

Copyright Law Reform

Annika Forss and Peter Chalk summarise the Federal Government's proposed changes to the Copyright Act 1968 (Cth) allowing for new uses of copyright material and strengthening enforcement in the digital age

Introduction

On 14 May 2006, the Australian Attorney-General, Phillip Ruddock, announced the Government's proposed changes to the *Copyright Act 1968* (Cth) (**Copyright Act**) resulting from the various copyright law reviews over recent years. The proposed changes will be set out in detail in a draft exposure Bill which will be released in the near future for further comment and consultation.

This article summarises the key changes that have been proposed.

Key Proposed Changes

New Exceptions for Private Use

There will be two new exceptions to copyright infringement that relate to "private use". They are as follows:

- Time shifting – Consumers will be permitted to record television and radio programs to view or listen to them at a later time. This will not allow the recording to be retained and watched or listened to multiple times.
- Format shifting – Consumers who have purchased a legitimate copy of certain categories of copyright material (yet to be defined), will be permitted to make a copy of that material in a different format. This will allow consumers to do the following:
 - store their music collection which is currently recorded on CDs, tapes and records into the memory of an MP3 player or similar article;
 - scan an article from a newspaper they have purchased onto their computer; and
 - copy old VHS tapes onto DVDs.

This exception, at least initially, will not permit the format shifting of digital audio-visual material (eg, computer games). However, the Government intends to review this exception in two years' time and then make an assess-

ment about whether the exception should be extended to digital audio-visual materials.

New Flexible Dealings Exceptions

The Government has not proposed the inclusion of a broad "fair use" exception. Rather, it has proposed a new flexible dealing exception that will allow the following:

- non-commercial uses by libraries, museums and archives (eg, copies of parts of historical documents can be included in materials for visitors);
- non-commercial uses by educational institutions for the purpose of teaching (eg, old VHS educational tapes can be copied onto DVDs);

- non-commercial uses for the benefit of people with disabilities (eg, a person with print disabilities can copy a book into a format that they can read); and
- parody and satire.

Importantly, these exceptions will not apply where an existing exception or statutory licence would otherwise apply.

Implementation of Recommendations from the Digital Agenda Review

There are a number of minor amendments to the Copyright Act arising out of this Review. The most significant amendments will deal with allowing libraries and archives to provide better assistance to users in the online environment.

Strengthening of Copyright Enforcement

The Government has proposed a range of new measures to "tackle piracy". They include the following:



- police will be able to issue "on-the-spot" fines for acts of piracy;
- changes will be made to make it easier for copyright owners to prove copyright ownership and subsistence of copyright (eg, for films, the worldwide labelling practices of commercially-released films will be recognised);
- the Courts will be given power to award higher damages and other remedies for large scale piracy (such as that which occurs on the Internet) without the need for copyright owners to establish each individual act of copyright infringement;
- the right of a copyright owner to commence civil infringement proceedings in response to unauthorised electronic reproduction of copyright works will be confirmed;
- a broader range of offences under the Copyright Act will apply in relation to Pay TV piracy;
- research will be undertaken to identify the nature and extent of piracy and counterfeiting in Australia; and
- industry initiatives will be implemented to raise the profile of copyright enforcement issues.

Circumvention of Technological Protection Measures

The changes proposed by the Government do not, at this stage, deal with Australia's obligations under the Australia-US Free Trade Agreement in relation to circumvention of technological protection measures. This issue is still being considered by the

Government and will be dealt with under separate legislation, proposed to be released later this year.

Implications of the Proposed Changes

While the Government has proposed changes that will broaden the exceptions to copyright infringement for certain acts by certain groups, at the same time, it has proposed significant changes that will assist copyright owners in reducing and preventing piracy. Of course, the exact scope and effectiveness of the changes will not be known until the Bill implementing these changes has been released for public review and comment.

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Digital Content Distribution in the Asia Pacific Region

Nick Abrahams and Trent Lyndon look at the issues confronted by US content vendors entering into new markets in Asia Pacific countries

Introduction

Consider the hypothetical scenario of a US vendor wishing to sell music and video content over the Internet to consumers located in the Asia Pacific region. What are the high level considerations for vendors of this kind that seek new markets in the Asia Pacific, distributing products electronically over the Internet? Is there a uniform approach to regulating this type of trading activity within the Asia Pacific region, and how is this regulation enforced?

Take the cases of Australia, China, Indonesia, Malaysia and Thailand. While there is some uniformity in approach, a high level analysis of these jurisdictions demonstrates that they have varying approaches to regulation, demonstrating the need for detailed guidance and assistance by qualified counsel resident in those jurisdictions. Consider the following questions that may be asked by the US vendor in order to obtain a high level overview of the regulatory framework and to assess its ability to expand into these jurisdictions:

Prohibited content

Are there restrictions on the type of content that can be provided over the Internet?

Australia

Australia has implemented national laws that attempt to prevent the online publication of illegal and offensive content. *The Broadcasting Services Amendment (Online Services) Act 1999* (Cth) amended and inserted into the *Broadcasting Services Act 1992* (Cth), certain provisions designed to prevent the publication of illegal and offensive online content. This is achieved through the establishment of a regulatory regime that applies to Internet Service Providers and Internet Content Hosts, requiring them to block or take down offending content. This, taken together with other laws that would apply to the content providers themselves, means that there are broad based restrictions on illegal and offensive online content in Australia.

China

China has implemented laws to prevent restricted content being provided over the Internet. Restricted content includes content that opposes fundamental principles determined in the Constitution, compromises state security, harms the dignity or interests of the State, incites ethnic hatred or racial discrimination, sabotages State religious policy or propagates heretical teachings or

feudal superstitions, disseminates rumors, disturbs social orders or disrupts social stability, propagates obscenity, pornography, gambling, violence, insults or slanders a third party, infringes on the lawful rights and interests of a third party, or includes other content prohibited by laws or administrative regulations.

Indonesia

There are no laws specific to Internet content as such, but the general law would need to be complied with, which strictly prohibits, for example, the promotion of gambling, alcohol and pornography.

Malaysia

There are several restrictions that the US vendor will have to consider. These include restrictions under the Malaysian *Communications and Multimedia Act 1998* (CMA).

The US vendor may be considered a content applications service provider (CASP) within the scope of the CMA. Under the CMA, a CASP is a person who provides a content applications service such as satellite broadcasting subscription, broadcasting terrestrial free to air, television terrestrial radio broadcasting, internet content applications services, or online publishing and information services. The CMA also provides that no CASP or other person using a content applications service, shall provide content which is indecent, obscene, false, menacing, or offensive in character with intent to annoy,