



## **Government's election policies on copyright**

12 November 2001

Most of the Government's election policies are set out in its arts policy *Arts for All*; there are also some references to copyright policy in *Building an Information Economy for the 21st Century*.<sup>1</sup>

### **Monitoring operation of Copyright Act in light of technological development**

The Government has undertaken to "monitor the operation of the Copyright Act as new technologies develop and new methods of creating and distributing information emerge".

In its response to the recommendations of the Intellectual Property and Competition Review Committee (IPCRC) in August 2001, the Government indicated it would proceed with the 3 year review of the Digital Agenda Act (promised when the Digital Agenda Act was passed), and indicated some of the issues to be included in the terms of reference for that review.

There has, however, been no indication to date of the timeframe for the review, who will conduct it or what the terms of reference will be (apart from the issues indicated in the Government's response to the IPCRC report).

### **Funding of digital rights management systems**

The Government has undertaken to "support the development of innovative digital rights management solutions, and will investigate options for the funding of test projects".

### **Enforcement**

The Government has undertaken to "enhance enforcement mechanisms" and to "consider options for enforcement of copyright".

In December 2000, the House of Representatives Standing Committee on Legal and Constitutional Affairs released its report *Cracking down on copycats: enforcement*

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<sup>1</sup> The policies are available from [www.liberal.org.au/policy/policyachieve.HTM](http://www.liberal.org.au/policy/policyachieve.HTM). "Arts for All" was released in 26 October, and "Building an Information Economy for the 21st Century" on 2 November.

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*of copyright in Australia.*<sup>2</sup> The Government has not yet indicated a timeframe for its response to the recommendations in the report.

### **Increasing awareness and understanding of IP**

The Government has said it is:

...committed to increasing awareness and understanding of intellectual property in order to strengthen Australia's IP system. Ways of simplifying the Copyright Act will be examined, with a view to promoting a clearer understanding among creators, producers and users of the application and operation of its provisions.

Better public information about copyright was one of the recommendations of the LACA Committee in its report *Cracking Down on Copycats*. The LACA Committee did not, however, recommend that this be done by "simplifying" the Copyright Act but rather by the government in conjunction with representative organisations from the copyright industry.

In 1995, the Copyright Law Review Committee (CLRC) began an inquiry, which was referred to as "Simplification of the Copyright Act". The CLRC recommendations, published in 1998 (Part 1) and 1999 (Part 2) were largely recommendations for substantive changes to the law, rather than "simplification" of the existing law.

In any event, amendments to the Copyright Act are unlikely to assist better awareness and understanding of copyright law on the part of non-lawyers, partly because copyright law comprises a large body of case law in addition to the Copyright Act.

Another development to be noted in this context is that IP Australia – whose primary areas of responsibility are patents, trade marks and designs – is now producing educational materials on copyright.<sup>3</sup> Its IP Toolbox (to be launched on 21 November) includes a copyright module.

### **Performers' rights**

The Government has said that it:

...will work with the performing arts community to develop workable performers' rights legislation, which recognises the value attached to the recording and communicating of performances.

...is currently developing a model for performers' rights for audio performers, following agreement on this sector by the World Intellectual Property Organization (WIPO), which will enable Australia to accede to the WPPT.

... will maintain its involvement in WIPO, with a view to enacting legislation for [audiovisual recordings of performances] once WIPO has an agreed model.

In December 1996, the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty was adopted. The treaty requires member states to provide rights for performers (mainly in relation to audio recordings of performances, but also moral rights) and for phonogram producers. The standards

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<sup>2</sup> The report is available from [www.aph.gov.au](http://www.aph.gov.au)

<sup>3</sup> [www.ipaustralia.gov.au](http://www.ipaustralia.gov.au)

relating to phonogram producers were largely met by the Digital Agenda amendments. The Government released an issues paper in relation to performers' rights in 1998. WIPO subsequently convened a series of meetings with a view to adopting a treaty for audiovisual recordings of performances.

### **Indigenous moral rights**

The Government has undertaken to:

...take steps to protect the unique cultural interests of indigenous communities and the cultural works that draw upon communal knowledge in conjunction with relevant Indigenous arts groups and ATSIC. Amendments to the moral rights regime will give indigenous communities a means to prevent unauthorised and derogatory treatment of works that embody community images or knowledge.

When the Copyright Amendment (Moral Rights) Bill 2000 was before the Senate in December 2000, Senator Aden Ridgeway introduced some amendments to the Bill aimed at giving special protection for moral rights in relation to indigenous communities. These amendments were not passed, but the Government undertook to give "serious consideration to the principles underlying Senator Ridgeway's proposals" in the context of its development of legislative amendments and other measures to address the issue of protection for indigenous intellectual property.

### **Film directors' copyright**

The Government has undertaken to "consult key stakeholders on proposals to amend the Copyright Act to grant new rights to film directors".

The Government undertook to review film directors' rights after the directors sought to be included as recipients of income from the new retransmission scheme introduced as part of the Digital Agenda amendments. The Government subsequently released an issues paper and sought submissions on the issue. Negotiations between film directors and producers for a joint proposal failed, and separate submissions were made by representative organisations.

### **Parallel importation**

The Government has undertaken to "reintroduce legislation to remove parallel importation restrictions on computer software (including computer games) and books (including periodical publications and sheet music) to encourage a greater range and lower prices".

The Copyright Amendment (Parallel Importation) Bill 2001 – which was aimed at allowing parallel importation of books and computer software – was introduced in February 2001. It was reviewed by the Senate Legal and Constitutional Affairs Committee, which released its report in May 2001. The majority Government members of the Committee recommended that the Bill be passed, but indicated serious reservations about the pricing data and analysis provided by the Australian Consumer and Competition Commission (ACCC), on which the Government had exclusively relied. The Bill was opposed by the Opposition and the Democrats, and lapsed before the election.

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In its response to the recommendations of the IPCRC in August 2001, the Government reiterated that it did not intend to allow parallel importation of articles containing other copyright material, including film products.

### **Extension of protection period for photographs**

The Government has undertaken to “extend the duration of copyright in photographs to bring it into line with the protection afforded to other creators.”

The Government released an issues paper and sought views about this issue in September 2000.

In December 2000, the WIPO Copyright Treaty was adopted (at the same time as the WIPO Performances and Phonograms Treaty referred to above). The main provisions of the treaty are concerned with digital issues, and a number of the amendments in the Digital Agenda Act were intended to be consistent with those provisions. The treaty also requires member states to protect photographs for the same period of protection as other artistic works: life of the author plus 50 years.