

Report of the Copyright Law Committee on Reprographic Reproduction

October 1976

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COPYRIGHT LAW COMMITTEE ON REPROGRAPHIC REPRODUCTION

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A Judge of the Australian Industrial Court

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COPYRIGHT LAW COMMITTEE ON REPROGRAPHIC REPRODUCTION

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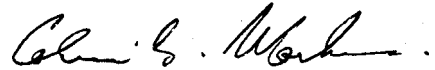
The members of the Copyright Law Committee on
Reprographic Reproduction have pleasure in presenting the
following report to you.



R.J.A. FRANKI, Chairman



L.J. CURTIS



C.B. MARKS



J. SHEWCROFT

Sydney, 15 October 1976

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Part 1

Introduction

1.01 This Committee was appointed on 20 June 1974 by the then Attorney-General, Senator the Honorable L. K. Murphy, Q. C., (now the Honorable Mr Justice Murphy) with the following terms of reference:

To examine the question of the reprographic reproduction of works protected by copyright in Australia and to recommend any alterations to the Australian copyright law and any other measures the Committee may consider necessary to effect a proper balance of interest between owners of copyright and the users of copyright material in respect of reprographic reproduction. The term 'reprographic reproduction' includes any system or technique by which facsimile reproductions are made in any size or form.

1.02 On 17 July 1974 the Committee caused a notice to be inserted in the morning newspapers published in the capital cities of Australia for the purposes of advertising the appointment of the Committee and its terms of reference and inviting interested persons and organisations to advise the Secretary of their interest in the work of the Committee. A second notice was published on 19 August 1974 inviting written submissions, observations, information or other material with respect to matters within the terms of reference and asking persons or organisations proposing to make written submissions to indicate if they expected to present, in addition, oral submissions to the Committee. The Secretary also wrote on behalf of the Committee to a large number of organisations to inform them of the establishment of the Committee and its terms of reference.

1.03 On 3 and 4 September 1974 the Committee held a preliminary meeting of interested persons in Sydney in order to give those able to attend an opportunity to inform the Committee in a preliminary way of the extent of the submissions they proposed to make and to discuss informally aspects of the Committee's work. The persons who attended this meeting are listed in Appendix B to this Report.

1.04 The Committee circulated at the meeting a document entitled 'Some Relevant Questions' to assist interested persons and organisations in the preparation of formal submissions and this document, together with the Chairman's opening remarks at the meeting, were also circulated to those who had expressed interest in the work of the Committee but were unable to attend. Both documents are set out in Appendix C to this Report.

1.05 After consideration of a submission on procedure by the Australian Copyright Council Ltd at the meeting, the Committee announced that it agreed with the principle that in general it should be possible for interested persons to answer any submission made to the Committee but it felt that it should not voluntarily disclose a submission against the desire of the person making it since the Committee was of the view that this would result in a restriction of information provided to it. However, it also stated that it expected to give less weight to material which was not open to examination by other interested parties than to other material. This decision was also communicated to interested persons not present at the meeting. The Committee decided to hear oral submissions in public except where a specific request was made to it that a submission should be treated as confidential. The Australian Copyright Law Review Committee, which reported in 1959, did not hold its hearings in public.¹

1.06 The Committee later made arrangements for written submissions and the

¹Report of the Copyright Law Review Committee 1959, paragraph 4

transcripts of proceedings, except where a request was made that these be confidential, to be made available for inspection in various capital cities of Australia.

1.07 During the course of the preliminary meeting the Chairman also asked those present for their views regarding the speed with which the Committee should proceed with its formal sittings. The feeling of the meeting was that the Committee should not endeavour to proceed too quickly in view of the time needed to obtain information and to draft detailed submissions. The Chairman indicated that, in view of this and the time the Committee required to study submissions and to make non-confidential submissions available for inspection, it would not be desirable to hold formal sittings until the new year.

1.08 On 17 December 1974, the Committee notified interested persons of the commencement of its formal sittings to hear oral submissions. These sittings commenced on 18 February 1975 in Sydney. In view of the number of submissions received from other States, the Committee also decided to hold formal sittings in Perth, Adelaide, Brisbane and Melbourne and the Committee heard submissions in these cities over the course of the following two months. The Committee also made visits to a number of institutions for the purposes of inspecting copying facilities and seeing at first hand the kinds of practices adopted by these institutions. The institutions visited are listed in Appendix B to this Report. The Committee's sittings concluded in Sydney in late April 1975. In all, the Committee heard oral submissions and questioned persons about their submissions made to the Committee and made inspections on 25 days. The persons and organisations who made written and oral submissions to the Committee are listed in Appendix B to this Report.

1.09 The Committee derived considerable assistance from those persons and organisations who made written and oral submissions to it. In addition, the Committee has also been assisted by a vast amount of published material on the problem and some of this material has been selected and listed in Appendix F to this Report.

I. 10 The Committee also had the benefit of studying a number of earlier reports on copyright. These included:

- the Report of the Copyright Committee, 1951, of the United Kingdom (Cmd. 8662) ('the Gregory Committee'), which recommended most of the provisions now contained in the Copyright Act 1956, of the United Kingdom;

- the Report on Copyright of the Canadian Royal Commission on Patents, Copyright, Trade Marks and Industrial Designs dated 1 August 1957;

- the Report of the Copyright Committee, 1959, of New Zealand;

- the Report of the Australian Copyright Law Review Committee, 1959; and

- the Report on Intellectual and Industrial Property of the Economic Council of Canada, January 1971.

1.11 All members of the Committee served on a part-time basis and meetings were held when practicable. Apart from the days of formal sittings and inspections the Committee has held meetings on a total of 46 days. During the course of the Committee's deliberations one member of the Committee, Mr E. M. Haddrick, resigned on appointment as Head of the Copyright Division of the World Intellectual Property Organisation in Geneva. The Committee has benefited greatly from his wide knowledge of copyright matters and in particular its international aspects, and the Committee would like to record its gratitude for his contribution to its work. Consequent upon Mr Haddrick's resignation in May 1975, Mr L. J. Curtis, First Assistant Secretary of the Attorney-General's Department, was appointed by the then Attorney-General as an additional member of the Committee.

Limits of terms of reference

1.12 It became apparent early in the course of the Committee's work that a number

of problems faced by the educational authorities, upon which submissions were made, concerned matters that fell outside the terms of reference, such as the video-taping of television programs and the reproduction for preservation purposes of sound recordings. However, a limited amount of such information was of assistance to the Committee as background material.

I. 13 We consider that we should draw attention to the fact that significant problems exist in some of those fields and we think consideration might well be given to instituting an examination of them.

I. 14 The terms of reference of the Committee are limited to the reprographic reproduction of works protected by copyright in Australia.

I. 15 The Committee was of the view that any copyright material which did not fall within the definition of 'work' in section 10 of the *Copyright Act* 1968–19732 should not be treated as within its terms of reference.

I. 16 In respect of 'reprographic reproduction' which is defined in the terms of reference to include any system or technique by which facsimile reproductions are made in any size or form, the Committee noted that a number of different techniques were in current use.

Matters not dealt with in the Report

I. 17 Apart from the material outside our terms of reference, it is also appropriate to mention that our attention was drawn to other matters to which we have made little or no reference in this Report. We have not referred, in the body of the Report, to all the submissions we received, but the fact that we have made no reference to a particular submission does not mean that we have not given proper consideration to it. We also received a small amount of information upon the basis that it would be treated as confidential. However, without breaching that confidence, we are able to say that nothing in that material was of an unexpected nature, and in general it confirmed the material we received publicly.

I. 18 In addition, we did not receive any detailed submissions on the position with regard to computers, although we had some information on this topic. While we understand that it may be possible to make facsimile reproductions of copyright works through the use of a computer, we did not consider we should make any specific recommendations in this field, because we thought it was really outside our terms of reference.

Statistics

I. 19 We decided not to undertake our own survey of copying or to obtain any further statistics in relation to copying beyond those which were volunteered. One reason was that we believed, from information submitted to us, and from our inspections of various institutions, that we had a reasonable picture of the position with regard to educational establishments. We also felt great difficulty in seeing what type of statistics in this area beyond what we had would assist us, since any statistics which could reasonably be obtained would only be of a very limited sample which might or might not be representative. We also thought it undesirable because we would be unable to give any indemnity in respect of copying if any copying was in breach of the *Copyright Act*.³

1.20 We also considered it impracticable to obtain information on copying in other sectors that was not volunteered.

² See Appendix E.

³ See Part 4, submission 2, as to the position in Denmark.

Outline of the Report

1.21 The body of this Report is set out in Part 2 and is self-explanatory. We have set out in Part 3 the international background to the problem of reprographic reproduction and, in Part 4, summaries of certain submissions presented to the Committee, to assist readers in obtaining a more precise picture of the circumstances in which copying is being presently undertaken in Australia, and of the complexity of the problems we had to confront. The nature of the summaries is described in the introduction to that Part.

1.22 We have also set out, for the convenience of readers, in Appendix A, a summary of our recommendations, in Appendix D, a table showing where sections of the *Copyright Act 1968–1973* are discussed, in Appendix E, some relevant sections of the Act, and in Appendix F, a short bibliography. The Secretary has also prepared an index to the Report.

1.23 It is appropriate, in this introduction, to express our gratitude for the assistance we received from those who made submissions or provided information to us.

Acknowledgement

1.24 We also think it appropriate to express our appreciation of the work of the Secretary, Mr John Gilchrist. He has displayed a most helpful and conscientious approach to the work of the Committee. We are very grateful to him for what he has done so ably.

Part 2

Section 1

Review of general considerations and of recommendations

1.01 The past ten years has brought about a very considerable change in methods of reprographic reproduction of published material. Equipment for facsimile copying of high quality that enables copies to be made easily and cheaply is now widely available in libraries, schools, colleges, universities and offices. As a result, large numbers of people now have the facility to reproduce copyright material without having to resort to laborious methods such as copying by hand or typewriting, or by slow and expensive methods of copying using the photocopying machines of a decade ago. Those methods set their own quantitative limitations on the amount of material that might be copied.

1.02 Reprographic reproduction of copyright material is most used where the spread of information is desired, whether for education, private study or scientific research. It is therefore not surprising that educational establishments and libraries have been the focus of the controversy that has surrounded the photocopying of copyright material in Australia and elsewhere. There is, we believe, particularly in Australia, a very considerable public interest in ensuring a free flow of information in education and research, and the interests of individual copyright owners must be balanced against this element of public interest.

1.03 This problem is not, of course, peculiar to Australia. It is one that is engaging the attention of copyright experts and governments in many countries that have systems of copyright protection. It has been considered also by meetings of experts on an international level. Later in this Section of the Report ¹ we will say something about the conclusions that have been reached at the international level. It is sufficient to say at this stage that no acceptable solution at an international level has so far been found.

1.04 We now turn to consider briefly the scope and nature of copyright protection in its historical and international setting.

1.05 The Copyright Law Review Committee which reported in 1959 on the Australian copyright law put the position as it saw it in paragraph 13 of its report as follows :

The primary end of the law on this subject is to give to the author of a creative work his just reward for the benefit he has bestowed on the community and also to encourage the making of further creative works. On the other hand, as copyright is in the nature of a monopoly, the law should ensure, as far as possible, that the rights conferred are not abused and that study, research and education are not unduly hampered.

This passage emphasises both the purpose of copyright protection and the fact that at no time has it been an absolute right of the copyright owner.

1.06 At common law, an author had copyright only in his unpublished works. Once a work had been made available to the public by publication, the author had no control over its further reproduction. The development of the printing press made it possible to reproduce works easily and cheaply. From various motives, the Crown controlled the printing of works by a system of licensing in the sixteenth and seven-

¹ See paragraph 1.34.

teenth centuries. One by-product of the licensing system was that it prevented the pirating of a published work by another publisher. The need to safeguard both author and publisher led to the first Copyright Act in 1709. For the first time, this Act gave an author a copyright in his published works. Through the rights given to the author it also made possible the protection of the investment of the publisher.

1.07 Subsequent statutory changes in copyright law reflected other advances in technological development. Perhaps the most noteworthy are the changes to ensure that an author or composer is able to control, and thus derive financial advantage from, the dissemination of his works by broadcasting, whether radio or television, phonograph records and the like.

1.08 The development of modern methods of reprography, which enable multiple copies of printed works and musical scores to be made easily and cheaply, represents another technological advance by means of which copyright works, especially literary, dramatic and musical works, may be made available more widely than before. At the same time, this increased availability has facilitated education and research. A tension has therefore developed between the expectations of many copyright owners that they should benefit from the greater availability of their works, on the one hand, and the needs of the community, on the other, for ready access to information and knowledge.

1.09 The rights of the copyright owner have never been absolute, in the sense that no dealing with his work could ever take place without his consent. This is the position under the international conventions relating to copyright and the domestic laws of the countries where copyright is protected. The most universal exception is the right to copy minor or insubstantial parts of works. There is also widespread exclusion from the rights given to authors of various rights of copying of a fair dealing or public benefit nature by libraries, educational bodies, research establishments and individuals. In other words, it has always been the policy of the law that the monopoly granted to the author is of a limited nature. Historically therefore the author is not in a position to maintain his claim with regard to copying of published works from a position of absolute right.

1.10 On the other hand, from the author's point of view, some of the 'public benefit' claims can appear unreasonable. Even in cases where copying is carried out in the pursuit of a socially desirable objective, it by no means follows that it should take place to the unreasonable prejudice of the economic or other legitimate interests of the author.

1.11 These questions raise the issue whether or not reprographic reproduction of a copyright work should be excluded from the rights that a copyright owner enjoys in respect of the reproduction of his work in a material form only where a greater public interest clearly requires such an exclusion or whether the proper balance of interest between owners of copyright and users of copyright material in respect of reprographic reproduction should be achieved on a broader basis.

1.12 We have not been able to achieve uniformity of outlook amongst ourselves on this issue.

1.13 In our approach to the problem of reprographic reproduction we have used the expression 'to the unreasonable prejudice of the economic or other legitimate interests of the author'. So far as concerns any economic prejudice the question arises whether reprographic reproduction should be restricted only if it is likely to cause the author loss of sales of published editions of his work or whether the matter should be viewed more broadly on the basis of a claim by the author to share in the benefits derived from new means of making his work more widely available as was the case with phonograph records, films and broadcasting.

1.14 There was some difference of opinion in the Committee on how this question should be answered. We regard reprographic reproduction as a modern technique for

‘reproduction in a material form’, that being one of the existing rights comprised in copyright under the *Copyright Act* 1968–1973 (section 31(1)).² We were not unanimous upon the question whether the main test to be applied in considering the economic aspect is the likely effect upon the sales of published editions of a work or whether a broader approach should be taken to the question.

1.15 For those who accept the proposition that the purpose of preventing photocopying is primarily to prevent the owner of the copyright being prejudicially affected, it follows that the area to be considered is basically the economic detriment to the owner. We received submissions that some photocopying affected sales adversely and others that some photocopying exposed authors and journals to a greater range of potential purchasers.

1.16 Generally speaking, we are satisfied that most photocopying of material in copyright which takes place is of material which might broadly be called material of an educational, scientific or technical nature. By this we mean material not produced for strictly literary, artistic or recreational purposes but material written for the purpose of conveying information. Into this category fall scientific journals, medical journals, books on educational subjects and a great amount of miscellaneous material.

1.17 We are satisfied that there is negligible copying from short stories, novels and other works of fiction and from biographies, histories and commentaries of a ‘popular’ nature.

1.18 We are also of the opinion that, of the technical material copied from journals, very little has been written by the author with the object of earning money directly from the publication. In most cases we are satisfied that the author wishes to disseminate his ideas as widely as possible and would not want to restrict copying, whether remunerated or not. In many fields it is necessary for persons, or organisations funding research, wishing to publish articles to pay a fee on a per page basis for publication to be made. However many technical books are, of course, written with a view to earning the author income from sales of the publication.

1.19 We cannot stress too strongly that the issues which we face cannot be disposed of purely by reference to notions of abstract justice and principles of copyright. Solutions can be formulated only after a thorough consideration of the practical circumstances in which reprographic reproduction is taking place in the community. This dichotomy between theory and practice has indeed proved to be one of the most formidable problems of the inquiry. It is particularly relevant when considering the question of methods of remuneration for authors from reprographic reproduction of their works.

1.20 Virtually the entire object underlying the authors’ claims for control over reprographic reproduction is to ensure increased remuneration from this use of their works. The view that ‘what is worth copying is worth protecting’ has been put before us emphatically and persuasively. However, what this usually means is ‘what is worth copying is worth paying for’. Very few authors want restrictions for their own sake but rather as a means of securing remuneration. If the view is taken that in particular circumstances remuneration may be warranted, the most profound problems arise when attempts are made to find practical, fair, and economic means of collecting and distributing royalty payments to the particular authors involved in Australia and throughout the world. These problems will be examined in detail later in this Report. Here a reference to some basic factors in the context of copying only within Australian universities will give some indication of the complexity of the problems:

. There are approximately 16.5 million acts of reprographic reproduction each

² See Appendix E.

year on self-service machines in university libraries throughout Australia; and it appears probable that at least a comparable quantity of reprographic reproduction takes place on other machines in universities.

- The material copied includes books and journals in copyright, books and journals out of copyright, and material being the property of the copier such as lecture notes, personal notes and administrative material.
- A significant proportion of the material copied is under the present law legally permitted, being of small parts of the original or carried out under privileged circumstances such as 'fair dealing'.
- It was estimated that in a university library containing one million works some six hundred thousand authors could be represented, and this figure would be very greatly increased if individual authors of journal articles are taken into account,
- Individual books in the libraries could have been published up to 100 years ago and still remain in copyright.
- A very small percentage of the books in university libraries has been written by Australian authors and the remaining authors are scattered throughout the length and breadth of the world, although concentrated mainly in English-speaking countries.
- The actual photocopying is carried out by library staff, by students and researchers, and by academic and clerical staff within departments.

No one who ponders over these factors can be left in any doubt as to the magnitude of the practical problems which arise in attempting to devise an economic, fair and workable system for collection and distribution of royalties which would compensate individual authors in relation to the extent to which their works are copied beyond the limits permitted by law.

1.21 During the course of our inquiries, we have gathered a good deal of information about the extent of photocopying in Australia. We do not, however, have anything like a complete picture, for a number of reasons. There is no way of finding out what copying of copyright material takes place on privately-owned copying machines in offices and elsewhere in the private sphere and no such information was volunteered. Detailed records of copying on library self-service photocopying machines are not available and only very limited records are available of copying on other library machines. No comprehensive records are kept of the details of photocopying in educational establishments for the purposes of instruction or use of staff and students. Nevertheless, we believe a sufficient picture emerged from our inquiries to give some idea of the extent of photocopying and to show the complexity of attempting to regulate it.

