COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Reference: Enforcement of copyright

THURSDAY, 26 AUGUST 1999

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HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Thursday, 26 August 1999

Members: Mr Kevin Andrews *(Chair)*, Ms Julie Bishop, Mr Cadman, Mr Kerr, Ms Livermore, Mr Mossfield, Mr Ronaldson, Ms Roxon, Mr St Clair and Mrs Danna Vale

Members in attendance: Mr Kevin Andrews, Ms Julie Bishop, Mr Cadman, Mr Kerr, Ms Livermore, Ms Roxon and Mrs Danna Vale

Terms of reference for the inquiry:

(1) The Committee will inquire into and report on issues relevant to the effective enforcement of copyright in Australia and, in particular, on:

(a) evidence of the types and scale of copyright infringement in Australia including:

(i) the availability and accuracy of data on copyright infringement;
(ii) the scale of infringement in Australia in comparison with countries in our region and Australia's major trading partners;
(iii) the geographical spread of copyright infringement in Australia;
(iv) the cost of infringement and impact on Australian business;
(v) whether there is evidence of the involvement of organised crime groups in copyright infringement in Australia, and if so, to what extent;
(vi) likely future trends in the scale and nature of copyright infringement.

(b) options for copyright owners to protect their copyright against infringement, including:

(i) actions and expenditure undertaken, and that could be undertaken, by copyright owners to defend their copyright;
(ii) use of existing provisions of the *Copyright Act 1968*;
(iii) use of legislative provisions other than those of the *Copyright Act 1968*;
(iv) technological or other non-legislative measures for copyright protection.

(c) the adequacy of criminal sanctions against copyright infringement, including in respect of the forfeiture of infringing copies or devices used to make such copies, and the desirability or otherwise of amending the law to provide procedural or evidential assistance in criminal actions against copyright infringement;

(d) the adequacy of civil actions in protecting the interests of plaintiffs and defendants in actions for copyright infringement including the adequacy of provisions for costs and remedies;

(e) the desirability or otherwise of amending the law to provide further procedural, evidential or other assistance to copyright owners in civil actions for copyright infringement;

(f) whether the provisions for border seizure in Division 7 of Part V of the *Copyright Act 1968* are effective in the detention, apprehension and deterrence of the importation of infringing goods, including counterfeit goods; and

(g) the effectiveness of existing institutional arrangements and guidelines for the enforcement of copyright, including:

(i) the role and function of the Australian Federal Police, and State Police exercising Federal jurisdiction, in detecting and policing copyright infringement;
(ii) the relationship between enforcement authorities and copyright owners;
(iii) the role and function of the Australian Customs Service at the border in detecting and policing copyright infringement; and
(iv) coordination of copyright enforcement.

(2) In undertaking the inquiry and framing its recommendations, the Committee will have regard to:

(a) Australia's obligations under relevant international treaties, in particular under the World Trade Organisation *Agreement on Trade Related Aspects of Intellectual Property Rights*;

(b) the provisions of the *Copyright Act 1968* and any amendments to that Act that have been introduced or have been publicly proposed by the Government, to be introduced into Parliament;

(c) established principles of criminal and civil procedure which apply in cases generally;

(d) Commonwealth criminal law policy;

(e) enforcement regimes for other forms of intellectual property;

(f) existing resources and operational priorities of Government enforcement agencies; and

(g) the possible effect of any proposed changes on the operation of Government and private sector organisations.

WITNESSES

Committee met at 9.36 a.m.

ADAMS, Mr Stephen Mark, Assistant Director, Import Policy Group, Import/Export Management Branch, Commercial Services Division, Australian Customs Service

BURNS, Mr Phillip Gregory, National Manager, Import/Export Management Branch, Commercial Services Division, Australian Customs Service

GULBRANSEN, Mr Peter, Director, Import Policy Group, Import/Export Management Branch, Commercial Services Division, Australian Customs Service

ACTING CHAIR (Ms Roxon)—Welcome. I should warn you, gentlemen, that we will have people coming and going. You will note that there are just a few of us here, but we will have more people coming and going throughout your evidence. A transcript is being made, so obviously everything that you say will be recorded. I also need to advise the witnesses that, although the committee does not require you to give evidence under oath, the hearings today are legal proceedings of the parliament and warrant the same respect as proceedings of the houses themselves. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament.

We have received a written submission from you but it might be helpful for us, if there is anything you would like to add, if you could give us a brief outline of the issues that you would like to cover today.

Mr Burns—Thank you for the opportunity. The first point that I would like to make in respect of our submission is that Customs role in terms of copyright and in terms of intellectual property rights generally is a different role to that which we normally apply in terms of import controls. In terms of import controls, I am talking about situations where goods are prohibited from entry or export. Customs has a role to identify those goods, seize them if necessary, and prosecute the would-be offenders.

However, in intellectual property matters, our role is simply to seize goods that are the subject of a notice of objection and to then detain those goods whilst the importer and the objector go away and resolve their dispute. They may have resolved their dispute in litigation, they may do it by negotiation, or they may resolve it by one party deciding not to participate, but that is their business. We do not have what is generally described as ex officio powers to prosecute or to do anything else in respect of intellectual property.

The second point that I would like to emphasise in terms of the Customs role is that we deal only with goods. We do not deal with electronic signals, Internet, email or any other electronic mediums. They are the responsibility of other portfolios, and certainly not Customs.

In terms of some of the submissions that we have read, I would also like to make a couple of comments in respect of them, in particular one about the use of the terms ‘counterfeit’ or ‘pirated goods’. Those terms seem to mean different things to different people. For Customs the notion of a counterfeit good has two separate legs: one is the intellectual property consideration; the other is the consumer protection role that we play.

The consumer protection issue is not the subject of your terms of reference but I mention it simply to alert you to the fact that we do take action under the Commerce (Trade Descriptions) Act which is basically truth in labelling, proper labelling of goods and the like, and counterfeit goods certainly come under that banner when we are concerned that they do not comply with the trade descriptions.

In terms of intellectual property, we have not only the Copyright Act, we have the Trade Marks Act and we have the Olympic Games (Indicia and Images) Act. I do not know that there is very much more that I would like to emphasise. I am here to gladly take your questions. I think I will leave it at that.

ACTING CHAIR—Sure. Would Mr Adams or Mr Gulbransen like to add anything to that?

Mr Gulbransen—No.

Mr Adams—No.

ACTING CHAIR—Could just take me through in a little more detail the role that you play in the consumer protection area. I know that is not strictly an area of our inquiry, but it would be interesting for us to be able to contrast the role that you play in that area with the somewhat limited role that you play in the copyright area. You take action not at the request of any business or private interest in the consumer protection area; is that right?

Mr Burns—Our powers are independent of any information we may receive from business or from industry. The issue is that Customs has the power to seize goods that do not comply with the Commerce (Trade Descriptions) Act—that is, generally speaking, matters relating to the marking of goods, the description of the goods, what they are, those sorts of issues, and that the labels that appear on the goods and the descriptions that appear on the goods are true and accurate, not misleading. We do receive information from industry in relation to goods that may not comply with commerce and trade descriptions—as intelligence, if you like. That information helps target our activities, but we do not rely on that. Nor are we obliged to wait for that to trigger Customs action.

The commerce trade description situation in respect of Customs is the traditional Customs activity at the border—when we find goods that are either prohibited goods or do not comply with various legislation that we act on behalf of, then we will seize those goods. That is the normal border protection role of Customs. I have already explained the difference in the IPR area.

ACTING CHAIR—You said you have had a chance to have a look at a number of the other submissions. You will have noticed, particularly from some of the industry submissions that we have received, that there is a lot of comment about the role that the Customs Service, provided they were adequately resourced, could play in assisting in this area. Would you like to talk just generally about your views on that? It is a fairly general question. We would be interested to know how you feel you operate with industry in these areas, whether more assistance could be provided to you to be able to play some role in that, and whether it would actually affect your priorities in other areas if you were to take on a greater role.

Mr Burns—I think there are a number of issues that tumble out when you ask a question like that. The industry commentary about the Customs role I think is often driven by ignorance of what it is. They confuse the border protection role that I just described in terms of the commerce trade descriptions-type legislation—where we stand in the marketplace or we stand at the border and seize offending goods—as distinct from the role we have here, and they expect us, once they have put in a notice of objection, to simply go and find these goods. Given that they know all about the marketplace, they know what their competitors are doing, they know what the fake goods look like, they know where they are coming from, they often know when they are coming, who is bringing them, all of that sort of information, how they expect Customs to know that without being told by the industry is a moot point.

ACTING CHAIR—Could I just stop you there? Do you have any suggestions about how business could actually assist Customs? Do you have some sort of practical suggestions about structuring it differently, ways that industry or objectors could be required to give more information to Customs or ways that you could work together better that would make those things more effective?

Mr Burns—The question of how the legislation is set up, of course, is a matter of policy for the government. But under the terms of the legislation as it now sits, when somebody registers a notice of objection with us we advise them of the need for them to support us in our targeting and profiling activity, that they need to assist us with the provision of information which allows us to then go and find the goods that are the subject of notices of objection.

An interesting point to make is that there are so few notices of objection lodged with Customs over the entire range of goods that are in the marketplace. Another observation is that, of the total population of goods in the marketplace, there are a whole lot of them for which nobody claims any intellectual property rights. There is another bundle of goods where people do, but choose not to enforce them through lodging notices of objection. The very small group left over are the ones that we deal with, which are the goods for which the intellectual property owners do register their rights with us, and then there is an even smaller group of those which actively supply us with information.

