



Copyright Legislation Amendment Bill 2004

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Copyright Legislation Amendment Bill 2004

Date Introduced: 30 November 2004

House: Senate

Portfolio: Attorney-General

Commencement: On Royal Assent or the commencement of the copyright provisions of the *US Free Trade Agreement Implementation Act 2004*, whichever is the later. The relevant provisions of the *US Free Trade Agreement Implementation Act 2004* are expected to commence on 1 January 2004.

Purpose

This Bill makes additional changes to the *Copyright Act 1968* (Copyright Act), following changes to Australian copyright law made in the *US Free Trade Agreement Implementation Act 2004* (USFTAI Act).

Background

The USFTAI Act made comprehensive changes to the *Copyright Act 1968* in accordance with the requirements of the Australia–United States Free Trade Agreement (hereafter ‘the Agreement’ or ‘AUSFTA’). These changes were described and analysed in [Jacob Varghese, ‘Guide to copyright and patent law changes in the US Free Trade Agreement Implementation Bill’, *Current Issues Brief No.3*, Parliamentary Library, Canberra, 2004-05](#) (hereafter ‘the Guide’).

Before the making the exchange of diplomatic notes necessary to bring the Agreement into force, the United States requested that Australia make some additional changes to the Copyright Act on the basis that the USFTAI Act had not adequately implemented the relevant provisions of the Agreement.¹ Australia agreed to make certain changes. These were outlined in a letter from [Trade Minister Mark Vaile to US Trade Representative \(USTR\) Robert Zoellick](#) accepted (with some reservations) in a return letter on [17 November 2004](#) (hereafter referred to as the ‘Vaile–Zoellick correspondence’).

The [exchange of diplomatic notes](#) has now occurred with agreement that the AUSFTA will enter into force on 1 January 2005. According to USTR Zoellick, the United States proceeded on the basis of the Australian Government’s commitment to introduce the present Bill and ‘have it enacted into law expeditiously’.² Nevertheless, the exchange of diplomatic notes was not, itself, conditional on the passage of the Bill. Accordingly, the AUSFTA will come into force on 1 January 2005 regardless of whether this Bill passes. However, given the Vaile–Zoellick correspondence and the text of the Agreement itself, the United States would have clear and enforceable remedies under the Agreement against Australia if the Bill is not passed.

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Parliament might note that the Vaile–Zoellick correspondence has effectively created new obligations for Australia, in addition to those found in the text of Agreement itself. Under the law of treaties, these letters can be used to interpret the Agreement or to justify a particular construction where the Agreement is itself ambiguous.³ In some areas, the letters have prescribed a particular method for implementation of obligations where the Agreement might have allowed multiple implementation methods. This effectively reduces the flexibility with which Parliament may apply the Agreement through law. This occurs in the following areas:

- **temporary reproductions:** in the Agreement, the exception for temporary reproductions was based on Australia’s right to develop limited exceptions to copyright consistent with Article 17.4.10. The Vaile–Zoellick correspondence agrees that this particular exception will be limited in prescribed ways, as provided by the current Bill
- **criminal provisions:** the Vaile–Zoellick correspondence specifically requires that Australian law provide certain criminal offences to be made out where they are undertaken ‘by way of trade’ or ‘with the intention of obtaining a commercial advantage or profit’. Under the text of the Agreement, only the latter option is required
- **transitional provisions:** the Vaile–Zoellick correspondence provides a specific framework for transitional provisions, where the Agreement was almost silent on the issue, and
- **internet service provider liability:** the Vaile–Zoellick correspondence requires Australia to implement certain aspects of the scheme required by AUSFTA in legislation, where previously Australia could enact the scheme using whatever instrument was appropriate.

Main Provisions

Temporary reproductions

Provisions

Items 1–8 deal with temporary reproductions made as part of an ‘incidental technological process of use’.

Many digital media players make temporary copies of media in order to transform a digital message into a useable form. For example, DVD players have an internal computer which copies part of the movie into their memory while turning the information on the disc into pictures on the screen.