1.22 The evidence we have shows that much of the photocopying that takes place is likely to be within the exceptions to the rights of the copyright owner established in the *Copyright Act*. It seems fairly clear that much of the copying done by individual students on self-service machines in the libraries of universities and elsewhere would be a 'fair dealing' within the terms of section 40 of the *Copyright Act*. In any event, a proportion of this copying is of the student's own lecture notes or of the notes of his fellow-students so that the figures for total copying on these machines, impressive as they are, give no reliable indication of the amount of copyright material copied without the consent of the owner of the rights involved.

1.23 We have however already drawn attention to the fact that traditional methods of copying imposed quantitative limitations on the amount of a work or the number of copies that might be reproduced within the permitted limits under the existing law. This leads to the question whether, having regard to what might be copied with the use of modern equipment, the present exceptions from the rights of the copyright owner should be continued, reduced or extended. The Australian Copyright Council

Ltd put forward proposals, which we discuss more fully in a later part of the Report³, to the effect that all photocopying of copyright works should be subject to a requirement of payment of royalty to the owners of the rights concerned on a per page per copy basis. There was no serious suggestion that no copying should take place without the permission of the copyright owner concerned.

1.24 Having thus set out in a preliminary way some of the basic issues with which this inquiry has been concerned, we now turn to a description of the scheme of the Report. This Section forms a summary which deals in a broad way with the major questions we have had to consider and which examines the Australian position against the background of the position in other countries. Other Sections of the Report will deal with the various issues in more detail. Sections of the Report deal specifically with the following topics:

- (a) Copying within the concept of fair dealing
- (b) Copying by a library for users
- (c) Copying by a library for other libraries
- (d) Copying of published or unpublished works for preservation and certain other purposes
- (e) Multiple copying in non-profit educational establishments
- (f) Copying in other circumstances
- (g) Crown copyright
- (h) Damages
- (i) Obligations under international conventions and international discussion of reprographic reproduction
- (j) Foreign legislation and developments

Part 4 of the Report consists of a summary of certain submissions presented to the Committee.

1.25 The present position under the Australian Copyright Act with regard to reprographic reproduction of copyright works may be summarised in a broad way as follows⁴:

- A copyright owner is given, subject to the exceptions provided in the Act, the exclusive right to reproduce his work in a material form—section 31 (1).
- A reproduction of an insubstantial part only of a work is not within the exclusive right—section 14(1)(a).
- A reproduction of a work or part of a work for the purpose of research or private study that is a 'fair dealing' with the work is not an infringement of copyright—section 40. In practice this seems to mean that a person can, for the specified purposes, make at least one copy of at least a reasonable part of a work and perhaps the whole of a work without infringing copyright.
- In certain circumstances and without remuneration to the copyright owner a librarian can copy an article in a periodical and up to a 'reasonable portion' of another published work, and supply the copy to a user—section 49; a librarian, for supply to another library, and again without remuneration to the copyright owner, can copy an article in a periodical and up to a reasonable portion of another published work and in some circumstances up to the whole of the work—section 50.
- A work may be copied for the purposes of a judicial proceeding—section 43.
- Unpublished works kept in libraries may be copied in certain circumstances—section 51.
- Subject to certain limitations a teacher or student may copy a work in the course of educational instruction so long as the copy is not made on 'an

³See Part 4, submission 1, and particularly paragraphs 2,26–2,31,

⁴The sections of the *Copyright Act* referred to are reproduced in Appendix E.

appliance adapted for the production of multiple copies' —section 200(1).

- . Copies of a work may be made for the services of the Commonwealth or of a State subject to the giving of notice to the copyright owner and the payment of compensation—section 183.

1.26 This brief summary shows that reproduction of a copyright work without the permission of the owner of the copyright maybe made in a number of circumstances for educational instruction, private study and research and for library use. The evidence before the Committee showed, however, that there is a good deal of uncertainty about the limits of permitted copying due to the exceptions being stated in general terms such as 'fair dealing' and 'reasonable portion'. It also showed the virtual impossibility of copyright owners effectively policing the present limits of permitted copying and the understandable concern of some authors that the widespread use of copying machines may be making substantial inroads into their economic interests.

1.27 Any recommendations we make should, of course, be in accord with the relevant provisions of any international convention to which Australia is a party and we consider we should also bear in mind any revisions of these conventions to which Australia is not yet a party. Nor do we think we should make any recommendations that would make the position in Australia very different from what might be called 'world standards', especially since most of the copyright material in use in Australia comes originally from overseas, unless we are satisfied that the advantages of any such recommendations clearly outweigh any disadvantages or that we should do so for any other good reason. Copyright is a highly international form of property and general conformity with world standards is itself a desirable aim.

1.28 There are two important international conventions which are relevant, the Berne Convention for the Protection of Literary and Artistic Works and the Universal Copyright Convention. The Berne Convention was signed on 9 September 1886. Since that date it has been revised on several occasions, including the revisions at Brussels in 1948, at Stockholm in 1967 and at Paris in 1971. Australia has acceded to the Brussels Revision of the Convention, but did not accede to the substantive provisions of the Stockholm Revision and has not yet acceded to the Paris Revision of the Convention. The other relevant international convention is the Universal Copyright Convention which was adopted in 1952, and revised in 1971. Australia acceded to the 1952 Convention in 1969 but has not yet acceded to the 1971 Revision.

1.29 The Brussels Act of the Berne Convention and the 1952 text of the Universal Copyright Convention do not specifically require the author to be granted the exclusive right to the reproduction of his work in a material form. This right is provided for by Article 9 of the Berne Convention as revised at Stockholm in 1967 and at Paris in 1971, and Article IV bis of the Universal Copyright Convention as revised in 1971. This latter Article appears to require a lesser degree of protection than does Article 9 of the Berne Convention.⁵

1.30 Under Article 9 of the Berne Convention free reproduction of a work maybe permitted by national legislation if the reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author. We consider that the recommendations we make in this Report are in conformity with the terms of Article 9 of the Berne Convention as revised at Paris.

1.31 We have obtained information about the copyright laws of a number of other countries.⁶ Generally speaking, it would seem that reprographic reproduction of copyright material within certain limits is permitted without the consent of the copyright owner being required and without any requirement for payment of royalty

⁵ See paragraphs IO. 06–10, O9 as to the various provisions in the two Conventions

⁶ See generally Part 3, Section 11,

to him or on his behalf.⁷ The precise limits of permitted copying vary from country to country, and according to whether the copying is done by a person for his own use, by a library for users of the library or other libraries, or in an educational establishment or other 'public interest' situations. In no country that we are aware of is all reprographic reproduction within the exclusive right of the copyright owner or is he entitled to royalty for all such reproduction.

1.32 The limits are often very difficult to define but taking the position broadly what might be described as the world standard would permit, as a minimum, a person to make for his personal use a copy of an article in a periodical or some small part of another published work. In some countries, this freedom of limited copying is subsumed under the test of fair dealing whether as a result of statutory provisions or by judicial decision.

1.33 It is of some relevance to note that in the new copyright legislation now before the United States Congress the fair use of a copyright work, including reproduction by copying, for purposes such as criticism, comment, news reporting, teaching, scholarship or research would not be an infringement of copyright.⁸

1.34 The question whether there should be some international regulation of reprographic reproduction has been examined by the sub-committee on reprographic reproduction of the Executive Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union) and the sub-committee on reprographic reproduction of the Intergovernmental Copyright Committee of the Universal Copyright Convention. At a joint meeting in June 1975 in Washington the two sub-committees passed a resolution set out in substance in paragraph 10.13. This resolution was subsequently adopted in December 1975 by a joint meeting of the Executive Committee of the Berne Union and the Intergovernmental Copyright Committee of the Universal Copyright Convention. The December decision makes it clear that there is unlikely to be any international consensus for some time on what measures ought to be taken to regulate reprographic reproduction of copyright works.

1.35 The question is under examination in a number of countries at the present time. We refer in Section 11 of this Report to some details of the consideration being given to this matter elsewhere. The fact that there is no settled international position on the question makes it desirable in our view that Australia, having regard to its position as a substantial importer of copyright material, should be hesitant in adopting a radical solution to the problem of a kind that is unlikely to find widespread acceptance amongst member countries of the two international conventions.

1.36 On the information available to the Committee, schemes are operating in three countries where payments are being made in respect of certain photocopying but where this is being done, so far as can be ascertained, it appears to be accepted that it is not possible to distribute any such amounts to individual authors and the best that can be done is to pay the authors' share of any funds available to authors' societies for purposes which may be described as 'for authors generally'.⁹

1.37 In making our recommendations we have, however, also had regard to the facts that Australia is geographically isolated from the major centres of scientific and industrial research and that the vast area of the Australian continent raises special problems in relation to the dissemination of information, particularly in the remoter parts. We have also taken into account the relatively limited resources in Australia for subscribing to and maintaining large numbers of scientific and technical publications from overseas.

1.38 Reference has already been made to proposals put to the Committee by the

⁷ See, in particular, paragraphs 11.02 and 11.03.

⁸ See paragraphs 11.54 and 11.66.

⁹ As to the Federal Republic of Germany, see paragraphs 1 I.08–1 I.14, as to the Netherlands, see paragraphs 11.19–1 I.26, as to Sweden, see paragraphs 11.33–I 1.42.

Australian Copyright Council Ltd. The Council sought the introduction of a system that would require payment to owners of copyright for all copies made, the payment to be on a per page per copy basis.¹⁰ Payment would be made to the individual copyright owners and not, as in a scheme operating in Sweden in respect of the copying of works in educational establishments under a voluntary agreement, into a fund applied generally for the benefit of copyright owners. The Council proposed that central collecting agencies should be established to collect and distribute royalties payable under the scheme.

1.39 We do not know of any other proposal elsewhere that would require the payment of a royalty on all copies made, irrespective of the number of copies made and the purpose of the copying. We think that the scheme is quite impracticable insofar as it would relate to the making of single copies by individuals for their own use. We do not think it would be practicable or desirable to institute such a scheme in respect of the copying by libraries under sections 49 and 50 of the *Copyright Act*, either as those sections now stand or as we propose they should be amended. The burden, both administrative and financial, of maintaining the necessary records would be too great and out of all proportion to any royalty reasonably payable. Moreover, to impose a requirement to maintain detailed records from which royalties might be calculated and to pay royalties would be to cut down the facility that libraries now enjoy under the *Copyright Act* but without conferring any corresponding benefit of any substantial consequence on copyright owners.

1.40 It should be remembered that a copyright owner is under no obligation to identify himself or to let it be known where he can be found in order that his consent might be obtained to copying of his works or royalty be paid to him. This is particularly so with those articles in scientific and technical journals where the author is not the copyright owner and often it may be a difficult problem to decide who is the copyright owner. Stress has been laid by a number of witnesses before the Committee on the importance of the free flow of information for education and for scientific, technical and social development in Australia. The Australian Copyright Council Ltd, purporting to speak on behalf of copyright owners, rightly did not oppose this view. So far, however, copyright owners have done little to make it easy for those engaged in spreading or using knowledge embodied in copyright works to respect copyright,

1.41 In short, it has not been shown to the Committee that there is any practical way in which royalties for single copying in libraries or for copying by individuals on self-service machines could be collected and distributed. Nor are we satisfied that there should be any diminution of the area of presently permitted free copying in this respect. Rather as we explain later in the Report, we would somewhat enlarge these areas of permitted copying. It may be found practicable to set up some kind of scheme for the collection and distribution of royalties in respect of multiple copying in educational establishments and elsewhere, and we examine this matter in greater detail later in the Report. We have also considered schemes other than that proposed by the Australian Copyright Council Ltd.

1.42 As a possible solution to the problem of distribution to individual authors on the basis of copying of their works, we have considered whether royalties in respect of photocopying might be paid to an authors' society for the general benefit of the members of the society or of authors generally, without the need to identify the owners of copyright in the works copied or the amount of each work copied. We see, however, no community of interest between, for example, the author of a poem in Australia and the writer of an article in America in a journal on atomic physics or in Russia

¹⁰ See Part 4, submission 1 and paragraphs 2.26-2.31.

on an engineering problem in Russia, or in a South American country on an agricultural problem. particularly if one of these authors has written his paper for the purpose of obtaining a higher degree or in the hope of establishing his reputation in the field, or to disseminate the results of a government-funded project.

1.43 In addition in a great many cases only one or two copies may be made of an article in the whole of Australia and the cost of collection and distribution of any reasonable royalty must, we consider, exceed the amount which the author or copyright owner might be expected to receive.

1.44 The lack of any community of interest of authors is at present an obstacle and, even if it were possible to work out some scheme for the payment, not to individual authors nor to a single society but to various societies of authors in various fields it would be quite impossible in our view at present to apportion any fund, if it was available for distribution, between any such societies on the basis of the amount of copying of the works of the members of each society.

Review of recommendations

1.45 In the application of the 'fair dealing' provisions of section 40 to reprographic reproduction it is our unanimous view that the section should be widened to allow such reproduction for the purpose of 'research or study' instead of 'research or private study'. In addition two of us would extend those purposes to 'purposes such as research, study, private or personal use'. This recommendation would apply whether the copying is done on a self-service machine or other machine and whether the machine is in a library or elsewhere. We appreciate the difficulty of ascertaining the limits of such permitted copying but we think that a limitation to what may be called 'fair dealing' is the best that can be done. We have made proposals in paragraph 2.60 which will assist in determining what is within 'fair dealing'. The limitation to 'fair dealing' ensures that no copying is permitted under this provision for any purposes that would unduly prejudice the interests of owners of copyright.

1.46 We also recommend that limited multiple copying of single articles in any periodical for use in the libraries of non-profit educational establishments be allowed without remuneration to copyright owners. A serious need for this facility has been demonstrated to us in our inspection of libraries at universities and institutes of technology in cases where a lecturer has included a particular periodical article in a reading list for a large class. In such cases it is quite impossible for students to have access to this material unless additional copies are available in the library. Because of the freedom lecturers enjoy in their choice of material we consider that it is not possible for a university library to subscribe for sufficient multiple copies of the many possibly relevant journals which exist and articles from any of which might be chosen in a reading list. We think that it should be permissible to make up to six copies of a single article in a periodical without infringement and without remuneration for use within such a library provided that the librarian making the copies intended that they would only be used in the library and would ultimately be destroyed. We are satisfied that the advantages to education of this recommendation are considerable and we think there would be no significant detriment to copyright owners.

1.47 Although it was clear to us that some publishers of journals for profit feared large scale photocopying, no specific complaint was made to us by an individual publisher of periodicals, nor by any individual writer of articles in periodicals expressing any concern about any photocopying that was taking place. We do not think we should recommend any reduction in the existing limits of permitted copying merely because that copying may make the publication of an existing journal uneconomic. We do not think that any such recommendation would be of practical value to authors. If the publication of a journal is for a commercial purpose the

publisher must be prepared to meet the commercial problems which always arise with changes in technology and in the habits of the community.

1.48 We noted the system which exists in relation to copying by commercial enterprises from certain scientific and technical periodicals in the Federal Republic of Germany¹¹, but we received no submission indicating that such a scheme had been considered in Australia. No submission was made to us concerning any attempts in Australia to impose any contractual obligation on a purchaser limiting photocopying as a condition of purchase. We express no view on any legal problems that might arise in any such circumstances.

1.49 We recommend that certain requirements should exist with self-service machines in libraries, namely that notices, in a form prescribed by regulation, should be displayed drawing attention to the relevant provisions of the *Copyright Act* and, if this is done, the installation and use of self-service copying machines in a library should not of itself impose any liability upon the owner of the library for any copyright infringement committed by a user of a machine.

1.50 If multiple copies of more than an insubstantial part of a published work other than an article in a periodical are required in a library conducted by a non-profit educational establishment we recommend that it should be permissible for up to six copies of that work or part thereof to be made without remuneration in any case where the work has not been separately published, or if it has been separately published, it has been ascertained after reasonable inquiry that copies cannot be obtained within a reasonable time at a normal commercial price. This right should be subject to the condition that the librarian making the copies intended that they would only be used in the library and would ultimately be destroyed.

1.51 In adopting this view we have been influenced by the complaints we received as to unavailability of texts in Australia and the unreliability of delivery when texts are ordered from overseas. We feel that in this respect Australia is at a serious disadvantage compared with many other countries, and we believe that some responsibility rests upon copyright owners to meet demand in a practical way as a condition of unrestricted enjoyment of their rights. In the case of works not separately published, we feel that some justification exists for extension of copying rights for educational purposes.

1.52 We received sufficient evidence on the extent of multiple copying in educational establishments for us to conclude that it is likely some of the copying thus taking place is an infringement of copyright, under the existing law. We also think that the demand for such copying will increase. To the extent that there is a demand for multiple copying in educational establishments, we think the copyright law should accommodate this demand. However, in principle, we consider that multiple copying should not be carried out without remuneration to the copyright owner in any case where it represents a substantial use of his property or it could prejudice sales of his work, particularly if the work has been specifically written for use in schools.

1.53 We therefore recommend that the Act should be amended to provide for a statutory licence scheme permitting a non-profit educational establishment to make multiple copies of parts of a work and in some cases whole works, for classroom use or for distribution to students, subject to recording any copying taking place under the scheme and an obligation to pay an appropriate royalty if demanded by the copyright owner or his agent within a prescribed period of time (say three years). Details of the scheme are more fully set out in paragraphs 6.39 to 6.66 of this Report.

1.54 However the Committee recommends that the making of multiple copies in non-profit educational establishments of up to two pages or 1 per cent of the number of pages (whichever is the greater) in an edition of a work or of two or more works

¹¹ See paragraphs 1.08–1.14.

in any period of 14 days should be permitted without infringement of copyright and without remuneration to copyright owners, provided (except in the case of a diagram, map, chart or plan) the part copied does not comprise or include a separate work. This was a majority recommendation and the members recommending this provision considered it to be a desirable one for the benefit of education and in general would involve an amount of copying in respect of which' any royalty would be very small and probably uneconomic to collect.

1.55 We also recommend that a teacher or lecturer should be permitted to make, without remuneration and without infringement of copyright, by reprographic reproduction, up to three copies of a copyright work or part of a work for the purpose of classroom instruction within the limitations described in paragraph 6.68 of this Report. We have also made certain recommendations for non-profit educational establishments conducting educational courses by correspondence or on an external study basis, which are described in paragraph 6.73 of this Report.

1.56 We recommend some alterations to Part III Division 5 of the Act dealing with the copying of works in libraries and our detailed recommendations appear in Section 3.

1.57 We have also made certain recommendations to permit, without infringement of copyright, limited copying of published or unpublished works for preservation and other purposes and the making of one microfilm or microfiche copy of any work where it is the intention to destroy the original, as set out in Section 5.

1.58 In Section 4 we have considered the system of inter-library loans and we have made no recommendations which would interfere with that system.

1.59 The conclusions we have reached and the recommendations we have made in this Report are the result of a great deal of consideration and concern. They will find approval with some and not with others. Total consensus on these issues is not possible, but our views represent what we consider at the present time to be the most feasible and fair approach to the task set by our terms of reference of effecting 'a proper balance of interest between the owners of copyright and the users of copyright material in respect of reprographic reproduction'. However we are mindful of the fact that the rate of change in technology in the field of reprographic reproduction is great, and we therefore consider that it is desirable to examine the state of the law at regular intervals.

