

Copyright futures seminar

Craig Grimison and Rosemarie Sebastian-Pillai report on recent developments in copyright law reforms

The Commonwealth Attorney-General, the Honourable Daryl Williams, repeated the federal government's commitment to a balanced copyright regime representing the interests of users and owners at a seminar on the future of copyright in Australia, held in Brisbane on 12 February 1999.

The Attorney-General also announced the release of Part 2 of the *Simplification of the Copyright Act*, signalling the implementation of the digital agenda reforms announced last year, and foreshadowed the release of the *Draft Exposure Copyright Bill*.

The Bill will attempt to simplify the current *Copyright Act 1968 (Cth)*. It will also address the issue of new technologies by reforming the *Act* to make it technology-neutral. (The *Act* is currently technology-specific and reflects very much the technology of the late 1960s when it was enacted.)

The conference was organised by the Australian Key Centre for Cultural and Media Policy at Griffith University, in conjunction with the Intellectual Property Society, Australia and New Zealand, and the law firm, Minter Ellison. It is the third conference in this series and is regarded as the premier conference on copyright in Australia. As a result, it attracted a host of important speakers including academic experts, Professors James Lahore and Sam Ricketson.

Annabelle Herd, formerly ACLIS copyright advisor and now representing the Australian Digital Alliance (ADA), explained the role of the ADA and the future of access to information in the digital age. She predicted a growth in the requirement to pay for the privilege of accessing information. She suggested that the increasing trend towards contractual licensing and the advances in technological protection software may interfere with the fair dealing provisions of the *Act*. Not surprisingly, some copyright owners disagreed with this view.

Kylie Brown from the Intellectual Property Branch, Department of Communications, Information Technology and the Arts, outlined the federal government's Digital Agenda initiatives,

and in particular the forthcoming *Copyright Amendment Digital Agenda Bill*. Her paper highlighted the tensions that exist between competing interests in the copyright law reform debate. Three groups were identified as having a vested interest in the copyright law reform process — creators and investors; content communicators, such as telecommunications carriers and internet service providers; and copyright users, such as libraries, archives, galleries and museums.

Copyright creators and investors are seeking maximum economic return from the delivery of online information and the exclusive right to control the distribution of copyright material. They are not in favour of extending the reasonable portion test to the online environment.

Content communicators argue that they should not be directly liable for content and that liability for authorising copyright infringement should be limited.

Copyright users such as cultural institutions indicate that they wish to rely on statutory exceptions to utilise emerging digital technology in order to make their collections available to a broader audience. They are requesting that statutory exceptions which currently apply to hardcopy should continue in the digital environment, including the extension of an appropriate quantitative test. Furthermore, copyright consumers oppose a ban on devices to defeat technological protection measures and argue that such a ban will allow copyright owners to 'lock up' works, to the detriment of copyright users.

The *Copyright Amendment Digital Agenda Bill* has been drafted to preserve the delicate balance that exists in the current *Copyright Act* and to reconcile these competing interests. The Bill provides libraries with limited exceptions for digitising material held in the library's collection for preservation purposes and for viewing by patrons visiting the library's premises. Under the Bill, libraries will be able to supply documents electronically subject to the restrictions that exist in the library copying provisions of the *Copyright Act 1968*.

The Bill will be released as an exposure draft in the coming weeks. It is expected that three working groups, consisting of experts and representatives from affected interest groups, will be convened to examine the areas that are likely to attract substantial public comment, namely the exceptions to the right of communication to the public, internet service provider liability and technological protection measures.

Andrew Christie, a former member of the Copyright Law Review Committee (CLRC), presented an overview of Part 2 of the CLRC's *Simplification of the Copyright Act 1968* reference. The report was released on 12 February and contains the CLRC's findings and recommendations on the simplification of copyright subject matter and exclusive rights. The report also makes recommendations in relation to outstanding issues from the Copyright Convergence Group.

The report recommends that there should be only two categories of subject matter — creations and productions. These two categories will include multimedia, non-creative compilations such as tables and unoriginal databases, and intangible works such as performances. They will also include works which do not equate to traditional concepts of authorship, such as computer-assisted and computer-generated works.

The committee has also recommended that the current bundle of exclusive rights should be reduced to four rights, including the introduction of two economic rights — the right of reproduction, and the right of dissemination.

In keeping with the federal government's intention to pass legislation implementing its moral rights obligations under the Berne Convention, the CLRC has recommended that the right of attribution and the right of integrity also be introduced. The CLRC believes that these broad categories of works and rights will ensure that the *Copyright Act* is responsive to future changes in technology.

The papers delivered at the seminar will be released on the CMP's website, at <http://www.gu.edu.au/gwis/akccmp/home.html>. ■