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Hot Topic: Copyright - all happening at once

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Summary

- Upcoming legislation
- TPMs
- Fair dealing, Digital agenda review, Enforcement
- Orphan works
- Legal deposit
- The AVCC and its FAQ
- Unlocking IP and OAK Law
- Best friends



Upcoming Legislation

- Attorney-General's speech on 29 August
- Progressive announcement of different parts of a bill to amend the Copyright Act
- "Exposure drafts" for comment
- Covers TPMs, new enforcement measures, new fair dealing exceptions, other measures
- "We will endeavour to stagger the submission dates so you will not be overwhelmed."

TPM Definition

A device or product, or a component incorporated into a process, that is designed, in the ordinary course of its operation, to prevent or inhibit the infringement of copyright in a work or other subject-matter by either or both of the following means:

- (a) by ensuring that access to the work or other subject matter is available solely by use of an access code or process (including decryption, unscrambling or other transformation of the work or other subject-matter) with the authority of the owner or exclusive licensee of the copyright;
- (b) through a copy control mechanisms.

TPM and Libraries

What is the problem for libraries?

- Access control; e.g. passwords, file permissions, encryption. Access control prevents all access, whether illegal or not.
- Copyright protection; e.g. can control reproduction, limit the number of copies, limiting the duration of access, etc
- They can protect both copyright and business models – not the same thing!

TPM Background

- Enquiry by LACA proposed many exceptions:
<http://www.apf.gov.au/house.committee/laca/protection/report.htm>
- Required to meet the AUSFTA: by January 1, 2007
- Will be a mix of legislation and regulations
- Draft exposure bill released recently: comments by Friday 22 September.
- US Government & DMCA have been influential

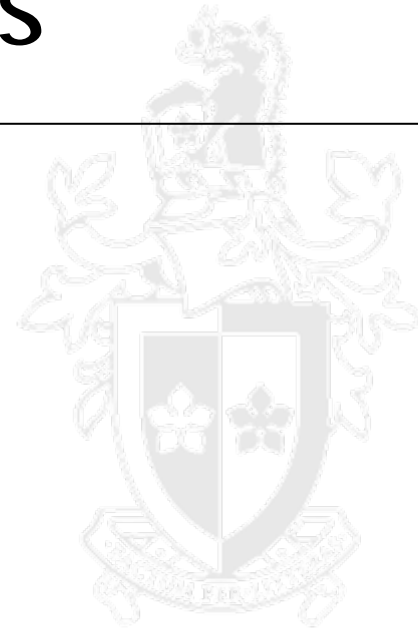
TPMs – What We Wanted

Exceptions for

- Fair dealing
- Libraries, archives and cultural institutions – research & study, copying for others, copying for preservation
- Service of the Crown
- Obsolete formats
- Mixed works

TPMs: More Exceptions

- Print disabled
- Use of Part VA and Part VB
- Research into encryption
- Orphans and abandonware
- Back up copies
- Format shifting



TPMs: Catch-22

- Circumvention of TPMs is permitted in some cases
- The legislation only protects copyright, not contractual or commercial interests (such as market segmentation devices)
- The legislation outlaws dealing in circumvention devices
- So how can we exercise legitimate rights?

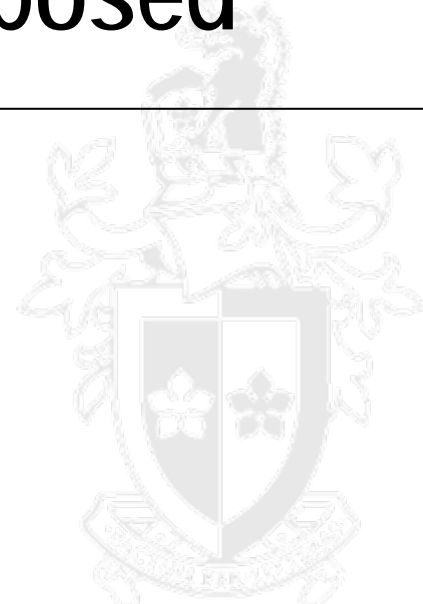
TPMs: What is Proposed

- Several exceptions, including “acquisitions by libraries ...”
- Further exceptions to be included in regulations (not yet available)
- Further exceptions under consideration, which require additional evidence
- There are some protections for libraries
- There are new civil remedies and criminal penalties for circumvention – up to 5 yrs and/or \$60K fine.