I would also contrast the feedback we get from that latter group. In terms of our activities, those that provide us with strong support—that is, information and intelligence—are generally very effusive about their support for what we do, in other words, that we get the runs on the board because we have got the information to target our activity. With regard to those who put in notices of objection and who do not then follow it up with a great deal of additional information, I notice a number of the submissions have spoken in terms of the needle in the haystack. Well, the haystack is just as big whether we are looking for the needle as distinct from whether they are. So without that supporting information, that supporting intelligence, we are basically just left to our own devices. Then it becomes opportunistic, in the sense that, as we open containers and inspect goods, we certainly look for counterfeit goods and goods infringing copyright and trademarks, but the chances of finding those goods are much smaller than if we were given proper targeting information, which could say, ‘On Thursday, this container is coming into Sydney on that ship,’ and we can go and find it, pull it off, open it up and do something about it.

ACTING CHAIR—In that situation, do you involve the objectors in actually physically examining any of the goods? Do you ring up and say, 'All right, now it is here, we need you to come'?

Mr Burns—No. Generally speaking, the examination is a Customs activity. Just because we get a targeted shipment does not necessarily mean that is what it is going to be, so the notion of confidentiality and privacy is necessary in terms of what it is in the box. There may be a whole lot of stuff in the box that has got nothing to do with our interest in terms of copyright. What we would do, generally speaking, is take samples of the goods that we find, if we have a concern that here is an infringement, and then get the objectors to come on in and talk to us about those samples. That then gets put into the decision making process as to whether or not we should then seize them. I think on every occasion that an objector has said, 'These are not my goods,' we have seized them.

What is also interesting, in terms of our statistics, is that of all of those goods that we do seize as a result of the expert telling us that they do not comply, we maintain the seizure of 70 per cent of those goods because the importer does not turn up to defend the importation. Of the remaining 30 per cent, almost all are given back to the importer because the objector does not initiate their own litigation to defend their copyright.

I have not mentioned any percentages about those that have been resolved by the litigation process that I spoke about in the first place. In our submission, we make a number of observations about that. One of the major problems, we believe, is the inherent size and cost effectiveness of the shipments that are being made. The shipments basically are small. If and when we do locate them, the cost effectiveness of either Customs or the objector going through a very detailed, longstanding, expensive litigation process over enough goods that would be put on a stall at Paddy's Market or the like just is not worth it. Hence, the 30 per cent of goods that we do seize generally go back, because the objector says, 'Look, I am not going to spend $100,000 on 55 T-shirts,' or 45 CDs, or whatever it might be.

Ms LIVERMORE—You have just quoted some statistics about whether, once you have seized the goods, they go back to the importer or go back to the objector. Is there any relationship with the time period in which the objector has to launch their proceedings? I think it is 10 working days from once you have seized it. Do you see that as having any effect on those statistics?

Mr Burns—The objector has 10 working days to launch proceedings and, if they need an extension of time, they can get a second set of 10 working days. Our belief is that that is sufficient time to initiate—I am not talking about completing it; I am not even talking about a hearing—some sort of litigation or some sort of mediation resolution. We do not advocate litigation as being the only outcome there. If they can sit down around a table and come to a commercial settlement, then that is between them. That is perfectly appropriate as far as we are concerned. At the end of the day, if they resolve their dispute and together they come to Customs and say, 'This is what we want you to do with the goods,' then we are happy about that. That is our role in terms of the copyright. That is the fundamental plank, if you like, of that side of it—that the government wishes it to be done that way.

Litigation is very expensive. One of our suggestions was that maybe some in-between forum like a mediator could be considered. Whilst the mediation is still not cheap, it is certainly cheaper than a fully-fledged court case that might last a long period of time as well. It may be appropriate to have a mediator who might even have some sorts of links to an industry body or something like that, or it may be simply a commercial litigator that is around the various towns at the time.

ACTING CHAIR—Don't you see that as having the potential to further complicate things by having a range of options that you can pursue?

Mr Burns—From my personal experience of being in charge of the investigation side of Customs for some time, I can say that more and more of our cases are going into a mediated outcome, where both sides get their opportunity to have a say. The mediator is normally a retired judge or somebody of a similar ilk, and both sides can come to an appropriate settlement, whereas perhaps across a table that is not possible. Neither side wants a long, drawn-out and expensive litigation process over what might be a very small quantity of goods. Some of the trademark owners will die in a ditch over one or two of whatever it is; others will wait until there are 1,000 or 2,000 or 10,000. It is all different but, at the end of the day, it is whatever line in the sand they happen to draw.

All we are interested in is being advised jointly by the two parties that they have resolved their dispute, when they tell us, 'This is what we want you to do with the goods.' That is a terrific outcome as far as we are concerned. We do not want to hold on to these things. They cost us money to look after. Not only do we have to look after them but also we have to store them and make sure that we do not lose them. Against the whole array of goods that Customs comes into contact with, the quicker we can turn them around the better.

ACTING CHAIR—Do you want to express any views about any potential changes that you can see occurring as a result of the amendments to the Copyright Act and the parallel importing changes? We have had some views expressed in other submissions that the changes will open the floodgates to pirated goods coming into Australia. Do you have a view about that or about the impact it will have on Customs role, particularly the comments you have made about labelling and packaging? In the Commerce (Trade Descriptions) Act, you said that some of the things will cross both of those areas. Do you have a view about that?

Mr Gulbransen—It will probably not affect Customs a great deal because our procedures are simply to find goods, hold them and then let the parties resolve them by court action or whatever. In respect of our activities, I guess we would call in the objector to tell us whether the importation is unauthorised in regard to parallel imports while they are not permitted. The question will change to: are these goods genuine once parallel imports are permitted? The question is really one for the objector or the independent expert, if we have one, that we can call in. Our question will simply change from whether the importation is authorised to whether the goods are genuine. It is not a question that Customs answers; we will call someone else in to do it.

ACTING CHAIR—One of the other suggestions that was made in the submission by the Commonwealth DPP was whether this whole area could be assisted by Australia recognising

registration systems in other countries. Do you have a view that you would like to express to us about that?

Mr Burns—Generally speaking, no, we do not have a view because the Customs role is not affected by whether there is a registration system or not. In our process, an objector lodges a notice of objection on the bona fide that they have a claim to it, we go and do our business, and when they get to a litigation situation they must then prove that they are the owners of that copyright.

ACTING CHAIR—So it makes no difference to you?

Mr Burns—That is post the Customs role. One of the concessions—and I think it is ably described in the Attorney-General's Department submission—is that it is a concession to the copyright owners in the first place that, when they lodge a notice of objection with Customs, we do not put them through a 'prove that you own the copyright' process. We simply say, 'That is something you are going to have to address when it gets to the point of the argument with the importer. But in the meantime, if you are prepared to lodge a notice of objection with us, we are prepared, on the face of it, to take action.' So, to answer your question, the registration system is post.

However, I will raise one issue. We have had one experience where somebody lodged a notice of objection for a particular copyright mark and somebody else came along and said, 'But that's mine,' and then promptly imported goods, and we ended up with two people claiming to be the copyright owner. In that particular case we had seized some goods, so we unseized the goods and said, 'You two need to go away and resolve your difficulties between yourselves. It is not a matter for the Customs Service, nor the copyright legislation. This is a civil issue between the two of you.'

ACTING CHAIR—Do you have any comments for the committee about how Customs or the government or the committee could assist in reducing what I think you describe as the unjustifiably high expectations of the role that Customs can play in this area? There obviously is some great misunderstanding or great expectation about what Customs can do. Do you have a view about how that perception can be altered?

Mr Burns—I am not sure if it is an ignorance of the Customs role or a convenience that, at the end of the day, the argument is really to shift the burden of enforcing copyright from the owner of the IPR over to the taxpayer, a la Customs. I think that goes a long way to coming to grips with this issue. The Attorney-General's submission—and they are our overriding department in the portfolio stakes—addresses this whole issue of reversing onus of proof and all of that sort of thing. I do not have any objection or any difference of view to the Attorney-General's comment, and that is that it is an anathema to the legal system in Australia to basically make the importer, who is innocent until proven guilty in the eyes of the law, guilty until they can prove that they have imported proper goods. That is a very valid argument in terms of legal policy, and I think Customs would just stand out of the environment and let that be debated.

ACTING CHAIR—With respect, that does not really go to the question of how we make it clearer what Customs' existing role actually is in this area. I guess that is a PR issue for you, more than for us.

Mr Burns—Yes, it is a very complex issue. It not only goes to how we explain our role better but to how we motivate industry to lodge more notices of objection. That goes to the cornerstone of industry support for the very thrust of the legislation. If they have made commercial decisions not to enforce their IPR rights in this particular manner, then it does not matter what we say in terms of PR because they cannot trigger our activity in any event.

We encourage any group in industry to talk to our regional staff. They are the people on the ground at the airports and on the wharves who are dealing with this material. There is no lack of a will on our side to do that. I think the lack of information coming is more to do with the fact that companies and owners of IPR have decided not to follow the process of the copyright legislation and to perhaps defend their IPR in some other manner.

Without harping, the A-G's submission talks about the commercial realities perhaps over time resolving this issue in a commercial sense rather than it needing to be done through regulation. Particularly with the advent of parallel imports around the corner, they are basically going to have to if this turns out to be a major commercial issue for them.

Ms LIVERMORE—My question goes back to something that was talked about before. It is a question on the process. I understand the process of the objector lodging the notice of objection with you. Is there any formal protocol in your working relationship with, say, the Australian Federal Police or the state police to take action in partnership with those other law enforcers?

