

5th September 2004

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

Prepared by  
Ken MICHAEL B.Surv(UQ),GDURP(UNE)  
Town Planner and Licensed Surveyor  
PO Box 302, Broadbeach 4218  
Email k.michael@bigpond.com

## **COMMENTS ON COPYRIGHT LAW REVIEW COMMITTEE (CLRC) SUBMISSIONS 65 AND 71 BY THE QUEENSLAND GOVERNMENT**

**SUBMISSION 65 titled SUBMISSION BY THE QUEENSLAND DEPARTMENT OF NATURAL RESOURCES, MINES AND ENERGY IN RESPONSE TO THE COPYRIGHT LAW REVIEW COMMITTEE'S "CROWN COPYRIGHT" ISSUES PAPER (2004)**

**SUBMISSION 71 titled 'RESPONSE BY THE QUEENSLAND GOVERNMENT TO THE DISCUSSION PAPER RELEASED BY CLRC ON CROWN COPYRIGHT'  
23 August 2004**

### **1.0 INTRODUCTION**

This submission has been prepared to provide an alternate point of view to aspects of CLRC SUBMISSION 71 and 65 by the Queensland Government (and a Department of that Government) and provide further support for CLRC SUBMISSION 73 by this author.

### **2.0 SUBMISSION 65**

**2.1 'Part 2 - Background to the current review - competition policy considerations' of this submission details**

*(b) A government, pursuant to legislation or regulations made under a constitutional power, requires a non-government entity to produce and lodge information and/or materials that are required for the performance of a governmental function: In this situation, the non-governmental entity is typically required to produce and lodge documents expressing information that is essential to maintaining the accuracy and universality of a statute-based governmental function. The documents expressing information in the form of text, plans, maps, graphs, diagrams or photographs may, provided they meet the originality threshold, attract copyright as literary or artistic works under Part III of the Copyright Act 1968 (or, less likely, as cinematograph films under Part IV of the Act). Documents of this kind, produced by non-government entities in accordance with detailed requirements prescribed by legislation, regulation and administrative guidelines are fundamental to*

*the operation of the land titles system and the regimes established for the granting of rights to exploit State-owned minerals and other natural resources. For example, the production and lodgement of reports on mining and petroleum exploration tenures is regulated by the Mineral Resources Act 1989 and the Petroleum Act 1923 while the production and lodgement of plans of survey is regulated by the Land Title Act 1994, the Land Act 1994, the Surveyors Act 1977, the Surveyors Regulation 1992 and the Survey and Mapping Infrastructure Act 2003 (effective from May 2004). The principal distinction between material in this category and the material described in paragraph (a) is that the latter is produced pursuant to the requirements of the commissioning contract negotiated between the government and the independent contractor. For materials within the category described in this paragraph (b), the details of the nature of the material required and the precise form in which it is to be lodged are prescribed in the legislation, regulations or administrative guidelines and are not open to negotiation between the government and the party responsible for producing the copyright material.*

In response to the proposal at the end of the above paragraph that,

*the details of the nature of the material required and the precise form in which it is to be lodged are prescribed in the legislation, regulations or administrative guidelines and are not open to negotiation between the government and the party responsible for producing the copyright material.*

It can be argued that the form of presentation is inconsequential to the professional endeavour, physical effort, intellectual effort and financial effort in producing the document, report or survey plan to meet the preset requirements.

Copyright is a right established to recognise an individual's endeavours and efforts. Simply creating a standard form of presentation does not transfer into an opportunity to gain a copyright over every work created to that standard presentation.

Submission 65 then goes on to propose that the State Government should enjoy the entire range of exclusive rights in relation to works produced under circumstances described under paragraph (b). However prior to considering any acceptance of such a proposal is must be asked

- What has the State done to deserve the entire range of exclusive rights, and
- Is there an intension of the State to use these rights to establish State monopolises and/or simply raise revenue.

In the commercial world, most people would be aware it is not uncommon for a publisher to request that any submission from an author be in a certain font, spacing, indexed in a certain way, be written in a specified language and so on. It would be considered an absurdity for a publisher to put forward a claim for copyright based on the fact that a writer submitted his manuscript in a way prescribed in material released by the publisher.

