

**KITMOG PTY LTD
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6 JUNE 1999

COMMITTEE SECRETARY
HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS
PARLIAMENT HOUSE
CANBERRA
A.C.T. 2600

SUBMISSION RE:-

INQUIRY INTO THE LEGAL ENFORCEMENT OF COPYRIGHT IN AUSTRALIA

Please find attached a submission on the above consisting of 22 pages of submission, 3 pages of open appendices and 7 pages of CONFIDENTIAL APPENDICES.

My apologies for not getting this material to you sooner but I did attend a public meeting on Copyright in Sydney on 3 June and wanted to hear what was said at that meeting before I completed my submissions.

In providing this submission to your committee, I am placing myself in a situation where I am allowing public access to material that I have kept confidential for some time.

In fact if my submission is not considered in full by your inquiry and changes made, either as a result of my submission or similar submissions of others, to the way in which enforcement of copyright on written material currently occurs in Australia, then our business will most likely suffer further erosion of income.

There are persons in the educational sphere who, if they gain access to this submission, will from past experience certainly increase their illegal photocopying.

Furthermore as the network of colleges and students is small in relation to my specific interests, it would not take very long for every educational institution in Australia to increase their illegal photocopying if no action is taken.

I look forward to hearing from you.

YOURS FAITHFULLY

ROBERT KERRIGAN

**KITMOG PTY LTD
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Tel 02-49307286 Fax 02-49-342655

18 MAY 1999

COMMITTEE SECRETARY
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1 - INTRODUCTION

KITMOG PTY LTD is a family owned Company specialising in supplying communication products to the horse and rural industries. Our business is entirely self funded from our own resources and no government assistance, subsidy or funding of any kind has ever been sought.

The Company operates two marketing divisions, EQUINE EDUCATIONAL servicing the horse industry and RURAL MEDIA AUSTRALIA servicing rural activities.

The business has been established for 16 years and operates as a publisher, importer, wholesaler and retailer of books and videos and we are about to release CD-ROMS and computer programs for sale. Our current listings total about 700 titles. Copies of our current catalogues are included for the Committees information.

The Managing Director Robert KERRIGAN is author or co-author of some 13 titles and is author/co-author of two titles expected to be released in the next few months.

Robert Kerrigan has also had some 14 years experience as a Part Time Teacher within the N.S.W. TAFE organisation. With another, he designed, tested and established the original Horse Management course in about 1974 and by himself the Small Area farmers course in about 1977 and taught up to 15 hours per week in the Hunter Valley of N.S.W. until the end of 1988.

The writer has therefore been exposed to the problem of copyright both as a tertiary level teacher with very restricted available teaching resources supplied by the employer and as an author and publisher operating as a small business.

This submission is presented under the headings as listed in the **TERMS OF REFERENCE** of the **INQUIRY INTO THE ENFORCEMENT OF COPYRIGHT IN AUSTRALIA**.

Relevant Appendices are also attached.

As the ENFORCEMENT OF COPYRIGHT IN AUSTRALIA cannot be removed from breaches of copyright, this submission will contain a number of actual examples of breaches of copyright as well as other relevant material.

The submission will be presented in the various Terms of Reference as outlined in the written material provided on the Inquiry.

1 - a) evidence of the types and scale of Copyright Infringement in Australia, including,

i) the availability and accuracy of data on copyright infringement.

It is extremely difficult, and in fact impossible in some instances, to get factual information on copyright infringement in Australia. It is extremely well accepted by many people that copyright infringement does take place, especially as regards written material, on a large scale.

The ready availability of photocopying machines in Australia has de facto encouraged the infringement of copyright on printed material.

There are a number of different groups of people involved in the illegal photocopying of printed matter.

- A) Those people who are not even aware of copyright and who just photocopy something for their own personal use or the use of their friends.
- B) Those such as teachers etc. at educational institutions who deliberately photocopy written material to be used as lecture notes, class hand outs and similar teaching aids.

This activity is encouraged by the lack of teaching resources, both financial and physical, in educational institutions. In fact it would not be unfair to suggest that illegal photocopying of written material is encouraged or at least aided by the educational system in general.

Illegal photocopying is a very easy, quick and cheap method of getting resource material and teaching aids. On that basis alone, this simply means that less money needs to be put into resource material,

allowing, on the same total expenditure, more money to be put into salaries and wages and hence more people to be educated.

Large scale photocopying of written material is seen by teachers and lecturers as an easy and quick way of preparing lecture notes and is being increasingly used by part time teachers, in particular, who do not see themselves being paid for any lecture preparation time.

