



Australian Government

Attorney-General's Department

Opening address

Australian Centre for Intellectual Property and Agriculture Conference

'Copyright: New Futures, New Agendas'

Minter Ellison Offices
Level 22, Waterfront Place, Brisbane

Friday, 18 February 2005 – 9.30am

Acknowledgements

- Firstly, may I acknowledge the traditional owners of the land we meet on - the Jagera / Turrabul people - and pay my respect to their elders, both past and present.

Other Acknowledgements

- My parliamentary colleague, Senator Bartlett
- Professor Brad Sherman – convenor of the conference.
- Members of the copyright community.

Introduction

1. Now I know what you all want me to talk about today.
2. You want to know who was at my house for Christmas lunch last year.
3. Well I can tell you that one of the world's top 50 intellectual property lawyers, Alex Carter-Silk QC was staying with me over Christmas.
4. He is a partner in an English firm and is described as, and the lawyers out there might understand this term, a rainmaker. We had a good discussion, with members of my Department on developments in copyright, where he shared his insights from practice in the United Kingdom.
5. When I was a solicitor, before becoming a Member of Parliament, my practice encompassed a number of other areas from commercial to family law.
6. At that time Australian copyright law was still developing. One of my predecessors as Attorney-General and as the Member for Parramatta, Nigel Bowen had only recently [in 1968] introduced a national Copyright Act.
7. My wife, who works for a legal publisher, has an interest in copyright. Indeed, copyright is one of many areas where my wife knows more than I do.

8. What I do know is copyright laws that are clear, consistent and responsive make a significant contribution to our social, cultural and economic development.

9. Good copyright laws encourage innovation. They protect the integrity of artistic and intellectual endeavour. And they facilitate mutually beneficial trade between nations.

10. An effective copyright regime is one thing all prosperous, dynamic and forward looking nations have in common.

Australian Government's Copyright Philosophy

11. Now the Australian Government is committed to providing a world class copyright environment.

- We are determined to implement reforms because we recognise the full benefits that good copyright laws offer.

12. Like so many areas within my portfolio, the challenge lies in balancing different, and often competing, interests.

13. Our reforms are driven by a desire to balance the rights of copyright owners with the interests of the users of copyright material.

14. But as I am sure you would all acknowledge, achieving this goal is a far from easy task.

15. Tom Bell, an Associate Professor at Chapman University School of Law, recently wrote, in relation to United States intellectual property laws that they will always achieve an "*indelicat* imbalance".[\[1\]](#)

16. It has also been said to me in relation to copyright law that if each stakeholder is slightly unhappy you have achieved a good result overall. I might add this applies of course in many areas of politics and lawmaking.

17. One of the difficulties with copyright is we are not operating in a static environment. Technological change and the global economy are creating new challenges that must constantly be addressed.

18. As the theme of this conference indicates - we are facing *New Futures and New Agendas* – and we will only succeed if we are visionary and proactive.

19. And today I want to give you a sense of the Government's agenda in copyright over the next year.

Number of Reviews

20. There are a number of reviews that the Government is doing this year.

21. Reviews are necessary in copyright to ensure all stakeholders are consulted as government strives to maintain the balance that I mentioned earlier.

22. This year the Government is commencing reviews on:

- The one per cent cap on radio broadcaster royalties for sound recordings;
- Whether we should introduce fair use type exceptions;
- Criminalising unauthorised use of pay TV broadcasts; and

- Whether the criminal offences in the Copyright Act need to be updated to make them consistent with the criminal code

23. And we are also completing reviews on:

- The Digital Agenda Act amendments; and
- are-sale royalty arrangement for visual artists.

24. We will also introduce two pieces of legislation in the first half of this year recognising, for the first time, director's copyright and also indigenous communal moral rights.

25. We are working towards acceding to both of the World Intellectual Property Organisation (WIPO) internet treaties this year.

26. Some of these areas will be covered in detail by other speakers today.

Obviously I welcome their interest and I want to speak in more detail about some of these issues.

