

# Copyright Amendment Act 1980

**PETER BANKI**, Legal Research Officer of the Australian Copyright Council, in a paper given at a recent ACLA seminar, looks at some of the key developments in Copyright Law . . . .

Photocopying has revolutionised the use of authors' works. It has been the focus of international debate on copyright and its philosophical base since the early 1960s.

With the possible exception of television and radio broadcasting, the photocopying machine has been the most significant technological development for copyright since sound recordings were invented. Legislators of copyright have certainly found it the most difficult to cope with.

Australia's first attempt to analyse the copyright implications of photocopying machines were the judicial statements in the *Moorhouse* case in 1974 and 1975. The Franki Committee was established soon after the first instance decision in that case and reported to the Attorney-General in 1976. The present amendments are the result of the Government's decisions on the Committee's recommendations.

The new Act is premised on the notion that copyright legislation requires a balancing of the private interests of copyright owners and the public interest of users of copyright material. This is the popular view of copyright as a limited monopoly property right, expressed only in terms of economic exploitation.

The Act was passed by Parliament on 18 September 1980 and received Royal Assent on 19 September. It deals with two main issues: provision for a systematic approach to photocopying; and increased penalties for summary offences.

## The Photocopying Amendments

These provisions are not yet in force. They will come into operation on a date to be fixed by proclamation — probably in April 1981 — to allow a period for users and copyright owners to design their photocopying record systems and to instruct staff.

The key provisions are:

- a minimum quantitative definition of "reasonable portion" (Section 5 — Section 10 of the Principal Act)

- a broader fair dealing exception permitting single copies of reasonable portions of works (S.7 — Section 40 of the Principal Act)

- more comprehensive library copying provisions (Sections 10, 11 and 12 — Sections 49 and 50 and new Section 51A of the Principal Act)

- a statutory licensing system for multiple copying in educational institutions and institutions assisting handicapped readers (Section 14 — new Divisions 5A and 5B in Part III of the Principal Act)

- requirements for the retention and inspection of copying records (Section 27 — new Sections 203A — G of the Principal Act)

Section 53B is the most important photocopying provision. It provides that educational institutions may make multiple copies of the whole or part of periodical articles and of works. Such copying is to be recorded, the records kept (new Section 203) and owners have a right to claim payment, except for some copies for external students.

The form of operation of this statutory licence is that multiple copying within specified limits is not an infringement of copyright if records of copying are kept. The limits are based on the formula used in other parts of the Bill, that of copying of no more than a reasonable portion except where the work is unavailable.

The operation of the statutory licence will depend largely on the effectiveness of record-keeping and on the extent to which copying under this heading can be isolated from other copying, particularly copying under Section 53A. Section 53A deals with multiple copying of insubstantial portions of works (1% or 2 pages every 14 days).

Unlike some of the other copying provisions, persons who make copies of works under Section 53B are not required to make a declaration. It is only required that they be "satisfied, after reasonable investigation" that the work is unavailable. Institutions which may use the statutory licence are resource centres and other educational institutions. These are defined in Section 10 of the Principal Act.

## The Penalties Amendments

Section 133 is amended to provide for increased penalties on conviction of a summary offence. These have been increased to \$150 per article in the case of articles other than a cinematograph film and \$1,500 in the case of a cinematograph film. The maximum fines are \$1,500 per transaction and, for prosecutions in the Federal Court, \$10,000. The maximum penalty under Section 133(3) (possession of plates used for making infringing copies) is also increased to \$1,500. "Recording equipment" is included in Section 133(4).

The amendments came into operation on 19 September.

## Other Amendments

These include:

- modification of the Crown's prerogative rights (Section 4 of the new Act) and provision for copying "prescribed works" (Section 8) and a similar provision in Part IV of the Act (Section 15).

- requirements that members of the Copyright Tribunal disclose interests (Section 19) and provisions conferring jurisdiction on the Tribunal to hear applications.

(a) determining remuneration under the statutory licences (Section 20)

(b) making orders suspending the application of the licence (Section 21).

- clarification of the meaning of Section 183 of the Act (Section 24).

- a defence in relation to copying under Sections 49, 50, 51A, 53B, or 53D by notation of copies (Section 27 — new Section 203H of the Principal Act).

- amendments relating to copies of sound recordings and other formal amendments (Section 28).

On March 23 this year, the Prime Minister, Mr Fraser, is reported to have said in Melbourne that the enabling legislation would come into effect on July 1st or as soon as possible after that date — **Ed.**