

AUSTRALIAN INFORMATION INDUSTRY ASSOCIATION LIMITED

Ms Claressa Surtees
Committee Secretariat
House of Representatives Standing Committee on
Legal and Constitutional Affairs
Parliament House
CANBERRA ACT 2600

Dear Ms Surtees

Please find attached a submission for the Copyright Enforcement Inquiry from the Australian Information Industry Association (AIIA).

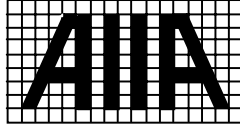
AIIA is grateful for being given the opportunity to provide input to the inquiry and would like to appear at the public hearing in Canberra.

The contact person at AIIA for this submission and our appearance at the public hearing is Ms Michelle Baird.

Yours sincerely

Mr Rob Durie
Deputy Executive Director
Australian Information Industry Association
Phone: 02 6282 4700

August 1999



**AIIA SUBMISSION TO
THE HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS**

INQUIRY IN TO COPYRIGHT ENFORCEMENT.

Introduction

The Australian Information Industry Association (AIIA) represents over 350 member companies involved in the provision of wide ranging IT&T products and services in Australia. In total, our member companies have revenues of over \$35 billion and more than 100,000 employees.

One of AIIA's key objectives is to assist with the creation of a policy and investment environment in Australia that facilitates the continued strong growth and development of the IT&T industry here and internationally.

AIIA is grateful for being given the opportunity to provide input to the House of Representatives Standing Committee on Legal and Constitutional Affairs for its inquiry into Copyright Enforcement.

Overview

It is the AIIA's understanding that the main purpose of the inquiry is to establish whether copyright infringement is a problem in Australia as a result of an ineffective enforcement regime.

AIIA cannot comment on the scale of the copyright infringement problem in Australia as we do not compile statistics on this issue, however we are aware that copyright infringement is a major concern to our members. For that reason, AIIA is providing this short submission in support of reforms that ensure that copyright law is balanced and continues to promote creative endeavours whilst providing a practical enforcement regime.

Specific Comments

AIIA's members represent a significant proportion of the Australian IT&T hardware and software industry. Many of those members are substantial owners of copyright material.

AIIA supports the effective enforcement of copyright laws in Australia. To the extent that those existing enforcement laws are inadequate, we support tightening of those laws to ensure that the unlawful use of copyrighted material is controlled. However, enforcement laws should target the appropriate groups especially commercial offenders rather than juveniles copying illegally but on a non-commercial basis.

AIIA submits that in order to reduce the software piracy in Australia, improvements are needed to the copyright enforcement regime in Australia. In particular, we urge the Government to adopt the following reforms:

- Increase the level of enforcement for software copyright.
- Introduce sentencing guidelines so that appropriate penalties for software piracy are imposed.

Level of enforcement

The agency with the primary responsibility for criminal enforcement of copyright is the Australian Federal Police. However it appears that the AFP does not accord a high priority to the criminal enforcement of intellectual property. This may be as a result of limited resources, or a focus on tasks that have been afforded a higher priority.

We understand that in practice the AFP will not undertake an intellectual property matter unless it involves counterfeit products to the value of \$1 million or more. This AFP policy effectively rules out criminal enforcement of the vast majority of intellectual property offences.

AIIA therefore recommends that:

- copyright offences should be given a higher priority by the AFP, and
- the Australian Government should allocate sufficient resources so as to allow the AFP to target offences at a more appropriate level than \$1 million.

Sentencing guidelines

AIIA is advised that there have only been a few criminal cases heard in Australia. In these cases, the level of penalty that has been handed down has been too low to serve as an adequate deterrent. Without adequate deterrence levels of software piracy are unlikely to reduce.

AIIA therefore recommends that:

- sentencing guidelines be introduced so that appropriate penalties for software piracy are imposed; and
- as a minimum statutory award in civil actions, the penalty should be equal to the wholesale value of the “work” infringed.

Summary

AIIA is grateful for being given the opportunity to provide input to the House of Representatives Standing Committee on Legal and Constitutional Affairs for its inquiry into Copyright Enforcement.

As copyright infringement is a major concern to AIIA members, AIIA supports the effective enforcement of copyright laws in Australia. Where existing enforcement laws are inadequate, we support tightening of those laws. However, enforcement laws should be balanced and target appropriate groups.

In particular, we urge the Government to adopt the following reforms:

- Increase the level of enforcement for software copyright.
- Introduce sentencing guidelines so that appropriate penalties for software piracy are imposed.