Under the Copyright Act (as amended by the USFTAI Act), temporary copies can be infringements of copyright unless they qualify under an exception. One important exception allows ‘the making of a reproduction of a work if that reproduction is incidentally made as part of a technical process of using a copy of the work’ (ss. 43B and

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111B, Copyright Act as amended by the USFTAI Act). This is designed to prevent the normal playing of DVDs and other digital media from being infringements. However, it is important to note that the exception does not apply where the original media is itself an infringing copy (this can be called ‘the exception to the exception’).⁴

Items 1, 2, 4 and 6 of the current Bill deal with the exception. Under these provisions, the exception from infringement would only apply to **temporary** reproductions made as a **necessary** part of a technical process of use. That is, the incidental reproduction will be an infringement of copyright if the copy is *not temporary*—for example, if the media player’s memory stores the information for the long term—or *not necessary*.

Items 3 and 7 deal with the exception to the exception. They provide that the exception does not apply where the original copy is from another country and would be an infringing copy if it had made in Australia.

Why are these changes necessary?

The exception for temporary copies rests on the right, under AUSFTA, for Australia to make any exceptions to copyright exclusive rights as long as they:

- are confined to special cases
- do not conflict with the normal exploitation of the material, and
- do not unreasonably prejudice the legitimate interests of the right holder (Article 17.4.10).⁵

It is arguable that the current exception, with or without the ‘exception to the exception’, does fit this test. However, Australia and the United States have now reached agreement that the exception should be amended in the manner proposed.⁶

Comment

These items effectively narrow the exception to infringement and broaden the exception to the exception. In other words, they make it more likely that people will be found to have infringed copyright. In the Guide, it was pointed out that the ‘exception to the exception’ effectively gave digital media a level of protection not available to non-digital media.⁷ For example, simply reading an infringing copy of a book is not an infringement in itself, where watching an infringing copy of a DVD will be. The extension of the ‘exception of the exception’ to cover material produced overseas which would have infringed if it were made in Australia extends this unique end-use protection for digital products further.

The addition of the word ‘necessary’ through items 2 and 6 could pose interpretative problems. For example, is it necessary to make a temporary copy if another machine is developed which does not have to make a copy in order to play the material? What if such an invention is patented and only available at high cost by a monopoly supplier? In the absence of legislative guidance these issues would be resolved by courts, if they arise

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through litigation. How they are resolved could create anti-competitive effects or render users of older technologies infringers under the Copyright Act.

Another possible concern is the effect on parallel importing of proposed paragraphs 43B(2)(a)(ii) and 111B(2)(a)(ii) in items 3 and 7. These provide that the exception to the exception includes situations where the original media would have been an infringing copy 'if the person who made the copy had done so in Australia'. On one reading, this could mean that it is an infringement to play products even *legitimately* purchased overseas, as such products may have infringed if they had been made in Australia, if the copyright owner had provided an exclusive publication license within Australia. This would undermine Parliaments' several attempts to liberalise copyright law to allow the parallel importing of certain copyright products. Whether this is the effect will depend on the interaction between these new provisions and the definition of 'infringing copy' in s. 10 of the Copyright Act. In the absence of clear Parliamentary intent to ensure that temporary copies can be made of legal parallel imports, it is possible that courts will come to an opposite conclusion.⁸

Carriage service provider liability

Provisions

Items 9–14 deal with the liability of carriage service providers (CSPs). CSPs are businesses that supply internet or telecommunications services.⁹

The USFTAI Act established a new regime for determining when CSPs might be liable for copyright infringements by users over the CSPs network or service. In short, CSPs can be liable for a monetary remedy for certain activities unless they comply with certain conditions.¹⁰ These conditions have been called the 'safe harbour'.

The 'financial benefit' test

Items 9, 10, 12 and 14 deal with the 'financial benefit' test. According to the test, CSPs may be liable for Category C and D activities if they have received a financial benefit directly attributable to the infringing activity.¹¹ A Category C activity occurs when a user of the CSP causes copyright material to be stored on the CSP's system or network.¹² A Category D activity occurs when the CSP refers users 'to an online location using information location tools of technology'.¹³

Item 9 would delete the current definition of 'financial benefit', which provides that financial benefit does not include a benefit that 'merely results from the level of activity on the [CSP's] system or network'. Under the current test, merely receiving usage fees from the infringing user is not enough to attract liability. **Item 14** proposes a new test for what is a financial benefit, based on a comparison between what a CSP charges and 'industry practice in relation to charging for services'. In determining whether a financial benefit has been obtained, a court must consider whether the CSP has obtained a benefit

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greater than that which it would have received if it charged according to ‘industry practice’.

