

Council of Australian State Libraries

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Mr Kevin Andrews MP
Chair
House of Representatives Standing
Committee on Legal and Constitutional Affairs
Parliament House
Canberra ACT 2600

Dear Mr Andrews

I write on behalf of the Council of Australian State Libraries in response to the invitation to comment on the draft legislation, the Copyright Amendment (Digital Agenda) Bill 1999.

The Council of Australian State Libraries (CASL) is the peak body representing State and Territory libraries throughout Australia. These libraries have a major responsibility for collecting the documentary heritage of their state or territory, providing quality reference and research services and assisting in the provision of public library services to the people of Australia.

CASL supports the Government's efforts to maintain a balance between the public interest in fair and reasonable access to information and the legitimate economic interests of copyright owners.

Australia's libraries play a vital role in maximising the opportunities for Australians to benefit from the information economy. Libraries facilitate the equity of access to information to support the public good and are a resource for research, which promotes the economic, social, and cultural development of the nation. CASL supports the concept of the legislation to encourage the information economy but suggests that the change to the definition of libraries, may shift the balance against the freedom of access to information.

CASL strongly endorses the submission by the Australian Libraries Copyright Committee (ALCC) made on behalf of the Australian library network.

CASL's concerns and comments on specific sections of the proposed legislation are:

Library Definition Subsection 10(1)

The changing of the definition of library which results in the exclusion of libraries in "for profit" businesses and organisations.

The change to the definition will not only affect "for profit" libraries but the whole library network to some degree. The exclusion of these libraries will directly affect the nation's interlibrary loan network by denying access to private sector libraries, through library exception provisions, to state, educational and public libraries' collections. In turn public sector libraries will not be able to access significant collections in corporate or legal libraries. For example an article in a journal held exclusively in a corporate library would no longer be available for interlibrary loan to a state or territory library for research purposes under the new legislation.

An unintentional outcome may be the transfer of interlibrary loan activity from the private and commercial sector to the public sector as researchers in the corporate sector move to using public and academic libraries to obtain their material. Corporate or legal companies may choose to disband their own libraries and use the public and academic sector thus increasing demand on already slim resources.

The exclusion of libraries operated by "for profit" organisations, such as corporations and law firms, raises the question of whether federal or state government enterprise libraries fall into the "for profit" category. For example is the EnergyAustralia library in Sydney a "for profit" library?

Library to User Copying (Section 49(5A))

CASL acknowledges that the legislation provides for library users to have online access to works acquired in electronic form and allows users to print a hardcopy of the material where that hardcopy would be covered by fair dealing. CASL suggests that this is restrictive and that users should be able to make lawful copies using both digital (eg saving to disc) and hardcopy technologies.

Library to Library Copying exception when copying from electronic source material-(Section 50(7B))

The legislation applies a different commercial availability test depending on whether the material copied is held by the library in hardcopy or electronic form. This is at odds with the statement in the outline to the bill that says, as far as possible, the exceptions should replicate the rights of owners and users in the print environment.

Electronic information products vary widely in their characteristics and some are very large databases, with many titles, frequently updated. It would be difficult in this context for the library officer to apply the commercial availability test.

Licence agreements, negotiated with the publishers of electronic information, will also have an impact on this section of the legislation. The contractual arrangements that libraries negotiate with the publishers/suppliers of electronic material should not be limited by the legislation.

Copying by libraries and archives for preservation (Section 51A)

The provision which enables libraries to digitise the copyright material in their collections for "administrative purposes" copying seems to imply that libraries may reformat fragile materials to new formats for preservation purposes but then restricts access to this material within the premises to "officers of the library".

CASL has concerns about the ambiguities in this section of the Bill. All state and territory libraries share a significant role in making Australian heritage material available to the nation. Preserving our cultural heritage, including indigenous resources, and facilitating access to original materials through preservation by digital formats is essential to all Australians. Restricting access to this preserved material to "library officers" only would be against the spirit of free and equitable access to Australia's cultural heritage.

Thank you for the opportunity to comment on the Bill. The impact of information technology on libraries has been far reaching and CASL supports the thrust of the Bill to reflect libraries' role in the provision of free and equitable access to information while confirming the interests of copyright owners.

Yours sincerely

Dagmar Schmidmaier
Chair
1 October 1999