



INFORMATION SHEET

G095

Copyright reform: government's May 2006 proposals

June 2006

In this information sheet, we outline the changes proposed by the federal government in its media release of 14 May 2006 titled *Major copyright reforms strike balance*, which includes changes proposed as part of the government's response to the Digital Agenda review. There is a link to the media release, and to the government's response to the Digital Agenda review, from our website at <http://www.copyright.org.au/U26782>.

We update our information sheets from time to time. Check our website to make sure this is the most recent version.

Key points

- These are proposals only: the changes have not yet come into effect.
- The government plans to release an 'exposure draft' of amendments to the Copyright Act, intended to give effect to its proposals, in early July 2006.
- There are a range of proposals, including new exceptions to copyright infringement and new anti-piracy measures.
- Australia has international treaty obligations which affect the scope of exceptions and other aspects of Australia's copyright law.
- The government's intention in relation to some of the proposals is unclear from the media release.

International treaty obligations

Australia is a party to international treaties which require that any exceptions or limitations to copyright:

- apply only to certain special cases;
- do not conflict with a normal exploitation of the material; and
- do not unreasonably prejudice the legitimate interests of the copyright owner.

This is referred to as the 'three-step test'. It can be assumed that the government intends its proposed new exceptions to comply with the three-step test.

Time shifting: recording from TV and radio for a later single private use

Under the current law, recording a television program to watch at home at a more convenient time usually infringes copyright: see our information sheet *TV programs: home-taping* at <http://www.copyright.org.au/film.htm>. Educational institutions are, subject to certain conditions, entitled to record television and radio programs for educational purposes: see our information sheet *Educational institutions* at <http://www.copyright.org.au/education.htm>.

The government proposes to change the Copyright Act to 'allow consumers to record most television and radio programs to view or listen to once at a later time' by the person who made it.

The proposal does not apply to:

- recording a program to show in class;
- recording a program to give or sell to someone else; or
- watching or listening to a recorded program more than once.

Issues which are unclear include:

- whether the new exception will apply to TV and radio programs which are available for digital download;
- whether copyright owners will remain entitled to prevent recording by technological means; and
- whether a contractual undertaking by a customer not to record (for example, with a pay TV supplier) would be effective.

Format shifting: copying from one 'format' to another for private use

Under the current law, copying copyright material from one 'format' to another for private use usually infringes copyright: see our information sheet *Music: copying MP3s, CDs and audio-cassettes* at <http://www.copyright.org.au/music.htm> and *Videos & DVDs: copying & downloading* at <http://www.copyright.org.au/film.htm>.

The government proposes to change the Copyright Act to 'permit a person who has purchased a legitimate copy of some categories of copyright material to make a copy in a different format'. Situations the government intends its proposal to cover include:

- copying music from a personal music collection (CDs, audio tapes or vinyl records) to the memory of an MP3 player or home entertainment personal computer;
- dubbing old VHS cassettes onto a DVD;
- making a compilation CD of tracks from purchased CDs, provided the tracks on the compilation are in a different 'format' such as MP3; and
- copying newspaper articles and other material from purchased newspapers, magazines, books and photographs onto a personal computer.

The proposal does not apply to:

- copying digital audiovisual material (for example, from a DVD) onto another device such as a portable player;
- copying computer games;
- making a back-up copy of a CD;
- making a copy of a digital download, if this is not permitted by the digital download agreement;
- making a copy for someone else;
- getting someone else to make a copy for you; or
- making a copy for yourself from an item purchased by someone else.

Issues which are unclear include:

- whether 'format' refers to the type of storage device (e.g. audiocassette, vinyl record, CD) or to the digital file type (e.g. MP3) or both;
- whether the new exception will allow the copying of material which is available for digital download;
- whether copyright owners will remain entitled to prevent copying by technological means; and
- whether a contractual undertaking by a customer not to copy would remain effective.

Libraries, museums & archives

The Copyright Act currently allows owners of collections (libraries, museums and archives) to do certain things with certain copyright material in their collections, including: copying and supplying to clients for research or study, copying and supplying to other libraries, preservation of 'original' versions such as manuscripts and replacement of damaged or lost items. For further information, see the information sheets and other publications listed on our website at <http://www.copyright.org.au/libraries.htm>.

The government proposes to introduce a 'flexible dealing' exception that would 'allow for non-commercial uses by libraries, museums and archives'. The government has given only one example of a situation which may be covered by the new exception: including 'extracts of historical documents in materials for visitors'.