Items 10 and 12 would omit the current knowledge requirement in the financial benefit test. Currently, a CSP is only liable on the grounds of receiving a financial benefit if they knew, or ought reasonably to have known, that the infringement was taking place. Items 10 and 12 would remove that requirement, so that CSPs can be liable even if they are not aware, or could not reasonably have been aware, that infringement is occurring on their network.

The ‘awareness’ test

Items 11 and 13 provide a new ‘awareness’ test for the safe harbour associated with Category C and D activities.

Under this test, CSPs may be liable if they fail to act expeditiously to remove or disable access to the copyright material or the link to copyright material on their system once they become aware that the material is infringing, or become aware of facts or circumstances that make it apparent that the material is likely to be infringing.

This is a whole new ground for CSP liability, not contained in the USFTAI Act.

Why are these changes necessary?

AUSFTA requires a prescriptive scheme for determining CSP liability based on the ‘safe harbour’ concept. Similarly, AUSFTA clearly provides that financial benefit should be a ground for liability regardless of awareness (Article 17.11.29 (v)(A)), that is, financial benefit and awareness are meant to be separate and distinct grounds, not necessary elements of the same ground. Items 10 and 12 would ensure that the Copyright Act more accurately reflects AUSFTA obligations. However, AUSFTA does not provide a definition of ‘financial benefit’. It is at least arguable that the existing definition is an appropriate adaptation consistent with AUSFTA.

The USFTAI Act implemented only part of the required ISP liability scheme, although it authorised the making of regulations that would deal with the remainder. AUSFTA clearly requires that awareness of infringement or circumstances that indicate infringement is likely should be a ground for liability (Article 17.11.29 (v)(B)), so regulations along similar lines were always anticipated.¹⁴ This Bill would incorporate that ground directly into legislation, rather than allowing regulations to define the scope of the ground.

Comment

See the Guide for general comments about potential areas of concern in AUSFTA’s CSP liability provisions.¹⁵

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The financial benefit test

The current Bill would make claims against CSPs easier by lowering the standard for the financial benefit test and reducing the elements that need to be proved in an infringement claim.

Parliament might want to carefully consider the new test for financial benefit (item 14). In requiring courts to compare pricing between that of the CSP and the ‘industry practice’, CSPs may be dissuaded from considering innovative business models and pricing practices. The very notion of an ‘industry practice’ in charging of services seems anathema to a competitive market economy which achieves its dynamism through businesses that are prepared to depart from ‘industry practice’. This dynamism is particularly apparent in the internet service industry, in which providers regularly and creatively compete on price, bandwidth, service and technology.¹⁶ The test as proposed might be a disincentive to provide pricing models which attract high volume internet users, as such plans might also attract a disproportionate amount of copyright infringers (such as peer-to-peer file-sharers). Under the Bill, CSPs might be liable simply for obtaining a financial benefit higher than their competitors as a result of high volume use by infringers—even if they are unaware or could not reasonably have been aware that infringement is occurring.

The difficulty is in differentiating between CSPs who deliberately and actively seek infringing users as a core part of their business model and those whose business model has another purpose but attracts infringing users incidentally. Reference to ‘industry practice’ seems to be a blunt instrument with which to separate these groups and many in the latter category might be caught, to the detriment of those businesses and their non-infringing users. An alternative approach might be to empower some administrative agency with competence in detailed microeconomic analysis, such as the Australian Competition and Consumer Commission, to produce more detailed criteria or make determinations on individual cases.

The awareness test

Under AUSFTA, the awareness test is linked to the process for notification of infringement. This process provides a system for copyright owners to send ‘take-down notices’ informing CSPs of copyright infringements across their network. It also provides an opportunity for the alleged infringer to provide a counter-notice refuting the allegation. Different obligations arise for CSPs depending on the nature of the take-down notice and whether a counter-notice is received. Also, AUSFTA requires that monetary remedies be available against people providing false information in notices and counter-notices.¹⁷

Under the Bill, rules regulating the use of notices and counter-notices remain a matter for regulations. Parliament is asked to adopt the awareness test without knowing what the Government intends for the rules governing how copyright holders may bring infringements to the attention of CSPs. Without any regulations, CSPs could be liable for

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keeping material on-line after receiving notification of infringement in any form, from any person (not just the copyright owner). This would create a powerful incentive for CSPs to remove any material that is subject to a take-down notice, regardless of the veracity of the notice, without any requirement for the CSP to give the alleged infringer an opportunity to respond to the allegation of infringement. Regulations may provide offences for vexatious or false take-down notices to provide some protection against misuse. They might also provide a process for counter-notification. Given that the proposed approach is to place the punitive provisions in legislation, it might have been appropriate to provide these checks and balances in legislation also.

