

Educational Media Australia Pty. Ltd.

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Inquiry into Copyright Amendment (Digital Agenda) 1999

**Submission to the House of Representatives
Standing Committee on Legal and Constitutional Affairs**

We at EMA, other industry colleagues and those Australian and international producers for whom we speak, are grateful for the opportunity to make this submission and give voice to our concerns.

In summary of our submission, we believe that if the government has decided to allow educational institutions to make digital copies of our audio video products, then the right to communicate those products should only be made available to those institutions by licence direct from the copyright holder. Further, that digital copies of our product made under Part VA should be identified as such and declared to the collection society.

1. Educational Media Australia Pty. Ltd.

For over thirty years EMA has provided audio visual product from Australia and around the world to the education market in Australia. Operating both as producer and distributor, we have established strong relationships with international producers of educational resources. The product we carry is specifically designed for use by educational institutions and is generally unsuited to broader distribution.

Our marketing people regularly source new product and advise on Australian education requirements for new productions. Our reputation and credibility amongst international producers, with whom we hold many exclusive distribution contracts, is an important factor in the amount of good quality, educational audio video material made available in this country to educational institutions, from the earliest levels of schooling through to university and adult learning courses.

At present, our programs are released to educational institutions in the form of boxed video and also by means of broadcast, mainly in the ABC Schools timeslot and early morning Open Learning broadcasts, during which many of our customers avail themselves of the opportunity to make off-air copies of the transmissions.

EMA is also involved, and has been from an early stage, in trials for the development of high quality video streaming technology, particularly with regard to its deployment within educational institutions.

2. What does the Copyright Act 1968 and Copyright Amendment (Digital Agenda) Bill 1999 make available to educational institutions in terms of exceptions for audio-visual material?

Educational institutions are permitted to make a copy from a broadcast, under statutory licence, as covered in Part VA of the Act. The definition of “copy” as stated in the Act extends this permission to include the making of a digital version of a broadcast program.

The legislation does not appear to require that educational institutions identify that a digital version has been made, merely that a “copy” is declared under record-keeping or sampling conditions so that the collection society can allocate revenue according to the titles and number of copies recorded.

We understand that although educational institutions are permitted to make a digital version of our products from a broadcast, they will not be allowed to “communicate” this version without obtaining a licence from the copyright holder. We take this to mean that they could hold digital copies on CDs, DVDs, DVHS, or ZIP disks for example, and distribute these copies to staff and students for educational purposes. It appears from the legislation that they would not be allowed to store the digital version on a server connected to the Internet, make them available on-line for any purpose or transmit the copies. This would include transmission via Intranets as well as the Internet, and narrowcast transmissions.

We would like to point out that the September issue of copyright e-news from the Attorney General’s Department states the following under “Legislation Update – Copyright Amendment (Digital Agenda) Bill 1999”:

“The existing statutory licence scheme for copying by educational institutions has been extended to the reproduction and communication of copyright material in electronic form. The extended scheme for the electronic use of copyright material has been drafted broadly. The key to the new scheme is flexibility based on agreement between educational institutions and the relevant collecting societies.”

In not emphasising the distinction between statutory licence for audio-visual product under Part VA and the statutory licence as it applies to works, we feel that the government has created the possibility for some confusion, where educational institutions may believe that statutory licence for audio-visual product covers the making of digital copies of A/V broadcasts and the communication of those copies.

With regard to the Fair Dealing exception, the legislation, under fair dealing for purposes of research and study (S.103C), allows for the making of part or the whole of a copy of an audio visual item if the copy is made directly by the student for the student's private study or research, subject to the five conditions listed in S.103C (2). One of these conditions states: "the possibility of obtaining the audio-visual item within a reasonable time at an ordinary commercial price." It is not clear to us whether, if the request is made specifically for a digital copy of the program, it would satisfy the fair dealing requirements if a VHS copy were to be supplied, in the event that a digital version was not available.

3. Our Position:

Our product and the product we distribute for others, is designed specifically for educational institutions. Many of our industry colleagues are in the same position. Educational institutions are our primary market. For us, they do not represent a small percentage of a wider paying market. They are our customers. Their ongoing business assures our salaries, our employment and the provision of continuing production and distribution of specialised educational product, from Australia and around the world. It is essential for the health of the industry that adequate revenue streams be maintained for all available rights within the education market.

It is our preference, and that of many of our industry colleagues, that educational institutions should not be given the right to make digital versions of our products. We believe that these versions should only be available to our customers under licence from the copyright holder.

If the government has already deemed that educational institutions shall have the right to copy, in any format, audio-visual material from broadcast, then we are grateful for the foresight of the government in not extending the statutory licence to communication of that copy.

If educational institutions have to apply to copyright holders for a licence to communicate the digital product they have acquired, then it seems that copyright holders will thus have access to the means for ongoing commercial exploitation of their products. We ask that this situation be further clarified within the legislation; that a clear statement of the government's intent for

educational institutions to purchase from the copyright holders a licence to communicate any audio-visual digital product for which they do not hold copyright.

With 30 years of experience selling audio visual product to schools, TAFE institutions and universities throughout Australia, we are well-equipped for the provision of licences to communicate our digital product, in any circumstances under which the need for a licence may arise.

Further, we would ask that any digital copies made under the statutory licence provisions of Part VA:

- are required to be identified as such by the educational institutions making those copies and that labelling and recording requirements are fulfilled, clearly identifying any and all digital copies made;

- that AVCS amounts for digital copies are increased not only to reflect the considerably increased value of a digital product to our customers but also to provide some form of insurance for copyright holders against the severe commercial consequences of copyright infringement with a digital product.

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