

Part 1

Introduction

1.01 This Committee was appointed on 20 June 1974 by the then Attorney-General, Senator the Honorable L. K. Murphy, Q. C., (now the Honorable Mr Justice Murphy) with the following terms of reference:

To examine the question of the reprographic reproduction of works protected by copyright in Australia and to recommend any alterations to the Australian copyright law and any other measures the Committee may consider necessary to effect a proper balance of interest between owners of copyright and the users of copyright material in respect of reprographic reproduction. The term 'reprographic reproduction' includes any system or technique by which facsimile reproductions are made in any size or form.

1.02 On 17 July 1974 the Committee caused a notice to be inserted in the morning newspapers published in the capital cities of Australia for the purposes of advertising the appointment of the Committee and its terms of reference and inviting interested persons and organisations to advise the Secretary of their interest in the work of the Committee. A second notice was published on 19 August 1974 inviting written submissions, observations, information or other material with respect to matters within the terms of reference and asking persons or organisations proposing to make written submissions to indicate if they expected to present, in addition, oral submissions to the Committee. The Secretary also wrote on behalf of the Committee to a large number of organisations to inform them of the establishment of the Committee and its terms of reference.

1.03 On 3 and 4 September 1974 the Committee held a preliminary meeting of interested persons in Sydney in order to give those able to attend an opportunity to inform the Committee in a preliminary way of the extent of the submissions they proposed to make and to discuss informally aspects of the Committee's work. The persons who attended this meeting are listed in Appendix B to this Report.

1.04 The Committee circulated at the meeting a document entitled 'Some Relevant Questions' to assist interested persons and organisations in the preparation of formal submissions and this document, together with the Chairman's opening remarks at the meeting, were also circulated to those who had expressed interest in the work of the Committee but were unable to attend. Both documents are set out in Appendix C to this Report.

1.05 After consideration of a submission on procedure by the Australian Copyright Council Ltd at the meeting, the Committee announced that it agreed with the principle that in general it should be possible for interested persons to answer any submission made to the Committee but it felt that it should not voluntarily disclose a submission against the desire of the person making it since the Committee was of the view that this would result in a restriction of information provided to it. However, it also stated that it expected to give less weight to material which was not open to examination by other interested parties than to other material. This decision was also communicated to interested persons not present at the meeting. The Committee decided to hear oral submissions in public except where a specific request was made to it that a submission should be treated as confidential. The Australian Copyright Law Review Committee, which reported in 1959, did not hold its hearings in public.¹

1.06 The Committee later made arrangements for written submissions and the

¹Report of the Copyright Law Review Committee 1959, paragraph 4

transcripts of proceedings, except where a request was made that these be confidential, to be made available for inspection in various capital cities of Australia.

1.07 During the course of the preliminary meeting the Chairman also asked those present for their views regarding the speed with which the Committee should proceed with its formal sittings. The feeling of the meeting was that the Committee should not endeavour to proceed too quickly in view of the time needed to obtain information and to draft detailed submissions. The Chairman indicated that, in view of this and the time the Committee required to study submissions and to make non-confidential submissions available for inspection, it would not be desirable to hold formal sittings until the new year.

1.08 On 17 December 1974, the Committee notified interested persons of the commencement of its formal sittings to hear oral submissions. These sittings commenced on 18 February 1975 in Sydney. In view of the number of submissions received from other States, the Committee also decided to hold formal sittings in Perth, Adelaide, Brisbane and Melbourne and the Committee heard submissions in these cities over the course of the following two months. The Committee also made visits to a number of institutions for the purposes of inspecting copying facilities and seeing at first hand the kinds of practices adopted by these institutions. The institutions visited are listed in Appendix B to this Report. The Committee's sittings concluded in Sydney in late April 1975. In all, the Committee heard oral submissions and questioned persons about their submissions made to the Committee and made inspections on 25 days. The persons and organisations who made written and oral submissions to the Committee are listed in Appendix B to this Report.

1.09 The Committee derived considerable assistance from those persons and organisations who made written and oral submissions to it. In addition, the Committee has also been assisted by a vast amount of published material on the problem and some of this material has been selected and listed in Appendix F to this Report. I. 10 The Committee also had the benefit of studying a number of earlier reports on copyright. These included:

- the Report of the Copyright Committee, 1951, of the United Kingdom (Cmd. 8662) ('the Gregory Committee'), which recommended most of the provisions now contained in the Copyright Act 1956, of the United Kingdom;
- the Report on Copyright of the Canadian Royal Commission on Patents, Copyright, Trade Marks and Industrial Designs dated 1 August 1957;
- the Report of the Copyright Committee, 1959, of New Zealand;
- the Report of the Australian Copyright Law Review Committee, 1959; and
- the Report on Intellectual and Industrial Property of the Economic Council of Canada, January 1971.