An additional concern is that the wording in items 11 and 13 appears to provide little room for the CSP to put material back up once a counter-notification is received. Under the scheme provided by AUSFTA, CSPs are to restore material after receiving a counter-notification from the alleged infringer, unless the copyright owner commences judicial proceedings within a reasonable time. The wording of items 11 and 13 does not provide that a CSP remains in the 'safe harbour' if they restore material after receiving a counter-notification. The test is simply awareness of circumstances that 'make it apparent that the material is likely to be infringing'. This seems to require the CSP to make its own judgement as to the likelihood that the material is infringing, even after receiving a counter-notification. If a court subsequently finds that judgement to have been wrong, the CSP may be held liable. Given that a CSP might also be liable under breach of contract for wrongly removing non-infringing material, this would put the CSP in the invidious position of choosing whether to risk liability to the copyright holder or liability to the alleged infringing user. It is possible that regulations made under s. 116AJ of the Copyright Act could provide procedures and remedies to make the obligations of CSPs clearer, but again Parliament is asked to approve legislation before seeing the checks that might be provided in regulations.

Onus of proof

Provisions

Items 15 and 30 make amendments to the provisions of the Copyright Act relating to certain onus of proof in proceedings relating to the ownership of copyright in sound recordings (item 15 deals with civil proceedings and item 30 with criminal proceedings).

The USFTAI Act provided that performers share the copyright in sound recordings. Previously the makers of the recording had been the sole presumptive copyright-holder.¹⁸

Sections 130 and 132B provide that a name affixed to a label on a record can be admitted as *prima facie* evidence that the person named is the copyright owner. This makes it easier for copyright owners to assert their rights by affixing a label to their product. Items 15 and 30 amend these provision to ensure that they do not imply that the person named is the *only* copyright owner. This recognises that copyright in sound recordings may now be shared by one or more persons.

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Why are these changes necessary?

AUSFTA requires that Australia provide that performers have rights in sound recordings.¹⁹ These changes were appropriately made through USFTAI Act. These current proposed amendments are consequential to those changes.

Comment

These proposed changes are logical consequences of the USFTAI Act's provision for performers to share in the copyright in sound-recordings.

Criminal provisions

Provisions

Items 17–29 deal with the criminal offence provisions of the Copyright Act. For the most part, these amendments would replace 'and' with 'or' in all the provisions that concern infringements performed 'by way of trade and with the intention of obtaining a commercial advantage or profit' (or similar provisions) (**items 18–28**). As noted in the Guide, the use of the word 'and' makes prosecutions of copyright infringers more difficult by requiring prosecutors to show both elements.²⁰ Replacing 'and' with 'or' means that prosecutors will have to show only one of these elements.

Item 17 is a slightly different change, ensuring that making an infringing copy with the 'intention of obtaining a commercial advantage or profit' is added as a distinct offence.

Item 29 ensures that these changes do not operate retrospectively.

Why are these changes necessary

AUSFTA's Article 17.11.26(a)(ii) clearly provides that criminal offences should apply to 'wilful infringements for the purposes of commercial advantage or profit'. The USFTAI Act had provided that the intention to obtain commercial advantage or profit had to be proved in addition to the existing 'by way of trade' element. The words proposed in the new Bill are a much more accurate implementation of AUSFTA, as the intention to obtain commercial advantage or profit should stand on its own as the basis for an offence (regardless of whether or not it can be proved that the infringement was 'by way of trade').

Comment

This is a minor and technical change that more accurately reflects AUSFTA. However, as pointed out in the Guide, another means to achieve compliance with AUSFTA would have been to replace 'by way of trade' with 'intention of obtaining a commercial advantage or profit', rather than providing them as necessary or alternative elements.²¹ Intention to obtain commercial advantage or profit is a slightly broader concept because it may include

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infringements that go to improving the commercial position of a business even through infringing articles themselves will not be traded (such as the use of infringing software for in-house commercial uses). Providing this element alone would more appropriately harmonise Australian and United States law.²² The configuration proposed by the current Bill could produce some unexpected results as courts try to grapple with differences between the two elements.

