

The background of the slide is a warm, orange-toned image. It depicts a hand holding a CD-ROM, with the disc's surface reflecting light. Below the hand, a computer keyboard is visible, with the 'PgDn' key clearly marked. The overall aesthetic is that of early 2000s digital technology.

Legally Blogged: Recording Australia's (Online) Cultural Heritage

**Unlocking IP Conference 2009:
National and Global Dimensions of the Public Domain**
17 April, UNSW, Sydney

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Catherine Bond (Faculty of Law, University of NSW)



Remember that Review?

- In 2007 the DBCDE, DEWHA and A-G's Dept commenced a review into the feasibility of extending the legal deposit scheme to include audiovisual and electronic material
- Submissions closed mid last year and we unsure how the review has progressed...
- Australia has fallen behind other jurisdictions including UK, Canada, NZ and US (to some extent)



Where are we now?

COPYRIGHT ACT 1968 - SECT 201

- (1) The **publisher** of any **library material** that is published in Australia and in which copyright subsists under this Act shall, **within one month after the publication, cause a copy of the material to be delivered at his or her own expense to the National Library.**

Penalty: \$100.

- (2) The copy of any library material delivered to the National Library in accordance with this section shall be a copy of the whole material (including any illustrations), be finished and coloured, and bound, sewed, stitched or otherwise fastened together, in the same manner as the best copies of that material are published and be on the best paper on which that material is printed.

[...]

"library material" means a book, periodical, newspaper, pamphlet, sheet of letter-press, sheet of music, map, plan, chart or table, being a literary, dramatic, musical or artistic work or an edition of such a work, but does not include a second or later edition of any material unless that edition contains additions or alterations in the letter-press or in the illustrations.



What's missing?

- Audiovisual and electronic materials (note that some electronic materials have been collected on voluntary basis)
- Broadcast material
- Internet/online material



Why does this matter?

- Gathering national collection of culturally significant material
- Preservation of Australia's published heritage for present and future generations
- Ongoing public access
- Audio-visual and electronic materials represents an (increasingly) significant part of Australian culture



Legal Deposit and the Public Domain

- Legal deposit aids the public domain by:
 - Ensuring that a record has been kept of each particular work protected under copyright
 - Ensuring that, once copyright expires, there is a copy of that work that can be accessed by the public
 - It is through legal deposit that many of Australia's public domain works are available today : deposit was originally a condition of registration (under the colonial and 1905 copyright statutes, and to some extent under the 1912 statute)



United Kingdom



- *Legal Deposit Libraries Act 2003 (UK)*: restored previous rights under *Copyright Act 1911 (Imp)*
- Section 6 – ‘Regulations: deposit of non-print publications’ – gives power to the Secretary of State to make regulations for the deposit of non-print publications
- This was described as the ‘main purpose’ of the statute: to ‘ensure that publications of significance are collected, regardless of the medium in which they are published’ (LDLA 2003 Explanatory Notes)



Canada



- 1969: Sound recordings
- 1993: CD-ROMs and video recordings
- 1995: Electronic publications on all types of physical formats
- 2004: LAC granted right to sample websites.
- 2007: Deposit of online 'publications'. Must be in publication form (e.g. title, author, date). Exceptions apply for emails, blog posts, press releases etc. LAC may choose to download directly from website in particular cases
- Publisher chooses public access arrangement (open/restricted)



New Zealand



- 2006: CD/DVD, off-line must be deposited
- 2006: Online files, NLNZ can copy, assistance should be provided if requested
- Online files, if publicly accessible, can be made accessible online by the NLNZ



United States



- 'Mandatory deposit' - 17 U.S.C. section 407
- Sound recordings, motion pictures must be deposited
- Machine-readable formats eg CD ROMs
- Exemptions contained in § 202.19
- At this point...no requirement that Internet-based online materials be deposited