Section 2

Copying within the concept of fair dealing

2.01 This Section concerns copying for private use, irrespective of the place where the copying is carried out, and includes copying on self-service machines, whether in libraries or not, but in general it does not include copying where the copy is made by or on behalf of a librarian pursuant to a specific request by a private user. The term 'self-service' machines wherever used, includes 'coin-operated' machines.

2.02 It has always been open to an individual user, for his own private purposes, to go to a library or otherwise obtain a copy of a literary work and to reproduce passages from the work by writing the passages out in long hand provided the copy was only used by the person who made it for his own research or private study. There was no suggestion seriously made that this copying was inappropriate or should be stopped. In recent years, with the development of equipment which is broadly called photocopying equipment, it has become possible to make precise copies of considerable parts of a literary work quickly and cheaply. In addition, the wide availability of these machines and their comparative cheapness has extended the opportunities for copying very greatly. This has raised the question whether or not a stage has been reached where some remuneration should be provided to the author even in cases where photocopying takes place within the concept of fair dealing.

2.03 It seems that almost every country permits a measure of photocopying without remuneration if the copying is for the purpose of research or private study. In a number of countries specific provision is made for this.¹ For example, Article 53 of the Copyright Act of the Federal Republic of Germany provides 'It shall be permissible to make single copies of a work for personal use'.² It also provides that such copies may be made by another person for the user. It also seems clear that the whole of the work may be copied under this article and that at least two or three and probably more copies may be made under it.

2.04 Another example is the position under the Japanese Act of 1970 which, in Article 30, provides that it shall be permissible for a user to reproduce by himself a copyright work for his personal use, family use or other similar-uses within a limited circle.³

2.05 In Sweden, it appears that paragraph 1 of section 11 of the Copyright Act provides that a few copies of a published work may be made for private use but these must not be used for other purposes. It seems that the concept of 'a few' copies depends on the type of work copied but that three copies would certainly be regarded as falling within the expression 'a few'.⁴

2.06 In the United Kingdom, Australia, Canada and New Zealand, by virtue of specific legislative provisions, certain copying for research or private study does not constitute an infringement of copyright. In general, the copying permitted is copying within the concept of fair dealing. Although so far no legislative provision of a similar nature exists in the United States of America, a similar concept has been developed by the courts, and is incorporated in a Bill now before Congress.⁵

¹ Section 11 of this Report deals in some detail with the position in several countries,

² See also paragraph 11.08.

³ See paragraph 11.16.

⁴ See paragraph I I, 29.

⁵ See paragraphs 11.52-I 1.66.

2.07 In Australia, section 40 of the Act provides that a 'fair dealing' with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, for the purpose of research or private study, does not constitute an infringement of the copyright in the work.

2.08 Section 40, together with sections 41, 42 and 43, apparently applies to both published and unpublished works, in contra-distinction to section 44. which only applies to published works.⁶

2.09 The position under the Act is that copying of an insubstantial part of a work⁷ does not constitute an infringement of the copyright in the work. Where a substantial part of a work is copied section 40 may, nevertheless, prevent that copying from being an infringement of the copyright in the work.

2.10 The combined effect of sections 13(1), 14(l)(a), 31(l)(a)(i), 36(1) and 40 of the Act may be summarised as follows: the copyright in a literary work is not infringed by a person who, not being the owner of the copyright, and without the licence of the owner of the copyright, reproduces or authorises the reproduction of the work, or of a substantial part of the work, in a material form, if the reproduction is a 'fair dealing' with the work 'for the purpose of research or private study'.

The test of substantiality

2.11 The question whether or not a substantial part has been copied depends more on the quality than on the quantity of what has been copied.⁸ A number of submissions were made to us about the difficulty of ascertaining what was a substantial part of a work in the practical situations that arise. We are aware of these difficulties but, in our opinion, it is not possible to provide any satisfactory, precise test. The test of substantiality depends, as we think it should, more on quality than on quantity, so that it must involve a consideration of the nature of the material copied.

2.12 We considered whether we should recommend an alternative to section 14 along the lines that up to a certain percentage of a work should always be regarded as an insubstantial part or some other provision delineating the quantity that could be taken. However, since this section is applicable to all purposes including commercial reproduction for sale we do not consider this would be fair to copyright owners because in some instances a very small amount of a work may be a critically important part of that work. Just as it would be impossible to provide a set of tests to determine with precision whether a person had been negligent in, for example, driving a motor car, we consider it is equally impractical to attempt to lay down any tests to determine what is an insubstantial part of a work. The difficulty in applying an objective quantitative test to a musical or artistic work is self-evident. We think it is appropriate to point out that a close examination of decided cases points clearly to the fact that in many circumstances a very small amount in quantity of a work may constitute a substantial part of that work.

Copying on self-service machines

2.13 Self-service photocopying machines are found in libraries associated with universities, colleges of advanced education, schools and other educational establishments. Many municipal libraries have them, but generally they are not to be found in the major public libraries such as the National Library of Australia or the Library of New South Wales. A considerable amount of the photocopying of copy-

⁶ See generally *Hubbard and Anor v Vosper and Anor* [1972] 2 Q.B. 84; [1972] 2 W.L. R. 389.

⁷ See generally sections 14 and 31 of the Act which are set out in Appendix E.

⁸ *Ladbroke (Football) Ltd v. William Hill (Football) Ltd* [1964] 1 W. L. R. 273.

right works done on all these machines by individuals is for the purpose of research or private study.

2.14 The Australian Vice-Chancellors' Committee estimated that the average number of sheets per student copied in 1974 by students on self-service machines in university libraries was 120. In some cases the material copied was not in copyright or was the student's own material, and in some other cases, it may be that only an insubstantial part of it was copied. It seems probable that most of the other copying involved on self-service machines would be for research or private study and would be permitted under section 40 of the Act if a fair dealing.

2.15 Litigation has recently taken place in relation to copying on a coin-operated self-service photocopying machine in a university library: *University of New South Wales v. Moorhouse and Anor* (6 A. L. R. 193). On the facts of that case it was held that the University had authorised the act of which complaint was made. Particular attention was drawn to the fact that no appropriate notices were posted in the library. A Mr Brennan twice photocopied a story ten pages in length from a book of short stories. This copying was performed in an effort to commence a test case. However it is difficult to see that this case provides an authority for any proposition other than that the placing of coin-operated self-service machines in a library without adequate notices at least drawing users' attention to relevant provisions of the Copyright Act constitutes an authorisation within section 36. Jacobs J. said, at p. 210: 'If it was intended to be in some way a test case then it is unfortunate that the occasion of testing was one where this University had inadvertently failed to qualify in any material way the invitation which it extended to make use of the photocopying machines to copy material in the University library'. Gibbs J. said, at p. 199:

The copies were not made in circumstances that would give rise to the protection of s. 40; there was no evidence that Mr Brennan made them for the purpose of research or private study but it appears to have been common ground that they were made simply to provide evidence in proceedings intended to be commenced against the University. It is accordingly unnecessary to discuss the meaning and scope of the expression 'fair dealing' in s. 40. The only question that remains is whether the University authorised the act done by Mr Brennan that infringed the respondents' copyright, namely, the making of the photocopies.

2.16 It will be seen that this case throws no light on what is 'fair dealing' for the purpose of research or private study within section 40. It is quite clear that this question did not arise because of the complete absence of any evidence that the copies were made for the purpose of research or private study.⁹

Remuneration for copying on self-service machines

2.17 The Australian Copyright Council Ltd, in general, has not sought to suggest that any restrictions should be placed on copying but has submitted that all copying should be remunerated upon the basis that the authors should receive a royalty in respect of each copy page made of any work within copyright.¹⁰

2.18 However we are satisfied that as a matter of principle a measure of photocopying should be permitted without remuneration, for purposes such as private study, to an extent which at least falls within the present limits of 'fair dealing'. Even if this view is not accepted, we consider there are insuperable practical difficulties in obtaining permission from, and in paying remuneration to, the copyright owners for copying in these circumstances. It is necessary to bear in mind the vast

⁹As for the consideration in this case of the question of authorisation see paragraph 2.51

¹⁰See Part 4. submission 1.

diversity of material copied and the problems of locating individual copyright owners. 2.19 We have evidence of the number of volumes in a great many libraries in Australia and estimates of the number of authors. For example, the Library Association of Australia submitted statistics which showed that the total number of volumes in university libraries in 1973 was of the order of 8000000. We were also told that in one university library there were in excess of 1 800000 volumes and in each of six others in excess of 600000 volumes.¹¹ The National Union Catalogue of Monographs housed in the National Library gives locations for an estimated 3000000 works.¹² We received a copy of a list prepared by the National Library in 1975 to mark the foundation of the Australian National Scientific and Technological Library (ANSTEL) entitled, *List of Scientific and Technological Serials* and it contains the names of over 20000 serial titles¹³ then held by ANSTEL. Dr Coogan, of the CSIRO, said that the total number of scientific journals was now estimated at between 45000 and 50000.¹⁴ We received an estimate that there were 10 to 12 million authors currently engaged in writing works throughout the world and we were told that the author index of *Chemical Abstracts*, which lists new information in the chemical field, now includes something like 200000 authors per annum in one subject.¹⁵

2.20 Dr Coogan said that it has been estimated that in the last ten years 2000000 papers per annum were published in the scientific field¹⁶ and there is often more than one author of a paper. Mr Pearce, on behalf of the Australian Vice-Chancellors' Committee, estimated that something in the order of 2500000 journal articles came to Australia annually.¹⁷ In addition, back numbers of an overseas journal usually cannot be obtained unless sought within a few months of the date of issue.¹⁸

2.21 Despite the fact that most photocopying is likely to be of comparatively recent works, it is almost always quite impractical for a person who wishes to copy part of a work for, for example, his private study to seek permission from any author legally able to grant permission. It is also usually equally impractical for a person to seek permission from the publisher because in many instances the right to grant a licence to copy may not reside in the publisher.¹⁹ In any event, even if the publisher be in Australia, the cost and difficulty of communicating with him would, in most cases, greatly exceed the value of the copying sought to be made to the person wishing to copy. It would also, in most cases, greatly exceed the amount which could reasonably be sought in respect of an appropriate royalty for the copying sought to be done.

2.22 It is, of course, almost impossible in the case of works which were published, say, 50 years ago, to ascertain whether copyright subsists because the duration of copyright in a literary, dramatic or musical work or in an artistic work other than a photograph is for the life of the author and 50 years thereafter.²⁰

2.23 If the work has not been published before the death of the author copyright subsists until the expiration of 50 years after the expiration of the calendar year in which the work is first published.²¹

2.24 Even if it can be determined when the work was published and when the author died, in most cases, with works published years ago, it is usually impossible from a

¹¹ See Part 4, submission 11.

¹² See Part 4, submission 11.

¹³ *List of Scientific and Technological Serials*. National Library of Australia, Canberra, 1975. See also part 4, submission 11.

¹⁴ See Part 4, submission 36.

¹⁵ See Part 4, submission 11.

¹⁶ See Part 4, submission 36.

¹⁷ See Part 4, submission 24.

¹⁸ See Part 4, submissions 21, 22 and 23.

¹⁹ See evidence as to journals, in particular, Part 4, submissions 24 and 38.

²⁰ Section 33 (2) of the *Copyright Act 1968-1973*.

²¹ Section 33 (3) of the *Copyright Act 1968-1973*.

practical point of view to determine in whom the copyright is currently vested or in whom the right to license copying resides. Even if the disposal of copyright is dealt with specifically under a person's will it is usually quite impractical, except in the most extraordinary case, to ascertain the contents of the will of a person dying outside Australia and, to a lesser extent, in Australia, and even more difficulty exists in endeavoring to trace the title to copyright or the right to license copying.

2.25 We were also greatly impressed by the evidence of a number of witnesses who stressed the problems that arose because some books were unavailable when ordered, or were out of print²², and because back issues of periodicals were difficult or impossible to purchase even a few months after the date of issue. 23

2.26 A system of licensing for 'public interest' copying, including that on self-service machines in universities and school libraries, was put forward by the Australian Copyright Council Ltd²⁴ which was broadly described as 'a voluntary blanket licensing scheme, supplemented by statutory licenses'. It was said that this scheme would avoid the difficulty of the individual user having to deal with the individual copyright owner in respect of the copying of his works. The Council rejected any method of payment other than an amount calculated on the basis of a per copy per page amount for each copyright owner. That is to say, it sought that each owner be remunerated by way of an amount based on the number of pages copied and the number of copies made.

2.27 The details of the Council's proposal are more fully set out in Part 4 of this Report. Even if it were practical to record each copying instance by a private individual to which section 40 applied and by some method to enforce payment from him to a central collecting agency, we are quite satisfied that in most, if not substantially all, of the copying instances great difficulty and expense would be involved in paying royalties of a small amount to copyright owners (and in particular the authors) and the cost of collection and distribution must exceed any reasonable royalty which the individual copier would be likely to pay or, indeed, a Government could reasonably be expected to provide, if it wished to fund some forms of copying by an individual on, for example, a self-service machine in a university library.

2.28 The Council's proposals involved one or more copyright agencies being able to agree with, for example, an educational body in relation to the amount to be paid and the limits to be allowed for copying under its scheme. Our experience in this inquiry leads us to believe that it is unlikely in most cases that agreement would be reached upon the terms of remuneration and the limits of copying permitted and the issues would fall to be determined by a tribunal, particularly since the Council's proposals covered copying by individuals on self-service machines.

2.29 The major attraction for an educational body which would arise from the introduction of legislation along the lines proposed by the Council²⁵ appears to be that the educational body would receive a statutory licence to copy, within certain imprecise limits and without remuneration, works of persons not represented by the agency and who had not given notice to remain outside the licence.

2.30 Indeed, we see so little advantage in this scheme to most copyright owners whose works are likely to be copied because of the practical difficulties in distributing any substantial amount of royalty to individual copyright owners, that we do not think that any significant number of them on a world wide basis would join a copyright agency. The material before us did not suggest a contrary conclusion. In saying this we consider that the proposal may be more attractive to publishers than to authors. However it is basic to the Council's proposals that individual authors

²² See part 4, submissions 31 and 34.

²³ See part 4, submissions 21, 22 and 23.

²⁴ See Part 4, submission 1.

²⁵ See Part 4, submission 1.

should ultimately benefit directly from the operation of the Council's scheme for the copying of their works on a per copy per page basis.

2.31 We note the following paragraph from the official report of the joint meeting of the sub-committee on reprographic reproduction of the Intergovernmental Copyright Committee of the Universal Copyright Convention and the sub-committee on reprographic reproduction of the Executive Committee of the Berne Union in June 1975²⁶, 'An observer of the International Publishers Association (IPA) pointed out that some of the discussion on distribution had been based on the assumption that all authors would belong to a society or union. In the United States, only 10% of the 20 000 authors published by one particular company were members of any such organisation. Few scientific, technical or educational writers belonged to associations'.

2.32 During our hearings, the Australian Copyright Council Ltd and some other parties, in support of the claim that a collecting agency could operate as an effective means of distributing royalties to copyright owners in Australia and throughout the world, referred to the Australasian Performing Right Association Ltd (APRA) as a successful example of such an agency.

2.33 APRA controls the rights of public performance and broadcasting of music on behalf of composers and publishers who are its own members in Australia or members of its affiliated societies in many other countries. Although we had no direct evidence about its activities, it appears that APRA does operate successfully as a medium for issuing licences to users of music, collecting royalties from the issue of those licences, and distributing the revenue thus received to authors and publishers throughout the world. In carrying out these activities it seems that APRA controls a high proportion of musical works in current use, irrespective of the country of origin, and that it effectively distributes a large revenue to many authors and publishers in Australia and elsewhere, its overseas distributions being made through its affiliated societies in other countries.

2.34 We understand that distributions to authors and publishers are made by APRA on the basis of detailed returns of music usage which it obtains from some of its licensees such as radio and television stations, in combination with certain statistically based sampling techniques.

2.35 In view of the emphasis placed upon the activities of APRA, we feel some comments should be made upon its relevance to our inquiry.

2.36 APRA is part of an established world-wide movement of performing right societies which operate in practically every country in the western world as well as in the USSR, Japan, and some African and Asian countries. The organisation of these societies started in France and the United Kingdom over sixty years ago. Undoubtedly the movement owes its rapid development and wide representation of authors and publishers to certain basic factors inherent in the music industry, namely the existence at the time of its development of relatively few music publishing houses, coupled with the fact that nearly all composers of music had close links with music publishers. Even so, many years passed before an effective and widely representative organisation was developed.

2.37 The problem of distribution of royalties in an equitable manner by APRA is greatly facilitated by the ephemeral nature of popular music of the kind which it mainly controls. This means that at any given time only a small range of musical works is in active commercial use in relation to the whole repertoire of music, and sampling techniques can be employed with a reasonable degree of accuracy.

2.38 It seems crucial to the effective operation of APRA that it is able to restrict its dealings with copyright owners in overseas countries to similar national affiliated

²⁶ See paragraphs 10.12-1015.

organisations from whom it receives its rights under blanket agreements and to whom it accounts for royalties earned in Australia. It does not need to deal directly with individual publishers or authors in overseas countries.

2.39 After considering these various aspects of the operation of APRA and the performing right movement generally, it is our view that a collecting agency for reprographic reproduction based upon the same model could not hope to operate as effectively in the foreseeable future, particularly in relation to overseas copyright owners.

2.40 The Australian Copyright Council Ltd also sought to rely on a sampling system. The Council arranged for some evidence of a statistical nature.²⁷ This evidence was not directed to copying in the libraries of universities or colleges of advanced education and we are quite satisfied that any system of sampling in university or college libraries of copying on self-service machines would not produce any worthwhile results in view of the absence of any significant pattern of material copied. We direct attention to the evidence of Mr Matthews, Legal Officer of the University of Queensland, on behalf of the Australian Vice-Chancellors' Committee as to the extremely wide range of publications likely to be involved. Mr Matthews produced some tables showing recommended books in certain courses in several universities and there were examples where, of the eight to fifteen recommended books for one first year subject on the list of one university, only one or two appear on any corresponding list of three or four other universities. We were also provided with a similar analysis which was compiled from reading lists in the handbooks of 15 colleges of advanced education and teachers colleges in New South Wales with regard to compulsory and elective education strands of three-year courses for primary and lower primary teachers. Of the 546 titles listed, 428 or 78.4 per cent were listed by one college only, 83 were listed by two colleges only and only two by more than five of the colleges. We are satisfied that even in universities and colleges of advanced education if each student was required to fill in a card relating to photocopying to be processed by a computer it would be necessary to provide a substantial measure of supervision at each machine if the records were to be of any value. This is particularly so since the records would be the basis for the distribution of monies.