TPMs: What is not proposed

Exceptions for

- Fair dealing
- Part VA and Part VB copying
- Orphan works
- New fair dealing exceptions will be considered later



Fair dealing

Government plans announced on May 14. The main features of these plans

- No new fair use exception along US lines
- Time shifting
- Format shifting
- Extended non-commercial uses by libraries, museums and archives, educational institutions, for people with disabilities, and for parody and satire

Fair dealing: limitations

- Provisions will not conflict with the normal rights of copyright owners to exploit their rights
- Time shifting will not permit creation of “home libraries” of recorded material
- Audiovisual material is excluded from the provisions – you can’t copy a DVD to a hard drive
- Exposure draft to be released SOON for comment

Digital Agenda review

- Undertaken by Matthew Hall of Phillips Fox
- Completed in January 2004 and provided to Gov't
- Some elements of the omnibus bill will relate to the Digital Agenda review

Enforcement Measures

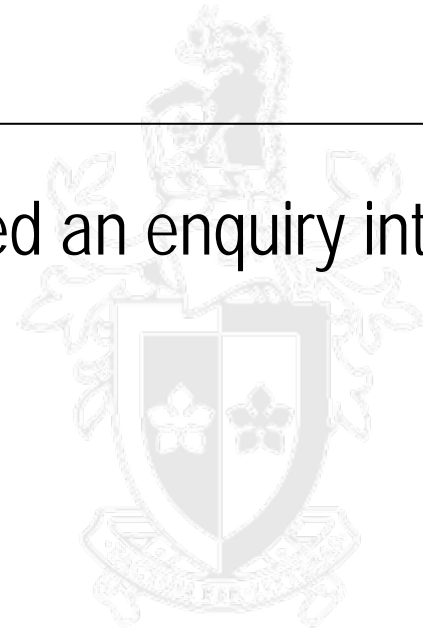
- On the spot fines
- Proceeds of crime remedies
- Changes in the way courts operate
- Research about the extent of piracy
- Agreements with other countries
- Practical measures: e.g. incoming travellers
- Legislation (when?) will provide universities with a "safe harbour" – i.e. render the university safe from successful prosecution for infringement

Orphan Works

- Government enquiry announced early 2006
- Orphan works – copyright works where the owner is unidentifiable or uncontactable
- Orphan works and risk management
- Orphan Works Forum held 22 May 2006
- Abandonware, cinderellaware, orphans, obsolete software – most copyright fits into these categories

Legal Deposit

- The government also announced an enquiry into legal deposit early in 2006
- It applies to 8 jurisdictions



The AVCC

- Next AVCC copyright meeting will be on Tuesday 31 October in Sydney
- The AVCC has a revised FAQ which is a major improvement – see your Copyright Officer
- The current agreement with CAL expires at the end of 2007

Unlocking IP and OAK Law

- Three funded projects. See
- <http://www.cyberlawcentre.org/unlocking-ip/> - run by Professor Graham Greenleaf of UNSW
- <http://www.oaklaw.qut.edu.au/> run by Professor Brian Fitzgerald at QUT
- OAKLAW has received additional funding in the latest round

Best Friends

- Your best friends are the Australian Digital Alliance – see www.digital.org.au – please join – and
- The Australian Libraries Copyright Council (ALCC) is funded by us
- University copyright officers and their staff have a mailing list, the University Copyright Network
- And a DAILY copyright news and information list sent out by the wonderful Annie Lennox of RMIT