Encoded broadcasts

Provisions

Items 32–41 deal with laws relating to encoded broadcasts (that is, subscription television and radio). As with the criminal provisions, many of these changes involve amendments to the criminal offences relating to infringing use of encoded broadcasts so that ‘by way of trade’ and ‘intention of obtaining a commercial advantage or profit’ are made alternative rather than both necessary elements (items 32–38). The same analysis and comments apply as those under ‘Criminal Provisions’ above.

Items 39 and 40 add an additional offence for the knowing use of encoded broadcasts which have been accessed without authorisation by way of trade or with the intention of obtaining a commercial benefit or profit. The main difference between this offence and the offence in s. 135AS (1A) seems to be that commercial use of the broadcast is offence even if the offender was not the person who decoded the broadcast without authorisation.

Why are these changes necessary?

Article 17.7 of AUSFTA requires criminalisation of the end-use of infringing satellite TV broadcasts. This amendment provides criminalisation for end-use, but only where a commercial purpose is involved.

Comment

As noted in the Guide, the USFTAI Act did not provide a criminal offence for the non-commercial end-use of infringing broadcasts as AUSFTA requires.²³ These amendments do not remedy this deficiency.

The Government has put its view to the US that Australia’s civil remedies for non-commercial end-use are sufficient disincentives, but has nonetheless promised a review of the law by 1 July 2005.²⁴ US Trade Representative Zoellick remains unconvinced, saying that the US is ‘firmly of the view that Article 17.7.1(b) of the Agreement requires criminalisation of this activity, including viewing of pirated signals in the home.’²⁵ However, the US has been prepared to proceed with entry into force of AUSFTA on the basis of the Government’s promised review.

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The United States' view that Australia has not complied with AUSFTA is almost certainly correct. Article 17.7.1 unambiguously provides that:

Each party shall make it a criminal offence:

...

- (b) wilfully to receive and make use of, or further distribute, a programme-carrying signal that originated as an encrypted programme-carrying signal knowing that it has been decoded without the authorisation of the lawful distributor of the signal.

Australian law, even assuming the passage of the current Bill, does not provide any criminal offence for wilfully receiving or using unauthorised decoded signals unless this is for a commercial purpose.

Transitional scheme

Provisions

Items 42–61 make amendments to provisions of the USFTAI Act which provided a transitional scheme to deal with contracts which were disrupted by extensions to the copyright term made through the Act. In short, where a person had entered into a contract with another (before Royal Assent was given to the Act) to make use of material but, as a consequence of the USFTAI Act, that use would now be an infringement, the scheme provided that such a person could apply for compensation for resulting losses from the copyright owner, or, if compensation was not paid, use the material as planned without liability.

This Bill proposes two changes to this scheme:

- it will now only apply to agreements made to use material in the first two years of the Agreement, not beyond, and
- the law will now be clear that compensation can only be paid for costs incurred, not for the profits that might have been expected to follow from the contract.

Why are these changes necessary?

AUSFTA does not make any specific requirements regarding the transitional scheme. The scheme was Australia's way of dealing with some of the consequences of implementation. The changes seem to be the result of recent negotiations with the United States preceding entry into force and have been formalised in the recent Vaile–Zoellick correspondence.

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Comment

These changes are unlikely to be controversial. The original transitional scheme did seem to be open-ended and potentially open to profiteering. The Bill's proposed time limit for the scheme will provide greater certainty for copyright owners and, by clearly limiting compensation to costs incurred, should prevent profiteering under the scheme.

Concluding Comments

For the most part, the amendments proposed in this Bill will achieve closer compliance with the Agreement. This is true in the area of CSP liability, encoded broadcasts, onuses of proof and the criminal provisions. In the area of encoded broadcasts, this Bill still does not go far enough in achieving compliance with the Agreement and Parliament can expect this issue to remain a matter of concern to the United States until an offence is provided for non-commercial end-use of unauthorised decoded pay TV signals.

The suggestion that the Bill makes only 'minor and technical amendments to the Copyright Act' understates the significance of the changes.²⁶ Although they are certainly 'technical', almost all of the proposed amendments will affect substantive rights and/or increase the likelihood of prosecution for copyright offences.

