COPYRIGHT AMENDMENT BILL (NO. 2) 1979

Date Introduced: 4 June 1979
House: Senate

Short Digest of Bill

Purpose

To extend and clarify aspects of the Copyright Act 1968 in particular those provisions dealing with photocopying, copying for handicapped readers and record piracy.

Background

On 20 June 1974 the then Attorney-General, Senator Murphy appointed a Committee, under the chairmanship of Mr. Justice Franki, to examine the question of the reprographic reproduction of works protected by copyright in Australia and to recommend any alterations needed to the Australian copyright law. The Committee reported on 15 October 1976 and suggested a number of important legislative changes. The Report made detailed recommendations relating to the concept of 'fair dealing' as specified in the Copyright Act 1968, copying by libraries for users, other libraries or for preservation, copying by non-profit educational establishments and Crown copyright.

No action was taken during 1977 to implement the Franki Committee recommendations. In June 1978, the Attorney-General, Senator Durack, issued a number of press releases stating the Government's intention to introduce legislation to amend the Copyright Act during the Budget Session of that year. It was proposed to allow time for public discussion of the amendments and for it to be debated in the Autumn Sittings this year. This did not eventuate. The Copyright Amendment Bill (No. 2) 1979 was not introduced until 4 June 1979. The Bill, which adopts the major recommendations of the Franki Committee, has been made available for public comment. The Attorney-General, in his Second Reading Speech, did not indicate when the Bill would be debated.
Provisions

Crown Copyright

Clauses 3 and 4 amend s.8 and insert a new s.8A to clarify that the 'fair dealing' and other similar provisions apply to Crown copyright as they do to privately owned copyright.

Definitions

Clause 5 inserts a number of new definitions into the Act including 'archives', 'educational institution', 'handicapped reader', 'institution assisting handicapped readers' and 'officer in charge' of a library or archives. These definitions are important in relation to some of the new provisions in the Bill. Other definitions are inserted in specific provisions.

Fair dealing

Clause 7 amends s.40 by omitting the word 'private' from the phrase 'research or private study'. This widens the scope of fair dealing which does not infringe copyright. In addition a new sub. s.40(2) is inserted to specify the matters to be taken into account in determining a fair dealing. These include the purpose and character of the dealing, the nature of the work, the possibility of obtaining the work within a reasonable time at a commercial price, the effect on the potential market for the work and where part only of the work is copied, the amount and substantiality of that part. The copying of an article in a periodical, or a reasonable portion of any other work for research or study is regarded as fair dealing (sub.s.40(3)).

Judicial proceedings

Clauses 8 and 15 insert new sections 43 and 104, respectively. These amendments mean that copyright is not infringed by anything done in giving professional advice by a legal practitioner or patent attorney. The existing provisions already cover judicial proceedings.

Library copying

Clauses 10-13 relate to copying by libraries and archives. Clause 10 rewrites sections 49 and 50. The new s.49 provides that an authorized person of a library or archives may supply a copy of an article or other work to a person if such person has made a request in writing to the officer in charge to be supplied with a copy and has also signed a declaration stating that the copy is required for
research or study and will not be used for any other purpose. The person must not have been previously supplied with a copy of the same article or work. In the case of a member of Parliament requesting a copy from a library that provides services to members of Parliament the declaration must state that he requires the copies for the performance of his duties and will not be used for any other purpose. (para. 49 (1)(b)). If a charge is made for making and supplying copies it must not exceed the cost (at present it must not be less than the cost). The amendments to s.49 will relieve the onus on librarians. At present the librarian may make copies if satisfied that the copy is required for the purpose of research or private study. Copyright may be infringed, even if there has been a request and declaration, if the copy is supplied to a person other than the person who made the request (sub.s. 49(5) and (6)). The application of sub.s.49(5) and (6) may be excluded by regulation (sub.s.49(7)).

Proposed s.50 adopts the same approach as s.49 in relation to copying by libraries for other libraries (or archives). It covers both copying for collection purposes or due to a request by a person pursuant to s.49.

Clause 12 inserts a new s.51A. The section allows a copy to be made by a library or archives without infringing copyright if it is to preserve a manuscript or original artistic work against loss or deterioration or in order to replace a damaged, lost or stolen work held in published form. If a microform copy of a work is made, the work from which the copy is made must be destroyed as soon as practicable (sub.s.51A (3)). As regards the copying of a work held in published form there is a proviso that an authorised officer must investigate and be satisfied that it is not obtainable within a reasonable time at an ordinary commercial price. A similar provision is inserted to apply to the copying of films and sound recordings (cl.16-new s.112A).

