

First a minor quibble - can the Attorney General please stop using the term "pirate" or "piracy" in conjunction with copyright infringement? While such emotive terms are run-of-the-mill for the common press, I would hope to expect more from our most esteemed Phillip Ruddock. Piracy is the taking of a ship or its contents by force - using the term piracy when referring to copyright infringement is to cheapen the term, and apply undue emotional burden to the crime of infringement.

Secondly, I am a criminal.

I currently have an Apple PowerBook computer, along with an iPod. Both of these devices have MP3 (and AAC) versions of my entire library of 200-odd albums. The act of converting these albums to MP3 format on my computer was technically a violation of Australian copyright law.

Even worse, I have a DVD/VCR at home, which I use to record programs that are on at inconvenient times (eg: any science fiction series such as Stargate-SG1, Farscape or Star Trek: Voyager) so that I can watch them when it suits me.

We are quickly approaching a time when it is the creation - not the distribution - of creative works will be by far the most expensive component of any creative endeavour. Even today, it is possible to transfer an entire album in high quality format (the digital recording that would go onto an audio CD, for example) in less time than it takes to listen to the album. We can do the same with movies, books, radio broadcasts - any recordable work.

To entrench specific exceptions into copyright law at this time would be to waste time on laws that are obsoleted before the ink they are written in has dried.

This time of technological change will - by necessity - bring about global changes in the recording, distribution and sale of creative works. Companies are exerting great efforts in making their physical media resistant to copying efforts, at the same time that physical media are becoming obsolete. They are wasting time attempting to find a technological solution to a social problem! Even worse, companies are using propaganda in the place of researched facts when attempting to persuade the lawmakers to take their side - The Economist has questioned recent studies by the Business Software Alliance of the USA, where the BSA makes assumptions that every computer ever sold must still be in use, and must be using Microsoft software, in order to justify their claims of "billions of dollars" of damages to the industry in "lost sales" - sales which were never made, and thus somehow deprived Microsoft of their rightful income. Microsoft's dominance in the market place is - in my opinion - due just as much

to piracy spreading their software quickly, as it is due to Microsoft's marketing or product capability.

Any changes to copyright law must take into account the fact that the future is an unknown territory.

One currently useless exception to the law is the right to make a "backup copy" of software in case the original media is destroyed - this exception doesn't prohibit the manufacturer of the software shipping intentionally faulty media as part of a "copy protection" mechanism. In such instances, backing up the readable files from the media is useless, since the software is expecting certain known flaws to be present on that media.

Any legislation that provides exceptions to copyright law must also forbid copyright owners from attempting to deny the Australian citizen the ability to exercise those exceptions. Unfortunately, this will impact on the income of certain companies - rather than replacing damaged media by going to the shops and buying the production again, I will simply recover the data from my backup to create a new "play" disk and continue on using the existing licence.

The United States of America is now under the control of corporations, thanks to laws such as the DMCA. That law forbids the use of circumvention measures to allow fair use rights to be exercised. Under that law, I can't buy music from the Apple iTunes Music Store and play it on a "Rio" MP3 player - the music from the iTMS is protected by a Digital Restrictions Management system that the "Rio" cannot use. Eventually, the restrictions on use that these corporations are imposing through their lobbying of the governments of the world, will cause unparalleled control of Australian culture, as these corporations start dictating who can watch certain movies, who can subscribe to certain news stories, who is allowed to listen to certain music - indeed, the corporations will control what our culture actually is.

The Copyright Act **must** be amended to include specific exception for time-shifting of broadcast works, and the space-shifting of licenced works.

Time-shifting will become more important as broadcasters become more and more antagonistic to fringe audiences - a specific example is science fiction/fantasy fans who have had to put up with their favourite shows being shown at 11pm.

Space-shifting must be allowed within the domain specified by the original licence, or at least within the personal collection of an individual, if it was that individual who bought the original licence. There must be no provision allowing publishers to limit what media the work can be shifted to - yesterday I created an audio CD

full of songs of my own choosing, for my drive from Canberra to Binalong (where by partner lives), today I'm experimenting with different ways of encoding the music I've bought (different file formats, different encoding speeds, etc). I don't want the way I interact with my music collection to be dictated to me by the supplier. ActewAGL doesn't tell me that I may only drink water from a blue glass container that holds exactly 285mL of fluid, why should the media companies dictate how I listen to my music or watch my movies?

The Government has to be aware that DRM schemes ("Digital Restrictions Management") are a form of censorship - the corporations are learning how to control who has access to the works in their collections. Today it's limited to being played on a specific device, a specific number of times. What's to stop them putting restrictions on demographics or political allegiance? The WIPO rules clearly state that the Government is not allowed to restrict the access control measures! Eventually, it is the Government itself that will be suffering when essential documents are encapsulated in pay-per-view DRM media.

The Attorney General's staff would be well advised to read the cautionary tale, "The Right To Read", by Richard Stallman - available at <http://www.gnu.org/philosophy/right-to-read.html>

At the very least, the exceptions regarding backup copies must allow an individual to use whatever means are available to produce a backup media that allows the licenced software to work in exactly the same way as the media that were originally supplied. This should not be limited to computer software, but any prerecorded media (eg: CD and DVD today, high density laser disc tomorrow, holographic crystals next year, who knows what the future holds?)

I have posters on my wall which I bought from cheap poster sales. There is no contact information on the poster to indicate who I would need to request permission from in order to work with those images. So I have broken the law again - I took photos of those posters with my digital camera and flatbed scanner, so that I can have the images on my computer's "desktop". Have I damaged the financial wellbeing of some unknown company? No, I haven't - they provided no means for me to contact them and ask for digital versions of their software. To what lengths must I go to attempt to contact an unknown company for permission to use their intellectual property? Or should I just close my eyes and pretend that these beautiful landscapes don't exist?

