



Committee on Copyright and other Legal Matters (CLM)

Country Report Australia

Annual report to the IFLA CLM committee
Durban South Africa 2007

Copyright

Revision of copyright law

Further changes to the Copyright Act came into force on the 1st January 2007. The changes were made in response to the US/Australia Free Trade Agreement and the review of the fair dealing provisions which were reviewed in 2006.

It seems that several of the Senate Legal and Constitutional Affairs Committee's recommendations were taken on board, including:

- Parody and satire is not subject to the 3 step test but rather a new fair dealing provision;
- Format-shifting of sound-recordings has been clarified (simplified) to ensure that the provision doesn't unintentionally preclude certain uses of digital music players;
- There will be a review of the provisions in 2008;
- Several of the strict liability provisions have been removed (not all);
- The preservation provision for key-cultural institutions has been broadened to allow 'up to 3 copies' to be made;
- The preservation provision for key-cultural institutions set up by statute will allow other institutions to be deemed as 'key-cultural institutions' pursuant to the Regulations (we haven't yet seen the amended regulations);
- Proxy caching has been clarified as a free-use exception;
- 'Private and domestic' use has been clarified to mean 'on or off domestic premises'
- The cap on fair dealing for research or study has been removed;

This is a vast improvement from the legislation that went into Parliament initially.

Having said that however, there are some obvious issues for libraries with this legislation still, including;

- The 'flexible dealing' provision is still subject to the 3 step test and seems to have been tightened up slightly (uses made for 'commercial gain or profit' are excluded);
- The criminal liability provisions remain potentially problematic; Some strict liability provisions remain;
- The preservation provision for key-cultural institutions is subject to a 'commercial availability test' i.e. you can't preserve materials until you can't obtain them any longer commercially - this is problematic for institutions;
- The provisions remain complex and convoluted;
- There is no broad flexible fair use style provision for consumers, so if you've exercised a right of the copyright holder and you can't find a specific exception to cover your activities in the Act, then it's illegal (institutions have more flexibility with the flexible dealing provision);

- The safe-harbor scheme for ISPs doesn't yet appear to have been extended to on-line service providers in this lot of legislation.

The changes are a mixed bag for libraries though they are better than the ones initially proposed. The concerted lobbying has had some effect.

Orphan works

The Attorney-Generals Department called for submissions on Orphan Works in 2006 to which libraries responded. No response has been received from Attorney-Generals to the submissions and a phone call to the Department has indicated that they intend to respond later in 2007 but there are currently other priorities. In the absence of action libraries have taken a risk management approach by adding wording that indicates they have attempted to find the copyright owner and inviting contact from anyone with concerns.

Public lending right

Public lending right legislation has been in Australia for many years. In 2007 I have taken over as Chair of the PLR committee. The Committee is responsible for the distribution of \$10,000,000 per annum to Australian copyright owners whose books are in public libraries. The distribution is based on a sampling process from a selection of public libraries across the country.

Australia also has a process for Educational Lending Right as well which is based on sampling of university libraries. The funds available are less than those for PLR and are provided by the Dept of Communication Information Technology and the Arts (DoCITA).

Legal deposit

There is no legal deposit requirement with regard to digital works at a national level, and few states have electronic legal deposit requirement.

Creative Commons

There is support across sectors for the use of CC licenses and other licensing arrangements that enable reciprocal free use of material. It is worth noting that:

- Microsoft has added a function that lets you badge a document with a CC license
- Queensland government is examining use of CC licenses

Legal matters

Anti terrorist law

The following Bill has been presented to Federal Parliament *Classification (Publications, Films and Computer Games) Amendment (Terrorist Material) Bill 2007* which recommends tightening up of classification laws to ban material that could be considered to encourage terrorism. An inquiry into the legislation provided an opportunity for libraries to respond to the Bill. Further progress on amendments is expected in the coming months.