

RESPONSE TO THE TERMS OF REFERENCE OF THE INQUIRY INTO THE ENFORCEMENT OF COPYRIGHT IN AUSTRALIA

Introduction

1. The Department of Communications, Information Technology and the Arts has responsibility for a diverse range of policy issues relating to intellectual property, its management and protection. The Department has responsibility, jointly with the Department of the Attorney-General, for copyright policy matters relating to the *Copyright Act 1968* and provides policy advice on the government's copyright reform agenda. The Department has a particular interest in intellectual property issues that arise in the context of both the cultural and communication industries and the evolving information economy. Many issues arise from the development of digital technologies and the new opportunities the Internet provides for creating, exploiting and accessing copyright material. Other issues relate to the protection of the rights of creators, including moral rights, performers' rights and the intellectual property owned by Indigenous people, and the management of intellectual property in both the public and private sectors.
2. Intellectual property management is increasingly being recognised as core to the successful functioning of any organisation in either the public and private sectors. One of the elements of good intellectual property management is the use of legitimate product. The Department appreciates that the advent of new technologies and new content delivery mechanisms could threaten the legitimate market of copyright creators, and, therefore, the remuneration they receive for their endeavours. The enforcement regime, which addresses intellectual property infringement, is a vital component of the intellectual property supply chain. While a strong enforcement regime discourages infringement, its main focus is to address alleged infringement after it has occurred. The following submission, addressing terms of reference relevant to this portfolio, points to the desirability of **preventing** infringement, and thus reducing the reliance on the enforcement regime.

Response to Terms of Reference

1)

(a)(i) the availability and accuracy of data on copyright infringement

Availability of data

3. The Department of Communications Information Technology and the Arts ("the Department"), through its Intellectual Property Branch, informally monitors information and through its intellectual property newsletter, *Copyrites*, contributes to discussion about copyright infringement.

4. The Department is aware of a range of information on infringement published by both Government and private sources. For instance, four agencies within the Attorney General's portfolio - the Australian Federal Police (AFP), the Australian Institute of Criminology (AIC), the Office of Strategic Crime Assessment (OSCA) and the Copyright Law Review Committee (CLRC)¹ - have published articles and reports, dealing, to varying degrees, with different aspects of copyright infringement. In 1993, the Music Industry Advisory Council, an independent body funded by the Commonwealth government, commissioned Price Waterhouse to prepare *An Economic Profile of the Australian Music Industry*, which reflected industry concerns in relation to piracy.
5. The Australian Government has also been concerned with examining the infringement of the intellectual property rights of Indigenous Australians². The issue of the applicability of intellectual property law to Indigenous arts and culture was initially raised in 1994 in the Commonwealth Issues Paper, *Stopping the Ripoffs: Intellectual Property Protection for Aboriginal and Torres Strait Islander Peoples*³.
6. Infringement of the work of individual creators has generally attracted less attention than the infringement of material in which corporations are major copyright holders, although there is substantial anecdotal evidence indicating that artists and authors have found their works reproduced in electronic form, or copied, without their consent or appropriate remuneration. The Department has no data on the frequency of these infringements.
7. Overseas governments have produced substantial studies relating to infringement of copyright material. In 1997, for example, the OECD released a paper dealing with the issue of intellectual property fraud, *The Economic Impact of Counterfeiting*⁴. This report deals with the activity of counterfeiting as it relates to a broad variety of products and industries. Other countries are also recognising the impact of infringement on the content industries.
8. In the private sector a number of major copyright industry bodies have disseminated data on a variety of issues relating to copyright infringement and piracy. These include the International Intellectual Property Alliance (IIPA), the Software Publishers Association (SPA), the Business Software Alliance (BSA), and the

¹ See: AFP journal *Platypus*, June 1997, "The 'new age' piracy", and June 1998, "Crimes in Cyberspace"; AIC series *Trends and Issues in Criminal Justice*, nos. 65 (January 1997) "Internet Piracy" and 93 (July 1998) "Criminal Exploitation of New Technologies"; Commonwealth Law Enforcement Board Assessment 1/96, "Law Enforcement and Intellectual Property Rights Protection", prepared by OSCA, August 1996; and CLRC report 1996, *Copyright Reform: A Consideration of Rationales, Interests and Objectives*, Australian Government Publishing Service, Canberra.

² See discussion paper by Terri Janke, *Our Culture: Our Future, Proposals for the Recognition and Protection of Indigenous Intellectual Property*, Michael Frankel & Company, Sydney, July 1997

³ Prepared by the International Trade Law and Intellectual Property Branch, Business Law Division, Attorney General's Department

⁴ At www.oecd.org//dsti/sti/industry/indcomp/prod/fakes.htm; the paper was prepared by the International Chamber of Commerce's Counterfeiting Intelligence Bureau for the Industry Division of the OECD's Directorate for Science Technology and Industry. It was first published in 1997 and then revised.

International Federation of the Phonographic Industry (IFPI)⁵. Of these bodies, the first three of which are based in the US, and the third in Geneva, only one, the BSA, through its Australian affiliate, the BSAA, has published a report specific to the Australian market. The report was prepared by Price Waterhouse and released by the BSAA in December 1998⁶. Similar reports have been prepared by Price Waterhouse for the US and EC markets. Calculations in all the reports rely upon assumptions and methods developed in Price Waterhouse studies in 1994⁷.

9. While organisations like the Motion Picture Association – which stated in 1998 that piracy caused revenue loss to the US film industry in 1997 of US\$2.3b – and the Australian Visual Software Distributors Association, have publicised figures for losses resulting from piracy, only the software industry has made the theoretical basis of its statistics widely available⁸.
10. The IIPA literature, available on its website, focuses on recommendations for additions to the US Administration’s trade “Watch List”⁹, and contains figures identifying alleged US trade losses resulting from illicit trade in copyright goods in countries outside the US. The BSA is a member of the IIPA, which appears to draw its figures concerning alleged piracy of business software from BSA data. SPA data on copyright infringement available on its website includes a study commissioned in conjunction with the BSA, the “1997 Global Software Piracy Report”¹⁰.
11. The IFPI Secretariat, based in London, has compiled statistics on copyright infringement. The IFPI website contains copies of press releases concerning piracy and IFPI tables of alleged levels and costs of piracy worldwide.

Accuracy of data

12. Copyright infringement is generally recognised as being increasingly a worldwide issue. The advent of new technologies in the last two decades providing new methods of storage, distribution and portability of copyright materials has undoubtedly

⁵ At, respectively, www.iipa.com ; www.spa.org ; www.bsa.org ; www.ifpi.org

⁶ *The Contribution of the Packaged Software Industry to the Australian Economy*, December 1998, PriceWaterhouseCoopers for the BSA; not available online.

