

Introduction

We ask that the Copyright Law Review Committee clarify a number of aspects relating to creation, use and re-use of information concerning the formation of innovation and the advancement of knowledge, covering global exchange of ideas, facts, process, etc. as digital materials over the Internet. This paper results from discussion within our extended family worldwide for various businesses, commercial and private family interests; from input and discussion with colleagues in VET (Vocational Education & Training) and with friends and family in Higher Education at Universities across the world. We believe that most of the aspects also apply to other professionals and their application to effective use for the public interest. A principle is provided for examination by CLRC:

The Barry Principle of Intellectual Property

"Global Distribution as provided by the Internet has radically changed the concepts of Intellectual Property. Organisations (such as government agencies, and employers) will need to change their activities to concentrate on their external exchange roles. The concept of 'copyright' ownership in materials will progressively become irrelevant as communities assert their rights as creators and owners of ideas and processes."

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Summary

The Copyright Act (1968) incorporating the digital agenda and moral rights amendments provides a new, effective, commencement point for management of information and knowledge in society when progressively more material will be available via electronic means such as internet, communications and interactive transmission technologies.

This paper raises for discussion the concept that commercial interests have biased the principles as delineated by the Copyright Act. Firstly, some aspects seem to differ from WIPO treaties and Intellectual Property in other Nations. An example is that the Act is biased to word based literary materials of copyright owners. Little mention is made of creator or author interactive roles. Secondly, the rights of the client (reader, listener, inter-actor, student) are generally not described. Also the responsibilities of owners in meeting the criteria for providing access to material are not sufficiently delineated.

In summary, the aspects that are raised for clarification include:

- Client rights and the public interest in the generation of innovation and knowledge.
- The concept of fair payment on an ongoing basis, particularly for the public and for employees who may contribute to re-use and adaptation. This includes the rights of the public, government clients, employees and contractors; and the rights and responsibilities that may arise from new expressions that were not envisaged when the materials were originally created.
- The concepts of technological change and the division of Intellectual property into increasing smaller and interactive components. The use of client tailored delivery is being progressively introduced, where the materials and presentation will differ in substantial ways between clients.

Copyright Owners Activities

In evaluating the aspects later in the paper it is considered that many of the issues might be resolved by implementing some simple ideas in more detail. The current Copyright Act states some principles, however much of the implementation is left to interpretation. This leaves creators and clients without sufficient guidelines. These ideas can be assembled to delineate the responsibilities of copyright owners particularly where these are large organisations such as international publishers and government agencies.

Summary Recommendations

When reviewing intellectual property policies, agencies should:

1. Make clear in writing what aspects of intellectual property are intended to be managed via deemed employer or government rights. This needs to cover the circumstances under which the agency will assume the costs of both publishing, creating innovation and protecting intellectual property.
2. Define inventor, creator and author rights including rights of revision and adaptation, reproduction, display, and ownership.
3. Define how creator, author and client can contribute to the development and delivery of inter-active materials. This needs to expand on rules such as privacy and security.
4. Spell out the role and rights of professional staff in the creative / technical process for works and for the design and development of deliverables. Also, identify when and how the agency can use intellectual property generated by professional staff.
5. Identify and explain how professional staff may use intellectual property and derivatives or adaptations under their own names, or as publishers.
6. Clarify how the inventor or author can use the agency's trademarks (e.g., name and logos) when commercializing a work. (eg certification of quality)
7. Identify and explain the client's rights or licenses that are expected for the purchasing, delivery and usage of works.
8. Identify methods to be used to deliver materials to meet the exceptions such as disability, education, research, and criticism: particularly covering the increasing requirement for delivery to remote communities.
9. Explain how professionals will be compensated for the development and preparation of e-Business deliverables (including distribution to remote communities and self-learning by the public) and how the parties will share in any royalties generated. This should include coverage of new usage and expressions using new delivery mechanisms that arise after the first publication of works.
10. Identify who will administer the agency's intellectual property policies.
11. Identify a forward path for new facilities for knowledge management and community based information professional exchanges.

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Explanation - The Barry Principle of Intellectual Property

"Global Distribution as provided by the Internet has radically changed the concepts of Intellectual Property. Organisations (such as government agencies, and employers) will need to change their activities to concentrate on their external exchange roles. The concept of 'copyright' ownership in materials will progressively become irrelevant as communities assert their rights as creators and owners of ideas and processes.