It could very well be argued that in some areas of education, illegal photocopying of written material in particular is providing educational institutions with "free resource material". In so doing, many copyright holders are de facto providing written technical material, theoretically subject to copyright at no cost and therefore no financial remuneration to these educational institutions.

- C) The increasing activity of public libraries who, in the electronic age, now see themselves as disseminators of all information on a large scale rather than organisations who physically loan books to individuals who actually enter libraries.

With the Group A people defined above, it would be virtually impossible to detect copyright infringement.

With the Group B people, whilst they are, or were, in theory, supposed to complete photocopy logs on each photocopying machine within an educational institution, every time that photocopies are made, it is my experience from some years as a teacher that the photocopy logs are rarely if ever completed correctly.

Furthermore, I do have to doubt if the accuracy of any such photocopy logs are ever checked by any authority and discrepancies clarified.

In addition with staff and students at educational institutions, the fact that material may be photocopied is looked upon as a way of saving money, of staff spending less time preparing class material, of students not having to buy text books, and so everyone keeps very quiet about such illegal procedures.

The following are examples of illegal copying of both written and CD-ROM material that I am aware of occurring in Australia at this time.

ACTUAL INFRINGEMENT OF COPYRIGHT

In my capacity as a publisher and wholesaler, I am in constant touch with over 1200 bookshops and saddleries throughout Australia.

The following actual examples of infringement of Copyright have or are occurring.

In all instances, no enforcement of Copyright has taken place.

1. BOOKS FOR KINDERGARTEN STUDIES.

A particular retail bookshop with a large trade to schools noticed that their sales of books suitable for kindergarten aged children dropped from about 130 copies to 1 copy of every new release to schools conducting classes for 5 to 9 year olds.

That bookshop finally found out that an alliance of teachers had been established in the district and that as soon as a new release came on the market, one copy was bought by one teacher. That book was then scanned into the INTERNET, every interested teacher informed by e-mail, who then down loaded the scanned-in text onto hard copy.

The particular bookshop has informed me that they pursued this matter as far as they could but were unable to do anything to stop the practice.

It appears that 10% of the book was downloaded onto the INTERNET on day 1, then 10% on day 8 then another 10% on day 15 and so on.

By day 80 or so the complete book had been downloaded onto the INTERNET and copied off by all those who were informed.

2. BOOKS FOR TERTIARY LEVEL STUDENTS.

Another bookshop, in another state from the one mentioned above, has a business agreement to supply text books to a particular tertiary level educational institution.

Information provided to me on Thursday the 20 May by the principals of that bookshop indicate that their sales of texts are decreasing by 20% a year, despite increasing student enrolments.

The bookshop proprietors own inquiries indicate that illegal photocopying of various texts are taking place within that academic institution, but they are unable to act to protect their sales.

3. PRIVATE BREACHING OF COPYRIGHT

The recent edition of the Australian Book Collector NO. 106 of MAY 1999, page 29 - Booksellers Diary contains the following:-

“A more blatant breach of Copyright came to my attention this afternoon, when someone rang to ask about Biggles books, especially some that he had seen in a “bibberliog-something”. A **Biggles Bibliography** perhaps?. Just so. By way of market research I ask where he got it. “Oh X gave me a photocopy of his”. I shall pursue the matter.

The author of this is Ross Burnett of Uralla N.S.W. the editor/publisher of the Australian Book Collector as well as the editor publisher of “A Biggles Bibliography” and trading as Ross Burnett Book Dealer of URALLA N.S.W.

4. BREACH OF COPYRIGHT ON CD-ROMS.

The breaching of Copyright is also a problem with CD-ROMS.

I am very reliably informed that there is a student at a primary school in the outer western area of Sydney who, for the sum of \$5.00, will produce copies of CD-ROMS overnight. The student only needs to be supplied with one blank CD-ROM disc plus the CD-ROM to be copied, he will overnight produce a copy and return that copy plus the original CD-ROM to his student friends the next day.

5. TERTIARY LEVEL TEXTS.

As a Part Time TAFE teacher for some 14 years, designing and teaching new courses in horses and rural subjects and with no teaching resources being provided to me during that period, I make no secret of the fact that I too infringed copyright.

I was only paid for teaching hours, I was not paid for preparation time. The easiest and simplest way to get teaching resources was to photocopy from books in my own library and hand those photocopies out as teaching aids and often as teaching notes.

Whilst there were printed messages on the photocopying machines that only 10% of any book could be photocopied, there was never any indication as to what that 10% referred to.

The 10% rule could have been interpreted in many ways, from only ever photocopy 10% to photocopying 10% to-day, 10% to-morrow etc. so that by the end of 10 days the whole book was photocopied.

