COPYRIGHTAGENCY

Submission to ALRC on Interim Report: Traditional Rights and Freedoms—Encroachments by Commonwealth Laws

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INTRODUCTION

The Australian Law Reform Commission (ALRC) has been asked to identify laws that 'encroach upon traditional rights, freedoms and privileges', including those that 'interfere with freedom of speech', and whether those that do are 'justified'.

In its Interim Report: Traditional Rights and Freedoms—Encroachments by Commonwealth Laws (Interim Report), the ALRC canvases the relationship between copyright and freedom of speech.

ABOUT COPYRIGHT AGENCY

Copyright Agency is a not-for-profit copyright management organisation that manages copyright licensing arrangements for writers, artists and publishers. It collects and distributes more than $100M a year in copyright fees and royalties. It is affiliated with similar organisations in other countries, enabling the licensed use of foreign content in Australia, and revenue to Australian creators from the use of their content in other countries.

SUMMARY OF COPYRIGHT AGENCY'S POSITION

A fundamental element of copyright is that it only applies to the *expression* of information or an idea, not the information or idea itself. Thus, anyone can disclose, share or publicise all of the ideas and information in a document, image or other content covered by copyright.

Australia's copyright legislation has a large number of defences to infringement (exceptions) that allow the copying and communication of copyright content without permission or payment. These include specific exceptions for reporting news, criticism, review, parody and satire.[1] These provisions recognise the importance to Australian society of certain forms of expression and communication that take precedence over a content creator's right to set terms or withhold consent.

There is also a large range of licensing solutions and arrangements (not necessarily for payment) that allow the copying and communication of copyright content.

Some have proposed that Australia introduce a broad new copyright exception based on the US 'fair use' exception. In the US, that exception has been held by the courts to cover a large range of activities, most of which are not related to freedom of expression in the true sense. Those that are (reporting news, criticism, review and parody) are already allowed by Australian law. Australia has a clearer, broader exception for satire than the US.

US cases that have held 'appropriation art' to be 'fair use' have been controversial in the US, and regarded by many to be unfair. For example US photographers have

[1] Criticism or review need not be *of* the copied content: see *Hubbard v Vosper* [1972] 2 Q.B. 84, in which a book reproducing Scientology documents was held to be fair dealing.

widely criticised US artist Richard Prince's use of other people's photographs in his works, without permission or payment.[2]

COMMENTS ON SPECIFIC ISSUES IN THE INTERIM REPORT

Contempt laws

At [3.95] the Interim Report includes the Copyright Act 1968 in a list of laws that 'protect the processes of tribunals, commissions of inquiry and regulators' and 'interfere with freedom of speech by, for example, making it an offence to use insulting language towards public officials or to interrupt proceedings'.

The inclusion seems odd, particularly because there are specific exceptions in the Copyright Act that allow the use of copyright content for judicial proceedings.[3]

Role of intellectual property laws

The Interim Report at [3.145] discusses the role of intellectual property laws.

The role of copyright law is described by the Spicer Report, which preceded the current Copyright Act, as follows:

The primary end of [copyright law] is to give the author of a creative work his just reward for the benefit he has bestowed on the community and also to encourage the making of further creative works. On the other hand, as copyright is in the nature of a monopoly, the law should ensure, as far as possible, that the rights conferred are not abused and that study, research and education are not unduly hampered.[4]

Thus the copyright system provides creators with opportunities to be rewarded for the value of creative work to Australian society, and an environment that promotes investment of skill, time and money in the continued creation and dissemination of creative work.

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[2] See https://www.plagiarismtoday.com/2015/05/21/why-so-many-photographers-hate-richard-prince/

[3] Sections 43(1) and 104. There are also exceptions relating to legal and other professional advice: sections 43(2) and 104.

[4] Report of the Committee appointed by the Attorney General of the Commonwealth to consider what alterations are desirable to the Copyright law of the Commonwealth, AGPS, Canberra, 1959 (the 'Spicer Report')