



NATIONAL LIBRARY OF AUSTRALIA

SUBMISSION TO THE SENATE STANDING COMMITTEE ON LEGAL AND
CONSTITUTIONAL AFFAIRS INQUIRY INTO THE COPYRIGHT
AMENDMENT BILL 2006

30 October 2006

Ms Jackie Morris
A/g Committee Secretary
Senate Standing Committee on legal and Constitutional Affairs
Parliament House
Canberra ACT 2600

The National Library of Australia welcomes the opportunity to comment on the Copyright Amendment Bill 2006. The Library is a member of the Australian Libraries Copyright Committee (ALCC) and the Australian Digital Alliance (ADA). We support the submissions of the ALCC and the ADA to the Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the Copyright Amendment Bill 2006. In particular, the Library is concerned about the imbalance created by this Bill between the rights of users and copyright owners through the narrowing of fair dealing and inter-library loan provisions.

In this submission we wish to draw the Committee's attention to the need for revision of ss 51B and 110BA in order for the Library and other collecting institutions to fulfil their mandate to preserve Australian works in digital form.

Preservation of Australian Works in Digital Form

The Copyright Amendment Bill 2006 does not make adequate provision for the preservation of digital works and creates a significant impediment to the preservation of commercial works in digital form.

Under the *National Library Act 1960* the Library is required to collect, preserve and provide access to Australia's documentary heritage. Works in digital form are now commonplace and the Library collects, preserves and provides access to these works just as it does for works in print and other forms.

In order to preserve works in digital form for future use, it is critical that the Library is able to transfer these works from their original digital format to new formats in a timely manner. For digital works, the Library envisages that it will need to administer a continuous program of content migration prior to existing formats becoming obsolete. Long term preservation of digital works will require regular copying of works from one software format to another.

The *Copyright Act 1968* does not allow for copying of works for preservation in the manner required for digital works. Section 51A stipulates that works cannot be copied unless they have been lost, stolen, damaged or have deteriorated. Under these conditions digital works cannot be recovered for preservation purposes. In addition, works can only be copied if they 'cannot be obtained within a reasonable time at an ordinary commercial price.' While s 51A is suitable for the type of preservation action required for non-digital works, it is unworkable in the digital environment.

In its submission on the Fair Use and Other Copyright Exceptions Issues Paper (June 2005) and the Review of Technological Protection Measures (October 2005) the

Library argued for exceptions that support its mandate to collect and preserve Australian works in digital form.

The Copyright Amendment Bill 2006, however, does not provide the Library with the level of copying required to preserve works in digital form. Restricting copying to a single reproduction of a work is contrary to international best practice, which requires a master copy and at least two other copies of digital works for disaster prevention. The Australian Standard¹ for the management of essential business information and software recommends at least three backup copies be created and stored off-site for business continuity purposes. UNESCO² in its *Guidelines for the Preservation of Digital Heritage* also emphasises the need for multiple backup copies of digital works to be made “as a basic insurance against the damage or loss to any single copy.”

The proposed new sections 51B and 110BA that allow copying by institutions with a legal mandate for collecting only provide for a single copy to be made of digital works. The Library’s digital collection management and storage system is configured to automatically produce three copies of digital works for preservation purposes in line with the above standards. The Library will not be able to continue its preservation of digital works unless ss 51B and 110BA are amended to reflect current best practice.

The requirement in ss 51B and 110BA to ascertain if a copy of a work can still be ‘obtained within a reasonable at an ordinary commercial price’ means that the Library will be unable to preserve commercial works in digital form. The characteristics of digital works are such that the Library needs to copy commercial works to new formats during their commercial lifetime. Unlike other formats, waiting until the digital works are no longer available commercially means the opportunity to transfer these works to a new format will be lost. The Library does not have the resources to negotiate permission with individual publishers of digital works to copy these works while they remain in the commercial marketplace. Sections 51B and 110BA do not recognise the complexities inherent in preserving digital works and the importance of creating multiple preservation copies of digital works in a timely manner.

The Library asks the Committee to amend ss 51B and 110BA to allow for multiple preservation copies to be made of digital works, and to allow the Library to copy commercial digital works for the purpose of preservation during the commercial lifetime of these works. These amendments are critical in order to ensure the availability of today’s Australian digital works to future generations.

Yours sincerely



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Director General

¹ Standards Australia & Standards New Zealand *Information Technology-Codes of Practice for Information Security Management, AS/NZS ISO/IEC 17799:2001* (Sydney: Standards Australia International Ltd, 2001) 25.

² UNESCO *Guidelines for the Preservation of Digital Heritage* (Paris: UNESCO, 2003) 114, 115.