

The Committee Secretary
House of Representatives Legal and Constitutional Affairs Committee

Submission re: *Copyright Amendment (Digital Agenda) Bill 1999*
Submitted by: Queensland Law Society Inc.

The Queensland Law Society Inc. would like to bring to your Committee's attention concerns it has in relation to the *Copyright Amendment (Digital Agenda) Bill 1999*.

The Society believes that proposed amendments introduced by the Bill will have a detrimental effect on the operations of law libraries owned and conducted by solicitors throughout Queensland (and the rest of Australia).

1. Definition of *Library*

The *Copyright Act 1968* presently has no definition of library although section 18 provides:

“For the purposes of this Act, a library shall not be taken to be established or conducted for profit by reason only that the library is owned by a person carrying on business for profit.”

Under the proposed amendments section 18 will be repealed and the definition of library will be inserted in section 10.

Clause 11 of the Bill proposes to insert in subsection 10(1) of the *Copyright Act 1968*, the following definition:

“***library*** includes a library owned by an educational institution, being an institution that is conducted for profit, but does not include a library owned by any other person or body carrying on business for profit if the person maintains the library mainly or solely for the purposes of that business.”

2. Effect of the definition

Under the proposed definition of ***library***, it appears libraries owned by law firms will no longer be considered libraries for the purposes of the *Copyright Act 1968*. This submission proceeds on the basis that this will be the case, if the amendment comes into effect.

Part 3, Division 5 of the Act confers certain privileges on libraries. These include the ability to copy a part of a work on request of a library user under certain conditions, without breaching copyright (section 49); the entitlement to copy a work for another library or request a copy of a work from another library (section 50); and the right to copy a work for preservation and other purposes (section 51A).

Libraries conducted by law firms will not be entitled to the privileges conferred by Part 3, Division 5 if the definition of *library* presently in the Bill becomes part of the *Copyright Act 1968*.

The law is constantly changing. For solicitors to professionally advise their clients, they need unfettered access to legal information. The key role of the library in a law firm is to provide assistance in research and provision of information in a timely manner to professional staff.

The exclusion of libraries in law firms from the definition of *library* in the Act, if the amendment proceeds, will significantly inhibit solicitors' access to legal information.

3. Consequences of the amendment

In practical terms, the inclusion of the definition of *library*, will have the following consequences for libraries in law firms:

- 3.1 These libraries will not be able to avail themselves of the privileges conferred by section 49 of the Act. This section enables non-profit libraries in certain specified circumstances to copy a work or a reasonable portion of a work for the purpose of research or study by library users without breaching copyright.

If the amendment comes into effect, a solicitor in court cannot obtain from his or her own library or from their firm's library, a copy of commentary on a case which was referred to in court proceedings. Similarly, if a solicitor is seeing a client at the client's business and requires an extract from the *Master Tax Guide* to advise the client at that time, the solicitor cannot obtain a copy from his or her own library or their firm's library.

- 3.2 Libraries in law firms will not be able to rely on the library to library copying provisions contained in section 50. This section enables a library to request another library for a copy or part of a copy of a work for the first library's collection, or to satisfy a request by a library user.

If the amendment proceeds, a library in a law firm will not be able to request a copy of a work or a part of a work from any other library, whether the other library is excluded from the Act or not by the new definition. It also means that a library in a law firm cannot make a copy or part of a copy of a work to any other library pursuant to the section, if requested to do so.

In practical terms this means:

- (a) a library in a law firm will not be able to request a copy of a work from a library in another law firm;
- (b) a library in a law firm will not be able to request a copy of a work from a Court Library; and further,
- (c) a University Library cannot request a copy of a work from a library in a law firm.

This will restrict the way many libraries in law firms operate. The established networks of communication and inter-library copying will be far less effective if libraries in law firms are no longer defined as libraries for the purposes of the Act.

The demands for information in libraries in law firms require the continued operation of these networks, as law firms cannot possibly afford to maintain libraries with collections to enable professional staff to adequately advise their clients in all cases.

Libraries in law firms rely on other law firm's libraries and other law libraries eg Court libraries for copies of works that are rare, out of print or difficult to locate to add to their collection, or to answer unusual requests from their users.

