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Article for Copyright World

Copyright Tribunal sets rates for copying by schools

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Educational institutions in Australia have the right to reproduce and communicate copyright works for their educational purposes under Part VB of the Copyright Act (Cth) 1968, provided they give a “remuneration notice” to Copyright Agency Limited (CAL). CAL is the collecting society responsible for administering the provisions. A remuneration notice is essentially an agreement that, in return for the right to rely on Part VB, the institution or its administering body agree to pay “equitable remuneration”.

The Copyright Tribunal has now set new rates to be paid by primary and secondary schools in relation to photocopying under Part VB. The Tribunal’s decision relates to an application by CAL for the Tribunal to set rates that would represent “equitable remuneration” for both photocopying and digital use of copyright works, and to determine the statistical method that should be used to sample the works being copied within the school sector after lengthy negotiations between CAL and the various bodies representing the schools failed to reach agreement. By agreement, the determination of the sampling system to be used was stood over, to await the resolution of the dispute concerning equitable remuneration.

The decision notes how far apart the parties were in relation to what rate or rates would be “equitable”: before the Tribunal, CAL argued that the appropriate figure for copying was 10 cents per page, while the schools argued that, taking into account the transient nature of the photocopied material, the figure should be 0.25 cents per page. It is also clear that the parties could not agree on the approach to be taken to determine the rate.

The Tribunal found that a single rate would not feasibly apply to the variety of different works available to copy. The Tribunal noted the statement by a United States commentator, a Mr Finkelstein, that “any law that values all musical works equally ... without distinguishing between the quality of the works or the reputation of the writers must evidence either a lack of understanding of the writer as a human being or a contempt on his part”.

The Tribunal noted that while it “would be an impossible undertaking to set remuneration having regard to each item that is copied”, the statute did make it possible to “determine different rates for different kinds of works”. The Tribunal therefore proceeded to determine a base rate of 4 cents per page, from which rates appropriate to specific categories of works were calculated.

The base rate was set by reference to evidence of the increased value of copied material in comparison with the situation which applied when the Tribunal last considered the matter in relation to schools in 1984. There were now new teaching methods, changes in teaching material related to these new teaching methods, and improvements in technology which have enhanced the quality of copied materials.

In the case of artistic works and poetry, the Tribunal set a rate of 8 cents per page, on the basis that when copying such material, usually the whole of the work is taken.

A rate of 6 cents per page was set for plays and short stories on the basis that when these works are copied, it is less likely that the whole of the work is taken, however what is copied is likely to be “the ‘heart’ or substance” of the work.

Finally a rate of 40 cents per page was set for the copying of works onto overhead transparencies, slides, and permanent display copies. This rate reflects the fact that such copies allow a work to be viewed by many students at a time, as well as the enduring nature of these particular types of copies.

The rates set by the Tribunal all represent an increase on the amount schools had been paying as “equitable remuneration” under Part VB, and apply to copying from 1 January 1997. In addition, the rates are all indexed according to the national Consume Price Index. However, in order to mitigate the effects of the increase, the new rates are to be phased in over a three or four year period, as had been suggested by CAL during the failed negotiations.

The Tribunal also determined that the total equitable remuneration payable by schools should continue to be calculated by reference to the number of enrolled students, due to the budgeting characteristics of educational institutions and the fact that other jurisdictions such as Canada and the United Kingdom apply such a concept. However, the per capita calculation will continue to be set by reference to the average number of pages copied over a certain period.

The Tribunal declined to deal with the matter of determining a rate for digital copying due to the lack of evidence presented in this regard. The matter was left to be determined at a point when both the parties were better informed as to the type and extent of digital copying occurring within schools.

The decision is available at www.austlii.edu.au/au/cases/cth/AcopyT/2002/1.html.