AV-CC

Australian Vice-Chancellors' Committee

the council of Australia's university presidents

(A.C.N. 008 502 930)

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Committee Secretary
Inquiry into the Enforcement of Copyright in Australia
House of Representatives Standing Committee on Legal and Constitutional Affairs
Parliament House
CANBERRA   ACT   2600
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Dear Sir/Madam

The Australian Vice-Chancellors' Committee (AVCC), the peak body representing the Australian universities, has prepared this submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs Inquiry into the Enforcement of Copyright in Australia, on behalf of the universities.

Please do not hesitate to contact me if you wish to discuss these issues further.

Yours sincerely

T J Mullarvey
Deputy Executive Director

ENQUIRY INTO COPYRIGHT ENFORCEMENT

AVCC response to the House of Representatives Standing Committee on Legal and Constitutional matters enquiry into issues relevant to the effective enforcement of copyright in Australia.

In preparing this response the Australian Vice-Chancellors' Committee (AVCC) has noted that the Committee's enquiry will focus on:

. evidence of the types and scale of copyright infringement in Australia;
. options for the owners to protect their copyright against infringement;
. the adequacy of criminal sanctions against copyright infringement;
. the adequacy of civil actions in protecting the competing interests of the parties to a copyright dispute;
. the desirability of amending the law to provide further assistance to copyright owners;
. the effectiveness of legal provisions for border seizure; and
. the effectiveness of existing institutional measures for the enforcement of copyright.

Not all of these matters are of relevance to the university system. This submission therefore concentrates on those areas of the Committee's concern where the universities have indicated an interest.

Australian universities as owners of copyright material have identified no serious concerns about infringement or potential for infringement of their copyright in the context of this enquiry.   As users of copyright material for educational and research purposes, the universities take very seriously their obligations to comply with the provisions of the Copyright Act and to ensure, as far as they are able, that staff and students are aware of these provisions and that procedures are in place to minimise infringement.   While not all universities have all of the following in place, universities have indicated that the major provisions in place are:

Purchasing control systems - general

Universities have policies in place to ensure that all purchases of copyright material, including hardware and software, are through approved suppliers and/or reputable businesses; that requisitions are endorsed by senior staff; that licence agreements are read and understood; that packaging and documentation are checked; that original licences are provided and original disks supplied with equipment. Where there is a higher risk the material may not be authentic, contracts covering the purchase contain an undertaking or warrantee that copyrights are not being infringed. Particular attention is paid to ensuring that software is identifiable by licence number. Pre-installed software is not accepted unless original licences and disks are supplied.

There have been instances where a university has declined to purchase a copyright item because of doubts about the authenticity of the material. Examples are material offered on personal web sites, or non-original CD-ROMs. Some universities have identified some "grey" suppliers in the PC area from whom they would not purchase software. No university has indicated that they were being offered illegal, pirate or dubious subject matter on a commercial scale.

Purchasing control systems - libraries

University libraries have a high level of awareness of copyright issues. Most purchases are made through reputable suppliers or publishers who usually have a direct interest in ensuring copyright compliance and have control systems in place. Acquisitions are supervised by professional staff. Depositors of self-published works such as lecturer's notes are required to sign a statement to the effect that the material does not infringe copyright. Suspicious material is queried with the supplier - examples include photocopies, non-professional binding or poor quality printing. Video and audio cassettes come under close scrutiny, particularly as to the professional quality. Items offered as gifts are reviewed and discarded if their copyright origins are doubtful.

Universities rely on the requirement under the Copyright Act that it is the responsibility of the supplier to ensure that the item being supplied is a non-infringing copy. The Act requires the Library to investigate only when it has good reason to be suspicious regarding the origins of the item.

Controls over use of equipment

Universities have in place good systems of control to prevent their equipment in computer laboratories, information technology areas and technical support services from being used for the creation of unauthorised copies. Systems include:
* copyright notices for copying equipment (photocopiers, scanners and computer terminals)
* guidelines and rules brought to the attention of staff and students, and general raising of awareness of copyright issues across campus
* security over equipment to prevent damage and access to certain files
* controls on software installation
* staff who borrow software required to sign compliance statements
* password protection
* configuration of library workstations to prevent copying of applications or operating system software
* restricted Internet access from computing laboratories
* classes in multimedia instructed on copyright, piracy and the law - students found to be breaking these laws subject to expulsion
* staff and students required to sign undertakings that only legal software may be used and that University computer facilities may only be used for lawful purposes
* security software which does not allow the copying of software applications
* surveillance equipment in student laboratories to detect any illegal activities
* some computer laboratories are diskless, others limit program options

No university has indicated any concern about the availability of adequate or appropriate technological measures to prevent infringement, although some universities have indicated that they have not made maximum use of those that are available.

