is stored electronically in databases, those databases are protected by password and access is limited to those clients which the copyright provisions provide for eg Members of Parliament.

## **3. Does QPL use any devices to circumvent technological protection measures or would it in the future?**

- QPL does not currently use any devices to circumvent technological protection measures. On the occasions when QPL has the need to print or download an electronic document that is "locked", i.e., not able to be downloaded, an approach is made to the publisher/owner to request a copy. This is generally agreed to, although this extra step contributes to administrative costs in acquiring material.
- As explained, QPL officers do not use such devices at present. . However under the current provisions of the Copyright Act 1968, (Sections 48A and 104 A) QPL officers may make a copy of material such as a news clip, a free-to-air TV or radio item, electronic report or journal article, book chapter, or a photo to assist a Member of the Queensland Legislative Assembly in the performance of his or her duties as a Member of the Parliament.
- In the future it may be anticipated that authors would publish a single copy of material and that could be published on the web with a lock on it. In this respect, the QPL may wish to use a circumvention device ( with the copyright owner's permission ) to access such material. The use of this material, or device, would still fall within the current exemption provided by sections 48A and 104 A, and 116A(3).

## **4. Importance of the current exemptions 48A, 104 A and 116A (3) under the Copyright Act 1968 (Cth)**

- The Queensland Parliamentary Library relies significantly on the current provisions of the Copyright Act 1968 to provide high quality research and information services to Members of the Queensland Parliament and collectively to the Parliament as an institution.
- Without the current copyright exemptions, Members of Parliament would be hindered in their free access to published information.

- In practical terms, these exceptions are critical for the provision of affordable and timely services by the Library to its clients.

## 5. Conclusion

- QPL collections will continue to rely more and more heavily on digital data, in response to our clients' needs for speedy desktop delivery of information.
- It is anticipated that copyright owners may increasingly "lock" their information to prevent capture.
- The importance of the need of Parliament as a democratic institution, and parliamentarians, for unimpeded access to information is currently recognised by the parliamentary library exceptions in the *Copyright Act 1968*. Without the exceptions, the Parliamentary Library would be compromised in its capacity to respond to confidential, time dependent requests, to create critical databases and to monitor developments in the print and electronic media.
- The parliamentary library exceptions contained in s48A and 104A are at risk of becoming redundant in their function of providing members of parliament with unimpeded access to quality information, if they have no application to technological protection measures.
- The parliamentary library exceptions should not be restricted to applying only in the print environment.
- Consistent with the objectives of the Digital Agenda Reforms the exceptions to infringement must equally apply to the digital environment. Therefore the current exemption as outlined in 116 A (3) – which provides that the supply of a circumvention device to a person, in a very narrow set of circumstances, is not illegal and that these circumstances include the supply to a person in order for them to utilise the parliamentary library exception – should persist.
- Members of parliament could be hindered in their free access to published information (hard copy and electronic) if the current exemptions for parliamentary libraries do not persist. Democratic processes in Australia would potentially be compromised.

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