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The Secretary
House of Representatives Standing Committee on Legal and Constitutional Affairs
Parliament House
CANBERRA ACT 2600

Re: Inquiry into Copyright Law: Digital Agenda Bill

Dear Sir/Ms,

I would like to make several comments on the proposed Digital Agenda Bill. I make these comments as an individual with an interest in copyright and intellectual property matters, but also from the context of someone who has worked in educational institutions and has some interest in the issue of access to information in the digital world. I would be happy to provide further explanation on any of these matters if this was sought.

Comment on the new s.135ZMD(3)

Under the existing statutory licence, an educational institution might, for example, concurrently make copies of separate articles from a particular periodical publication, in connection with separate groups of students in different faculties or courses of study, without the person(s) who made the copies being aware of the concurrent copying elsewhere in the institution, or for another department in the institution. Each copy made from the periodical could be entirely within the limits set and for the purposes proscribed within the statute.

However, under the new s.135ZMD(3), this exception is qualified by providing that if a body administering an educational institution makes part of a work available online, that part of the work must be "taken down" before another part of the same work can be made available under this section. The explanatory memorandum notes (p. 98) that this subsection is intended to prevent the simultaneous making available online of more than one portion of the same work.

While this principle is reasonable, prima facie, it would seem to create a situation whereby the present provisions which have applied in practice in the print context **may not** transfer into the digital. The implication in the new s.135ZMD(3) appears to impose an organisational level of consciousness of the reproduction of parts of works, ignoring the reality that in a large educational institution, different faculties or departments might use parts of the same work in entirely different contexts with different groups of students, at similar or the same times. Furthermore, the making available online of more than one portion of the same work under this provision may occur at the individual Web site level for a single subject or course, and not through a central library or other information resource centre, making administration and detection from the institution's position difficult, or at least burdensome.

The Explanatory Memorandum notes the intention in the Bill, that as far as possible, 'the exceptions replicate the balance struck between the rights of owners and the rights of users that has applied in the print environment', in the context of the extension of the existing statutory licence scheme for educational institutions to permit these institutions to make electronic copies of works and to communicate them to students for educational purposes (p. 3). Some acknowledgement of this concept in recognition that the expectation of such use is in connection with a particular group

of students or those enrolled in a particular course of study, would recognise the complexities of such use within educational institutions.

A comment on the new s.49(5A)

This item (54) amends s.49 to insert a new s.49(5A) that deals with libraries or archives making material in digital format available online. While the limitation on the right of the user to communicate or make an electronic copy is understandable, and the right to make a fair dealing hard copy on the premises is reasonable, these constraints would seem to limit the use of digital material to much the same concept as that applicable to hard copy works in a collection, and not establish the legal framework lauded in the Explanatory Memorandum “to encourage online activity and the growth of the information economy”. (p. 2)

The new section would appear to enforce traditional notions of how our society deals with information resources, rather than address the new concepts emerging in information access and use which prevail within the online environment. Essentially users will still be bound to the premises of the library to effectively utilise such works rather than using the capability of the technology to access information resources in new ways. Those within society who are constrained by geography, physical impairment or other factors, and who presently have difficulty accessing such resources, will not see their access or availability improved under this proposal.

While I respect the need to limit the capacity of individuals to transmit or reproduce electronically such works in the interests of protecting the interests of rights’ owners, I am concerned that we will not have made any substantial change in our notions of access to works nor will we be maximising the potential of the technology.

Comment on item 16. Subsection 10(1)

Item 16 amends s.10(1) to insert a definition of “to the public” which will mean “to the public within or outside Australia”, thus making it clear that the term “to the public” extends to the public outside Australia.

This is a positive proposal and one I wholeheartedly support. However it leaves open the question of the copyright protection and control for Australian copyright owners in such transmissions **originating overseas** and coming **into** Australia which might conceivably contain unauthorised copies or uses of Australian copyright owners’ works.

I am not an international law expert or even a lawyer, but am concerned that an Australian organisation might create original material and post this to its Web site, which might subsequently be copied offshore and re-transmitted back into Australia in competition with the original creator’s or owner’s material. While redress might be available in the country of origination, this might prove an expensive or unworkable option for many organisations.

Some form of deeming provision which treated the transmission into Australia as if it were one originating here would seem to me to offer some protection for Australian creators and copyright owners in this context.

I thank the Committee for this opportunity to comment on the proposed legislation and trust that these comments will be of value.

Yours sincerely,

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