

1 October 1999

Ms Claressa Surtees
Secretary
House of Representatives Standing Committee
on Legal and Constitutional Affairs
R1 109
Parliament House
CANBERRA ACT 2600

Dear Ms Surtees

re: Inquiry into the Copyright Amendment (Digital Agenda) Bill 1999

The Australian Library and Information Association (ALIA) welcomes the opportunity to comment on the *Copyright Amendment (Digital Agenda) Bill 1999* released on September 2, 1999.

ALIA is the professional association for the library and information sector which represents 1500 institutional members, 6500 personal members and the interests of 10 million library users. ALIA is a member of the Australian Digital Alliance (ADA) and the Australian Libraries Copyright Committee (ALCC). ALIA supports the submission made in response to this inquiry by the ALCC and the submissions made by other library and information services organisations such as the Australian Law Librarians Group and the National Library of Australia.

The Association welcomes the introduction of the Digital Agenda Bill into Federal parliament. We recognise that the Government has a strong commitment to strengthening copyright protection in the digital environment and to allowing reasonable access to digital material. We welcome the Government's decision to permit libraries and archives to use new technologies to make their collections more accessible to library users and to allow users to rely on the fair dealing exceptions to access and use digital information.

Changes to the Bill proposed by the ALCC

The submission of the ALCC proposes the following changes "to improve the implementation of the Bill's underlying policy goals, including as follows:

- The Bill should not exclude private sector libraries from the library provisions - this issue should be deferred for consideration in the context of the CLRC Simplification Report
- Sections 43A and 111A should be redrafted to remove the presumption that all temporary electronic 'copies' are reproductions in material form for copyright purposes.

- Subsection 49(5A) should be amended to ensure that, amongst other things, library users browsing electronic material on the premises are able to make reasonable copies under fair dealing using both hardcopy *and digital* technologies.
- Subsection 50(1) should be amended so that interlibrary requests can be made via an intermediary library, rather than directly from one library to another.
- A library should only be required to check the commercial availability of a work in electronic form when the amount requested is more than an article or more than a reasonable portion.
- Sections 51A(1) and (3) should permit digital preservation and administrative purposes copies to be made available to all users within the premises of a library or archives.
- Circumvention devices/services should be available to any person who requires the device/service for any non-infringing purpose, and the scope of 'permitted purposes' should be expanded accordingly."

The Association shares the concerns which the changes proposed by the ALCC seek to redress. Of particular concern is that these aspects of the Bill will impact on the whole library and information sector, not just libraries in the 'for profit' sector. We wish to expand on some of the practical implications for libraries and information services of the Bill.

Definition of 'library' and exclusion of libraries in 'for profit' organisations

In reviewing Australia's copyright legislation in 1959 the then Copyright law review committee (the Spicer Committee) recommended that Australia should follow the example of the British legislation in encouraging industrial research and development by allowing libraries in industry access to the library copying exemptions for research and study purposes.

The present Copyright Law Review Committee (CLRC) recommends in its Report on the Simplification of the Copyright Act (Part 1 - Exceptions) that all libraries should have access to the exemptions, and states that the benefits to copyright owners of isolating libraries in the 'for profit' sector would not be significant.

There are approximately two hundred and fifty libraries attached to 'for profit' organisations in Australia (Directory of Special Libraries in Australia. 10th edition). These libraries have been relying on the library copying exceptions to deliver research and information services to the business, research and scientific community and to share their specialist collections with the wider community since the commencement of the present Copyright Act on 1 May 1969.

This is a small sector compared with the 1400 public libraries and the 10,000 educational libraries which have access to the library copying provisions. They collect resources within specific subject areas. They have small staff numbers -- many of them are staffed by one person. Their effectiveness to their organisation depends on access to information resources and the timeliness of their service.

'for profit' libraries will not be permitted to copy even small portions of a work for research or study purposes, without permission from the copyright owner. In some examples provided by our members, approximately 80% of the owners of copyright material are not covered by copyright collection agencies. Therefore, many copyright owners will have to be tracked for any use of any portion of material. This will seriously impede the service to their clients, and the quality of research and development.

The Association is concerned that the new definition of 'library' in subsection 10(1) which does not include '*a library owned by any person or body carrying on business for profit if the person maintains the library mainly or solely for the purposes of that business*' (excluding 'for profit' educational institutions) has been introduced without consultation with the sector and is contrary to that recommended by the CLRC.

The Association believes that the recommendation of the CLRC regarding the 'for profit' sector, and the definition of 'library' in the Bill, need to be more widely debated within the community. Further, the Association recommends that the impact of both 'definitions' on the operations of the library and information sector and on benefits to copyright owners be monitored so that the information gathered may inform community debate and consideration of the Bill by the Parliament. Members of the Association would welcome the opportunity to participate.

The ability for the whole library and information sector to operate under fair dealing provisions and to share resources is significant to Australia's ability to compete in the global marketplace.

Resource sharing and public benefit

Because of the specialised nature of their library collections, libraries in 'for profit' organisations have resources which are valuable for publicly funded libraries and for individuals in under-resourced regional areas to access. These resource sharing activities would be impeded by the Bill.

Some examples of this resource sharing for public benefit are:

- Library resource sharing in the public and private hospital and health sector. A medical library belonging to a large corporation, which is a member of a network of medical libraries, has calculated that for the period May to July this year, it has supplied 120 journal articles to other libraries and individuals and most of these were supplied under Section 50. One hundred (83%) of these articles were supplied free of charge to libraries in government health departments and public hospitals which are members of the network.
- Pharmaceutical industry library services to hospital staff and medical practitioners in regional areas. A library in a corporation supports the information needs of medical information officers. These officers provide answers to doctors on patient care. Twenty five percent of the 6000 queries received this year have been urgent. In these situations, the officer will ask the library for immediate access to the relevant medical literature. The timely fulfilment of these requests will be impeded by the Bill.

- University library services accessed by industries and corporations with which the universities have co-operative arrangements, such as CRCs with public and private organisation membership.
- Specialist services to the public from libraries such as the Australian Stock Exchange library, to encourage Australian share-ownership and to inform those who have never owned shares.
- Access to corporate library resources by parliamentary and other government libraries. A banking sector library has advised that 80% of their external requests come from government departments.

Conclusion

For Australia's information economy to thrive, the Digital Agenda Bill must maintain an appropriate balance between access and protection in the digital arena as permitted by Article 10 of the WIPO Copyright Treaty. The Association believes that the changes proposed by the ALCC achieve a good balance between the individual's rights of access to information and the rights of copyright owners.

The Association thanks the Committee for considering our response to its inquiry. If you have any queries or require any further information about our response, please contact me on tel: 02 6285 1877 or email: jennefer.nicholson@alia.org.au

Yours sincerely,

Jennefer Nicholson

Executive Director