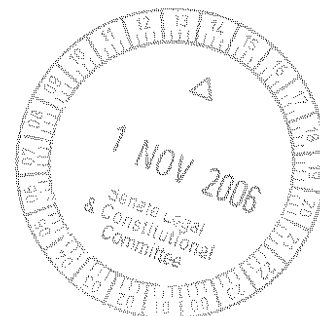


Ms Jackie Morris
Acting Committee Secretary
Senate Standing Committee on
Legal and Constitutional
Affairs
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

27 October 2006



Dear Ms Morris

Inquiry into the Copyright Amendment Bill 2006

Reed Elsevier Australia ("REA") welcomes the opportunity to make a submission to the Senate Standing Committee on Legal and Constitutional Affairs' Inquiry into the Copyright Amendment Bill 2006 ("Bill").

REA wishes to congratulate the Australian Government on the significant progress that it has made since the exposure draft of the Bill was made available in early September 2006. In particular, REA is encouraged to see that the Government has seen it fit to provide broader protection to access control technological protection measures ("TPMs"). Access control TPMs are essential to the feasibility of REA's current and future business models, and Reed Elsevier's experience in other jurisdictions around the world, including the United States of America, has been that the application of access control TPMs facilitates the dissemination of copyright material online.

REA also supports the Government's proposals to enhance the enforcement of the Copyright Act by introducing a tiered criminal offence regime, among other things. REA considers that improving the ease with which Australia's copyright legislation can be enforced is an important goal for the Australian Government.

Despite these positive aspects of the Bill, REA has strong reservations with the active caching exception for educational institutions in Schedule 8 of the Bill. The express terms of proposed section 200AAA appear to extend far beyond the Government's policy intent as expressed in paragraphs 8.23 to 8.28 of the Explanatory Memorandum, and threaten to seriously undermine the educational licensing regimes pursuant to which Reed Elsevier makes available many of its online products.

Consider, for example, the application of proposed section 200AAA to Reed Elsevier's LexisNexis product. LexisNexis is an online legal information service that Reed Elsevier makes available to a number of universities and other educational institutions around Australia on a

subscription basis and at significantly reduced academic prices. Fees payable for the LexisNexis academic service are calculated on a per capita basis and licence terms restrict the number of simultaneous users, among other things. Access to the LexisNexis service is protected by a range of TPMs, including password controls and IP validation techniques.

Since proposed section 200AAA would allow educational institutions to reproduce on a secure server all manner of copyright material and communicate that material to any number of its staff and students (whether simultaneously or otherwise), its enactment would undermine the basic tenets of LexisNexis' academic licensing model. Licensing on a per capita basis simply would not make sense if an educational institution could access the copyright material on a single occasion and create a reproduction of that material on its server for later dissemination to its staff and students in connection with a course of instruction. Similarly, Reed Elsevier would likely end up in breach of its licence terms with the copyright owners who make their works available through the LexisNexis service if Reed Elsevier cannot effectively restrict the number of simultaneous users of those works.

REA proposes two solutions to address these significant adverse consequences that are likely to result from the current drafting of section 200AAA. First, REA submits that the Australian Government should amend proposed section 200AAA so that it only applies to active caching activities (and not activities that merely involve downloading copyright material from the Internet).

A second solution would be for the Australian Government to exclude from proposed section 200AAA copyright works or other subject-matter that are protected by TPMs. In other words, proposed section 200AAA should be amended to only apply to copyright works or other subject matter made available online to the general public without restriction; if a TPM such as a password or an IP validation technique is employed to restrict access to copyright material made available online, then educational institutions should not be permitted to bypass that TPM in order to reproduce on a secure server the material to which the TPM has been applied and to then communicate that material to any number of its staff and students.

REA thanks the Senate Committee for considering its views on the Bill and welcomes the opportunity to further discuss the points raised in this submission. To do so, please contact Mary Alice Bannister by phone on (02) 9422 2002 or Mary-Alice.Bannister@reed-elsevier.com.au.

Yours sincerely



Mary Alice Bannister
Reed Elsevier Australia