⁷ See *The Contribution of the Packaged Software Industry to the European Economies*, 1994, PriceWaterhouseCoopers for the BSA

⁸ *Ibid*, and also see the *1997 Global Software Piracy Report*, prepared by the International Planning and Research Corporation,

⁹ The so-called “Special 301 Watchlist” refers to a list administered by the US Trade Representative (USTR) pursuant to a provision of the US Trade Act enacted which allows the USTR to monitor the legal and enforcement regimes of countries alleged to provide inadequate protection for US intellectual property rights holders and/or unfairly limit access of the rights holders to the countries’ markets. The Watch List is updated annually and contains five categories: *Priority Foreign Countries* (prospectively subject to retaliatory trade measures at the end of a six month review period), *Priority Watch List* (subject to addition to the *Priority Foreign Countries* list after annual review), *Watch List*, *Out of Cycle Review* and *Special Mention*. The significance of Special 301 to Australian piracy issues is discussed in the response to paragraph 2(a) of the Terms of Reference.

¹⁰ *Supra*

facilitated the unauthorised copying of works, particularly across geographical and jurisdictional borders.

13. The exact volume of copyright infringement is impossible to quantify with precision, since infringers, vendors and users have little incentive to disclose records. Since copyright infringement is an illegal activity, measures of incidence of infringement include legal enforcement records; the numbers of convictions entered or orders granted for unauthorised reproduction and/or import; customs statistics for discovery of illicit product; police statistics specifying operations aimed at counterfeiting enterprises and industry estimates. Federal Court of Australia records indicate that in the years 1990-1998, the highest number of applications filed in a single year for *any* breach of the *Copyright Act 1968* (“the Act”) was 122 (in 1994)¹¹. Annual average and median number of applications for the same period are 101 and 99 respectively. The Court estimates that the majority of applications do not proceed to trial¹².
14. Thus, it can be fairly stated that the annual number of applications for copyright infringement in all areas of copyright activity - ie, film, software, sound recording and publishing inclusive – is small. In 1997-98, the Department of Public Prosecutions obtained four summary convictions for breach of the Copyright Act¹³. In 1998, the Customs Service, in actions under the Act, seized over 2000 music CDs¹⁴. These records, while they provide useful information about the policing of infringements, provide little indication of its actual extent.
15. Similarly, industry statistics on copyright infringement should be analysed with care. For example, the Price Waterhouse report released by the BSAA in 1998¹⁵, estimates the level of illicit copying of PC business software by subtracting the number of legitimate software packages sold during a given period from the total number of “packages in use” during the period. The weakness of the calculation is that while sales of legitimate product are verifiable from industry sales records, the number of packages in use cannot be measured accurately. The report can only estimate the total number of applications programs in use. Price Waterhouse qualifies its estimates as “a conservative assumption validated by market research”¹⁶, although no citation is given for the market research. Even if it were possible to estimate more accurately the number of packages in use, the estimate would rely on the assumption that the number of legitimate software packages sold represents the entirety of legitimate applications in use. Many legitimate applications in use, however, are software giveaways, supplied, for example, with computer magazines, or sold embedded in hardware.

¹¹ Documentary information supplied to the Department by the Principal Registry, Sydney, the Federal Court of Australia, on 15 February 1999

¹² Per discussions with the Court’s Assistant Director of Case Management, 15 February and 19 May 1999. The estimate was made in respect of *all* applications to the Court.

¹³ Report on the operations of the Office of the Commonwealth Director of Public Prosecutions for the year ending 30 June 1998, Table 13, p.18

¹⁴ ACS statistics supplied to the Department by the Attorney General’s Department

¹⁵ *Supra*

¹⁶ *Ibid*, p. 17

16. The OECD paper notes that the model postulated by Price Waterhouse for calculating software piracy levels is “difficult to accept”¹⁷ but notes that “the estimations by the software industry are very typical for most copyright protected industry, including the music and motion pictures.” In respect of reported levels of copyright infringement occurring in relation to Indigenous artworks, the author of the report into commercialisation of Indigenous cultural property notes that reliable statistical information is yet to be compiled¹⁸.
17. The rate of infringement of the rights of individual creators is similarly difficult to determine. Musicians choosing to promote their work directly on the Internet rather than relying on a record company may not be as aware of the threat of infringement as they could be or adopt appropriate technological protection mechanisms. Many academic authors may not be aware that their works have been used beyond their original journal purpose, or be deterred by a publisher’s assertion that all rights have been transferred as a consequence of an article being accepted for publication. While Viscopy actively monitors the art world for infringements, and brings the need to pay royalties for the use of work to the attention of infringers, there is little doubt that a large proportion of such infringements go undetected. The Department has no estimates of infringement for these individuals, or the related economic impact, if there is any.
18. The Department, while appreciating the difficulties in infringement data collection, believes that the copyright industries should be encouraged to refine their data collection processes and methodologies for determining piracy levels.

(a)(ii) the scale of infringement in Australia in comparison with countries in our region and Australia’s major trading partners

19. The Department has not undertaken any substantial research on comparative patterns of infringement between Australia and regional countries and trading partners. It is generally accepted, however, that piracy rates in Australia are comparable to those in other industrialised nations with strong legal protection regimes consistent with obligations under international treaties. Australia does have a strong legal protection regime particularly in comparison with countries in the Asia-Pacific region and, therefore, piracy rates in Australia are substantially lower than those in most countries in the region.
20. In addition, the Australian Government is particularly conscious of the need to ensure that the degree of intellectual property protection matches technological development. The *Copyright Act 1968* is currently being amended to take account of new technologies in line with the recently agreed World Intellectual Property Organisation Copyright Treaty. The new copyright protection regime will provide appropriate protection in the digital environment for creators of copyright material, and will

¹⁷ *The Economic Impact of Counterfeiting*, supra, p.28

¹⁸ See Janke, supra, p.27

simultaneously ensure that users of copyright material, such as students, continue to have the same access to material as they have in the paper-based world.

21. Australia also has a relatively formal and well-regulated retail sector, which contributes to restricting the distribution of pirate product (such as sound recordings and videos). On the other hand, the extensive take-up of new communications products and services in Australia is likely to have resulted in increased infringements through online copying.
22. In relation to a comparison of Australia and its major trading partner, hearings were held on 29 April 1999 into international piracy of US software and its impact on the US economy, before the International Economic Policy, Export and Trade Subcommittee of the US Senate Foreign Relations Committee. The Associate General Counsel of Microsoft, in response to a question from Senator Sarbanes of Maryland, said that the level of software piracy in Australia had reduced to approximately 27%, the same level said by Microsoft to prevail in the US. This statement may represent the most current view of the US industry concerning piracy rates in Australia.
23. The Australasian Film and Visual Security Office acknowledges that Australia has one of the lowest rates of film and video piracy in the world. The current proportion of pirate product is about four per cent of the total Australian market¹⁹.

