

ifrro

International Federation of Reproduction rights Organisations
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House of Representatives
Legal and Constitutional Committee
The Parliament of the Commonwealth of Australia
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Chairman
André BEEMSTERBOER

Attn. Chairman of the Legal and Constitutional Committee

Secretary General
Olav STOKKMO

Brussels, October 28th 1999

Dear Mr. Chairman,

RE: COPYRIGHT AMENDMENT (DIGITAL AGENDA) BILL 1999

The International Federation of Reproduction Rights Organisations (**IFRRO**) is the international non-governmental organisation representing national Reproduction Rights Organisations (RROs) world-wide, such as the Copyright Agency Ltd. (CAL) in Australia. RROs act on behalf of both authors and publishers of published works whenever the individual exercise of their rights is impracticable. They began their activities originally in response to the need to license wide-scale photocopy access to the world's scientific and cultural printed works. Today the member associations of IFRRO collect and distribute remuneration for photocopying and certain digital uses.

IFRRO also represents national and international associations of authors and publishers such as the International Publishers Association (IPA), the International Association of Scientific, Technical and Medical Publishers (STM) and the European Writer' Congress (EWC).

IFRRO speaks on behalf of its members at international forums such as the World Intellectual Property Organisation (WIPO) and the European Union (EU). Its principal functions include fostering the establishment of RROs world-wide, facilitating agreements and relationships between and on behalf of its members, and increasing public and institutional awareness of copyright and the role of RROs in conveying rights and royalties between rightsholders and users.

We wrote to the Australian Government on April 26th 1999 expressing its concerns regarding the exposure draft of the Copyright Amendment (Digital Agenda) Bill. We attach a copy for your information.

We notice that there are changes to the original draft in the revised amendment Bill tabled in the House of Representatives on September 2nd. IFRRO welcomes and supports several of these changes, in particular the introduction of an exclusive communication to the public right, the narrowing of the definition of libraries that may benefit from library privileges and changes to the rules governing information transactions between libraries. These amendments to the original draft recognise the difference between print and digital regimes in institutions that undertake significant amounts of copying as part of their daily business.

Nonetheless, like many of our international colleagues and member organisations, we are concerned that key sections of the proposed legislation are still not in harmony with international agreements and conventions on the protection of copyright to which Australia has acceded. IFRRO believes strongly that it is in the interest of the Australian Government to ensure that the final form of the legislation achieves this harmony.

We recognise that limitations to the exclusive rights of reproduction and communication may be justified in certain special cases. However, the form of those exceptions must be appropriate to the technology via which copying of works takes place. This is not only generally acknowledged, but was also an essential part of an Austrian Supreme Court ruling of January 31st 1995.

IFRRO strongly opposes the use of quantitative tests like the 10% deeming provision suggested in the current Bill to define the concept of fair dealing in the Australian Copyright legislation, especially in a digital environment. We fail to see how the proposal in the current Bill could be compatible with Article 9.2 of the Berne Convention, which has to be respected when introducing limitations to the exclusive right.

We urge the Australian Government to make limitations to the exclusive rights subject to a qualitative test guided by the “three step test” described in Article 9.2 of the Berne Convention. In this respect we support strongly submissions made by CAL, which also emphasises this important aspect and suggests specific modifications to the amendment Bill.

IFRRO will be happy to provide to the committee advice and resources at its disposal to assist in this important deliberation on the future of Copyright Law in Australia, either directly or through our Australian member organisation CAL.

Yours sincerely,

Olav Stokkmo
Secretary General