Caselaw & Legislation Databases and Copyright Issues in Australia [1]

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INTRODUCTION

In this paper I will be discussing copyright issues pertaining to electronic library-type databases which contain legislation and cases in order to flag some issues that we librarians might need to consider in the future. In discussing the copyright issues it is necessary to look at copyright with respect to databases as well as separately examining the copyright protection afforded to legal materials. This is necessary because the fact that a database may or may not be protected by copyright does not change the fact the underlying work may or may not be protected by copyright.

COPYRIGHT: A STATUTORY DEFINITION

What is 'copyright' in terms of the *Copyright Act* 1968 (Cth)? Copyright is defined as the exclusive right, in the case of literary, dramatic or musical works to:

> reproduce the right in a material form;
> publish the work;
> perform the work in public
> broadcast the work;
> cause the work to be transmitted to subscribers to a diffusion service;
> make an adaptation of the work; or
> do, in relation to an adapted work, any of the above mentioned acts.

In relation to an artistic work, copyright is the exclusive right to

> reproduce the work in a material form;
> publish the work;
> include the work in a television broadcast;
> cause a television program that includes the work to be transmitted to subscribers to a diffusion service. [2]

Copyright, then, is an exclusive right to apply any of the functions described in the section to the material in question. It is also the exclusive right to authorise

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[1] This paper is an edited version of one presented at the 8th Asia-Pacific Specials, Health and Law Librarians Conference, Hobart, Tasmania, in August 1999

[2] *Copyright Act* 1968 (Cth) s 31(1)

others to do any of these acts. In addition to literary, dramatic, musical and artistic works, copyright exists to protect sound recordings, broadcasts, published editions and compilations of works.

COPYRIGHT IN DATABASES

Does Copyright Protect Electronic Databases?

It is by looking at the copyright law with respect to 'compilations' that this question can be answered. In terms of the copyright of electronic databases, the *Copyright Act* 1968 (Cth) does not specifically provide protection for them. Traditionally, they qualify for protection as 'literary works' on the basis of being a 'compilation' or 'table' under the Act.[3] This is based on the definition of 'literary work' in s. 10 of the Act.

In s. 10, the definition section, 'literary work' includes:

> (a) a table, or compilation expressed in words, figures, or symbols (whether or not in visible form); and
>
> (b) a computer program or compilation of computer programs.

Ricketson suggests a 'table' might include a list or timetable and a 'compilation might include a dictionary, an almanac, a gazette, an anthology or a selection of other on copyright works or factual information.[4]

What is important is that a table or compilation involves the *presentation* of a *body of factual* information in a *particular way*.[5]

Factual information such as railway timetables, catalogues and so on may lack literary skill but the courts may find them sufficiently 'original' to be protected by copyright if the requisite amount of skill and labour has been expended on their production.[6]

The problem with analysing 'originality' in terms of skill and labour was stated by Lord Atkinson in *McMillan v Cooper*[7]:

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[3] Yastreboff, N. 1996, 'Copyright for Online Databases on the Internet, Part 1' *Australian Intellectual Property Bulletin*, vol. 9, no. 3, p. 37

[4] Ricketson, S. 1991 (1984), *The Law of Intellectual Property*, Law Book Co., Sydney, p. 98.

[5] Note 3.

[6] Note 3, 99

[7] (1923) 40 TLR 186

> What is the precise amount of knowledge, labour, judgment or literary skill or task which the author of any book or compilation must bestow upon its composition in order to acquire copyright within it... cannot be defined in precise terms. In every case it must depend largely on the special facts of the case, and must in each case be a question of degree[8]

Examples of the types of materials that have been found to be compilations include catalogues of merchandise stock,[9] directories,[10] compilations and arrangements of documentary materials,[11] and anthologies of poems [12] Many works have qualified as literary despite their 'prosaic and utilitarian nature'.[13]

There is a benchmark American case *Feist Publications Inc v Rural Telephone Service Co* [14] that rejected this 'sweat of the brow' doctrine as this was called. This has meant that in the United States mere skill, labour and effort are not sufficient to fulfil the originality requirements for the copyright protection of compilations.

Selection and Arrangement

The issues the reported decisions seem to have focussed on are the 'selection' and 'arrangement' of the 'work' in order to determine if it was a literary work which would therefore qualify for protection. 'Selection' assumes there is a large body of information or data, and effort. Energy and money are expended to decide which pieces or parts of the body of data to include. 'Arrangement' has to do with the 'order' that is imposed on the final outcome of the selection process.