In addition to the proposal in the media release, the government proposes to make some changes affecting owners of libraries and other collections as part of its response to the Digital Agenda review. These include:

- limiting the 'library use' provisions to collections which are accessible to the public, directly or through an inter-library loan system;
- extension of the preservation provisions; and
- allowing 'reproduction of works in the collection for the purpose of educating or training volunteers of the library or archive'.

The government's response to the Digital Agenda review indicates that it may intend its proposed 'flexible dealing' exception to apply to:

- making and communicating low resolution reproductions of an artistic work; and
- making available, on a computer network, non-preservation copies of artistic works on a dumb terminal on the premises of a library or archive (without the ability to make a hard copy from that dumb terminal).

Issues which are unclear include:

- whether the proposed 'flexible dealing' exception may apply to any type of activity carried out by an owner of a collection, or whether it is confined to activities related to managing and providing access to the collection;
- whether the proposed 'flexible dealing' exception would apply to collections owned by profit-making organisations, and whether it would apply to collections run for profit (all current provisions are available for the former, and some are available for the latter);
- what 'non-commercial' means;
- whether the application of the 'flexible dealing' exception would depend upon similar factors as those applying to fair dealing for research or study (see our information sheet *Research and study* at <http://www.copyright.org.au/permission.htm>); and
- the relationship between the proposed new exceptions and existing exceptions and statutory licences.

Educational institutions

The Copyright Act currently allows educational institutions to make certain uses of copyright material for educational purposes. Most of these uses are conditional upon the institution having given an undertaking to pay equitable remuneration. For further information, see the information sheets and other publications listed on our website at <http://www.copyright.org.au/education.htm>.

The government proposes to introduce a 'flexible dealing' exception that would allow 'non-commercial uses by educational institutions for the purposes of teaching'. The government has given only one example of a situation which may be covered by the new exception: allowing 'a school to put an out-of-date VHS documentary onto DVD'.

In addition, the government proposes to make some changes affecting educational institutions as part of its response to the Digital Agenda review. These include:

- subject to equitable remuneration, allowing the recording and communication of 'audio-visual versions of copyright material from free-to-air broadcasts that are available subsequently on the internet';

- consolidation of the warning notices educational institutions are required to use when communicating broadcast material under Part VA of the Act and text and images under Part VB of the Act (currently two notices are required);
- an equivalent provision for 'digital anthologies' to that which currently applies to hardcopy anthologies;
- 'clarifying' that a communication for the purpose of showing or playing something in class is not a 'communication to the public'; and
- a change regarding 'the status of temporarily cached copies of materials used by educational institutions'.

Issues which are unclear include:

- whether the proposal about internet versions of broadcast programs applies to downloadable versions of those programs (such as podcasts), or streamed versions, or both;
- whether the proposed 'flexible dealing' exception would apply to profit-making as well as not-for-profit educational institutions (the current provisions apply to both);
- what 'non-commercial' means;
- whether the application of the 'flexible dealing' exception would depend upon similar factors as those applying to fair dealing for research or study;
- the relationship between the proposed new exceptions and existing exceptions and statutory licences.

People with disabilities

People with certain disabilities have difficulty getting access to the content of copyright material unless it is copied into a different format. For example, people with severe visual disabilities are unable to read print and can only get access to the content of print material if it is copied into a format such as Braille or a digital file that can be "read" out loud by specialised computer software.

Currently, the Copyright Act includes special provisions for people with disabilities. The provisions permit certain organisations to make copies in accessible formats for people with a print disability or an intellectual disability. People with such disabilities are entitled to make copies in accessible formats for themselves where this is a fair dealing for research or study. For further information, see our Print Disability Guidelines and other material at <http://www.copyright.org.au/disability.htm>.

The government proposes to introduce a 'flexible dealing' provision that would allow 'non-commercial uses for the benefit of people with disabilities'. The government has given one example of how the new exception may apply: it 'may allow a person with a print disability to convert a book they own into accessible text'.

Issues which are unclear include:

- whether the proposal would allow people with a disability to supply copies of material to each other;
- what 'non-commercial' means;
- whether the application of the 'flexible dealing' exception would depend upon similar factors as those applying to fair dealing for research or study; and
- the relationship between the proposed new exceptions and existing exceptions and statutory licences.

Parody and satire

Currently, there is no specific exception under Australian law allowing the use of copyright material for parody or satire. In some cases, however, such uses may be a fair dealing for criticism or review. For further information, see our information sheet *Parodies, satire & jokes* at <http://www.copyright.org.au/writing.htm>.