Likewise all teachers were supposed to fill in a photocopying machine log which provided details of author, titles etc. as well as total number of pages photocopied.

In my experience in some 14 years, very rarely was this log ever filled in correctly by the numerous teachers that used such facilities in two major TAFE colleges.

There was never to my knowledge, in 14 years, any checks done at any time as to the number photocopies made as per the written log and the actual copy count on the photocopying machines. If any such checks were made, there was never any attempt by anyone to determine the discrepancies that existed between the actual copy counts on the photocopying machines and the log details.

APPENDIX 2 of this submission provides detail of a further breach of copyright.

Complete details are provided of known copying of a book in full and over a number of years.

ii) the scale of infringement in Australia in comparison with countries in our region and Australia's major trading partners.

Unable to provide any comment.

iii) the geographical spread of copyright infringement in Australia.

Copyright infringement of written material relating to horses and rural subjects is Australia wide.

Examples provided earlier in this submission cover Victoria, N.S.W. QLD and W.A

iv) cost of infringement and impact on Australian business

This term of reference needs to be subdivided further into the following:-

A) Loss of sales of written material due to copyright infringement.

APPENDIX 2 provides details of a known example of the cost of copyright infringement on one technical book.

My best estimates **on three titles only** are that EQUINE EDUCATIONAL as publishers have lost sales of about **\$500,000** over 8 years or about **\$62,500** per year since 1991 due to illegal photocopying of our publications. As author's royalties, about **\$6,250** per year.

There are at least another five horse books, distributed by our Company but published by overseas publishers, that are extensively photocopied and used in educational institutions. My estimate of losses in retail sales from the illegal photocopying of those titles would amount to **\$87,500** per year alone.

Considering that EQUINE EDUCATIONAL lists just 500 horse books, it would be reasonable to say that illegal photocopying of horse books in Australian educational institutions would have a minimum retail price value of about **\$250,000 to \$300,000** per year.

B) Reduced new product development.

Reduction in sales due to illegal photocopying means reduction in both publisher and author income.

As far as the publisher is concerned, to the small specialist publisher it may well mean the difference between staying in business or ceasing to have any business at all.

To the larger and more successful publisher it will certainly mean that those businesses will have less capital available to produce more product and so have an increased product range.

In our own instance, I estimate that if we had been able to achieve the retail sales that we should have achieved, had illegal photocopying not taken place, we would have been able to produce another 2 or 3 titles per year.

There are always many more titles available to publish than there is money to pay for the publishing costs. Considering that we publish on average about 2.5 titles per year, the figures supplied on illegal photocopying means that our Australian horse book list should be twice the existing size, if illegal photocopying did not exist.

On the basis detailed above, the reduced new product development which has affected our business due to the infringement of copyright as a result of illegal photocopying of written material has probably cost us a gross income loss from lack of new product in the range of **\$50,000** per year.

This sum is in addition to loss sustained from illegal photocopying of books already published.

C. Subsidies to the educational sector.

In light of the above, it could be said that our small business with about 500 titles, of which some eight or nine are known to be illegally photocopied at will by the educational sector is “voluntarily” subsidising the educational sector to the sum of **\$250,000** to **\$300,000** per year.

One can only estimate that the “voluntary” subsidisation by all publishers and copyright holders to the educational industry, Australia wide, in any one year **must amount to millions of dollars.**

v) whether there is evidence of the involvement of organised crime groups in copyright infringement in Australia and if so to what extent.

Any answer to this depends on what is meant by organised crime groups.

I am not aware of any involvement of organised crime groups in illegal photocopying of written material relating to the horse and rural industries.

However there does exist and has existed for many years, an informal but successful communication system within tertiary educational institutions that “encourages” illegal photocopying by teachers of written material for use as teaching resources.

The persons responsible are usually not making any additional money for themselves by virtue of the illegal photocopying. They are however, protecting and or enhancing their teaching positions by being able to provide teaching resources at considerably reduced cost, thereby reducing their overall educational cost per student etc. and very likely enhancing the possibility of their continuing employment.

In addition, the provision of illegal photocopies of written material to students encourages more students to attend such courses as they do not have to buy set texts and instead receive the material by illegal means

Whilst this illegal photocopying probably does not amount to organised crime, I suggest that it none the less amounts to a criminal activity.

vi) Likely future trends in the scale and nature of copyright infringement.

The scale and nature of copyright infringement with regards to written material would have appeared to have increased over the past twenty years.

There is no obvious or apparent reason why illegal photocopying will not maintain its current levels or even increase in the future.

This will be especially so as financial restraints continue to take place on educational institutions and at the same time demand for educational services increases as a result of both political and market forces.