1.11 All members of the Committee served on a part-time basis and meetings were held when practicable. Apart from the days of formal sittings and inspections the Committee has held meetings on a total of 46 days. During the course of the Committee's deliberations one member of the Committee, Mr E. M. Haddrick, resigned on appointment as Head of the Copyright Division of the World Intellectual Property Organisation in Geneva. The Committee has benefited greatly from his wide knowledge of copyright matters and in particular its international aspects, and the Committee would like to record its gratitude for his contribution to its work. Consequent upon Mr Haddrick's resignation in May 1975, Mr L. J. Curtis, First Assistant Secretary of the Attorney-General's Department, was appointed by the then Attorney-General as an additional member of the Committee.

Limits of terms of reference

1.12 It became apparent early in the course of the Committee's work that a number

of problems faced by the educational authorities, upon which submissions were made, concerned matters that fell outside the terms of reference, such as the video-taping of television programs and the reproduction for preservation purposes of sound recordings. However, a limited amount of such information was of assistance to the Committee as background material.

I. 13 We consider that we should draw attention to the fact that significant problems exist in some of those fields and we think consideration might well be given to instituting an examination of them.

I. 14 The terms of reference of the Committee are limited to the reprographic reproduction of works protected by copyright in Australia.

I. 15 The Committee was of the view that any copyright material which did not fall within the definition of 'work' in section 10 of the *Copyright Act 1968-19732* should not be treated as within its terms of reference.

I. 16 In respect of 'reprographic reproduction' which is defined in the terms of reference to include any system or technique by which facsimile reproductions are made in any size or form, the Committee noted that a number of different techniques were in current use.

Matters not dealt with in the Report

I. 17 Apart from the material outside our terms of reference, it is also appropriate to mention that our attention was drawn to other matters to which we have made little or no reference in this Report. We have not referred, in the body of the Report, to all the submissions we received, but the fact that we have made no reference to a particular submission does not mean that we have not given proper consideration to it. We also received a small amount of information upon the basis that it would be treated as confidential. However, without breaching that confidence, we are able to say that nothing in that material was of an unexpected nature, and in general it confirmed the material we received publicly.

I. 18 In addition, we did not receive any detailed submissions on the position with regard to computers, although we had some information on this topic. While we understand that it may be possible to make facsimile reproductions of copyright works through the use of a computer, we did not consider we should make any specific recommendations in this field, because we thought it was really outside our terms of reference.

Statistics

I. 19 We decided not to undertake our own survey of copying or to obtain any further statistics in relation to copying beyond those which were volunteered. One reason was that we believed, from information submitted to us, and from our inspections of various institutions, that we had a reasonable picture of the position with regard to educational establishments. We also felt great difficulty in seeing what type of statistics in this area beyond what we had would assist us, since any statistics which could reasonably be obtained would only be of a very limited sample which might or might not be representative. We also thought it undesirable because we would be unable to give any indemnity in respect of copying if any copying was in breach of the *Copyright Act*.³

1.20 We also considered it impracticable to obtain information on copying in other sectors that was not volunteered.

² See Appendix E.

³ See Part 4, submission 2, as to the position in Denmark.

Outline of the Report

1.21 The body of this Report is set out in Part 2 and is self-explanatory. We have set out in Part 3 the international background to the problem of reprographic reproduction and, in Part 4, summaries of certain submissions presented to the Committee, to assist readers in obtaining a more precise picture of the circumstances in which copying is being presently undertaken in Australia, and of the complexity of the problems we had to confront. The nature of the summaries is described in the introduction to that Part.

1.22 We have also set out, for the convenience of readers, in Appendix A, a summary of our recommendations, in Appendix D, a table showing where sections of the *Copyright Act 1968–1973* are discussed, in Appendix E, some relevant sections of the Act, and in Appendix F, a short bibliography. The Secretary has also prepared an index to the Report.

1.23 It is appropriate, in this introduction, to express our gratitude for the assistance we received from those who made submissions or provided information to us.

Acknowledgement

1.24 We also think it appropriate to express our appreciation of the work of the Secretary, Mr John Gilchrist. He has displayed a most helpful and conscientious approach to the work of the Committee. We are very grateful to him for what he has done so ably.