

# **The Australian Library and Information Association (ALIA) submission to the Copyright Law Review Committee on Crown copyright, March 2004**

The Australian Library and Information Association (ALIA) represents the Australian library and information sector, 5000 individual professional members, 900 institutional (library and information organisations) members and the interests of 10.4 million users of library and information services.

In responding to the Crown copyright reference of the Copyright Law Review Committee (CLRC), the Association consulted librarians in National, state, university and law libraries. All of these librarians have practical experience in acquiring and giving public access to government publications and information published under crown copyright.

As a result of this consultation, ALIA makes two recommendations. The recommendations cover the key issues identified in the CLRC issues paper:

- Issue 4 whether the current legislative scheme is appropriate;
- Issue 5 whether the government should own copyright as a matter of public policy; and
- Issue 18 options for reform, costs and benefits.

## **Recommendation 1 [issues 4,5, and 18]**

**Legislation covering crown copyright should be modernised to express the values of open information in a modern democracy. In addition to asserting ownership rights, the legislation should assert the rights of public access. The crown copyright provisions should explicitly permit free access without permission or royalty to certain categories of public-interest publicly-funded information, where the information is wanted for a non-commercial purpose. This would include:**

- **free access to and use of, for non-commercial purposes, legislative, parliamentary and judicial/tribunal information;**
- **free access to and use of, for non-commercial purposes, documents related to the accountability of public bodies, evidence and reports of commissions of inquiry, government gazettes and other publications reflecting the processes of government policymaking and administration;**
- **the supply of such publications at cost-recovery only for commercial exploitation in non-exclusive licence arrangements.**

## **Recommendation 2**

**The legal deposit provisions in the Commonwealth Copyright Act should be strengthened to require full deposit of government publications in any format, including online format in the appropriate library, for example, Commonwealth publications in the National Library of Australia, and state government publications in state libraries through amendment of the relevant State Acts.**

### **Recommendation 1 [issues 4,5, and 18]**

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1. Effectively Australians should know that these materials are, for non-commercial purposes, in the public domain.

### **History of Crown copyright no longer fulfils modern purposes**

2. As the issues paper points out, crown copyright and crown prerogative are creatures of history, originating from monarchic control of publishing and printing.
3. ALIA believes that the crown prerogative serves no modern purpose and should be abolished.

### **Crown copyright retained with explicit statement in legislation of public access principles [issue 5]**

4. After consideration of the United States example of moving essential legal information into the public domain, ALIA supports the retention of crown copyright for reasons of accuracy and authenticity, provided that the legislation also contains a clear statement of the public right to access government information, with certain categories of information provided free of permission or cost.

5. To that end ALIA has adapted the policy principles of the Queensland Government's Information Access and Pricing Policy standard 33, (available at <http://www.iie.qld.gov.au/informationstandards/downloads/is33.pdf>) as an example of a broad commitment of Commonwealth and State to ensuring public access to publicly funded information, as follows:

#### *ALIA example of crown copyright information access principles*

1. *Government information is implicitly collected and produced for and on behalf of citizens.*
2. *Agencies should regard citizens' expectations of access to government information as reasonable, unless providing access would:*
  - *infringe the privacy of individuals*

- *breach Cabinet and other government protocols in relation to confidentiality*
  - *breach commercial confidentiality requirements*
  - *breach statutory requirements*
  - *demonstrably compromise the operations of the custodial agency or law enforcement or national security*
  - *impose unreasonably high costs on the agency that cannot be recovered*
3. *Certain information produced by the legislature, the judiciary and the executive will be freely available. This includes but is not restricted to:*
- *legislation, including bills, explanatory memoranda and subordinate legislation*
  - *parliamentary debates and the record of parliamentary committee deliberations and reports*
  - *government gazettes*
  - *parliamentary papers*
  - *commissions of inquiry reports*
  - *budget papers*
  - *government agency annual reports*
  - *papers produced by government agencies inviting public comment*

#### **Public service culture of open access**

6. ALIA believes that a statement of fundamental information access principles should be included in legislation to ensure a culture of open access in the management of government intellectual property, in the same way that the Privacy Principles in the Commonwealth Privacy Act ensure that government departmental policies and practices comply with fundamental objectives of the legislation.

7. This would not impede the ability of government agencies to develop commercial information products. The different categories of:

- information freely available;
- information available at cost recovery (the Queensland Government principles also provide public guidelines for cost recovery processes); and
- information which may be further developed or charged for at commercial rates such as statistical guides, patents, scientific and technical standards, research project publications;

are, in the Queensland government approach, clearly understood by both information users and agency employees.

8. ALIA offers three examples to illustrate the importance of outlining in crown copyright provisions a statement of public information access principles, so that Australians know their access rights to such information and Government agencies are guided by those principles when they make decisions on information access and use and information product development.

