

LEGISLATIVE RESEARCH SERVICE
DEPARTMENT OF THE PARLIAMENTARY LIBRARY

COPYRIGHT AMENDMENT BILL 1986

Date introduced: 21 May 1986
House: House of Representatives
Presented by: Hon. Lionel Bowen, M.P.,
Attorney-General

DIGEST OF BILL

Purpose

To strengthen the provisions relating to the unauthorised copying of audio and video material for commercial purposes and to make other amendments to the Copyright Act 1968 (the Principal Act).

Background

Copyright, as a type of property, is founded on labour and invention. It is designed to prevent the appropriation of the work of an author by others. Copyright can be defined as an exclusive right to make copies of an original work or composition. Usually the author of the literary, dramatic, musical or artistic work is the owner of any copyright.

Subject to certain prerogative rights of the Crown, copyright exists in a work by virtue of the Principal Act which came into operation on 1 May 1969 and repealed all previous copyright legislation except that relating to industrial designs. The Principal Act was largely a result of the Berne and Universal Copyright Conventions of 1948 and implements those conventions.

Under the Principal Act, copyright exists in any original dramatic, musical or artistic work produced by a resident or citizen of Australia. Copyright also subsists in original sound recordings, cinematograph films, sound and television broadcasts and published editions of works.

In 1974 the Attorney-General appointed a Copyright Law Committee to investigate the making of facsimile

copies. The Committee felt that such aspects as the videotaping of television programs and the reproduction, for preservation purposes, of sound recordings were outside its terms of reference. The Committee reported in 1980.[1] In July 1981 the Attorney-General announced that his department would review the audio-visual copyright provisions of the Principal Act and invited submissions from the public. As a result of the review an issues paper was published in 1982.[2]

The issues paper covered three main areas, namely whether it should be made lawful to copy audio visual material for private use; the copying of material by educational institutions and institutions assisting intellectually handicapped people; and relaxing copyright prohibitions relating to copies of material made by libraries.

Since the submissions for the review have been made new problems have arisen concurrent with technological change. Over recent years the proliferation of illegally copied audio visual tapes or "pirate videos" has challenged the copyright legislation. In 1983 the legal advisor to the Australian Film Commission estimated that the loss to copyright owners due to 'piracy' was in the order of \$10-\$20 million.[3] Amendments proposed in the present Bill address this problem. The current Attorney-General has foreshadowed that further amendments to copyright laws may be necessary to take account of the widespread use of home video recorders and the unlicensed importation into Australia of videos legally copied overseas.

Main Provisions

Currently in Australia a broadcast must have originated in Australia before it can attract copyright (section 91 of the Principal Act). Clause 5 will add a new sub-section 22(6) to deem a broadcast made via a satellite to have been made at the time and from the place of the transmission from earth.

Clause 6 will insert a new section 47A into the Principal Act. The new section will permit a person who holds a "print-handicapped radio licence" and who keeps records of particular broadcasts, to broadcast material without infringing copyright (proposed sub-section 47A(1)). Failure to keep the required records may result in a fine not exceeding \$500 (proposed sub-section 47A(3)). The owner of the copyright in material so broadcast will be able to

inspect the records kept by the broadcaster (proposed 47A(6)) and may request payment of an equitable remuneration. If this cannot be agreed, it will be determined by the Copyright Tribunal (proposed sub-section 47A(7)).

The making of copies of unpublished works by libraries in order to preserve those works does not infringe copyright as it does not amount to a publication (sub-sections 51A(1) and (4) of the Principal Act). Clause 7 will insert a new sub-section 51A(5) into the Principal Act which extends this provision so that the supply of such a copy to another library for the purpose of research will also not constitute 'publication'.

'Audio-visual item' will be defined to include a sound recording, a cinematograph film, a sound broadcast or a television broadcast (clause 10 which will insert a new section 100A into the Principal Act). Copyright in an audio-visual item will not be infringed where it is dealt with for the purpose of criticism or review (proposed section 103A) or for the purpose of news reporting (proposed section 103B). In each instance there will have to be sufficient acknowledgement of the item (clause 11).