Mr Burns—The Australian Customs Service has a very close relationship with the AFP over a whole range of matters. There is an MOU in place for narcotics and a more general MOU in place for cooperation between the agencies on a range of other matters. So there is a close relationship.

In terms of copyright, we would see our role as providing the AFP with information on serious matters when we discover them. The fact that we have not referred many, if any, to the AFP reflects the fact that we do not believe we have found any serious criminal matters. However, the relationship between the AFP and Customs is so very robust and effective that if there were an issue where we needed to speak to the AFP or to the DPP, or to both, that would not cause us any trauma at all.

ACTING CHAIR—I know it is a bit difficult for Ms Bishop and Mr Andrews, but if they do not have anything in particular to raise with the Customs Service—I think they would like to; they can guess whether we have or have not—I think we are about done.

CHAIR—I apologise—on behalf of Ms Bishop as well—for not being here earlier. The vagaries of this place sometimes throw up competing demands, and this was one such occasion.

Ms ROXON—Is there anything else you would particularly like to raise with us that we have not raised in questions to you?

Mr Burns—I do not think so. We have had our say in our submission. We would very much support the Attorney-General's submission. We obviously discussed this issue with them as we both proceeded to finalise our submissions. I think we basically cover our views in one or other of those two documents.

Ms ROXON—We have said to a number of other departmental witnesses that once we have taken evidence we may need to request your attendance again further down the track. If that becomes necessary, we will contact you.

Mr Burns—Certainly.

Sitting suspended from 10.04 a.m. to 10.15 a.m.

ADCOCK, Ms Nola, Deputy Head, Information and Research Services, Department of the Parliamentary Library

TEMPLETON, Mr John, Acting Parliamentary Librarian, Department of the Parliamentary Library

CHAIR—I welcome the representatives of the Department of the Parliamentary Library. I should advise you that, although the committee does not require you to give evidence under oath, the hearings today are legal proceedings of the parliament and warrant the same respect as the proceedings of the houses themselves. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. We have received your submission to the inquiry, and I now invite you to make some opening comments.

Mr Templeton—Thank you, Mr Chairman. Our opening comments will be very brief. The purpose of the Parliamentary Library making a submission to the committee was simply to flag the existence of the specific exemption that parliamentary libraries have under the Copyright Act, and to repeat that that exemption is of significant importance to the way the Parliamentary Library is able to operate and to provide the services it provides to senators and members. I know there is no suggestion in the terms of reference that the exemption is under threat, but we thought it was useful to simply stress again the importance which we and other parliamentary libraries attach to that capacity to provide services easily to senators and members.

CHAIR—Can you elaborate for me, in terms of practical day-to-day operations in providing the services, how you perceive that there could be some difficulties?

Mr Templeton—Were the exemptions under sections 48A and 104A of the Copyright Act not there, we would find that we would have an additional administrative load and we would certainly have a financial impost in that we would have to pay a significant amount in copyright fees. That is because the nature of the work which the Parliamentary Library does for senators and members is so reliant on material which is generated and which is current—it is very topical. Ms Adcock is probably much better placed than I am to explain the detail of that, but our problems would be both administrative and financial.

CHAIR—Can I take the administrative problems first. Can you tell me precisely what additional administration would arise if this were removed?

Ms Adcock—There have been some changes of arrangements. Certainly there has been a requirement to keep detailed records of what material has been copied and by whom, with appropriate authorities given that it is only being done for a purpose—in this case for the work of senators and members. We have not had to do that; we have not had to get those authorities because of the special exemption that we and the state parliamentary libraries have. It has been by a special extension of the Commonwealth copying provision that we have been able to do this work for members—to be able to not only provide that direct service on specific requests but also build up the sorts of information files and databases that we can and to keep those at the ready to answer questions. We have been able to do that

without any administrative overhead requirement to record and elaborate on why we are doing it, how we are doing it and for whom we are doing it.

CHAIR—Let us take a hypothetical example. I ring up the library from my electorate office and say, 'Can you get me such and such an article?' At the present time you can do that without any additional administration, but you are saying that, if this were changed, then you would have to have some certification from me that this was for my parliamentary purposes and you would have to record that.

Ms Adcock—That is right.

CHAIR—Mr Templeton, I take it that you are saying that the Parliamentary Library would have to pay some copyright fees as well?

Mr Templeton—We would have to come to some arrangement similar to that of Commonwealth departments.

Ms Adcock—Yes. The Attorney-General's Department and the Copyright Agency Ltd have come to an agreement which has been extended to allow Commonwealth agencies to photocopy in the normal course of their work. It is unclear whether we would be able to piggyback on that arrangement or whether we would have to investigate a special arrangement for us on that basis.

Ms JULIE BISHOP—You have been talking about photocopying. What about electronic copying?

Ms Adcock—We do a fair amount of electronic copying, but generally we use an extensive range of commercial databases which have an in-built fee for copyright arrangements. That is an interesting development in that, within our own legislation in Australia, we certainly have that exemption, but when we are negotiating with publishers overseas and large database suppliers, that exemption does not apply. We are compelled to pay fees to comply with whatever arrangements, fees and conditions that publishers impose in the wider context. We do have to do that.

Ms JULIE BISHOP—So I take it that that is an increasing fee base that you are having to find as more information is available electronically?

Ms Adcock—Yes, it is a balance. The Internet has made a little bit of a change in some services like legal services, which in the past were extremely expensive to access. More of that has been made available free-to-air. It is an increasing trend, and there has been discussion internationally amongst parliamentary libraries generally that—and I think this is an increasing trend anyway—globalisation creates a problem in accessing material from various centres around the world. Our own provisions within our Copyright Act are overridden by the publisher's requirement for us to pay whatever fees and follow any conditions that they impose on us. So electronic copying does create that additional difficulty. Within Australia, we are generally subjected to the sorts of conditions and terms that Australian vendors impose on their electronic material.

Mr CADMAN—Could I look at copyright going the other way: the freedom of the public to gain access to parliamentary material and information that is produced here. To what extent does copyright apply to material produced here? I do not think it would apply to *Hansard*, but what about bills, regulations, committee reports and research papers? To what extent does copyright apply to material that the parliament produces?

Mr Templeton—My understanding, certainly from the perspective of the two departments for which I am responsible, is that the Commonwealth obviously does have copyright and that it is generally regarded to vest in the parliament. But we have a policy—which all the parliamentary departments have—that material which is produced by and about the parliament should be made available to the community as freely as possible. That is why in the last four or five years there has been a very significant increase in the amount of material available electronically on the Internet from both the chamber departments. All the *Hansards* and all the library's general distribution papers are put up on the Internet, as well as some resource guides to the use of the Internet. So there is a policy decision across the parliament that as much information from and about the parliament should be made available to the community as freely and as easily as possible.

Mr CADMAN—But it is copyrighted so that if, say, somebody were to gain access to the electronic storage system and change that material, they would be in breach of copyright, would they?

Mr Templeton—I would expect so, yes.

Mr CADMAN—It would help me if it were possible to have a list of what is copyrighted but available freely. Is that too hard to prepare? I am just thinking of the need to keep the community informed on the one hand but, on the other side of things, to have proper protection for intellectual property which is generated by individuals which may not be the province completely of the parliament. For instance, if you were to engage a consultant to look at your library services and that document became a public report for the sake of the parliament, how would that be treated? Is that in part the intellectual property of the consultant? Is it entirely yours because you have paid for it? Normally, would you say it is entirely yours, it would be copyrighted by the parliament and it may or may not be charged for? But there are circumstances where people working in this environment may need to have copyright protection for their intellectual property. Could that happen?

Mr Templeton—It may happen in some areas of the parliament. I am not sure that it would happen in either of the departments for which I am responsible. But in answer to your first question about getting a list of what material is made available publicly and what the various departments believe their copyright positions to be, if you like, I can coordinate that for the committee and provide it to the committee at a later date.

Mr CADMAN—I would like that to occur, Mr Chairman, because that would then give us a basis of how we operate ourselves in regard to this area.

CHAIR—Perhaps in general broad terms because, obviously, we do not want a list of every document produced by this place.

Mr Templeton—We can make it generic groupings.

CHAIR—Yes. I do not want to make six months work for you.

Mr CADMAN—No, that is not the intention.

Ms JULIE BISHOP—I was interested in your recommendation in relation to the wording of sections 48A and 104A. What exactly have been the practical problems you have encountered or that you anticipate that you might encounter as a result of the wording including the phrase 'that parliament'?

Ms Adcock—In terms of the services that we cooperatively try to support between the state parliamentary libraries and ourselves, in most instances we would be covered by the normal fair dealing provisions—we would not be photocopying a whole book; it would be a journal article within a journal title. It probably has its greatest practical application when committees are visiting a state parliament or members of a parliament are visiting another parliament because our exemption does not allow us to provide a service for members other than our own current members of parliament—'members of the parliament', 'members of that parliament', not 'members of parliament'. It would assist that. We have checked with our state parliamentary library colleagues as well that, in those instances where members or committees of inquiry may be visiting another parliament as well, it would assist. The basic principle of doing work for current members of parliaments in Australia would still apply. It would just give that additional flexibility to be able to provide a service when they are visiting another parliament. That parliamentary library would be able to provide that service to them.

Ms JULIE BISHOP—I am just wondering whether or not that phrase 'to provide library services for members of parliament' is sufficiently specific. It might give rise to interpretation issues. I do not know. I am just wondering how 'members of parliament' would be interpreted in a Commonwealth act. Have you sought any advice in relation to that wording?