EDUCATIONAL INSTITUTIONS AND COPYRIGHT

I can see an ever increasing rate of illegal photocopying of written material occurring in educational institutions as they are faced with continuing budget restraints and directions to provide more education for less money.

A simple way to reduce costs and service extra students is to photocopy teaching material.

Another method used by educational institutions of reducing resource or textbook costs is for the educational institution to buy enough books of a specific title to be used in each particular subject as texts. The texts are handed out at the start of each lecture to each student and are then taken back at the end of the class.

This practice is especially prevalent in subjects where the courses are of 18 weeks or less in duration, and more than one course is conducted per week.

The Inquiry may care to consider if in fact this practice can be considered an infringement of Copyright.

In my experience, especially from being “on both sides of the fence”, Copyright infringement is being used and abused by educational institutions on an extremely regular basis.

The management of such educational institutions may well deny that such is the case but when one gets down to lecturer level, or student level, to those that are actually doing the photocopying, the practice is widespread.

The extent and degree of photocopying varies from institution to institution and subject to subject. It also depends a lot on staff attitude and the money that is available to that institution for staff employment as well as resource material etc.

There are currently very few of the educational institutions in Australia, teaching horse subjects who actually require students, both external and internal, to buy text books.

The greater proportion of the other tertiary educational institutions provide photocopied notes, most of which appear to breach copyright.

I have been told on a number of occasions by the head of one equine studies course that the students simply will not buy text books, “they do not have the money.”

I simply do not believe that as I know of the colleges that specify texts and students buy those texts.

I know the type of student and the course levels in each college and in all instances the students of colleges that are encouraged to buy written texts are doing a course of lesser or equal standard to the college “whose students have no money to buy texts”.

I also know that in two instances of colleges where compulsory texts are required that the possible income level of those completing the course will be less than of those of the college “whose students have no money to buy texts”.

It has been inferred to me that it is easier for such academic institutions to apply for and get additional staff than it is to resource material.

On that basis, the trend within tertiary educational institutions is therefore to get staff to compile lecture notes by doing illegal photocopying and to then make income for the college by selling such compulsory course material to the students.

The protection of Copyright, especially as such activities are not regularly monitored by any authority therefore becomes irrelevant to the generation of income by the educational institution.

The loser is the original copyright holder, who did all the original work yet gets nothing for his or her endeavours.

LIBRARIES AND COPYRIGHT

The expansion of libraries into servicing clients via the Internet and other electronic means is a very worrying trend in the administration of Copyright.

Some 15 or so years ago when one person went into a library and borrowed one book for say one week, the public access to the material in that book was limited to in this example no more than 52 people in any one year at that particular library.

Whilst I have no figures to show otherwise, I am sure in that era that the average book would not have been loaned out for anywhere near that amount of time.

Authors and others who are copyright holders, including myself, were quite happy to look upon the possibility of 10% of the work being photocopied as being a form of advertising, hopefully leading to sales of the book.

That was also the era when every library purchased their own books and there was no inter-library transfer of written material.

Every author had the possibility of having a copy of their book sold to every library that considered the title and contents was relevant to the clientele of that library.

I am informed that there is now a trend in some States for individual libraries to be designated as the “source library” for a particular subject in that state. That “source library” buys one book on the subject, so the sales of an individual title decreases from tens or hundreds to one in that State.

The use of intra-library communication facilities, I believe, allows anyone State wide to borrow that title on an inter-library loan.

Whilst I am aware of the continuing budget restraints being placed on libraries and the fact that they need to make their money go further in providing services, the provision of such services, I suggest is currently being subsidised by the publishers and authors of copyright material in two ways.

The first is by way of reduced income in that less number of titles are sold and secondly by way of breaches of copyright in that every library has a photocopier and I have never yet seen any such photocopiers monitored as to how much photocopying had taken place.

There is also, I understand an increasing trend for every library, especially in educational institutions to become public libraries.

Previously libraries in educational institutions lent only to staff and students of that institution and not to the general public. I am told that if such libraries with a previously restricted lending audience become public libraries, they are allowed much more freedom in lending and other activities that allow breach of copyright.

b) options for copyright owners to protect their copyright against infringements, including:-

- i) actions and expenditure undertaken and that could be undertaken by copyright owners to defend their copyright.**

The ability of copyright owners to take action to defend their copyright is severely limited and in fact even restricted by the complete lack of simple, “easy to understand” information about how copyright holders may act.

Some years ago, I originally was advised to discuss my problems with the Copyright Agency. Initially that Agency was not interested in my problems and referred me onto a solicitor who had just left their employ and who was then in private practice.

