

# Australian Copyright Council

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## Comments on draft Copyright Amendment (Computer Programs) Bill 1999

### Introduction

Thank you for inviting us to comment on the draft Bill.

We presume that the amendments proposed by this Bill will supersede the amendments proposed to section 43A in the Copyright Amendment (Digital Agenda) Bill 1999, on which we have made a separate submission.

### Comments

#### Section 47B(1)

We note that section 43B in the draft Copyright Amendment (Digital Agenda) Bill 1999 covers the same ground as this provision and we are uncertain whether these provisions are intended to co-exist or whether the proposed section 43B will be deleted from the Bill. This should be clarified. We refer you to our submission on the Digital Agenda Bill and our comments on section 43B.

As we stated in our submissions on the CLRC's draft report on the protection of computer software and the Digital Agenda Bill, we do not know when "normal use" would not be allowed by an express or implied licence granted by the copyright owner. We are of the view that normal use is what is allowed by the licence from the copyright owner and we are, therefore, unsure about how this exception would operate.

#### Section 47B(2)

We are not sure what the purpose of this section is, particularly given the proposed section 47D. We are of the view that studying the ideas and functions of a program is unlikely to be a "normal use" of a computer program and we are, therefore, unclear as to how this exception would operate.

If this exception, or a version of it, is to remain, we submit that it should be subject to the same conditions applicable to the use allowed by subsection (1), as set out in subsection (3).

**Section 47B(4)**

A computer program may not be embodied in an article, such as a disk or CD ROM, but may be downloaded by a purchaser directly from the Internet, for example. Therefore the word “printed” (which implies traditional printing on packaging) may not be appropriate. In some cases, licences are not included on packaging but are found in text accessible from within the program itself. We submit that the word “printed” should be deleted.

**Section 47C**

The word “or” is missing from the first line of subsection (b), before the words “on behalf of”.

We submit that subsection (c)(ii) should read, “to enable the owner or licensee of the original copy to store the reproduction *for use in lieu of the original copy if the original copy is lost destroyed or damaged*”.

We submit that subsection (c)(iii) should include the words “...provided that the owner or licensee of the original copy has only one reproduction of the work in his or her possession at any one time” at the end of the clause.

We submit that copyright owners ought to be able to exclude the operation of this provision by agreement as they have the right to do in respect of the current back-up provisions in section 43C.

**Section 47D**

The media release issued by the Minister for Communications, the Information Economy and the Arts and the Attorney-General on 23 February 1999 states that “decompiling computer programs will not be allowed for other purposes such as producing software that directly competes with the original product”.

We submit that the Bill does not provide that a person cannot decompile a program to create a competing one. Section 47D(b) provides that a person may make a reproduction or adaptation of a program for the purpose of obtaining information to make a program to connect to, and be used together with, the original program *or any other program*”.

**Section 47E**

We make no comment on this provision.

**Section 47F**

We make no comment on this provision.

**Section 47G**

We are not sure why sections 47B and 47C are not “prescribed provisions” and submit that they should be.

**Section 47H**

We submit that copyright owners ought to be able to exclude the operation of these provisions by agreement. If clause is to remain, we submit that it should only apply to agreements entered into after the commencement of the provision.

**Further information**

We would be happy to provide further information or answer any questions the Government may have in relation to any aspect of this submission.

Virginia Morrison  
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9 April 1999