Once a (licenced) work is in the collection of an individual, what that individual does with those works for their own benefit, should not be impeded by Copyright. if I choose to print wallpaper based on a frame from a movie that I like, why should I need to ask permission from the originator of that work for permission to plaster that image all over the walls of my house? While this is especially the case

where the work is not available in the form that I wish to use it, why should I be restricted at all?

This brings us onto the "private copying" issue.

The Copyright Act should **not** be amended to include a statutory licence for private copying. The main use I have for blank media is to make backups of my computer so that in the case of hard drive failure, theft or damage of the hardware, I can recover the data and continue where I left off. For a business it's a case of business continuity - for a private individual is about maintaining the personal history that is present in my photo album, email collection and private document collection. Why should I be paying the \$2-3 dollars per disc (currently valued at about \$6 each) that would be needed in order to make such a foolish scheme self-funding?

Rather, the copyright owners should make means available to purchase a licence to copy certain works. For example, if my friend has an album on CD that I'd like a copy of, and that album isn't available through the iTunes Music Store or any other online source, I should be able to go to the publisher's web site (eg: Mushroom Records) and buy a licence to that work (possession of that licence thus allows me to make a backup copy of the original for my own use). It would be then up to the publisher to distribute the royalties as appropriate.

To address the issues of section 15 directly:

1) Further restrictions on "fair use" are inappropriately being suggested by corporations that cannot see how to properly take advantage of the changes in their environment. The digital age is to copyright as global warming is to coastal resorts - the changes are coming, and it's simply a matter of adapting to the changing environment to survive.

2 & 3) The changes to the Copyright Act must reflect the fact that the Australian Government is acting in the interests of the people of Australia, and not the corporations of the USA. Making the fair-use exceptions more open as recommended by the CLRC seems appropriate to me.

4) Unless the Australian Government is proposing to police the lives of individuals, the fair-use exceptions to the Copyright Act must allow for any private use of any work, within the private collection and utilisation of the original licencee.

I do not even support the exclusive rights of live performers to record their performances. Anywhere that I can take my eyes and ears, I should be allowed to take a recording device (with obvious exceptions when it comes to military security). Movie producers complain of people shipping "screenies" of their films - why don't the movie producers get in on the game? Rather than selling only one

version of the movie on DVD (the \$30 version with special extras), why not sell a cheaper version that has just the movie, with no commentary, no subtitles, etc - for \$10?

If I go to see a theatre production, my camera will capture the stuff I want to see - this actor over here, the reaction from that portion of the audience, the way the lights were hung, the conducting style in the orchestra. Certainly the professional production will be much higher technical quality (better camera, better microphones, etc), but my recording will be unique and specific to my taste. Are people going to take my poorer recording when they could get the professional recording at a decent price?

The production team could even solicit the audience to contribute their recordings - these contributed recordings could then be used to make a richer recorded production. Audience recordings are an opportunity, not a threat.

5) Exceptions must include format shifting, if the above points are not addressed. We currently engage in that behaviour as common practice, and it has become the cause of new types of social interaction - people listening to each others' music collections in order to discover new music. Never before have music and movie companies had their customers doing this sort of advertising for them - they should be rejoicing at the fact that their advertising force is increased with each and every sale they make.

6) backup copies should be allowed for any recorded media. The backup copy must be allowed to be exactly as functional as the original. If my washing machine breaks, I get it fixed - I don't go and buy a completely new \$400 washing machine if a \$20 part and \$50 labour will fix it. Why should I have to go and buy a \$30 movie again, just because my current version DVD was put in the toaster by my nephew? For the sake of a \$6 disc, I can continue to watch the movie with the licence I have already paid for.

On the other hand, if the DVD was stolen along with its case, has the thief has stolen not just the media but the licence too? When I buy a DVD second-hand, how do I verify that the licence has transferred with the media? Who is eligible to sell me a licence? How do I determine that a video shop is allowed to sell me the licence for a movie along with the DVD? If the licence is transferred by ownership of the wording on the case carrying the DVD, what happens if a movie studio opens up online, and I never actually purchase licence wording printed on physical media?

If I have a collection of music and movies that were all purchased online, and they all exist on my laptop, is the thief going to be charged with the theft of \$5000 of licences along with the \$3000 laptop? Am I liable to re-purchase all those licences, or do I retain

those licences by virtue of having paid for them?

For physical media, it's easy enough to say that the licence is transferred with the physical wording - in much the same way that deeds work, with the ownership of land being decided by the possessor of the deed certificate. For electronically distributed media, the licence would work more like the modern land ownership system, where the body responsible for the sale would track who they've sold licences to, in addition to providing some proof of purchase to the buyer (eg: a digitally signed message containing the licence wording, purchase date and price).

This issue comes to a head with the iTunes Music Store - I can buy music from that store and "authorize" it for use on three computers. However, if I reinstall the operating system I then have to re-authorize that computer. I can do this for a maximum of seven authorizations - that equates to reinstalling the operating system on three machines once each, and losing my iPod once.

7) I do not support a statutory licence on private copying, simply because I don't engage in the practice enough to consider it worth doubling the cost of my media for no net gain. The money raised would simply disappear into "consolidated revenue", and in the meantime I'd be doubling the cost of protecting my memories.

8, 9, 10) No other comments come to mind, taking into account my view that personal use should be unrestricted and unencumbered.