Cultural Significance: Blogs

Cyberspace Law and Policy Centre, University of New South Wales

The House Of Commons

The Unlocking IP Research Staff Blog

New models for sharing and trading intellectual property

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> CAL v NSW Analysis Part Two: Constitutional Validity of Free Uses of Works By Government (permalink)

Supporters

The Unlocking IP research project
The Cyberspace Law and Policy Centre
The Australasian Legal Information Institute

Archives

September 2006
October 2006
November 2006

Thursday, August 07, 2008

CAL v NSW Analysis Part Two: Constitutional Validity of Free Uses of Works By Government

So at the end of my last post I suggested that, if the Government introduced new free use provisions, based on the UK legislative model, to deal with the decision of the High Court in CAL v NSW, then there may be some constitutional problems in doing so. I mentioned two provisions - section 51(xviii), the constitutional copyright power; and section 51(xxxi), the power with respect to acquisition of property on just terms.

Any arguments with respect to section 51(xviii) can arguably be easily dealt with. What's interesting about this power is that, for a long time, it was believed that the Parliament could actually do very little with respect to copyrights because of the narrow interpretation given in the decision of *Attorney-General (NSW) ex rel Tooth & Co Ltd v Brewery Employees' Union of NSW* [1908] HCA 94; (1908) 6 CLR 469. In that case it was found that the union label trade mark wasn't valid because such marks were not around in 1900, when the Constitution was framed. On that basis, for about eighty-five years it was believed that section 51(xviii) gave the Parliament very narrow power with respect to making IP laws. However, the 1994 decision *Nintendo Co Ltd v Centronics Systems Pty Ltd* [1994] HCA 27; (1994) 181 CLR 134 and then the subsequent 2000 decision *Grain Pool of Western Australia v Commonwealth* [2000] HCA 14; 202 CLR 479 - revealed that the HCA believed that section 51(xviii) was quite a wide power, leading to broader concerns that there might not actually be any limits on section 51(xviii).

As such, given this broad interpretation, it would be unlikely that such free use exceptions would fall foul of section 51(xviii), unless some sort of constitutional argument could be raised that the term "copyrights" as it appears in the Constitution requires that remuneration be given to the copyright owner. That, however, would probably cause all types of chaos, and is therefore unlikely. It would be interesting to run through...however, in light of the CAL v NSW decision, I am in no hurry to get another copyright case before the HCA.

It is the second provision, however, that may cause constitutional difficulties for these types of exception. Section 51(xxxi) has occasionally popped up in IP decisions over the last fifteen years (see *Australian Tape Manufacturers Association Ltd v Commonwealth* [1993] HCA 10; (1993) 176 CLR 480 and *Stevens v Kabushiki Kaisha Sony Computer Entertainment* [2005] HCA 58; (2005) 221 ALR 448). This constitutional section was actually mentioned at several points in the joint judgment of CAL v NSW:



Cultural Significance: Blogs

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the blog of...

JIM AND THE SINGING HAMSTER


Image by Cool Text: Logo and Button Generator - Create Your Own

MONDAY, MARCH 16, 2009

I'm back, but Jim's emo-ing...



Hey hey, Hammy here. Yes, I'm back, but not for long. I will be back for only a week, then I will be flying off to Darwin, somewhere north of Australia. Anyway, Jim is a little crazy, and he wishes to post this . I don't know, as I myself didn't even get what was he trying to say but he insist that I post it up. Well, here goes:
(by the way, it's in the form of a poem. how interesting)



Hi, Hammy here.

about jim

jimandthesinginghamster
Australia

Hi, Hammy here. This is Jim's blog. Yes, my master, babysitter or whatever you want to call him . He's a guy, obviously, and he's lame. A lame person he is, no, not that he can't walk. He will amuse you with his lame words that will keep you speechless for a few seconds. That, ladies and

Done



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From: sender@hotmail.com

To: recipient@hotmail.com

Subject: Life and Laughter

Font Style Font Size **B** *I* U [List Icons]

Excerpts from a Dogs Diary...