Similar comparisons can be made when architects, engineers or designers produce plans for submission to authorities for approval. All these plans are prepared to meet Building Codes, Australian Standards, Legislation and Regulation. Again it would be considered a nonsense to propose that any copyrights associated with these works should transfer to the authority, or authorities, that produced the standard requirements for presentation.

In summary setting the parameters for a submission does not automatically create or transfer any copyright that could be attributed to the submitter.

## SUBMISSION 71

Submission 71 also submitted by the Qld Government on 23/8/2004 states on Page 3 how in 1998 the Queensland Government released

*'Information Standard No 33: Information Access and Pricing' which advocates that government information must be made accessible, directly or indirectly, to citizens of Queensland and those doing business in Queensland at no more than the cost of provision and in a manner which provides reasonable access to the community unless statutory requirements vary the access and pricing arrangements."*

Although in principle this policy sounds gracious and admirable the sting in the tail is the term *'unless statutory requirements vary the access and pricing arrangements'*. This exemption clearly sets up a situation where with the simple passing of legislation or regulations substantial revenue can be achieved by charging for public access to information held by the Government. In the case of survey plans held within State land title archives, the Qld Government has used the Land Titles Regulation to establish pricing\* for access to the survey plans that is far in excess of *'cost of provision'*.

\* Current prices being (Source *Land Title Regulation 1994-Schedule 2*)

3. Optical disk print-out of—
  - (a) a certificate of title or plan of survey generated—
    - (i) within an office of the land registry . . . . . 11.00
    - (ii) by external access . . . . . 8.80

Journalist Brendan O'Malley revealed further background of the whole issue in 'Mayors angry at missing money', a 19/5/03 front-page article in the State's major newspaper *The Courier Mail* This article began with

*The Beattie Government has been accused of plundering millions of dollars in property search fees which were intended to protect southeast Queensland bushland.*

*Angry southeast Queensland mayors estimate at least \$50 million has been raised since the Goss government increased land title fees for searches and survey plans in its 1994-1995 budget, but only \$20 million has been spent.*

*Then treasurer Keith De Lacy said the 1994-95 move to increase land title fees would raise \$35 million over five years to be spent on protecting open space in south east Queensland.*

*The Southeast Queensland Regional Organisation of Councils (SEQROC) claimed yesterday less than \$20 million has been spent.*

The article then goes on to reveal

*The Department of Natural Resources forecast it would collect about \$20 million in search fees this financial year, all of which would be spent running the Titles Registration Office.*

### 3.0 CONCLUSION

3.1 The State of Queensland present behaviour regarding fee-based access to copyrighted works in land registration archives and the current provisions of the Copyright Act is, in the opinion of this writer, questionable. However, setting aside the provisions of the current Act

for the moment, this example of the treatment of survey plans and documents held within the land registration archives provides a perfect illustration of what can be expected should any amendments to Copyright Act occur that would allow Government to ignore original copyrights on deposited material and charge whatever they wish for the provision of copies of works copyrighted to others.

3.2 Going further and summarising, any amendment to the Copyright Act that would either remove the personal copyright of reports, plans and similar works held in State archives or, transfer those rights to the State, would only encourage the State to use Copyright laws

- To restrict the circulation of information and material held in archives, and/or
- Establish State monopolies, and/or
- Encourage the State to use public access to archival material as a source of revenue raising and taxation.

In a democratic, free-market society neither of the above scenarios is desirable.

3.3 Accordingly, as detailed in the conclusion section of submission 73 (reproduced below) the Act should be enforced to ensure that access to works copyrighted to others and held in State archives must only occur at 'cost of provision'. Cost of provision also has a number of other public benefits including

- (a) Introducing a level playing field for both the State and private enterprise
- (b) Avoids potential disputes relating the distribution of profits
- (c) Avoids the need for royalties as everyone is aware that no profit is being made and public benefit is the objective.

Reproduced from CLRC Submission 73

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.

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

## Bibliography

Michael K. CLRC Submission 73 , August 2004

Qld Government, CLRC Submission 71, August 2004

Qld Department of Natural Resources, Mines & Energy, CLRC Submission 65, 2004

O.Malley, B. 2003 'Mayors angry at missing money' The Courier Mail 19<sup>th</sup> May 2003

Queensland Land Title Regulation 1994-Schedule 2