The government proposes to introduce a 'flexible dealing' exception that would 'allow for parody and satire'.

It appears that the proposal would not affect a creator's right to take legal action if his or her work is treated in a derogatory way: see our information sheet *Moral Rights* at <http://www.copyright.org.au/introductory.htm>.

Removal of cap on copyright fees for broadcasting sound recordings

The fees payable by broadcasters to owners of copyright in sound recordings (usually record companies) for broadcasting sound recordings are currently subject to a 'cap': 1% of the gross earnings of the broadcaster. In practice, the amount is much less than 1%, as royalties are not payable to record companies for the broadcasting of recorded music from the US. There is a link from our website to the government's discussion paper on this issue at <http://www.copyright.org.au/U25649>.

The government proposes to remove the 1% cap, and replace it with an obligation to pay 'equitable remuneration'. If the broadcasters and copyright owners cannot agree on 'equitable remuneration', then the Copyright Tribunal would determine it.

The proposal does not affect the separate royalties payable to composers and music publishers for broadcasting music. Those royalties are not subject to the cap provision (and are payable for US recordings).

Australian performers may benefit if the removal of the cap results in higher payments to record companies. The company which collects the record companies' broadcasting royalties – Phonographic Performance Company of Australia (PPCA) – makes voluntary payments to Australian performers, and the amount of these payments may increase if the royalties received by PPCA increase.

New piracy measures

Under the current law, a copyright owner whose copyright is infringed is entitled to take legal action to seek compensation and other remedies. Some infringements may also be offences, for which the offender may be fined and/or jailed. For more information, see our information sheet *Infringement: actions, remedies, offences and penalties* at <http://www.copyright.org.au/permission.htm>.

The government proposes to make a number of changes in relation to piracy and enforcement. These include:

- on-the-spot fines for piracy;
- access to, and recovery of, profits made by pirates;
- new presumptions of copyright ownership in court proceedings;
- increased remedies and penalties for internet piracy; and
- new offences for pay TV piracy (see further <http://www.copyright.org.au/u26688>).

Copyright Tribunal jurisdiction

The Copyright Tribunal determines the amount payable to copyright collecting societies for certain uses of copyright material. It deals with disputes about how much is payable as a copyright fee. It does not determine whether or not there has been an infringement of copyright.

The government has proposed extending the Copyright Tribunal's jurisdiction so that it can determine how much is payable for some additional uses of copyright material administered by copyright collecting societies. The proposals follow recommendations made by the Copyright Law Review Committee (CLRC) in 2000 following its review of the Copyright Tribunal's jurisdiction. There is a link to the CLRC report from our website at http://www.copyright.org.au/recent_inquiries.htm

How do the proposals become law, and how long will it take?

The government's announcement has not made any change to the law. For the proposals in the announcement to become law, the following must occur:

- drafting of amendments to the Copyright Act to give effect to the proposals (this is currently in train);
- introduction of a Bill containing the amendments into Parliament;
- passing of the Bill by the House of Representatives and the Senate;
- assent by the Governor-General.

In the course of its passage through the House of Representatives or through the Senate, a Bill may be referred to a Parliamentary Committee, which may invite witnesses and submissions on matters in the Bill. The committee's report can result in changes to the Bill.

For more information about the legislative process, see the information sheet *Making Laws* at <http://www.aph.gov.au/house/info/infosheets/index.htm>

The government has indicated that before it introduces a bill to implement its proposals, it will release an 'exposure draft' of amendments for comment. We understand that this will probably occur in early July. At this stage, it appears that a bill will be introduced into Parliament some time after August.

Further information

For further information about copyright, see our website – <http://www.copyright.org.au>.

The purpose of this information sheet is to give introductory information. If you need to know how the law applies in a particular situation, please get advice from a lawyer.

If you meet our eligibility guidelines, a Copyright Council lawyer may be able to give you free preliminary legal advice about an issue not addressed in an information sheet. This service is primarily for professional creators and arts organisations but is also available to staff of educational institutions, libraries and governments. For further information about the service, see <http://www.copyright.org.au/advice> or our information sheet *Australian Copyright Council: who we are, what we do*.

Information from the Arts Law Centre of Australia may also be of interest to you: see <http://www.artslaw.com.au> or telephone (02) 9356 2566.

Reproducing this information sheet

You may download and print one copy of this information sheet from our website for your reference, or you may purchase a printed copy from our online shop – <http://shop.copyright.org.au> – or direct from us.

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.



Australian Government



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

© Australian Copyright Council 2006