Ms Adcock—No, we have not sought specific advice in relation to that, whether it would create any more difficulty than the fairly simple one that we envisage.

CHAIR—There being no further questions, I thank you very much for your submission and for coming along and discussing it with us this morning.

Mr Templeton—Thank you, Mr Chairman.

[11.10 a.m.]

AITKIN, Professor Don, Member, Australian Vice-Chancellors' Committee

GRIFFITH, Associate Professor Philip, Member, Australian Vice-Chancellors' Committee

MULLARVEY, Mr Thomas John, Deputy Executive Director, Australian Vice-Chancellors' Committee

ACTING CHAIR (Ms Julie Bishop)—The committee is inquiring into the enforcement of copyright in Australia. I welcome Professor Don Aitkin, Mr John Mullarvey and Associate Professor Philip Griffith. It is necessary for me to advise witnesses that, although the committee does not require you to give evidence under oath, the hearings today are legal proceedings of the parliament and warrant the same respect as proceedings of the houses themselves. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament.

We have received a submission from the Australian Vice-Chancellors' Committee and it has been authorised by the committee for publication. Professor Aitkin, would you like to make an opening statement?

Prof. Aitkin—Thank you, I would, Madam Chair. Universities take copyright very seriously. We are both major producers of copyrightable material and also major consumers of it, or at least our students and our staff are. We take very seriously the obligation to comply with the provisions of the Copyright Act. We have management systems and other provisions in place to minimise copyright infringement by staff and students. I am sure I speak for my colleagues when I say that I put out such statements at least twice a year to everybody to remind them. Every staff member of my university gets a statement about the copyright obligations of being a staff member and every student does as well, and every photocopier has a statement next to it and so on. You have been advised of that in our documentation.

We ourselves have identified no serious concerns about infringement or potential infringement of our own copyright, that is, the copyright of our own members of staff. You will get little cases from time to time where somebody publishes something and then there is an, 'Oops' and they write to say, 'We are terribly sorry. We thought we had done this. We haven't.' It is done in a reasonably civilised manner. If there are royalties involved, they get paid. We do not ourselves have any serious problems in that respect.

We do not have any direct evidence about illegal or counterfeit material, and we have no particular view about making criminal prosecution easier. We think from our perspective that the system works about as well as you could reasonably expect it to work. I think this is essentially a commercial issue, and it is up to organisations like ARIA or the Australian Customs Service to make points about what they see as the industry needs. We ourselves would say we are reasonably content with the way it is. In what follows, I shall defer to

Professor Griffith who is our expert in copyright matters. Mr Mullarvey and I are both ready to answer other questions should they arise.

ACTING CHAIR—Was there something you wished to say, Professor Griffith?

Prof. Griffith—No, I am happy to respond to questions if there are some.

ACTING CHAIR—Professor Aitkin, in the submission, when you are talking about controls over the use of printery, you speak of strict procedures in place. Could you just elaborate on what you define as strict procedures in that regard?

Prof. Aitkin—There is a warning on every photocopier in our university which says, 'The use of this photocopier for photocopying purposes is governed by the Copyright Act and the following must be done . . . ' Sometimes we are doing sampling for this purpose, so every single thing that is done on that photocopier is recorded for a period of four weeks or six weeks. John Mullarvey can give you more information on that. This has been true for universities for years and years. Our print room is not able to print stuff unless the head of the printery knows that the copyright provisions regarding release of material for this purpose have been complied with. So there is a whole formal procedure of obtaining copyright permission before things are printed.

ACTING CHAIR—Do you consider it to be quite an administrative burden?

Prof. Aitkin—Life is full of administrative burdens. Yes, it is an administrative burden, but since we are producers of copyright material, I, as an author, would want there to be provisions like this; I, as a consumer, am prepared to put up with it. I think most academic staff would take that view.

ACTING CHAIR—Have there been any specific concerns of which you are aware where the Copyright Act has had an impact on the universities in terms of using copyright material for education and research?

Prof. Griffith—The Copyright Act has an enormous amount of specific sections which contemplate the work not only of universities but of educational institutions generally. There is in place an entire system of legitimate, licensed copying for payment and remuneration: part VB of the Copyright Act. There are also specific arrangements to allow library copying and to facilitate the use of libraries by member of the public and by students: special provisions are in place in 49, 51, 51A and so on in relation to that sort of copying. There are provisions also relating to the use of material which is screened on air and for which there is access for educational and research purposes. There are general provisions within the Copyright Act about fair dealing for the purposes of research and study. So the entire Copyright Act contemplates a research and teaching function as part of the traditional copyright balance between the private and commercial rights of copyright owners and the public usages that might be made by the society at large.

ACTING CHAIR—How are the universities dealing with the move from photocopying and copying in the traditional sense to electronic copying of material? Are you working on policies? Are committees considering the issue? What is being done in that area?

Prof. Griffith—It has been a matter of interest for universities since about 1984-85, particularly the question of the reprographic reproduction rights. The changes which the parliament made in the early 1980s brought the question of copying and usages of copyright very much into the universities' thinking. Committees were set up. The AVCC had a specialised committee called the Copyright and Intellectual Property Committee that operated over a period of 10 or 15 years looking at all sorts of questions related to copyright and copyright policy. It drew upon senior administrators within universities, it drew upon senior academics within universities, it distributed a lot of papers and seminars were held. We were part of discussions with parliament and with interest groups. As a result of it, contracts were entered into with Copyright Agency Ltd and with other organisations. That inevitably led us to the digitalisation issue, and there has been ongoing work for the last 10 years on questions of how computers are going to impact upon material. There have been matters before the Copyright Tribunal relating to the digitalisation of material and a lot of discussions have been had with copyright owners. So it is an ongoing matter of pressing interest to universities.

Prof. Aitkin—Can I suggest that Mr Mullarvey gloss on that one?

Mr Mullarvey—The issue of CAL and digital access or use within universities has been a major problem for universities. We have been in the Copyright Tribunal with a court case running since 1996. It is still not finalised.

ACTING CHAIR—What is the nature of that case?

Mr Mullarvey—The case started by the AVCC on behalf of the 37 universities was to ask the tribunal to set a rate for digital copying. As a result of action by CAL, the case was subsequently extended to include the legitimacy of copying for external students under the exemption in the act, the right of students to copy out of closed reserve in universities, and the right of staff to copy for research purposes and fair dealing purposes. That has been an ongoing case which has already cost the university sector in excess of $1½ million in direct costs with lawyers and QCs. It is still an ongoing case because the decision taken by the tribunal did not resolve all the issues because the president of the tribunal felt he was not in a position to do that. We are about to enter another phase of the case with another application being made by CAL to the Federal Court, again dealing with those issues. So it is a major issues for universities. In fact, they have not moved into the digital arena as we would have liked them to do because they do not know what it is going to cost them.

Mr CADMAN—Could we get a bit more elaboration on some of the sticking points, the points of argument?

Mr Mullarvey—Let us take the issue of digital. The Copyright Agency Ltd believes that universities should pay something in excess of $2 to $5 every time a student or a staff member accesses an article in electronic form.

ACTING CHAIR—Any article?

Mr Mullarvey—Any article.

Mr CADMAN—Why—on what basis?

Mr Mullarvey—Because they believe that once you digitalise something it is a different use, it has a greater flexibility for universities than simply taking a print copy, and they have argued in the tribunal for a higher rate. The tribunal did not set a higher rate, and we are now proceeding through another forum instigated by CAL. On top of that, they have argued that when universities make course packs, the books of learning that are often referred to, or anthologies, a higher rate should be set for those because it is better than just simply photocopying a number of sheets. The tribunal has set a rate of 5c per page. Two weeks ago we had an argument in the tribunal over whether we should pay for fair dealing or not. That is also about to go to the Federal Court.

Mr KERR—You are not arguing that you should not pay a reasonable return to the creative producers of the materials that you are reproducing for your students, so what is the complaint here?

Mr Mullarvey—Definitely we believe we should pay for the use of copyright material. What the issue is about is what that rate should be. The tribunal, back in 1986-87, set a 2c rate which, as a result of inflation, had reached something like 3.5c last year. CAL had argued that it should be 10c.

Mr KERR—It is the nature of this, isn't it, that it is essentially a commercial negotiation, that they ask for a lot, you do not want to pay anything, and somewhere along the line, if you cannot resolve it, you go to the tribunal and they tell you what you are going to pay?

Mr Mullarvey—That is what has occurred.

Mr KERR—But I am wondering how this impacts in terms of your indication in your submission that you do not think there is any room for criminal law enforcement of copyright and the like. I am just wondering how these things link together.

Prof. Griffith—I am not sure that they necessarily do. What we are saying is that there is a commercial discussion, that commercial discussion has been operating through negotiation and then it has been taken to an umpire, which in this case is the tribunal. We have views about how the umpire ought to look at those questions, the processes in place. There is no need in there for any kind of criminal enforcement. There is no need in there for anyone to investigate or to pursue it as such. There is no illegal activity being pursued by the university, or a suggestion of it, which warrants their being investigated with a view that there might be some offence, or any penalty which would make us, as it were, comply.

We are purchasers, if you like, of material from a supplier of material. We are in a commercial dispute about levels of supply and also about which aspects of what they claim to be supplying we should be paying for. It is not completely true that we should pay for absolutely everything perhaps as the law currently stands. The fair dealing provisions, which CAL now wishes to look at again, have traditionally been part of a balance; traditionally there has not been payment for those. Should the parliament wish to change that balance,

that is a matter for the parliament, but at the moment it is a free matter. So that is a matter of dispute between us.

