

House of Representatives

Supplementary Order Paper

Tuesday, 1 April 2008

Copyright (New Technologies) Amendment Bill

Proposed amendments

Hon Judith Tizard, in Committee, to move the following amendments:

Clause 2(1)

To omit this subclause (lines 5 and 6 on page 6) and substitute the following subclauses:

- (1) **Section 18(2)** comes into force on the day after the date on which this Act receives the Royal assent.
- (1A) The rest of this Act comes into force on a date to be appointed by the Governor-General by Order in Council.

Clause 3(2): new definition of communication work

To omit “transmission, or the making available by a communication technology,” (lines 1 and 2 on page 7) and substitute “transmission”.

Clause 3(2): new definition of educational resource supplier

To insert the following definition after the definition of **communication work** (after line 5 on page 7):

- “**educational resource supplier** means any person—
- “(a) whose principal function is the copying of communication works and the supply of the copies it makes to educational establishments for educational purposes; and
 - “(b) who does not conduct its business for profit; and
 - “(c) who has been approved by the Minister of Education as an educational resource supplier for the purpose of this Act by a notice published in the *Gazette* and whose approval has not been revoked.

Clause 4: new section 3

Heading to *new section 3*: to omit this heading (line 23 on page 8) and substitute the following heading: “**Associated definitions for communication works**”.

Subsection (1): to omit “communicating a work or” (line 24 on page 8).

Subsection (1)(a): to insert “communication” after “transmitting the” (line 26 on page 8).

Subsection (1)(b): to insert “who provides the contents of the work and” after “any person” (line 30 on page 8).

Clause 18(2)

To omit this subclause (lines 4 to 6 on page 12) and substitute the following subclause:

- (2) Section 35 is amended by repealing subsections (3) to (5) and substituting the following subsections:
 - “(3) A person also infringes copyright in a film to which subsection (6) applies if that person—
 - “(a) imports a copy of the film into New Zealand within 9 months of first being made available to the public; and
 - “(b) knows or has reason to believe that the film is imported into New Zealand within 9 months of first being made available to the public; and
 - “(c) is not the licensee of the copyright in New Zealand; and
 - “(d) imports the film into New Zealand other than for that person’s private and domestic use.
 - “(4) For the purposes of **subsection (3)**, a film is first made available to the public (as set out in section 23(2)) by any authorised act whether in New Zealand or elsewhere.
 - “(5) **Subsections (3) and (4)** are repealed on 31 October 2013.”

Clause 28: new section 48

To omit new section 48 (line 27 on page 15 to line 16 on page 16) and substitute the following section:

“48 Copying and communication of communication work for educational purposes

- “(1) This section applies when a copy of a communication work is—
 - “(a) made or communicated by or on behalf of an educational establishment; or
 - “(b) made and supplied by an educational resource supplier to an educational establishment.
- “(2) In any case to which **subsection (1)(a)** applies, the making or communication of a copy of the communication work by or on behalf of an educational establishment, and the subsequent communication of the copy within the educational establishment, does not infringe copyright in the communication work or in any work included in it if the copy is made or communicated for the educational establishment’s educational purposes.
- “(3) In any case to which **subsection (1)(b)** applies, the making and supply of a copy of the communication work by an educational resource

supplier does not infringe copyright in the communication work or in any work included in it if the copy is made and supplied for the educational purposes of the educational establishment to which it is supplied.

- “(4) However, the exclusions from infringement of copyright in **subsections (2) and (3)** do not apply to—
- “(a) the copying of a communication work if or to the extent that—
 - “(i) licences authorising the copying of the communication work by or on behalf of educational establishments or by educational resource suppliers are available under a licensing scheme; and
 - “(ii) the educational establishment or the educational resource supplier, as the case may be, knew that fact; or
 - “(b) the communication of a communication work if or to the extent that—
 - “(i) licences authorising the communication of the copy by or on behalf of educational establishments are available under a licensing scheme; and
 - “(ii) the educational establishment knew that fact; or
 - “(c) the supply of a communication work by an educational resource supplier if or to the extent that—
 - “(i) licences authorising the supply of the communication work are available under a licensing scheme; and
 - “(ii) the educational resource supplier knew that fact.”

Clause 49

To omit “49” and substitute the following heading (line 1 on page 32):

49 Reception and retransmission of broadcast in cable programme service

Clause 53: new section 92A

To insert the following section after the heading “Internet service provider liability” (after line 21 on page 33):

“92A Internet service provider must have policy for terminating accounts of repeat infringers

- “(1) An Internet service provider must adopt and reasonably implement a policy that provides for termination, in appropriate circumstances, of the account with that Internet service provider of a repeat infringer.
- “(2) In **subsection (1)**, **repeat infringer** means a person who repeatedly infringes the copyright in a work by using 1 or more of the Internet services of the Internet service provider to do a restricted act without the consent of the copyright owner.

