



The Director
Copyright Law Review Committee Secretariat
Attorney-General's Department
Robert Garran Offices
National Circuit
Barton ACT 2600

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Dear Director

CLRC Issues Paper : Crown Copyright

The Council of Australian University Librarians (CAUL) welcomes the opportunity to provide a submission in regard to the Copyright Law Review Committee's current reference on Crown copyright in Australia.

As CAUL is a representative body of both university libraries and higher education it supports the widest possible access to government information for the benefit of the community and to enable learning and research.

CAUL also supports the submission from the Australian Vice Chancellors Committee (AVCC) and those provided by the Australian Library and Information Association (ALIA) and the Australian Libraries Copyright Committee (ALCC).

CAUL agrees to the submission being made available in digital form.

Questions regarding this submission may be directed to

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Issue 1: The Committee seeks your views as to whether government ownership of copyright material should extend to all works and subject-matter. For example, should it only apply to literary works? Should artistic works such as architectural plans be excluded?

Subject to its comments on the nature of the copyright regime, CAUL considers that government ownership of copyright material should extend to all works and subject-matter.

Issue 2: The Committee seeks your views as to whether the government should enjoy all the exclusive rights of copyright.

Subject to its comments on the nature of the copyright regime, especially those made in relation to issue 4, CAUL considers that the government should enjoy all the exclusive rights of copyright.

Issue 3: The Committee seeks your views as to whether moral rights should apply in the context of government copyright.

CAUL considers that the moral rights of attribution and integrity should apply to government materials but that they should apply to the Crown as copyright owner rather than the individual author or creator. This view is informed by the consideration that the individual authors or creators have produced materials in the pursuit of their duties as officers or servants of the Crown rather than in their personal capacities.

Issue 4 (key issue): The Committee seeks your views as to whether the legislative scheme establishing government ownership of copyright material is appropriate. In particular, should the government acquire ownership of copyright material by virtue of:

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

CAUL considers that the definition of government ownership of copyright should be changed from the phrase used in ss 176-178, “by, or under the direction or control of, the Commonwealth or a State”, to an expression similar in intent to that adopted by the UK and New Zealand, such as ‘made by an officer or servant of the Crown in the course of his duties’. This definition locates the act of creation within the pursuit of duties, avoiding the current ambiguity under which materials produced under contract, such as research reports, can be deemed to be Crown copyright. It would not preclude the government seeking ownership of copyright when negotiating contracts for the creation of materials.

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

- (a) the executive;*
- (b) the judiciary; and*
- (c) the legislative.*

Subject to its comments on the nature of the copyright regime, CAUL considers that government copyright should extend to the materials produced by all three arms of government.

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.

CAUL considers that the entities which should be included should be those which are generally considered to be integral to public administration such as government departments and entities subject to ministerial direction. Other statutory authorities, including trading corporations and universities, should not be included except in regard to documents such as annual reports which they may be statutorily required to submit to the minister or parliament. Activities subject to privatisation or outsourcing, as raised in paragraph 26, should be treated similarly by requiring that any such arrangements include provision that records and documents required to fulfill statutory accountabilities must be subject to 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?

CAUL takes the view that all material produced in the pursuit of public administration should be subject to Crown copyright. Copyright in material produced in relation to other government functions should vest in the individual author or corporate entity as appropriate.

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?

For reasons of clarity, it would be advisable for the term of copyright to be consistent. CAUL supports the retention of death plus 50 years as the term of copyright.

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?

CAUL takes the view that the broadest possible access to government information offers the greatest community benefit. It therefore considers a blanket licence scheme to be preferable. However, if that approach should not be supported then CAUL considers that all exceptions should apply consistently to all materials.

Issue 10: The Committee seeks your views as to whether the licence in s 182A to reproduce legislative materials and the decisions of courts and tribunals should be expanded to allow multiple copies? Alternatively, is a blanket licence scheme an appropriate model?

CAUL is of the opinion that a non-exclusive blanket licence scheme to provide for all uses and all copying of all Crown copyright materials, subject only to moral rights, should be adopted.

Issue 11: The Committee seeks your views as to the appropriate nature and scope of prerogative rights. Should the prerogative rights in the nature of copyright be clarified or replaced by legislation?

CAUL believes that the prerogative rights have become inadequate because of the lack of clarity in their application and consequently that they should be replaced by legislation.

Issue 12: The Committee seeks your views as to any issues arising under the Commonwealth Constitution and how these may affect the possible options for reform.

CAUL considers that the Commonwealth should endeavor to achieve consensus with the States on the application of a uniform regime in regard to Crown copyright. If that should prove unachievable, then the Commonwealth should exercise its Constitutional power to drive uniformity.

Issue 13: The Committee seeks your views as to the practical operation of the law relating to the administration or licensing of copyright material. In particular, should government practice be encouraged to achieve uniformity throughout the different Australian jurisdictions?

See above.

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.

In general, freedom of information and privacy laws relate especially to unpublished government information and therefore fall outside the domain of copyright. However, CAUL believes that there is a public interest in ensuring that freedom of information and privacy laws apply consistently to protect the citizen.

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

- (a) does copyright continue to be relevant?*
- (b) how does one safeguard against the distortion or inappropriate use of government material made available through new technologies?*
- (c) is facilitating government information online inconsistent with the policy objectives behind government ownership of copyright?*

Consistent with the intent of the digital agenda amendments to the Copyright Act, CAUL believes that all copyright provisions should be independent of medium. Crown copyright, in accordance with the views expressed in this submission, should thus apply in all formats. Enforcement of moral rights will assist government to safeguard against the distortion or inappropriate use of government material made available through new technologies. There is no conflict between facilitating government information online and the policy objectives behind government ownership of copyright except perhaps the aim of generating revenue which CAUL believes to be an inappropriate aim in regard to materials produced in relation to public administration.

Issue 16: The Committee seeks your views as to whether, as a matter of public policy, the government should own copyright in materials produced by the:

- (a) executive arm of government?*
- (b) legislative arm of government?*
- (c) judicial arm of government?*

CAUL believes that there is a public interest in ensuring the integrity and attribution of materials produced by all three arms of government and consequently supports Crown copyright in all such materials, subject to a regime of the nature outlined in this submission.

Issue 17: The Committee notes that these models, and other overseas models, do not treat government copyright material in a uniform manner and seeks your views as to whether any of them provide useful models for Australia.

As indicated above, CAUL believes that the approaches to the terms of application of copyright and the definition of the materials subject to Crown copyright offer useful guidance for Australia. While recommending the continuation of Crown copyright, CAUL feels that the public policy aims of placing all US government materials in the public domain are highly desirable and should be emulated in a revised Australian regime.

Issue 18 (key issue): The Committee seeks your view as to options for reform, legislative or otherwise, and the costs and benefits of those options.

CAUL favours the option described as “retaining crown copyright, and/or crown prerogative, but waiving or licensing it in all circumstances” because it believes that this option will ensure both the integrity of government information and the widest possible access to it. CAUL considers these to be the most important public policy objectives in regard to government information.

Issue 19: The Committee seeks your views as to any transitional issues arising out of the options for reform.

CAUL has no views on transitional issues.

Issue 20: The Committee seeks your views as to any other matters arising out of this Issues Paper.

CAUL believes that, as far as may be possible, any revised regime should be retrospective and should therefore apply to all Australian government materials, both Commonwealth and State, current, past and future.