- 8:00 am - Dog food! My favorite thing!
- 9:30 am - A car ride! My favorite thing!
- 9:40 am - A walk in the park! My favorite thing!
- 10:30 am - Got rubbed and petted! My favorite thing!
- 12:00 pm - Lunch! My favorite thing!
- 1:00 pm - Played in the yard! My favorite thing!
- 3:00 pm - Wagged my tail! My favorite thing!
- 5:00 pm - Milk bones! My favorite thing!
- 7:00 pm - Got to play ball! My favorite thing!
- 8:00 pm - Wow! Watched TV with the people! My favorite thing!
- 11:00 pm - Sleeping on the bed! My favorite thing!

Excerpts from a Cat's Diary...

Day 983 of my captivity.

My captors continue to taunt me with bizarre little dangling objects.

They dine lavishly on fresh meat, while the other inmates and I are fed hash or some sort of dry nuggets. Although I make my contempt for the rations perfectly clear, I nevertheless must eat something in order to keep up my strength.

The only thing that keeps me going is my dream of escape. In an attempt to disgust them, I once again vomit on the carpet.



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Cultural Significance: Online Video

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Free Hugs Campaign - Official Page (music by Sick Puppies.net)



0:05 / 3:39

This is a video response to "FREE HUG" SHIRTS & SIGNS @ MyHugShirt.com

★★★★★ 108,192 ratings 41,566,259 views

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juanmann 0:43 DavesFre... 2:51 StanleyP... 2:43 Greenhou... 3:53

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YysupermanYY (10 minutes ago) Reply

what?

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Get your "Free Hugs" t-shirts here:
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Special thanks to Sick Puppies, for the music:
<http://www.sickpuppies.net>

Contact:
stepane@attglobal.net

News: We would like to thank and hug every one of you for making this video Youtube video of the year!

Sometimes, a hug is all that we need. Free Hugs is the real life controversial story of Juan Mann, a man whose sole mission was to reach out and hug a stranger put a smile on their face.

In this age of social-disconnection most all of us lack that simple human touch from another, the effects of the Free Hugs Campaign are now felt around the globe.



UNLOCKING IP

New models for sharing and trading intellectual property

Cultural Significance: Articles/Blogs/Videos/Comments

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State Government discovers radical changes to Central Station necessary for CBD Metro are physically impossible.

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Current economic climate calls for review in jobs needed to qualify for welfare, say agencies.

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Prev



Pandora Archive

- Growing collection of Australian online publications, established in 1996
- Originally established by NLA, now 9 other partners (libraries and cultural collecting societies)
- Requires labour intensive negotiation with publishers for rights to collect, preserve and provide access
- Experimental snapshots taken, but can't be made available to the public due to copyright protection
- Extending legal deposit would reduce overheads and lead to an improved collection of online publications



When to collect?

- Pandora - Is the publication
 - about Australia or
 - on a subject of social, political, cultural, religious, scientific or economic significance and relevance to Australia and be written by an Australian author; or
 - written by an Australian of recognised authority and constitute a contribution to international knowledge.
- Authority and long term research value
- Is it significant to Australian audiences?
- Where are the publishing decisions made?
- Snapshots of the Australian Domain can be significant



Extended Scheme: Online Collection Strategy

- Requiring deposit of online materials by publishers too burdensome
- Institutions should be allowed to copy materials made available online
- Selective/hybrid collection (rather than comprehensive) based on broad view of 'cultural significance'
- Guidelines for 'cultural significance' should be developed by library/archive (already done to an extent with Pandora)
- Voluntary online notification facility where publishers can alert library/archive when relevant online materials become available
- Library/archive can require publisher to provide materials upon request (for example, where access issues arise)
- Pandora+ model



Thank You

Blog: <http://www.cyberlawcentre.org/hoc/>

Abi Paramaguru: a.paramaguru@unsw.edu.au

Catherine Bond: catherine.bond@student.unsw.edu.au

Free Hug?: http://www.youtube.com/watch?v=vr3x_RRJdd4