

Council of Australian State Libraries
Submission to the Copyright Law Review Committee
Review of Crown Copyright

Introduction

The Council of Australian State Libraries (CASL) makes the following comments on the review of Crown Copyright, and welcomes the opportunity to provide a submission. The submission is made in response to the Copyright Law Review Committee *Issues Paper*, published in February 2004.

The Council of Australian State Libraries, as a participating member, supports the submission to the Review of the Australian Libraries Copyright Committee. This independent submission provides additional information of particular relevance to CASL libraries.

Council of Australian State Libraries (www.casl.org.au)

The Council of Australian State Libraries (CASL) is the peak body representing all Australian State and Territory libraries and the National Library of Australia. These libraries have a major responsibility to collect the documentary heritage of their state or territory, to provide quality reference and research services and to assist in the provision of public library services to the people of Australia.

All CASL member libraries are publicly funded institutions, and are public sector agencies within their State and Territory jurisdictions, with the National Library Federally funded. Our member libraries are major managers and providers of access to government information, which is subject to Crown copyright.

The submission considers the issues concerning the review of Crown copyright from two perspectives:

1. CASL libraries as public sector agencies, and
2. CASL libraries as managers of information resources and providers of information services, including government information.

1. CASL libraries as Public Sector Agencies

Overall, CASL supports the retention of the current Crown copyright provisions. This will enable the 'protection' of the Crown's intellectual property, with conditions of use being determined by each jurisdiction or agency. CASL believes that Crown copyright protects the Government's Intellectual Property and has potential commercial benefit.

The Crown's privilege with regard to ownership of copyright material produced under its direction or control or first published by it should also be retained.

CASL member libraries also contract external agencies to complete a range of activities, for example to undertake research projects, produce training materials, develop websites and databases, where inhouse expertise or resources may be limited. CASL libraries wish to retain ownership of this output, and to determine conditions of use.

2. CASL Libraries Managing and Providing Access to Information

The present uncertainty about the extent to which the Copyright Act applies to both judicial and legislative material should be reduced. Generally, uniformity of Crown provisions with regard to format, duration and jurisdiction is preferred, to enable better understanding and compliance by service providers and consumers. The inclusion of access and reproduction rights in government publications, where copying is freely granted, should be encouraged.

Comments on Issues of Particular Relevance

Issue 1: The Committee seeks your views as to whether government ownership of copyright material should extend to all works and subject-matter. For example, should it only apply to literary works? Should artistic works such as architectural plans be excluded?

CASL supports the retention of the current Crown copyright provisions, including ownership of copyright in all works and other subject matter. Apart from diminishing the Crown's ability to control and benefit from its intellectual output, a change in this position would add complexity to the legislation.

Issue 2: The Committee seeks your views as to whether the government should enjoy all the exclusive rights of copyright.

CASL supports the retention of the current Crown copyright provisions, including ownership of copyright in all works and other subject matter, and all exclusive rights. Apart from diminishing the Crown's ability to control and benefit from its intellectual output, a change in this position would add complexity to the legislation.

Issue 3: The Committee seeks your views as to whether moral rights should apply in the context of government copyright.

The moral rights of public sector staff who create works as part of their job should be entitled to have that creative effort treated appropriately.

Issue 5: The Committee seeks your views as to whether the Copyright Act should make express provision with respect to copyright in materials produced by:

- (a) the executive;***
- (b) the judiciary; and***
- (c) the legislative.***

There are benefits in clarifying the provisions with regard to materials produced by the executive, the judiciary and legislative material. This would simplify and make explicit the differences for these types of materials.

Issue 6: The Committee seeks your views as to what entities should be included as part of 'the Commonwealth or a State' for the purposes of the Copyright Act and how this should be determined.

The benefit of specifying the entities to be covered by the Crown is that uncertainty as to the status of individual government agencies and bodies would be overcome. The need to ensure currency and an additional administrative responsibility would be the cost.

Issue 8: The Committee seeks your views as to the appropriate duration of government copyright. Should it be the same as for non-government copyright material?

CASL supports the retention of the current provisions with regard to duration of government copyright.

Issue 13: The Committee seeks your views as to the practical operation of the law relating to the administration or licensing of copyright material. In particular, should government practice be encouraged to achieve uniformity throughout the different Australian jurisdictions?

Uniformity of provisions across the different Australian jurisdictions is desirable.

Issue 15: The Committee seeks your views as to the effect of new technologies on government ownership of copyright material. In particular:

- (a) does copyright continue to be relevant?**
- (b) how does one safeguard against the distortion or inappropriate use of government material made available through new technologies?**
- (c) is facilitating government information online inconsistent with the policy objectives behind government ownership of copyright?**

With regard to new technologies and electronic formats, copyright continues to be relevant. Indeed, with increasing availability of online services and electronic-only access to many information sources, the attribution of copyright becomes more, not less, important. While safeguarding of online use and downloading of copyright materials cannot be guaranteed, the retention of copyright provisions is a precautionary measure.

Provision of government information online is not inconsistent with copyright, as the ability to make information freely available is retained, while copyright is licensed through specific provisions on websites, and individual online publications and products.

The Creative Commons approach supports these developments (www.creativecommons.org), in aiming to enrich the creative and intellectual environment with flexible modes of use and distribution. It reconceptualises traditional modes of use of copyright material through a series of licenses which makes works available on conditions such as attribution; non-commercial distribution; no derivative works; verbatim copies; and share- and share-alike.

Dagmar Schmidmaier AM
Chair
Council of Australian State Libraries

26 March 2004