Educational institutions

Clause 14 inserts a new Division 5A (ss.53A-53E), which deals with copying of works in educational institutions and Division 5B (ss.53F), which covers the copying of works in institutions assisting handicapped readers. As defined, the institutions mentioned must be non-profit.

New s.53A permits the officer in charge of a library of an educational institution to make 6 copies of an article or work for the collection of the library. However, no more than one article may be copied from a periodical
unless they relate to the same subject matter (sub.s.53A (3)) and in the case of a work, only a reasonable portion may be copied unless a copy of the work cannot be obtained within a reasonable time at an ordinary commercial price (sub.s.53A (4)). After 5 years the owner of the copyright may request the officer in charge to destroy or surrender to him copies of a work. (sub.s.53A(7)).

New s.53B allows the copying of insubstantial portions of a work for the purposes of a course of education at an institution. Only 2 pages or 1% of the total number of pages (whichever is the greater) may be made.

New s.53C permits a teacher to make 3 copies of a work for classroom purposes. Similar restrictions specified in s.53A apply.

New s.53D provides that copyright is not infringed by educational institutions copying for teaching purposes if remuneration is paid. This is subject to the conditions that only a reasonable portion may be copied unless a copy cannot be obtained within a reasonable time at an ordinary commercial price and a written record of the copying is made. The record must be in the prescribed form and set out the title or description of the work, the author's name, the publisher's name, the number of pages copied, the date, the number of copies made and any other particulars that may be prescribed (sub.s.53D (3)). Certain copying for correspondence or external studies students may be made un-remunerated (sub.s.53D (4) and (5)). The copyright owner may request equitable remuneration for copies made pursuant to this section and if agreement cannot be reached the matter is determined by the Copyright Tribunal (sub.s. 53D(6) and (7). See also cl.20 which inserts s.149A). A copyright owner is not, however, precluded from making a private licence agreement with an educational institution. (sub.s.53D (8)).

Handicapped readers

A similar statutory licence scheme is introduced by new s.53F for institutions assisting handicapped readers. A sound recording or Braille version of a work may be made for the use by a handicapped reader for the purpose of research or study subject to the same limitations specified in s.53D i.e. a new record or Braille version cannot be obtained within a reasonable time at an ordinary commercial price (sub.s. 53F (3) and (4)) and a record is kept in the prescribed form (sub.s. 53F (5)). The same remuneration provisions apply as for s.53D. New sub.s.53F (8) specifies that copyright shall not vest in the maker of the handicapped reader's copy.
Jurisdiction and Penalties (Record piracy)

Clause 17 extends s.132 to allow prosecutions to be brought in the Federal Court or any court of competent jurisdiction.

Clause 18 amends s.133 to increase the penalties for offences under the Act. These are aimed particularly at record piracy. The amendments increase the penalty for a first conviction for importing or otherwise dealing with an infringing copy from $10 to $150 in respect of each article and for subsequent convictions increasing the fine from $10 to $150 and the maximum term of imprisonment from 2 months to 6 months. Proposed sub.s.133 (2) sets the maximum penalties where a number of articles are involved in the same transaction: before the Federal Court $10000, before any other court $1500. The penalties specified in sub.s.133 (3) are increased from $200 to $1500 and 2 months to 6 months imprisonment. These relate to possessing a plate used for making infringing copies or wilfully infringing copyright by performing in public.

Clause 21 inserts new sections 159A and 159B. Section 159A permits the Tribunal, on the application of the Attorney-General, to suspend the statutory licence of an educational institution under s.53D if it has been twice convicted of failing to keep proper records. Section 159B permits an institution to seek revocation of a suspending order made under s.159A.

Three new sections, ss.203A-203C, are inserted by cl.26 to regulate the copying records kept by institutions. Penalties are specified for failing to properly maintain records or declarations. A false or misleading record or a record which is not retained for the prescribed period carries a maximum fine of $500. It is also an offence ($500 penalty) if copying records are not kept in such a way as to allow the copyright owner to inspect those relating to his work (sub.s.203A(5)). A fine of $1000 or 6 months imprisonment is specified if records are wilfully destroyed (sub.s.203A (6)). New s.203B gives the copyright owner or his agent the authority to inspect records on a specified day after giving written notice. New s.203C provides that a person may not rely on any of the sections which permit copying unless a prescribed notation is made on the copy. This must include the section of the Act which is relied on, the date the copy was made, the name of the person who made it and the name of the body or person on whose behalf it was made.

A series of technical amendments are made in Schedules to the Act (see clauses 27 and 28).

Law & Government Group
LEGISLATIVE RESEARCH SERVICE

10 July 1979