



# Law AND Accounting Volunteers FOR Arts

HELPING QUEENSLAND ARTISTS PROTECT THEIR LEGAL RIGHTS AND FINANCIAL INTERESTS

30 October 2006

**Attn: Senator Payne**

Chair

Senate Legal and Constitutional Affairs Committee (Committee)

Department of the Senate

PO Box 6100

Parliament House

CANBERRA ACT 2600

Dear Senator Payne

**RE: Copyright Amendment Bill 2006 (the Bill)**

The *Arts Law Centre of Queensland Inc* (ALCQ) welcomes this opportunity to make a submission to the Parliamentary Inquiry into the *Copyright Amendment Bill* 2006. ALCQ is a non-profit community legal centre incorporated in Queensland in 1991 to help artists protect their legal rights and financial interests. ALCQ conducts legal and accounting advice and information and education programs for the benefit of the Queensland arts community and the association's members, many of whom are self-employed sole traders and subject to high levels of discontinuous work and low incomes. ALCQ currently receives funding from the Queensland Government towards the costs of administering these programs.

ALCQ's membership includes an affiliate network that represents the interests of approximately 4,000 individual Queensland creators working in disciplines that include writing, performance, music, visual arts, craft and design. As the creators of literary, dramatic, musical and artistic works, these individuals are the primary beneficiaries of the economic and moral rights granted under copyright law. ALCQ wishes to remind Committee members of the purpose and intent of copyright law, frequently cited as being for the encouragement of learning, but articulated by the Crown in the introductory sentence of the Statute of Anne as:

*'Whereas Printers, Booksellers, and other Persons have of late frequently taken the Liberty of Printing, Reprinting, and Publishing, or causing to be Printed, Reprinted, and Published Books, and other Writings, without the Consent of the Authors or Proprietors of such Books and Writings, to their very great Detriment, and too often to the Ruin of them and their Families: For Preventing therefore such Practices for the future, and for the Encouragement of Learned Men to Compose and Write useful Books...'*

ALCQ supports the comments made by the *Australian Society of Authors* (ASA) in their submission on the proposed Bill dated 25 October 2006. In particular, ALCQ agrees with concerns raised by the ASA that certain provisions in the proposed Bill may result in unintended consequences that conflict with the exploitation of literary works in emerging markets and, as such, prejudice the interests of authors.

Concerns raised by the ASA regarding the Government's proposed amendments relating to time-shifting and private copying, libraries, and technological protection measures are equally applicable to the authors of artistic works.

***Use for the purpose of parody or satire***

The Attorney-General's media release dated 22 September 2006, *Fairer Deal for Public on Copyright*, states that the Government's proposed reforms include:

*'allowing our comedians to use copyright material for parody or satire.'*

Under current copyright provisions in Australia, comedians are able to substantially reproduce copyright material for comedic purposes by making payment to the copyright owner or collecting society.

ALCQ endorses the recommendations made by the *Australian Copyright Council* (ACC) in their *Response to the Issues Paper on Fair Use* in June 2005, in particular recommendation 39 concerning the use of works in later works. The ACC draws a distinction between use of an earlier work for the purpose of parody and use of an earlier work for the purpose of satire. Similarly, in their response to the Government's Fair Use issues paper, the *Arts Law Centre of Australia* (ALCA) argues that, in producing a parody, it is inevitable that an original work will be referred to. They defined parody as:

*'a comment on, or ridicule of, an original work, produced by imitating the original work [as] distinguished from satire, which is typically understood as a comment on society, which may include its culture.'*

ALCA argued for a specific exception for parody, as well as support for:

*'a restriction of the parody exception so that it only applied to works having a predominantly cultural purpose, as distinct from a predominately commercial one.'*

ALCQ endorses the submission of the *International Intellectual Property Alliance* (IIPA) dated 28 October 2006 and shares concerns expressed by the IIPA in Part II of its submission regarding exceptions to copyright infringement proposed under s. 200AB(5) – uses for the purpose of parody and satire. The lack of definition of what may constitute a reasonable use for the purpose of parody and what may constitute a reasonable use for the purpose of satire will, according to the IIPA:

*'...Inject a much higher level of uncertainty into Australian copyright law... and ... [provide] very little practical guidance to copyright owners or users as to what is or is not permitted.'*

In its 2005 *Issues Paper on Fair Use*, the Government conceded that any attempt to list uses that qualify as a 'fair use' for the purpose of parody or satire is extremely difficult, because the distinction between fair use and infringement can be unclear and not easily defined. In the explanatory material for the *Exposure Draft of Exceptions and other Digital Agenda review measures* dated September 2006, the Government proposes that the courts will identify the conditions where a particular use is a defence to a claim of copyright infringement.

In practical terms, this will require a writer, choreographer, musician, artist or designer to seek recourse to the courts in the event that another party uses their copyright work without permission. ALCQ believes that placing copyright creators in this position is not in keeping with the spirit and intent of copyright laws.

The Bill proposes a new s. 200AB(7) that includes definitions for the purpose of s. 200AB, with the same meaning as in Article 13 of the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPS). Article 13 of TRIPS requires that:

*'Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.'*

ALCQ proposes that any new copyright exception for the purpose of parody or satire requires clarity in its definition and must be narrow in its scope and reach. The provision should describe the 'certain special cases' in which a work can be used for the purpose of parody or satire without payment to the copyright owner, and clarify that any such use must not infringe the creator's moral rights.

Regards

Jo Forsyth  
Coordinator  
on behalf of the Management Committee  
Arts Law Centre of Queensland Inc