I discussed with that solicitor the particular problem in hand and very simply I did not proceed further for three reasons.

Firstly the inability of me being able to obtain physical evidence required for any legal action, even though I knew that illegal photocopying was taking place.

Secondly the costs involved in such a matter

Thirdly the fact that any decision in my favour was likely to be negotiated on a confidential basis and therefore could not be imposed on any other institution breaching copyright.

Some years later, when the confidential matter detailed in APPENDIX 2, arose, I again contacted the Copyright Agency. The results were less than satisfactory and are detailed in APPENDIX 2.

From my current knowledge of how the Copyright Agency works, it is simply a collection medium for photocopying fees on some written titles from some photocopying sources.

It has been my experience that the Copyright Agency is not interested in any copyright matter that does not “fit into” their method of operation.

APPENDIX 3 provides a fax sent to the Copyright Agency on 20 January 1999.

Despite two telephone calls to the Copyright Agency since that fax was sent, I still have not, to this date some 19 weeks later received any reply.

I would suggest that by far the majority of Copyright holders do not have any idea of how to protect their copyright.

Even if the Copyright holders did have any idea of how to protect their copyright, there is the problem that the chances of any copyright holder gaining access to material or physical evidence of illegal photocopying is very limited, if not impossible, at this time.

For a copyright holder to do so in relation to illegal photocopying within an educational institution would require the copyright holder to be able to gain access to all lecture notes, class handouts and other resource material at any time.

That could only be done on an unannounced visit, if the copyright holder had any legal authority to do so.

As I currently understand the situation, any copyright holder has no legal right to enter any educational institution, even with a prior appointment and request to see lectures notes, resource material etc.

With some knowledge of the educational system, any visit by any person, copyright holder or otherwise, that was by an arranged appointment in relation to inspection of material for copyright infringement would immediately lead to all illegal photocopying being removed from that institution during the time of the visit and hence being unavailable for inspection.

It is logical that the Copyright holder should be the person who is able to monitor any breaches of copyright in relation to their material.

Copyright holders are the people who know what is their publication and would quickly be able to determine if copyright law is being breached.

If the Copyright holder is unable to monitor copyright by virtue of distance, time or the fact the copyright offence relates to an overseas publication and or publisher, then any authority held by the Copyright owner, in relation to physical inspections could be transferred to another party such as a distributor to monitor copyright on their behalf as their agent.

ACTION TAKEN

APPENDIX 2 provides details of action taken by the writer in an effort to counteract known illegal photocopying.

That experience clearly showed that the Copyright Agency was certainly not the correct body to approach on the matter. At the time I was not aware and neither was I made aware of the possible interest of the Federal Police in such matters.

I did not seek recourse to private legal advice, simply on the basis that the Copyright Agency gave me the impression, incorrectly as it turns out, that they would be able to effectively handle the matter.

Further from some amount of experience over the years as an expert witness in agriculture in legal matters, I was aware that evidence would be required.

The problem was getting that evidence. The matter still remains unresolved.

ACTION THAT COULD BE UNDERTAKEN

The ability to act in matters of breaches of Copyright should rest with the author or with their nominated agent.

Authors and similar copyright holders do not usually travel very much and nor do they usually move and circulate to any extent in the business world.

In addition they are usually well known in their individual areas of interest and even if an author did attend a college where breaches of copyright was occurring with their material, I am sure that that any such breaches of copyright would be “inaccessible” to those authors and other copyright holders during that visit.

The author’s agent in respect to enforcement of copyright should be the person who has the best opportunity to be able to monitor any copyright infringements.

As an author as well as a publisher and a wholesaler, I can state that all the breaches of copyright that I have detected in my field of interest have occurred when acting as a publisher or a wholesaler, and never as an author.

Any information on such activities has never come as a result of a direct inquiry, but as an aside to a general conversation or just from a casual comment passed by some one in conversation.

In addition, it is publishers and wholesalers who travel considerably and mix widely in the business circles.

Similarly some of the breaches of copyright detailed in this submission have been detected by retailers.

Whilst it is in the individual and combined interests of authors, publishers, wholesalers and retailers to ensure that breaches of copyright do not take place, it is in fact the author who suffers least financially.

The publisher, the wholesaler and the retailer all individually suffer greater financial loss per book than the author by any breaches of copyright and so on that basis they have a very sincere reason in protecting copyright of any product that they have an interest in.

In practice it really does not matter who monitors breaches of copyright, as long as two important points are considered.

1. Firstly those monitoring copyright are sufficiently acquainted with the particular subject material that they are able to recognise with little effort, breaches of copyright.