Clause 12 will insert new section 110A and 110B into the Principal Act. Where a library has a record of a film or sound recording which is unpublished and 50 years old, copyright will not be infringed by the making of a copy, or the supply of a copy to another person, for the purpose of research or with a view to publication (proposed section 110A). Copyright will not be infringed when a library makes a copy of an unpublished sound recording or film for the purpose of preserving it or replacing it in the case of loss, theft or deterioration (proposed sub-sections 110B(1) and (2)). Supply of such a copy to another library for the purposes of research will not constitute publication (proposed sub-section 110B(4)). This section will only apply to published works where it can be shown that another copy of the work cannot be obtained at an ordinary commercial price within a reasonable time (proposed sub-section 110(3)).

At present it is an offence to make, sell, hire, exhibit, import or distribute an article where the person knows that in so doing copyright will be infringed (sub-sections 132(1) and (2) of the Principal Act. Clause 15 will alter the test for liability from the current subjective test to an objective, 'ought reasonably have

known' test. Sub-clause 15(b) will insert a new sub-section 132(2) into the Principal Act which will make it an offence to possess articles which the person ought to have known infringed copyright.

Clause 16 deals with the penalties for breaches of section 132. When a person is convicted of an offence against sub-sections 132(1), 132(2) or 132(2A) and the offence concerns articles other than films, that person will be liable to a \$500 fine per article on a first conviction and a \$500 fine per article or 6 months imprisonment, or both, for subsequent convictions. In the case of corporations \$2500 and \$5000 fines for first and subsequent convictions respectively will apply (proposed new sub-paragraphs 133(1)(a) and (c) will be substituted into the Principal Act by clause 16). Where articles of film are involved, the penalties for a person will be a fine of \$1500 per film or 2 years imprisonment, or both, for a first conviction and a fine of \$1500 per film or 5 years imprisonment or both with respect to subsequent convictions. In the case of a corporation the fines will be \$7500 and \$15 000 per article respectively. The limit on fines in the Federal Court will be \$50 000 for a person and \$250 000 for a corporation and in any other Court will be \$10 000 for a person and \$50 000 for a corporation. The penalties for convictions under sub-sections 132(3)(5) and (5AA) of the Principal Act will be similar to those for offences relating to films as set out above (proposed sub-section 133(3)). Clause 17 will substitute a new section 133A into the Principal Act which will make similar provisions for offences and penalties relating to copying computer programs.

The rules of evidence will be altered so that affidavit evidence of the existence or ownership of copyright in an article may be sufficient evidence of such existence or ownership (clause 18 which will insert a new section 134A into the Principal Act).

Institutions assisting intellectually handicapped people will be able to make copies of certain items for the purpose of assisting the intellectually handicapped without infringing copyright (sub-section 200A(1) which will be inserted into the Principal Act by clause 26). The items which will be able to be copied under new sub-section 200A(1) must generally have first been published or broadcast (clause 24 will add sub-section 195A(5) into the Principal Act). The institutions will have to keep detailed records of the copies they make (proposed sub-sections 200A

(3) and (4)) and an owner of copyright in an item copied will be able to request payment of a fee by the institution. If a fee cannot be agreed, it will be determined by the Copyright Tribunal (proposed sub-sections 200A (5) and (6)).

In certain circumstances the institution will be able to supply the copies of items which it has made to intellectually handicapped people without infringing copyright (proposed sub-section 200A(2)).

For further information, if required, contact the Law and Government Group.

19 June 1986

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References

1. Report of the Copyright Law Committee on Reprographic Reproduction, AGPS, 1976 (Franki Committee).
2. Attorney-General's Department, Review of Audio Visual Copyright Law : Issues Paper, AGPS, 1982.
3. Copyright Society of Australia Incorporated and Australian Copyright Council Limited, Symposium on Copyright Law and Practice, Sydney, 1983, p.59.

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