

Related Issues

- 7.1 A number of issues related to the enforcement of copyright were raised with the Committee. While these issues do not fall strictly within the terms of reference for the inquiry, the Committee considers it desirable to refer to them briefly. The issues are:
- the parliamentary library exception to infringement;
 - the relationship between infringement and censorship;
 - the infringement of copyright in broadcasts; and
 - the protection of performances from unauthorised exploitation.

Parliamentary library exception

- 7.2 The Commonwealth Department of the Parliamentary Library (DPL) submitted that the present wording of sections 48A and 104A of the *Copyright Act 1968* (the Copyright Act), which provide an exception to infringement for parliamentary libraries, hampers the intended operation of the exception. Sections 48A and 104A respectively state that the copyright in a work, or other subject matter:

is not infringed by anything done for the sole purpose of assisting a person who is a member of a Parliament in the performance of the person's duties as such a member, by an authorised officer of library, being a library the principal purpose of which is to provide library services for the members of that Parliament.

- 7.3 DPL stated that there is frequently a need for an exchange of information between state, territory and the Commonwealth parliamentary libraries in order to avoid duplication of effort and to ensure that services are readily

available to members of all Parliaments.¹ However, such exchange of information is not possible under the current wording. For this reason, DPL suggested that sections 48A and 104A be amended so that the principal purpose of a library referred to in each section is simply to provide library services for the members of a Parliament.

- 7.4 The Committee appreciates the problem that has been identified in the operation of the parliamentary libraries exception. In the Committee's view, such a problem was likely neither intended nor foreseen by the draftsman. The Committee agrees that the Copyright Act should be amended as suggested.

Recommendation 22

- 7.5 **The Committee recommends that sections 48A and 104A of the Copyright Act 1968 be amended so that each section concludes:**

'...being a library the principal purpose of which is to provide library services for the members of a Parliament.'

Infringement and censorship

- 7.6 In his submission, Mr John Dickie urged against any changes to the copyright law which allowed material in Australia to circumvent the classification process. He argued that such circumvention, particularly in relation to videos, digital video discs and computer games, would seriously undermine the integrity of the present classification system.²
- 7.7 Whilst appreciating this potential problem, the Committee does not consider that any of the changes it has proposed would have such an impact. As indicated in Chapter 2, the Committee does not regard the present inquiry as an opportunity to revisit generally issues of parallel importation. Thus the Committee does not express a view as to the relationship between the parallel importation of audio visual material and the enforcement of censorship laws.

1 Department of the Parliamentary Library, *Submissions*, p. S36.

2 Mr John Dickie, John Dickie Communications, *Submissions*, p. S87.

Infringement of copyright in broadcasts

- 7.8 The Federation of Australian Commercial Television Stations and the Australian Subscription Television and Radio Association, together with some of their members, gave evidence relating to the infringement of copyright in pay TV broadcast signals.³ They also drew the Committee's attention to the unlawful interception of free-to-air signals outside their licence areas, and program carrying signals. The Committee considered these issues in its inquiry into the Copyright Amendment (Digital Agenda) Bill 1999.
- 7.9 The Committee is not persuaded that the evidence presented in the current inquiry requires it to revisit the conclusions and recommendations it reached in relation to those issues, contained in Chapter 5 of the Advisory Report on the Copyright Amendment (Digital Agenda) Bill. Indeed, the Committee notes that the government implemented one of its key recommendations in relation to broadcasts.⁴

Protecting performances from unauthorised exploitation

- 7.10 Music Industry Piracy Investigations (MIPI) submitted that the existing civil and criminal protection for performers contained in Part XIA of the Copyright Act, against the unauthorised recording of their performances, is inadequate. MIPI argued that performers should also be protected from the unauthorised exploitation of their performances.
- 7.11 The Committee strongly sympathises with this view, but refrains from recommending any amendment to Part XIA at this stage. The Committee notes that the area of performers' rights is under review both domestically and at the international level.⁵ The World Intellectual Property Organisation's Standing Committee on Copyright and Related Rights plans to hold a diplomatic conference later this year to finalise a new treaty on the rights of performers in audiovisual works. In addition, the Attorney-General, the Minister for Communications, Information Technology and the Arts and the Minister for Arts and the Centenary of Federation have announced that the government has begun an

3 Federation of Australian Commercial Television Stations (FACTS), *Submissions*, p. S108; Australian Subscription Television and Radio Association (ASTRA), *Submissions*, p. S293; Mr Smart, Foxtel, *Transcript*, p. 223; Mr Meagher, Austar Entertainment, *Transcript*, p. 230; Ms Bean, Optus Communications, *Transcript*, p. 224.

4 Recommendation 21 of the Advisory Report on the Copyright Amendment (Digital Agenda) Bill 1999: see amendments 47 and 57 of the Government amendments introduced into the House of Representatives on 19 June 2000.

5 *E news*, newsletter of the Intellectual Property Branch of the Attorney-General's Department, Issue 13, May 2000.

examination of the ways to provide stronger protection for directors under the Copyright Act.⁶

- 7.12 While the Opposition members of the Committee believed it is appropriate to recognise a directors' copyright, the majority of the Committee thought it desirable to wait until the examination and consultations referred to above are complete. In doing so, however, the Committee wishes to stress that it recognises the need to provide directors' proprietary rights in films greater protection.

Kevin Andrews MP
Chairman

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6 Joint New Release, Hon Daryl Williams AM QC MP, Senator the Hon Richard Alston, Hon Peter McGauran MP, *Copyright Consultations Recognise Directors' Role in Film Production*, 17 August 2000.