

Article for *Copyright World*
***Government response to IPCRC
recommendations; legislative developments
concerning parallel importation***

Ian McDonald, Australian Copyright Council, 3 September 2001

The Australian Federal Government has released its response to the final recommendations of the Intellectual Property and Competition Review Committee (IPCRC), published in September 2000: see *Copyright World* issue 98 at 6, 101 at 6-7 and 102 at 5 for news reports on the Committee and its interim report.

Parallel importation

The IPCRC recommended the repeal of the parallel importation provisions of the Copyright Act, with a 12-month transitional period for books.

The Government had already announced its intention to allow parallel importation of books, periodicals, printed music and software, including computer games. As reported in *Copyright World* issue 110 at 4, the Copyright Amendment (Parallel Importation) Bill implementing this policy was introduced into Parliament in February 2001. The Bill was passed on 27 June and introduced into the Senate on 28 June, where the second reading was adjourned. The Bill had already been referred to the Senate Legal and Constitutional Affairs Committee for review. The Government members of the Committee, who constituted the majority, had supported the Bill although they had criticised the way the issue had been handled by the relevant government departments, and the extent of dependence on data provided by Australia's trade practices regulator, the Australian Competition and Consumer Commission. The Australian Labor Party (ALP) and Australian Democrat Members opposed the Bill.

As the ALP and the Democrats together constitute the majority of members in the Senate, there is some doubt as to whether the Bill will ultimately be passed (see issue 111 of *Copyright World* at 3 for a news report of the Senate report).

The Government's response to the IPCRC report affirms that it is not considering introducing legislation to remove restrictions on the parallel importation of films, and that the removal of restrictions on the parallel importation of books will not be implemented until 12 months after the amending legislation is passed. The Government response to the IPCRC report also noted that the book industry, including the printing and publishing sectors will receive Commonwealth adjustment assistance from indirect tax reforms. The Government notes that the Book Industry Assistance Plan will provide up to \$240 million over 4 years to writers, publishers, printers and consumers.

Copyright term

The Government has accepted the IPCRC's recommendation that the term of copyright not be extended beyond the general period of life plus fifty years, but has stated that it is considering extending the period of copyright in photographs to life plus fifty, in line with the 1996 WIPO Copyright Treaty.

Matters to be dealt with as part of the 3-year review of the Digital Agenda amendments

In a number of cases, the issues raised by the IPCRC have been dealt with in the Digital Agenda amendments, passed by Parliament in mid-2000 (which came into operation on 4 March 2001: see *Copyright World* issue 102 at 5 and 104 at 4). As part of its response to the IPCRC, the Government has noted that the terms of reference for the three-year review of those amendments will include:

- a "thorough examination" of the library and archive exceptions on both the development of markets for copyright material and on the ability of libraries to "discharge their important community function as disseminators of information in the online world";
- whether or not technological protection measures which copyright owners use to control access to their digital material preserve "a reasonable balance between competing interests". (Note: as reported in issue of 111 of *Copyright World* at 3, the Government has already given the Copyright Law Review Committee a reference to inquire into the relationship between copyright and contract law.)
- the operation of the provisions in the Act allowing the decompilation of computer software; and
- the operation of the provisions in the amendments relating to temporary technical reproductions such as those made as a result of temporary caching;

The Government also stated that, in line with an IPCRC recommendation, the three-year review would look at the effects of the provisions in the Act relating to "first digitisation" on the market place and consumers. While the IPCRC refers to the "new right of first digitisation", there are in fact no provisions in the Act relating to first digitisation – there is merely a note to the effect that a conversion of a work into a digital or other electronic machine-readable form includes the first digitisation of the work. Such a conversion would be encompassed within the reproduction right.

Collecting societies

The Government announced that it is working with copyright collecting societies in relation to the adoption of voluntary codes of practice which address concerns raised by the IPCRC, and that it will review relevant provisions of the Act, regulations and guidelines relating to collecting societies declared under the Act to be collecting societies for the purposes of various statutory licences.

The Government has also agreed that, in order to facilitate licence negotiations and minimise the need for parties to resort to the Copyright Tribunal, the Australian Competition and Consumer Commission (the ACCC) should be required by statute to issue advisory guidelines on those matters which it considers relevant to arriving at terms and conditions (including reasonable remuneration) for copyright licences which are subject to the Tribunal's jurisdiction. As a complementary measure, the Government agreed that the Copyright Act should be amended to ensure the Tribunal has the discretion both to take the ACCC guidelines into account and to admit the ACCC as a party to Tribunal proceedings.

The Government has agreed that alternative dispute resolution mechanisms should be encouraged to resolve disputes arising as part of the licence negotiation process.

The Government also noted that proposed amendments to the Trade Practices Act 1974 (Cth) would ensure that collecting societies would have to seek authorisation from the ACCC for conduct prohibited by Part IV of that Act (relating to restrictive trade practices).

Other matters

In its response to the IPCRC report, the Government also announced that:

- adherence to any future international agreement relating to the protection of compilations and databases will take careful account of the specific cost/benefit to Australian society;
- in relation to the provisions in the Act which give the Crown ownership of copyright, the Government "will consider the best means to achieve the objective of eliminating unjustified preferential treatment", including by means of "best practice policy guidelines" at the Commonwealth level that could serve as a model for practice by the Australian states);
- it rejected removing the statutory cap on the copyright licence fees payable by broadcasters in relation to the broadcast of published sound recordings (currently set at 1% of gross earnings);
- it would take "very seriously" the IPCRC's comments concerning the cost/benefit of implementing the recommendations for a new regime of copyright in Part 2 of the Copyright Law Review Committee's report on the simplification of the Copyright Act (relating to the categorisation of subject matter, exclusive rights and other issues) and in particular the IPCRC's concerns about "the lack of certainty that could arise from adopting the new regime": see *Copyright World* issue 90 at 8 for an overview of the recommendations concerning the simplification of the Act.

The IPCRC report is available at www.ipcr.gov.au, and the Government's response at www.law.gov.au/infopack. The text of the Copyright Amendment (Parallel Importation) Bill 2001 is available via www.aph.gov.au. For the Senate Committee report on that Bill see www.aph.gov.au/senate/committee/legcon_ctte/index.htm.