



Jon Stanhope MLA

CHIEF MINISTER

ATTORNEY GENERAL MINISTER FOR THE ENVIRONMENT
MINISTER FOR ARTS, HERITAGE & INDIGENOUS AFFAIRS

MEMBER FOR GINNINDERRA

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The Hon Peter Slipper MP
Chairman
House of Representatives
Standing Committee on Legal and Constitutional Affairs
Parliament House
Canberra ACT 2600

Dear Mr Slipper

Thank you for your letter of 25 August 2005 regarding the House of Representatives Standing Committee on Legal and Constitutional Affairs review of technological protection measures exceptions arising from the Australia-United State Free Trade Agreement (AUSFTA).

The ACT Government has maintained a close interest in the negotiation and implementation of the AUSFTA. Together with other States and Territories, the ACT Government was consulted by the Department of Foreign Affairs and Trade in relation to a number of aspects of the AUSFTA negotiations, especially in relation to government procurement and trade in services and investment. There was no detailed consultation, however, in relation to the implications of the AUSFTA for Australia's copyright regime.

Exceptions from technological protection measures are a serious issue for the ACT Government. Access to an exception for making acquisition decisions is important for our public libraries. Exceptions provided to educational institutions are of great benefit to ACT Government schools, given that copyright related costs are already substantial. In 2004 the ACT Department of Education and Training paid \$550,000 to copyright collection agencies. Any significant increase in this cost will have a direct adverse effect on school funding.

Two provisions of the *Copyright Act 1968* (the Copyright Act) significantly benefit ACT Government schools. These are Part VA, Copying and communication of broadcasts by educational and other institutions, and Part VB, Reproducing and communicating works etc. by educational and other institutions. These provisions of the Copyright Act provide a form of statutory licence for educational institutions to use copyrighted materials. Currently neither of these provisions are included in exceptions under the AUSFTA.

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601

Phone (02) 6205 0104 Fax (02) 6205 0433



Amendments made to the Copyright Act by the *Copyright Amendment (Digital Agenda) Act 2000* introduced civil and criminal provisions against certain activities relating to technological protection circumvention devices. There are exceptions to these provisions for certain permitted purposes including activities undertaken by schools allowed under Part VB of the Copyright Act. A similar exception should apply to the provisions of the AUSFTA.

An exception to the AUSFTA provisions should also apply to Part VA of the Copyright Act. It is likely that in future digital delivery mechanisms for broadcasts will use technological protection measures and will therefore limit the ability of educational institutions to use the Part VA statutory licence. A legitimate need to circumvent technological protection measures can arise in a number of circumstances. For example, DVD zoning, in circumstances where teaching resources are sourced from overseas, can hamper the teaching of foreign languages. Also it is sometimes necessary to reconfigure material to facilitate use by disabled students.

Section 183 of the Copyright Act, Use of copyright material for the services of the Crown, provides a statutory license to use copyright material for the services of the Commonwealth or a State government. Governments should have a right to disable a technological protection measure in order to use their statutory licence. Without such a right a government's ability to engage in non-infringing use of copyright work would be hampered. Accordingly s. 183 of the Copyright Act should also receive an exception to the AUSFTA provisions.

Given the extensive use made of Parts VA and VB of the Copyright Act by schools and of s. 183 by government more generally, the ACT Government believes the Committee should recommend the addition of those provisions as exceptions to the AUSFTA technological protection measures.

Thank you for the opportunity to provide comment to the review.

Yours sincerely



Jon Stanhope MLA
Chief Minister

17 Oct 2000