

## Further Amendments to the Copyright Act in Relation to Photocopying

The Statute Law (Miscellaneous Provisions) Act (No. 2) 1984 was passed by Parliament before the Senate rose prior to the election. It includes several amendments to the Copyright Act in relation to photocopying which have been discussed at the Attorney-General's Department's Monitoring Committee.

It should be stressed that these amendments cover photocopying only. The long awaited changes to audio-visual copyright (copyright in 'other than works') are still over the horizon. The amendments are detailed and complex but can be simply described in general terms.

The definition of 'educational institution' has been extended in order to permit more bodies to take advantage of the multiple copying provisions in Sections 53A-D. The definitions now include schools of nursing and the educational activities of hospitals and teacher education centres. However, apart from the latter, it is still the case that the only institutions which are eligible are those which have as their *principal* function the provision of education. Educational functions of institutions whose principal purpose is not education, eg training courses within commercial firms or educational activities of public libraries, are excluded. Within the definitions, the Attorney-General can declare an institution to be a central records authority, an educational institution or an institution assisting handicapped readers.

The expected alteration to S.40 which would have specifically prevented use of the Fair Dealing section to circumvent S.49 and S.53 is not included in the amendments.

Copying by Parliamentary Libraries for the sole purpose of assisting a member of Parliament in the performance of duties as a member is now specifically exempted from Copyright infringement.

Amendments to S.49 go a considerable distance towards meeting library problems in satisfying requests from remote users. Such a person may make a request to an 'authorised officer' of a library for a copy in the usual terms and also make a declaration that it is for research and study, that a copy has not been previously supplied and that 'by reason of the

remoteness of the person's location the person cannot conveniently furnish . . . a request and declaration . . . soon enough to enable the copy to be supplied to the person before the time by which the person requires it'. Neither the request nor declaration in such cases needs to be made in writing. On receipt the authorised officer can make a declaration setting out the particulars of the request and declaration and also stating that the claim of remoteness is true. This declaration by the authorised officer, of course, must be in writing.

Section 50(7) has been redrafted. It is now clear that the only case in which the requesting library needs to make a declaration in relation to an inter-library loan, as distinct from the request and declaration received from the user, is where the copy is required for inclusion in the collection of the library making the request and has previously been supplied, or where the request is for a copy of more than a reasonable portion of a work. This redrafting eliminates the confusion which was generated by varying interpretations of the clause which has now been replaced leading to what was known as the 'double declaration'.

There is also an addition to S.53D which eliminates a problem relating to making copies for handicapped users. Previously there was no express provision for an intermediate copy to be made in the course of creating a handicapped reader's copy. The making of an intermediate copy, described as a 'prescribed reproduction' is now permitted but it must only be used for making copies for handicapped readers and must be destroyed after three months.

Finally there is a large group of amendments to the penalty clauses requiring the keeping of records and declarations. In general terms the revisions are intended to ensure that individuals and administering bodies are penalised only when they *wilfully* disregard their responsibilities. It is now most unlikely that penalties would be imposed for inadvertent breach of the provisions or breaches which were beyond the control of the responsible individuals or administering bodies.

Finally it becomes an offence for copyright owners or their agents to go on fishing expeditions through records and declarations. A new clause attempts to meet the fears of educational institutions that agencies would hunt through their records in order to find additional copyright owners on whose behalf the agent could then seek to act.

One change which had been mooted has not occurred. This was the suggestion that the date in the annotation on copies should be the same as that on requests and declarations. Using identical dates would appear logical but it does not suit the existing practice in many libraries.

It is not at all clear whether the 'remote user' provisions will permit libraries to supply what have been termed 'non-specific requests', that is where a remote user wants information but cannot nominate the specific articles or books which may contain it. Librarians may feel a need to discuss with their legal advisers whether it is necessary having found relevant information to go through the additional step of contacting the remote user to inform him/her of the bibliographical details of the relevant items and having the remote user formally make a specific verbal request.

In general terms, however, the amendments clear up several anomalies. They don't, of course, remove the need to keep records which many libraries find cumbersome. Record keeping is the price which Australian libraries and educational institutions pay in return for more permissive photocopying legislation than yet exists in other countries with which we share our legal tradition.

F.D.O. Fielding  
29 November, 1984

## Moving towards greater literacy

California's Literacy Campaign got off to a good start with the granting of funds totalling \$2,635,000.

Garry E. Strong, the State Librarian, said that it was a significant step for the state to take on behalf of the millions of adults in California needing help in learning to read and write in English. A programme has been approved to expand the current adult literacy services to new communities.

## LAA Handbooks — back numbers

Miss Janet Hine, 31 Fairfax Road, Mosman has copies of the LAA Handbook for 1952, 1959, 1960 and from 1962 onwards. If anyone would like them, free of charge, would they please contact Miss Hine on 969 7594. The new owner would have to organise cartage.

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