

Article for *Copyright World*

Report on the Jurisdiction and Procedures of the Copyright Tribunal Released; Removal of Restrictions on Parallel Imports Proposed

Virginia Morrison, Australian Copyright Council, 2 April 2001

Copyright Tribunal report

The Federal Government-appointed Copyright Law Review Committee has completed its review of the jurisdiction and procedures of the Copyright Tribunal. In its final report, the Committee concludes that the Tribunal is functioning well but makes a number of recommendations for changes to the Copyright Act that would enhance its function.

The Copyright Tribunal was established in 1969 under section 138 of the Copyright Act 1968 (Cth). It is an administrative tribunal which has jurisdiction to set rates for statutory and some non-statutory licences administered by copyright collecting societies, and to determine other matters in relation to licensing. It performs a similar function to the Copyright Tribunal in the United Kingdom. It was conceived as a tool of competition policy, to counteract the possible abuse of monopoly power of collecting societies which dominate the market for licensing certain types of copyright material.

The Committee was asked to report on the need for changes to the jurisdiction and procedures of the Tribunal, and on whether the capacity of the Tribunal needs to be increased in order to address additional licensing matters, arising in part in response to technological developments.

The most significant recommendation made by the Committee (by majority) was that the Tribunal's jurisdiction be extended to cover all collectively administered licences, whether statutory (compulsory) or non-statutory (voluntary) and including transactional, or one-off, licences.

The Committee also recommended that the Tribunal should have the power to substitute a licence scheme or a transactional licence for one put forward by a party, in addition to its current jurisdiction to vary or confirm a scheme.

In addition to licensing arrangements, the Committee looked at the issue of whether the Tribunal ought to have jurisdiction over issues arising between collecting societies and their members, such as distribution issues. Major users of copyright material argued that such jurisdiction would be appropriate. Ultimately, the Committee saw little evidence of the need for such an extension and recommended against it. However, it did recommend that a collecting society which has been declared to administer a statutory licensing scheme should have the ability to apply to the Tribunal for an order confirming, varying or substituting an existing or proposed scheme of distribution.

To address the issue of the Tribunal's increasing workload, the Committee recommended that more presidential and non-presidential members be appointed, ensuring that copyright owner and user interests are evenly represented.

The Committee also made recommendations concerning the streamlining of the Tribunal's procedures, and in relation to the accessibility and promotion of the Tribunal.

The Committee's report (which is dated December 2000 but was released in mid-February) is available online at http://www.law.gov.au/clrc/gen_info/clrc/rep_index.html

The Government is yet to respond to the report.

Parallel importation

Legislation to allow the parallel importation of items containing computer software and "electronic, literary or music items", and printed books, periodicals and music was introduced into the House of Representatives on 28 February 2001. If passed, the legislation will remove copyright owners' ability to control the importation of such legitimate items into Australia. The provisions relating to printed books, periodicals and music would not come into effect for a year after the legislation comes into effect.

Restrictions on parallel importation of sound recordings were removed in 1998. There is no current proposal to relax the restrictions on parallel importation of films.

The Copyright Amendment (Parallel Importation) Bill 2001 and the Explanatory Memorandum are available from <http://www.aph.gov.au/legis.htm> (click "Current Bills (by title)").