



RECEIVED
27 OCT 2005

BY: LACA



Queensland
Government

Premier of Queensland
and Minister for Trade

Please quote: MN86140/AR22/IGR

25 OCT 2005

Submission No. <u>51</u>
Date Received

2/10
Ms Joanne Towner
Committee Secretary
House of Representatives Standing Committee on
Legal and Constitutional Affairs
Parliament House
CANBERRA ACT 2600

Joanne
Dear Ms Towner

Queensland Government submission to the inquiry into the review of exceptions from liability for circumventing technological protection measures

Please find attached the Queensland Government's submission to the Inquiry into technological protection measures (TPM) exceptions that is currently being conducted by the Standing Committee on Legal and Constitutional Affairs.

The Queensland Government welcomes the opportunity to contribute to this Inquiry. Retaining the potential for governments to use circumvention devices for non-infringing purposes is an important element in the ongoing provision of Queensland Government services.

Yours sincerely

**PETER BEATTIE MP
PREMIER AND TREASURER**

Executive Building
100 George Street Brisbane
PO Box 185 Brisbane Albert Street
Queensland 4002 Australia
Telephone +61 7 3224 4500
Facsimile +61 7 3221 3631
Email ThePremier@premiers.qld.gov.au
Website www.thepremier.qld.gov.au

QUEENSLAND GOVERNMENT SUBMISSION TO THE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS' INQUIRY INTO THE REVIEW OF EXCEPTIONS FROM LIABILITY FOR CIRCUMVENTING TECHNOLOGICAL PROTECTION MEASURES

The Queensland Government seeks exemption from liability for acts of circumventing an access control measure for a permitted purpose under the *Copyright Act 1968* (Cth) on the basis that:

- in a growing digital environment, digital format is increasingly the preferred available format for many copyright protected materials and may not be available by other means;
- access to these materials is vital to carry out permitted activities under the *Copyright Act 1968* (Cth) which provide government agencies with a right to access and use various types of copyright protected materials without the permission of the copyright owner; and
- governments' rights to access and use materials that they have required external parties to prepare and lodge are essential to the performance of government.

To attach liability to the act of circumventing an access control measure, would indirectly erode these existing rights; disturb the balance between copyright owners and copyright users established by the *Copyright Act 1968*; and adversely affect the operation of government.

LIKELY ADVERSE IMPACTS ASSOCIATED WITH NON-INFRINGEMENT USES OF COPYRIGHT PROTECTED MATERIALS

Activities of educational institutions

The non-infringing activities of educational institutions are currently covered by permitted purposes set out under Part III, Part VA, Part VB and Part VII of the *Copyright Act 1968*. The types of copyright protected materials affected include:

- literary works such as ebooks, electronic articles and publications, software programs;
- musical works;
- dramatic works such as eplays;
- cinematograph films such as videos and DVDs;
- sound recordings; and
- broadcasts.

As delivery of education is moving to online curriculum, inability to access various types of copyright protected material in digital format for permitted purposes would cause delay and disruption to the operation of institutions; potential decrease in availability of resources; and increase in costs associated with administrative requirements. More harm would be caused to educational institutions than to copyright owners as the permitted purpose provisions under the *Copyright Act 1968* are not actionable as copyright infringement. Whereas the purpose of assisting owners with self help measures, such as access control measures, is to prevent copyright infringement.

Activities of other Government Agencies

The non-infringing activities of government agencies are currently covered by permitted purposes set out under Part III and Part VII of the *Copyright Act 1968*. The types of copyright protected materials affected include:

- literary works such as ebooks, electronic documents, compilations, computer programs;
- artistic works such as photographs, maps, plans, drawings;
- musical works;
- cinematograph films such as videos, DVDs;
- sound recordings;
- broadcasts; and
- various classes of material received by government under statutory instruments obligating persons to submit such material to government.

Liability for acts of circumventing access control measures would indirectly erode the existing rights agencies have under the *Copyright Act 1968* to access and use various types of copyright protected material without the permission of the copyright owner. The impact would have an adverse affect on the operation of agencies, through delay or prevention of service delivery; decrease in availability of potential resources; and increase in delivery costs. An exemption from liability for acts of circumventing access control measures for permitted purposes would not be detrimental to the existing rights of copyright owners under the *Copyright Act 1968* or affect the value for the copyright owner's material.

Copyright materials that are required to be produced and lodged pursuant to statutory requirements would fall under the current exclusion from infringement of dealings in circumvention devices where the acts are done for specific permitted purposes (ie "services of the state" or "for law enforcement") but are nonetheless difficult to define in terms of a particular class, as required under Article 17.4.7(e)(viii). Article 17.4.7(e)(vi) provides for an exception to TPM liability to apply to "lawfully authorised activities carried out by government employees, agents, or contractors for law enforcement, intelligence, essential security or similar government purposes". However, it is unclear whether the concept of "law enforcement" in this exception is

broad enough to include activities relating to civil as well as criminal law administration and enforcement.

If not protected governments could, by legislative amendment or regulation, introduce provisions specifying the technical requirements for TPMs attached to submitted materials and the consequences of failure to comply with such requirements. However, this would require technical requirements for submitted materials to be precisely specified (when Australian governments have strong preference for a technology neutral approach) and could require the amendment of numerous separate pieces of legislation on a State by State basis. A technology-neutral exception to cover the broad range of materials produced and submitted pursuant to statutory provisions would be the simplest and most effective way of ensuring the performance of government functions is not impeded by the implementation of the TPM provisions in the AUSFTA. This matter needs to be considered in light of the recent recommendations of the Copyright Law Review Committee. If the proposals to reduce the range of materials in which Crown copyright exists were to be given effect by amendment to the *Copyright Act 1968*, it would be essential to ensure that appropriate exceptions to liability for circumvention of TPMs are secured to enable governments to perform their functions when dealing with copyright materials produced and provided by external parties. Consequently, it will be necessary to provide, as being exempt from liability, for a class of materials which includes materials produced and lodged pursuant to statutory and regulatory obligations.

Activities of Government libraries and archives

The non-infringing activities of government libraries and archives are currently protected by the permitted purposes set out under Part III, Part IV and Part VII of the *Copyright Act 1968*. The types of copyright protected materials affected include:

- literary works such as e-books, electronic articles, electronic legal and technical publications;
- artistic works such as maps, photographs, drawings;
- cinematograph films such as videos and DVDs ;
- sound recordings.

Inability to access online copyright protected works to carry out permitted purposes would severely disrupt the delivery of government services provided by libraries and archives and would result in service delays; decrease in available resources; and increase in administration costs. The potential harm to the effective operation of government libraries and archives greatly outweighs any perceived benefit the self help measure may provide to copyright owners as their existing rights and the value of the copyrighted works would not be affected.