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Overview of the Copyright Amendment Act 2006

Article for APRAP

Ian McDonald

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In late 2006, extensive changes were made to copyright law by the Copyright Amendment Act 2006. Many of these are directly relevant to composers, songwriters and publishers, including those relating to:

- private copying;
- parody and satire;
- technological protection measures;
- enforcement measures; and
- the situations in which the Copyright Tribunal can decide on licensing disputes.

We comment on some of these below.

Private copying

People can now time-shift material from radio and TV, space-shift copies of recordings they own and format-shift other types of material such as books.

It's not clear that the changes will have any immediate effect on composers, songwriters or publishers. This is because the amendments largely make legal the sorts of activities which to date have infringed copyright, but which people have commonly indulged in anyway – for example, making back-up copies of CDs and extra copies to use in the car, or copying CDs into MP3 format to use in their iPods.

The amendments do, however, represent a lost opportunity, as the government could have introduced a private copying scheme under which private copying is permitted, but on the basis that a small charge is imposed on sales of copying equipment and blank CDs, to compensate relevant copyright owners. Such schemes operate elsewhere in the world, and return significant sums of money to people in the music industry.

The amendments are also likely to have a snowball effect. As more people become aware that private copying no longer infringes copyright, people who hitherto didn't make private copies may rely on the provisions instead of buying any extra copies they want.

Lastly, it's perhaps inevitable that the provisions – which are very limited in scope – will be misunderstood. Consequently, people may well copy much more broadly than the provisions permit, mistakenly believing that they're not infringing copyright even though they lend the copies they make to friends, or copy from borrowed CDs, or sell or give away their CDs once they've copied them.

Parody and satire

A new exception allows "fair dealing" for parody or satire.

Generally, a parody comments on a work which it imitates. The purpose of satire, on the other hand, is to draw attention to characteristics or actions by using, for example, irony, sarcasm and ridicule.

Other countries have exceptions for parody, but no other country, to our knowledge, has a special exception for satire.

Despite some reported comments, the new provision will not necessarily allow people to put new lyrics to existing melodies – this would not, by itself, create a parody or a satire. Also, it will be interesting to see whether advertisers, for example, try to rely on the new exception to avoid getting clearances. Whether or not the use of music in ads really is for parody or satire – or is, indeed, “fair” – will, however, depend on all the circumstances.

The new provision doesn’t directly affect a composer or songwriter’s ability to take action for infringement of his or her moral rights but, in many cases, it may be that using a song or piece of music in a way which is derogatory under the new provision is defensible as “reasonable”.

Enforcement

There are new provisions which relate to piracy and enforcement. These include:

- on-the-spot fines for many offences;
- increased penalties for criminal infringement including where the infringement involves digitisation of analogue material;
- new offences relating to “substantial infringement on a commercial scale”;
- the ability to take into account likely infringements as well as proved infringements when infringement takes place online on a commercial scale; and
- new presumptions, based on labelling and other documentation, about copyright subsistence and ownership in court proceedings.

Australian Copyright Council

The Australian Copyright Council is a non-profit organisation whose objectives are to:

- assist creators and other copyright owners to exercise their rights effectively;
- raise awareness in the community about the importance of copyright;
- identify and research areas of copyright law which are inadequate or unfair;
- seek changes to law and practice to enhance the effectiveness and fairness of copyright;
- foster co-operation amongst bodies representing creators and owners of copyright.



The Australian Copyright Council has been assisted by the Commonwealth Government through the Australia Council, its arts funding and advisory body.

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