As an example, I feel with my knowledge of the horse industry and the published written material available to that industry, that I would be able to recognise very quickly any breaches of copyright that have taken place.

2. That there is a legal system in place that allows such monitoring of copyright to take place.

The actual monitoring of breaches of copyright is not an easy task.

As an example, I would be able to detect a possible breach of copyright in relation to horse books within a matter of minutes of seeing a set of photocopied notes. My activities allow me access to 500 or so current horse books as well as another 900 or so in my private library.

I would be able to confirm within 24 hours, if any breach of copyright had in fact taken place in written material in my subject interests.

ii) use of existing provisions of the Copyright Act 1968

I have never attempted to use any of the provisions in this Act. I must admit that I have never read the Act but I have been advised by others that it is unworkable anyway and out of touch with modern day practice.

iii) use of legislative provisions other than those of the Copyright Act 1968.

I am unaware of any such legislative provisions.

iv) Technological or other non-legislative measures for copyright protection.

With printed material, I know of no technological measure at this time that can be used for copyright protection.

It is possible with video to use a security device on the video that will prevent copying on a VHS to VHS basis. The security device scrambles the signal so that any copy will have small sections of copied video and then sections of varying length of "snow" as appears on a badly tuned television set.

As far as computer programs and CD-ROMS are concerned, I am advised by my experts that whilst security devices similar to those used on video are available, programs do exist that will allow the "breaking" of such security devices and hence illegal copying of any CD-ROM or computer program.

Such devices can even "break" codes that allow for a restricted number of uses or a use by date.

c) Adequacy of criminal sanctions against copyright infringement, including in respect of 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.

From the limited information that I have been able to access, it would appear that criminal sanctions against copyright infringement by way of photocopying written material either do not exist in practice or else are very few and far between.

Such possible criminal sanctions are certainly not known at all within the educational sector.

It would appear that the current problem with the enforcement of copyright under Australian law is that physical evidence needs to be produced in order to even consider mounting a case for copyright infringement.

In the case of the import of illegal produced overseas sourced CD-ROMS or similar products, procedures exist that can allow for the Federal Police and or Customs to confiscate any such shipments on their entry into Australia.

In most instances, the quantities of illegally produced product involved are usually high numerically but often involve reasonable financial amounts in terms of book sales not achieved..

In addition, physical confiscation of material produced by infringement of copyright can take place and the destruction of such material sometimes features in the daily news media.

In the case of illegal photocopying of written material within Australia, especially within the educational sector, the numerical quantity per educational institution may be small, in the range of 10 to 30 copies per institution per year.

In total over say 40 institutions, the total physical quantity again may be reasonably small, say in the range of 400 to 1200 copies but the total retail value of the products being photocopied can amount up to \$48,000 in the case of one book in one year.

As mentioned earlier in this report, I estimate that the total cost of illegal photocopying of horse books in Australia to be worth between **\$250,000 to \$300,000** per year.

In addition, the physical confiscation of such Australian illegally photocopied material is not going to be as newsworthy as the confiscation of imported material.

As detailed previously and in APPENDIX 2, the Copyright agency has shown no interest in pursuing one specific case.

I was not aware until recently that the Federal Police had any jurisdiction in this matter.

I have recently discussed the continuing problem detailed APPENDIX 2 with a very co-operative officer on the phone.

His very frank and simple comment was “send us the details but I doubt if we would have the resources to look at the problem.”

It would appear that under the current laws and administration of such law, that illegal photocopying of written material is able to take place without fear of any form of sanction or punishment if one or more of the following circumstances exist:-

- 1) copyright infringement takes places outside the metropolitan areas of the State capitals.**
- 2) the chances of a visit from anyone from Federal Police and or the Copyright Agency is remote.**
- 3) the written material being illegally photocopied relates to a subject matter that is not considered significant in the view of either the Copyright Agency and or the Federal Police.**
- 4) the copyright holder is known within the specific subject matter area.**

In terms of amending the current laws to provide procedural or evidential assistance in criminal actions against copyright infringements by staff at educational institutions, it could well be said that the present laws actually assist copyright infringement.

- 1) the obtaining of physical evidence is extremely difficult.

Offending teachers and or lecturers make sure that any illegally photocopied material are kept well away from any possibility of being accessed by any copyright holder.

In fact it could be said that it has become a “game” with horse books in teachers trying to keep illegally photocopied material away from myself. Eventually I hear about it somewhere and somehow from students, but rarely see the offending material.

2) the relatively small size of individual infringements of copyright.

As stated above with one particular book it would amount to somewhere between 10 to 30 copies per educational institution with a total retail value of about \$1,200.

Certainly in the area of litigation, it is not worth while pursuing a matter for that sum of money.