Clause 53: new section 92C(2)(a) and (ba)

To omit these paragraphs (lines 5 to 15 on page 35) and substitute the following paragraph:

- “(a) the Internet service provider—
 - “(i) knows or has reason to believe that the material infringes copyright in the work; and
 - “(ii) does not, as soon as possible after becoming aware of the infringing material, delete the material or prevent access to it; or

Clause 53: new section 92C

To insert the following subsection after *subsection (2)* (after line 18 on page 35):

- “(2A) A court, in determining whether, for the purposes of **subsection (2)**, an Internet service provider knows or has reason to believe that material infringes copyright in a work, must take account of all relevant matters, including whether the Internet service provider has received a notice of infringement in relation to the infringement.

Clause 53: new section 92CA

To omit this section (line 28 on page 35 to line 2 on page 36) and substitute the following section:

“92CA Requirements for notice of infringement

A notice referred to in **section 92C(2A)** must—

- “(a) contain the information prescribed by regulations made under this Act; and
- “(b) be signed by the copyright owner or the copyright owner’s duly authorised agent.

Clause 53: new section 92CB

To omit this section (lines 3 to 30 on page 36).

Clause 89: new section 226

Paragraph (b) of the definition of TPM or technological protection measure: to insert after “operation, it” (line 14 on page 53) “only”.

Paragraph (b) of the definition of TPM circumvention device: to omit “no” (line 26 on page 53) and substitute “only limited commercially”.

Clause 89: new section 226D

To omit subsection (2) (lines 8 to 15 on page 56) and substitute the following subsections:

- “(2) The rights that the issuer of a TPM work has under **section 226B** do not prevent or restrict the exercise of a permitted act.
- “(2A) The rights that the issuer of a TPM work has under **section 226B** do not prevent or restrict the making, importation, sale, or letting for hire of a TPM circumvention device to enable—

- “(a) a qualified person to exercise a permitted act under Part 3 using a TPM circumvention device on behalf of the user of a TPM work; or
- “(b) a person referred to in **section 226E(3)** to undertake encryption research.

Clause 89: new section 226E

Subsection (1): to omit “or to undertake encryption research” (line 5 on page 58).

Subsection (2)(b): to add (line 14 on page 58) “, but only if the copyright owner or the exclusive licensee has refused the user’s request for assistance or has failed to respond to it within a reasonable time”.

Subsection (3): to omit “For the purposes of this section, a person (A) undertakes encryption research if A” (lines 15 and 16 on page 58) and substitute “Nothing in this Act prevents any person from using a TPM circumvention device to undertake encryption research if that person”.

Clause 89: new section 226H

Subsection (1): to insert “exclusive” before “licensee” (line 29 on page 59).

Subsection (2)(b): to omit “work.” (line 36 on page 59) and substitute “work; or”.

Subsection (2): to add the following paragraph (after line 36 on page 59):

- “(c) A does not know, and has no reason to believe, that any copyright management information attached to, or embodied in, the copy has been removed or modified without the authority of the copyright owner or the exclusive licensee.

Clause 89: new section 226J(1)(a)

To insert “exclusive” before “licensee” (line 11 on page 60).

Explanatory note

This Supplementary Order Paper amends the Copyright (New Technologies) Amendment Bill as reported from the Commerce Committee. Specifically, it does the following things:

- it amends the commencement provision so that *clause 18(2)* comes into force on the day after the date on which the Act receives the Royal assent;
- it makes some minor adjustments to definitions contained in *new section 3*:
- it replaces *clause 18(2)* of the Bill, which amends section 35 of the Copyright Act 1994. Section 35(3) (and, consequentially, section 35(4)) expired on 2 January 2000. This amendment replaces subsections (3) and (4) and provides that they apply until 31 October 2013. Section 35(3) makes it an infringement of the copyright in a work if a person who does

not hold the New Zealand copyright imports a film into New Zealand within 9 months of the film's first cinematic release date:

- in *new section 48* it extends to educational resource suppliers (defined in *new section 3(2)*) the same protection from liability for infringement of copyright currently enjoyed by educational establishments:
 - it inserts a new heading for *clause 49* of the Bill:
 - it adds a requirement that an Internet service provider (**ISP**) must have a policy for terminating the accounts of repeat copyright infringers (*new section 92A*):
 - it clarifies that an Internet service provider who knows or has reason to believe that material posted on the ISP's website infringes copyright is liable if the ISP does not delete or prevent access to the material as soon as possible after becoming aware of it. A factor in determining whether an Internet service provider knows or has reason to believe that material infringes copyright is whether the Internet service provider has received an infringement notice in respect of it (*new section 92C(2A)*):
 - it clarifies the extent to which the rights of a TPM issuer under *new section 226B* impinges on the exercise of a permitted act or the undertaking of encryption research:
 - it clarifies, for the purposes of *new section 226E*, who may undertake encryption research:
 - it adds a further exception to liability for commercial dealing in a work when someone has interfered with the commercial management information attached to or embedded in the work:
 - it clarifies that the references in *new sections 226H and 226J* to "licensee" are references to the exclusive licensee.
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