2.41 Mr Matthews said that if all self-service machines in the University of Queensland were to be supervised and even if those in the main library were collected into one room, a further 23 staff members would be required, involving a direct labour cost, calculated for the year 1974, of at least \$115000.²⁸ To this all the usual overheads were to be added. Mr Matthews put the cost of direct labour for all Australian universities at something over \$1 million in 1974, to which overheads had to be added. He said that upon the basis of copying 16.5 million sheets this cost worked out at about 7 cents a sheet for direct labour costs alone.²⁹

2.42 An estimate was made by the Australian Department of Education that in 1974, to provide a clerical assistant in each of the 1400 secondary schools in Australia at a salary of say, \$5000 per year, to monitor photocopying, would involve an annual cost of about \$7 million, to which must be added all the usual overheads.³⁰

2.43 It is clear from this evidence that the cost of providing accurate records of individual copying is out of all proportion to any royalties that might be payable to copyright owners, and that a satisfactory sampling system that would take the place of the keeping of detailed records cannot be devised.³¹

2.44 Although it might be possible theoretically, if cost were no object, to supervise

²⁷ see part 4, Statistical Evidence.

¹⁸ See Part 4, submission 24.

²⁹ See Part 4, submission 24.

³⁰ See Part 4, submission 25.

³¹ See generally Part 4, Statistical Evidence.

self-service machines in, for example, university or college libraries, to the extent that adequate records of each page copied were made, we think it would be quite impossible to require records of the photocopying to be made in respect of photocopying on private machines. We have been told that even now it is possible for a person to purchase a machine cheaply which will provide satisfactory photocopies. 2.45 With photocopying machines in places where institutional supervision is not possible or practical we think that few, if any, individual persons would be sufficiently familiar with the Act or sufficiently concerned to make a record of the copying done even if someone other than the copier was required to provide any remuneration in respect of that copying.

2.46 It is interesting to note that at the joint meeting of the sub-committees on reprographic reproduction in Washington in June 1975, the delegation from the Federal Republic of Germany expressed the view that any solution to the problem of reprographic reproduction requiring libraries to supply lists showing the title and the individual author would be doomed from the start.

2.47 We did not receive many submissions from individual persons concerning the making of copies for research or private study, but those who did make submissions were unhappy with the delay and inconvenience of filling in forms where this practice was adopted.³²

2.48 It has been suggested that it might be possible to provide some fund in respect of all private copying by placing a sales tax on copying machines or by placing a sales tax on copying paper. Whilst certainly it would be possible to provide a fund by placing a tax on copying machines or, indeed, perhaps requiring an annual licence fee in respect of each machine, there is, in our view, no practicable way by which any such fund could be distributed to provide remuneration to the copyright owners whose work was copied on a per page basis or on any other basis which would be broadly equitable. In saying this, we have in mind the difficulty of tracing the individual author or if the author is dead, the person or persons entitled to any royalty. The fact that the author may be situated anywhere in the world, the fact that only a page or two of a particular author's work, or even, for example, 30 pages, might be copied on any one machine in a year, the fact that the work copied may not be still in copyright, all support the conclusion that a reasonable amount of unremunerated copying by a person, at least for research or study, should be allowed. Even if one disregards the approach of the Australian Copyright Council Ltd and considers that it would be appropriate to distribute any such fund to an organisation of authors for the benefit of authors generally who were members of that organisation, we can see no possible practical means of achieving any appropriate distribution even in Australia at the present time. Apart from the problem of distribution of monies collected, taxing or licensing machines would create gross inequities where a machine is scarcely used at all for reproducing published copyright material, for example, as in many business offices.

2.49 We also point out that, subject to any relevant provisions of the *Trade Practices Act 1974*, there is no legal reason why one or more copyright agencies should not, as the law stands at present, enter into agreements with any person or persons in relation to licensing photocopying not permitted by the *Copyright Act*.

2.50 While the resolution adopted by the sub-committees on reprographic reproduction of the Intergovernmental Copyright Committee of the Universal Copyright Convention and the Executive Committee of the Berne Union in June 1975 envisaged States encouraging the establishment of collective systems to exercise and administer the right of remuneration, the majority of us consider that it is unlikely that a collecting agency or agencies will be established in Australia representative of all or a

³² See Part 4, submission 41

substantial percentage of the owners of copyright in works likely to be copied. If such an agency were to develop within the framework of the present law its activities should be brought under the supervision of the Copyright Tribunal in the same manner as the activities of bodies for licensing the public performances of copyright works are dealt with under Part VI of the Act.

Authorizing infringement of copyright

2.51 We have already mentioned the judgment of the High Court in *The University of New South Wales v. Moorhouse and Anor*³³ where it was held the University had authorised and was therefore legally responsible for the act of which the complaint was made and we now deal in more detail with the question of authorisation.

2.52 Jacobs J., with whom McTiernan A.C.J. agreed, said in relation to the person who had carried out the photocopying which had taken place:

There was no express permission given to him but the real question is whether there was, in the circumstances, an invitation to be implied that he, in common with other users of the library, might make such use of the photocopying facilities as he thought fit.

His Honour went on to say:

The invitation to use is on the face of it an unlimited invitation. Authorisation is given to use the copying machine to copy library books.

His Honour, after pointing out that the University had not qualified its invitation to users of the library to use its machines and that the only form of notice which was posted was inappropriate, said:

The particular form of notice on the machines is a negative factor in that it did not in any relevant way limit the invitation which was implicitly extended to make use of the machines for photocopying as the user thought fit.

Gibbs J., said:

It seems to me to follow from these statements of principle that a person who has under his control the means by which an infringement of copyright may be committed—such as a photocopying machine—and who makes it available to other persons, knowing, or having reason to suspect, that it is likely to be used for the purpose of committing an infringement, and omitting to take reasonable steps to limit its use to legitimate purposes, would authorise any infringement that resulted from its use.

His Honour then went on to consider the steps which the University had taken to limit the use of the machine to legitimate purposes and, after observing that the University had the power to control both the use of the books and the use of the machines, said that various measures adopted by the University had not amounted to reasonable or effective precautions against an infringement of copyright by the use of the photocopying machines.

His Honour also said:

However, the fatal weakness in the case for the University is the fact that no adequate notice was placed on the machines for the purpose of informing users that the machines were not to be used in a manner that would constitute an infringement of copyright. It is unnecessary to consider what the position would have been in the present case if the notices on the machines had been sufficient.

2.53 We consider both on the grounds of principle and on practicality that the Act should allow copying on self-service machines without remuneration in university or other libraries where the copying is a fair dealing for the purpose of research or study, and two of us would extend the limitation to ‘for purposes such as research, study, private or personal use’. We recommend that the Act should be amended to

³³ See paragraph 2.15

make it clear that the installation and use of self-service machines in libraries does not of itself impose any liability for copyright infringement upon the librarian or the librarian's employer provided notices in a form prescribed by regulation are displayed drawing users' attention to the relevant provisions of the Act.

Consideration and recommendations concerning 'fair dealing' and section 40 of the Act

2.54 We pass now to consider in more detail the provisions of section 40 of the Act. For the purposes of this examination of the section, no consideration will be given to the question of copying by a librarian, different aspects of which are considered in Sections 3, 4 and 5 of this Report.

2.55 Although the concept of 'fair dealing' was attacked by the Australian Copyright Council Ltd on the basis that, *inter alia*, 'it gives no certainty to users', it appears that under the Council's proposals 'fair dealing' would still be retained in cases where notice had been given and in cases of copying not being within the category of 'public interest copying'.³⁴

2.56 The Australian Book Publishers Association was in favour of retaining 'fair dealing'.³⁵

2.57 We have had many submissions directed to us about the unsatisfactory nature of such an indefinite test as that embraced by the words 'fair dealing'. However, we are satisfied that for the purposes of section 40 it would be most unwise to attempt any exclusive definition of the words 'fair dealing' and we believe this concept should be retained.

2.58 The question of 'fair dealing' was recently examined by the Court of Appeal in *Hubbard v. Vesper*, *supra*³⁶, in relation to the section of the United Kingdom Copyright Act 1956, equivalent to section 41, but what was said as to the words 'fair dealing' appears equally applicable to those words in section 40. Lord Denning M.R. at 94 said, *inter alia*: 'It is impossible to define what is "fair dealing". It must be a question of degree . . .'. Megaw L. J. at 98 said in relation to the words 'fair dealing', *inter alia*: 'It may well be that it does not prevent the quotation of a work from being within the fair dealing sub-section, even though the quotation may be of every single word of the work'. This was said in reference to an example of the copying of the epitaph on a tombstone.

2.59 We see section 40 as being a section mainly directed to the acts of an individual, and there are so many factors which may have to be considered in deciding whether a particular instance of copying is 'fair dealing', that we think it is quite impracticable to attempt to remove entirely from the Court the duty of deciding the question whether or not a particular instance constitutes 'fair dealing'. We are also unable to think of any words which would precisely define the expression 'fair dealing' so as to be of any assistance to a person trying to decide whether the making of a copy of a substantial part of a work would be protected by section 40 or not. This is particularly so when one looks at the position with, for example, poems and music, each of which may be a separate work, even though found in a collection bound together, as for example, in a book.

2.60 We think, however, that it would be useful to add a provision to section 40 so far as it applies to reprographic reproduction along the following lines:

- (a) In determining whether a dealing with a work in any particular case is a fair dealing the factors to be considered shall include:
 1. The purpose and character of the dealing;

³⁴ See Part 4, submission 1.

³⁵ See Part 4, submission 3.

³⁶ [1972] 2 Q.B. 84; [1972] 2 W.L.R. 389

2. The nature of the work;
 3. The amount and substantiality of the portion taken in relation to the whole work;
 4. Whether the work can be obtained within a reasonable time at a normal commercial price;
 5. The effect of the dealing upon the potential market for or value of the work; and
- (b) Without restricting the meaning of the expression 'fair dealing' the making of one copy for (research or study) :³⁷
1. in the case of copying from a periodical publication, of not more than a single article or, where more than one article relates to the same subject matter, those articles; or
 2. in the case of copying from an edition of a work, of not more than one chapter or 10 per cent of the number of pages in that edition, whichever is the greater, is a fair dealing with the work.

2.61 We think that a person coming within the general provisions of section 40 may be entitled to make more than one copy of a substantial part of a work for research or study if, for example, he is engaged on a research project which requires him to assemble for his own use part of a work under different headings or, for example, where he wishes to mark certain references on one copy and certain comment or criticism on another. We do not consider this would be outside our recommendations or that any special provision is necessary to cover it.

2.62 We had a number of submissions put to us concerning problems associated with the phrase 'for the purpose of research or private study'. We note that the Australian Vice-Chancellors' Committee suggested the deletion in section 40 of the word 'private'.

2.63 We considered whether we should recommend, so far as concerns reprographic reproduction, that section 40 of the Act be amended to provide that a fair dealing with a work for 'purposes such as research, study, private or personal use' should not be an infringement of copyright.

2.64 We are of the view that 'study' should not be limited by the word 'private'. Whilst it is difficult to understand the scope of what is comprehended by the term 'private study', the limitation seems to have been intended to distinguish use of copyright material for private study from use for classroom instruction. We think the distinction is, in many respects, an artificial one. We note that the Copyright Bill now before the United States Congress would permit fair dealing with a copyright work for purposes which, *inter alia*, include teaching and scholarship, which clearly covers classroom use. It is clear that the photocopying of material is of considerable assistance in enabling teachers and students to prepare material for classroom use, and that it is difficult to maintain a distinction between private study and other educational purposes. So long as the photocopying of material for educational use is qualified, for the purposes of section 40, by the requirement of fair dealing, we think that the removal of the limitation to private study will not prejudice owners of copyright.

2.65 On the other hand, two of us have considerable reservations about an extension of section 40 to permit fair dealing by way of reprographic reproduction for private or personal purposes. Whilst there may be a good deal of photocopying of limited amounts of copyright works for purposes that may be described as private or personal, and either the owners of copyright in that material have no means of knowing what is being copied or do not consider it worthwhile to take action against those who do the copying, two of us do not believe that it is necessarily appropriate to make this copying legitimate. That copyright owners are either unable or unprepared to enforce their rights does not seem to those of us who hold this view to be a sufficient reason for limiting those rights. Those two are concerned that such an

³⁷ The words in brackets should correspond with the words used in section 40.

extension would lead to further erosion of copyright in the public mind and that further changes in technology may extend the capacity of private individuals to make photocopies in ways that we do not now foresee.

2.66 Notwithstanding these considerations, the other two members of the Committee are firmly of the view that section 40 should be extended to permit reprographic reproduction of copyright works, within the scope of fair dealing, for private or personal purposes. They believe that this extension would not make Australian law out of line with what might be broadly described as world standards. They consider that the interests of copyright owners would remain sufficiently safeguarded by the requirement of 'fair dealing' and if the extension they propose be adopted, that this extension would be desirable in the interests of the general public.

2.67 They also consider that there are a number of cases which are impossible to foresee but of which an example may be given where copying, provided it is fair dealing, should be allowed. Suppose, for example, a ratepayer receives a letter from a municipal council under circumstances which do not require him to treat the letter as confidential and he wishes to discuss the contents of that letter with some other ratepayers who live some distance away. Or he may merely wish to make a copy for filing in a particular way or for preservation. Under the law as it stands at present making such a copy would be an infringement of copyright, unless it can be said to be for the purpose of 'research or private study', or for the purpose of 'criticism or review' or unless a licence is implied.

2.68 While we are therefore unanimously agreed that the limitation of 'private' before 'study' should be removed we are unable to reach agreement on any further extension of the scope of section 40, so far as reprographic reproduction is concerned. We would emphasise that we have not, of course, considered the operation of section 40 in relation to use of copyright material by means other than reprographic reproduction.

Other recommendations

2.69 We also recommend that the Act should be clarified to make it clear that sections 40, 41 and 43 may be applied to copying by a library or archives if that copying is not otherwise permitted and also that the provisions of Divisions 3 and 5 of Part III apply to published editions of works dealt with in section 88.

2.70 We do not think any further amendment to section 41, which concerns fair dealing for the purpose of criticism or review, or any amendment to section 42, which concerns fair dealing for the purpose of reporting news, has been shown to be necessary or desirable in relation to problems arising as a result of the use of reprographic reproduction.

Section 3

Copying by a library for users

3.01 This Section concerns copying by libraries for users and for Members of Parliament which is presently dealt with in section 49 of the Act. It does not include copying on self-service machines and it deals only with cases where the librarian or person acting on behalf of a librarian is performing the copying. It is also not concerned with copying for preservation or of out-of-print material or of unpublished works or the preparation of multiple copies for use in the libraries of educational establishments or for distribution to students.

3.02 We consider that the position with regard to copying by librarians or persons on their behalf must be examined as a separate problem whatever conclusion is reached concerning personal copying by an individual himself on a machine.

3.03 We consider that the present Australian legal position is not substantially inconsistent with what might be called the world standard. There is no doubt that it is desirable that for certain purposes a user should be able to obtain a copy of an article in a journal and a reasonable part of a published work.

3.04 It was not in fact put to the Committee that librarians should not be permitted to make photocopies of copyright material in their libraries. What has been in issue is whether royalties should be payable in respect of this copying. A library often finds it inconvenient or impractical, especially in the case of a journal, to permit a work to be borrowed. A library user will often want to have his own copy of a journal article or part of another published work. Even if he is prepared to buy the journal or the whole work, he will often find that it is not available. Libraries are, in our view, properly regarded as information resource centres. The need for copying library material by or for users of a library would not normally be satisfied by the library purchasing additional copies of the works. Quite apart from the severe financial burden this would place on libraries, we are satisfied that it is not possible to predict user demand for particular works in advance in most cases. In any event, the needs of the user, who may want to make notes on the copy or assemble it with other material, would not be met merely by the library having additional copies.

3.05 In Section 2 of this Report we have already recommended the retention of the fair dealing concept for copying by individual persons without provision for remuneration to the copyright owner. It is our view that copying by librarians is analogous to copying by individual persons under the fair dealing concept although in the case of copying by librarians it is considered desirable to have a separate provision rather than to allow the matter to rest on the general provisions of 'fair dealing'. For this reason we do not recommend that any provision should be made for remuneration in this class of copying.

3.06 Even if it were considered that remuneration should be paid for copying by librarians there would still be practical difficulties in the way of a feasible scheme for the payment of such remuneration.

3.07 The evidence shows that written requests for photocopies now received by librarians there would still be practical difficulties in the way of a feasible scheme for royalties might be based to be derived from them. To extract this information however would involve additional costs which might often exceed any royalties reasonably payable.

3.08 We received information concerning the nature of material photocopied in a number of libraries, for example, the National Library of Australia, the Library of the Western Australian Institute of Technology, the State Reference Library of Western Australia, and the Library of New South Wales. We also received the views of a number of persons based on their experience. Apart from libraries attached to schools, it seems clear that by far the greatest amount of photocopying performed by librarians is in relation to articles from journals and again, by far the greater number of the articles copied is from journals which were not published in Australia.

3.09 For example, it was said that in a test period in the Library of the Western Australian Institute of Technology only 17.8 per cent of the material copied was Australian published material and only 13.8 per cent was Australian material subject to copyright.¹ During a test period in the State Reference Library of Western Australia 46 per cent of the copy instances were in respect of periodicals and serials, 29 percent in relation to books and only 8 per cent of the books from which any pages were copied were books published in Australia and in print. It was estimated that the probable number of pages copied from each book in this sample was three.²

3.10 Witnesses from the CSIRO estimated that about 324000 photocopy pages were made per year in the CSIRO libraries and of these, about 90 per cent were from journals of which most were published overseas.³

3.11 The witnesses with a technical or scientific background, for example, Professor Angus-Leppan⁴, those from the CSIRO and Dr Sheridan, who represented the Institution of Engineers, Australia were all in favour of a continuation of the law permitting single articles in journals to be copied by librarians for users and their views were unanimous that in substantially no case was any author of an article in a scientific journal paid any royalty or indeed paid any fee in respect of the article. It was forcibly put that such articles were written for the purpose of disseminating information, for the purpose of the author achieving status in his profession or a higher degree or to present the results of some funded research. Indeed it is sometimes the practice overseas to pay a considerable sum, up to, so we were told, \$100 a page, to get papers published in particular journals.⁶

3.12 We were told that most writers of scientific or technical articles in journals were pleased if their articles were copied and, indeed, the Institution of Engineers pointed out that it would be a much more economical way of disseminating the information which it was endeavoring to put out through its journals if libraries, at no cost to it, would provide copies of articles appearing in its journals.

3.13 We feel that, so far as concerns articles of a technical and scientific nature, there is a great public need for copies to be available without undue restriction.

3.14 In view of the vast number of authors in the scientific and technical field⁷ we do not consider that it would be practical or appropriate to distribute any fund, which might be obtained as a royalty in relation to the copying of journal articles or reasonable parts of a book, to societies of authors or groups of authors in various countries of the world, if for no other reason than that in general the relevant authors are not members of any such society.

Consideration and recommendations concerning section 49

3.15 We proceed now to consider section 49 of the *Copyright Act* in detail.

¹ See Part 4, submission 22.