(a)(iii) the geographical spread of copyright infringement in Australia

24. Without appropriate data, it is difficult to ascertain exactly where copyright infringement is concentrated. Anecdotal evidence suggests that music and software infringements occur primarily in urban areas, reflecting both larger population densities and larger networks of software and music distributors. It is probable that the Internet, by making communication for commercial purposes easier, is causing proximity to population centres to become a less significant issue to systematic copying enterprises, or to individual consumers of subject matter copied illegally.

(a)(iv) the cost of infringement and impact on Australian business

25. The Department has received representations concerning the cost to the software and music industries of copyright infringement. As noted, however, industry estimates of losses arising from piracy are difficult to substantiate.
26. The pace of technological development is driving the rethinking of business models for the copyright industries and, while their revenues and the potential for new markets are growing, the economic threat posed to them by infringement is causing major concern. The Department recognises that the copyright industries in Australia have a strong claim about the impact that infringement has and could have on levels

¹⁹ Information supplied to the Department verbally by Stephen Howes, Director, Australasian Film and Video Security Office, 30 July 1999.

of growth. Since Australia is a net importer of intellectual property, it is important that attention be paid to maintaining or creating the legal conditions that allow for domestic formation of intellectual property and thereby vitalisation of the economy. Importantly, however, the Department considers that there are a number of strategies that could be employed by the copyright industries to address infringement. These include raising the awareness of the consequences of intellectual property infringement by the copyright industries to both consumers and competitors within industry sectors and the increased adoption of intellectual property management systems.

Music

27. The domestic music industry contributes approximately \$50 million to the Australian economy per year. Sales of music in digital format have been increasing at a rapid rate over the last ten years, since the introduction of the compact disc into the market place, although in the last calendar year, CD sales appear to have plateaued, with no pick up in other formats²⁰. The industry claims that the piracy rates have shifted from around 4 % to around 7 % in the last year and has suggested that one of the reasons is directly related to the removal of parallel importation restrictions for sound recordings. The Department is not aware of any information provided by the music industry to support the contention that this particular reform to the Copyright Act is directly responsible for an increase in piracy of sound recordings. The Department considers that any increase in piracy rates over the short term can be attributed primarily to domestic copying, in particular the advent of new delivery mechanisms, MP3 technology and the increasing use of the internet.
28. The music industry also recognises the potential threat to the sector from new technologies and is addressing the unauthorised copying of music through the Secure Digital Music Initiative, supported by publishers, record companies, hardware manufacturers and distributors. This standard, or set of specifications, seeks to provide easy access to legitimate recordings through a number of mechanisms including watermarking technology and the development of portable players for the consumer market as part of a strategy which provides music consumers with an alternative to the products already available on the market for downloading pirate recordings. The music industry in Australia is dominated by a number of large foreign owned record companies and over a thousand smaller independent record labels. Increasingly, these smaller artists are bypassing the traditional distribution infrastructure and are marketing their product directly on the internet.
29. It is not clear what impact piracy might have on this section of the industry, given that the most pirated recordings are often the most popular and the artists that generate these recordings are usually contracted to record companies. The music industry's claimed piracy rate is much lower than that claimed by the software industry. This is despite the many ways in which the music industry generates revenue from the sale of

²⁰ Australian Record Industry Association statistics for sales at wholesale value to the year ending 31 December 1998 provided to the Department.

its product, that is, through sound tracks for film and video, sheet publishing, performing, CD sales etc, all of which could be threatened by modern copying technology. Price may also be a reason for this, providing less of an incentive to copy; the average price for a full length CD sound recording is considerably cheaper than a software program.

30. Unlike the software industry, the music industry in Australia has not yet focussed its attention in any significant way on educating its consumers about the pitfalls of copyright infringement, either of the economic consequences for artists of piracy, or of the problems associated with purchasing potentially inferior product.

Software

31. The software industry in Australia is large, and growing faster than other segments of the information technology market. The report *Stocktake of Australia's Information Industries*, produced for the Department of Industry, Science and Resources in 1998, notes that revenue from Australian produced software for 1995/96 was \$821.4 million and that the total value of the Australian software market is forecast to grow annually at an average of 14.5 per cent to 2001. Imports of packaged software in 1995/96 were \$431.4 million which was over four times the level of exports at \$99.6 million. Unlike the music industry, the software industry is reliant on a small number of revenue streams for product distribution, for example, licensing.
32. This suggests that copyright infringement is likely to have a different impact on revenue streams as there are fewer fall back revenue streams to rely on while dealing with an infringement issue. This is particularly the case for smaller software development companies. Software, like music, is increasingly being sold and delivered on the Internet. The market for packaged software, however, is still larger than digitally delivered software and this is unlikely to change until access to the Internet and confidence in online purchasing among consumers increases. The Australian government is committed to encouraging the development of the Australian software industry as part of the information industries and has recognised this as a key priority under the Information Industries Action Agenda²¹. The Government's Information Technology Outsourcing Program is also designed to encourage industry development in this sector.

Film

33. Australia is overwhelmingly an importer of film and video products. In 1997, total box office was \$584 million, of which five per cent of gross was generated by Australian films. Australia earned \$19 million in royalties from the export of cinema features and paid \$87 million for imports.²² Australia's film and video industry operates at a loss. However, the rate of loss fell from an operating profit margin of -

²¹ The Prime Minister's December 1997 statement, *Investing for Growth*.

²² Australian Film Commission, *Get the Picture: Essential data on Australian film, television, video and new media* (5th Edition), Australian Film Commission, Sydney, 1998, p.2-3.

