

MORE ON COPYRIGHT

A FURTHER MEETING with officers of the Attorney-General's Department has been held as part of the series intended to examine problems in the administration of the changes brought about by the amendments to the Copyright Act. Most of the problems discussed at this meeting were those identified earlier.

Educational institutions

Section 10 of the Act deals with the definition of 'educational institutions'. The best advice that can be given at present is that a body wishing to take advantage of this section for itself or for one of its units should approach the Department setting out the facts. It is important to do this promptly.

It would seem that the Department is willing to take a liberal attitude in considering such applications, and in those cases where it is not possible to satisfy the conditions of the Act this will serve to identify the problem to the Department. It is clear that there are problems in multi-purpose institutions where, while a unit of the organisation would satisfy the conditions if it had a separate identity, the whole may not. The Department is interested to receive approaches.

The position of the Australian Copyright Council on the matter is equivocal, perhaps because on the one hand it sees it as a means of obtaining additional income for owners of copyright and on the other has, to date, seen little progress in the flow of 'equitable remuneration' to its members.

Those declarations

The law now requires that a signed request and declaration be received in advance by a librarian before a reasonable portion of an item in copyright is copied and supplied if the librarian is to have the protection of s.49 of the Act. From the point of view of librarians, obtaining such a declaration and keeping it as required by the Act gives close to absolute protection. It has, however, interfered with service to users, particularly those who cannot conveniently come to the library.

Under the now superseded law there was no stated requirement to obtain such a written request or declaration for copying but the librarian had to be satisfied as to certain conditions. While many librarians (mainly those in the larger libraries) found it convenient in the past to obtain a signed document of one sort or another, thus covering themselves, other librarians relied on their knowledge that the copying satisfied the terms of the Act.

One possible solution developed by the Department is that amendments could be made to provide that a librarian asked to make a copy for a user should be given the choice of either:

- (a) being satisfied in accordance with s.49 (3)(a) and (b) of the Copyright Act prior to 1980; or
- (b) requiring the user to provide documentation in accordance with s.49 as amended by the 1980 Act which, however, he can retain or dispose of at his discretion.

Whichever choice was made, records would not have to be kept and the obligations currently imposed on librarians by ss.203A and 203D-203F would be abolished. However notations on copies under s.203H would remain obligatory if the protection of

the Act is to be used.

It is the view of officers of the Attorney-General's Department that while these possible changes in the legislation would allow copying of specified material without the need for a previously supplied declaration, that it would not allow the copying of items where a citation of sorts was unavailable. This would prevent a librarian supplying a copy to a user not able to specify a source and is clearly less than satisfactory, particularly to those who are already disadvantaged in their access to information by their remoteness from satisfactory library service.

Those involved in the provision of such services would do well to provide the Executive Director of the Association with documentation of their needs and also to take whatever action they feel is appropriate to convey those needs to the Attorney-General's Department directly or through the appropriate channels of their government. To date the Attorney's view has been formed mainly by special librarians who have been the most active in pressing their case.

The possible change referred to above will not allow 'anticipatory copying' to supply a copy of an item of which the user is unaware but which the librarian knows will be useful for study and research. This point needs bringing out also. Librarians at the meeting were pleased that there was further movement in the Department's attitude but were not fully satisfied. Copyright interests were concerned about what they regarded as the loosening up that these changes implied.

It seems that they see the existence of declarations as making it possible, should the need arise, to run a check on whether systems are being maintained with the intention of 'keeping librarians honest'. It gives a 'peace of mind' to copyright owners which permits them to accept more willingly the needs of the public and of librarians acting on behalf of the public, to copy their material to the extent it is thought to be reasonable by the community and provided by law. It seems that any further concessions on declarations may require some compensating control.

The view was expressed that copyright owners could otherwise find themselves in the position of campaigning to repeal sections of the Act. It has been their view that the requirements of the new law will give some protection against so-called systematic copying and, if there are amendments of the type mooted, it seems that there will be some pressure to have a clause put in the Act to deal with this problem. Copyright and library interests will need to grapple with this problem soon in the hope that a better

solution will be found than that under the US Act.

Fair dealing, s.40

While it is not the view of the writer that librarians should use the fair dealing section of the Act where there are clear provisions under other sections of it specifying the law as it applies to copying by librarians, it is a matter of concern that there have been proposals to provide expressly in the Act that librarians should not be permitted to rely on s.40 in any circumstances in carrying out their duties.

A prohibition has also been mooted to prevent a librarian 'making single copies of works for persons where he knows that all copies are to be used for a common purpose in connection with a course of education or training at an educational institution'. It would appear that the introduction of such changes into law would be likely to interfere in some cases with the provision of single copies in a way which is completely within the spirit of the law.

It must be recognised, nevertheless, that the use of s.40 of the Act in a way which was clearly not intended when the Act was drafted, and to avoid the payment of equitable remuneration, will provide further pressure from those wishing to prevent what they regard as abuse. School librarians with a view on this should address their comments to the Executive Director or to the Australian School Libraries Association. (See also the report on the New South Wales Department of Education case.)

Criminal offences

The Department has not proceeded with the proposal to change the Act to make the offences specified in the Act civil rather than criminal offences, because of problems it has encountered. It has, however, suggested certain alterations to the law which confine the criminal liability of individuals for offences created by ss.203A-H to deliberate or careless actions.

AV copying

It will be recalled that the Attorney-General has set up an inquiry into AV copying and copyright.

It was reported that examination of submissions received by the Department has been completed and the first draft of an 'Issues' paper is being prepared for release. The submissions will also be available for public inspection.

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Student Grants

THE LAA SCHOOL LIBRARIES SECTION, Victorian Division seeks applications from student members of the LAA for study grants of up to \$100 to assist original research studies related to school librarianship.

Students wishing to apply for a grant during 1982 should send full particulars, including evidence of membership to the LAA to: Mrs. Rosemary Graham, 39 Bordeaux Street, Doncaster, Vic. 3108.

Closing date is 30 June 1982, and all applicants will be notified of the results before 31 July 1982.

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A helpful hint — 1982 is a conference year, as well as the year for two very important national workshops. The differential for LAA22 is \$110 for members and \$160 for non-members, and a similar range for other activities.

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