² See Part 4, submission 15.

³ See Part 4, submission 36.

⁴ See Part 4, submission 37.

⁵ See Part 4, submission 38.

⁶ See Part 4, submissions 36.

⁷ See generally Part 4, submissions 11 and 36.

3.16 This section deals with the making of a copy of an article or part of an article contained in a periodical publication by or on behalf of the librarian of a library that is not established or conducted for profit, and also the making of a copy of part of a work by or on behalf of a librarian of such a library where the copy 'contains only a reasonable portion of the work'. The combined effect of sections 48, 49 and 53⁶ is that although section 49, partly as a result of the definition of 'article' in section 48, does not extend to artistic works, section 53 protects the copying of artistic works used in certain illustrations in an article or part of a work copied under the provisions of section 49.

3.17 From the submissions we have received it seems that the degree of copying permitted under section 49 is considered appropriate by most librarians, but considerable dissatisfaction was expressed by librarians and by users about the requirements of sub-section (3) of section 49 and also librarians in general pointed out that what was 'a reasonable portion' was very difficult to determine.

3.18 We are not able to formulate any more satisfactory expression than 'reasonable portion', but it seems desirable to add a provision that in the case of copying from an edition of a work up to one chapter or 10 per cent of the number of pages in that edition, whichever is the greater, shall be deemed to fall within the words 'a reasonable portion', although 'a reasonable portion' might in some instances be a greater amount than this and the librarian would be protected if a Court so found.

3.19 We also recommend an addition to the Act somewhat along the lines of section 108(e) of the United States Bill S.22⁷ permitting the copying in a library of an entire work or more than a reasonable portion of it where that work forms part of a collection in the library if the librarian has first determined on the basis of a reasonable investigation that an unused copy of the work cannot be obtained within a reasonable time at a normal commercial price and makes a declaration to this effect, and provided a declaration is also made by the user of the library that the copy is required 'for the purpose of research or study'. It should also be provided that the declarations are to be open for inspection upon reasonable notice and are to be retained by the library for a period of 12 months. In the United States Bill the words 'fair price' are used but we prefer the words 'normal commercial price' which indicate the test is not whether the normal commercial price is fair but whether the price at which the work can be obtained is the normal commercial price. Two of us would extend the permitted copying to copying 'for purposes such as research, study, private or personal use'. In any case the words in this section should correspond with those adopted in section 40.

3.20 In general, if a library wishes to provide the service of copying by a member of the library staff rather than permit a person requiring the copy to make it on a self-service machine, it does not seem unreasonable to require that person to make out a form containing a signed statement relating to any requirements which might be provided in any amended section 49.

3.21 At present, sub-section (3) of section 49 requires that the librarian must be satisfied, unless the person is a Member of Parliament, that 'he requires the copy for the purpose of research or private study and that he will not use it for any other purpose'. It will be necessary for the words 'for the purpose of research or private study' to be amended to correspond with the words adopted for section 40. In addition, before the protection of the section operates, the person to whom the copy is supplied must not have been supplied previously by the librarian or person acting on behalf of the librarian, with a copy of the same article or of the same part of the work and where the copy is supplied to a person other than to a Member of Parliament, the person is required to pay for the copy an amount not less than the cost of making the copy.

⁶Set out in Appendix E

⁷See paragraph 11.60.

3.22 We have considered whether the section should continue to require a payment to be made by the person requiring the copy, particularly since we have been told in some cases, where the article is required by a research worker carrying out funded research, that the cost of the copying is charged to the cost of the research and that the cost of making the charge often exceeds the cost recovered against the research project for the making of the copy.

3.23 The amount charged in respect of copying seems to vary considerably and, where a copy is made by or on behalf of a librarian, the charge appears to run from 5 cents to 15 cents a copy. It is to be noted that the requirement for payment does not apparently apply to copies made on a machine not operated by the librarian, or a person acting on behalf of the librarian. We doubt whether the requirement for payment serves any useful purpose, and we think the general practice is for most libraries to seek to cover at least the cost of paper and the machine, even if not all the labour costs. We feel that in the ordinary library situation it would not be possible to fix with any precision 'the cost of making the copy'.

3.24 We doubt whether there would be any serious disadvantage to copyright owners if a library were permitted to supply copies within the limits of section 49 as proposed to be amended without having to require payment for the copies. On the other hand, a library should not be permitted to make a profit from supplying copies under this section, or under section 50. We therefore consider that the Act should prohibit any charge in excess of the direct and indirect costs of making the copy but should not require any charge to be made.

3.25 We think it is not unreasonable to limit the protection of the section for the librarian to cases where the user declares that no previous copy has been supplied to him by the librarian or person acting on behalf of the librarian of that library.

3.26 We also consider that rather than requiring the librarian to be satisfied as to the purpose for which the copy is required, it should be sufficient, as in the United Kingdom, to provide that the condition is fulfilled if the librarian or person acting on behalf of the librarian receives in good faith a signed statement by the person requesting the copy, declaring that the purpose for which the copy is required falls within the words of the section and that he will not use the copy for any other purpose. We think it would be appropriate that the legislation provide a penalty where the user of the library makes a false declaration.

3.27 We have also been concerned to consider the development of the systematic reproduction of single copies of single articles from journals in libraries. An example of the development we have in mind is illustrated by ANSTEL.¹⁰

3.28 This problem has arisen in a fairly acute form in the United States of America and litigation ending in the Supreme Court took place in *The Williams and Wilkins Company v. The United States*. This was an action by the Williams and Wilkins Company, a medical publisher, against the Department of Health, Education and Welfare of the United States of America, alleging infringement of copyright by the National Institute of Health and the National Library of Medicine arising from large-scale photocopying of articles from periodicals published by the plaintiff. The plaintiff was successful before the trial judge but the United States Court of Claims upheld an appeal by a four to three majority.¹¹ The Supreme Court of the United States heard an appeal but the Judges were evenly divided and so the appeal was dismissed. The Judges of the Supreme Court gave no reasons for their judgments.

3.29 We have considered the proposal in section 108(g) of United States Bill S.22 and in particular the further recommendations of a sub-committee of the House Judiciary Committee.¹² After very careful consideration we think that in Australia

¹⁰ See Part 4, submission 1 i.

¹¹ Reported in Federal Reporter 2nd Series (1973) 487 F.2nd'3'5

¹² See paragraphs 11.63 and 11.66(c).

any such provision *inter alia* would impose undue restrictions on the dissemination of technical and scientific information. As we have said, we feel that if any systematic reproduction of copies is undertaken by libraries it will be mostly in the scientific and technical fields.

3.30 In coming to our conclusion we have considered a number of possible approaches in relation to a library engaged in systematic reproduction. One would be to apply some restrictions in respect of journals other than those in the scientific and technical fields, using those words in their widest meaning. Another approach would be to define the works that may be copied by prescribing the class of persons for whom they were written, for example, scholars and researchers. We do not find these approaches attractive. A further approach would be to require the keeping of records and where more than, say, six copies of an article were prepared over a given period, a fee would be available to an owner making a claim within a prescribed time in respect of that copying. Whether or not this last approach would be practical in other fields, we reject it in this case as impractical and of no significant benefit to the authors involved.

3.31 We were also told that it takes up to five months for journals to arrive in Australia by surface mail. The National Library of Australia pointed out that it often received requests for photocopies of important articles from a copy of a journal which it has received by air mail. It is obvious that users in general cannot enjoy the luxury of the cost of receiving all journals by air mail.

3.32 In all the circumstances we have come to the conclusion that we do not wish to recommend any special restrictions to deal with this kind of development. However, we consider it necessary to keep this matter under review.

3.33 We note that section 18 provides that, for the purposes of the Act, a library shall not be taken to be established or conducted for profit by reason only that the library is owned by a person carrying on business for profit.

3.34 We consider that the provisions of section 49 should also extend to archives which should be suitably defined.

Other recommendations

3.35 We also note that sections 40 and 41 provide certain exceptions in relation to fair dealing and any amendment to section 49 should not restrict any possible application of sections 40, 41 and 43 to copying by libraries, '3

3.36 We also recommend that section 112 dealing with reproduction by libraries of published editions of works should be amended to conform with the recommendations we have made with respect to section 49.

¹³ see paragraphs 2.69 and 2.70.

Section 4

Copying by a library for other libraries

4.01 This Section concerns copying by libraries for other libraries or what is commonly called copying for inter-library loans. The term 'inter-library loan' is used to include the case where one library supplies to a second library at the request of the latter library a photocopy of a work or part of a work held in the collection of the former library.

4.02 Photocopying for the purpose of 'inter-library loan' is to replace in appropriate cases the loan of a book or periodical which, particularly in a country of large area, becomes impractical for many reasons, including the time taken to transmit the work itself to the place where it is required and the cost of postage or airfreight.

4.03 We consider that it is desirable to facilitate inter-library loans particularly in a country which, as is the case with Australia, is situated at a great distance from many of the centres of publication, and which is so large as to make it obviously impossible to provide elaborate library facilities in the widely separated towns which exist.

4.04 A good illustration of the need for inter-library loans appears in the State of Western Australia where the State Library Board is responsible for the operations of the whole of the State Library system.¹ At the time submissions were made to us there were 145 public libraries in Western Australia, of which 33 were in the metropolitan area. It is clear that it would be quite impossible to provide in each of these libraries all the monographs and periodicals which might reasonably be required by a reader in the area. This is more particularly so in the scientific and technical field. Another illustration of the need exists in the CSIRO which at the time submissions were made, had a total staff of about 7200, of whom about one-third were research scientists located in more than 100 laboratories throughout Australia. Although the CSIRO library network comprised about 40 libraries, each attached to a scientific laboratory, there were in addition about 20 field stations holding books which provide some support for research staff located at isolated stations.²

4.05 The need for inter-library loans in the scientific and technical field is also clearly illustrated in the STISEC Report.³ This report highlights the necessity for making readily available the great quantity of scientific and technical information, 98 per cent of which, it is estimated, is produced outside Australia. It is pointed out in the report that the combination of geographical isolation and low population density puts Australia at an industrial disadvantage and requires a greater effort to ensure good communication with the rest of the world than is needed in most other industrialised countries.

4.06 It is quite clear to us that if information is not readily available in Australia, the progress of the country will be seriously impeded and this must ultimately react on the general standard of living in the community. The STISEC Report also points out that inter-library loans satisfied byway of photocopying are necessary, since Australia could not afford to store multiple copies of little-used or unused journals on library

¹ See Part 4, submission 15.

² See Part 4, submission 36.

³ See Part 4, The STISEC Report. (Following submission 11.)

shelves around the country, but the report envisages that every library would have what copies it needed of those journals most useful to its clientele.⁴

4.07 We were also told by an officer of the Library Association of Australia that, even if the subscription to a journal is \$20 per annum, the total cost of purchasing and maintaining it on a library shelf is about \$85 per annum. One factor restricting undue reliance by a library on inter-library loans is the cost. It was estimated by officers of the National Library of Australia that the cost to that library of satisfying an inter-library loan was \$6-\$8 and to this must be added the cost incurred by the library requesting the loan.⁵

Remuneration for copying for inter-library loans

4.08 As we have said, we consider that most of the photocopying which is likely to take place in respect of inter-library loans will be in the technical and scientific field. In this situation we think that no special legislative provision at present is required to restrict the supply of copies of articles on a systematic basis through the inter-library loan scheme, but the situation should be kept under review.

4.09 There does not appear to be much demand for the copying for inter-library loans of works other than technical or scientific works. In addition, as we have said, apart from the cost of photocopying itself, the cost of handling an inter-library loan is substantial and in the field of general literature we consider it is very unlikely that any copying for inter-library loan would take place which would be detrimental to the interests of the author. We do not therefore think that it would be practical or appropriate to recommend any system of royalty or other remuneration in respect of inter-library loans falling within the provisions of the section of the Act dealing with copying by libraries for other libraries which is now section 50.⁶

Consideration and recommendations concerning section 50

4.10 We proceed now to consider section 50 of the Act in detail.

4.11 The provisions of this section are subject to Regulation 4 of the Copyright Regulations (No. 58 of 1969) which limits its application to copying for another library not established or conducted for profit and to the provision of not more than one copy unless the librarian of the library supplying the copy is satisfied that the copy previously supplied has been lost, destroyed or damaged.

4.12 The section is applicable to the copying of an article in a periodical publication or the copying of a literary, dramatic or musical work or part of a work by or on behalf of a librarian of a library. The section is subject, however, to the requirements that the copy is supplied only to the librarian of another library and, where more than 'a reasonable portion' of the work is copied, the librarian by whom or on whose behalf it is made does not know the name and address of any person entitled to authorise the making of the copy and could not by reasonable inquiry ascertain the name and address of such person. The copy must not be supplied to a library established or conducted for profit-regulation 4.

4.13 It is noted that the section does not specifically deal with the use to which the copy supplied may be put. It therefore seems open to the librarian of the library

⁴See Part 4, The STISEC Report.

⁵See Part 4, submission 11. The Library Association of Australia also submitted to the Committee a copy of an Inter-Library Loan Code produced by the Australian Advisory Council on Bibliographical Services in 1966, with the assistance of the Association. The Code consisted of recommendations which were intended to improve efficiency in inter-library lending and obviate abuse of the inter-library loan privilege and dealt specifically with the question of photocopying of material for loans.

⁶See Appendix E.

supplied with the copy to make the copy available to any person whether that person desires to use it for the purpose of research or private study or not. Sub-section (3) of section 50 permits regulations to be made excluding the operation of the section where the copy is supplied to a person by the library receiving it otherwise than in accordance with the regulations, but no such regulations have been made.

4.14 We think these provisions are unsatisfactory. There is, in our view, insufficient reason why a person who wishes to have a copy of an article in a periodical publication or no more than a reasonable part of another work for the purposes specified in section 49 (as proposed to be amended) should not be able to obtain a copy through the inter-library loan system without the library that obtains the copy for him being subject to the penalty that another copy cannot subsequently be supplied to it.

4.15 It is because of regulation 4 and not of section 50 that the protection of section 50 does not apply where the supplying library has previously supplied a copy of the work to the requesting library unless the librarian of the supplying library is satisfied the copy so previously supplied has been lost, destroyed or damaged. We consider that the protection to the supplying librarian should not depend on whether the requesting librarian complies with the section or upon the acts of the person to whom the copy is supplied by the requesting librarian. We recommend that the restriction in regulation 4 on the supply of a second copy unless the first copy has been lost, destroyed or damaged should be eliminated except in the case where the requesting librarian requires the copy only for the shelves of his library.

4.16 We recommend that section 50 of the Act should be amended so that it is an infringement of copyright for the requesting library to supply to a person the copy obtained from the supplying library otherwise than in a case where the librarian of the requesting library or the person acting on his behalf receives in good faith a signed statement by the person requesting the copy declaring that the purposes for which the copy is required fall within the same purposes as we recommend for section 49 and further that he will not use the copy for any other purpose. We recommend that the librarian of the supplying library should be protected by section 50 provided he is informed that the declaration has been obtained in the requesting library. We further recommend that a penalty be provided for a false declaration.

4.17 This leaves for consideration the situation where a librarian requests through the inter-library loan system a copy of an article or other work or of part of an article or other work for its own collection. In this case we recommend that the making of such a copy should not be protected by section 50 unless, if a copy has previously been supplied by the librarian of the supplying library to the requesting library, the librarian of the requesting library is satisfied the copy previously supplied has been lost, destroyed or damaged and so informs the supplying library.

4.18 We note that in any case the librarian of the requesting library receiving the copy can copy it for a user of the library provided in so doing the provisions of section 49 are satisfied.

4.19 The same provisions as we have recommended for section 49⁷ should be incorporated in section 50 with regard to the words 'a reasonable portion'. Accordingly we recommend that in the case of copying from an edition of a work up to one chapter or 10 per cent of the number of pages in that edition, whichever is the greater, shall be deemed to fall within the words 'a reasonable portion' although 'a reasonable portion' might in some instances be a greater amount than this percentage and the librarian would be protected if the Court so found.

4.20 We consider that the requirement that before more than 'a reasonable portion' of the work may be copied the librarian by whom or on whose behalf the copy is made must not know the name and address of any person entitled to authorise the

⁷See paragraph 3.18

making of the copy and could not by reasonable inquiry ascertain the name and address of such person should be replaced by a provision that the librarian has first determined on the basis of a reasonable investigation that an unused copy of the work cannot be obtained within a reasonable time at a normal commercial price and makes a declaration to this effect. It should also be provided that the declaration is to be open for inspection upon reasonable notice and is to be retained for a period of 12 months. This is consistent with the recommendation we have made for copying by a librarian for a user of the library. We recommend this change because we are satisfied that there is very often great difficulty in communicating with the person entitled to authorise the making of a copy and that frequently communications are not answered.

4.21 We also consider that section 50 of the Act should extend to archives, which should be suitably defined.

Other matters

4.22 We direct attention to paragraph 3.35 concerning libraries and sections 40, 41 and 43, and also to our recommendation in relation to unpublished works set out in Section 5 of this Report.

Section 5

Copying of published or unpublished works for preservation and certain other purposes

5.01 This Section mainly concerns copying by libraries or archives of material in the library or archives for preservation or, in certain instances, replacement. We have been greatly impressed by the need, which the present Act does not fulfil, for provisions permitting, without infringement of copyright, copying for preservation purposes. Submissions were made by the National Library of Australia, the Library of New South Wales, the Australian Archives, the Australian Advisory Council on Bibliographical Services and others that great difficulty exists with certain published and unpublished material.¹

5.02 It is not unusual for the papers of a public figure to be deposited either under his will or by his beneficiaries with a major public library or archives. Many of these papers consist of letters which have been written to him and in which the copyright does not pass with the gift of the papers, because the copyright resides in the writer of the letters. In many instances it proves quite impossible to seek permission to copy because it is not possible to find the person or persons in whom the copyright resides. The legal position then appears to be that even if there is no practical reason a copy should not be made of, for example, a letter, and that letter is freely open to the public for inspection in the library, no copy can legally be made under section 51 until more than 50 years after the death of the author and more than 75 years after the letter was written.

5.03 We were told that very often letters and other unpublished documents of valuable historical interest are written on paper which will deteriorate in the course of time, even without undue handling, and if they are made available to researchers they will deteriorate more rapidly with consequential loss to the nation.

5.04 We are quite satisfied that no reason exists why a library or archives should not be able to reproduce an unpublished work solely for the purpose of preservation or security. It may be desirable for an unpublished work to be copied to prevent unnecessary handling of the original. Sometimes an unpublished work may be wanted for examination in another library by a research worker and it is very often quite impractical for the research worker to travel to the library where the document is and also undesirable to risk sending the document to a library convenient to the researcher. We therefore recommend that an unpublished work maybe copied for preservation or security or for research use in that or another library or archives but provision should be made to ensure that this does not cause the work to become a published work.