21 per cent in the 1993/94 financial year to -6.1 per cent in 1996/97.²³ Video distributors earned \$192 million in wholesale revenue from sell-through titles, demand for which had doubled in five years, and \$208 million from rental titles, demand for which is decreasing. The net effect of this has been an increase in the volume of videos sold, but a decrease in the total income generated from video distribution. Australia earned around \$10 million in royalties from exportation and spent \$120 million on importation of Video Cassettes.²⁴

34. The Australasian Film and Visual Security Office (AFVSO) claims that in the 1980s evidence existed of organised criminal pirating of videos in Australia and estimates that, in 1986, 25 per cent of the film and video market consisted of pirate product.²⁵ For the last four or five years this rate has rested at about three per cent with the exception of the last 12 to 18 months, during which time the proportion of video material available as pirated product has risen to four per cent and is continuing to rise.²⁶ AFVSO claims that this proportion of the market equates to approximately \$25 million in foregone revenue and suggest that the cause of this recent rise is the increasing availability of illegal Video Compact Discs (VCDs) and Digital Video Discs (DVDs), most of which are imported from overseas.²⁷
35. Hoskins, McFadyen and Finn predict that digital technologies will lead to an increase in piracy due to both the elimination of the physical deterioration traditionally caused by successive copies being made and the ability to distribute material via the global network.²⁸ AFVSO suggests that counterfeit DVDs, which are predominantly produced in China, are extremely difficult to distinguish from legitimate product and will increasingly pose a threat to the video industry. A further issue with the transfer of market demand for video cassettes to DVDs resides in the difference between the cost of the initial product and the marginal cost of additional units. It is more expensive to produce a master copy of a DVD and less expensive to produce copies than is the case in the production of video cassettes.²⁹ This might mean that a greater gap would exist between the price of pirate and legitimate DVDs than has been the case with video cassettes. Currently the cost of DVDs purchased from the US over the Internet is, in most cases, the same if not more than the price of a retail purchase in Australia, excluding the cost of shipping.
36. In the Australian film industry problems with copyright infringement currently have a negligible influence on the box office, despite isolated instances of unauthorised video products being released before both the cinematic or video release of films for

²³ Ibid, p.60

²⁴ Ibid, p.178

²⁵ Howes, supra.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Colin Hoskins, Stuart McFadyen and Adam Finn, A., *Global Television and Film: An Introduction to the Economics of the Business*, Clarendon Press, Oxford, 1997, p.142.

²⁹ Australian Film Commission, supra, p.180.

which there is a high level of anticipation or popularity.³⁰ If Australian films gain greater prominence within the film industry as a whole, demand for pirate product might increase due to the fact that a film's publicity and success are directly linked to the demand for pirate products. Certainly, 'blockbuster' films, which are largely produced in the USA, are subject to the highest levels of piracy and it might be assumed that any increase in the success of Australian films would therefore result in their being subject to greater levels of copyright infringement.

37. When the release date of a film is delayed in one country, the demand for pirate copies of the film has the potential to increase.³¹ The Department considers that the impact that illicit copies might make on the film industry, as opposed to the video industry, however, is fairly minimal for two reasons: firstly because the demand for video products is not motivated by the same factors as the demand for cinematic screenings;³² and secondly, because Australian films will probably continue to appeal primarily to niche markets and, hence, may not attract the problems of US-style product.³³
38. The Department is unaware of any significant effort by the film industry to educate consumers about the impact of copyright infringement on the film industry, particularly with regard to the impact of new technologies, such as DVD. DVDs available for rent through video rental outlets do not currently contain the pirate copy warning messages seen on rental videos for some decades. However, the industry has developed a technological protection measure incorporated in the DVD players, which attempts to address piracy. The world market for players has been divided into zones, with the result being that Australian consumers can not play a DVD in Australia that was purchased in Hong Kong, for example on the players available in Australian retail outlets. Methods of bypassing the technological protection measures are now available, however, with the main distribution mechanism being the Internet. Anecdotal evidence suggests that DVD piracy in Australia is not prevalent, but may

³⁰ See for example Al Clark, *The Lavender bus: how a hit movie was made and sold*, Currency Press, Sydney, 1998, p.170-171, who suggests that pirate videos of *The Adventures of Priscilla, Queen of the Desert* (1993) were shown to gatherings of varying size, with some such screenings including an admission fee.

³¹ A very recent example of pirate video appearing in Australia before the release of a film occurred with *Star Wars: the Phantom Menace* (1999). Such illicit copies were made via the use of video cameras during cinema screenings in countries where the film had already been released. It is not clear whether this kind of piracy detracts from box office in any substantial sense because the pirated copies are poor, publicity of piracy activities may actually add to the general anticipatory mood surrounding the release of the film and video consumption patterns are different from cinematic film consumption patterns: ie, viewer preferences of video audiences differ from those of cinema audiences

³² The Australian Film Commission, *supra*, p.179, suggests that many in the industry see video and cinema consumption as separate non-competing activities. New technologies might have an impact, other than their use for pirated products, if lifestyle patterns are to change to the extent that cinema attendance decreases significantly.

³³ David Gonski, *Review of Commonwealth Assistance to the Film Industry*, Australian Government Publishing Service, Canberra, 1997, p.15, suggests that the Australian film industry cannot compete by producing US-style product, but should continue to produce a 'niche-product' in its pursuit of a secure market.

become so as the cost of the hardware decreases,³⁴ especially if the range of titles able to be legally imported is limited by zoning or other considerations.

Education and Awareness

39. The Department considers that copyright owners have a responsibility to protect their product and that significant steps have been taken to address this issue in the past, particularly by associations representing copyright industries. The Department considers that in many cases preventative action is the most appropriate protection against infringement. Most Australian copyright creators are either individuals or small to medium sized enterprises, and it is important to understand and respond to their needs.
40. This could be achieved in a variety of ways, including public awareness campaigns, the adoption of encryption technologies (supported by the appropriate legislative environment such as the provisions relating to circumvention of technological protection measures proposed in the *Copyright Amendment (Digital Agenda) Bill 1999*), the adoption of intellectual property management strategies, including implementing internal security procedures and innovative marketing. The BSA has adopted an aggressive approach to software piracy, with the establishment of an anti-piracy hotline for consumers, and a website monitoring strategy, which identifies websites containing infringing material. The Department recognises that while copyright owners and investors share responsibility for reducing or restraining infringement activities, a statutory safety net is an important element. In direct response to the potential impact of new delivery mechanisms, the *Copyright Amendment (Digital Agenda) Bill 1999* includes provisions which will clarify the liability of Internet service providers with regard to infringing material accessed via their networks.
41. The copyright industries are taking positive steps towards fostering greater public appreciation of the objectives of copyright law, that is, to create the legal environment which appropriately remunerates creators for their endeavours while at the same time, providing appropriate access for copyright users. The Government is also taking steps in this regard. The *Copyright Amendment (Digital Agenda) Bill 1999* was drafted with the express intention that it should strike an appropriate balance between private interest and public access, and implements obligations arising from the *WIPO Copyright Treaty* agreed by members of the World Intellectual Property Organisation (WIPO) at Geneva in 1996.
42. Individuals themselves, as primary rights holders should be encouraged to increase their awareness of intellectual property issues and how the relationship between new technologies and copyright infringement could have an impact on their revenue streams. The Department has found, for example, that it is not unusual for art museums and galleries, in an effort to capture the advertising and promotional value

³⁴ Anecdotal evidence from a video rental outlet.

of the Internet, to post works on websites, without appropriate permission or digital protection mechanisms.