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Reasons why copyright may become irrelevant

- Much current material available on the Internet is still in text or book formats with large volumes of static information. This static format also applies to music and films. The Copyright Act relates very well to static materials. These principles have also been applied effectively where large numbers of contributors are involved such as in journals, newspapers and films.
- However, the major feature of the Internet is that delivery is immediately interactive and depends on the client. The client actions determine the material delivery and are the intellectual property of the client. Various forecasts (such as e-Business) predict that such inter-active interchange will replace the static formats by several orders of magnitude.
- Deliveries over the Internet by communications mechanisms and by interactive broadcast are developing into inter-active elements that are dependent on client criteria. This includes Client Relationship Management (CRM). Examples are:
 - The delivery of information by SMS over WAP phones
 - The delivery of inter-active Internet games or video presentations that depend on the exact criteria for a group of clients.
- Another aspect is that Clients will progressively wish to ensure privacy and to limit facilities via encryption and permission management. This represents facilities such as Net Nanny Internet and email vetting, as P3P (Platform for Privacy Preferences) see W3C (<http://www.w3.org/P3P/>) and as security certificates that are delivered by products such as Windows XP and by other e-Business systems. The ownership of information in databases is already developing towards clients
- More exceptions to copyright, eg. education and research exceptions will need to be changed to allow distributed learning. The fair use exemptions for education use and for research use typically only apply to use for private or non-commercial purposes. Payment of fees to other publishers and to other government agencies may be determined as not following guidelines for fair use.
- Student's rights and public rights will be established by providing material by both Government Agency and by commercial organisations with specific licenses allowing re-use and adaptation. This aspect will grow.
- Government Agencies will have increasing difficulty in proving originality for the contents of administrative arrangements and learning objects. They will also have difficulty in proving that material has not been previously published. Eg MIT has announced that they will progressively provide all course material as free to use teaching materials. This includes describing best practice business methods.
- The implication is that existing copyright owners will progressively not meet the originality criteria under the Copyright Act (1968) s 176 for new materials that include client pre-existing or even new owned components and are inter-active.

Examples of Employment Situations that needs Clarification in regards to Innovation in Technology.

It is often proposed that globalization will mean that a person has several jobs during their lifetime. An example might be:

A person was born in Canada and completed primary education, and then moved to USA for secondary education. The person gained science and teacher degree qualifications in France, and then teaches science in Germany for 6 years. The person then carries out biotechnology research for an International Pharmaceutical company for 5 years. The person then relocates to Australia on marriage, registers as a teacher and is employed at 3 schools for a short period. The person takes 5 years leave for raising 2 children. However, the person during this time publishes several research papers on the Internet using specialist Silicon Graphics and biotechnology proprietary software. The person also gains distance education post-graduate qualifications in IT and Multimedia from Israel and UK. The person then re-starts a career as a secondary science teacher specializing in advanced on-line distance learning delivery. The person is employed part-time simultaneously at a state school, at a private school and at a University. The work includes delivery of standard curriculum lessons as a relief supply teacher, and development of new learner based self-tuition material. Some of the content explains bio-technical products; other parts include safety and scientific explanations.

The main question that needs clarification is what can be published by the person for use in various environments - viz; for use by teachers in schools and universities in other states, and what rights need negotiating, or for new use by health professionals in hospitals. The secondary question is what rights apply to a member of the public who purchases an electronic book, attends a course or is provided with a safety sheet, eg providing explanations to friends and family.

Another example might be – A Solicitor (professional licensing specialist and member of LESI ANZ) is employed under contract by a government agency to advise on commercialization of Intellectual Property. The specialist is then asked to be a member of an International IP advisory panel in Europe and also is asked to provide a key-note speech to a copyright conference in USA.

The question is – how does the Copyright Act explain the differentiation between prior knowledge, between confidential matters of the government agency and between interchanging advice to the public and professionals about the legal issues discovered as part of the government contract? This example can also apply to architects for building design, to doctors, engineers, etc.

