

COPYRIGHT vs CONTRACT

Nick Smith reports that submissions have closed for the copyright vs contract review. The following is an extract from *The ADA Monthly Intellectual Property Wrap-Up*, August 2001.

www.digital.org.au/issue/issue.htm

With 27 Submissions received from interested parties, the Copyright Law Review Committee has begun considering the issue of the relationship between copyright law and contract.

The submissions, from such groups as the ADA, the Copyright Agency Limited, the National Library of Australia, the Australian Publishers Association and the Australian Copyright Council, are split fairly evenly between rightsholder bodies which assert that 'freedom of contract' should be paramount, and 'copyright user' bodies which assert that the copyright law as enacted by Parliament should prevail.

The International Intellectual Property Alliance, a coalition of 7 US trade associations, notes that contracts which would modify copyright exceptions do exist: "The Issues Paper begins by correctly noting that 'licenses to use copyright works ... may contain clauses that purport to exclude or modify the statutory exceptions to copyright infringements.'

In contrast, a number of other groups have no knowledge of any such agreements. According to CAL:

35. CAL is not aware of any Australian agreements relating to digital works that excludes or modifies the limitations to the exclusive rights of copyright owners.

36. CAL has been provided with a copy of the Australian Publishers Association's (APA) submission to the committee. CAL notes that the APA approached all of its members, approximately 88% of the book publishing industry, none of whom could offer up any positive examples of contracts expressly seeing to exclude or modify exceptions in the Act.

The IIPA, along with other rightsholder bodies, contend that licence agreements are a more efficient means of setting 'user privileges' than the copyright law. According to the IIPA:

Ample historical and recent evidence makes clear that licenses with terms that vary – from transaction to transaction – including from exceptions anticipated and codified in the copyright statute, can be expected to become more common. This practice should not only be considered permissible but, in most instances, beneficial. Put another way, proposals to interfere with or restrict contractual freedom in the licensing of access to or use of copyrighted materials

should be greeted with great skepticism, including those proposals deriving from perceived inconsistencies between license terms and statutory exceptions to copyright. Maximising contractual freedom in this sphere is in the best interests of copyright owners and the general consuming public alike

In contrast, the ADA and other bodies do not dispute the need for vendors of copyrighted material to sell their works accompanied by a licence agreement but argue that the exceptions in the Copyright Act must be preserved as a set of democratically-accountable minimum standards.

All submissions to the CLRC can be found at:
www.clrc.gov.au/clrc

Select 'Present reference' and then 'What is the Committee Doing?'

LEXPO 2001

For those in Sydney at the end of October a legal technology exhibition and conference is being held at Sydney Town Hall 25-6 October 2001. There will be over 50 exhibits of legal technology and IT products and services. Entry to the trade exhibition is free.

LAW LIBRARIAN CHANGES NAME

Information provision in the legal world has changed dramatically since the formation of the British and Irish Association of Law Librarians (BIALL) in 1969. Now the Association wants to disseminate its own message to reflect the changing face of the profession. Their journal, formerly *Law Librarian*, has been renamed *Legal Information Management* and given a new cover and format. The aim is to encompass the needs of all those involved in providing legal information.

BIALL Chair Valerie Stevenson comments:

Keeping up to date with developments in legal information is extremely important to information managers, legal practitioners and academics as well as law librarians. *Legal Information Management* aims to provide high quality articles on a wide range of topics which will appeal to all sectors of the profession.

A sample of the new journal can be seen at
www.biall.org.uk