



6 September 2004

Louise Gell  
The Director  
Copyright Law Review Committee Secretariat  
Attorney-General's Department  
Robert Garran Offices  
National Circuit  
BARTON ACT 2600

Dear Ms Gell

## **REVIEW OF CROWN COPYRIGHT IN AUSTRALIA**

Copyright Agency Limited (**CAL**) is grateful that it had the opportunity to attend the Crown Copyright Forum held by the Copyright Law Review Committee (**CLRC**) on 27 July 2004 in Sydney. CAL wishes to respond to several of the issues raised at the forum which are of central interest to CAL's members.

### **Section 182A**

CAL is aware of the views put by various parties at the forum that section 182A of the Copyright Act 1968 should be extended to permit multiple copying of prescribed documents, or that various categories of documents should not be afforded copyright protection under the Act.

CAL wishes to restate its view that prescribed documents, such as judgments and legislation, should be protected by copyright in order to ensure their integrity if they are copied. CAL cannot see how providing copyright protection to works prevents access to them, particularly as section 182A is already in force and providing access to these works to users. There does not appear to have been any example given showing that users are not adequately provided access under the current section 182A.

Should the committee decide to recommend that multiple copying of prescribed works be permitted under section 182A, CAL would like the Committee to consider the position expressed by CAL in its original submission. This is that a further section be inserted into the Act to ensure that users are aware that such an exception does not apply to non-Crown works, especially those produced by legal publishers. CAL suggests that the additional clause be drafted in similar terms to paragraph 15 of UK Guidance Note 6 to alert users to the distinction between prescribed works created by the Crown and other works for which the copyright owner should be afforded copyright protection.

CAL takes this position, as it is concerned that users do not currently differentiate between official Crown versions of documents, and value-added products of legal publishers, such as annotated legislation and case-law. CAL believes that if works produced by legal publishers are not expressly protected under the Act, users will mistakenly rely on the extended exception to copy them. This will erode the markets of legal publishers and diminish the incentive for them to invest their resources in the production of these highly valuable works.

### **Direction and Control of the Crown: sections 176 to 178 of the Act**

Another issue raised at the forum which CAL would like to make more detailed comments on is the arguments raised by various government bodies on the parameters of the term 'direction and control' of the Crown in relation to sections 176-178 of the Act.

CAL understands the position of several government bodies to be that if documents are prepared in accordance with terms of various pieces of government legislation the Crown can assert copyright ownership over these works in reliance on sections 176 to 178 of the Act.

In particular reference is made to surveyors' cadastral maps and plans created in compliance with provisions of various state Acts. CAL wishes to express its strong objection to such an interpretation of 'direction and control' for the purposes of sections 176 to 178 of the Act as unfounded and unreasonably broad.

CAL is particularly concerned that surveyors, as a group of creators who invest their expert knowledge, skill and talent into creating works, should be afforded the same rights as other copyright owners under the Act. Consequently CAL believes that use of their works by the Crown should be equitably remunerated in accordance with Part VII Division II of the Act.

CAL would also like to point to the fact that surveyors are most often commissioned by private entities to create survey maps and plans. The works they create, while some elements may be completed in compliance with provisions of Acts, are the result of surveyors' individual skill and labour for which they deserve recognition as authors.

As previously stated, if the CLRC would like further information on CAL's views on copyright ownership in survey maps and plans, the use of survey maps and plans by government, or CAL's current application in the Copyright Tribunal in relation to Crown use of survey maps and plans we would be more than happy to provide it.

Yours sincerely

Michael Fraser  
Chief Executive