ACTING CHAIR—I do not want to traverse the detail of your tribunal hearing, but on this issue of electronic copying as opposed to photocopying in the traditional sense—and the university obviously is an enormous creator of original works and, on the other hand, is also a very large user of other people's works for research and education and the like—do you see any inherent difficulties and differences between the copyright regime that we have that covers photocopying and copying in the traditional sense and electronic copying? I ask this because there is often a position put forward that essentially the same principles can cover because it is copying in one form or another. Do you see inherent differences in the fact that electronic copying at the stroke of the key can go to millions of users as opposed to traditional photocopying?

Prof. Griffith—There is always the question of width of distribution and the potential risks of the width of distribution. One of the points the universities would make is that, from our point of view, given what we are charged to do—which is to provide educational courses and to be able to draw upon the cultural background, to be able to draw upon the books, the canon, the material that is available, the intellectual resources that are available—we have to have access to them. At the moment, one of the best ways of getting access, one of the quickest and most flexible ways of getting access to it is through digitalised approaches—through the use of computers, the use of the net and so on.

At the moment, it is a fairly unstructured environment but it is an important area for us to be able to access. What we have been trying to do is make sure that we are accessing it legally and that we are willing to pay a proper and commercial rate for it. One of the balances about what is the proper and commercial rate is the impact it may have upon traditional publishing arrangements, the degree of distribution which becomes possible and control over copies which are made, the access to material. The price perhaps needs to reflect the risk factor in that. Similarly, the publishing industry needs to readdress the way in which it is delivering material and the way in which it recoups.

ACTING CHAIR—To what extent are authors at universities—professors and others—placing their original works on the Internet free of charge or for a charge? Has anyone done that sort of assessment?

Prof. Griffith—There are 37 universities.

ACTING CHAIR—I assume, though, at varying degrees.

Prof. Griffith—What happens in the universities and what happens from faculty to faculty within universities is tremendously different. But there is an enormous amount of material placed upon university web sites and public web sites, upon public discussion groups and upon learned sites, as very much free access material. A lot of people are very keen to do it. Many of us would put draft work onto the net inviting comments. It then becomes available worldwide as a public resource, and of course that interactive approach is useful in the final work which might end up in print form, for instance. Yes, there is a great deal of that being done.

ACTING CHAIR—Thank you.

Mr CADMAN—You need to bear with me a little because I am just wondering what happens if you change media part way through. If you download, that to many becomes an original document which is your own property and you feel entitled to it to some degree so that copying that in a photocopying machine is not infringing copyright. Do you see that as a problem? Are lecturers saying, 'These notes I have pulled off the net are very useful. Here are multiple copies for the class.' That seems to me to be an infringement of copyright, even though it goes through a couple of forms of media. What is your experience?

Prof. Aitkin—It is a very good point. One reason I think you are all wrestling with it is that, although the technological revolution which produced the Xerox photocopier has, in a sense, levelled out and we are not expecting enormous technological shifts in photographic reproduction, the Internet revolution has just begun and nobody has a very clear idea of where that is going to take us. Internet usage in Australia last year was doubling every two months.

I was in Taiwan five years ago and no-one was connected to the Internet—it was illegal to be connected to the Internet—and now five million of the 22 million people of Taiwan have Internet connection because the government has said, 'No, it is good for you. Go out and connect.'

I think the point you have raised, Mr Cadman, is a very important one. People who are equipped to interrogate the net usually have a printer. They have a monitor, a keyboard and a printer. So if they see something they like, they press 'print' and they print themselves one copy of whatever it is. For fair dealing purposes, that would mostly be okay as long as they did not take a whole book. In fact, if you could get access to the book and the book was copyright, you would probably have had to pay a fee to get into it anyway. There is a lot of material which is only accessible if you have paid to access it. Having paid to access it, you are entitled to a copy of it. As Philip says, there is an awful lot of material now which is free as public domain stuff.

I think what is lacking at the moment is the technological end to this process which would be accompanied by a set of protocols, conventions and understandings about what is fair and what is not fair. We are still wrestling with what is fair and what is not fair in this area. That is because we do not know where it is all going to end. We are getting very close to saying in Australian universities that you need to have an Internet compatible computer in order to enrol. You need to have one. If you do not have one, you are going to find life intolerable, because they are essential for a contemporary student. Nobody is going to pay for that except the student or the student's parents. In some American universities that is already de rigueur. You just have to do it.

So I do not know that we can give you a clear answer to that question. It will be, in my view, five to 10 years before the penetration of the Internet has reached the penetration of the VCR or the other essential items of the contemporary household.

Mr CADMAN—It is not too early, though, to be putting protocols in place.

Prof. Aitkin—We have protocols but, as soon as you have them, you find that there has been a new shift in the way in which the Internet is being used. It is very difficult to predict. For example, I would be interested to know whether the committee feels that within five years we will all be buying a lot of material through e-commerce on the net and what effect that will have on small shops in country towns and elsewhere. I do not know the answer to that question, but the conventions of Australian life will be greatly affected by that.

Prof. Griffith—The issue of copyright infringement and the rights of authors is a matter which is extremely important within universities generally. It is not something which is just allowed to slide. As I say, there has been an AVCC, and each university has copyright officers. I spend a great deal of my time going to various universities giving copyright seminars to teachers, to lecturers, to librarians. There are then information notices and information packs. Most course materials will have copyright warnings placed upon them. Students are being reminded practically daily about copyright, and they are also reminded by university and faculty policies about plagiarism and about access.

Students who are found to have simply downloaded something and then present it as their own work, or even if they just cut and paste it around, end up facing disciplinary procedures on an academic level. These may be so serious that they may even be removed from enrolment within their university. It is not something which is simply tolerated within the system. Quite apart from there being a copyright issue in it, there is a scholarship and education issue in it, which is really vital to us.

Mr CADMAN—Very good. I used the illustration of downloading into hard copy and then doing further copy, but what about just sticking with a purely electronic form? There are university students around our district who turn up with a disk and say, 'Look at this good stuff. This will do so-and-so.' You can bet your boots that that has been copied improperly and it is an intellectual item that may have been a lifetime's work for one individual, but this character has got it on a floppy disk and is handing the floppy disk around to people who download it onto their computers.

Prof. Aitkin—If it is software, it is probably public domain. There is an enormous amount of software that is just available if you want to use it—no fee.

Mr CADMAN—There is, but there is also some stuff with limitations on it.

Prof. Griffith—Are you suggesting that this is an activity which is actually taking place within university sponsored premises? People can do this in their living rooms, but universities have labs and we have students with access.

Mr CADMAN—Going back to the criminal thing, I just wondered whether you can become accessories as universities.

Prof. Griffith—Accessories to people's criminal behaviour?

Mr CADMAN—If somebody is doing an illegal act, you are providing the mechanism for them to do it.

Prof. Griffith—You would need to establish that there was some offence which had taken place in this process. There are offences in the Copyright Act but those offences relate to knowingly or reasonably knowing and then dealing with for commercial purposes—essentially sale, distribution and so on.

It may well be that no such offence has actually taken place. There may well have been commercial infringement, but universities are extremely concerned about that. Universities have different ways of dealing with this. Quite a number of laboratories which are within universities to which students have access are specifically set up in a way that students are not able to make copies. A lot of materials these days are simply too large to be downloaded on to anything other than CD ROMs or major tapes. You are not going to get them on a set of floppies. A number of universities have chosen to take floppy disk access out of their computer laboratories which are accessible by students. There are warning signs; there are people who monitor.

There is no way that we are going to be able to guarantee to you 100 per cent that one of our students or one of our staff is not committing what is an improper act. All we can do is put in place reasonable systems; warn people, remind, seek to guide and seek to punish those who do the wrong thing when that is proved. We are certainly doing that. It is an important thing for us.

Mr CADMAN—Your committee does not really have a universal protocol which is applying in every university or some basic precautions.

Prof. Griffith—I would defer to John on that. It is not the role of the AVCC to dictate to the 37 universities. It is to advise them and to suggest.

Mr CADMAN—I understand that, but you might be able to recommend or suggest.

Prof. Griffith—And we do, and there are position papers put out.

Prof. Aitkin—We commonly do put forward a sample protocol for people, but I will defer to John on this.

Mr Mullarvey—Certainly with respect to CAL and also screen rights in the audiovisual area, we have agreements which have standard sets of processes to be followed on a regular basis. They are developed between the parties and then circulated to universities. On top of that, the various committees provide information to the universities at various stages on these sorts of matters.

Mr CADMAN—If it would not be a problem, it would be nice for this committee—and for me personally—to receive some indication of what are the topics you are raising with your constituent bodies.

Prof. Aitkin—Certainly.

ACTING CHAIR—Could I just follow that up? On page 2 of your submission under controls over use of equipment, the last paragraph under that section says:

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.

Could you just elaborate on what that is meant to convey? What is it that the universities have indicated to you?

Prof. Griffith—We put a survey to universities. We asked a series of questions and asked universities to respond to them. Of the 37 universities, 27 replied and there were a number of responses to what was being done.

ACTING CHAIR—Was there a response?

Prof. Griffith—Some universities have made use of as many different approaches as they can. For instance, some have disabled the disk drive and some have said that they will have actual people in rooms, but not all universities do all of the same things. This is essentially what we are saying.

Mr Mullarvey—One other thing that we have not mentioned is that often audits are done of equipment to make sure that only licensed software is actually on the equipment. This stems from a number of years ago where concern was raised about pirating of software. Universities put in place procedures to make sure that they try and trap it.

ACTING CHAIR—How does that audit procedure work? Does it vary from university to university?

