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Copyright Law Branch  
Attorney-General's Department  
Robert Garran Offices  
National Circuit  
BARTON ACT 2600

**Email: [copyrightlawbranch@ag.gov.au](mailto:copyrightlawbranch@ag.gov.au)**

Dear Sirs,

Re: Possible discriminatory clauses of the Copyright Amendment Bill 2006.

We are concerned as to the interpretation in the explanatory Memorandum below.

“A reproduction must be made by the owner of the original article (ss 43C(1)(a), 47J(1)(a), 109A(1)(a), and 110AA(1)(a)). This will prevent a person making a reproduction from a borrowed article or a reproduction being made by someone else on behalf of the owner.”

This apparently means that if the owner of the original article does not have the equipment or knowledge to make the copy themselves, they are unable to request or pay anyone else to do this for them.

This discriminates against anyone who is not technically capable from making a copy that is permissible under the amendments. It particularly discriminates against the older generation, who struggle enough to cope with technological change. It also discriminates against those who are financially disadvantaged as they cannot afford the equipment to make an allowable reproduction.

For example, the proposed amendments will make it legitimate to transfer the audio from old vinyl records to compact disc, but it is unlikely that many owners of vinyl records have a working turntable and or the expertise to create the compact disc.

The compact disc like any other recording media will eventually be replaced as a storage medium - by holographic, silicon or another storage medium.

Will this reproduction then be limited to only those with the necessary expertise and technology?

The Attorney General states in the Explanatory Material: "Australian consumers should not be in a significantly worse position than consumers in similar countries." Consumers in the United States of America under the interpretation of "Fair Use" are able to have a commercial organisation transfer articles from one format to another.

**Perhaps an additional paragraph (f) could be added to ss 43C(1)(a), 47J(1)(a), 109A(1)(a), and 110AA(1)(a) as follows:**

(f) should the owner authorise another party to make the copy on their behalf, then these conditions will apply to that authorised party, who will return the original with the copy to the owner.

For example:

#### **109A Copying sound recording in different format for private use**

- (1) This section applies if:
  - (a) the owner of a record embodying a sound recording makes a copy (the *main copy*) of the sound recording for his or her private and domestic use instead of the record; and
  - (b) the record was not made by downloading over the Internet a digital recording of a radio broadcast or similar program; and
  - (c) the record is not an infringing copy of the sound recording, a broadcast or a literary, dramatic or musical work included in the sound recording; and
  - (d) the format in which sounds are embodied in the main copy differs from the format in which sounds are embodied in the record; and
  - (e) at the time the owner makes the main copy, he or she has not made, and is not making, another copy that embodies sounds in a format substantially identical to the format in which they are embodied in the main copy; and
  - (f) should the owner authorise another party to make the copy on their behalf, then these conditions will apply to that authorised party, who will return the original with the copy to the owner..

For this purpose, disregard a temporary copy of the sound recording incidentally made as a necessary part of the technical process of making the main copy.

- (2) The making of the main copy is not an infringement of copyright in the sound recording embodied in the record or in a literary, dramatic or musical work or other subject-matter included in the sound recording.

This would enable owners to convert their collections easily by using commercial organisations.

The International Disc Duplicating Association (IDDA) is an international organisation of ethical disc duplicators. Although most of the members are based in the USA, the IDDA is an Australian organisation whose president is Australian. See [www.discdupe.org](http://www.discdupe.org) for more information on the IDDA.

CD-ROM Services Pty Ltd is a commercial disc duplicating service, making single and multiple copies of discs for government departments, commercial, medical and marketing organisations. The company has a strict policy of copyright observance, and is one of the few duplicators to offer Technological Protection Measures, or Copy Protection, to its clients.

The writer of this letter and his technical staff are prepared address the committee and show them how difficult it is to make a copy from one format to another.

Yours faithfully,



Bernhard Kirschner  
President – IDDA  
Director – CD-ROM Services Pty Ltd