



February 19, 2008

RS
22/2/08

Ms. Helen Daniels,
Assistant Secretary,
Copyright Law Branch,
Attorney-General's Department
Robert Garran Offices
National Circuit
BARTON
ACT 2600

Dear Ms. Daniels,

Re: Sections 47J and 110AA of the Copyright Act 1968

I refer to the current Issues Paper "Copying photographs and films in a different format for private use", which invites comments for review of the above Act. As a computer scientist involved in computer vision research and also as a consumer who, on occasion has purchased video and photographic material, I seek assurance that any changes do not further erode the rights of users of these materials.

In order to clarify my position I must first comment on the introductory material in the issues paper, which I believe misrepresents the fundamental purpose of copyright law. The opening sentence of Section 1 states that "copyright is a form of intellectual property that protects the rights of creators...". The wording of this statement hinders clear thought on the issues for two reasons:

- The term "intellectual property" is a term without legal meaning, nor any unambiguous colloquial meaning. In recent years it has been used to encompass many different concepts in law, including copyright, patents, trademarks, trade secrets and registered designs. These laws have little in common and it merely blurs the issues and inhibits understanding when one tries to consider them together. The term also implies that intellect has a natural owner, which is contrary to common ethical values.
- Similarly "protecting the rights of creators", implies that there is some fundamental exclusive right of authors and that copyright is a vehicle to uphold this right. This implication is false. Without the copyright act, authors would have no such rights. Indeed, even under copyright, the rights are merely a temporary concession, since the copyright expires after a fixed term. Furthermore, in most commercial materials today, the copyright holder is not the author of the material, contrary to the implication in this sentence. Copyright was invented as a concession to

authors, not as a means of enforcing some pre-existing right.

With this in mind, I offer the following comments about the specific issues addressed. I do not see any fundamental difference between films and photographs. A film is nothing more than a photograph with the added dimension of time. Therefore, in the following comments, when I speak of "photographs" or "images" it should be taken to include films, cinematographic and video material. Similarly, my reference to section 47J applies equally to section 110AA, which are substantially identical.

Section 47J currently operates primarily in the interests of the copyright holder, in that it prohibits copying of photographs in all but a few very particular circumstances. Hence, I do not see that any exemptions should be removed, but recommend exemptions be extended to permit the following:

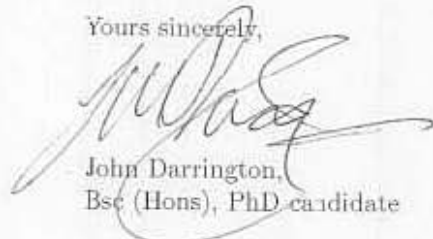
- Digital to digital copying should be permitted, since anything else makes it impossible to exploit modern photographic technology. For example, to perform certain image processing techniques (such as automatic indexing, image classification or feature extraction), it's often necessary to first represent the image in a different format. There are many formats for photographic images, *eg.* PNG, JPG, TIFF, GIF *etc.* and within these formats there are several 'subformats', each designed for handing an image in different ways. For technical reasons, it's desirable or even necessary to represent an image in the format appropriate to the task in hand. Furthermore, to avoid degradation, it's necessary to minimise the number of times an image is converted between formats. Also, to place a photograph on a web site, most image gallery software (for reasons of network efficiency) requires that 2 or 3 copies of the image are automatically made at different resolutions. The current exemptions should be widened to include digital to digital copying.
- Copying should also be permitted where the person making the copy, or commissioning the copy, is the subject of the photograph, or has commissioned the original photograph. Many families and individuals have been surprised to discover that photographs for which they have paid significant sums of money (such as graduation photographs and wedding photographs), carry legal warnings against home copying. Any reasonable person would consider that the subject of the photograph, having paid a professional price to the photographer, has a moral right to make copies as he or she pleases. Unfortunately, section 47J does not permit this. Neither is the photographer under any obligation to make any copies for their customer. Hence an artificial monopoly exists, from which the purchaser has no reprieve. Section 47J should be extended to grant rights to persons who commission such photographs, or place an obligation on the copyright holder to make copies on their behalf, for no more than the cost of making the copy.

Your issues paper mentions the very real issue of "Technological Protection Measures" (called "Digital Restriction Methods" (DRM) in the popular press). As mentioned, the recent 'free trade' agreement between Australia and the United States of America obliged Australia to enact far reaching prohibitions against

anyone attempting to circumvent such measures, even where these persons have the legal right to copy the material (such as when copyright has expired, for backup purposes or for fair use copying). This dilemma serves well to question the wisdom of entering into such agreements, and raises the issue of whether that agreement itself should be reviewed. However, given the current state of affairs, the only way to remain in compliance with the 'free trade' agreement and simultaneously make the changes described above, would be to prohibit the sale, distribution, manufacture or import of materials into Australia, when the materials are encumbered by TPM. I make this recommendation with trepidation, since I generally believe that blanket prohibitions are an affront to the civil rights of Australians. However in this case, it would seem to be the only way mitigate the harm brought about by the 'free trade' agreement enacted by the previous government.

Whilst these recommendations would offer reprieve to users in only very specific circumstances, I'm sure you understand that the issues paper and call for comments is of very limited scope. Wider reform of copyright law in Australia would be needed to uphold the rights of individuals in a more general scenario, which perhaps the department will consider at a later stage.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Darrington', written in a cursive style.

John Darrington,
Bsc (Hons), PhD candidate