



Thursday 9 November 2006

Senator Marise Payne
Parliament House
CANBERRA ACT 2600

RE: COPYRIGHT AMMENDMENT BILL 2006

Dear Senator

Thank you for providing Apple Computer Australia Pty Ltd and Apple Computer, Inc. (Apple) with the opportunity to participate in the Senate Legal and Constitutional Affairs Committee's public hearing for the inquiry into the *Copyright Amendment Bill 2006* (the Bill). We also appreciate the Committee's thoughtful consideration of our submission's proposed modifications to Schedule 6 (Fair use exceptions) of the Bill.

As a supplement to our prior submissions, we would like to make a few brief comments that directly address several questions raised by the Committee and issues advanced during hearing sessions that discussed Schedule 6 of the Bill. We strongly believe that the following matters must be properly addressed by the Bill in order for the final legislation to be fair and practical for Australian consumers, whilst not in fact damaging any copyright owner's actual or likely economic interests.

1. Sections 111 and 248A – Recordings of broadcasts for private and domestic use

Apple asserts that while the Bill's expansion of these sections is positive, as drafted, they will continue to make arbitrary distinctions based on the location of and reason for the recording of copyright material. Taken to their logical conclusion, these provisions would criminalise patently innocuous behaviour that consumers generally assume is a legal and appropriate use of technology. What sense does it make to limit 'private and domestic use' to a recording made in the home, and also to restrict the intent of the person making the recording to 'watching or listening to the material broadcast at a time more convenient'?

Apple believes that the following are examples of scenarios that are fair and reasonable uses of copyright material, but that will remain illegal under the Bill. If a person watches the SBS foreign language news (at a convenient time) whilst intending to watch it *again* later because the language or content is difficult to understand, or if one family member records a broadcast for viewing by other family members at a later time, what is the harm to the copyright owners' interests? What is the harm to the copyright owners' interests with a person making a copy of a broadcast at work to watch later at home?

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In our view, none of these activities adversely affect the normal exploitation of the copied broadcast or unreasonably prejudice the legitimate interests of the rights holders. As demonstrated in our submission to the Committee on 1 November 2006 (Submission), there are far less cumbersome and restrictive ways to achieve the Government's aims without needlessly criminalising legitimate and reasonable consumer practice.

2. Section 109A – Private copies of sound recordings

Based on our participation in the public hearings, we believe that the Committee recognises that the Bill's current drafting does not use the word 'format' in a meaningful way. We would respectfully submit that *no* definition of 'format' can be expected to be successful.

Apple also emphasises that, given copyright owners presently have no reasonable expectation that they will benefit from sales of multiple copies of CDs among members of a family, restricting consumers to a limited number of copies or limiting the period of time in which such copies can be possessed will not make sense to consumers. Apple respectfully maintains that it is unrealistic to expect consumers to, among other things, destroy 'temporary' copies during or within a certain amount of time after they make a 'main copy.' Apple believes that the measures proposed in its Submission will adequately address the Government's objectives without harming any legitimate expectation of the copyright owners.

3. Sections 43C, 47J and 110A – Private copies of books etc, photographs and videotapes

As a supplement to Apple's prior submissions on this matter, we question the need for these amendments to be so limited in their subject matter. For instance, we fail to understand how a consumer that makes a copy (in any form) of recipes, letters, manuals, pamphlets or poems that are not collected in a 'book' damages any legitimate economic interest of affected copyright owners. We contend that if it is harmless to copy a photograph (in any format) for private and domestic use, as is now proposed, it will not harm copyright owners if the same action occurs for a graphic image or a cartoon strip. The section 110A restriction to videotape is too narrow, and fails to take into account that film comes in many, many forms, such that it is impossible to limit film by its medium in this manner.

The Government has expressed a concern that these and other restrictions inserted into the Schedule 6 amendments are necessary to protect adequately the legitimate commercial interests of copyright owners. We request that the Committee examine this position very closely for proper verification. Apple believes that these claims of economic interests have more to do with aspiration than reality, and should not, therefore, be used as a justification for such prescriptive drafting.

In conclusion, Apple strongly supports copyright and the rights of copyright owners to derive reasonable economic returns from their copyright. To win the support of consumers for these principles, however, it is necessary that consumers feel confident that the law is sensible and fair in striking a proper balance between the interests of copyright holders, business, and the Australian people.



Once again, thank you for your careful consideration of Apple's concerns during the inquiry process, and please do not hesitate to contact my office if you have any questions about anything contained in this letter.

Respectfully yours,

A handwritten signature in black ink, appearing to read 'Tony King', is written over the typed name and title.

Tony King
Managing Director

APPLE COMPUTER AUSTRALIA PTY LIMITED