

## **Part 1 : What's Wrong with the Issues Paper?**

While I am sure Mr Norman has attempted to stay neutral to the result of this review in drafting the issues paper, he has failed very seriously. Even before the average reader has made their way through the introduction, they have been exposed to many half-truths and blatant lies-by-omission.

For example : "Copyright is a form of intellectual property that protects the rights of creators in certain original forms of expression, including photographs and cinematograph films.". Which blatantly fails to mention that the rights we are talking about are not rights in the usual sense - inalienable human rights, they are a mere commercial monopoly granted to individuals by the people, through the government. They can be revoked at any time by the people (through the government) by a simple change of the copyright act and do not have the same sort of moral consequences as removing other rights, such as free speech.

Another good example is : "It [copyright] rewards creative effort, and economic investment in creative effort, by granting a number of exclusive economic rights.". On the whole, copyright does not reward creative effort - it suppresses it. The only ones to gain from copyrights are the oligopoly of the big name music labels and music studios. Creative individuals (ie, the majority) are burdened by them. Take for example the wildly successful "Best of Bootie" CDs (see <http://www.bootieusa.com/bestofbootie2007/index.htm>). The creative individuals who made the music on these CDs are forced into pursuing their art form illegally by the complexity and expense (and in some cases, impossibility) of the copyright licensing involved.

While these are subtle, they set the tone for the bias of the entire paper. Particularly worrying is the constant slurs against pirates. Piracy is no longer seedy merchants selling burnt CDs on the street corner - it has been constantly redefined by both sides of the copyright debate, and is now a movement of copyright reformists, with it's own leaders and visionaries, political parties and conventions. It is wildly popular for a movement in it's infancy - the Swedish Pirate party has surpassed the Swedish Green party in members. There is even talk of organising an Australian Pirate Party.

## **Part 2 : Review**

### ***Operation and Changes to 47J.***

Section 47J is the part I have the least objection to. Unlike movies or music there is a) real competition in the market and b) Most photography is of private events, allowing private photography where pretty much everyone involved simply ignores copyright law.

As such, the negative effects of this section of the Copyright Act are minimal and not worth changing until the rest of Copyright law is overhauled.

That said, technical protection measures are terrible, and far from being given any legal protection, should be outlawed. Technical protection measures are designed to prevent copyright infringement, but in reality are extremely unlikely to prevent any competent infringer. Once a TPM has been broken, the contents protected by the TPM can be shared freely by copyright infringers. Because

TPMs break fundamental laws of Cryptography, it is impossible to produce a TPM which cannot be broken, and the speed at which TPMs are broken is *increasing*, not decreasing. Since the TPM does not deter any competent infringers, the only people who suffer from the TPMs are the people who obey even unjust laws, who soldier on despite the TPM. TPMs have well known and frankly disastrous secondary effects, such as the Sony Rootkit Debacle, in which a TPM from Sony installed itself on unwitting user's computers and compromised not only the privacy of their home computers but also their security. (See eg, [http://en.wikipedia.org/wiki/Sony\\_Rootkit](http://en.wikipedia.org/wiki/Sony_Rootkit))

These devices are nothing short of completely immoral and should be banned.

#### **Issue 4: Current operation of section 110AA**

##### **(a) Does section 110AA provide an appropriate balance between the rights of copyright owners and other interests?**

No - the ban on space shifting, digital format shifting, and commercial format shifting and the legal protection for TPMs should all be revoked. All these things make life harder for consumers with no legitimate gain for companies.

##### **(b) If section 110AA is not appropriate, what are the options for achieving a better policy outcome?**

Short of a complete copyright overhaul, which I realise is not within the scope of this review, removal of the TPM provisions would be a good start. Outlawing them would probably require a separate law and so is not within scope.

The popularity of digital video players such as the iPod Video show that there is consumer demand for portable movies. While there has been some attempt to fill this demand with the iTunes video store, consumers should not be forced to buy movies twice, simply so they can watch it on both their DVD player and iPod Video.

Digital format shifting should be allowed. If I buy a movie or TV show online which is in AVI or MKV format, I should be legally allowed to "format shift" to an MP4 formatted file, because this is the only format which my iPod Video understands. It is a necessary part of space-shifting.

Commercial format shifting should also be allowed on behalf of a consumer. Thus, instead of attempting to transfer an entire cassette library to DVD by hand, a member of the public could simply engage the services of a format-shifting company to do the job for them.

##### **(c) What are the benefits and costs of those options?**

Since the vast majority of the public have zero knowledge of copyright law, and those that do have no respect for it, this would essentially simply enshrine in law what the public is **already** doing. Thus the costs are basically zero. The benefits are that jobs would be created by the companies that format shift VHS tapes to DVDs.

***Issue 5: Should section 110AA be changed to permit additional copying***

**(a) Under what additional circumstances should section 110AA permit a copy to be made of a cinematograph film for private and domestic use?**

Along with the issues discussed in section 4, a backup provision would be nice, as with software.

**(b) What are the kinds and sources of films that are likely to be reproduced under any proposed changes?**

This question is misleading. It should read something like :

What are the kinds and sources of films that are likely to be reproduced under any proposed changes where this would not otherwise be legal and which someone actually cares about the copyright for?

Since the only people who satisfy the last two clauses of the revised question are people who make money from the copyright under a restrictive licence, which at the moment means commercially published movies and Anime from big-name studios.

**(c) To what extent are films likely to be reproduced under any proposed changes subject to TPMs (such as anti-copy measures) to block unlicensed copying?**

Almost all commercially produced DVDs are subject to a TPM called CSS (which I might add was broken long ago), so pretty much everything to which the above two clauses applies will be subject to a TPM.

**(d) How would any proposed changes affect the normal market exploitation of films and other legitimate interests of copyright owners?**

Basically it wouldn't. Seriously, if a DVD breaks people are far more likely to go download the movie on P2P than to go buy another DVD. After all, they quite rightly feel that they are entitled to it - they did after all buy it once, why should they have to buy it again?

**(e) How would any proposed changes improve achievement of the Government's policy objectives, including economic incentives for the creation and distribution of films?**

This would have minimal / no effect on the economic incentives of movie studios.

***Issue 6: Should section 110AA be changed to limit permitted copying***

It is already far, far too restrictive. Don't limit it any more.

***Issue: 7 Visual images embodied in a computer program***

**(a) In the event that proposed changes to section 110AA would extend to a cinematograph film embodied in a computer game or program, should the making of a reproduction of that game or program be permitted – and if so how would this be implemented?**

The cinematograph should simply be considered part of the computer game or program and should not be given any special protection or be treated as a cinematograph.

**(b) How would the issue of TPMs (such as anti-copy measures) be dealt with?**

I think my views on this are fairly clear by now.

## **Conclusion**

We stand at a pivotal point in copyright history. In the future one of two things will happen : Either the copyright oligopoly will win and every private communication of the Australian public will be monitored for copyright infringement (Don't laugh or accuse me of doom saying - this has actually been suggested in America). Alternately the Pirates and the Australian public will bring the oligopoly and copyright law to it's knees and a new wave of smaller companies will come to the fore who understand how to make a profit without copyright. Either way, the status quo is about to be changed drastically.

Christian King.

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