

Submission of Comments

Public Consultation on Draft Copyright (Amendment) Bill 2004

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Contents

1. Section 34: Infringing copies made on machines installed in libraries and archives1
2. Section 45: Copying by libraries and archives for users.....2
3. Section 46: Copying by libraries or archives for other libraries or archives3

1. Section 34: Infringing copies made on machines installed in libraries and archives

Proposal:

(insertions in red double-underlines and deletions in red strikeouts)

<p>Section 34: Infringing copies made on machines installed in libraries and archives</p> <p>Where —</p> <p>(a) a person makes an infringing copy of, or part of, a work or a published edition of a work or of 2 or more works on a machine <u>(including by computer)</u> for the making, by reprographic reproduction, of copies of documents, being a machine installed by or with the approval of the body administering a library or archives on the premises of the library or archives, or outside those premises for the convenience of persons using the library or archives; and</p> <p>(b) there is affixed to, or in close proximity to, the machine, in a place readily visible to persons using the machine, a notice of the prescribed dimensions and in accordance with the prescribed form,</p> <p>neither the body administering the library or archives nor the officer-in-charge of the library or archives shall be taken to have authorised the making of the infringing copy by reason only that the copy was made on that machine.</p>

Rationale: In Australia, their equivalent section 39A was amended when their section 104B was introduced in 2000. Both sections should go hand-in-hand.

Also, in Australia, a distinction is drawn between the coverage for underlying works versus subject-matter other than works. The former is covered by their section 39A whereas the latter is covered by their section 104B. It may therefore be better to exclude the coverage of “published editions of works” in our section 34 since they are going to be covered by our new 105A. Before Australia introduced their 104B in 2000, coverage for “published editions” (being part of subject-matter other than works) was not provided for, and hence Singapore additionally provided for it in section 34. With our new 104B, this is perhaps now unnecessary.

If our section 34 is not amended to include computers, a situation arises whereby libraries and archives *may not* be held liable for authorising the making of infringing copies of *audio-visual subject-matter such as sound recordings* made using computers on their premises; but they *will be* held liable for authorising the making of infringing copies of the underlying musical works. In other words, it is necessary for our section 34 to catch-up with our new section 105A.

2. Section 45: Copying by libraries and archives for users

Proposal 2A: The new section 45(7A) deals with libraries or archives making their electronically-acquired articles or published works available online within the premises. Section 45(7A) should be extended to allow libraries or archives to make available online (on their premises), electronically-acquired unpublished works also. Provision should also be added to the effect that this does not constitute the publication of the unpublished work or of any work or other subject-matter included in the work. Provision for making available online (within premises) should also be added for subject matter other than works, notably sound recordings and cinematograph films.

Rationale: Libraries and archives collections include electronically-acquired unpublished works, for example, old documents which have been digitised. It would not be more logical to permit online displays of electronically-acquired articles or published works but prohibit online displays of electronically-acquired unpublished works. Within the physical confines of the library or archive, all works in their collections should be capable of being made online and given the same treatment. Otherwise, unpublished works would suffer greater deterioration due to the need to handle the physical versions.

This proposal can still co-exist with the new section 47 (dealing with copying and supplying life-plus-50-years unpublished works), which gives a narrow scope of materials (due to the duration requirement) but allows for supplying copies beyond the physical confines of the library to researchers.

Proposal 2B: Insert a new section 45(10):

It is not an infringement of copyright in an article contained in a periodical publication, or of copyright in a published work, to communicate it in accordance with subsection (2) or (7A).

Insert a new section 45(11):

(9)

In this section:

supply includes supply by way of a communication

Rationale: The purpose of Australia’s section 49(7B) is to provide an exception for the act of communication. Our new section 45(9) [or their equivalent section 49(7A)] provides an exception only for the act of making a copy, which is distinct from the act of communication. Both (Australia’s) section 49(7A) and section 49(7B) go hand-in-hand.

Expressly stating that the term "supply" encompasses the communication of a work or part of a work to a particular user, will be a helpful move to remove any doubts.

3. Section 46: Copying by libraries or archives for other libraries or archives

Proposal: The existing section 46 be amended with relevant provisions, using Australia’s section 50 as a guide, to extend to the electronic reproduction and communication of copyright material to another library or archives in response to requests from other libraries or archives or their users under section 45.

Rationale: This would bring section 46 in-line with sections 45 and 47. This enables the National Library and other special libraries to use new technologies to provide access to copyrighted material for the community. The commercial availability test in section 47 and the “research or private study” criteria in section 45 would serve as a means to ensure that economic rights of owners of copyright material are not unreasonably prejudiced.