

Our Ref: 226017

1 October 1999

The Secretary

House of Representatives Standing Committee on Legal and Constitutional Affairs

Inquiry into Copyright Amendment (Digital Agenda) Bill 1999

I refer to your invitation for submissions. I have been asked by the managing Partner of our firm (Steve Aitchison) to briefly convey our firm's views on the Bill.

Definition of Libraries

Our firm's key concern is with the proposed change to the definition of libraries (which I note from the Ex Mem is specifically directed (in part) to law firm libraries). We are concerned that this change could have a significant adverse impact on the cost, timeliness and quality of legal services. However, we are also concerned about the negative impact of such a change on the broader public and library community through creating a division between the libraries within "for profit" businesses and those in the not for profit sector. This would remove the current extensive benefits of inter-library co-operation.

I am aware of the analysis prepared for the Australian Libraries Copyright Committee (ALCC) and the Australian Digital Alliance (ADA) by Jamie Wodetzki (Minter Ellison) and that Jamie has been involved in some of the public hearings on the Bill. We support the relevant concerns raised in his Commentary dated 16 September 1999 (as available at <http://www.alia.org.au/copyright/news/1999.09b/>).

Definition of Communicate

On a technical level, I have some concerns with the proposed definition of "communicate". It is appreciated that this is meant to be technology neutral, but because of its reliance on terms such as "electronically" and "on-line" it may inadvertently fail to cover some current and future communications technologies. For an example of current technology, "free space" optical communications that do not travel by fibre may not be neatly captured by the definition. In the future other communications technologies (perhaps quantum or nanotechnology based) may also pose problems. Of course these matters could be addressed by later amendment or we could trust in the good sense of the courts. However, I suggest it may be more appropriate to address this issue at the outset with even more technology "neutral" language.

I regret that time has not permitted me to make a more considered submission on the rest of the Bill. I appreciate that it is a difficult task to strike a fair balance between the interests of user and owner groups, and wish the Committee good luck in analysing these important issues and formulating appropriate recommendations.

Yours faithfully
NORMAN WATERHOUSE

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