5.05 Archival bodies have expressed the view that the Act should permit, without infringement, of copyright, the copying of unpublished works held in a library or archives by the librarian or archivist, or a person acting on his behalf, for a person who makes a declaration that he requires the copy for the purpose of research or study only and that he has not previously been supplied with a copy of that work. This view was put on the basis that scholarship and research would be facilitated by such a provision.

¹ See in particular, Part 4, submissions, 11, 12, 13, 14, 15, 16 and 17.

5.06 The Committee has considered whether this privilege of copying might be given and whether, if given, it should be confined, as is the case with copying under section 49, to reasonable parts of works. Much of the material held in archival collections consists, however, of short works such as letters and other personal documents. It would not be practicable in many cases to confine copying to parts only of these works.

5.07 The Committee does not, however, make any recommendation that would specifically permit the making of a copy of an unpublished work by a librarian or archivist for a student or research worker to take away. We point out that any right to copy within the concept of fair dealing would not be affected.

5.08 We might here mention that the limited copying which we propose shall be permitted from unpublished works has no bearing upon any question of confidentiality of the material copied. Whether unpublished material in its original form can be made available to researchers or the general public will depend upon the circumstances of the deposit in the library or archives, and persons depositing such material may still of course impose restrictions on its disclosure.

5.09 We have also received evidence of problems with respect to published material which has been damaged and which cannot be replaced.²

5.10 We consider that where a published work held by a library or archives is damaged, deteriorating, lost or stolen, the library or archives should be permitted to make a replacement copy if after a reasonable investigation the librarian has determined that an unused copy of the work cannot be obtained within a reasonable time at a normal commercial price and makes a declaration to this effect. The declaration is to be open for inspection upon reasonable notice and is to be retained by the library or archives for a period of 12 months.

5.11 We therefore recommend that a new section along the following lines be inserted in the Act:

It is not an infringement of copyright, for a library or archives, or any of its employees acting within the scope of their employment, to copy a work which is in the library or archives if:

- (a) the work is an unpublished work copied solely for the purpose of preservation or security or for research use in that or another library or archives; or
- (b) the work is a published work copied solely for the purpose of replacement of a copy that is damaged, deteriorating, lost or stolen where the library or archives has, after reasonable inquiry, determined that an unused copy cannot be obtained within a reasonable time at a normal commercial price.

5.12 We have been impressed by the cost and difficulty of storage of little-used books and journals and we consider that where a library or archives wishes to retain a work rather than discard it but wishes to save shelf space the library or archives should be able to make a microfilm or microfiche copy and destroy its original.

5.13 Therefore we recommend that it should not be an infringement of copyright to make one microfilm or microfiche copy of any work in the collection of the library or archives where it is intended to destroy the original.

5.14 We also recommend that, in conformity with the recommendations we have made, the words 'for the purpose of research or private study' in section 51 (1)(d) be replaced with respect to reprographic reproduction by the words 'for the purpose of research or study'. Two of us would further extend the words to 'purposes such as research, study, private or personal use.'

5.15 We note that section 51(2) permits the copying without breach of copyright of a manuscript, or a copy, of a thesis or other similar literary work that has not been published and is kept in a library of a university or other similar institution by a

²See in particular Part 4, submissions 15 and 16

librarian of the library for supplying to a person who satisfies the librarian, or a person acting on behalf of the librarian, that he requires the copy for the purpose of research or private study and that he will not use it for any other purpose. We recommend that so far as concerns reprographic reproduction the words 'for the purpose of research or private study' be replaced by the words 'for the purpose of research or study'. Two of us would further extend the words to 'for purposes such as research, study, private or personal use'.

Section 6

Multiple copying in non-profit educational establishments

6.01 This Section deals with multiple copying in non-profit educational establishments, including the provision of multiple copies for a library of a non-profit educational establishment. Copying by an individual student or an individual teacher falls under the heading of copying within the concept of fair dealing, and is dealt with in Section 2 of this Report. Copying by a librarian for a user, including a student or a teacher, is dealt with in Section 3 of the Report. Copying for an inter-library loan is discussed in Section 4 of the Report.

6.02 We have already recommended a provision which would permit the making of up to six copies of articles in periodicals on a temporary basis for use by students in the library of an educational establishment in paragraph 1.46. We have also recommended in the case of other published works, required in a library conducted by a non-profit educational establishment, that up to six copies of that work or part of it may be made without remuneration in any case where the work has not been separately published, or if it has been separately published, it has been ascertained after reasonable inquiry that copies cannot be obtained within a reasonable time at a normal commercial price.¹

6.03 The remaining question is whether there should be some general provision for the making of multiple copies of the whole or parts of a work in educational establishments for classroom use or for distribution to students. If there is to be some such provision then consideration must also be given to any limitations to be imposed and to whether there is to be provision for remuneration to authors.

6.04 Broadly speaking, the making of multiple copies would not be permissible under the various categories of copying which we have previously considered except in relation to our recommendations referred to in paragraph 6.02. It is also possible that under our recommendations on the fair dealing concept considered in Section 2 of this Report some limited multiple copying could be permissible in appropriate circumstances.

6.05 Section 200 of the Act² makes special provision for the reproduction of a work in the course of educational instruction where the work is reproduced 'by a teacher or student otherwise than by the use of an appliance adapted for the production of multiple copies, or as part of the questions to be answered in an examination or in an answer to such a question'.

6.06 It may be noted that this provision extends to copying of the whole of any work, and no provision is made for any compensation to be paid to authors.

6.07 In our view section 200 as it stands is unsatisfactory in relation to the reprographic reproduction of copyright works. Whilst not prohibiting the making of multiple copies, the prohibition on use of 'an appliance adapted for the production of multiple copies' imposes a test as to what is authorised which depends upon the type of machine used to make reproductions. In our view technical changes in photo-

¹ See paragraph 1.50.

² See Appendix E.

copying machines have made quite unsatisfactory a distinction between infringement and non-infringement based on the kind of machine used to make a reproduction.

6.08 The term 'appliance adapted for the production of multiple copies' would seem to include many types of modern photocopying machines, which are capable, once the machine has been set, of making large numbers of copies without further intervention by the operator. These machines are available in many educational establishments. It would appear that the making on a modern photocopying machine of a single copy for the purposes of educational instruction would not be exempt from infringement under the section, whereas the making of a number of copies on the older type of machine would be exempt. It seems probable that section 200 represented, when it was first enacted, a practical compromise between the need for some reproduction of copyright material in the classroom situation and the interests of copyright owners. Apart from obvious illustrations of that need, such as the copying out of copyright material on a blackboard or the making of a slide for an epidiascope, considerations of time and cost would limit, in a practical way, the making of multiple copies of material if machines adapted for the making of multiple copies could not lawfully be used. Again, these considerations do not seem to be sufficient reason to deny the teacher the right to use a modern photocopying machine to make a single copy of a work, or even a few copies, for use for the purpose of classroom instruction when he might, by virtue of section 200 for example, type out the same number of copies without infringing copyright.

6.09 The section is unsatisfactory in another respect. A person who sells or distributes copies of a work made under the protection of section 200(1) may nevertheless be held to infringe the copyright in the work under section 38. Thus a school might not be able lawfully to sell to its pupils copies made under the protection of section 200, even though the price charged was no more than enough to cover costs, or even to give the copies to its pupils if by so doing the copyright owner could demonstrate prejudice. But it may be able lawfully to lend those copies and recover them back afterwards, even though the practical result is the same in terms of economic detriment to the copyright owner.

6.10 We therefore think that apart from the recommendation we make in paragraph 6.69, section 200, so far as it relates to the reprographic reproduction of a work or an adaption of a work, no longer serves a useful purpose, and should be superseded by the provisions we recommend in this Section of the Report.

6.11 In considering what recommendations we should make in relation to multiple copying in educational establishments, we have felt it necessary to consider in turn:

- (a) is there a significant need for such a facility?
- (b) should there be provision for this facility, and if so, what limitations should imposed, for example, as to the number of copies permitted to be made, as to whether the whole or some part of the original may be copied, as to the nature of the original material which may be copied?
- (c) should there be some provision for payment of remuneration to authors, and, if so, in what manner?

6.12 We have also given detailed consideration to the position in other countries, particularly in relation to possible methods of remuneration for authors.

Extent of, and need for, multiple copying

6.13 With regard to the extent of multiple copying in non-profit educational establishments in Australia, such evidence as was available to the Committee showed that both the extent of multiple copying and the need for it to be done varied considerably according to the nature of the institution involved.

6.14 Evidence of the position in universities was given in the written submission of

the Australian Vice-Chancellors' Committee.³ From this it appeared that the extent to which multiple copies of works or parts of works are made for distribution to students varies from one university to another and from one faculty to another. The submission sought, however, to have multiple copying for distribution to students allowed without infringing copyright. Other evidence showed that there is a significant support for multiple copying facilities, although educational authorities do not all agree that this is desirable from an educational standpoint. We feel however that the educational issue is not for us to determine.

6.15 In a submission made on behalf of Colleges of Advanced Education and similar bodies in New South Wales⁴, it was said that the nature of the courses offered in colleges of advanced education and the high proportion of part-time students at these institutions made it necessary for photocopies of works or parts of works to be available for distribution to students. Multiple copying is apparently often practised on a wide scale in many colleges of advanced education.

6.16 Only limited evidence of the extent of multiple copying in schools was placed before the Committee.

6.17 An estimate provided on behalf of the South Australian Institute of Teachers⁵ in relation to primary schools was that photocopying would probably not exceed a total of ten pages per pupil per year, and most of this would be of a single page.

6.18 The Australian Department of Education told the Committee⁶ that, in both primary and high schools in the Australian Capital Territory, the bulk of copying consisted of multiple copying of a single page, or of a few pages for distribution to classes, but there was some, though not a great deal of, copying of whole chapters of books.

6.19 In the absence of evidence of the nature of the material contained in the pages of works being copied for distribution in schools, the Committee was unable to form any opinion whether or not the amounts being copied formed more than an insubstantial part of the works involved.

6.20 We were provided with information contained in a report by the Council for Education Technology and the Publishers' Association in the United Kingdom dated January 1975. We have set out some of the details in relation to this in Part 4 of this Report⁷ and it appears that each pupil in every primary or secondary school in the United Kingdom in a year receives no more than about 40 pages of material which could possibly be in infringement of copyright.

6.21 We also received some information about photocopying in schools in Denmark in the submissions of Mr Banki⁸ but we were unable to draw any significant conclusions from this material.

6.22 In Australia it appears that in some cases copies are made for classroom use because the original work is out of print, or because works ordered did not arrive within a reasonable time.

6.23 The Committee did not seek to carry out or request any surveys of copying in schools in Australia. It is clear that the Committee had no power to extend any legal privilege in respect of evidence derived from a survey and it did not feel justified in pressing for a survey not voluntarily offered where the result of the survey would not be privileged.

6.24 The Committee is satisfied that some multiple copying is taking place in educational establishments, particularly at the tertiary level, that equipment for this

³See Part 4, submission 24.

⁴See Part 4, submission 28.

⁵See Part 4, submission 31.

⁶See Part 4, submission 25.

⁷See Part 4, submission 3.

⁸See Part 4, submission 2.

reproduction is widely available in one form or another, and that there is an increasing demand for its use. There is evidence that copying for educational purposes takes place on a substantial scale in other countries. We have no reason to believe that the situation is radically different in Australia particularly having regard to the difficulties in obtaining copies of books and additional copies of journals. In these circumstances we think it likely that some of the copying thus taking place is an infringement of copyright under the existing law, and we also think it likely that the demand for copying of this kind will increase because of modern educational techniques which place more emphasis on the study of materials from a variety of sources than upon the use of a single prescribed text.

6.25 A special problem for copyright owners seems to be the photocopying of sheet music, part songs and poems for use in educational establishments and elsewhere. These works are usually relatively short so that copying of the entire work or of a large part of the work is quite practicable and economical.

Remuneration for multiple copying

6.26 To the extent that there is a demand for the making of multiple copies of works or substantial parts of works for use in educational establishments, the Committee is of the view that the copyright law should accommodate this demand. In principle we consider that multiple copying should not be carried out without remuneration to the copyright owner in any case where it represents a substantial use of his property or it could prejudice sales of his work, particularly if the work has been specifically written for use in schools.

6.27 However there are considerable practical difficulties in devising a workable scheme for payment of remuneration. Although we are proposing some means of facilitating payment we have reached the conclusion that, whether or not these proposals are feasible, some limited right of making multiple copies should be given to educational establishments.

6.28 Under the present law it is of course open to individual educational establishments to seek prior permission from the individual copyright owner concerned before making copies of his work or part of his work, and to pay whatever royalty may be required by the owner as a condition of such permission. Subject to any relevant provisions of the *Trade Practices Act 1974-1976* it is also open to any agent acting on behalf of a significant number of copyright owners to offer a licence to copy the works of these owners to any prospective licensee or licensees.

6.29 We consider that it is not practicable at the present time in most cases to obtain specific permission in advance from individual copyright owners to make copies. Even if the name and address of the person who could give permission were known, the delay in obtaining permission, often from overseas, would be likely to be so great that the material would be no longer needed by the time permission was received. Very often the administrative costs involved in seeking permission would be out of all proportion to the royalties reasonably payable in respect of the reproduction of the work. So far as we are aware publishers of books and journals have not made any significant efforts in Australia to provide copies of articles or parts of works for purchase by educational establishments.

6.30 Accordingly we are of the view that some special arrangements are desirable if, on the one hand, educators are to have reasonable freedom in the area of multiple copying, and on the other hand, copyright owners are to have a reasonable and practical opportunity of obtaining recompense. The formulation of suitable arrangements has proved to be one of the most difficult tasks we have faced.

6.31 We have considered the problem broadly on three different bases.

(a) Voluntary or contractual schemes derived from negotiations between rep-

representatives of educational bodies on the one hand and copyright owners on the other. Such schemes would not necessarily require any special legislative provisions.

(b) Schemes which depend upon special legislative provisions for their operation.

(c) Schemes which are a combination of (a) and (b).

6.32 In three countries, schemes have been proposed or have been put into operation, under which multiple copying of copyright works would be permitted in educational establishments without permission having to be asked for in each case and under which royalties are payable, or are payable if claimed, either to the copyright owners or to organisations acting on their behalf.

6.33 In Sweden such a scheme resulted from voluntary agreement between the government and representatives of copyright owners.⁹ Theoretically there is no step embodied in the Swedish agreement which could not be adopted in Australia or a part of Australia by voluntary agreement without amendment to the copyright law. It appears that legislation has been enacted in the Netherlands, under its Copyright Act, giving educational authorities the right to make multiple copies of copyright works subject to payment of royalties to an organisation set up for the purpose of collecting those royalties and distributing them to or on behalf of the owners of the copyright in the works the subject of the photocopying.¹⁰ We have no information on how this is working in practice.

6.34 The matter is also under consideration in other countries. The position overseas is more fully discussed in Section 11 of this Report.

6.35 In considering any arrangements which might be made for payment to or on behalf of copyright owners in an English-speaking country such as Australia, regard must be given to the fact that it would be much more difficult for any collecting agency to be as broadly representative of authors as would be the case, for example, in Sweden because of the widespread use in Australia of books and periodicals from other English-speaking countries around the world. In our view in Australia an agency which cannot offer broad international representation is less likely to provide a feasible basis for a voluntary licensing scheme, because of the lack of comprehensive protection which it could offer to educators.

6.36 The Committee was informed that the Australian Copyright Council Ltd had set up a company, Copyright Agency Ltd, which was intended to act as a collecting agency on behalf of authors, to enter into agreements for the photocopying of works and to receive and distribute royalties.

6.37 We doubt whether a substantial percentage of authors whose works would be likely to be copied would join such a scheme, at least in the foreseeable future. We do not think that the needs of education, particularly as presented to us by those who gave evidence on behalf of the universities and colleges of advanced education, should be postponed until a viable voluntary licensing agency that is broadly representative of the relevant copyright owners has been established.

6.38 Given the great diversity of material that may be photocopied for use in universities, colleges and schools in Australia, and the large numbers of authors involved, including a significant proportion of overseas authors, the Committee does not think it would be practicable, at least at the present time, to establish a scheme in respect of multiple copying under which any royalties will be collected on a per page per copy basis and distributed to the individual owners of copyright involved. The Committee thinks it very probable that the administrative costs involved in doing so would be likely to be much in excess of royalties that would reasonably be payable. We think it would be inequitable to require the payment of royalties of an amount

⁹ See paragraphs 11.34-11.42.
¹⁰ See paragraphs 11.19-11.26.

sufficient to ensure that a surplus was available for distribution after covering the administrative overheads involved, no matter how high were these overheads.

Recommendations for a statutory licence scheme

6.39 After considering the issues involved we have decided to recommend, in addition to our recommendations in paragraph 6.02, a scheme which would provide in effect a statutory licence permitting a non-profit educational establishment to make multiple copies of parts of a work and in some cases of whole works subject to recording any copying taking place under the scheme and an obligation to pay an appropriate royalty if demanded by the copyright owner within a prescribed period of time (say three years).

6.40 We are conscious that the idea of a statutory licence for the multiple copying of copyright works for educational purposes will not appeal to some copyright owners, who will regard it as a derogation from their rights under the Copyright Act. We note that Mr Ferguson, for the Australian Book Publishers Association, said that in England certain publishers of school books are not in favour of licensing of copying. The Australian Book Publishers Association has raised a particular objection to any form of statutory licence. Nevertheless, we believe that the very considerable element of public interest in education, together with the special difficulties that teachers and others face in Australia in obtaining copies of works needed for educational instruction, justifies the institution of a system of statutory licences in non-profit educational establishments. Although this is not the position in most countries, as explained above, legislative effect has been given to a licensing scheme in the Netherlands¹¹ and a Swiss expert Committee has proposed, in a working paper, that a similar scheme should be instituted by legislation in Switzerland.¹²

6.41 We are also satisfied that legislation to give effect to the scheme we propose would not contravene the provisions of Article 9 of the the Berne Convention as revised at Paris in 1971.

6.42 The members of the Committee are not in agreement upon the best method of implementing its recommendation with regard to this scheme of copyright licence.

6.43 The Committee considered in particular two possible methods by which a royalty could be determined. The first method is to fix a rate of royalty which would apply generally in a way similar to that provided for the recording by a manufacturer of a musical work in Division 6 of Part IV of the *Copyright Act*. The rate, whilst a general rate based on the actual amount of copying, could nevertheless be weighted in favour of certain works, e.g. poems or music. The second method is to allow the parties, e.g. the copyright agency or copyright owner and an educational body to endeavour to reach agreement as to the appropriate royalty to operate as between these parties only and to provide, if no agreement is reached, that the Copyright Tribunal should arbitrate.

6.44 Two Committee members consider that the legislation should provide for a royalty rate fixed either by regulation or by the Copyright Tribunal after an appropriate inquiry. The members holding this view would prefer provisions for an inquiry by the Copyright Tribunal which would fix a rate for royalty payments. These members consider, on balance, that the Copyright Tribunal should be empowered to fix the rate of royalty rather than make a recommendation to the Attorney-General as is now provided by sections 58 and 148 of the *Copyright Act*. This course of having a rate of royalty fixed by statute, or in some other way, so that it becomes the standard rate of royalty is that adopted in the Netherlands although, as we have said, we have

¹¹ See paragraphs 11.19–11.26.