Another aspect that emerges from the caselaw is that copyright is usually denied to 'mere lists' particularly if the information is available elsewhere. It has always been important that the data itself is not given incidental protection. 'Facts'

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[8] Mullans, M J. 1996, 'Copyright and databases' *Computers & Law*, vol. 30, p. 20.

[9] Note 3, 102

[10] Note 3, 102

[11] Note 3, 100, and see *BBC v The Wireless League Publishing Co Ltd* (1926 1 Ch 433 (cited in Ricketson at page 100) where protection was given to a compilation of advance daily radio programs for the ensuing week published each week in the BBC Radio Times.

[12] Note 3,100

[13] Note 3, 95

[14] 499 US 340 1991

alone have never been granted copyright protection. In 1937, Latham, J in *Victorian Park Racing & Recreation Grounds Co Ltd v Taylor* [15] said: 'The law of copyright does not operate to give any person and exclusive right to state or describe particular facts'.[16]

Database Copyright

All of these examples apply to printed materials, but the weight of legal commentary suggests that the same reasoning applies to electronic databases.[17]

Mullans explains that databases are 'typically factual in their content'.[18] However they require 'significant expenditure of time, effort and money to be able to sort through the reams of information and categorise them in a particular manner'.[19]

The decision in *Feist* as well as the financial investment in database creation is seen by some commentators as being indirectly responsible for the *sui generis* regime now in place in the European Union for non original but economically important databases.

The courts have always been careful with compilations not to give incidental protection to the information itself, the very thing, as Ricketson points out, which may be desired by makers of a modern electronic database.[20]

The application of the concepts concerning compilations to electronic databases can be difficult. The courts tended to look at the work as a whole. As Mullans points out, the creation of an electronic database involves a wide range of skills, so the question is then open for the courts to decide on the ambit of skills (if any) which is to be part of the consideration of skills and labour spent in the creation of a database.[21]

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[15] (1937) 58 CLR 479 at 498

[16] Note 3, 95

[17] Note 7

[18] Note 7

[19] Note 7

[20] Ricketson, Sam 1999, 'Databases – tool of the information age: current protection under Australian and New Zealand law', *Journal of the Intellectual Property Society of Australia and New Zealand Inc*, vol 36, p. 21

[21] Note 19

Perhaps the issue will become increasingly important as changes are mooted for copyright law because of unprecedented changes in broadcasting, telecommunications and computing due to rapid technological advancement.[22]

There is now a blurring of the boundaries between broadcasting and telecommunications which is resulting in a convergence of these communication modes. Some writers suggest that this convergence means that multimedia formats will be the next focus of the copyright law – it allows voice, data, text, image, sound and vision to be carried on the same medium – and all are expressed in binary form.[23] In industry terms, these can also form the component parts of a database and accordingly may need to be evaluated against the compilation criteria of s. 10 in order to acquire copyright protection; or some other regime will be required.

So essentially copyright in electronic databases is provided for in s. 10 of the *Copyright Act* and is thought to revolve around the meaning of 'compilation' under the Act.

COPYRIGHT IN CASELAW AND LEGISLATION

The *Copyright Act* deals separately with official publications under the heading of Crown copyright. There is also a residual common law concept of the Royal prerogative, which has to be mentioned.

What is meant by the term 'caselaw'?

I use the terminology 'case law' or 'cases' consciously to refer, generically, to 'law reports' and 'unreported judgments'. The meaning of both of these terms needs to be carefully considered as it informs some of the application, in a sense, of copyright law to law reports.

Law reports are thought to contain a number of elements, generally and also within the context of copyright law. These may include, for example, the parties' names, catchwords, headnotes, lists of cases, argument of counsel, typographical arrangement (and its sound and/or digital equivalent), reasons for decision and the judgment (as in 'order' or 'award').

What usually happens in Queensland courts is that there is a transcript of proceedings. If there is a spoken (or *ex temporare*) 'reason for decision' this will be included. Often decisions are 'handed down' or 'reserved', which means

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[22] Lahore, J. *Intellectual Property in Australia*, (Sydney) para 5.6.

[23] Note 21.

that written reasons for judgment are made available after proceedings are concluded. The judge usually says '...and I publish my reasons...' or some other such statement.