Review of a fair use exception

27. For instance the fair use exemptions. This attracted some attention in the media in the last week or so.

28. There was some suggestion that the Government had announced a wide ranging review on Monday.

29. I made no such announcement on Monday but I am pleased to announce that today. That is that we will commence a review on whether an exception or exceptions based on the principles of 'fair use' should be added to the Copyright Act.

30. The review will be conducted by my Department.

31. I know there is intense interest in this issue and I look forward to receiving public submissions following the release of a discussion paper which we hope to have ready by April.

32. I expressed the view, which was reported in the media, that there is a reasonable argument for allowing the purchaser of recorded copyright material in one format being able to transfer it to another format for private use, if that was the purpose of the original purchase.

33. I appreciate there are other issues associated with fair use type exemptions and this is not a simple issue.

34. Developments in digital technology are changing the way people can use copyright material.

35. Although I find it difficult to keep up with all the technology and terminology of Ipods, mp3s and P.V.R.s. This is of course much of what we older people have to put up with these days. I can tell you my kids are all on top of it. Even those that we have as house guests.

36. But it is also exacerbating the tension between copyright owners, technology companies and consumers.

37. Content owners and distributors need to develop new business models to adapt to this technology. And it is up to them to respond to these technological changes in a way that will protect and grow their businesses.

38. The Government is aware that some user groups believe there would be advantages in adopting an open ended exception to copyright similar to the 'fair use' provision in the United States.

39. A 'fair use' provision may give the Copyright Act more flexibility to maintain the copyright balance in a digital environment.

40. Some interests believe fair use principles should determine whether particular uses should be an infringement of owner rights - such as transferring music files to an Ipod player or recording a TV program.

41. At the same time, the Government understands that the 'fair use' proposal is of concern to copyright owners.

- Their main concern being that the uncertainty of 'fair use' could encourage infringement and undermine their rights.

42. Not for a moment do I underestimate the difficulties associated with adapting our law to incorporate 'fair use' type provisions.

I can assure you the Government will scrutinise the idea very closely.

And no decisions will be made without full consultation.

One Per Cent Cap on Royalties

43. One issue that has been around for almost as long as the Copyright Act is the disagreement between radio broadcasters and owners of copyright in sound recordings about the amount that should be paid for broadcast of sound recordings.

44. This is an issue we are considering at the moment with a review of the one per cent cap on license fees paid by broadcasters for playing sound recordings on the radio.

45. Radio broadcasters, record companies and Australian musicians as well as other stakeholders all have an interest in this review.

46. I will ensure their views are considered before any decision is taken and would encourage anyone with views to express it before the March 18, which was the deadline we specified for public comment.

Indigenous Communal Moral Rights

47. Indigenous communal moral rights is another area where the Government is determined to push ahead with copyright reforms.

48. As a former minister and someone with a strong interest in Indigenous Affairs spanning more than 30 years, I have firsthand knowledge of the importance of protecting the integrity and sanctity of indigenous culture.

49. The Government has received a number of positive comments on the exposure draft legislation it released last year.

50. We are now working on refinement of the bill, in particular to make the legislation more practicable and workable.

51. These were matters that were drawn to attention during the consultation period and we will be using our best endeavours to simplify the arrangements for protection recognising some of the difficulties that communities have in dealing with formal procedures for securing interests. And our intention is for it to be finalised and introduced into parliament this year.

52. I understand Justice Lindgren is addressing the conference on the Bill and I look forward to hearing his insights on this important area of legislative reform.

Conclusion

53. In conclusion, let me just say that 2004 was a significant year for copyright reform in Australia, particularly with the implementation of the Australia—United States Free Trade Agreement.

54. 2005 is shaping up to be another year of change and reform.

55. Can I thank you all for your interest in copyright law. And I look forward to working with you all and look forward to hearing something of the deliberations today and hope you will keep me addressed of developments and ensure that I am able to address these issues with you.

[1] Bell T. W. "Indelicate Imbalancing in Copyright and Patent Law" in Thierer A and Crews W (eds) *Copyrights: The Future of Intellectual property in the Information Age*, 2002