

# Copyright Law Reform

## Catherine Mullins summarises the Copyright Amendment Act 2006

The *Copyright Amendment Act 2006 (Act)* seeks to ensure that it is the copyright pirates who are penalised for flouting the law, not ordinary consumers who have legitimately purchased copyrighted products.

### Introduction

On 19 October 2006, the Senate referred the provisions of the *Copyright Amendment Bill 2006 (Bill)* to the Standing Committee on Legal and Constitutional Affairs for inquiry and report by 10 November 2006 (and then 13 November 2006).

The Bill described a range of major amendments to the *Copyright Act 1968 (Copyright Act)*, many of which implement outcomes of the Federal Governments Copyright Law Reviews in 2005 and 2006 as well as other policy initiatives.

The Bill was passed (without amendments) and commenced on 11 December 2006.

### The Changes

#### New Exceptions for Private Use

"Time Shifting" and "Format Shifting" are the two new exceptions to copyright infringement relating to private use:

- Time Shifting (Schedule 6, Part 1) – these provisions allow an individual to copy from television and radio without permission in order

to replay it "at a time more convenient than the time when the broadcast is made". Once made the copy can then be watched by household members, but can not be more widely distributed. These provisions do not impose any obligation on the individual to check the commercial availability of the material.

- Format Shifting (Schedule 6, Part 2) – these provisions allow an individual who owns copies of certain types of material to copy that material into different formats, for instance:
  - hard copy photos can be copied into digital form and digital photos can be copied into non-digital form;
  - VHS cassettes can be copied onto DVDs;
  - magazines can be scanned so as to be used in a digital device;
  - personal CD collections can be copied into MP3 or other digital formats for use in an iPod or computer.

Importantly the Act does not provide for:

- digital audio visual material to be copied onto another device such as a portable player;

- a backup copy to be made of a CD;
- computer games to be copied;
- somebody else to make a copy;
- a copy to be made for yourself from an item owned by somebody else;
- a recording downloaded from the internet to be copied; or
- getting someone else to make a copy for you.

#### New Flexible Dealings Exceptions

The Act's new flexible dealings exceptions allow for the use of copyright material for certain purposes which, in general terms are (Schedule 6, Part 3):

- non commercial uses by libraries, museums and archives, for instance copies of parts of historical documents can be included in materials for visitors;
- non commercial uses by educational institutions for the purpose of teaching, for instance old VHS educational tapes can be copied onto DVDs;
- uses for or by a person with disabilities, for instance a person with print disabilities can copy a book into a format that they are able to read; and
- uses for parody and satire.

Schedule 6 also includes amendments clarifying the existing exception related to "fair dealing" for the purposes of research or study (Schedule 6, Part 4) the effects of which being to limit the

extent of fair dealing for research or study to the definition of a "reasonable portion" regardless of whether or not the work is out of print, or out of print and only available in one library or archive in Australia.

Also included in the Act are changes to exceptions related to official copying and archive material (Schedule 6, Part 5).

### Technology Protection Measures

Technological Protection Measures (TPMs) are technical locks such as passwords, encryption software and access codes, used by copyright owners in order to stop their copyright material from being copied or accessed. While liability for the manufacture and commercial supply of devices or services circumventing TPMs was already established under the Copyright Act, the Act creates new offences for circumventing TPMs and gives effect to Australia's remaining intellectual property obligations under the Australian - United States Free Trade Agreement.

The Act aims to help combat piracy by introducing civil remedies and criminal penalties where a person circumvents an access-control TPM and builds on the current scheme whereby criminal penalties are imposed for dealings in circumvention devices and services.

Under the Act, copyright owners will be able to take legal action against somebody who:

- circumvents an access-control;
- manufactures, distributes, imports, offers, provides or communicates a device to circumvent either an access-control or a copy-control; or
- provides a service to circumvent either an access-control or a copy-control.

In some cases these activities also constitute criminal offences. Criminal penalties provided by the Act are of 5 years imprisonment and/or fines of 550 penalty units (currently \$60,500).

### Copyright Tribunal Jurisdiction

The Copyright Tribunal's Jurisdiction is extended under the Act to enable it to determine how much is payable for



some additional uses of copyright material administered by copyright collecting societies. (Schedules 10 & 11)

### Removal of Cap on Copyright Fees for Broadcasting Sound Recordings

The Act removes the 1% cap currently payable by broadcasters to owners of copyright in sound recordings for broadcasting sound recordings, and replaces it with an obligation to pay "equitable remuneration". If the amount of "equitable remuneration" can not be agreed upon, the matter will be decided by the Copyright Tribunal.

### Strengthening of Copyright Enforcement

The range of new measures contained in the Act to "tackle piracy" include:

- new offences relating to "substantial infringement on a commercial scale";
- "on-the-spot" fines for acts of piracy will be able to be issued by the police;

- access to, and recovery of, profits made by pirates;
- new presumptions of copyright ownership in Court proceedings;
- increased penalties for criminal infringement including when infringement involves digitisation of all materials; and
- a broader range of offences in relation to pay TV piracy.<sup>1</sup>

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#### (Endnotes)

<sup>1</sup> A detailed discussion of the amendments as passed in their final form will be contained in the Australian Copyright Council's discussion paper to be published in around June 2007 – *Recent Developments in Copyright 2007*. An information sheet on the reforms is available on the Council's website.