A third example is a maintenance engineer employed on contract to maintain a machine. The engineer visits the client and finds an issue during maintenance. The engineer phones the original machine supplier. The engineer is then provided with new repair manual updates for the machine to his WAP/ SMS phone. The updates are specific to private information about the machine, the client and the engineer. The question is can the engineer keep the updates – and how does he transfer them to the employer?

Consequently, the issue appears to be - can the Copyright Act be expanded to clarify the differences and principles involved – or does the current clause “reasonable in the circumstances” have to remain as the defining criterion.

Additional Suggestions

The following additional suggestions are provided to CLRC so that they may establish clarification for Intellectual Property Rights and for Copyright for individuals and community groups including professional organisations.

It should be noted that the remainder of this paper provides comments to CLRC for their evaluation. The timescale and resources available to produce the comments has not allowed adequate analysis and the determination of priorities and confirmation of scope for the suggestions below, and for comments later in the paper.

1. A unifying statement should be provided into Australian Law that explains the inter-relations between all forms of Intellectual Property. This should include explanation of aspects for materials that are common or public property and aspects where restrictions apply in order to reward Creators and publishers for their innovation activities. This should also clarify aspects that are covered by international treaties and are not implemented in Australian Law.
2. Guidelines should be provided that clarify the responsibilities of publishers including government agencies and companies for the promotion of innovation in the Australian economy and for global activities.
3. The rights and responsibilities for publishing materials should be clarified, as compared with the rights of creators. It is suggested that restrictions and obligations are defined for setting limits on activities of the crown and of employers. It is suggested that the current definition "associated with employment" should be clarified.
4. It is suggested that default criteria should be defined that allocates both income and costs for ongoing continuing development and presentation of materials to creators and to publishers.
5. Another condition should be that the Agency (government or business) be required to publish within a reasonable timeframe of original material development. If this is not achieved then the copyright and intellectual property rights should be released either to the public or back to the creator. – The conditions (If innovation does not take place within a reasonable time) should be similar to the conditions for library copying if authors cannot be found for granting usage permissions. The danger that copyright is used to prevent publishing should be eliminated, as the overriding aim is controlled use for innovation for public benefit.
6. CLRC should determine the view of commercial publishers about government agencies making copies and electronic expressions of material that are in the public or IP free environments, and of government transfer between administrative and commercial activities?
7. CLRC should also determine the views of other community organisations. There is probably a larger range of organisations that may be involved, viz: churches, charities, retirees, pensioners, unemployed, business organisations that are not professionals such as rotary, zonta, alumni and trade groups etc.

Main Report - Detailed Comments

This paper is created by authors who have produced inter-active materials for publishing on the Internet. A family company has also published composite materials with photographs, videos and films. Professional development has been undertaken at TAFE, University with participation in professional bodies such as AIMIA (Australian Interactive Multimedia Industry Association). Exchanges have been made with colleagues, friends and family worldwide about copyright and intellectual property issues. Requests have been received from agencies to allocate copyright in materials.

People trained in Europe and USA see that Australia has some differing interpretations of Copyright and Intellectual Property to other jurisdictions. In Australia, there seems to be an impression that copyright, moral rights and other intellectual property rights may be claimed by an employer from employees under deemed rights that do not need to be agreed in writing. There is also an impression that the government (or crown) may actively seek out and retain copyright and intellectual property of others for commercial purposes. This impression seems to interpret that the copyright of a specific presentation is able to include all components. It is suggested that following the development of inter-active materials, the copyright in the adaptations should be similar to copyright in compilations. That is copyright covers only the presentation not the original materials, and ideas in the content. This may need further clarification.

In some jurisdictions some creators' intellectual property rights only subsist for real persons. In addition, the publishing of information by government agencies is assumed to be only a default action when other publishers are not available, and in which case only reasonable administration charges may be applied for public usage.

Several of the comments are provided with explanations for the Education environment. It is suggested that similar comments may apply to a number of government services: such as Health, Primary Industries, Natural Resources, and Agriculture, The comments may also apply to commercial organisations and publishers.