¹² See paragraphs 11.43–11.50.

no information about how the scheme is working there. A rate based on a per page per copy basis in excess of a minimum is envisaged. It is suggested that provision should be made for subsequent reviews of the royalty by the Copyright Tribunal if it is requested to do so by the Attorney-General.

6.45 Periodically the copyright owner or collecting agency would bill the educational establishment in respect of copying for which it had a right to claim and a copyright agency would deal with the money recovered as previously directed by the copyright owners. No payment would be made by the educational body unless a claim was made to it.

6.46 The members holding this view consider that to leave an educational body in the position where, if it made use of the licence, it was incurring an obligation to reach agreement upon a rate of royalty or alternatively to have the matter determined by the Copyright Tribunal might well deter that body from making use of the licence. The members holding this view also feel that this proposal would be less likely to give rise to any possible difficulty under any trade practices legislation. In addition, members holding this view are in favour of regulations under the Act dealing, so far as is practicable, with the precise obligation of an educational establishment using the scheme so that the area of disagreement between a copyright owner or agency and an educational body would be reduced as much as practicable.

6.47 On the other hand, two members of the Committee who prefer the second method for determining royalties, do not think it practicable or appropriate to establish by legislation a scheme providing for all the details involved in the collection and distribution of royalties payable by educational establishments or authorities availing themselves of the proposed statutory licence. They think that the details of the means by which these payments should be collected and distributed ought to be left to negotiation between the parties concerned. If legislative sanction were thought necessary for a scheme of collection and distribution, then it should be authorised under the Act only after it has been approved by the Copyright Tribunal. They consider that in the event of failure by the educational authorities and copyright owners to come to a satisfactory agreement, the Copyright Tribunal might be given the function of arbitrating between them.

6.48 The purpose of the scheme we propose would be to permit non-profit educational establishments, subject to certain defined limitations, to make such number of copies of parts of copyright works or of the whole of such works as they considered necessary for classroom use or for distribution to students without prior approval of the copyright owners concerned. On the other hand, it would give a copyright owner or a person or body authorised by him an entitlement to claim a royalty for the photocopies thus made of his work. The only practical alternative we see to such a scheme is some extension of permitted unremunerated copying.

6.49 Under the scheme proposed the making of the copies would be immune from infringement action if a record of the copying is kept in a prescribed manner and form. There would be a statutory obligation to pay royalties ascertained by whatever manner is prescribed. In addition there would be a statutory duty to allow reasonable access to records of copying by any copyright owner or his representative.

6.50 Any copyright owner or collecting agency could search the educational establishment's records to ascertain what copying had taken place to enable a claim for remuneration to be made. The right to make such a claim would lapse after a period of, say, three years. The royalty envisaged would not be in respect of a fresh right, but it **would** be in respect of the general right of reproduction conferred by section 31(1).

6.51 It might be thought desirable that regulations should provide certain statutory requirements compliance with which would free the educational establishment of any further responsibility other than to pay a royalty if claimed. For example an edu-

cational establishment could act on a declaration purporting to come from the owner of the copyright, or his agent resident in Australia, that the claimant is the owner of the copyright in Australia or the owner's agent in Australia and that copyright subsists in Australia and that the agent undertakes that it will distribute the royalty payment as previously agreed by the copyright owner. The regulations could provide that the establishment could pay over the royalty to the claimant if it was satisfied that the claim met the statutory requirements. A statutory declaration could be required or a penalty could be provided for any wilfully false declaration. If any dispute arose it could be determined by a court according to law.

6.52 The records to be kept in respect of multiple copying should show, as a minimum:

- . the title of the work copied,
- . the number of pages copied,
- . the number of copies made,
- the author of the work (where known),
- . the publisher of the work.

6.53 It might be convenient for the necessary particulars to be specified in regulations made under the *Copyright Act*, rather than in the Act itself. If experience showed that other particulars were required, or that not all of the particulars we have suggested were necessary, then the regulations could be amended more easily than the Act. Moreover, we envisage that the Copyright Regulations might specify the form in which the records should be kept, so that records kept by different educational establishments would be maintained in a common form.

6.54 The Committee circulated a letter in August 1975 to those persons and organisations who made representations to it and who appeared likely to be interested, which set out details of a proposed scheme for multiple copying of limited parts of books in non-profit educational establishments. The proposal involved the recording by the educational establishments of the details of copying on a card suitable for use in a computer or alternatively on a docket, a duplicate of which could be retained by the educational authority, and these records would be submitted periodically to a central authority. This authority, it was proposed, would bill the educational establishment when a claim had been made to it within a specified period by the copyright owner or his agent in Australia. Interested parties were asked to comment on whether it would be practicable to obtain the records envisaged without undue cost, and to give their views on the scheme as a whole.

6.55 Most of the education authorities responsible for the running of primary, secondary and tertiary educational establishments and other persons and bodies in the educational sphere from whom replies were received, expressed serious reservations about the practicality of the scheme as proposed, and in particular the costs they envisaged to be involved in the production of accurate records.

6.56 We have taken account of these objections that it would not be practicable, or that it would be an unduly onerous burden to keep records of photocopies made. We accept that this would be the case where the making of single copies is involved. The making of multiple copies in educational establishments will, however, normally be done on a systematic basis. Very often it will be done not by the teaching or lecturing staff but by ancillary clerical staff. Notwithstanding the views expressed in the preceding paragraph, we consider the time and cost in making and maintaining records, which would be disproportionate to any royalty reasonably payable in respect of the making of single copies, should not properly be regarded as an undue burden when done in respect of the making of multiple copies, if it is desired to take advantage of the statutory licensing scheme.

6.57 Under our proposals an educational establishment availing itself of the statutory licence would be required to pay to the owners of the copyright involved or

their representative the appropriate royalty if it was claimed within a time to be prescribed by regulation. It would be within the scheme for owners to authorise an agency not to distribute royalties to individual authors or publishers, but to use the royalties in some agreed fashion for the collective benefit of the copyright owners concerned.

6.58 The proposed statutory licensing scheme should extend to the making of copies of published literary, dramatic or musical works in the following circumstances:

- (a) where the work concerned is not separately published—the whole of that work may be copied;
- (b) where the work concerned has been separately published, but copies cannot be obtained within a reasonable time at a normal commercial price—the whole of that work may be copied;
- (c) not more than one article in the same periodical publication may be copied unless the articles relate to the same subject matter;
- (d) in any other case, not more than a reasonable portion of the work may be copied.

6.59 Where a work or part of a work that maybe copied under the proposed scheme contains an artistic work by way of illustration or explanation, then the making of the copy is not to be an infringement of the copyright in the artistic work.¹³

6.60 We recommend the legislation should provide that up to 10 per cent of the number of pages in an edition of a work or one chapter, whichever is the greater, should always be regarded as a reasonable portion.¹⁴

6.61 It is appreciated that an author might desire to remain out of any statutory licensing scheme, as envisaged in the scheme proposed by the Australian Copyright Council Ltd¹⁵ but since it would be very difficult to provide practical machinery to give effect to this desire, it is considered that any statutory scheme should extend to all literary, dramatic and musical works. We do not consider that the suggestion of a copyright owner giving a notice or advertising in the gazette if he wished to remain outside any licensing scheme would be at all practical.

6.62 Our proposals do not therefore envisage any statutory obligation on an educational establishment to keep records or to make payment. But the keeping of records of multiple copying would provide a means by which the educational establishment could make multiple copies of up to the specified amount of a literary, dramatic or musical work without being concerned about an infringement action.

6.63 We are aware that the proposal set out in the paragraphs above might seem to favour the interests of education as against the interests of copyright owners. It would entitle copies to be made of a work or part of a work without the permission of the copyright owner, whilst leaving copyright owners with the practical problem of collecting the royalties due to them under the proposal. To that criticism, we would make the following answers:

- (a) We have already expressed the view that the needs of education cannot await the establishment of a comprehensive voluntary licensing scheme.
- (b) The proposal places what we regard as reasonable limits on the amount that can be copied.
- (c) The proposal embodies a specific recognition of the principle that this use of a copyright work should be paid for if the copyright owner, or an agent acting on his behalf, claims payment.
- (d) The regulations prescribing the form and manner in which records of copying are to be kept under the scheme should effect the best possible balance between

¹³ Compare with section 53 of the Act.

¹⁴ Compare recommendations for library copying in 3.18 and 4.19.

¹⁵ See Part 4, submission 1.

the labour and cost involved in keeping the records on the one hand, and on the other, that involved in inspecting and searching records.

- (e) It is open to a collecting agency that is representative of a sufficient number of copyright owners to come to an agreement with an educational authority, such as a State Department of Education, or a body representing a number of institutions, that it would accept a blanket fee in lieu of the keeping of detailed records of the copying of works of authors represented by it.
- (f) We think the proposed scheme is justified even if it is not used sufficiently to provide funds for copyright owners to collect and distribute the royalties available. If there is no demand for its use it will not operate. If, on the other hand, there is a considerable demand for its use, then it may flourish. We appreciate that a great deal of work may be involved in searching the records of the various educational establishments and it may be that any reasonable royalties would not cover the costs of searching. At one stage of this inquiry we considered requiring the records of multiple copying in educational establishments to be sent to a registry under government control or requiring the copying to be advertised, but after further examination we do not find either of these proposals attractive.

6.64 It should also be noted that the proposed scheme would not prevent the negotiation of either blanket or individual licences to copy more than might be copied under the statutory licence.

6.65 We express no view on whether or not copying in government schools might be considered to be Crown use under the Act as it exists at present. We draw attention, however, to the recommendation we have made in paragraph 7.11 that section 183 of the Act should not extend to the use of copyright works in government schools.

6.66 The entitlement of an educational establishment to make multiple copies of a work under this scheme would, of course, be in addition to whatever might be done under the fair dealing provision. It should be noted in this connection that we have recommended that, in section 40 of the Act, 'private study' should be replaced by 'study'. It would also be in addition to what could be done under the recommendations to which we refer in paragraph 6.02.

Copying of small parts of works

6.67 Three of us consider that in non-profit educational establishments provision should be made permitting multiple copying of very limited amounts of works without remuneration. Whether or not in any particular case two pages of a work constitute an insubstantial part of a work for the purpose of section 14 of the Act, these members consider that the making of multiple copies in any non-profit educational establishment of up to two pages or 1 per cent of the number of pages (whichever is the greater) in an edition of a work or of two or more works in any period of 14 days should not constitute an infringement of copyright provided (except in the case of a diagram, map, chart or plan) that the part copied does not comprise or include a separate work. These members recommend this provision which they consider to be desirable for the benefit of education and in general it would permit only an amount of copying in respect of which any royalty would be very small and probably uneconomic to collect. The other member does not support this proposal.

Provision of copies for classroom instruction and for examinations

6.68 We think it likely that there will be occasions when a teacher will find it convenient or necessary to make a few copies of a copyright work for the purpose of classroom instruction. This would be a Facility that he would have under the existing

section 200, so long as he did not use a machine adapted for the production of multiple copies in order to make the copies he needed. We think that special provision should be made for a teacher or lecturer without remuneration to the copyright owner, to make a limited number of copies by reprographic reproduction for use in classroom instruction and that it should not matter on what kind of machine or by what means he makes those copies. Accordingly, we recommend that the Act should permit a teacher or lecturer to make by reprographic reproduction up to three copies of a copyright work or part of a work for the purpose of classroom instruction. The limitations in paragraph 6.58 above should apply in such a case. This would be in addition to whatever copies he might make under the fair dealing provisions that we have proposed elsewhere in this Report, and any provision that might be adopted to give effect to the matters raised in paragraph 6.67.

6.69 We also consider that the provisions of section 200 which provide that copyright in a literary, dramatic, musical or artistic work is not infringed by the reproduction of the work as part of the questions to be answered in an examination, or in an answer to such a question, should continue to permit any reprographic reproduction of such a work for those purposes.

6.70 So far as a non-profit educational establishment is concerned, the practical effect in relation to multiple copies of what we propose is as follows:

There would be no infringement of copyright if the making of copies is a fair dealing with the work within the provisions of section 40, as we propose it should be amended, or section 41. There would be no infringement, if the recommendation set out in paragraph 6.67 is accepted, by making copies of up to two pages or 1 per cent of the number of pages (whichever is the greater) in an edition of a work or of two or more works in any period of 14 days provided (except in the case of a diagram, map, chart or plan) that the part copied does not comprise or include a separate work. There would be no infringement if no more than six copies were made within the limits referred to in paragraph 6.02. There would be no infringement if no more than three copies of a copyright work or part of a work within the limits specified in paragraph 6.58 are made for classroom instruction. There would be no infringement if more than three copies of a work or part of a work were made within the limits specified in paragraph 6.58 and the prescribed records were kept, but there would be an obligation to pay on demand, to the order of the copyright owner, a royalty as determined by one of the methods discussed in paragraphs 6.42 to 6.47. Of course, anything done with the consent of the copyright owner would not constitute an infringement of copyright.

Correspondence schools

6.71 We recognise that there are special problems associated with correspondence schools and the conduct of external courses by universities and colleges of advanced education. In Sydney, we inspected a correspondence school which prepares lessons for distribution to students who are unable to attend school because of distance or for other reasons. Mr Penny, the Supervisor of Media Services at Mr Lawley Teachers College, also mentioned the problem with regard to external students 'scattered all over Western Australia' doing an external studies course in aboriginal teacher education.¹⁶

6.72 We think it reasonable to place students doing courses by correspondence or external study in much the same position as they would be in if they could visit a library and obtain a copy of an article in a journal or a reasonable portion of a work under the provisions of section 49 of the Act.

¹⁶ See Part 4, submission 32.

6.73 We recommend that a non-profit educational establishment conducting educational courses by correspondence or on an external study basis for students should be allowed to prepare, without requests from students, such copies as may be appropriate for the students of journal articles or reasonable portions of works to the same extent as a librarian could provide copies for a person on request made under section 49. This should not extend to material reproduced as part of lecture notes.

6.74 We draw attention to the copying privileges which will be available to correspondence schools and external studies departments and their libraries if our recommendations for libraries and educational establishments are adopted. These recommendations are set out in Section 3 paragraphs 3.16–3.26 and as extended by paragraph 6.73 dealing with copying by a library; paragraph 6.67, in respect of multiple copying of small parts of works for educational purposes without payment of remuneration to the copyright owner; paragraph 6.58 for the granting of extended multiple copying privileges for educational purposes, subject to liability to compensate the copyright owner. In addition, the general ‘fair dealing’ privilege will be available in appropriate circumstances—see section 40 and section 41 of the Act and paragraphs 3.35 and 6.04.

Section 7

Copying in other circumstances

7.0 I This Section includes copying

(i) in the business sector

(ii) in the Government sector, (for the service of the Crown)

(iii) for the purposes of a judicial proceeding or for providing professional advice.

7.02 The Committee received very little comment on copying in the business, professional and government sectors. However, we are satisfied that the immense number of articles and books in existence and coming into existence each year, the great diversity of interests throughout the Government, professional and business community, the difficulty and cost of attempting any recording of copying and the impracticability of policing it, together with the practical impossibility of distributing any amounts to authors entitled in almost all cases, would make the introduction of any statutory licensing system in these sectors quite impractical. We are also of the view that copying which falls within the general exceptions to infringement of copyright recommended in other parts of this Report should not be excluded from the benefit of those exceptions only because it falls within the classes of copying dealt with in this Section of the Report.

7.03 We proceed to deal separately with copying in respect of each of the three areas specified above.

Copying in the business sector

7.04 Copying for the purpose of dealing with scientific, medical, technical and other problems is important to these sectors and useful in maintaining and improving the standard of living in Australia.

7.05 We note the provision in section 18 of the Act that libraries are not to be taken to be established or conducted for profit by reason only that the library is owned by a person carrying on business for profit.

7.06 We gave very careful consideration to recommending an extension of the permitted copying by commercial and industrial enterprises for what is often called internal use. Since we could see no prospect of the satisfactory operation of any statutory licensing scheme which would provide remuneration to copyright owners, including authors, in respect of copying within this category, we were faced only with the option of recommending an extension of unremunerated copying.

7.07 Although we appreciated the importance to the community of not inhibiting the free flow of information we felt, on balance, that we should not recommend any specific concessions in respect of unremunerated copying in the business sector.

Copying in the Government sector (for the service of the Crown)

7.08 We take the same view of the importance of copying in this sector as we do in relation to the business and professional sectors.

7.09 Section 183 of the *Copyright Act* permits the Crown, whether in the right of the Commonwealth or a State, or a person authorised in writing by the Commonwealth or a State to make, for the services of the Crown, reprographic reproduction of a

of a copyright work without having to seek permission from the owner of the copyright. The reproduction might be of the whole of a work, and might extend to the making of any number of copies of the work. If the reproduction falls within the exclusive rights given by the Act to the copyright owner, the copyright owner must be informed, by a procedure laid down under the Act, of the copying. The terms for the copying in such a case are to be such as are agreed or, in default of agreement, as are fixed by the High Court.

7.10 We think that the Crown, or a person authorised by the Crown, should be entitled to copy a work in circumstances where a private individual would be entitled to copy it without obligation to the copyright owners. If it be accepted that this is the result presently achieved by section 183, no change in the Act would be required.

7.11 We think, however, that the Crown should not be permitted to rely on section “ 183 for the making of multiple copies of works for use in Government schools, and that our recommendations in Section 6 of this Report should apply to Government and non-Government educational establishments alike.

7.12 We also mention that it is open for trade associations, individual business concerns and Government bodies and instrumentalities to enter into limited voluntary arrangements similar to the system which exists in the Federal Republic of Germany in relation to limited scientific publications of a West German origin.¹ It may be that such an arrangement would be attractive to these bodies.

7.13 We note that although some steps have been taken to arrange for a collecting agency in respect of the copying for commercial purposes from certain journals it seems to have been accepted in West Germany that distribution of any proceeds to individual authors is not practical.²

Copying for the purposes of a judicial proceeding or for providing professional advice

7.14 Section 10 defines ‘judicial proceeding’ as meaning ‘a proceeding before a court, tribunal or person having by law power to hear, receive and examine evidence on oath’.

7.15 Section 43 of the *Copyright Act* provides that the copyright in a literary, dramatic, musical or artistic work is not infringed by anything done for the purposes of a judicial proceeding or a report of a judicial proceeding.

7.16 People are assumed to know the law and they are entitled to know their legal rights and obligations. We feel that this should be facilitated and we recommend the following addition to section 43³:

or by a fair dealing with such a work for the purpose of or in the course of the provision of professional advice by a legal practitioner or patent attorney as to the legal rights or obligations of a person.