Mr Mullarvey—It varies from university to university as to how they do it. They have monitoring systems to ensure that only licensed software is on equipment, then checks, et cetera, but it varies across the 37 universities and then across the various faculties within the universities. It depends on whether there is a centralised system for controlling all PCs or whether it is decentralised.

Prof. Aitkin—Let me give you an example of how it works in practice. We have 2,000 computers on campus. We have 10,000 students and 1,000 staff and most of them have computers at home as well. Canberra is a highly interactive city in that way. A student complained that the machine was not working properly. When the technical officer came to look and opened up the back there was a card in there that should not have been in there. The question was, who had put it there? There is an audit of every person who has used that machine. It was actually relatively straightforward to work out, because of what the card could do, who had put it in there and forgotten to take it out. We put this to the student who confessed and so he faced disciplinary action. I think you would find examples like that in every university.

Prof. Griffith—In my university, our law faculty operates the AUSTLII process. We have an enormous reliance upon computerised teaching, computerised resources and so on. All of our students have access to computer labs, all of them have an individual PIN number, none of them can actually enter the room without entering the PIN number onto a key pad, and a record is kept of everyone that enters the room. Any person who logs onto a computer must enter their password and their PIN number. The time they log on is noted by

the system and is monitored automatically and is printed off every day. The time they log out is monitored. Their traffic is monitored. So we know what they are doing whilst they are in our room dealing with our software and dealing with the resources which they can access through that. It is something we simply have to do and it does involve an administrative cost, but it is something we are obliged to do.

Mr KERR—Could I ask you a procedural question about how you deal with this question of fair dealing? Historically academics and researchers, and including students, could say that they want access to some portion of a work for the purposes of research. I do not think it was necessary to sign any documentation, but as a matter of course there was a beginning of the year sign-on exercise and you would confine any requests within that. How do you do that within a digital environment? How do you assess a request for access to materials on that fair dealing basis?

The other interesting question is, given that that access is essentially free at the moment, other than advising people they should not distribute it further and make a second and subsequent copy and given the ease of its digital distribution, I wonder whether you are aware of apocryphal accounts as to how it is circulated. Certainly, it is suggested that it is fairly widely distributed. Once you have the material on the screen, it is easy to send it to a discussion list, a group of your fellow students or whatever. It is so simple, that we all do it.

Prof. Griffith—You mentioned that there may be a convention of people making applications for fair dealing. I am not sure that that is at all a universal process. As I read the act at the moment, what it says is that performing certain activities for particular purposes is not an infringement. It simply is not an infringement. It is a perfectly lawful activity. So you do not need to request to do it.

If you overstep those bounds by going beyond the limits which would be a fair dealing, then people may wish to argue with you about it, but that would be a matter for someone to raise with you. No, I regret to say that, beyond the same sort of apocryphal stories that you may have heard, I do not have anything in particular.

Mr KERR—I am just wondering how do you deal with it. How do you deal with the issue of access in the digital environment?

Prof. Griffith—I am not sure that there really is a difference. The publishers think there might be.

Mr KERR—The libraries say that they will not allow people access to their materials unless on each occasion a fair dealing request is made and it has to be signed off that it is within this provision of the copyright law. Now I thought that was a lot of rubbish when they put it to me.

Prof. Griffith—That is a different point.

Mr KERR—What you are saying to me is that certainly within the universities that does not happen.

Prof. Griffith—No, that is a different point. I am sorry. I misunderstood your original question, obviously. I imagine then you are coming back to sections 49 and 50 of the act in which libraries are supplying copies for the purposes of readers or users of the library for particular points. Under those circumstances, one needs to make a request of the library that something be supplied. What was contemplated by the parliament when those sections were introduced was the supply under reprographic reproduction arrangements. Certainly under those circumstances, one would make a request and the library on receiving the request and being reasonably satisfied would supply it. Although the library does not, unless there is something in the request which would trigger their suspicion, actually have to investigate as the section currently runs.

Mr KERR—I am just wondering how you translate that in the digital environment.

Prof. Griffith—I am not sure that there particularly still is a problem. You are not asking an organisation to go out and create a copy which they then supply to you in a hard format. You can yourself simply use a piece of machinery to access something. One of the analogies you might use is that you could go into the library, take the book off the shelves, read the chapter in it and then say, 'I would like a copy of that chapter.' You then go to the library and say, 'I would like you to supply me with a copy of the chapter.' At that point there is a question about reproduction and so a series of requests are made, record keeping is made and you are able to return to the publishers and say to them, 'We are able to say to you that the reproductions that we have made have been for a particular purpose and do not impinge upon your commercial interests.'

At the point at which you browse through something on screen, you are doing no more than walking up and reading it off the shelf. You look at the book; you have a look at the chapter; you put it back on the shelf; you walk away from it. At the point at which you download it and make copies of it, it seems to me that you are into the sort of question that you are asking: how should that be dealt with? That is, indeed, the sort of question that we have with CAL about what remuneration levels, if any, ought to be applicable to that. It is a commercial discussion between us.

Mr Mullarvey—We are currently in discussions with CAL about how you actually monitor copying that is done in a digital environment. As a result of the decision of the tribunal, we are now talking with them. We do not actually have a straightforward answer yet. We will have to have one because universities want to use the digital environment, but it is going to take some time and much discussion.

Prof. Aitkin—Some of it is dealt with in the ordinary market way. For example, suppose we have a site licence for the use of chemical abstracts—I am just taking that from the air; I do not think we actually do, but let us suppose we did—that site licence enables any member of staff in any university to interrogate any part of chemical abstracts. We pay a fee for that and the fee is actually quite a considerable fee. But for somebody to say, 'Now I can get into chemical abstracts, I will reproduce the whole of that and sell it,' the costs are actually greater than the costs of the site licence. It is not in anyone's economic interest to do that. It does not make commercial sense. The publishers of journals which give electronic copy have set their prices at a point where it is sensible for you to have a site licence and not sensible for you to try to reproduce their stuff and sell it. For most journals and books, most people

actually do not want possession; they want the capacity to use a bit of it. That is really what the fair dealing rule is.

Mr KERR—They are addressing this through contract law rather than through copyright law.

Prof. Aitkin—Yes.

Mr KERR—That seems to me to be the direction that this will go in if you cannot reach an agreement. In other words, all materials that you receive, including print materials, will be subject to contractual arrangements that you will have to enter into in respect of the use of those materials. That is what it seems to be unless you reach an accommodation in relation to those issues.

Prof. Aitkin—Before you came in, Mr Kerr, I was expressing the view to the chair that we do not know how far this technological revolution is going to go. It may very well be that publication in book form as we know it will become the less, rather than the more, characteristic form of accessing information. I can imagine having a site licence for all of Oxford University Press, for example. All Australian universities would pay a thumping great fee to OUP, and then anybody could access anything that OUP produced. It would not make sense for you to then try to have a hard copy because the cost of it by page is actually quite considerable.

ACTING CHAIR—People always want a hard copy of a favourite book.

Mr KERR—It is interesting that book publishers say that there are now two markets developing. There is the aesthetic market of the physical object that we have for children's books, for literature and for objects that you want to keep that you would never consider tearing up. But there is the information services market, where you are not selling a whole anymore, you are selling parts. You are selling chunks of information.

ACTING CHAIR—A more disposable market.

Mr KERR—That is where they are concerned that, essentially, unless we do find an appropriate middle point in this argument, the system for payment for those chunks of information is lost to the creators.

Prof. Aitkin—Yes, I thought your suggestion was actually quite right in that we are likely to move further down the commercial contracts side to deal with that.

Mr KERR—I agree and that seems to be the way that the balance gets levelled up, in a sense. They say, 'Sorry, you just can't have it unless you pay this price.'

Mr Mullarvey—Yes. Even for print copying now, there is a very comprehensive contract between the universities and CAL as to how they can do it, how much they pay, and how they provide the information about the copyright owners to CAL so that the copyright owners get paid. We are already there.

Prof. Griffith—Could I make a final rider to Mr Kerr's comment. Certainly that is likely to be the case but, as we move further down the contract and commercial rates point of it, inevitably the university sector is going to be asking for additional funding to be able to cover it.

ACTING CHAIR—You thought you would get that one in.

Mrs VALE—I appreciate the very strict protocols that you have put in place to prevent students from breaching copyright and the consequences of disciplinary procedures against your students, but can you tell us anything of experiences of universities who have had allegations of breaches of copyright laid against them? Are you in a position where you can tell us how the response has been and how you have had to deal with it?

Prof. Griffith—On what sort of allegation?

Mrs VALE—Any allegations of breach of copyright.

Prof. Griffith—Do you mean civil infringement from time to time?

Mrs VALE—Yes.

Mr Mullarvey—For the 10 years that I have been with the Australian Vice-Chancellors' Committee and dealing with this issue, I do not know of one case where a university itself has been accused, as distinct from an accusation against a particular student, which Professor Aitkin referred to before.

Prof. Griffin—There was an authorisation case in the 1970s, which was one of the things which triggered the reprographic reproduction. It was University of New South Wales v. Moorehouse in 1974, where the university was found to have authorised an infringement by a person in the library by the process of supply of a photocopy machine which the court found had been insufficiently regulated. That attracted the attention of the university librarians across the countryside no end. Indeed, the parliament also responded with section 39A of the Copyright Act in order to provide a balance between authorisation provisions and so on.

Mrs VALE—With the fair trading ruling.

Prof. Griffith—There was also a discussion in the VUT case about the supply of material, which was also dealt with, in this instance, by the Federal Court. The university was found not to have infringed and to have acted quite properly. Those are the only two cases of a university which spring to mind.