Written reasons of this kind, often an integral part of the legal research process, can become *unreported judgments* and are made available in a number of different formats. Examples include print, CDROM and on-line. It is also possible for a decision delivered *ex temporare* to be an unreported judgment.

At a later time, judgments (or cases) containing important principles or precedents thought to be legally significant, will be reported. These include both *ex temporare* judgments and those where the judge or judges have supplied written reasons. So when I refer to 'caselaw' I will be referring to unreported judgments (or 'reasons for decision') and law reports, separately.

CROWN COPYRIGHT

What is Crown copyright?

Under Australian copyright law any original work created by a government employee is necessarily the subject of Crown copyright.[24]

There are also the 'direction and control' provisions of Part VII of the Act. Part VII 'Crown copyright in original works made under the direction of the Crown' provides that the Commonwealth or a State becomes the owner of the copyright in a work if that work is made or first published 'by, or under the direction or control of' the Commonwealth or a state. It is irrelevant whether the author of the work is or is not employed by the Commonwealth or a state under a contract of service.[25]

This is how the Act deals with the creation of Crown copyright. It is necessary now to address how this works in practice as applied to cases (as I have defined them in this paper) and legislation.

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[24] *Copyright Act* 1968 (Cth) s. 32, s 35(6)

[25] See *British Broadcasting Co v Wireless League Gazette Publishing Co* [1926] Ch 433 for an example of when a publication is ***not*** 'prepared or published by or under the direction or control of His Majesty or any government department, cited in Lahore, note 20

Does Crown copyright apply to caselaw and legislation?

Caselaw: unreported judgments

Under s 32 of the *Copyright Act* copyright may subsist in an 'original literary... work' that was unpublished if the person was an Australian citizen. It is widely accepted that 'written reasons' are 'original literary works'. As we have seen, the copyright subsists in the employer under s 35(6). The question then becomes 'are judges employees of the state'?

Judges of the High Court are appointed by *commission*[26] (before taking office the person must take an oath or make an affirmation to serve the Queen). As servants of the Crown, all judges are directed to dispense judgments in cases, which come before them. Arguably 'direction' could be read widely to encompass the relationship between the Crown and its judges, Commonwealth and State, to bring judgments within the scope of crown copyright.[27]

The meaning attached to 'direction' is of particular relevance to the issue of Crown copyright in judgments. Ann Monotti argues that the idea of judges being under the direction or control of the Crown is an anathema to the concept of the independence of the judiciary if the terms are interpreted in the sense in which they apply to employment contracts.[28] A judge does not hold office under a contract of service from the Crown.[29] Judges are not under the control of the Crown, but direction alone is sufficient.[30]

The possible conclusions at this point, then, are that: (1) unreported judgments are protected by copyright as original literary works; and (2) ownership of the copyright may be with the Crown as the employer of judges under s 32 and s 35(6), or, failing that, the Part VII 'direction or control' provisions of the *Copyright Act*; or copyright is owned by the judges themselves as authors.

Caselaw: law reports

A number of assumptions need to be made with respect to law reports. As we have seen law reports can comprise many parts. Assuming there is an assignment of all the parts, if this is necessary, from the 'authors' of the parts to the publisher, if the report is published by a council of law reporting, then the council will probably own copyright in the published law report.

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[26] *High Court of Australia Act* 1979, s 11

[27] Monotti, Ann 'Nature and Basis of Crown Copyright in Official Publications' 1992 9 EIPR 305-316,313

[28] Note 26

[29] *Terrell v Secretary of State for the Colonies* [1953] 2 QB 482, 499 cited in Lahore, *op cit* para 20, 220

[30] Note 26

Individual law reports might be considered 'compilations' in the context of copyright law.[31] Each separate part of the report, headnotes, annotations, lists of cases, arguments of counsel, summaries of the law as well as the 'reasons for decision' of the judge could well have copyright in them separately (given that the threshold of originality is met), or not, as the case may be. Copyright will also subsist in the entire law report or 'typographical arrangement'[32] (assuming the requisite standard for originality is met).

However, it has been suggested that where there are councils of law reporting set up by State statute, if the Crown owns copyright in 'reasons for judgment' (and, remember, this is not finally decided yet and may well never be) then the *Copyright Act* being a Commonwealth Act will take precedence. I interpret this to mean, copyright in 'reasons for judgment' will always reside with the Crown, never the publisher (which, in this example is a council of law reporting).

