



Submission No: 0003

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

Dear Ms Phillips

Copyright Law Review Committee – Crown Copyright

The Australian Institute of Criminology (AIC) thanks you for the opportunity to comment on the important issue of the law relating to government ownership of copyright material.

The AIC supports public policy and a legal framework that enhances the ability of the AIC to conduct, commission and disseminate high-quality research.

The AIC is similar to all government agencies in that the government is the owner of copyright in any work made by or under the direction or control of the government (ss 35(6), 176-179 of the Copyright Act 1968). However, the AIC is not similar to most other government agencies in that, as a statutory authority and a research organisation, the AIC has been assigned copyright in all materials produced by the AIC (Agreement between the Commonwealth of Australia and the Australian Institute of Criminology in relation to Copyright Ownership dated 20 September 1994 – File Reference OCL 93422125 Attorney-General's Department).

The publications produced by the AIC particularly governed by copyright are:

- Trends and issues in crime and criminal justice;
- Research and public policy series; and
- Technical and background papers.

Other AIC publications include:

- Crime facts info;
- AICrime reduction matters; and
- Australian crime: facts and figures

It should be noted that the AIC does sell its publications, however this is not a profit making venture.

As well as producing research from within the organisation, the AIC disseminates the work of the Criminology Research Council (CRC) through its publications and its website. The AIC also houses a substantial criminal justice library and data holdings.

The AIC is able to access permanent, irrevocable, non-exclusive, royalty-free licence to use the intellectual property in contract material commissioned through the CRC. However, in accordance with CRC guidelines, the intellectual property of contract material is vested in the people carrying out the research.

The following are comments on issues particularly relevant to the AIC.

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 entities to be included as part of ‘the Commonwealth or a State’ for the purposes of the Copyright Act should include all those agencies which are accountable to the Australian government or the state and territory governments. At the Australian government level, this includes all agencies operating under the FMA or CAC Acts.

Recommendation

That the AIC be subject to the principles of Crown Copyright.

Issue 7 – The Committee seeks your views as to whether all material produced as part of a government function be deemed to have been created by the government. If so, in whom should copyright vest?

The government should remain the owner of copyright in any work made by or under the direction or control of the government according to ss 35(6), 176-179 of the Copyright Act 1968.

The AIC should remain the owner of copyright in all materials produced by the AIC according to the ‘Agreement between the Commonwealth of Australia and the Australian Institute of Criminology in relation to Copyright Ownership’ dated 20 September 1994, File Reference OCL 93422125 Attorney-General’s Department.

The AIC does not wish to hold a stake in direct ownership of the intellectual property of CRC research grants. The intellectual property in this instance is owned by the person or persons to whom the research has been commissioned. It should be noted that the type of literary research conducted at the AIC and through the CRC cannot be exploited for commercial purposes in the same manner as other types of research, for example, medical research.

Recommendation

In accordance with ss 35(6), 176-179 of the Copyright Act 1968, the Crown should retain copyright of publications produced by the government.

In accordance with the 'Agreement between the Commonwealth of Australia and the Australian Institute of Criminology in relation to Copyright Ownership' the AIC should retain assignment of copyright in all materials produced by the AIC.

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?

The appropriate duration of copyright is as it currently exists, that is for a term of 50 years from the expiration of the calendar year in which the research was published. Given that copyright is not held by an individual, similar arrangements as those for persons in which copyright is linked to a date of death, are not suitable. An extension to copyright currently being proposed under the US Free Trade Agreement to 70 years would directly impact on education and research institutions.

Recommendation

It is recommended that duration of government copyright be retained at the existing level of 50 years from the expiration of the calendar year in which the research was conducted.

Issue 9 – The Committee seeks your views as to the application of the exceptions to government copyright material. Should the exceptions apply to government copyright material in the same way as they do to non-government copyright material? Should there be a special exception for copyright material owned by the government?

According to the provisions of sections 106 and 106A of the Copyright Act 1968, the fair use of a copyrighted work, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research is not an infringement of copyright. When reproducing text, it is fair to copy: 10% of the number of pages, or one chapter where the work is divided into chapters. There should be no distinction made on the basis of the profit status of the organisations as this is covered sufficiently by the purpose of the copying.

Recommendation

It is recommended that the current "fair dealing" exceptions be maintained for "not for profit" purposes.

Issue 14 - The Committee seeks your views as to the appropriateness of the law relating to government ownership of copyright given the operation of freedom of information and privacy laws in regulating access to, and use of, personal and government information

Freedom of information refers to the right to apply for documents held by public sector agencies. Freedom of information and privacy laws are separate from the laws governing copyright.

Recommendation

Freedom of information and privacy laws should be enforced for non-published material. Copyright laws should be enforced for published material.

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

The Copyright Amendment (Digital Agenda) Act 2000 imposes unnecessary restrictions on digital information particularly in relation to the fair exchange of material between libraries. There is no need to treat electronic documents any differently from paper copies for interlibrary lending purposes.

Recommendation

The principles of “fair dealing” should continue to apply to material produced electronically, particularly in a library context. The former National Office of the Information Economy (NOIE) developed a workable ‘e-government’ strategy which could be applied across the Australian government public sector.

Yours sincerely

Signed by
Toni Makkai, PhD
Acting Director

23 March 2004