



Australian Society of Authors

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Senator Payne, Chair  
Senate Legal and Constitutional Affairs Committee  
Department of the Senate  
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Dear Senator Payne

*Re: Copyright Amendment Bill 2006 and related Regulations*

Your Committee has asked for comment on the above amendments and regulations. The Australian Society of Authors (ASA), the peak body representing Australia's literary creators, welcomes this opportunity to present our views on these important amendments. The ASA directly represents about 3,000 members across Australia who write and illustrate in all genres; and we speak on behalf of the more than 10,000 authors and illustrators (according to Public Lending Right estimates) working in Australia today.

Overall, the ASA commends and supports the detailed recommendations on the Copyright Amendment Bill 2006 formulated by the Australian Copyright Council. The ASA also commends and endorses the combined submission to Attorney-General the Hon. Philip Ruddock MP from the Copyright Advisory Group of the Ministerial Council on Employment, Education, Training and Youth Affairs and Screenrights the concerning the drafting of proposed sections 28A and 200AAA. We believe this submission is an excellent example of how apparently opposing parties can work in consultation with each other to improve copyright management in Australia.

We offer the following additional points specifically relevant to the interests of authors for your consideration.

### *Private Copying/Format Shifting*

The ASA requests that the proposed private copying “format shifting” exception not apply to books at this stage but instead be monitored, and reviewed in two years’ time with audiovisual material.

We are seriously concerned that the government’s proposal will introduce exceptions formulated in the context of the private copying of music that will have unforeseeable and unintended consequences if imposed now on books. The commercial environment in which books are created and marketed differs from that for music and is evolving in different ways.

The ASA’s major concern is that some of the proposed exceptions to copyright infringement may impede or interfere with emerging markets for authors in the digital environment. The ASA brings to your attention the rapid growth of the market for digital books. The Australian Bureau of Statistics records that sales of electronic books (including audiobooks) for the period 2003-2004 had risen to \$7.5 million, and that this was a developing market area. Authors are currently able to sell rights for digital publication in addition to print publication, a situation that provides authors with valuable additional income. The government’s proposals threaten the ability of authors to be paid for the use of their time and talent in the digital marketplace.

The ASA is aware that in other developed countries where private copying is allowed copyright owners are compensated by levies on copying equipment and media. We understand, however, that the government is not prepared to introduce such a scheme in Australia.

While the matter is so unsettled, we urge that a music-based solution be held back from books to ensure proper consideration of the consequences.

### *Libraries/Proposed new “flexible” exception*

The ASA appreciates and commends the role of public and educational libraries in the dissemination of knowledge and information. The ASA values such libraries for their importance in the cultural development of Australia. The ASA believes that such libraries should have the ability to fulfil their important role so long as there is no impediment to real or potential income to creators.

However, the ASA does not believe that libraries in other settings, such as in corporations or law firms, should be able to rely on the same exception provisions as those applying to public and educational libraries. The ASA argues that such libraries exist to fulfil a fundamental commercial purpose and as such any copying and communication of works they undertake should be properly remunerated through appropriate licensing.

Further, the ASA believes that the overlap between the proposed new “flexible” exceptions for libraries and archives (including collecting institutions) and for educational institutions and the exceptions that are covered under statutory

licence is problematic as it leads to potential uncertainty and hence the possibility of increased litigation. The current licence system for educational institutions works well and we see no reason to extend further free use exceptions for educational purposes.

Should libraries and educational institutions have some “special case” that is currently not covered under the exceptions provided in the Act, we request that this be clearly documented. The ASA would give such a “special case” careful consideration and it may well be that we would support the addition of such an exception, as we do for the new “flexible” exception for people with disabilities.

#### *Technological Protection Measures*

A key element of the draft regulations that concerns the Australian Society of Authors (ASA) is that if these drafts regarding *Technological Protection Measures* are implemented as legislation educational institutions and libraries will be permitted to use circumvention devices to access works that are otherwise technologically protected for use. The act of viewing is one of the key acts that authors expect to be paid for and the technological protection measure is put in place so that this stream of income can be protected. Bypassing the protection measure closes an accepted remuneration channel for authors through payment by contract with a publisher and this is of great concern to the ASA.

We note as well that the text of the applications mechanism in the draft legislation places no obligation for the body entrusted to undertake the required review of this mechanism to consult with copyright owners whose works will be affected. The ASA believes that consultation with affected copyright owners should be required so that the Minister can properly assess that the need for the exemption has been credibly demonstrated.

Yours sincerely

Dr Jeremy Fisher  
*Executive Director*