I can only assume that such is the case with any legal action in relation to copyright infringement.

However when the total sum of all the illegal photocopying Australia wide is added up it could amount to some \$250,000 to \$300,000 per year.

In total the amount is significant, in relation to individual colleges the amount is considerably less.

3) the general attitude in the community and especially the educational community is that individuals will not get caught infringing copyright.

Maybe some one has been caught infringing copyright by way of illegal photocopying in educational institutions but if so the details of the case are not known to me.

I certainly know that there is an attitude of “to hell with copyright” amongst many teachers and lecturers, especially in outer suburban and country areas and the breaking of copyright by these people is taken as a common day occurrence.

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.

Most of the material written in the preceeding section is applicable to this section and should be read in conjunction.

From my limited knowledge, civil actions against copyright offenders would be a more satisfactory way of dealing with infringements of copyright relating to written material undertaken in Australia

However such civil actions will be a waste of time unless it is much easier and simpler for copyright breaches to be detected and for any infringements to be processed in a period of two to three months and not years.

Further any such civil actions re copyright infringement, even if settled by mediation or on undisclosed terms as far as costs and or damages are concerned should not be sub judice or settled on the condition that the matter never be disclosed to the public.

Any settlements of civil actions on the basis of non disclosure would only assist the infringement of copyright.

The results of any such finding on infringement of copyright should be able to be made public to every educational institution immediately on the matter being concluded.

Any decision relating to any such action that does not allow public disclosure of the result will only encourage copyright infringement.

On the other hand, the ability to make educational institutions and or libraries aware that a decision has been awarded in favour of a copyright holder against a specific educational institution or library for infringement of copyright would I suggest receive instant respect from other similar organisations.

This would be particularly so if some form of penalty was imposed upon both the actual person who performed illegal photocopying of written material as well as the educational institution concerned.

A monetary penalty would be the most appropriate.

Any monetary penalty should be:-

a) sufficient to re-imburse the publisher for the retail value of the material photocopied. The publisher is the person or business who has suffered financial loss of sales as a result of the photocopying.

The publisher would in turn re-imburse the author for any royalties "lost" as a result of photocopying.

Whilst I am fully aware of the fact that legitimate photocopying royalties are paid to copyright holders, I have detailed previously that in fact infringement of copyright has a much larger financial impact on the publisher's business than on the copyright or authors business.

b) of sufficient size as to discourage the continuation of the practice by the offender and the encouragement or allowance of the practice by the educational institution concerned.

c) cover all costs of any legal action as well as any administration costs etc involved in the matter, including the costs of notifying by mail every other educational institution of the result.

The best method would be a financial penalty made up of retail price of the printed matter multiplied by a factor, applicable to both individual and educational institution.

I have no idea of that factor at this time but it would be possible to calculate a suitable factor.

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.

As detailed in earlier sections of this submission, and in the attached APPENDIX 2, it is virtually impossible under the present law and the manner of copyright administration in Australia to stop the infringement of copyright relating to written material in educational institutions.

The practice is widespread, is increasing in size and accepted as the thing to do in many places.

For effective monitoring and controlling of copyright infringements in relation to written material in Australia, the following actions are suggested:-

- 1) there needs to be an effective and efficient system of monitoring photocopying of written material on all photocopying machines in all educational institutions in Australia.

In fact it should be made law that every photocopying machine in educational institutions in Australia should have such a measuring device attached.

Refer APPENDIX 4

2. Such a system would provide a complete record of all photocopying that has taken place in those educational institutions and allow royalty payments to be made to every copyright holder on actual data and not to a few copyright holders on sample data as at present.
3. Financial penalties as described above be imposed on both person and educational institutions that breach copyright.
4. Copyright holders or their nominated representatives be allowed to enter any educational institution during normal teaching hours to inspect for breaches of copyright.

Copyright holders or their nominated representatives would know what they are looking for and would be able to detect copyright infringements much faster than any other person not very well acquainted with the content of the written material being investigated.

There would undoubtedly be an extremely adverse reaction from educational institutions to this proposal, even when made public.

It is however imperative on educational institutions and their staff to recognise and accept that the infringement of copyright in relation to written material has been going on without any effort to comply with the existing law for many years.

Any statements from anyone or any educational body to the contrary will only be made in ignorance of what has been and is actually happening at “grass roots” level.

For as long as I have been involved in education in one way or another, illegal photocopying of written material has been accepted as “open go”.

No one to my knowledge has ever accepted that the act of illegal photocopying of written material beyond that allowed by law is in fact tantamount to stealing.

