

## Introduction

### Referral of inquiry

- 1.1 On 17 March 1999 the Attorney-General, the Hon. Daryl Williams AM QC MP, asked the Committee to inquire into and report on issues relevant to the effective enforcement of copyright in Australia and set out the terms of reference for the inquiry. The detailed terms of reference appear at p x of this report. They provide for the Committee to address the following:
- evidence of the types and scale of copyright infringement in Australia
  - options for copyright owners to protect their copyright against infringement
  - the adequacy of criminal sanctions against copyright infringement
  - the adequacy of civil actions in protecting the interests of plaintiffs and defendants in actions for copyright infringement
  - the desirability or otherwise of amending the law to provide further procedural, evidential or other assistance to copyright owners in civil actions for copyright infringement
  - whether the provisions for border seizure in Division 7 of Part V of the *Copyright Act 1968* are effective
  - the effectiveness of existing institutional arrangements and guidelines for the enforcement of copyright.
- 1.2 The Attorney-General asked that in the inquiry the Committee have regard to:
- Australia's obligations under relevant international treaties

- the provisions of the *Copyright Act 1968*
- established principles of criminal and civil procedure
- Commonwealth criminal law policy
- enforcement regimes for other forms of intellectual property
- existing resources and operational priorities of government enforcement agencies and
- the possible effect of any proposed changes on the operation of government and private sector organisations.

## Background to the inquiry

- 1.3 The inquiry follows growing claims by Australian industries (such as film, music and software) that copyright owners, and other members of the community, are being deprived of substantial income through the infringement of copyright. The task of the Committee, therefore, has been to investigate the extent of the infringement, and the legal and practical mechanisms available to copyright owners in protecting their copyright. The Committee has also considered whether the current criminal and civil laws are adequate, and whether they are used effectively by government agencies and copyright owners alike.
- 1.4 In the recent debate surrounding the lifting of restrictions on parallel importation,<sup>1</sup> industry members have also expressed concern over the effect of parallel importation on the incidence of copyright infringement.<sup>2</sup> This issue was raised by a number of witnesses during the course of inquiry, and is addressed in Chapter 2 of the report.
- 1.5 A number of smaller copyright owners also participated in the inquiry. These witnesses identified a separate range of problems that they faced in the enforcement of copyright, including in particular their inability to seek civil remedies for infringement. The Committee has undertaken a thorough review of civil actions and relief available under the *Copyright*

---

1 See, for example, Prof A Fells, 'Repeal of Parallel Importation Restrictions: A Step Forward for Copyright in Australia and New Zealand', address given at 12<sup>th</sup> Annual Intellectual Property Society of Australia and New Zealand Inc Conference, 29 August 1998; J Revesz, *Trade Related Aspects of Intellectual Property Rights*, Staff Research Paper, Productivity Commission, May 1999.

2 K Cummins, 'Piracy inquiry outcomes 'come first'', *Australian Financial Review*, 6 April 1999.

*Act 1968* in Chapter 5, and has made recommendations that it hopes will make the law more workable for all copyright owners.

## Related inquiry

- 1.6 It should be noted that during the course of this inquiry the Committee was asked to undertake an inquiry into the provisions of the Copyright Amendment (Digital Agenda) Bill 1999.<sup>3</sup> The Committee regards the Bill inquiry as complementing its work on the enforcement of copyright inquiry, and as such, has not sought to revisit the conclusions and recommendations that it arrived at in the Bill inquiry. This relates particularly to the issues of the infringement of copyright in broadcasts, which is referred to in passing in Chapter 7 of this report.

## The inquiry process

- 1.7 The inquiry's terms of reference and invitations to make written submissions were contained in advertisements in national newspapers on 9 and 10 April 1999. The original closing date for submissions was 21 May 1999 and, at the conclusion of the inquiry, 67 submissions had been received. The Committee held public hearings in Canberra, Sydney and Brisbane. Details of the witnesses who gave evidence are included in Appendix C. Appendix G comprises a list of individuals and agencies overseas with whom the Chairman consulted during the course of the inquiry.

## The report

- 1.8 The structure of the report reflects the main terms of reference, set out above.
- 1.9 Chapter 2 examines the type and scale of copyright infringement, and looks at the relationship between parallel importation and copyright infringement.
- 1.10 Chapter 3 considers the operation of the existing legal framework for the enforcement of copyright. As a preliminary issue, the question of who

---

<sup>3</sup> On 3 September 1999 the Attorney asked the Committee to inquire and report on the Bill and on 6 December 1999 the Committee's *Advisory Report on the Copyright Amendment (Digital Agenda) Bill 1999* was presented to the Parliament.

should bear the responsibility for the protection and enforcement of copyright is considered. In this chapter the Committee examines the issue of registration of copyright, one of the key issues to emerge from the evidence.

- 1.11 Chapter 4 concentrates on the application of the criminal law to copyright enforcement. The Committee considers existing penalties and sentences, as well as new offences in relation to infringement. A key issue discussed in this chapter, and picked up again in Chapter 5, is the need to simplify the proof of infringement.
- 1.12 Chapter 5 focuses on civil remedies for infringement. The Committee considers suggestions for more effective redress, including statutory damages, and a small claims jurisdiction for infringement disputes.
- 1.13 Chapter 6 deals with the practical aspects of copyright enforcement. The Committee examines the arrangements between law enforcement agencies, amongst themselves and with copyright owners, for the policing of copyright. As part of the arrangements, the Committee looks at the role of the Australian Customs Service in intercepting infringing material at the border.
- 1.14 In Chapter 7 a number of issues related to enforcement are briefly discussed.