



AUSTRALIAN
COPYRIGHT
COUNCIL



***Submission on Personal Properties Securities
Bill 2008: Consultation Draft***

August 2008

Australian Copyright Council

The Australian Copyright Council is a non profit company. It receives substantial funding from the Australia Council, the Commonwealth Government's arts funding and advisory body. The Copyright Council provides information about copyright via its website, publications and training, provides free legal advice about copyright, conducts research, and represents the interests of creators and other copyright owners in relation to policy.

Some of the organisations affiliated with the Copyright Council have made separate Submission on the Consultation Draft of the Personal Properties Securities Bill 2008.

Description of copyright security

It may be difficult to describe certain copyright securities in a way that ensures they will be found by someone searching the register. There may therefore need to be guidelines about how to describe copyright securities and how to search for them. The term "misleading defect" in proposed section 202(2) may need to be further defined to exclude securities described according to the guidelines.

Registration of a security before a security agreement is made

In our view, a copyright security should not be registrable without the written consent of the borrower.

Intellectual property deemed to be included with tangible property

Proposed section 30 is intended to prevent a borrower using its intellectual property rights to frustrate the sale or use of secured tangible property by the lender. There are different ways that this objective could be realised, including a deemed licence to use the tangible property for its normal use. It is not necessary for the lender to *own* intellectual property rights associated with a tangible security in order to be able to sell or use the security. The guidelines and educational material associated with the legislation should alert lenders and borrowers to the need to consider and describe intellectual property interests associated with a tangible security that may be needed for the use of the security.