The CSP liability provisions are likely to be the most controversial part of the Bill. In effect, they put the punitive elements of the safe harbour scheme in legislation while leaving the checks and balances to regulations. It is impossible to provide an overall assessment until the entire scheme can be seen. However, based on the legislative provisions alone the 'awareness' test seems to put CSPs in the difficult position of judging and acting on alleged infringements, with potential liability whether they remove disputed material or keep it on-line. In addition, the proposed financial benefit test seems to be a blunt instrument for separating legitimate, innovative CSPs from those deliberately profiteering from copyright-infringing users. It risks encouraging conformity in CSP pricing over innovation, at the expense of both smaller internet entrepreneurs and consumers.

As with the USFTA Act, this Bill does not exploit those areas of AUSFTA that would allow Australia to provide new exceptions or limitations as a counter-balance to the new copyright protections.²⁷ This Bill, like the USFTA Act, makes significant changes to Australia's copyright regime without rigorous public consultation with stakeholders or experts. As a result of both pieces of legislation, Australia can expect uncertainty in copyright law, at least until courts develop interpretations that make sense of the American law which have been 'grafted on' to the Australian system. As Australia lacks much of America's legal context—such as a constitutional Bill of Rights, the doctrine of fair use, or the narrower test of 'originality' in copyright law—these American elements could produce quite different results in Australia to those in the United States.

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Finally, Parliament might note with concern the process that has preceded this Bill. Through the Vaile–Zoellick correspondence, the Government has effectively created new obligations for Australia. Some of the flexibility in implementation offered under the Agreement has been reduced through Minister Vaile’s detailed assurances to the United States on specific implementation models. The lack of Parliamentary involvement or scrutiny of the negotiations leading to the Vaile–Zoellick correspondence stands in sharp contrast to the involvement in the decision to ratify the Agreement.²⁸

Endnotes

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- 1 See Mark Davis, US Forces FTA Changes to Copyright, *Australian Financial Review*, 16 November 2004, p. 4.
 - 2 See Robert Zoellick, ‘Letter to Mark Vaile’, Washington, DC., 17 November 2004.
 - 3 Article 21.9 of AUSFTA requires dispute settlement panels to interpret the Agreement in accordance with Articles 31 and 32 of the *Vienna Convention on the Law of Treaties* [1969]. Article 31(2)(b) of that convention provides that such letters are considered ‘context’ for the purposes of interpreting the Agreement.
 - 4 See Varghese, *op. cit.*, 23 on this ‘exception to the exception’.
 - 5 This is known as the ‘Berne three step test’. For more explanation see [Jacob Varghese, ‘Guide to copyright and patent law changes in the US Free Trade Agreement Implementation Bill’, *Current Issues Brief No.3*, Parliamentary Library, Canberra, 2004-05](#), p. 23
 - 6 See Vaile–Zoellick correspondence.
 - 7 See Varghese, *op. cit.*, 23.
 - 8 For further discussion see Kimberlee Weatherall, *Weatherall’s Law* (website), Melbourne, 4 December 2004. <http://weatherall.blogspot.com/>
 - 9 See s. 87, *Telecommunications Act 1997*.
 - 10 See Varghese, *op.cit.*, 24–25.
 - 11 See items 4 and 5 of the table in s. 116AH, Copyright Act (as amended by the USFTAI Act).
 - 12 See s. 116AE, Copyright Act (as amended by the USFTAI Act).
 - 13 See s. 116AF, Copyright Act (as amended by the USFTAI Act).
 - 14 See Varghese, *op. cit.*, 26.
 - 15 *ibid.*, p. 27.
 - 16 For a recent example of the competitive nature of the industry see Howard Dandah, ‘Primus blasts broadband speed to 6Mbps’, *PC World*, 22 November 2004. <http://www.pcworld.idg.com.au/index.php?id=1297863376>.
 - 17 See Varghese, *op. cit.*, 26.

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- 18 See *ibid.*, 5–6.
- 19 See *ibid.*, 3.
- 20 See *ibid.*, p. 16.
- 21 *ibid.*, p. 17.
- 22 See 17 US Code § 506.
- 23 See Varghese, *op. cit.*, p. 20.
- 24 See Mark Vaile, ‘Letter to Robert Zoellick’, Canberra, November 2004.
- 25 Zoellick, *op. cit.*
- 26 Senator Chris Ellison (Minister for Justice and Customs), ‘Copyright Legislation Amendment Bill: Second Reading Speech’, Debates, Senate, 30 November 2004, p. 1.
- 27 See Varghese, *op. cit.*, p. 36–38 for further discussion.
- 28 Joint Standing Committee on Treaties and the Senate Select Committee on the Free Trade Agreement between Australia and the United States.

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