SUBMISSION

Australian Law Reform Commission Issues Paper 42

Copyright and the Digital Economy

Queensland Department of Natural Resources and Mines
November 2012

The following submission is provided by the Queensland Department of Natural Resources and Mines to the Australian Law Reform Commission in response to its Issues Paper 42 dated August 2012 entitled *Copyright and the Digital Economy.*

Electronic document management

Both government and private organisations are implementing electronic storage and retrieval systems for documents. Previously, information was recorded on hard copy documents, which were stored in a filing system. In an electronic environment, if a person wishes to view an existing document, they access the record keeping system electronically instead of retrieving the paper file from the organisation's records. They then either view the document on screen or print out the document for viewing.

Arguably, the performance of essentially the same functions in an electronic environment as would have been done in a different way in a hard copy environment should not be treated differently with regard to the operation of copyright legislation.

It is submitted that the *Copyright Act 1968* (Cth) should be amended to clearly provide that copyright is not infringed by using documents in the manner described above, where the use does not extend beyond what would have been done by viewing a paper document on a file.

Further, the *Copyright Act* should also be amended to clearly provide that use by government in the manner described above does not give rise to any obligation under the Act such as notification, sampling or payment obligations under the Crown use provisions in division 2 of part VII.

An alternative approach could be to provide that such use does not constitute reproduction or communication to the public in terms of the *Copyright Act*.

The above comments relate in part to questions 34 and 50 in the Issues Paper, but are not limited to those questions.

Crown use of copyright material - implied licences

The Issues Paper refers, at paragraphs 202 and 203, to the decision of the High Court in *Copyright Agency Limited v State of New South Wales* (2008) 233 CLR 279.

The High Court remarked at paragraphs 92-93 of its judgement that:

> 'a licence will only be implied when there is a necessity to do so'; and

> '[s]uch necessity does not arise in the circumstances that the statutory licence scheme excepts the State from infringement, but does so on condition that terms for use are agreed or determined by the Tribunal (ss 183(1) and (5))'.

Those remarks indicate that the existence of the Crown use exception in s 183(1) can prevent a government from establishing the existence of an implied licence.

In contrast, a private organisation seeking to use copyright material for its own purposes would not be entitled to rely on the Crown use exception in s 183(1). The existence of that section would not prevent a private organisation from establishing the existence of an implied royalty-free licence in its favour.

For those reasons, it appears that government users of copyright material may be severely disadvantaged as compared with private organisations and individuals.

It is therefore submitted that the *Copyright Act* should be amended to clearly provide that the existence of s 183 should not be taken into account in determining whether an implied licence exists in favour of the Commonwealth, a State, or another person referred to in s 183(1), or the terms of any such implied licence.