The effect of public interest has been seen as an overriding interest for copyright in the Pharmaceutical Industry. Commercial companies were pressured to allow local production and organisations to import drugs – where the patent, design and copyright interests were eventually agreed to allow manufacture and delivery of drugs outside the arrangements of commercial companies in the developed world. It is possible that similar attitudes may arise about charges for government services if significant members of the public or if community groups view that they are being exploited. Pressure groups will increase in activity for indigenous and 'green activities'. Such attitudes are currently being seen in conceptions about banks

The fuss about music recordings using MP3 and Napster is a similar situation where there is a confrontation between music publishers who are trying to make encryption facilities very tight and others who view that individuals should have the rights to copy music to their friends and families. This is not currently really resolved. The fuss is likely to arise again for eBooks and for interactive films as network facilities increase in capacity making exchange for these materials viable.

A. Bias of Copyright Act to Commercial Interests.

The current version of the Copyright Act explains the allocation of copyright for authors. This also describes allocation processes for transfer of rights to publishers. This is very clear for literary works such as books and articles, where there are few authors. It is also clear for artistic works such as paintings and films. This is for static material.

Much development has been devoted to delivery of such material via formats that can maintain the original presentation - Such as facilities provided by Adobe. Even more work has been devoted to music such as the debate about MP3 and Napster and the views of Commercial Publishers that copying should be limited to small numbers of authorized people. Such commercial publishers have devoted large resources to defining technological protection measures. At the moment this is aimed at copying / download from the publisher to the client. It is suggested that similar principles must be applied to the return information from the client to the publisher.

It is suggested that these publisher commercial interests have taken precedence over client and consumer views about copyright. People have been much more concerned that their input to the Internet and inter-active processing should always be private. This has hidden the view that such input is the property of the client. This aspect needs to be resolved between copyright, privacy and security. It is believed that many issues have been reported and examined by the various debates about privacy and security. It is therefore suggested that CLRC should obtain input from the privacy commissioner.

B. What are the fundamental rights of Individuals to Ideas, Processes, Methods and other aspects not covered by Copyright?

The USA has an aim defined for Intellectual Property and Copyright

"The Congress shall have Power ... To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries"

(United States Constitution, Article I, Section 8)

Unlike the USA, where definition of copyright and works is substantially contained in sections 102 and 103 of the Copyright Law of the USA^[37] (see Appendix 1). Australian Intellectual Property Rights seem to be fragmented and confusing. Australia does not have the advantage of a 'bill of rights'.

AG / IPCRC, Page 22 ^[6] illustrates the conflicts and confusions as follows:

"Article 2 (viii) of the WIPO Convention defines intellectual property to include the rights relating to: literary, artistic and scientific works; performances of performing artists, phonograms and broadcasts; inventions in all fields of human endeavour; scientific discoveries; industrial designs; trade marks, service marks, and commercial names and designations; protection against unfair competition; and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields. Not all of these rights are specifically protected under Australian laws."

"One of the most important international conventions in the field of intellectual property law is the TRIPS Agreement. Although this agreement does not contain a definition of intellectual property, Article 1.2 indicates that the term refers to the seven categories of rights or subject matter which are dealt with in the agreement: copyright and related rights, trade marks, geographical indications, industrial designs, patents, layout designs of integrated circuits, and undisclosed information."

This confusion extends into the domain of individual's versus employer's rights to Intellectual Property. It is proposed that individuals have basic rights that may not be assumed by the employer.

Monotti ^[30] re-states that individuals may apply their skills though-out their working life, providing that employer's confidentiality is not breached.

"A principle of common law is the prima facie right of all persons to use and exploit their skill, experience and knowledge to earn their living. Ansell Rubber Co Pty Ltd v Allied Rubber Industries Pty Ltd [1967] VR 37; Herbert Morris v Saxelby [1916] 1 AC 688."

Another view (which may not have been examined in detail) with respect to copyright and intellectual property is the authorization of professional status to several categories of people, such as engineers, teachers, architects, accountants, solicitors, and doctors. Most states provide certification and authentication of skills and qualifications; which, subject to certain professional development, persist for life, irrespective of employment status. Many of these professionals undertake self development independent of their employer. The Copyright Act seems to grant ownership and publishing rights in such self-development (unfairly) to employers. This seems in conflict with the role of the professionals defined in the Law. It is suggested that such legal status as defined in Acts may override 'deemed' employment attribution of intellectual property.

