

AL©C

Australian Libraries' Copyright Committee

PO Box E202, Kingston ACT 2604

ADA

Australian Digital Alliance

Tel: (02) 6262 1273 Fax: (02) 6273 2545

**Submission to
Copyright Law Review Committee's
review of
Crown Copyright**

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The Australian Libraries' Copyright Committee (ALCC) and the Australian Digital Alliance (ADA) welcome the opportunity to make a submission to the Copyright Law Review Committee's inquiry into the issue of Crown copyright. The ADA and the ALCC wish to address the key issues raised in the Issues Papers as highlighted by the CLRC.

The Australian Digital Alliance is a coalition of IT companies, scientific and research organizations, schools, universities, consumer groups, cultural institutions, libraries and individuals. ADA members are united by the common stand that intellectual property laws must strike a balance between providing appropriate incentives for creativity on the one hand, and reasonable and equitable access to knowledge on the other. The ADA believes copyright laws must balance effective protection of the interests of rightsholders against the wider public interest in the advancement of learning, innovation, research and knowledge.

The Australian Libraries Copyright Committee is the cross-sectoral body acting on behalf of Australian libraries and archives on copyright and related matters. It seeks to have the interests of users of libraries and archives recognised and reflected in copyright legislation, and in so doing, help build and sustain a copyright regime which promotes learning, culture and the free flow of information and ideas in the interests of all Australians.

Issue 4: Whether the legislative scheme for establishing government ownership of copyright material is appropriate. In particular whether the government should acquire ownership of copyright material by virtue of

- **S 176 and 178 (works, sound recordings and cinematograph film made by, or under the direction of control of, the government)**
- **S 177 (works if published by, or under the direction or control of, the government)**
- **S 35(6) (works made pursuant to the terms of employment under a contract of service or apprenticeship)**

The ALCC and the ADA believe that the existing legislative scheme is in general conducive to the effective and efficient management of government materials but submits that the range of rights granted and situations which gives rise to government ownership is no longer justifiable nor necessary for the continued proper management of government materials. In light of current policies on competition and access to information, and the many developments in communications and government operations

since the introduction of crown copyright provisions, dilution of rights and control over government materials in relation to particular categories of materials is an appropriate step in reform.

The ADA and ALCC support the establishment of government copyright over materials created in the course of carrying out government functions. The UK and New Zealand models adopt a balanced approach by establishing government copyright over materials “made by an officer or servant of the Crown in the course of his duties”. The ADA and ALCC support the adoption of similar phrasing or expression for establishment of rights but submit that this should be maintained only where there is no substantial privatization of government functions and where the particular body is not engaged in significant business activities. Control of work created by the government should be vested in the government on the proviso that the full range of exclusive rights should only be asserted where particular issues warrants full control and rights for reasons of sensitivity of information or security etc.

The continued effective operation of s179 (which can vary the government privilege of s176) must be maintained to ensure that rights can be negotiated as appropriate in certain circumstances.

The rights conferred by s177 (through publication by government), should be abolished. The grant of copyright as a result of first publication gives unjustified preferential treatment to the government for control of information. The removal of this privilege from the UK legislation (upon which s 177 is based) lends further support for the removal of this obsolete provision from the Australian legislation.

Issue 5: The Committee seeks your views as to whether the Copyright Act should make express provision with respect to copyright in materials produced by:

- **the executive**
- **the judiciary and**
- **the legislature**

In general terms the ADA and ALCC submit that it is in the public interest for the government to assert copyright in government material for all three areas of government operations (executive, judiciary, legislature). However policies establishing new models for increasing use and access of material through express licence provisions should be pursued. Such policies should apply on a national basis to align the practices of states and territories ensuring uniform treatment of government information. Uniform practices across the states and territories is instrumental in reducing delays and related costs which pose obstacles to accessing information.

The subsistence of Crown copyright in materials created by the executive government should be maintained and is largely uncontroversial. The establishment of a register of bodies and organizations to which the government ownership provisions of the Act apply

(determined by factors as listed in para 24 in the Issues papers) may be helpful in clarifying some of the uncertainty that exists and is supported by the ADA and ALCC

The public interest in ensuring access to justice warrants the waiver of some of the rights conferred by current legislation in relation to legislative and judicial materials which should be made as widely available to the public as possible. The ADA and the ALCC support waiver of rights in relation to these materials in line with the practices currently in place in New South Wales. Principally, authorization to reproduce legislative and judicial materials should be automatically granted (via licenses or mechanisms) on the condition that publication must not purport to be the official version and publication pursuant to such a waiver is required to be accurately produced without any unauthorized additions or variations.

Issue 18: The committee seeks your views as to options for reform, legislative or otherwise and the costs and benefits of those options

The ADA and the ALCC believe that the following options as put forward in the Issues Paper (para 124) have the potential to achieve the desired balance between the principles of access and imperatives of open, effective and efficient governance. Option A however may provide more flexibility and clarity of procedure:

Option A

“Retaining crown copyright, and/or crown prerogative, but waiving copyright, in or allow licenses over certain types of material”

The waiver of copyright through the adoption of licenses to regulate the use of government material would provide maximum flexibility in creating appropriate practices for treatment of government material.

As discussed in relation to Issue 5, waiver of some of the exclusive rights of crown copyright in government materials (particularly in relation to judicial and legislative materials) will provide a more effective way of facilitating appropriate control and access to information; this can be achieved through the adoption of model licenses supported by formal policy and guidelines for government licensing practices.

Formal policy to govern licensing should establish as a fundamental principle that licenses be as liberal as possible according to context and type of work. Such policy should provide a range of model licenses for accessing government works. The licensing terms and procedures should be transparent, and licensing procedures should be designed to require minimum management. The administration of licenses for government material should be managed by a new body within the government rather than a separate, or private agency. Efficient models for license acquisition and promulgation in a web-based environment should mean that this management could be kept at a low cost overall.

The introduction of a licensing model for government material should be designed to ensure widest dissemination of material as possible with flexibility for control where circumstances warrant it. The establishment of such a model must support the principle that public funded information should be made as widely accessible as possible at little or no cost. Special care should be taken to ensure that the introduction of a licensing model does not lead to a situation whereby publicly funded information is captured and repackaged by private publication/distribution markets to be made accessible to the public only through value added products.

Licenses for legislative and judicial materials should provide blanket coverage for use and require no action on the part of the licensee in order to gain the license. The Canadian practices for government licensing provide a useful and balanced model for licensing of material. Where Crown copyright is asserted for generating revenue “licenses should be based on the principles of non-exclusivity and the recovery of no more than the marginal costs incurred in the reproduction of the information or data” (para111, CLRC Issues papers).

All licenses should be easily obtained and the process for obtaining a licence should be as streamlined as much as possible to reduce costs and delays which may be prohibitive for smaller organizations and individuals.

The ADA and ALCC note that the Creative Commons model, currently being developed in an Australian version may be a suitable approach to government copyright. The model provides more specifically for use and reproduction activities which are not infringing and requires little administration for both licensors and licensees.

Option B

“Retaining crown copyright but making a special exception to copyright infringement for government material”

The creation of a special exception to copyright infringement would also provide a satisfactory and simple way (though perhaps less clear way) in which to facilitate public access to and use of government materials.

Such an exception should provide access to, use and reproduction of government material for all educational or non-commercial purposes. Use of legislative and judicial materials, in particular should be as unrestricted as possible. The creation of a new exception should operate alongside the existing “fair dealing” exceptions but be substantially broader in application. Special provisions should be introduced to ensure that libraries can facilitate as far as possible public access to government materials without incurring undue financial burdens in costs or delays.