(a)(v) whether there is evidence of the involvement of organised crime groups in copyright infringement in Australia, and if so, to what extent

43. The Department has received representations from the music industry which refer to the alleged involvement of organised crime in copyright infringement but is not aware of any specific cases³⁵. Consultation with the Customs Service and Attorney General's Department suggests that the involvement of organised crime in copyright infringement in Australia is rare.

(a)(vi) likely future trends in the scale and nature of copyright infringement

44. Technology allowing digital transmission of information makes redundant much of the physical media and process at present necessary in the copying of information. Accordingly, copying of material and distribution of the copies becomes easier. Technology development, on the other hand, such as software locks, can allow for increased protection of copyright material in the digital environment, while still allowing appropriate access under fair dealing. The Department encourages industry research into development of technology that protects commercially valuable material.

45. The music industry recognises that wide scale piracy will be the norm, rather than the exception if it does not act to provide consumers with a viable alternative. The Secure Digital Music Initiative, currently in Phase I, is attempting to address the music industry's fears of wide scale piracy. Its central aim appears to be to provide consumers with a viable, inexpensive alternative to the mechanisms which now exist to download and play pirated music from the Internet.

46. It is likely that copyright material which can be digitised will be made widely available to consumers in different ways and with a greater variety of pricing structures. Copyright creators are becoming increasingly aware of the potential new market spaces in which they can trade their works and are currently endeavouring to determine the appropriate business models to complement these spaces. There is currently a growth in research activity in the area of electronic rights management systems, with a number of trials and pilots taking place within Australia and overseas.

(b) options for copyright owners to protect their copyright against infringement, including:

(i) actions and expenditure undertaken, and that could be undertaken, by copyright owners to defend their copyright

³⁵ For example, submission of MIPI to the Department of Communications and the Arts, 16 October 1996, p.2.

47. The copyright industries, the music and software industries in particular, devote considerable energy and investment to combating piracy. Retail inspection, liaison with overseas counterparts to track the source of product, participation in government forums, educational promotions, legal action and intelligence gathering, including such initiatives as the Microsoft anti-piracy hotline, are all aspects of their approach to dealing with the problem. The industries believe that the procedural and evidentiary requirements of the Act impose unnecessary and counterproductive hardship, although it is worth noting that evidentiary requirements in both civil and criminal law generally are framed to impose exacting standards of proof.
48. Again, the Department considers that the copyright industries should be encouraged to continue undertaking positive strategies seeking to prevent infringing activity rather than relying on legal deterrence such as focussing on price, availability of product, technological and distribution innovation (including protective technology measures, and developing new “piracy-proof” ways of attracting consumers). The Department notes the considerable efforts made by the software and music industries to date in this regard.
49. The film and video industry makes security measures a high priority as it needs to maintain the confidence of distributors and licensees. Films that attract a high level of publicity before being released require strict security in the post-production phase, as copyright owners risk having reels stolen to be used for unauthorised video production.³⁶
50. Similar concerns about infringement of the rights of holders of artistic rights and the high costs for individuals to take legal action against alleged infringers led to the formation, with Government support, of Viscopy. The 1994 report *Review of Australian Copyright Collecting Societies* recommended the establishment of a visual arts collecting society for much the same reasons. The report concluded that in an age of mass reproduction it was not only inefficient, but also practically impossible for artists to administer the full extent of their rights without the benefits of collective administration. Viscopy’s existence since mid 1995 has helped to reduce the number of flagrant infringements in the artistic field; however, considerable work remains to be done in this regard.
51. Government support for the establishment of Viscopy as a copyright collecting society to represent the interests of holders of artistic rights reflects the perception that individual rights holders can do little, and collective action is necessary to enforce copyright. The Government is currently developing a response to the report *A Review of Australian Copyright Collecting Societies* which will seek to ensure that the collecting societies are in the best position to defend their members interests. It should be noted, however, that many individual copyright holders are not members of collecting societies, which may in part reflect a lack of understanding of the significance copyright issues and the structure of the industry. In some cases (for

³⁶ Clark, *supra*, p.171.

instance in relation to books) corporate copyright holders have comprehensive collecting society membership while individuals are under-represented.

52. The activities of the copyright industries in protecting the rights of copyright creators, including significant investment in anti-piracy strategies, clearly demonstrate that while legal regimes underpin the contribution of cultural creativity to the economy, preventing infringement in the first instance is also vital.

Need for Government and Industry Initiative

53. The Productivity Commission has estimated that the contribution of copyright protected industries to the economy is at least as important as patents³⁷. Including the software industry, the growth of value added in copyright industries averaged 4.3 per cent a year between 1985-86 and 1992-93. The share of copyright content in 1996-97 indicates that the copyright content for domestic sales and trade as a share of GDP is considerably higher than the corresponding patent content. The difference is particularly large in domestic sale sourced from local production. While the value added of copyright industries (excluding advertising) is estimated to be 2.4 per cent of GDP in 1996-97, total expenditure on BERD³⁸ (excluding software and R&D in services), from which the patent content estimates are derived, amounted to only 0.6 per cent of GDP in that year. For the year 1996-97, total copyright exports contributed \$1240 million to the Australian economy³⁹.
54. These figures indicate the growing significance of the content industries in Australia and point to the need for both industry and government to focus on ways to maximise the contribution of these industries to the Australian economy. This, in part, means recognising the impact of copyright infringement by establishing new strategies to counter its potential threat to the economy.
55. Acknowledging that copyright legislation is frequently flouted and not often understood, the UK Government has recently created a high level group designed to raise the awareness of copyright in the community. This group works to the Creative Industries Task Force and will focus on increasing understanding of the benefits to the economy of the copyright industries. The Department suggests that such an initiative might be appropriate in Australia.
56. This would involve the creation of a joint industry and government body, consisting of representatives from the copyright industries and government, to increase public understanding of copyright and to explore the ways in which maximum economic benefit from the copyright industries can be gained. The body would focus on ways of improving public perception of copyright and related rights. This is particularly

³⁷ Trade Related Aspects of Intellectual Property Rights, Staff Research Paper, Productivity Commission, May 1999.

