

Copyright Law Branch
Attorney-General's Department
Robert Garran Offices
National Circuit
BARTON ACT 2600

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The Hon Philip Ruddock
Attorney-General
Parliament House
CANBERRA ACT 2600

**SUBMISSION TO THE COPYRIGHT LAW REFORM COMMITTEE CONCERNING
SECTION 183 OF THE COPYRIGHT ACT 1968**

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1.0 SUBMISSION

The submission seeks consideration of those amendments to the Act necessary to clarify the use of **Section 183-'Use of copyright material for the services of the Crown'** regarding public access to electronically scanned images of public records held in State Government archives.
More specifically

- a. ensuring efficient computer based access to electronically scanned images of works held in public records for fair dealing purposes including research, study and the provision of professional advice.
- b. ensuring that authorities administering public records do not use the provisions of Section 183 for the purpose of dealing with electronically scanned images of works held as public records for
 - (i) the establishment of business activities with commercial entities centred on access to, and the supply of, electronically scanned images of works to the public
 - (ii) revenue raising by offering for sale the electronically scanned images of works copyrighted to others
 - (iii) offering to exchange electronically scanned images of works held in public records in return for a tax or levy

2.0 BACKGROUND

The background behind this submission is the current method of access to documents held in public land registries. The land ownership system operating in Queensland and New South Wales can generally be described as a State based centralised land register. Many refer to the system as the

Torrens System, which derives its name from the 19th century colonial politician who was instrumental in introducing the system into Australia. Basically these States require all land dealings and associated documents to be lodged with the State register for processing. All documents receive a dealing or catalogue number and after the processing of deposited works, the details for each land parcel on the register are updated with the new information. What eventuates is a central archive containing all legal documents, including surveyors' plans and solicitor's works, that evidence land actions. This archive is then used by following surveyors and solicitors as the principle source off research for following land dealings. Other public authorities, professions and the public themselves are also able to research the register when necessary.

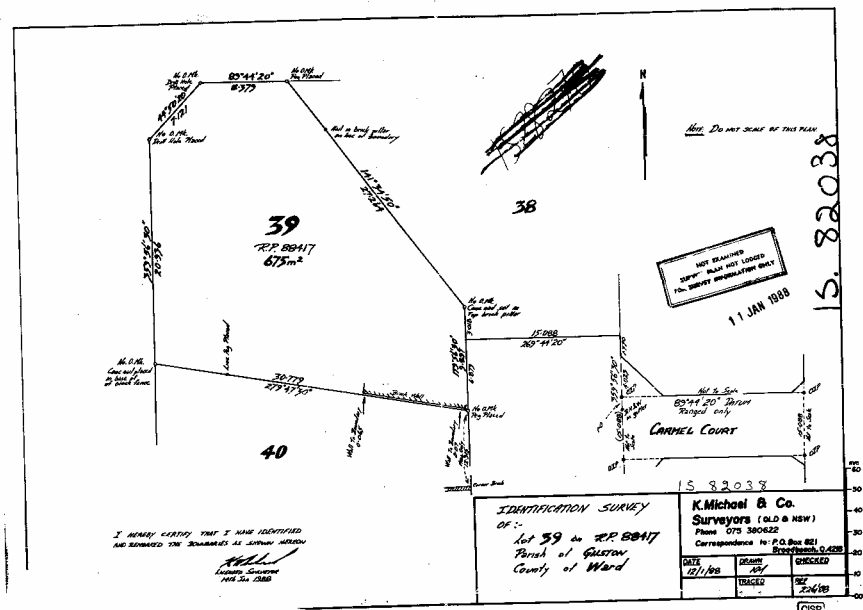
The best analogy this writer can think of is a large reference library holding the works of numerous surveyors and solicitors. These plans, maps and documents have generally been prepared with considerable expertise and at some expense. Of course, as with all such works there are copyrights associated them.

With the introduction of the digital age the opportunity to create a large electronic reference library presented itself. Storage of the scanned images of deposited works not only provides a safer improved storage environment but also provides the opportunity for easy assess by professionals undertaking research from anywhere in the State. The fact that a unique dealing number identifies all lodged documents also lends itself to the electronic world by allowing instantaneous file searching. Of course the copyrights on all these works remains, vested in those who prepared the original hardcopy work, but as long as the principal purpose for access to the scanned image was research and study who would really care. Everybody who lodges documents into a public record understands that one of the main purposes of maintaining public records is to assist those who follow.

Over the last 5 to 10 years someone in government saw the opportunity to use this electronic resource for revenue raising. Firstly the term 'information broker' was introduced and access was denied unless fees of around \$14.00 and above (Queensland) were paid to view a single electronic image file of a scanned deposited A4/A3 document. Commercial retailers have also been invited to assist in the distribution and trafficking of the images through commercial website where copies of works are made available after the payment of a fee.

The absurd situation has now arisen where a party, including this writer, who deposits works into this archive can visit a commercial website and purchase a direct electronic image of his own work at a fee that is far in excess of the cost of viewing, via a computer terminal, a simple image file created by scanning the original hardcopy.

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Copyright protects this plan. Unauthorised reproduction or amendment is not permitted. Contact the surveyor or Consulting Surveyors Queensland for information.

Reproduction of work delivered as tiff image file from commercial website in exchange for payment of \$12.76. Delivered May 2003. Image taken from a work copyrighted to K. Michael and held in public archive.

It is at this point that it must be emphasised that the majority of these plans and documents have not been prepared by the State. As mentioned previously it is accepted that prior to the lodgement of the works into the registry a copyright is established in the work with that copyright being attributed to the party who, through professional expertise and endeavours, created the work.

It is acknowledged that State regulations associated with the land title legislation of the respective States may contain provisions for the application of a search fee for access to information contained in the central register however where access is confined to the simple viewing or supply of a image file created by scanning a hardcopy plan/document (to which a copyright can be attributed to a third party) then the Copyright Act (Commonwealth) 1968 should prevail and commercial dealing should not occur. Any argument concerning a need to recover administration costs is negated by the fact that the State department administering the public record has already received processing fees at the time of the deposit of the works into the system.

To correct this issue those sections of the Copyright Act which cover Government copying should be strengthened to ensure they are backgrounded against objectives that ensure

- a. the continuing respect and acknowledgement of the copyright attributed to the party who, through professional expertise and endeavours, created any work deposited into public records
- b. the prevention of Government departments commercially exploiting access to, and supply of, electronic image files created by scanning works held in public records

- c. effective and efficient methods of public computer access to electronic image files of public records be established and maintained.

3.0 CONCLUSION

This submission seeks clarification or amendment of Section 183 of the Act to ensure that those provisions of this section that provide for copyright exemptions to the State for effective administration are not abused by State departments and agencies for revenue raising.

3.1 Suggestions to achieve this outcome include

- (i) The clarification of the term 'in the services of the State', used in section 183(1) of the Copyright Act, to specifically exclude the State from commercially exploiting the act of access to, or supply of, image files created by scanning works deposited into public records.

- (ii) The inclusion of a section into the Copyright Act 1968 establishing that where the services of the State require a State entity to provide access to, or supply, images files created by scanning copyrighted works held in public records then any charge associated with the provision of those images to the public must not be more than the cost to the entity of

- (a) making the image file available to the enquirer for view or print; and/or
- (b) if the enquirer requires image files of multiple works already held as image files then the cost of
 - (i) the transfer of those images files onto CD or DVD and the mailing of that CD or DVD or
 - (ii) the electronic transfer of the digital images by internet.

Definitions:- 'image file'- an electronic image created by the scanning of a hardcopy work