The question of where the copyright ownership of law reports resides does not assist much in discussing copyright and databases of legal materials as most databases of case law contain unreported judgments (or 'reasons for decision') only.

Legislation

Although it is probably easier to see a more direct connection between the creation of legislation and Crown copyright there is no statutory copyright in legislation. This is because in 1938 it was decided in *Attorney-General for New South Wales v Butterworth & Co Australia (Limited)*[33] that the prerogative existed with respect to legislation and this decision has never been appealed or overturned.

The continuance of the prerogative has been enshrined by s. 8A of the *Copyright Act*, which states, as far as is relevant '... this Act does not affect any prerogative right or privilege of the Crown.'

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[31] See *Copyright Act* 1968 s. 10 where 'literary work' is defined as including 'a table, or compilation expressed in words, figures, or symbols.'

[32] Note 20, para 20210

[33] (1938) 28 SR (NSW) 195

WHAT ARE PREROGATIVE RIGHTS AND DO THEY EXIST WITH RESPECT TO CASELAW AND LEGISLATION?

Prerogative rights

Prerogative rights over official publications have their origins in royal censorship and the strict control over printing exercised by the Crown as the industry developed in the 15th and 16th centuries.[34] The laws were brought to Australia as it was a British colony and therefore its laws included 'all the common law relating to rights and prerogatives of the sovereign in his capacity as head of the realm.'[35] The objective of the prerogative was to superintend publication and convey authentic copies of works to the public.[36]

The prerogative is an exclusive right or privilege of the Crown to publish certain official material. It is a residue of discretionary authority, which, at any given time, is legally left in the hands of the Crown. The prerogative cannot be lost by desuetude. An existing prerogative can be expressly or impliedly replaced by statute but it is only abridged while the statute is in force.[37]

So while Crown copyright in official publications is a statutory right, the Royal Prerogative is part of common law. Although a new prerogative right cannot be created, as part of the common law it is a 'living organism capable of meeting the requirements of a growing community.'[38]

The problem with the prerogative is that it is cumbersome and outmoded. In the United Kingdom a new copyright has been created, Parliamentary copyright, which may, to the extent that it is legally possible, replace the prerogative right – at least for all practical purposes

Prerogative rights in caselaw

Unreported judgments

There is no clear authority for the proposition that the prerogative rights of the Crown extend to judgments publicly delivered or handed down by the courts.

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[34] Bannister, J. 1996, 'It ain't what you say, it's the way you say: could freedom of political expression operate as a defence to copyright infringement in Australia?' *Copyright Reporter,* vol 14, no 1, p. 25.

[35] *The King v Kidman* (1915) 20 CLR 425, 435 cited in Note 33

[36] Note 26, 308

[37] Note 26, 305-308

[38] H V Evatt, cited in Note 36, 305

Law reports

Some commentators believe, there is a strong basis for arguing that the Crown's prerogative in relation to statutes extended to the printing of law reports.[39] There are some early cases which support this view.[40] However the recognition of a prerogative right in respect of certain works during this period is not conclusive authority of its existence.[41] There were also times throughout history when judges asserted rights of granting exclusive licensing and printing.

Eventually, however, the voluntary professional association known as the Council of Law Reporting was set up. This later became a company limited by guarantee known as the Incorporated Council of Law Reporting and, in a practical sense, it became responsible for the printing and publishing of law reports.

Prerogative rights in legislation

As has already been stated prerogative rights exist in Australia with respect to Acts of Parliament.[42]

It might be possible, but not necessarily useful, to argue that this case only concerned 'Acts of Parliament', therefore the extensive amount of other *legislative* material may be covered by Crown copyright (or, as in the United Kingdom, Parliamentary copyright).

SUMMARY OF CROWN COPYRIGHT AND PREROGATIVE IN AUSTRALIA

The situation then, with respect to the copyright of legal material in Australia, is that the Crown in right of the Commonwealth or a State has prerogative rights in the publication of legislation. This is based on the 1937 *Butterworth Case* and the fact that s. 8A of the *Copyright Act* 1968 preserves existing prerogative rights of the Crown.