³⁸ Business Expenditure on Research and Development

³⁹ Trade Related Aspects of Intellectual Property, Staff Research Paper, Productivity Commission, My 1999, page 126.

important in the information age where access to information, especially via the Internet, has a dual role: the potential to both benefit society and to undermine the legitimate markets of copyright owners. The Department considers that copyright laws have far reaching effects across industry, educational sectors and government, yet copyright is poorly understood by both business and the community at large.

(ii) use of existing provisions of the Act

57. Part V of the Act sets out remedies for infringement of copyright, including injunction, damages and account of profits and forfeiture. The Department has limited knowledge of the number of actions undertaken individually by complainant companies or individuals, although Federal Court statistics already noted demonstrate that the aggregate number of actions is small.

(iii) use of legislative provisions other than those of the Act

58. Owners of some copyright material can undertake actions under the *Trade Practices Act 1974* for false, misleading or deceptive conduct or representations, or for the common law tort of passing off, dealt with within the original jurisdictions of the Federal and High Courts. Passing off actions are primarily concerned with infringement of trademarks, which are usually dealt with under the *Trade Marks Act 1955*. The owner of copyright in artistic works may also undertake some actions under the *Designs Act 1906*. The Department considers that these additional mechanisms for protecting legitimate markets are under-utilised by individual copyright owners, perhaps due to a lack of awareness and the costs involved in bringing legal action, particularly for smaller companies or individuals.

59. The Department recognises the relationship between trade mark protection and efforts to ensure that Indigenous artists are recognised and remunerated for their creative endeavours. The Government is currently involved in assisting with the development of an “Authenticity Label” for Indigenous creators which is based on trade mark protection principles.

60. Copyright creators can currently initiate defamation suits under the common law with regard to derogatory treatment of their works. The Government recognises the precedents being set internationally with regard to codifying moral rights in other common law jurisdictions and Australia’s major trading partners and has made a commitment to amend the Copyright Act to introduce moral rights protection for creators in line with the World Intellectual Property Organisation (WIPO) Copyright Treaty and related provisions of the Berne Convention for the Protection of Literary and Artistic Works. The introduction of moral rights legislation, as foreshadowed by the Government, should reduce the reliance on the *Trade Practices Act*, for example, with regard to actions for misleading conduct, or the tort of passing off. Creators will then be able to bring an action from infringement of their new moral rights to be acknowledged as the creator of a work and/or to object to the derogatory treatment of a work.

technological or other non-legislative measures for copyright protection

61. Technology can be utilised to assist identification of counterfeit goods by product-branding, or to prevent or restrict access to the intellectual property in goods, thereby making duplication difficult or impossible. Examples of product-branding include holograms, retro-reflections and filmic veneers. These technological protection measures, however, can be easily replicated after a relatively short period of time and it appears that copyright industries are constantly researching new ways of product branding to keep ahead of copyright infringers. Examples of access restriction include electronic encryption, embedded computer chips and hardware key-locks. The music industry, in conjunction with hardware manufacturers, is currently developing the Secure Digital Music Initiative as an attempt to control piracy.
62. Other measures for protection involve co-operation between public and private bodies, a means of rights enforcement encouraged by the intellectual property division of the World Trade Organisation. The World Customs Organisation (WCO) in 1995 adopted model legislation as a reference for development by member states of national legislation providing for concerted action between copyright owners, customs bodies and distributors. It is significant, however, that the WCO states that copyright owners carry the primary responsibility for enforcement of intellectual property rights⁴⁰.
63. The Department considers that awareness raising and cooperative and informed intellectual property management is at least as effective in protecting against copyright infringement as legal remedies. In collaboration with Cinemedia, the Department has funded the Performing Arts Multimedia Library (PAML) project to explore the challenges for performing arts companies in managing their intellectual property in a digital environment.
64. A major objective of the PAML project is to explore the legal issues surrounding the production and distribution of digital products. Exploring models for effective management of intellectual property in the performing arts, visual arts and other areas of creativity has provided an opportunity for the partners in this project to develop and disseminate the experiences of the participating companies in intellectual property management.
65. The *Copyright Amendment (Digital Agenda) Bill 1999* contains new enforcement measures to take account of new technologies, including prohibition of commercial dealing in encryption circumvention devices and sanctions against tampering with rights management information attached to copyright material.
66. While there is scope to use technology to reduce the incidence of infringement of copyright of various forms, such a solution is available only to a restricted set of copyright holders – those who have the financial and technical resources to

⁴⁰ OECD report, *The Economic Impact of Counterfeiting*, supra, p.34.

successfully develop, acquire and apply such measures. Such an approach offers little comfort for individual creators.

(c) the adequacy of criminal sanctions and desirability of amending the law

67. The software and music industries, and to a lesser extent, film industry and broadcasters, have argued that criminal sanctions in Australia are not sufficiently enforced, or broad enough, to deter infringement. Concerning broadcasters, the Department has noted that unauthorised decryption of broadcast material may be a looming problem and accordingly, the *Copyright Amendment (Digital Agenda) Bill 1999* provides civil and criminal remedies for the commercial dealing in decryption devices, including devices to decode encrypted broadcasts.

68. The issue of criminal penalties and enforcement is of major importance. The focus of criminal law enforcement should be consistent with public expectations concerning allocation of resources.

(d) the adequacy of civil actions in protecting the interests of plaintiffs and defendants in actions for copyright infringement

69. The maximum monetary penalty for a single criminal infringement by an individual under the Copyright Act is \$60,500 and by a corporation \$302,500 and, prima facie, these amounts suggest a considerable deterrent to prospective infringers. The general rule in civil damages awards is to recompense the complainant for quantifiable loss decided by the judge. The copyright industries have argued that the evidentiary requirements for establishing breach of copyright, including the establishment of subsistence of copyright, are too onerous to be effective and that judges are too lenient in exercising their discretion to impose damages⁴¹.

70. In the case of imported sound recordings and embodied underlying works, the Copyright Act has, through the *Copyright Amendment (No. 2) Act 1998*, provided that in an action for infringement, the copyright material is presumed to be infringing material unless the defendant proves otherwise. This provision places on the defendant the burden of proving that infringement has not occurred, substantially easing the evidentiary burden of which the industries complain. This is particularly so in that the standard of proof in such a civil action is merely on the balance of probabilities, rather than beyond reasonable doubt.

71. The changes in regard to imported infringing sound recordings were made as part of the repeal of restrictions on the parallel importation of sound recordings, and were a considered response to the arguments of the music industry that repeal could have the effect of increasing the quantity of infringing material imported into Australia. But the general question of whether a changed onus of proof is appropriate for all other categories of protection, as defined by the Copyright Act, has not been considered by

⁴¹ See, for example, the IIPA report on Australia, an attachment to its *Special 301 Recommendations* submission of 15 February 1999, available on the IIPA website.

the Government. Any proposal to ease evidentiary requirements placed on plaintiffs should be subject to rigorous examination.