- f) **the effectiveness of existing institutional arrangement 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.**

I was only aware upon receipt of the booklet relating to this inquiry that in fact the Federal Police had any jurisdiction in this matter.

Comments have been passed earlier in this submission re my one contact with that organisation.

- ii) **The relationship between enforcement authorities and copyright owners.**

Being very brief, the relationship between enforcement authorities and copyright owners is less than satisfactory unless the copyright holder happens to be one whose works appear in the random surveys done by the Copyright Agency.

Refer APPENDIX 2

I have had no contact of any substance with any other agency except the Copyright Agency on the matter of copyright infringement.

iii) the role and function of the Australian Customs Service at the border in detecting and policing copyright infringement.

Unable to offer any comment.

iv) coordination of copyright enforcement

From my experience there is no coordination of copyright enforcement in relation to written material in Australia.

In fact, the Copyright Agency has shown a considerable reluctance to be interested in anything relating to infringement of copyright that involves written material, if that infringement that does not "fit" their established procedures.

Anything that can be done to ensure that copyright infringements in relation to written material is controlled and monitored more effectively than at present would be welcome.

APPENDIX 1

DETECTION OF BREACH OF COPYRIGHT.

The present system of the detection and reporting of any breach of copyright is clumsy and unwieldy to say the least.

In fact it is so inefficient and ineffective that it could well be said that the present system of administration of Copyright encourages breaches of current copyright regulations.

As I understand the system, Copyright resides with the originator of the work be that work, text, photograph, cartoon, design, and similar original contributions in the area of educational material. I further believe that the material may be fiction or non fiction and that the material may be in many forms be that written text, film or video, or electronic formats.

If this is incorrect, then I can only say that my inquiries of THE COPYRIGHT AGENCY have not produced any information to the contrary and I certainly would appreciate further clarification.

The practical problem is that very few originators of works that can be copyrighted are in a physical position to be able to “police” any infringement that may occur of their copyright.

Very few such copyright holders would have any opportunity to go out into the market place and determine if in fact their copyright is being breached.

This fact is one of the main reasons why various people infringe copyright as they know that there is very little, if any chance, of them every getting caught.

The people who do see or hear of breach of copyright occurring are the publishers, trade representatives and the retail booksellers.

I am in the position of not only being an author but also a publisher and a trade representative.

I also often provide occasional lectures at various tertiary educational institutions around Australia. I also frequently meet students in various activities, away from their educational institutions in the horse and rural industry.

This variety of interests allows me to detect some, but certainly not all breaches of copyright of my own literary works plus some breaches applying to those overseas publishers that we represent.

Even when such breaches of Copyright are detected and reported to the Copyright agency, they are ill equipped and unable to do anything about the matter.

APPENDIX 2 IS CONFIDENTIAL

APPENDIX 3

COPY OF PREVIOUS CORRESPONDENCE



20 JANUARY 1999

FAX TO 02 9394 7601

PAGE 1 OF 2

COPYRIGHT AGENCY LIMITED
LEVEL 19
157 LIVERPOOL STREET
SYDNEY
N.S.W. 2000

Attention STACEY BALE

Thank you for your fax of 6 January re publisher representation in this country.

We actually represent the following publishers and in all instances are by far the biggest customer of each in Australia.

EXCLUSIVE BASIS

U.K. FARMING PRESS
U.K. THE SPORTSMANS PRESS

NON EXCLUSIVE

U.K. THE KENILWORTH PRESS
U.K. J. A. ALLEN & CO.
U.K. WHITTET BOOKS

U.K. QUARTILLES PTY LTD
U.K. THE PONY CLUB (U.K.) LIMITED

U.S.A. J. MEAGHER

N.Z. RICHARDS PUBLISHER

Some time ago I raised the matter of illegal copying and the breaking of copyright with Allen's in England, their material being regularly copied in this country without permission or acknowledgement.

They simply wrote back to me and said that they would be informed of any copyright breach by the U.K. body responsible for monitoring copyright.

I gained the impression from them that if there was any breach detected of their copyright in Australia, your Agency would notify your English counterpart who in turn would notify the English publisher.

Interestingly they had not had any notification of the various copyright breaches that I had been observing.

That may or may not be the current case, so in order to assist me to provide information to each of the above 9 overseas publishers, I would appreciate if you could send me up, by mail, a copy of the three pages that you faxed to me on 6 January.

The reproduction from the faxed copies is such that it would not be possible to fax that material overseas.

Any other additional information that you can provide on how this system operates and that will clarify the issue would also be appreciated.

As soon as that material is received I will fax each publisher and get their instructions.

ROBERT KERRIGAN

APPENDIX 4 IS CONFIDENTIAL