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[39] Note 3. 331

[40] For a full discussion of the Royal Prerogative and copyright see Monotti, A. 1992, 'Nature and basis of Crown Copyright in Official Publications' *European Intellectual property Review*, vol. 14. no. 9

[41] Note 26

[42] *Attorney General for NSW v Butterworth & Co (Australia) Ltd* (1938) 28 SR (NSW) 195

With respect to judgments the situation is not so clear. The prerogative cannot be clearly established. One is then left with Part VII of the Copyright Act. Fairly obviously s. 32 could apply if judges own copyright in their own right, and if they did the Crown would have not have copyright as judges are not under a contract of service with the Crown. Sections 176 and 177 remain the only possibility for establishing crown copyright in 'written reasons for judgment' and law reports, respectively, based on the nexus between the Crown and the judiciary being one of 'direction or control' as described in Part VII. Commentary on the meaning of 'direction or control' in this context is not conclusive and as there is no authority this remains an open question.

This is all overlaid by the existence in many state jurisdictions of councils of law reporting. Some of these have a statutory basis, while others are incorporated. These councils have responsibility for the publication of the law reports. It is also possible that the Crown or the judge owns copyright in the 'reason for decision' and the Crown owns copyright in published law reports which is assigned to the Council. This assigning of the rights is done by statute where the Councils have a statutory basis and by licence where they are incorporated. However where there are no councils of law reporting, ownership of the rights in law reports is still very much an open question between the Crown, the judge and the prerogative.

So although precise ownership of the copyright in these materials may remain unclear, what is clear is that legislation (prerogative), judgments (Crown copyright, prerogative, author's rights) and law reports (published works) are all protected by copyright in Australia. Now I want to look at the question of what rights we have in terms of the copying, etc, of these materials.

HOW CAN WE USE THESE MATERIALS?

Fair dealing provisions

Division 3 of the *Copyright Act* deals with fair dealing provisions. These include:

- Fair dealing for the purpose of research or study [43]
- Fair dealing for the purpose of criticism or review [44]
- Fair dealing for the purpose of reporting news [45]

Reproduction for the purpose of judicial proceedings or professional advice [46]

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[43] *Copyright Act* 1968 s. 40

[44] *Copyright Act* 1968 s. 41

[45] *Copyright Act* 1968 s. 42

[46] *Copyright Act* 1968 s. 43

By s. 10a 'judicial proceeding' means a proceeding before a court, tribunal or person having by law power to hear, receive and examine evidence under oath.

What these fair dealing provisions might mean for caselaw and legislation is that an entire case or statute could be copied if the copy was made for research or study, criticism or review, or for the reporting of the news. Under s. 43 again an entire case or statute could be copied in preparing for legal proceedings or for the purpose of the giving of professional advice by a legal practitioner.

The fair dealing provisions apply to all types of works with legal materials not being excluded. The fair dealing provisions also include works I have defined as law reports (being 'published editions' under the Act). There is no evidence however that the fair dealing provisions would apply to the same material if it were in an electronic database.

Statutory waiver or license to copy crown copyright works

As well as the fair dealing provisions, under the Crown copyright provisions of the Act it is permissible for a person (for themselves or on behalf of another and for a particular purpose) to make one copy of the whole or part of a 'prescribed work' in which Crown copyright, including any prerogative right or privilege in the nature of copyright, subsists.[47]

This licence only applies under the following conditions:

1. The copy is made by means of reprographic reproduction, that is, a facsimile copy of any size or form is made[48]; and
2. Where a charge is made for the making and supplying the copy it does not exceed the cost of making and supplying that copy.[49]

'Prescribed works' are listed under subsection. 3 as:

> (a) an act or State act, an enactment of the legislature of a Territory or an instrument (including an ordinance or a rule, regulation or by-law) made under an act, a State act or such an enactment.

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[47] *Copyright Act* 1968 s. 182A(1)

[48] *Copyright Act* 1968 s. 182A(1)

[49] *Copyright Act 1968* s. 182A(2)

(b) a judgment, order or award of a Federal court or of a court of a State or a Territory;
(c) a judgment, order or award of a tribunal (not being a court) established by or under an act or other enactment of the Commonwealth, a State or a Territory;
(d) reasons for a decision of a court referred to in paragraph (b), or of a tribunal referred to in paragraph (c) given by the court or the tribunal; or
(e) reasons given by a Justice, judge or other member of a court referred to in paragraph (b), or of a member of a tribunal referred to in paragraph (c), for a decision given by him either as the sole member or as one of the members, of the court or tribunal

This section appears narrower in its scope than the fair dealing provisions. While an entire act might be copied, it is not clear that an entire law report might be. It is likely to cover unreported judgments. It is also clearly only referring to making photocopies from paper copies and only to situations where no profit making or commercial venture is in issue.

