

Terms of Reference- Crown copyright

Ownership of copyright by the Commonwealth, States and Territories ('the Government') is dealt with in Part VII of the *Copyright Act 1968* (Cth).

Under this Part, the Government is the owner of copyright in any work, film or sound recording made by, or under the direction or control of, the Government. The Government is also the owner of copyright in any work first published by, or under the direction or control of, the Government. In addition, copyright subsists in material which would not otherwise be copyright by virtue of it being made by, or under the direction or control of, the Government. These provisions are subject to any agreement with the author or maker of the copyright material otherwise assigning copyright.

The Government also has a prerogative right in the nature of copyright, which is preserved under s 8A of the Act and is not affected by other provisions of the Act.

Other countries take widely differing approaches to protection of material produced by governments. Within Australia there is a variety of States' practices in relation to management and control of copyright material.

In 2000 the Review of Intellectual Property Legislation under the Competition Principles Agreement (the Ergas Committee) recommended that s 176 of the Copyright Act be amended to ensure that the Government is not provided with preferential treatment compared with other parties.¹ The Government's response to this recommendation supported the objective of eliminating unjustified preferential treatment, but opted to develop best practice policy guidelines rather than amend the Act. In addition, calls have been made for the amendment of s 177 of the Act. This section vests copyright ownership in the Government if it is the first to publish, or if first publication occurs under the direction or control of the Government.

1. Against that background, the Copyright Law Review Committee (the Committee) is to inquire into and report on the appropriateness of the law in Australia in relation to government ownership of copyright material, with particular regard to:
 - (a) the appropriate scope and definition of 'the Commonwealth or a State' and whether statutory bodies established indirectly under the legislation of the Commonwealth, States and Territories that have legal capacity to acquire, hold and dispose of real or personal property should be treated differently to those that do not, for the purposes of copyright ownership,
 - (b) the extent to which statutory bodies that are emanations or agencies of government have entered into agreements with the government for assignment to them of copyright in existing and future materials produced by them,

¹ Intellectual Property and Competition Review Committee September 2000, *Review of Intellectual Property Legislation under the Competition Principles Agreement*, Commonwealth of Australia, Canberra, p. 114.

- (c) whether the Copyright Act should make express provision vesting copyright in materials made by, or under the direction or control of, the Parliament of the Commonwealth, a State or Territory in that Parliament,
- (d) whether the prerogative rights in the nature of copyright subsisting in legislation should be clarified or replaced by legislation defining the nature of copyright in such materials and vesting it in the Government, and
- (e) whether the licence in s 182A to reproduce legislative materials and the decisions of courts and tribunals should be expanded to allow multiple reproduction.

2. In doing so the Committee will consider:

- (a) the extent and appropriateness of reliance by government on copyright to control access to, and/ or use of, information,
- (b) the underlying social and economic problems government ownership of copyright seeks to address,
- (c) the social and economic objectives of government ownership of copyright material,
- (d) the implications of privatisation of government bodies/agencies, and outsourcing of government functions, for ownership and public right of access to copyright material produced as part of a government function,
- (e) international comparisons,
- (f) the effect of new technologies,
- (g) constitutional issues, if any,
- (h) legislative and non-legislative options for reform,
- (i) the costs and benefits of the options for reform on the different groups affected,
- (j) a preferred arrangement for government ownership of copyright material, if any, in light of the objectives set out in (c),
- (k) a strategy to implement and review the Committee's preferred option, and
- (l) any other incidental matters which are able to be addressed within the time frame for the reference.

3. In undertaking the inquiry the Committee will have regard to:
 - (a) any amendments to the Copyright Act that are introduced into Parliament, or which the Commonwealth announces are proposed to be introduced or are being considered,
 - (b) the recommendations and findings of relevant Government reviews or inquiries and any reports by or views of relevant expert advisory bodies and other interests,
 - (c) Australia's relevant international obligations, including those in treaties and other agreements to which Australia is considering becoming a party,
 - (d) the role and nature of government and the need for government to be able to be accountable and fulfil its responsibilities efficiently and effectively,
 - (e) the approach of each Australian government to ownership of copyright material,
 - (f) the role of councils of law reporting in the exercise of copyright in judgments and decisions of courts and tribunals,
 - (g) the need to analyse and, as far as practicable, quantify the benefits, costs and overall effects of the options identified by the Committee in light of the principle that legislation which restricts competition should be retained or enacted only if the benefits to the community as a whole outweigh the costs, and if the objectives of the legislation can be achieved only by restricting competition,
 - (h) the effect on the operation and complexity of any future copyright legislation, including any transitional provisions, and
 - (i) the policy that the compliance cost and paperwork burden on small business should be reduced where feasible.
4. In undertaking the review, the Committee is to advertise widely and consult with key interest groups and affected parties.
5. In undertaking the review and preparing its report and associated recommendations, the Committee is to report to the Attorney-General by 4 December 2004.