



## Copyright in Universities – What We Are Thinking About

Within universities copyright management is about maximising the use of other peoples' intellectual property, within the limits allowed by the *Copyright Act 1968* — just like the role of a library. Over the past decade or less, most universities have appointed specialist copyright officers, and developed small copyright units. Some of them are based in (or loosely aligned with) the library, others with the legal office, and others in the area which supports learning and teaching. Copyright people form a university copyright network, and meet from time to time. In copyright matters, universities mostly work together through Universities Australia (formerly the Australian Vice-Chancellors Committee), our industry association.

The major clients of university copyright offices are staff — teaching and research staff. Teaching is a process which makes prolific use of other peoples' intellectual property, and research makes use of even more. In fact, so much so that the Copyright Act makes particular provision for the use of copyright material in education. This is done in statutory licences provided in Part VA and Part VB of the Copyright Act. They allow copying within certain limits and rules without seeking the permission of the copyright owner before doing so.

Here are some of the things preoccupying universities, and often their libraries too.

### Money of course

Universities paid over \$23 million in 2007 to the Copyright Agency Ltd and to Screenrights for the right to make copies under Part VA and Part VB of the Copyright Act. They also spend a great deal of time and effort complying with the provisions of these parts of the Act.

### Transnational copyright

Now that pretty much all universities have operations overseas, and sometimes whole campuses overseas, they worry about how this might impact on their use of copyright material. Much copying takes place within the scope of other countries' copyright laws.

### Committing Crimes

One of the features of the Copyright Act, following the amendments passed into law at the end of 2006, is enhanced criminal provisions. This means that the criminal law increasingly applies to copyright infringement, rather than the civil law. In particular, the amendments introduced strict liability offences (fines up to \$6600 for each offence) which does not require proof of fault, and for which an infringement notice can be issued by Federal or state police. The rules for on-the-spot fines are still being worked out, but this is a new development.

### Section 200AB

When the Copyright Act was amended at the end of 2006, one of the amendments was a new section, s 200AB, which allows for broader uses of copyright material than those previously allowed. It applies to libraries and archives, educational institutions, and people with disabilities.

Unfortunately, it is not yet clear just what section 200AB may be used for. It includes a number of limitations, which make its actual role less clear than it might have been. But when the Government explained what it might be used for, it gave these examples

- a library using a work without the copyright owner's permission because the copyright owner could not be identified or contacted
- an educational institution converting into another format a video cassette of teaching material because the material is no longer commercially available.

### Orphans

Much material which universities want to use is in copyright (that is, someone probably owns the copyright) but the material cannot be copied because the owner cannot be contacted or cannot be identified. Very often the material has a trivial commercial value, or none. The Commonwealth Government announced in 2006 that it intended to look into this issue. Recently IFLA (the International Federation of Library Associations) and the IPA (International Publishers Association) have agreed on a joint approach including these agreed elements:

- a 'reasonably diligent' search for the copyright owner
- clear and adequate attribution
- remuneration or restitution if the copyright owner appears
- any injunctive relief should take into account good faith investment by the user
- use is non-exclusive.

### Off-air copying

Part VA of the Copyright Act allows educational institutions to make copies of radio and television broadcasts 'off air'. These can be used in classes or copies made and lent to students. Someone else can make these copies on our behalf, and this is a growing trend. The use of off-air copies must be limited to the university. The recent amendments to the Copyright Act mean that it is now possible to copy broadcasts which have also been made available online (e.g. as podcasts) by the broadcaster, using Part VA.

### Use of section 183

Recently, the Commonwealth Government has announced that we will be able to make copies of research publications, and do all copyright acts necessary for the purposes of the Research Quality Framework (RQF) under the terms of section 183 of the Copyright Act. This permits copying, on fairly generous terms, in the service of the Commonwealth.

### Staying safe

Most universities now have some kind of disclaimer and take-down procedure for online content. This means that if anyone claims that their copyright has been infringed by the university, then the university has a formal procedure for investigation and, if necessary, taking it down.

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