Other statutory waivers and licensing arrangements

There are a number of other statutory waivers and licences that have been created over the years since the *Copyright Act* was first passed. These seem to have been created in response to changing circumstances and the technological advances.

(a) Standing licence to publish or copy Commonwealth legal materials

The Commonwealth government has established standing licences to enable law publishers to publish Commonwealth legislative materials and to enable institutions to make multiple copies of Commonwealth legal materials for teaching purposes free of charge. These licences were announced on 15 December 1982 by the Acting Attorney General at that time, Mr Brown. Law publishers can now apply for a standing licence which enables them to publish all Commonwealth acts, statutory rules, bills and explanatory memoranda, as well as ordinances and regulations of Commonwealth territories (other than the Northern Territory) The licence was intended to assist publishers in the provision of prompt up-to-date services on Commonwealth law.

In the educational field all institutions are given a standing licence to make multiple copies for teaching purposes of the following legal materials - bills,

acts, statutory rules, ordinances and regulations of Commonwealth territories (other than the Northern Territory) extracts from Parliamentary papers and Hansards, explanatory memoranda and judgments of courts and tribunals.[50]

It is not clear whether there are any fees charged for these standing licenses

(b) Standing licences and crown copyright waivers in Australian states

The State of New South Wales has waived its copyright in legislation and unreported judgments.[51] This means that publishers, subject to certain conditions can publish legislation and unreported judgments without infringing Crown copyright. The stated purpose for the relinquishing of Crown copyright was that the people of New South Wales should have unimpeded access to legislation.

There is also nothing mandated about whether the final published product has to be print or electronic so it can be assumed that either is acceptable.

The Victorian Government has also issued guidelines to assist its officers deal with requests to reproduce material, which is subject to Crown copyright.[52] The guidelines cover the copying of material stored in electronic databases and clearly envisage the charging of a fee or royalty that can be waived or reduced in certain circumstances.

This licence is purported to apply to all official publications, not only legal materials. The licence grant states that publishers and educational institutions should be given wide access to state legislative and judicial material

A standing licence to publish legislative material was also granted by the Northern Territory Government in 1996.

Queensland is currently reviewing its position on the licencing of Crown copyright material along similar lines to the Victorian guidelines.

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[50] Note 3, para 40,105

[51] 'Copyright in Legislation and other material' Notice, published NSW Gazette 110, 27 September 1996, reprinted in Lahore, Note 3, para 107,993; and 'Waiver of Crown Copyright in Unreported Judgments in NSW' Notice published in NSW Government Gazette, 3 March 1995, reprinted in Lahore

[52] 'Guidelines relating To Victorian Crown Copyright', reprinted in Lahore

These licences are an acknowledgment by the States of the public's need for enhanced access to legal materials that electronic publishing, particularly on the Internet, has facilitated. They can also be used as an opportunity for the government to recoup some of the cost of production of the source material.

CONCLUSIONS

Legal materials in Australia are protected by Crown copyright, the prerogative and possibly 'ordinary' copyright. There are also reasonably generous fair dealing provisions to cover photocopying by the various user groups that have been identified over time (for example, students and legal practitioners). As we have seen this refers only to the copying of originals in a print form.

How does all of this translate to the on-line and electronic environment? The various waivers of Crown copyright I have referred to would appear, in part, to be aimed at making primary legal materials easily available to legal publishers.

From our experience as librarians we know that publishers first put the information out on CD ROM, and increasingly these databases are being made available on-line via the Internet.

Our ability to copy, download, and otherwise disseminate legal materials to which we have access in this format is governed by whatever licence is signed between the vendor and us. This licence, we must assume, takes precedence over any statutory waiver of Crown copyright or fair dealing provision that may have been applicable to the print medium.

Where this might be different however is when the primary materials are made available on the Internet, free of charge. Here there is no contract and no vendor license restrictions. An interesting question we might consider is whether and to what extent the fair dealing provisions and crown copyright exceptions might apply here.

Other Internet-related questions might flow from this. For example, if a library creates a Web page and provides hypertext links to cases and legislation on another free site, could this be construed as 'copying'? Would the answers be different depending on whether the Web page creator was a law firm or a university library? Another example might be a library or information service provider who downloads cases and acts from a free site and then on sells it. If this is done on a fee for service basis, could it be made analogous to the s. 182A waiver; and if profit making was involved would this make a difference?