72. Evidence from the copyright industries of procedural impediments to the effective protection of the economic and moral rights recognised in copyright should be viewed seriously. The context in which the relevant statutory regime operates should be carefully identified – it is certainly possible that legal action under the Act is both too costly and slow for a large number of copyright owners, particularly individuals or smaller companies.
73. The Department is not confident that sufficient justification exists for amendment of the Copyright Act to allow for the more stringent measures that have been suggested in the past, such as compulsory grant of ex parte search orders on fulfilment of certain conditions, or provision for statutory damages.
74. The reliance on evidence to establish a breach of the law does impose a burden on complainants. Any proposed change to rules of evidence, however, requires careful consideration of whether the amendments will create a legal environment that could be used by copyright owners to unfairly intimidate legitimate operators in the distribution sector. In the case of copyright owners with the resources to investigate the most remote cases of possible copyright infringement, statutory damages and compulsory search orders might create a legal environment that is easily abused by copyright owners, but it is certainly important that the needs of copyright owners with few resources should be canvassed. Further research to ascertain the views of smaller enterprises and individual owners is warranted.

(e) the desirability of amending the law to provide further assistance to copyright owners for actions for infringement

75. Industry proposals concerning procedural or evidentiary amendment include, for criminal prosecutions, requiring the prosecution to prove only subsistence of copyright, after which the defendant is obliged to prove licence to produce or distribute, or, alternatively, reducing the standard of proof in establishing the case from beyond reasonable doubt to balance of probabilities. Another proposal is to extend the scope of the criminal provisions of the Copyright Act - which at present tie infringement (other than infringement by public performance) to commercial infringement – to non-commercial infringement, such as end-user copying. For civil actions, suggestions include imposition of product labelling requirements consistent with industry standards, removal of the requirement that a defendant must have knowledge that product imported or dealt with commercially is infringing product, and placing on defendants, by various mechanisms, greater responsibility for establishing that product is legitimate.
76. The IIPA recently recommended in a submission to the US Trade Representative (USTR) that Australia be monitored for breach of intellectual property trade obligations. According to the IIPA, “the Australian provisions [in the Copyright Act]

with regard to evidentiary proof of copyright ownership must be eased to reasonable (and TRIPs compatible) levels ...” . However, as noted in the Department’s comments on TRIPs below, Australia’s intellectual property regime is consistent with its international treaty obligations, including the enforcement provisions of TRIPs.

77. The Department is not opposed to changes which expedite the process, and reduce costs, of litigation, provided that the changes do not compromise legitimate public expectations concerning privacy and due process. The Department considers there is merit in considering whether knowledge requirements might be eased, industry-consistent labelling standards introduced, or a defendant should be required to give reasonable grounds of doubt concerning the subsistence of copyright or a plaintiff’s title to copyright material.
78. The Department considers that implementing internal and external intellectual property management strategies could assist the copyright industries in easing the evidentiary burden imposed on them by the legal system. Significant cost efficiencies can be gained by monitoring more carefully intellectual property transactions, storage and delivery. The Government has recently introduced legislation that reverses the onus of proof in relation to sound recordings, i.e. to place on a defendant in any civil proceedings the burden of establishing that products which they have imported were legitimately produced in the place they were made. In principle, there is no reason why this approach could not be considered in relation to other sections of the Act where appropriate.

(f) the effectiveness of provisions for border seizure

79. The issues in relation to border seizure appear to relate fundamentally to allocation of resources rather than the effectiveness of legislative provisions. Again, it should be noted that the advent of new delivery mechanisms is likely to have an impact on the amount of product that enters Australia through traditional borders.
80. The Australasian Film and Visual Security Office suggest that VCDs are currently illegally passing through customs as they are not declared as video products but instead are declared as musical Compact Discs.⁴² VCD technology is a predecessor to DVD technology. VCDs not only can be played on VCD players, which are relatively rare outside Asia, but also can be played in the CD-ROM drive of a personal computer and in many DVD players, which are gaining increasing popularity in Australia.

(g) the effectiveness of existing institutional arrangements and guidelines for the enforcement of copyright

81. At present, legal enforcement records do not reveal a high incidence of civil or criminal offence, but levels of infringement are probably much higher than court records suggest for a number of reasons. Industry or individuals bear the cost of

⁴² Howes, *supra*.

proceedings under a civil action. Often, the cost of legal action is prohibitive. In criminal cases, both the Government, through its law enforcement agencies and industry bear the cost of legal action.

82. A valid complaint of copyright industries is that knowledge of the content of intellectual property law, and the economic importance to Australia of effective intellectual property protection, is sometimes limited – in the private sector as well as public. Whether it follows, however, that Commonwealth law enforcement agencies do not accord sufficient priority to copyright matters is not by any means certain as resource prioritisation is a complex area.

83. Given anecdotal evidence of widespread infringement of the copyrights of individual authors and visual artists, it could be argued that the focus of attention on manufactured products, such as sound recordings and computer programs is unbalanced. A diversion of some of the current effort put into policy infringements of these items would hold the potential to significantly reduce returns to individual authors and artists.

2)

(a) Australia's obligations under relevant international treaties, in particular the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs)

84. TRIPS requires that parties comply with the chief obligations of the main conventions of WIPO: the Paris Convention for the Protection of Industrial Property (Paris Convention, in relation to patents and trademarks) and the Berne Convention.

85. The main difference between TRIPS and other intellectual property treaties is that failure to comply with this Treaty can lead to normal WTO trade sanctions. This means that a nation which does not fulfil its obligations with respect to copyright protection could face sanctions with respect to other trading. Australia's enforcement regime is compliant with TRIPS.

86. Australia imports substantially more intellectual property than it exports⁴³. Given the significant contribution of the copyright industries to the economy, the Government considers that international agreements which enable Australian exports to compete effectively in global markets are conducive to the growth of these industry sectors in Australia. Greater uniformity in international regulations and consistent application and enforcement of rules, by strengthening the predictability of the international trade environment, encourages free trade, investment and innovation.

87. Australia's intellectual property regime is consistent with its international treaty obligations, including the enforcement provisions of TRIPs. The government is

⁴³ See, for example, Australian Bureau of Statistics, *Balance of Payments and International Investment Position, Australia, 1994-95* (5363.0) and *Australia's Balance of Trade in Culture*, Cultural Ministers Council Statistics Working Group (prepared by ABS), December 1996

committed to ensuring that Australia's intellectual property regime continues to meet international best practice standards. In the *Copyright Amendment (No. 2) Act 1998*, the Government increased penalties for criminal breach of the Act.