C. What rights and information pre-exist from government or commercial services or education at schools, from university and from membership of professional organisations?

Clients, students and members of professional organisations have a right to own the intellectual property in their pre-existing work as creators. They also will gain copyright in their original additions to materials from publishers and authors.

DCITA ^[15] states that for both works and films that Moral Rights belong to Creators.

"Employees hold moral rights in their works or films, even if the copyright in the material they produce belongs to their employer. Given that pure art accounts for only a small proportion of the material protected by copyright, it will be fairly common for the holders of copyright in a work or film to wish to subsequently modify it. To avoid a possible infringement, users of material to which moral rights attach, may obtain the consent of an author to undertake, or omit to do, an action which otherwise might constitute an infringement of moral rights."

It is believed that similar criteria apply to photographs, sound recordings, multi-media materials and other artistic objects. Such works will progressively become a larger part of Internet delivery. This means that progressively the rules that apply for deemed employer assignment of literary text works will decrease as artistic material and inter-active content increase. In Internet, Film and video delivery expressions a number of different collections exist. This aspect has not yet been adequately recognised within Australian Law.

The rights of a either a client paying for services or of a student enrolled on a course may be compared with the rights of an organisation that commissions for hire a person to perform work. The client / student corresponds to the "employer" and hence could be deemed to have some limited copyright allocated in the work (or a deemed license to use) as in the delivered presentation - usually this would be non-exclusive. This usage license would be similar in the rights granted if the client / student purchased a copy of a definition manual.

Clients / Students also have a right to 'get what they contract for' and should be able to keep a copy of the information provided as part of the work / course for whole of life. This right for students in primary and secondary schools may be vested in their legal agent (ie parents or mentors) as they are minors and the implied contract must be deemed to be with their legally authorised representative.

The aspect of legal representation should be further evaluated to determine if the implied rights are sufficient to allow parent access to copyright materials at home under the educational exceptions. Similar extensions should be examined for disability access in the community

Consequently, student work may be deemed as personal copyright where they meet the originality criteria. The work of students then fits with the definition of pre-existing material when the final work is an assembly of educational institute material; material from others and the student materials.

The Copyright Law of the United States of America ^[37] is very clear on pre-existing materials: It clearly defines protection and rights. (Appendix 1). A succinct description of relationships between parts of intellectual property and copyright and the status of pre-existing rights is not easy to find in Australia. This means that interpretations are open and confused.

D. What rights for Creators should survive assignments to publishers and employers?

Creators should have a moral right to intellectual property. Presently the crown, publishers and employers may assume these rights.

The Moral Rights Copyright Act (1968) s 10 states that rights can only be conferred on individuals. DCITA advises that the Creator or Author always retains Moral Rights. ^[16], ^[17]

"To underline the personal nature of moral rights, under the legislation they remain with the author even though he or she may have transferred copyright in the work concerned to another person. After the author's death, they are exercisable by the author's legal personal representatives. Generally, moral rights will last as long as the copyright in the work concerned."

There are already a number of actions that creators may take to avoid automatic assignment of copyright to employers or to the government (crown)

- Publish to an internet site prior to preparing on an employers premises
- Notify and publish via a professional association
- Publish or register in USA or Europe. This may include moral rights
- Notify employer about views and copyright for particular documents in advance of creation or publishing.
- It is considered that any author may add electronic identification to any material (just as an artist may sign a work. The transfer of ownership or copyright does not allow the publisher to remove such author identification.

E. What rights for use of materials arise for students participating in courses, including tutoring distance delivery and self-learning environments?

In traditional courses the copyright applying to books and manuals is fairly clear. If a book is loaned or purchased then a right for use is available whilst the book is in possession. This concept needs to be clarified for delivery where a copy is not provided electronically.

USA Copyright Law provides protection for material anywhere in the world. This may be of benefit to families or professional organisations that are able to work with creators who are domiciled in USA.

§ 104..Subject matter of copyright: National origin

(a) UNPUBLISHED WORKS. The works specified by sections 102 and 103, while un-published, are subject to protection under this title without regard to the nationality or domicile of the author.

F. What rights apply to associated people involved with learning: eg parents, mentors, employers, community and teachers?

Insufficient time found to research this aspect. However, it is considered that distributed delivery and self- learning principles will make this aspect critical in the future.