Exclusion of libraries in law firms from the definition of *library* for the purposes of section 50 will also adversely affect public, university, state, national and parliamentary libraries as such libraries will no longer be able to request and obtain copies of works from libraries in law firms.

Inevitably the proposed amendment will inhibit the spirit of cooperation between libraries.

- 3.3 If the amendment proceeds, the entitlement to make copies of works for preservation and other purposes pursuant to section 51A will not be available to libraries in law firms. This is significant in relation to a library replacing a work which is damaged, or lost or stolen, particularly a work that is out of print.
- 3.4 Warning notices above photocopiers and other copying equipment pursuant to section 39A provide libraries with some protection from liability for copyright infringements in the library. If the amendment proceeds, libraries in law firms will lose this protection for copyright breaches by library staff and members of the firm, notwithstanding notices have been posted in the library.

4. Employment

If the amendment proceeds, it will have an adverse effect on the employment of library staff in law firms. The imposed restrictions will reduce the demand for library staff to assist professional staff with their research and copying.

Professional library staff will be sacrificed for less qualified or unqualified staff for the purpose of reducing the costs of operating a library. Firms will be forced to down size their library operations which will make some library staff redundant.

If the amendment proceeds, it appears likely that some libraries in law firms will close causing unemployment in the library profession. Law firms may rely more on Court libraries and Law Society libraries in the various states and territories to provide information to assist them in advising their clients.

5. The Alternative

If the amendment proceeds, libraries in law firms will have to approach the Copyright Agency Limited (CAL) for a voluntary licence. This licence will require libraries to maintain records of copying of CAL members' works and make payment to CAL from time to time. It will also mean that the libraries will be subject to CAL's sampling procedures.

Not all copyright owners are members of CAL. Copyright owners who are not CAL members will have to be approached individually by libraries for permission to copy their works. Libraries would have to negotiate with such owners and comply with any conditions imposed. Works may not be able to be copied because consent cannot be obtained in a timely manner or at all.

6. Budgets

If the amendment proceeds, budgets in libraries will be significantly affected as they will need to accommodate a CAL licence component. These monies will either have to come out of an existing budget, consequently cutting expenditure on texts and subscriptions or will have to be directly passed onto the beneficiary of the information, namely the client of the law firm. It will also be very difficult to estimate the cost of obtaining the right to copy the works of copyright owners who are not members of CAL.

7. Conclusion

The Society submits that the definition of *library* should be deleted from the *Copyright Amendment (Digital Agenda) Bill 1999* for the reasons set out in this paper.

The effect of the amendment is to withdraw privileges which have endured for 31 years for libraries in law firms and other professions.

The definition of *library* was not included in the exposure draft, but is included in the Bill. This appears completely inconsistent with claims from government representatives that the exposure draft was only being "fine tuned" before the Bill was introduced.

The Society notes that the definition of *library* was included in the Bill without any prior consultation with the major stakeholders namely Law Societies, Australian Law Librarians Group and associations and bodies of other professions.

The purpose of the Bill is to bring the *Copyright Act* up to date with developments in technology. However, the inclusion of the definition of *library* has nothing to do with technology – it simply removes existing privileges.

The Society believes that if the amendment proceeds, it will create significant difficulties for solicitors in operating their libraries. It will mean that:-

- licences will have to be obtained from CAL;
- where copyright owners are not CAL members they will have to be located and their consent sought to copy their works;

- copies of works held in other libraries can not be obtained pursuant to section 50;
- no protection can be obtained from copyright notices under section 39A; and
- copying for the purposes of preservation under section 51A will not be permitted.

Copyright fees will have to be paid by libraries in law firms to comply with the Act, if the amendment proceeds. These additional research costs will have to be passed on from law firms to their clients thus raising the cost of legal services.

The Society is the member organisation for solicitors in Queensland. Consequently, this submission has focused on libraries in law firms. Clearly, the proposed amendment has significant ramifications for libraries conducted by members of other professions.

No good reason has been advanced to include the definition of *library* in the ***Copyright Amendment (Digital Agenda) Bill 1999***.

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