

Dear Ms Surtees

Thankyou for your invitation to comment on the provisions of the Digital Agenda Bill.

John Wiley and Sons Australia, Ltd is a subsidiary company of John Wiley and Sons Inc. of New York. We are publishers of educational, professional, scientific, technical and medical books and journals, and one of the largest and oldest independent publishers in the world.

Over the last five or so years Wiley has made significant investments in electronic media and delivery. Currently, approximately 80% of our large range of academic and research journals have been converted to electronic format and their contents are now available to customers worldwide through our licensing programs. We have also published numerous multimedia products that are only available electronically, principally via the Web.

We welcome the Government's initiative in proposing the Digital Agenda amendments, and we appreciate the effort it has made to ensure some sort of balance is achieved between the interests of the various parties.

The major concern we had with the Exposure Draft was with the issue of balance. We did not feel the government had got it right. There was a lack of understanding of the technology, and how that changed the dynamics of information publishing and access. As a result the scale had been tilted decidedly in favour of libraries and other users, to the real detriment of creators.

In the current Bill much of the balance has been restored.

There remain, however, two major flaws that we wish to bring to your attention. These are in sections 49 and 50 which deal with library copying for users and interlibrary loans.

#### LIBRARY COPYING FOR USERS

We understand the need the library community has for a measure of certainty in the copyright environment. The Australian Act has always been more specific in spelling out precisely what constitutes 'reasonableness', than its international counterparts. Thus the Bill transfers the current '10% or chapter or article' provisions for paper-based products into the digital environment by allowing '10% of the words' of a digital work as fair dealing.

The problem with this specificity in the digital world is that such portions may often not be 'fair'. They may be available for sale in the normal course of commerce - in fact such trading in small parts may be the primary method of exploitation in some publishing circumstances. Commercial document delivery services, for example, are already thriving businesses.

It would be better, in our view, for the law to resist such specific and premature intervention, and to rely more broadly on the principles of fair use as articulated in Berne and the WIPO Treaty. It is especially important to do this in an emerging new economy like the digital one, where so many dynamics of

production and consumption are not yet developed. This may indeed rob the library community of a measure of certainty. But it will impose, rightly, a measure of caution in the way libraries seek to systematise operations for the benefit of themselves and their clients in this new, emerging information economy.

Wiley certainly does not oppose library copying or fair use of its products, and has never sought to limit access to students, researchers or library users in any way. However, we do oppose legislation that has the potential to directly subvert our normal business as a commercial publisher.

## INTERLIBRARY LOANS

Section 50 allows interlibrary loans of electronic works, but we are pleased to see the Bill has included a strict 'commercial availability test'. This places an onus on the library to investigate whether the work is for sale or available under a license on reasonable terms and within a reasonable timeframe, before a request from another library can be complied with. (An equivalent test should be mandatory under section 49 as well - library copying for users).

There is a major loophole here however. Academic and research journals are sold to libraries on a subscription basis. As these journals have become available electronically, license terms have developed on the same subscription model. Wiley, for example, offers a Basic Access License and an Enhanced Access License, and each is an annual fee for differing access rights to current and past issues of a range of Wiley journals. Individual articles are not for sale or license separately.

The logic of this is not hard to fathom. Most products we buy as consumers are bundled or packaged in some way, in order to make the economics work. We cannot buy the sports pages of a newspaper or an encyclopedia entry separately. The economics of journal publishing would collapse if all individual articles were available separately without conditions of any sort. Certainly the prices of such separate articles would be perceived as unrealistically high, but would be necessary to fund the whole publishing and distribution process.

The Bill, as we read it, would allow interlibrary loans of individual articles, as the library officer charged with responding to the request would conclude as a matter of logic that individual articles in journals licensed to the library were not commercially available separately.

This provision would obviously subvert the normal business of journal publishing.

We would suggest Subsection 50(7B)(e) be amended to make it clear that if an individual article is available as part of a subscription or license to the periodical in which it appears, then it is commercially available. It would not then be a candidate for interlibrary loan.

## CONCLUSION

We believe that if the government accepted our suggestions to amend Sections 49 and 50 there would be little need to distinguish between classes of libraries - public/educational and corporate. This distinction is opposed by the library

community and is only justified if the library exceptions as proposed in the Bill proceed.

Thankyou for the opportunity to present our submission in writing. We would also welcome the opportuniy to talk to it in person at a committee hearing over the next few months.

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