88. The *Copyright Amendment (Digital Agenda) Bill*, introduced into the House of Representatives on 2 September 1999, is consistent with the new international standards set out in the *WIPO Copyright Treaty* and the *WIPO Performances and Phonograms Treaty* agreed by members of the World Intellectual Property Organisation (WIPO) at Geneva in 1996. The Bill amends the Copyright Act to take account of new technologies. The principal way in which the Bill takes account of the digital environment and new technologies is by granting copyright owners a new technology-neutral right of communication to the public. This new right will ensure that copyright creators and owners will be able to receive remuneration from uses of their material in broadcasts, on cable TV and on the Internet as well as through communication technologies that have not yet been developed. Civil and criminal remedies are also introduced for the commercial dealing in decoding devices.

(b) the provisions of the Copyright Act 1968 and any amendments to that Act that have been introduced or have been publicly proposed by the Government, to be introduced into Parliament

89. In 1998, the Government amended the Act to permit parallel importation of sound recordings. To date, the reform has contributed to reductions in the price of many top-selling CDs. The music industry has not been able to demonstrate that there is a link between the alleged increase in piracy and the removal of the importation restrictions.

90. The *Copyright Amendment (Computer Programs) Act* permitting decompilation of software and hardware in limited circumstances received Royal Assent on 24 August 1999. It will commence shortly. This legislation, which allows exceptions to copyright infringement, was carefully drafted to ensure that the appropriate balance between the needs of users and creators of copyright material is maintained, while allowing Australian software developers access to the same tools many of their overseas competitors have and boosting the development of the information economy generally. The exceptions will allow decompilation to be performed for the purposes of making interoperable software, to correct errors, including the Y2K computer date problem and to test the security of information systems. To ensure that the amendments do not impinge on the right of copyright owners to exploit their legitimate markets and to address industry concerns regarding piracy, information derived from decompilation cannot be communicated to others other than for the purposes outlined in the Copyright Act.

91. The *Copyright Amendment (Digital Agenda) Bill 1999* was introduced into the House of Representatives on 2 September 1999. These important reforms will give copyright owners much greater capacity to commercially exploit their copyright materials in the online environment. They will receive a new technology-neutral right of communication to the public. Civil and criminal remedies have been

- introduced to protect technological protection measures (such as software locks) which are designed to enable copyright owners to enforce their rights themselves.
92. In addition, the new enforcement regime provides both civil remedies and criminal sanctions against the intentional removal or alteration of electronic rights management information (or RMI), such as digital watermarks. The Bill also proscribes certain activities in relation to copyright material from which the attached RMI has been removed or altered. Also, the new enforcement regime provides both civil remedies and criminal sanctions against the manufacture and dealing in devices for the unauthorised reception of encoded subscription broadcasts. Such devices include decoders that allow the unauthorised reception of pay TV signals.
93. Appropriate exceptions for copyright users, including large institutional users such as libraries, museums, galleries and educational institutions will also be introduced. These will allow electronic reproductions and transmission to be made for purposes such as research and study in certain limited circumstances. The Copyright Act will also be amended to clarify carrier and ISP liability for copyright infringements on-line in order to create a workable legal regime which will encourage the growth of on-line activity, including electronic commerce.
94. The reforms are consistent with new international standards to improve copyright protection in the online environment adopted in the 1996 World Intellectual Property Organisation (WIPO) Copyright Treaty and WIPO Performances and Phonograms Treaty. The enactment of this Bill will be a major step towards aligning Australia's copyright laws with the standards imposed by the treaties.

Conclusion

95. The Department recognises that pirate activity has the potential to threaten some of the most important contributors to the economy and society in Australia. The economic importance of ensuring that the legal system allows for protection and enforcement of proprietary rights should not be underestimated. Without an effective regime of proprietary rights, the incentive to engage in creative activity decreases. Copyright infringement, if unchecked, has the potential to cause serious economic harm as well as impinging upon the rights of the copyright owner. This is increasingly being recognised internationally, both in non-government organisations and within government, resulting in the establishment of expert groups to identify issues of importance to the copyright industries.
96. If the Copyright Act specifically and the enforcement regime generally are not effective in protecting the economic and equitable interests of copyright owners then, in terms of public policy, legislative or other changes are justified. The Department considers that there are cost efficiencies in addressing the issue of infringement before it occurs rather than relying on the enforcement regime to address infringement after it has occurred. A greater understanding in the community of intellectual property, its significance in the economy and the value of the copyright industries is necessary if copyright is to be respected. Raising awareness of intellectual property as a preventive mechanism is likely to have greater benefit for

individual creators, the majority of which would find litigation through the enforcement route prohibitively expensive.

97. The meaning of intellectual property and the provisions of copyright law are not well understood either by individual creators or within the community. Many creators do not have the knowledge or skills to manage their intellectual property. Infringements often flow from an inadequate knowledge of the law. Even large institutions (such as universities) which are major users of intellectual property sometimes have no policies or management guidelines in place to assist employees who may be unintentionally infringing copyright material. Better education of both creators and users of copyright material about intellectual property rights and their management is essential to reducing infringement.
98. The Department considers that an understanding of the concept of intellectual property and awareness of copyright issues in the community are so low that there is much to be gained from encouraging programs and activities to increase levels of awareness in the community. One of the ways in which this might be achieved in the public and private sectors is to include intellectual property management practices as part of core business. Understanding how intellectual property is valued, how it is stored, how it is protected and what its relationship is to the other activities in an organisation would assist in raising awareness.
99. Drawing on the points outlined in the body of the submission and conclusion, the Committee might give consideration to the following suggestions:

In recognition of the contribution to the economy and social fabric of Australia, and the potential for increased contribution as new markets are explored with the use of new technologies, a body be established, a Copyright Task Force, committed to raising the awareness of copyright and related rights in Australia, with a focus on encouraging good intellectual property management and preventing infringement. This body would draw upon the expertise of Australia's content industries including the film, music, publishing, broadcasting, software, television, and art industries, as well as consumer groups, educational institutions, libraries and government to :

- identify strategies to increase more effective management of intellectual property; and
- identify strategies to increase public perception and respect of copyright and related rights.

In recognition of the lack of reliable data of copyright infringement in Australia, that the Copyright Task Force conduct a study that would:

- measure the scale of copyright infringement in Australia;
- measure the extent of actual economic loss caused to copyright industries by copyright infringement, including the potential impact of new technologies; and

- identify the factors contributing to the viability of copyright industries in Australia and their contribution to the economy.