

Mr Kevin Andrews, MP
Chairman
House of Representatives Standing Committee on
Legal and Constitutional Affairs
Parliament House
CANBERRA ACT 2600

Dear Mr Andrews

Copyright Amendment (Digital Agenda) Bill 1999

I write in response to the call for submissions on the *Copyright Amendment (Digital Agenda) Bill 1999*.

The State Library of New South Wales is the oldest and largest state library in Australia, tracing its origins to 1826. The Library has a collection of more than 4 million items which includes publications in all formats as well as significant collections of Australian research materials such as manuscripts, maps and pictures. Each year more than 1 million people visit our Macquarie Street site. Materials in our collection are not available for loan to readers, but must be used onsite or supplied via interlibrary loan to other libraries. Each year more than 1 million items are used in our reading rooms and over 600,000 enquiries are received in person or by telephone, fax or email. The Library provides a range of copying facilities for use by readers, including photocopiers, microfilm reader printers and printers attached to PC workstations giving access to a range of CD-ROM and other electronic information sources. About 2 million copies, or on average 2 copies per library user, are made by clients using these facilities each year.

A major role of the State Library is to provide access to information for people throughout New South Wales. The State Library works co-operatively with the New South Wales public library network to deliver information services to New South Wales citizens who live far from Sydney or who are otherwise disadvantaged in their access to library and information resources.

The State Library is a member of the Council of Australian State Libraries (CASL) and endorses its submission. We also endorse the submission by

the Australian Libraries Copyright Committee made on behalf of the Australian library system as a whole.

In general the Library welcomes the thrust of the Bill to confirm the application of fair dealing and exceptions for libraries and archives in the digital environment.

I wish to comment in more detail on three aspects of the Bill:

Scope of the library-to-library exception when copying from electronic source material (section 50 (7b))

Under this section, every request from one library to another for a copy of an item from an electronic source, no matter how small the portion requested, would require the library officer to check the commercial availability of the work.

Given the objective of the Bill is to apply the existing balance between copyright owners and users to the digital environment, a stricter commercial availability test for copying from electronic sources is at odds with this objective.

It is difficult to see how the test could be followed in practice. By what criteria could or should the library officer be satisfied – that potentially the whole work could be purchased or subscribed to by the requesting library? Electronic sources vary widely in their characteristics. Some are very large databases which are frequently updated and in which the content changes regularly. In these cases it would be difficult for a library officer to judge whether the requested item was part of a work which was commercially available.

This requirement also has potential to create administrative complexities and anomalies, for example where a work is held in both print and electronic formats. An example is a reference work, such as the *Australian Dictionary of Biography*, which has been published in both print and CD-ROM formats. A single article or extract could be supplied from the print copy, but the same text could not be supplied from the electronic version. From the point of view of the library user, the content required is identical.

The stricter commercial availability test for library to library supply from works in electronic form may also lead to inequities in access. Library users who are able to visit the State Library in person would be able to obtain copies of items under fair dealing and library to user provisions. However, those who because of their remoteness from Sydney or because of other disadvantages must use our information resources through their local public library, would not have access to the same range of information services and resources.

For these reasons, the State Library strongly recommends a quantitative test equivalent to that for print material for library-to-library copying from electronic sources.

Copying by libraries and archives for preservation, replacement and medium shifting (Section 51A)

We welcome the amendments which remove the technologically specific language, such as "microform copy", of this section and which allow online communication of preservation/replacement copies. However, we are concerned that the new "administrative purposes" provision, if narrowly interpreted, could have the effect of allowing libraries to reformat fragile materials to new formats for preservation purposes but not to use these new formats to provide access to the information.

The State Library of New South Wales is one of the Australian libraries with responsibility for survival of our cultural heritage. The Library has a significant program of reformatting fragile and at-risk materials to guarantee their long term preservation and availability. We rely on the existing preservation copying provisions to copy New South Wales newspapers, rare New South Wales serial titles and original manuscripts, maps and pictures. For example, 1500 newspaper titles, 15,000 manuscript items and 330,000 original pictures have been copied by the Library to ensure their preservation.

In our view there is a clear distinction between reproducing materials for preservation purposes to ensure continuing and long-term access to information resources and reproducing materials for the purpose of managing or administering a library or archives collection. It is important that this ambiguity in the Bill is removed.

Use of circumvention devices or services for permitted purposes (S,116A(7))

The Bill allows certain libraries, such as the State Library, to acquire circumvention devices or services where technological measures have been used to prevent the making of copies under library-to-user and library-to-library provisions (Sections 49 and 50).

As noted above, the State Library has a responsibility for preservation of cultural heritage. As information technology develops, hardware and software platforms become obsolete. In this environment of rapid technological development, there is a risk that without the ability to copy or reformat electronic resources significant aspects of our cultural heritage will be lost. We recommend that Section 51A is added to the permitted purposes to give libraries, such as the State Library, the right to acquire circumvention devices or services to make preservation copies of electronic materials in our collection.

Yours sincerely

Dagmar Schmidmaier
State Librarian & Chief Executive
29 September 1999