Mrs VALE—Do universities have a specific committee to deal with copyright matters, or is it part of the normal management structure that you have these protocols put in place with the different faculties?

Prof. Aitkin—Each university would have something like an intellectual property committee. We do, and I think everybody does.

Prof. Griffith—Yes, most universities do.

Prof. Aitkin—As the employer of the University of Canberra staff, I assert at once that everything my staff do is the property of the university. That is the old Masters and Servants Act. Then I almost instantly assert that in all sorts of respects I allow them to exercise the benefits of the intellectual property, but I first of all assert that I own it. In order to do that, we have all had to have an intellectual property committee which has looked at all of this.

The gloss on your earlier point is also worth making. We have a tense relationship with the Copyright Agency Ltd. We are often in court; we are often in disagreement. We would so ruin our collective case if one university were to act in a non-vigilant way. John Mullarvey, who is the executive officer of this side of the AVCC, sends us out stringent warnings several times a year saying, 'For heaven's sake, take this seriously. If you don't, and we finish up in court and they can show that one university has not behaved in an exemplary fashion, our case will be so much weaker.' So there is a perfectly self-interested reason for doing it as well.

Mrs VALE—Eternal vigilance.

ACTING CHAIR—Thank you for appearing before us today. Thank you for your submission, which has been most helpful. The exchange today has also been most helpful to the committee.

Prof. Aitkin—It is our pleasure. Thank you.

[11.55 a.m.]

BROWN, Mr Paul, Federal Agent, Australian Federal Police

HUGHES, Mr Andy, Director, International and Operations, Australian Federal Police

CHAIR—I welcome representatives of the Australian Federal Police. I should advise you that although the committee does not require you to give evidence under oath, the hearings today are legal proceedings of the parliament and warrant the same respect as proceedings of the houses themselves. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. We are in receipt of the AFP submission of 30 June this year, and I invite you to make some opening comments.

Mr Hughes—Thank you. The AFP appreciates the opportunity to appear before this inquiry into enforcement of copyright. As indicated in our written submission, we consider that subparagraphs 1(a)(v), 1(c), 1(g)(i) and (ii), and 2(f) of the terms of reference refer to matters most directly related to our sphere of activities.

The AFP's approach to the investigation of reports of criminal offences associated with copyright or intellectual property is essentially the same as the approach adopted to other forms of economic or fraud related activity. There is a range of factors to be taken into account in determining whether the matter is accepted for investigation and to the priority it is to be afforded. These include the availability of limited resources, competing priorities, judgments about the level and extent of the criminality involved, the prospects of a successful prosecution, the likely impact and outcome of police involvement and the availability of alternative means of resolving the particular case.

The AFP applies a case categorisation and prioritisation model in an effort to provide an objective basis for evaluation and comparison of our operational activities. This process is intended to ensure that available resources are applied to those tasks which return maximum value.

All matters referred to the AFP for investigation, including intellectual property or copyright type offences, are assessed by the relevant national or regional operational coordination centre to determine whether the AFP will accept or reject the referral. While we acknowledge that this assessment process often results in alleged copyright infringements not being accepted for investigation, the AFP considers that it rightly focuses on those copyright matters where there is a high incidence of direct or associated criminality and the matter warrants application of the criminal law.

The fundamental aim of the AFP investigative effort is to ensure that limited investigative resources are directed to the most important investigations. In practice, these are largely those of high-end criminality. An endeavour is made wherever possible to target criminal action on those matters likely to have the most beneficial impact rather than solely on the basis of the monetary amounts involved.

The AFP acknowledges concerns which have been raised about the role and extent of criminal enforcement in intellectual property and copyright matters generally. We have participated with other Commonwealth agencies in discussions on the matter under the auspices of the Attorney-General's Department. We reject any assertion that the AFP does not give full and proper consideration to requests for investigation of copyright complaints. Likewise, we do not consider that applying our assessment, evaluation and prioritisation process to copyright referrals has adversely impacted on Australia's international obligations.

In the case of those copyright cases which it has investigated, the AFP has not established any significant evidence to substantiate the involvement of organised criminal groups within Australia in copyright infringement. Nevertheless, the prospect of organised criminal activity being involved is clearly a matter which needs to be taken into account.

In the AFP's experience, the principal practical difficulties encountered in pursuing criminal prosecutions of copyright revolve around establishing and proving issues of fact rather than law—that is, obtaining evidence to prove the existence of copyright in a particular case to the required standard.

The level of penalties provided in the act are regarded as adequate. However, the actual sentences handed down by courts are often relatively low. While the Attorney-General's Department is best placed to comment on the desirability of amending the law, the AFP supports any proposals to simplify proceedings.

It is the AFP's view that the most appropriate avenue for dealing with the greater proportion of allegations of copyright infringement is through civil proceedings between the parties rather than by recourse to the criminal process. The reasons for this include the standard of proof, which in civil matters is a lesser standard than that required to be met in criminal prosecutions; the range and type of remedies available for the civil process, having regard to the frequent motivation of complainants being pecuniary satisfaction rather than criminal conviction—a potential outcome and likely in criminal proceedings; the resource intensive nature of copyright investigations compared with the level of criminality involved, a factor reflected in sentences delivered, and establishing proof of copyright in individual items is often expensive, impractical and, on occasions, unsuccessful.

The AFP endeavours to maintain an effective, cooperative relationship with individual copyright owners and industry groups where investigations are undertaken. We acknowledge, however, that our inability to accept all matters reported to us for criminal investigation has caused some frustration. Thank you.

CHAIR—Thank you, Mr Hughes. I note on page 7 of your submission that there were 23 referrals of copyright in 1998 and nine to date in 1999. Of the 23 in 1998, 20 were rejected, two were investigated and one was withdrawn by the complainant, and of the nine at the time of making the submission this year five had been rejected, two had been accepted and there were a further two under evaluation. Is there a pattern or some similarity in the bases of those that are rejected?

Mr Hughes—No. All of the matters that we receive are subjected to the case categorisation and prioritisation model—which I will refer to as CCPM, if I may; it is easier

than having to repeat those words—and there are a number of factors taken into account when we apply that model to any matter that we receive. They include the impact, the resources, the priority of the matter. We take into account the monetary value, although that is not the sole deciding factor. Also, as I said, we look for any indications of organised criminal activity and we assess the level of criminality involved, either directly or indirectly, and the likely run time of the operation. So there are a number of issues that are taken into account. So there is no particular trend. There is no particular type of copyright matter necessarily that would never get through if there were the right elements there in that matter.

CHAIR—We could not look at those 20 rejections in 1998 or the five rejections this year and find some pattern. It just depends on the facts of each case, you are saying.

Mr Hughes—That is correct, and the circumstances that exist at the time in terms of our resources and so on.

CHAIR—Right. Given that that seems to me—but you tell me otherwise—a small number of referrals and an even smaller number of investigations, you seem to be suggesting that even that number exceeds your resources to investigate.

Mr Hughes—It might be helpful if we put it in the context of the AFP's overall referral rates. In the 11 months between July 1998 and May 1999, the AFP received over 8,250 referrals for investigation, and these included illicit drug investigations, economic crime investigations, corruption, general crime and others. Of those, there were just over 1,000 economic crime investigations—we should have included the figures that you just read out—so it is in that context that you can see that we do operate with a large number of referrals, and the 23 are obviously a small component of that. We are not saying we cannot do 23 jobs. What we are saying is that we have had over 8,250 matters to investigate and, of the 23 which were copyright related matters, only two were able to be taken on.

CHAIR—Is it fair to say that from your perspective allegations of copyright offences are a drop in the ocean in terms of the total referrals?

Mr Hughes—It is a small percentage of the total referrals, yes.

Ms JULIE BISHOP—Mr Hughes, you refer on page 4 of your submission to the level of penalties provided in the act. I am wondering if this might have influenced the Federal Police's overall attitude towards copyright matters in some way. What was the subject matter of this particular case, where the fine of $4,900 was imposed?

Mr Hughes—I am sorry, we do not have the specific details of that particular matter with us. We can provide that information if you like.

Ms JULIE BISHOP—It is just that I am interested. You state that the fine was disproportionate to the effort and resources applied. I am not suggesting that perhaps your effort and resources were misplaced, but were they disproportionate to the infringement? If you do not know the facts, that question might be difficult. Do you see the point I am making?

Mr Hughes—Yes. It is difficult to answer that question, I am afraid.

Ms JULIE BISHOP—What are the subject matters of alleged copyright infringements; what is the range of subject matters you are asked to investigate?

Mr Hughes—It is a wide range from a wide cross-section of the industries involved with copyright. It is really difficult to say that most of them are of a particular type. There is quite a diverse range of referrals and each one has its own unique characteristics about it.

Ms JULIE BISHOP—Can you give me some examples—compact discs? I am just trying to get a picture of the sorts of things you are asked to deal with.

Mr Hughes—For example, in April of this year we had an allegation of pirated Sony Playstation games being sold in Melbourne. In March of this year we had a complaint that Gillette had fraudulently used its patent in the development of the twin-blade razor and there was an allegation by Microsoft that Computer Hire and Sales Australia was selling unlicensed copies of Microsoft software.

Ms JULIE BISHOP—Do you find that the complaints are in fact made concurrent with civil proceedings?

Mr Brown—I am not sure that it would be concurrent, but in many instances civil proceedings are also being contemplated by those making the complaint. In most cases where the AFP is not in a position to pursue criminal action, I think civil proceedings would eventuate.