Controls over use of printery

There are strict procedures in place in universities to ensure university printeries are not used for the creation of unauthorised copies. Printery staff are given specific information on the

limits which apply to copying under the provisions of Part VB of the Copyright Act. All printing requests must be authorised by senior staff and requestors must sign a declaration that the reproduction will not infringe copyright. Electronic masters of teaching materials are securely stored and password protected. Across the university system it is clear that printery staff and management are very copyright aware and it is unlikely that infringing copies could be made in a university printery.

Inventory procedures

Universities or their faculties maintain databases of all equipment purchased and managed by them and of software currently in use. Procedures are in place to eliminate pirate or infringing or non-authenticated copies of copyright material. Any non-authenticated materials discovered in regular audits are destroyed. Regular audits of computer terminals are carried out to ensure there are no infringing copies of software. Publicly accessible library and computer facilities are checked regularly and supervised for compliance. New software packages are registered, borrowings recorded and workstations with the installed software are registered. Where licences permit home use of software staff must provide proof of a valid licence for their office equipment before the materials are provided. Use of equipment like CD cutters is monitored. A movement away from individually purchased software licences to site licences run from servers will further reduce the capacity of staff and students to make infringing copies.

Controls over university networks and systems

There is high awareness in universities of the necessity to maintain vigilance over the use of the network. Procedures are time-consuming and resource-intensive but exercised with thoroughness. Controls are two-pronged. Those directed at preventing installation of illegal or unauthorised software include:
- access control of machines to restrict the ability to install software;
- all software in laboratories installed by IT services only;
- no IT support provided for unauthorised software.

Controls directed eliminating software after unauthorised installation include
- periodic checking of systems and desktop machines by systems programmers in the process of routine support;
- in teaching laboratories, checking to ensure machines remain legally compliant, and secured to prevent unauthorised software installations;
- images are downloaded to laboratory machines regularly during teaching periods and any software loaded without proper authority is removed;
- staff-dedicated machines audited for compliance with respect to software, and unlicensed software removed;
- student laboratories re-installed periodically from the central server to minimise and/or eliminate non-licensed/non-authenticated computer programs;
- computers in the laboratories automatically cleansed each night, thus cleaning up any software that students have loaded themselves during the day which may have come from dubious sources;
- regular re-loading of PCs ensures that any non-authenticated or non-licensed software is removed;

- random checks. Universities cooperate with external organisations such as Microsoft, which conduct unannounced, random inspections and audits of university equipment;
- registry of software users.

Auditing for illegal software and various access controls is a full time job in many universities.

Raising staff awareness

The general awareness of copyright issues has significantly increased in universities in recent years. Appropriate notices are placed near public photocopiers and network access equipment in libraries, and warning signs are placed in laboratories regarding unauthorised and improper use of software. Most universities have a code of conduct for users of electronic facilities which is issued to staff and students. University policies are actively promoted to staff and students. General education about copyright matters is part of staff induction and student briefing. Presentations and seminars by the university Copyright Officer to staff and student groups on copyright issues are common, and booklets or guidelines are produced to assist staff prepare teaching materials while ensuring they abide by the licensing provisions.

General comments

While universities take copyright enforcement very seriously, a university can only exercise due care in relation to copyright infringement to ensure it does not aid or contribute to copyright violations by individuals. The configuration of audio-visual and computer equipment and software access, and signage about copyright, does that, and having a clear copyright policy and ensuring that staff and students are aware of it are seen as a way of protecting the university from claims of vicarious liability in the event of infringement action being taken against students or staff members.

In the light of the universities' experience the AVCC does not consider criminal enforcement to be warranted. It sees the matter as essentially a commercial issue, and believes that the appropriate response to commercial disputes is private litigation. The university sector would not welcome and sees no need for criminal investigations, believing that proper management systems keep the problems within acceptable bounds. The existing exposure to the possibility of civil action is sufficient incentive, if one were needed, for organisations to implement such management systems. There is no evidence of a problem in the university sector which would justify investment of resources in an enhanced specialist investigation or prosecution service in relation to intellectual property, nor a justification for increasing the copyright owners' rights by altering the traditional balance in issues like burden of proof of facts in copyright cases for example.

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