It is considered critical that currently the Copyright Act allocates exemption management for disability and for education to Education Institutes. It is considered that this aspect will need to be expanded to cover access by people in remote locations and communities. Issue not adequately defined and may need further explanation of legal representatives roles for minors. Eg VET and community also disabled people

G. What conditions should usually apply to employers for both deemed employee and contract rights?

Insufficient time found to research this aspect. However it is considered that if a publisher does not agree adequate and sufficient remuneration to an employee then misleading conduct may be interpreted. This might also apply to a change in intend to publish in the future by new delivery mechanisms. Such actions may invalidate deemed allocation of rights

The Bibliography for a number of references does not provide the creators name. This is an example that should be evaluated re author moral rights. Several organisations do not quote the creators for compilations of abstracts. It is noted that in the recent Telstra Case about copyright of telephone directories the issue of originality of the work of the compilers was crucial to agreement that copyright was valid. This should be examined further.

§ 105. Subject matter of copyright: United States Government works

Copyright protection under this title is not available for any work of the United States Government, but the United States Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest, or otherwise.

H. What is the relationship to in-built patents, designs and other rights in Australia and International

It appears that some aspects of the Copyright Act do not correspond to interpretations in other international treaties. The WIPO Treaty 1996^[38] does not appear to allocate rights to government to take copyright in materials under terms that differ from other organisations.

Sterling provides a recommended Draft International Copyright Code^[33]. This is sponsored by ALIA. The code appears to grant un-assignable rights to individuals as creators and authors. The code covers other intellectual property rights. It also should be examined further as 'government' is omitted from the draft definitions, and therefore may be deemed to fall into the category of publishers.

It is suggested that CLRC should further review the Copyright Act as compared with international interpretation

I. What rights and responsibilities apply to Government Agencies for both Public Administration and for Competitive Activity?

There needs to be a further examination of Competition Policy in regard to Intellectual Property and Copyright in Government Materials, and in materials prepared under the direction of the government or material created by employees that are deemed to be government copyright ownership. Some agencies appear to believe that they own exclusive copyright and intellectual property in works created by government employees as part of their normal roles as administrators or as professionals. This needs to be reviewed for other aspects of intellectual property which may not be transferred in this manner, and for pre-existing materials. Several agencies are setting out to use such materials for gain in commercial activities such as sales overseas, or sales to commercial publishing.

The views of ACCC and commercial publishers may need to be consulted to evaluate whether the allocation of copyright from services to the public into commercial activities fails the competition policy tests for separation of government administrative functions from commercial activities. It may be appropriate to separate the functions of government between very low cost administrative functions and commercial activities

Some quote that were encountered in this area include:

IPCRC ^[6], Page 113 states:

"The principles of competitive neutrality as set out in s. 3(1) of the Competition Principles Agreement provide that:

The objective of competitive neutrality policy is the elimination of resource allocation distortions arising out of the public ownership of entities engaged in significant business activities: Government businesses should not enjoy any net competitive advantage simply as a result of their public sector ownership. These principles apply only to the business activities of publicly owned entities, not to the non-business, non-profit activities of those entities."

The next 2 paragraphs discuss equitable remuneration and the possibility that the Crown should pay an appropriate price for such re-use - discussing the example of architects.

IPCRC also quote the Defence Department on page 114 - who suggest that the government should only use s176 in rare circumstances

"The Department of Defence pointed out that it is sometimes difficult to establish that performance of some tasks is in the course of Reservists Defence employment, and thus there is a greater possibility of dispute."

IPCRC then recommends that

"Crown ownership of copyright

The Committee does not believe that the Crown should benefit from preferential treatment under the Copyright Act as compared with other parties. As a result, we recommend that s. 176 of the Copyright Act be amended to leave the Crown in the same position as any other contracting party."

J. What rights apply to associates (both professional and personal) and to creators covering part-time employment in several organisations, periods of unemployment and personal development, and to short periods of employment?

Whilst the Copyright Act seems to clearly define copyright, there appears to be potentially large areas where the employment status may not be clear. It appears that the differing interpretations being attributed to employees' normal duties or work prepared under directions of the government may be subject to significant exceptions. This area should be of concern to community organisations and other groups.

