

## Article for *Copyright World*

### ***Re-elected government's election commitments***

Ian McDonald, Australian Copyright Council, 16 November 2001

Following its re-election at the Federal poll held on 10 November, it is timely to note the Liberal–National Party Coalition government's election policy commitments which relate to copyright. 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”;
- “support the development of innovative digital rights management solutions, and ... investigate options for the funding of test projects”;
- “enhance enforcement mechanisms” and “consider options for enforcement of copyright”;
- increase “awareness and understanding of intellectual property in order to strengthen Australia's IP system”;
- examine “ways of simplifying the Copyright Act ... with a view to promoting a clearer understanding among creators, producers and users of the application and operation of its provisions”;
- “work with the performing arts community to develop workable performers' rights legislation, which recognises the value attached to the recording and communicating of performances”;
- “maintain its involvement in WIPO, with a view to enacting legislation ... once WIPO has an agreed model” for audiovisual recordings of performances;
- “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” through “amendments to the moral rights regime” thereby giving “indigenous communities a means to prevent unauthorised and derogatory treatment of works that embody community images or knowledge”;
- “consult key stakeholders on proposals to amend the Copyright Act to grant new rights to film directors”;
- “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”; and
- “extend the duration of copyright in photographs to bring it into line with the protection afforded to other creators”.

Many of these commitments reiterate previous announcements, or are by way of response to various reports, including a number of those which we have reported on in *Copyright World* over the past year, including: the report of the Intellectual Property and Competition Review Committee and the House of Representatives Standing Committee on Legal and Constitutional Affairs report *Cracking down on copycats: enforcement of copyright in Australia*.

The policies are available from [www.liberal.org.au/policy/policyachieve.htm](http://www.liberal.org.au/policy/policyachieve.htm): see *Arts for All*, released on 26 October 2001, and *Building an Information Economy for the 21st Century* released on 2 November 2001.

### **Two cases to watch: anti-circumvention devices and DVD rental**

In other news, there are two cases in the Federal Court which, as far as we are aware, examine for the first time sections of the Copyright Act either amended by or inserted into the Act by the Digital Agenda amendments, which came into operation on 3 March 2001.

The first case, which is part heard, relates to access codes and computer game station console devices, and the application and scope of the new anti-circumvention provisions in the Act. The case is already notable in that the Australian Competition and Consumer Commission (ACCC) has been granted leave to appear as *amicus curiae*: see *Kabushiki Kaisha Sony Computer Entertainment v Stevens* [2001] FCA 1379, available at [scaleplus.law.gov.au/html/feddec/0/20013/0/FD004490.html](http://scaleplus.law.gov.au/html/feddec/0/20013/0/FD004490.html).

In the second case, between the Australian Video Retailers Association and Warner Home Video, one of the central questions is whether a Digital Video Disk (DVD) may be a "computer program" for the purposes of the Act. (A new definition of "computer program" was inserted into section 10(1) of the Act by the Digital Agenda amendments.)

The action relates to whether businesses are able to rent out DVDs distributed by Warner Home Video with the intention that they only be on-sold in the domestic retail market. (Warner differentiates the domestic retail and commercial rental markets, charging a much higher price for DVD's purchased for rental.) Under the Australian Act, owners of copyright in computer programs are given a right to control rental, while owners of copyright in cinematograph films are not. If the court decides against Warner, the ability of DVD distributors to sustain a differentiated market will collapse. For a newspaper report of the case, see [www.theage.com.au/entertainment/2001/11/01/FFXWYDZYFTC.html](http://www.theage.com.au/entertainment/2001/11/01/FFXWYDZYFTC.html). Judgement in the case has been reserved.