#### *Example 1*

9. During the Federal Government's public information program to explain the Goods and Services Tax to Australians, the Federal Treasurer budgeted for a special

allocation to the Australian Tax Office for the purpose of a public education program and for the distribution of information, free of charge, in print and digital form.

10. On a number of occasions librarians sought permission to photocopy the print booklets in multiple copies because, for reasons of time or information technology failure, they needed the information produced in that way. The ALIA copyright advisor was unable to get clearance for those uses from ATO officers. She had to apply for copyright permission to what was then a central IP agency, Ausinfo. The Ausinfo officers wouldn't give telephone permissions. ALIA (and presumably other members of the community) had to go through a formal application process which took two weeks, despite quoting the Treasurer's support for free public access to this information and the ATO publications and seminars program.

11. This was a case of decision-making following strict copyright regulation and procedures which were inefficient and undermined the Government's stated policy of a freely available policy education program. The Departmental officers concerned would have been supported by a clear statement of public access principles in the crown copyright provisions.

### *Example 2*

12. The National Office of the Information Economy's e-government strategy (cited at para 84), lists a number of key objectives in the use of government information, none of which identify a clear public interest principle, although an attempt has been made to include it in objective 6, to "enhance citizen engagement".

13. Australian federal and state governments offer Australians more government information especially in digital form than we have ever had, and the former NOIE played a significant role in that development.

14. Nonetheless these objectives are not clearly based on fundamental public interest and are, have been and could equally well be used to justify cost-recovery or commercial payment for all government publications.

### *Example 3*

15. The Australian National Audit Office is currently briefing Commonwealth government and parliamentary departments on its report: *Intellectual property policies and practices in Commonwealth agencies*. (Audit report No.25 2003-4) This is a detailed management plan, largely adapted from commercial models or drawing on government models like that of Western Australia which emphasise the responsibility of government agencies to identify opportunities for commercial exploitation of government intellectual property.

16. There are some vague references to public benefit (p.17) and the potential conflict between public interest and commercialisation (p.40) and also the fact, that while ANAO recommends a whole-of-government approach, some agencies will have IP priorities which are different from others and, indeed, may not have the production of intellectual property as their core business.

17. However, in such a detailed management plan, there are no principles of public access to publicly-funded information at little or no cost, against which to balance a

thrust towards encouraging commercialisation of Government intellectual property in an audit/financial accountability process.

18. In practice the ANAO report is freely available, as it should be. However, it carries the standard formal copyright statement that attaches to any product of a commercial publisher.

19. A public service culture of public access to information would, using the excellent management techniques suggested in the ANAO report, identify information for public domain distribution, information for cost-recovery and information available for commercial development and attach copyright information notices accordingly.

20. This would promote clarity and certainty for the administration of government intellectual property and access to it, with corresponding cost and efficiency benefits. [issue 18]

## **Recommendation 2**

**The legal deposit provisions in the Commonwealth Copyright Act should be strengthened to require full deposit of government publications in any format, including online format in the appropriate library, for example, Commonwealth publications in the National Library of Australia, and state government publications in state libraries through amendment of the relevant State Acts.**

21. Changes in government agencies and administrative arrangements, outsourcing and privatisation of departmental functions and the Commonwealth Government's decision to close Australian government bookshops, because of increasing online information access, make it increasingly important to ensure the comprehensive collection of the publications of Australian legislatures, courts and executive governments, in all formats, including digital formats, so that Australians have ongoing access to the history of public policy and the context in which policy has developed.

22. The National and state libraries are already recognised by government and community as possessing the expertise and commitment to acquire and make publicly available government publications, irrespective of changes in agency functions or government agencies tasked with intellectual property permissions.

23. The present situation regarding legal deposit is that it doesn't cover all government publications, either in format or in jurisdiction.

24. To redress this, the National Library of Australia and the state libraries have made mutual arrangements for public access to Commonwealth and state government publications.

25. The National Library of Australia has also developed the Pandora project, for capturing digital information produced by governments and by some Australian commercial publishers. The value of this project is internationally recognised.

26. Ensuring legal deposit in a co-operative federal-state scheme would provide certainty for Australians and for our great public library institutions that the Pandora project would continue and expand as part of a comprehensive federal-state publications preservation and access scheme. It is the most cost-effective method of ensuring government publication access, unless parliaments are willing to make their parliamentary collections publicly available. [issue 18]

27. ALIA also supports the submissions provided by the Australian Libraries Copyright Committee, the Council of Australian University Librarians, and the Association of Parliamentary Libraries of Australasia (APLA) which support the widest possible access to government information for the benefit of the community and to enable learning and research.

The Association consents to this submission being made available in digital form. For further information regarding this submission, please contact me on 0262158215 or e-mail [jennefer.nicholson@alia.org.au](mailto:jennefer.nicholson@alia.org.au)

Yours sincerely

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26 March, 2004