An example is voluntary activities. Many people work for voluntary organisations during their leisure time. Such activities may be either similar to employer duties or may differ. The Acts suggests that employed creators loose their rights by reason of their employment. In fact, organisations are warned against using volunteer creations for commercialisation. It is also considered that any people involved in collaborative projects might fall into similar categories. These aspects are quite common for people invited to join Government consultation committees.

Another example of possible compulsory taking of ownership might be the work of CLRC - the activities to collect and evaluate views on Copyright is at the direction of the Crown. In which case, Section 176 of the Copyright Act might be deemed to apply. It is suggested to CLRC that if such actions are taken in this review and in any other similar reviews, then, the contributions made by the public will progressively reduce, as people may perceive unfair attribution of derivatives and adaptation of their recommendations and views.

ACC Information Sheet 58 states in this area:

"Does an organisation own copyright in material created by volunteers?"

Usually, volunteers retain copyright in material such as reports, logos and so on that they create. Generally, the organisation will have the licence, or permission, to use the relevant material for the purposes for which it was created. A person who has been paid to create something protected by copyright is unlikely to be in a position to revoke the commissioning party's use of the material for the purposes for which it was created. However, a volunteer may often be able to revoke permission for the organisation to continue to use the copyright item (for example, to stop using a logo). Organisations concerned about this should get specific legal advice if they wish to protect themselves from such an eventuality."

Other areas where an employer or the government may not be able to fairly claim copyright ownership include

- Work prepared by students who are contracting for education, training or learning. This includes several categories of people eg nurses and doctors as explained in the Copyright Act for interpretation of Educational Institutes.
- Staff who work for several employers at the same time: this is becoming increasingly common. In some schools and hospitals the relief staff at times may reach thirty per cent. Such people often work at several locations. This is also common for contractors.
- Students who are studying part-time whilst they are employed. Often their study is into new areas of personal skills and knowledge development. The employer may be contributing to some costs, but in other cases the employer is not involved.
- Retirees, pensioners and unemployed people producing work

Intellectual Property in this Paper

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The Barry family has members in several countries worldwide. A number of people have completed education to degree level in one country and are now working in another. Several members have changed employers between countries. At the second generation there are some 200 family members. At the fourth generation, this is some thousands.

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Limitations of Study

The topics of Intellectual Property and Copyright are complex. A Bibliography is provided in this paper. However, it only contains citations suggested by the Barry Family. If links are followed the references expand to a large collection. However, it is almost certainly incomplete. Comments are from personal views from minor publishing activities and from work as employees for organisations in differing parts of the world. It is considered that the resources and time that would be needed to effectively review relevant factors on a global basis restrict the comments in this paper. It is therefore suggested that CLRC should allocate more resources to international comparisons and precedents. The timeframes indicated by the CLRC for examining copyright allocated only 2 months to collecting comments and 9 months to evaluating recommendations. It is suggested that this implies that contributors will not have the collation of all other contributions and will therefore be unable to take sufficient account of others views. This paper provides a few views from both a consumer and an employee perspective. It is suggested that the CLRC should actively seek out further views from consumer and community groups. These aspects need further evaluation.

Appendix 1 - USA Copyright

Extract from "Circular 92 - Copyright Law of the United States of America ^[37] "

"§ 102. Subject matter of copyright: In general

- (a) *Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:*
- (1) literary works;*
 - (2) musical works, including any accompanying words;*
 - (3) dramatic works, including any accompanying music;*
 - (4) pantomimes and choreographic works;*
 - (5) pictorial, graphic, and sculptural works;*
 - (6) motion pictures and other audiovisual works;*
 - (7) sound recordings; and*
 - (8) architectural works.*
- (b) *In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.*

§ 103. Subject matter of copyright: Compilations and derivative works

- (a) *The subject matter of copyright as specified by section 102 includes compilations and derivative works, but protection for a work employing pre-existing material in which copyright subsists does not extend to any part of the work in which such material has been used unlawfully.*
- (b) *The copyright in a compilation or derivative work extends only to the material contributed by the author of such work, as distinguished from the pre-existing material employed in the work, and does not imply any exclusive right in the pre-existing material. The copyright in such work is independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of, any copyright protection in the pre-existing material."*

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