Ms JULIE BISHOP—I am just trying to get to the bottom of what the AFP's actual role in copyright infringement should be. Given the number of complaints made, given the number of matters you investigate and—and I mean no criticism—given the priority you give to these things and particularly your view that civil proceedings are possibly the best avenue for pursuing infringements, where do you see the role of the AFP?

Mr Hughes—I think the simple answer to that—simple to say but not so simple to actually carry out—is to target those instances where there is a high level of criminality, particularly those instances where we learn of any organised crime involvement. I see that as certainly being a matter that the AFP should become involved in.

Ms JULIE BISHOP—But your interest there is the organised crime rather than the infringement of the copyright, is it not?

Mr Hughes—It is in any activity of organised crime. If I may draw a comparison, we are involved with people smuggling issues, which are very contemporaneous issues of note. Our involvement there is at the organised crime level, not at the level of actually chasing people who have arrived illegally. We target that higher level of criminality involved through our overseas liaison network and through our agents here in Australia. It is our view that that is the level where we should rightfully become involved: where there is a high level of organised criminal activity.

Ms JULIE BISHOP—On page 6 of your submission you state:

> The AFP will usually accept matters of this type for investigation only where there are clear and substantial circumstances of direct or associated criminality which impact or affect the Commonwealth's law enforcement interests.

I am sorry to ask again, but can you give me an example of the sorts of things the AFP would consider worthy of their attention because of the underlying or associated impact on Commonwealth law enforcement?

Mr Hughes—Perhaps I could give you a brief summary of the two matters we have accepted this year that were in the figures the chair mentioned earlier. We received the first one on 18 January. It was an allegation from Protocol Risk Management Security and Investigations, acting on behalf of Microsoft Corporation and Microsoft Pty Ltd, regarding breaches of copyright by a person allegedly selling counterfeit Microsoft programs with a value of $800,000. A large volume of material was alleged to have been copied contrary to copyright. There was a huge economic loss to the owner and the commercial nature of the unlawful operation swayed us, when we applied our CCPM, to accept that matter.

The second matter, which was received on 14 January, was allegations that an organised group was distributing pirated computer software, audio CDs and games of substantial value. They were two examples of matters that we have accepted.

Ms JULIE BISHOP—I can understand the second, with the organised group aspect. The first was an infringement against Microsoft Corporation?

Mr Hughes—Yes.

Ms JULIE BISHOP—That is interesting. I would have thought that Microsoft, with the resources that corporation has, would have itself pursued civil proceedings against an individual.

Mr Hughes—As I understand this particular matter, they had undertaken a considerable part of the investigation, utilising that company, so that the resource implications for the AFP were minimised.

Ms JULIE BISHOP—Was that a factor that you took into account?

Mr Hughes—Undoubtedly, because one of the elements of our CCPM is the resource implications. When we come from a standing start or a very low baseline in an investigation, it can be quite intensive to get to the level that in this particular matter, as I understand it, Microsoft and their inquiry agency had taken the matter. So that certainly was a factor that was taken into account.

CHAIR—Effectively, what you are saying is that if the owner of the copyright or his, her or its agents have done a substantial amount of the preliminary investigative work, then it is much more likely that the AFP would be able to accede to a request to follow it through because of the resource implications?

Mr Hughes—It certainly is a factor because we do take resources as an element of our CCPM. It would be difficult to say that in every case where that was done we would of necessity take the matter on; we would still need to look at the referral in totality. But, certainly, we welcome any contribution of that nature by industry or industry agencies before it is referred to us in the appropriate cases.

Mrs VALE—Did they actually bring evidence to you that established a prima facie case of their ownership of the copyright so that you could proceed to enforcement? Is that part of the help or support that you were looking for on behalf of the person alleging the breach?

Mr Hughes—I am not aware exactly how much they had done, but I have been told it was a substantial way down the path, which eased our requirement to commit resources to that matter.

CHAIR—Can I take this a step further. In their submission to us, the Music Industry Piracy Investigations say on page 22, amongst other things:

> . . . given there is no national co-ordinated enforcement approach with Australia to mesh with border protection operations, the stance of the AFP tends to inhibit or discourage the involvement of other law enforcement agencies.

Is there a state of friction, if I could put it that way, in the relationship between the AFP and the copyright owners and their representative agencies which causes a state of distrust? If there is, is there anything that can be done to improve that relationship?

Mr Hughes—I do not know whether there is a state of friction. As I said in my opening statement, we do recognise a level of frustration from within that sector. We endeavour to engage whenever we can to explain the reasons in these cases for our rejection of the matters. I do not think it amounts to a friction. There is still useful dialogue that does occur, certainly in particular incidents that are referred to us, but we do understand their frustration.

CHAIR—They and the Motion Picture Association suggested that one possible avenue for improving the relationship would be a law enforcement committee under the auspices of the Attorney-General's Department. Has there been any discussion with these organisations about such a proposal? And, whether or not there has been any discussion, do you view this as a useful area of progress?

Mr Hughes—Given the complexities of these copyright issues, we believe there could be some benefit in a clearer mechanism for contact between the agencies, but I think that continuing dialogue with the industry in this regard is probably the most useful way forward. In terms of it being set up under the auspices of Attorney-General's, I would suggest that that would be a matter that the Attorney-General's Department would be best placed to comment upon. But, again, we would welcome any initiatives that would streamline or improve the effectiveness of the relationship with the industry in general.

CHAIR—More generally, are there any particular suggestions you would have that would assist the AFP and the state police organisations in detecting copyright enforcement?

Mr Hughes—As you have alluded to, the state police are equally as well placed as us, on a legislative basis at least, to undertake investigations. For example, they have all the powers that we have under the Crimes Act for obtaining search warrants and so on. We believe the fundamental issue here is whether it is appropriate, in every instance, for the criminal law to be applied. As I said in my opening statement, be it AFP or state police or territory police, we believe that in many instances it is more appropriate, given the commercial nature of the issues involved, for it to be dealt with on a civil basis rather than seeking criminal remedies.

CHAIR—You mentioned search warrants. In the submission from the Director of Public Prosecutions there is the statement that:

> The Australian Federal Police may be reluctant to execute search warrants and seize large numbers of allegedly infringing copies if there is significant doubt that the existence and ownership of copyright held overseas can be proved at the end of the day.

Is that an accurate statement?

Mr Hughes—The obtaining and execution of search warrants, certainly the execution of search warrants, is an invasive investigative process that we will not engage in if there is no prospect in our minds, and on advice from DPP, that we can in fact prove, to the criminal law requirements, copyright in the matters that we are investigating. So, from my interpretation of the DPP's position, that would be what they are alluding to there, that we will not automatically take out search warrants without having first considered the prospects of a successful prosecution.

CHAIR—Does that mean, though, that if the copyright which is allegedly infringed is owned overseas, then the chances of a search warrant being taken out and executed are fairly remote?

Mr Hughes—In any case where there are going to be quite clear difficulties in establishing copyright—and certainly where copyright is owned overseas there are some challenges in determining that point in fact—what you are referring to could well be the case more often than not.

Ms JULIE BISHOP—Just following on from that, if one wanted to bring proceedings in those circumstances, probably civil proceedings would be better because of the availability of Anton Piller orders and the lower onus of proof that would be required in civil proceedings, where you could get an Anton Piller order for seizure of the offending goods and then the civil court could work out the copyright ownership on a different standard of proof.

Mr CADMAN—As a layman, it occurs to me there must be a link somewhere or other between copyright infringement and fraud. If I knock something off the net and come and sell it to you representing it as genuine, and it is not, haven't I entered into a process of misrepresentation or fraud?

Mr Hughes—You may well have, but whether we could actually prove that beyond reasonable doubt to the satisfaction of the court is questionable. This is the basis of our argument that, because we need to establish proof beyond reasonable doubt in the criminal

environment and given the nature of the matter when we are talking about copyright, the civil remedy, which is on the balance of probabilities, may well be, in our view at least, a more effective—

Mr CADMAN—I understand that. The chairman has raised the overseas difficulties. Could I put to you that for a small creator of something that may not be of huge value in itself but may constitute a lot of work that can be replicated many times through electronic transmission, or even CDs burnt quickly, that is a pretty significant thing in the eyes of that creative individual. But you say we have got a resource restriction so we will not touch it.

Mr Hughes—It is not quite as simple as that. There are a range of things we need to take into account. Resources is one of them. This is not a plea for extra resources; what we are saying is that it is a factor that we take into account. Where you have an individual in the circumstances you describe, obviously the facts of the whole matter would need to be assessed. I agree that the individual would certainly be feeling a sense of loss in those circumstances. But whether we could actually prove the fraud is really the key issue.

CHAIR—Mr Hughes and Mr Brown, we have a difficulty in that we are all being summoned elsewhere—and you know the effect when a summons is issued. So, unfortunately, I am going to have to conclude this hearing at this stage. There are other matters which I and other members of the committee would like to discuss with you, and perhaps we will make some arrangements through the secretariat to have you back on a subsequent occasion. We appreciate the submission from the Federal Police and we appreciate you coming along today to discuss it. As I said, there are other matters which we would like to discuss with you in relation to it, so if we can make some arrangements to do that on a subsequent occasion we would appreciate that.

Mr Hughes—We would be happy to do that.

CHAIR—Thank you very much. I apologise for the vagaries of this place.

Resolved (on motion by **Ms Livermore**):

That this committee authorises publication of the proof transcript of the evidence given before it at public hearing this day.

CHAIR—I thank all those who have been in attendance today and I thank *Hansard*. I declare this hearing closed.

Committee adjourned at 12.22 p.m.