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To: clrc.secretariat@ag.gov.au
Subject: SISA Submission on CLRC Copyright and Contract Reference

SUPPORTERS OF INTEROPERABLE SYSTEMS IN AUSTRALIA (SISA)

10 August 2001

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

Dear Ms Phillips

Copyright and Contract Reference

SISA is pleased to make this submission to the CLRC in relation to its current reference.

As an industry body representing Australian software and IT companies that favour open and interoperable systems, SISA has a long history of promoting copyright laws that reflect a fair balance between protection and access.

In his second reading speech to the Copyright Amendment (Computer Programs) Act 1999, the Attorney-General, the Hon Daryl Williams, said that:

"This bill makes a number of changes to the Copyright Act 1968 which are of great importance to the development of the information economy in Australia. The changes will promote open systems, or 'interoperability' of computer programs and products, and facilitate error correction and more effective security of computer systems."

He also stressed the importance of section 47H, as a means of ensuring the effectiveness of the Government's policy of promoting open systems:

"One other important provision in the bill will nullify any agreement that purports to exclude the right to run a program in order to study it, the right to make backup copies or the right to decompile a program for interoperability, for error correction and for security testing."

SISA is a strong supporter of the changes brought about by the 1999 computer software amendments, including in particular the introduction of s47H.

There was a long enquiry and debate about the computer software exceptions (most of it carried out by the CLRC in the early-mid 1990s), including the "contracting out" issue. Section 47H shows that the Government can choose to proscribe contractual attempts to nullify its copyright policies, particularly where there is no public benefit in allowing certain contractual provisions to stand. In the case of the decompilation and related exceptions (ss47B-47F), there is simply no public benefit in preventing people from developing interoperable products, correcting bugs and testing the security of systems. Thus it makes perfect sense not only to create exceptions to copyright infringement for these things, but to make it impossible for vendors to use their contracts to prevent the activity.

There is no reason why the Government could not choose to extend the application of s47H to other exceptions.

SISA is happy to provide additional information and to participate further in the Committee's work on this reference.

Please direct any questions or comments to:

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For and on behalf of SISA
Jamie Wodetzki and Steven Heptonstall