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## **COPYRIGHT LAW REVIEW COMMITTEE - CROWN COPYRIGHT SUBMISSION**

The Western Australian Department of Industry and Resources welcomes the opportunity to comment on the Copyright Law Review Committee's issues paper on Crown Copyright.

The Department is concerned that the Committee is raising issues that appear to suggest that the extent of copyright protection afforded to Government owned copyright be reduced. The Department is also concerned about the approach the Issues Paper takes to the issue of access to government information. The Department's interest in this matter comes from the role the Department plays in providing assistance and support to Western Australian Government agencies in implementing the Western Australian Government Intellectual Property Policy, which is described below.

### **The nature and significance of copyright owned by Australian Governments**

The focus of the Issues Paper appears to be on the public interest in the broad dissemination of official government publications. The paper does not seem to acknowledge the breadth and significance of copyright protected materials in modern Australian Governments and the potential benefits that may be able to be generated for Australians from the commercialisation of significant copyright items. On an annual basis Governments across Australia expend enormous amounts of public funding, possibly up to \$1 billion, which result in the generation of significant copyright assets including computer software and education and training materials, which may be able to be utilised to generate economic and other benefits for the nation.

Governments across Australia are beginning to appreciate the importance of managing and, where appropriate, commercialising intellectual property assets generated with public funds. The Western Australian Government Intellectual Property Policy approach is to identify that IP assets have the potential to generate economic, social or environmental benefits to Western Australians through the use and commercialisation of those assets. A similar approach is being taken by four other Australian states. Queensland and South Australia released policies in 2003 and 1999 respectively, and New South Wales and Victoria are both expected to release policies during the course of 2004.

The Commonwealth Department of Communications Information Technology and the Arts released the IT IP Guidelines in 2000 which took a similar approach for information technology related intellectual property, which is primarily in the form of copyright protected software. It should also be noted that the Australian National Audit Office in its report no 25 of 2003/04 entitled "Intellectual Property Policies and Practices in Commonwealth Agencies" is also

recommending a similar approach to be adopted across the whole of the Commonwealth Government.

In the Issues Paper the Committee questions the rationale behind the existence of copyright in materials produced by or for Government. The Committee's argument centres around a suggestion that the rationale behind copyright protection is to encourage creativity and that this is not relevant to Government as Government produces copyright material in the course of public administration and requires no encouragement to do so. It is suggested that this argument is flawed, as it would follow that protection should be removed from material produced by individuals and organisations in the private sector where this encouragement is not needed.

It is suggested that the rationale behind copyright is to reward creativity as much as to encourage creativity and this will result in a reward even when encouragement is not necessarily required. Taking this approach the justification for government ownership of copyright would go as follows: governments exist for the benefit of the people and if governments generate copyright material the rights afforded as a reward for creativity can be utilised or commercialised for the benefit of the people.

It is also suggested that to remove copyright protection from Government generated materials or to provide a lesser level of copyright protection to IP copyright materials produced by or under the control of Government or to remove some of the exclusive rights from Government would destroy or seriously damage a potentially valuable driver of economic development in Australia.

It is strongly recommended that the Committee reconsider the issues addressed in its paper from the now well-accepted position that intellectual property rights, including copyright, are important assets that can be exploited for economic and other benefits.

### **Copyright and Information**

The issues paper seems to confuse the issue of ownership of copyright with the issue of access to information and suggests that Government owning copyright somehow prevents or restricts access to information, which is disputed. Copyright does not provide protection over information per se and only provides protection to the form in which the information is represented. If the objective is to improve access to information, removing Government's ownership of copyright will not achieve this objective and approaches other than changes to the Copyright Act should be investigated.

If you have any inquiries in relation to this submission please contact Mr Peter van Bruchem, Principal Policy Officer (Intellectual Property) on (08) 9222-5514 or [peter.vanbruchem@doir.wa.gov.au](mailto:peter.vanbruchem@doir.wa.gov.au)

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