Two of us would omit the words ‘as to the legal rights or obligations of a person’ This recommendation would meet some of the problems mentioned by the Law Society of New South Wales⁴ and the Institute of Patent Attorneys of Australia Inc.⁵

¹ See paragraphs 11.08- 11.14.

² See paragraph 11. 13.

³ As to the position regarding Crown copyright, see Section 8 of this Report

⁴ See Part 4, Submission 39.

⁵ See Part 4. submission 40.

Section 8

Crown copyright

8.01 Submissions have been made to us in relation to problems which may exist regarding what may loosely be described as Crown copyright, either in the right of the Commonwealth or of a State. Submissions in this regard were made by the Law Society of New South Wales¹, by the Institute of Patent Attorneys of Australia Inc.² and the Australian Law Librarians' Group of the Library Association of Australia.

8.02 The Law Society pointed out that quite often current Acts, reprinted Acts, current Rules and reprinted Rules are unavailable from official sources for a considerable period and that it is also often desirable to copy other documents such as extracts from the Gazettes or certificates of birth, death, valuation, etc. The Society suggested that because every man is deemed to know the law everything possible should be done to enable his legal position to be ascertained by him and his advisers. The Society also suggested that judgments and particularly unpublished judgments should be available more freely than at present. The Australian Law Librarians' Group submitted that legislative instruments and judgments (except headnotes and editorial notes) should be exempted from photocopying restrictions.

8.03 The Institute of Patent Attorneys explained the need for patent attorneys to copy, for example, Australian and foreign specifications, for the purposes of adequately advising clients about their legal position under the *Patents Act* and other Acts relating to industrial property and for providing evidence for consideration by, for example, the Commissioner of Patents in considering an opposition to the grant of a patent. Mr D. W. Perry, a Patent Officer with an Australian company, drew attention to his desire to be able to make multiple copies of abstracts of specifications from *The Australian Official Journal of Patents, Trade Marks, and Designs* for circulation to various officers in the company and in subsidiary companies.

8.04 There are two aspects to these problems. The first concerns the reproduction of works which fall within one of the prerogative rights of the Crown which are expressly preserved by the words of sub-section (2) of section 8 of the *Copyright Act* which provides 'This Act does not affect any prerogative right or privilege of the Crown'. The second concerns the reproduction of works in which copyright is vested in the Commonwealth or a State by Part VII of the present Act or otherwise.

8.05 The nature of the prerogative right of the Crown was considered in *The Attorney-General for New South Wales v. Butterworth and Co (Australia) Ltd*³. The question of what is loosely called Crown copyright is also discussed in *Copinger and Skone James on Copyright* 11th Edition, pp 350–356, 702–703.⁴ It is convenient to speak of the relevant rights of the Crown preserved by section 8 of the Act as 'prerogative copyright' although it may be doubted whether it is strictly correct to designate these rights as copyright.

8.06 We consider that the Act should make it clear that any act that is excluded from

¹ See Part 4, submission 39.

² See Part 4, submission 40.

³ 38 S.R. 195.

⁴ E P. Skone James (ed.), *Copinger and Skone James on Copyright* 11th edn., Sweet and Maxwell. London. 1971

infringement of copyright under that Act should equally not be an infringement of any 'prerogative copyright' of the Crown.

8.07 The Act should also be amended to make it clear that a person is entitled to make reprographic reproductions of a statute or an instrument made under the authority of a statute, an order, judgment or award of a court or other tribunal, or of the reasons for decision of a court or other tribunal. The sale of a copy so made should not be permitted, except that this should not prevent the cost of making the copy being recovered from a person to whom the copy is supplied. A provision to this effect would enable an organisation to make copies for distribution to its members. We do not consider any special provision should be made with respect to *The Australian Official Journal of Patents, Trade Marks, and Designs*.

Section 9

Damages

9.01 We have considered the question of damages in infringement actions. We have given consideration to whether any special provision should be available in respect of infringement by reprographic reproduction and we note that the concept of statutory damages finds a place in the United States Bill S.22, but on balance, by a majority, we do not recommend any similar provision. Sub-section (4) of section 115 of the Act provides for additional damages in certain cases and reads as follows:

Where, in an action under this section—

(a) an infringement of copyright is established; and

(b) the court is satisfied that it is proper to do so, having regard to—

(i) the flagrancy of the infringement;

(ii) any benefit shown to have accrued to the defendant by reason of the infringement; and

(iii) all other relevant matters,

the court may, in assessing damages for the infringement, award such additional damages as it considers appropriate in the circumstances.¹

9.02 This sub-section is based on sub-section (3) of section 17 of the United Kingdom Copyright Act. The effect of the United Kingdom sub-section is dealt with in *Halsbury's Laws of England*, 4th edition, Volume 12, para 1189. The Australian sub-section differs from the United Kingdom sub-section in particular by the omission of the words 'is satisfied that effective relief would not otherwise be available to the plaintiff'. The United Kingdom sub-section was dealt with recently in *Beloff v. Presdam Ltd*.² Great care must be exercised in examining the English decisions because *Rookes v. Barnard*³ in so far as it relates to the question of exemplary damages, has not been accepted as the law in Australia.⁴ The effect of this must be carefully borne in mind when considering *Cassel and Co. Ltd v. Broome*.⁵

9.03 It seems, however, that this sub-section empowers the Court to award what may be called exemplary damages. This power enables a Court broadly, if it considers that the sum to which the plaintiff is entitled as ordinary damages is insufficient to punish the defendant, to award an additional sum which, taken together with the amount awarded for compensation, is considered sufficient to deter the defendant from repeating his conduct. We do not wish to express any firm view on the construction of sub-section (4) of section 115 and bearing in mind that our terms of reference only extend to considering one form of infringement we do not consider it appropriate to make any specific recommendation in relation to damages.

¹ The whole of the section is set out in Appendix E.

² [1973] 1 All E.R. 241 at 264-273. [1973] R.P.C. 765, 788-798

³ [1964] A.C. 1129.

⁴ See *Australian Consolidated Press Ltd v. Uren* [1969] 1 A.C. 590, 117 C.L.R. 221 and 117 C.L.R. 185.

⁵ [1972] A.C. 1027.

Part 3

Section 10

Obligations under international conventions and international discussion of reprographic reproduction

Obligations under international conventions

10.01 The question of the reprographic reproduction of works protected by copyright must be considered in the light of our existing and possible future international obligations. As previously stated in this Report, Australia is a party to both major multilateral copyright conventions, being party to the Brussels Act (1948) of the International Convention for the Protection of Literary and Artistic Works (Berne Convention), and the Universal Copyright Convention as concluded at Geneva in 1952.

10.02 There are no specific provisions in these two instruments which deal with the question of reprographic reproduction, nor does either instrument explicitly confer a general right of reproduction on the author. Article I of the Brussels Act of the Berne Convention provides that the countries to which the Convention applies constitute a Union for the protection of the rights of authors over their literary and artistic works. Article 8, and the succeeding Articles up to and including Article 14 bis, contain the provisions constituting the *jus conventions* (minimum of protection). These are the right of translation, the right of authorizing the reproduction of works published in newspapers or periodicals, the right of authorizing the presentation and performance of dramatic, dramatico-musical and musical works, the right of authorising radiodiffusion, the right of authorizing public recitation, the right of authorizing adaptations, the 'mechanical rights' in relation to musical works, cinematographic rights and the 'droit de suite'. In the view of the Study Group which prepared the draft text of the Stockholm Revision of the Convention, it follows from this enumeration that the Convention does not establish a general right of reproduction. However, Articles 9, 10 and 10 bis deal with some aspects of reproduction, of which Articles 9 and 10 have a bearing on the question of reprographic reproduction. Article 9(1) states that serial novels, short stories and all other works, whether literary, scientific or artistic, whatever their purpose, and which are published in the newspapers or periodicals of one of the countries of the Union shall not be reproduced in the other countries without the consent of the authors. Paragraph 2 of that Article provides for an exception to this right: articles on current economic, political or religious topics can be reproduced by the press unless the reproduction is expressly reserved; nevertheless the source must be clearly indicated. Paragraph 3 provides that protection shall not apply to news of the day nor to miscellaneous information having the character of mere items of news.

10.03 Article 10(1) states that it shall be permissible in all countries of the Union

¹ Preparatory document S/1 'Berne Convention for the Protection of Literary and Artistic Works: Proposals for Revising the Substantive Copyright Provisions (Articles 1 to 20),' *Records of the Intellectual Property Conference of Stockholm (1967)* Vol. 1, WIPO, Geneva (1971), 71 at p 111.

to make short quotations from newspaper articles and periodicals, and Article 10(2) refers to the inclusion of excerpts from literary and artistic works in education and scientific publications or in chrestomathies in so far as this inclusion is justified by its purpose, and states that this shall be a matter for legislation in the countries of the Union.

10.04 The provision relevant to the question of reprographic reproduction in the Universal Copyright Convention is Article I which states that each Contracting State undertakes to provide for the adequate and effective protection of the rights of authors and other copyright proprietors in literary, scientific and artistic works, including writings, musical, dramatic and cinematographic works, and paintings, engravings and sculpture.

10.05 Both the Berne and Universal Conventions have since been revised. Revisions of the Berne Convention took place at Stockholm in 1967 and Paris in 1971. Australia has not acceded to the general substantive provisions of the Stockholm Act which was closed to further ratifications or accessions on 10 October 1974. Thus the Paris Revision, which in fact incorporates the general substantive provisions of the Stockholm Act, is the only further Act of the Berne Convention to which it is at present open for Australia to accede.

10.06 The main relevant provision of the Paris Act is Article 9 which provides a general right of reproduction. The relevant parts of the Article provide:

(1) Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form.

(2) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author,

10.7 The Main Committee at the Stockholm Conference which considered proposals for revising the general substantive provisions of the Berne Convention commented on the construction of Article 9(2) in its official report, as follows²,

The Committee also adopted a proposal by the Drafting Committee that the second condition should be placed before the first, as this would afford a more logical order for the interpretation of the rule. If it is considered that reproduction conflicts with the normal exploitation of the work, reproduction is not permitted at all. If it is considered that reproduction does not conflict with the normal exploitation of the work, the next step would be to consider whether it does not unreasonably prejudice the legitimate interests of the author. Only if such is not the case would it be possible in certain special cases to introduce a compulsory licence, or to provide for use without payment. A practical example might be photocopying for various purposes. If it consists of producing a very large number of copies, it may not be permitted, as it conflicts with a norms, exploitation of the work. If it implies a rather large number of copies for use in industrial undertakings, it may not unreasonably prejudice the legitimate interests of the author, provided that, according to national legislation, an equitable remuneration is paid. If a small number of copies is made, photocopying may be permitted without payment, particularly for individual or scientific use.

The general substantive provisions were not the subject of examination at the Paris Conference.

10.08 Article 10(1) provides:

It shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries.

² Report on the Work of Main Committee 1 (Substantive Provisions of the Berne Convention Articles 1 to 20),
Records of the Intellectual Property Conference of Stockholm (1967) Vol 11, WI PO, Geneva (1971), 1131 at p 1145.

Article 10(2) provides:

It shall be a matter for legislation in the countries of the Union, and for special agreements existing or to be concluded between them, to permit the utilisation, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided such utilisation is compatible with fair practice.

10.09 The Universal Copyright Convention was also revised in 1971. Article I was retained in its original form but was augmented by Article IV bis which provides a general right of reproduction. The Article states that:

(1) The rights referred to in Article I shall include the basic rights ensuring the author's economic interests including the exclusive right to authorise reproduction by any means, public performance and broadcasting. The provisions of this Article shall extend to works protected under this Convention either in their original form or in any form recognizably derived from the original.

(2) However, any Contracting State may, by its domestic legislation, make exceptions that do not conflict with the spirit and provisions of this Convention, to the rights mentioned in paragraph 1 of this Article. Any State whose legislation so provides, shall nevertheless accord a reasonable degree of effective protection to each of the rights to which exception has been made.

International discussion of reprographic reproduction

10.10 The question of the reprographic reproduction of works protected by copyright has been discussed frequently at an international level since 1961. While joint meetings of the Permanent (later Executive) Committee of the Berne Union and the Intergovernmental Copyright Committee of the Universal Copyright Convention undertook surveys of national legislation and other preparatory work on the question, it was not until 1968, in response to the view of the two Committees and as a result of a resolution of the Fourteenth General Conference of Unesco, that a Committee of Experts was convened to consider some resolution to the problem. The Committee of Experts recommended that a number of principles should be taken into account in maintaining a fair balance between the interests of copyright owners and the users of copyright material, but considered that it was for national law to lay down conditions for reprographic reproduction to effect this balance.

10.11 The report of the Committee of Experts was not considered by the joint meetings of the two Committees until 1971 and they resolved that, in view of the revisions of the two multilateral copyright conventions, the work of the Committee of Experts should be brought up to date, and that the secretariats of Unesco and WIPO should formulate proposals in the first half of 1973 for an international recommendation which would act as a guide to national legislation. A similar resolution was adopted at the Seventeenth General Conference of Unesco. As a result the Working Group on Reprographic Reproduction was formed for the purpose of assisting the Secretariats, and in May 1973 this Working Group reported that an international instrument in the form of a recommendation to States was both feasible and desirable.

10.12 However, at the joint meeting of the Committees in December 1973 it was decided that the question was still not ready for international regulation on the ground that, as the problem was being studied in a number of countries, it would have been premature to formulate any principles on an international level until some solution had been reached on a national level. The Committees resolved that the matter should be further studied by sub-committees, and that the results of this examination should be submitted to a joint meeting of both Committees. The meeting of the sub-committees was held in Washington in June 1975.

10.13 At this meeting a draft resolution was adopted which provided, *inter alia*, in substance that each State should resolve the problem of reprographic reproduction

by adopting any appropriate measures which, respecting the provisions of the two Conventions, establish whatever is best adapted to their educational, cultural, social and economic development, and that to that end it rested with each State to decide whether and to what extent the various solutions put forward at the meeting could be applied in order to assure authors the protection of their economic interests offered by the Conventions. It also provided that in those States where the use of the processes of reprographic reproduction is widespread, such States could consider, amongst other measures, encouraging the establishment of collective systems to exercise and administer the right to remuneration.

10.14 In our view, the report of these sub-committees is a very useful document. We note that no delegation could point to any existing system for the remuneration of individual authors, and those supporting the encouragement of collective agreements (for example, the Federal Republic of Germany) did not think the remuneration of individual authors was practical. We also note that the so-called 'BONUS' agreement, which has been operating in Sweden in relation to schools, did not appear to have been entirely successful and the meeting was told that there was dissatisfaction both amongst the school authorities and authors and there was doubt whether the present agreement would be extended beyond its three-year period, but that no decision had been made concerning the nature of any alternative system

10.15 The only method suggested of attempting to provide any remuneration in respect of personal copying by an individual for his own private use was by some type of tax, perhaps equivalent to a sales tax on photocopying machines

10.16 Following the meeting of the sub-committees, the matter was put to a further joint meeting of the Committees of the Berne and Universal Copyright Conventions and at that meeting, held in December 1975, the resolution adopted by the sub-committees was approved. In view of the nature of the resolution, the Committees decided not to pursue study of the matter for the present and agreed with a proposal that it was preferable for it not to be considered by the governing bodies of Unesco and WIPO in the near future.

Section 11

Foreign legislation and developments

Introduction

11.01 There is always some difficulty in ascertaining with precision the effect of foreign laws. In the following paragraphs dealing with the laws in other countries we have tried to present an accurate but not necessarily the complete picture. We have had to rely on material from a number of sources the accuracy of which we had to assess. The following presents our understanding of the position based on the information available to us on 3 September 1976.

Summary of foreign legislation

11.02 Virtually all countries of the world which have enacted copyright legislation have legislative provisions which permit, within certain limits, reprographic reproduction of copyright works without the need to obtain the copyright owner's permission, or to provide him with remuneration. The extent of this permitted use is normally limited both as to purpose and amount.

11.03 Provisions relating to copying by individuals in foreign legislation are most frequently couched in the concept of 'personal use' or 'private use', although a number of countries have provisions similar in scope to section 40 of the Australian Copyright Act. Many of the countries which have adopted the concept of 'personal use' or 'private use' expressly permit a complete copy of a copyright work to be made for that purpose, and a few, such as the Federal Republic of Germany and Sweden, permit the making of more than one complete copy of a work without infringing copyright in the work. Further, a number of countries also permit copying of protected works in these circumstances by a third party, whether this is provided expressly as in the Federal Republic of Germany, or by implication.

11.04 Many foreign copyright laws also make some provision for the reproduction of copyright works for educational purposes without remuneration to the copyright owner. However, the scope of these provisions varies considerably.

11.05 Most countries also provide carefully defined rights of reproduction to libraries and similar bodies without remuneration to copyright owners. The kind of institution entitled to rely upon these provisions varies, but archives, non-commercial documentation centres and scientific institutions maybe included in this area. Special provisions often cover to a varying extent activities such as conserving collections, providing reproductions for users or for other libraries, and reproducing out-of-print or unavailable works. The laws of a few countries also contain other provisions for various purposes, for example, for the completion of collections, and for the use of the disabled.

11.06 The dividing line between the area of permitted use and of the infringement of copyright is normally drawn between the non-commercial and commercial use of copyright works and/or the copying on a scale which does not unduly prejudice the legitimate interests of authors. It is to be noted that in, for example, Holland and the Federal Republic of Germany, limited reprographic reproduction of copyright works in commercial enterprises is permitted but in such cases equitable remuneration is payable to the author.

Discussion of laws and developments in various countries

11.07 In the following paragraphs of this Section of the Report we have outlined the major developments in other countries in relation to reprographic reproduction. We have also set out some provisions of the copyright laws of a number of comparable countries to provide the reader with more precise information on where the balance of interest is drawn between owners of copyright and the users of copyright material in respect of reprographic reproduction.

Federal Republic of Germany

11.08 The German Copyright Act passed in 1965 and as amended to 10 November 1972 permits, under Article 53, reproduction for personal use by a person or his agent of 'single copies of a work' without payment of remuneration. This right to copy extends not only to complete copies of articles from newspapers and periodicals but also to complete books. Article 54 of the German law also permits a person or his agent to make single copies of a work without remuneration for his own scientific use if and to the extent that such reproduction is necessary for the purpose, and also for incorporation in internal files if and to the extent that the reproduction is necessary for this purpose and provided the copies are made from the person's own copy of the work.

11.09 The same Article also provides for making single copies for internal use of out-of-print works, provided the copyright owner cannot be traced, and of small parts of published works or single articles which have been published in newspapers and periodicals.

11.10 In all the above cases only 'single copies' maybe made but it seems generally accepted that 'single copies' means 'a few' or up to five reproductions. Compensation need only be paid in respect of copying under Article 54 if the copying is for commercial purposes. That is, a commercial enterprise may reproduce, for example, small parts of published works or single articles from periodicals for its own purposes under Article 54 provided it pays equitable remuneration for such reproduction. The obligation of remuneration is presently implemented chiefly by means of a collection society which concludes general contracts on behalf of authors and publishers (who in practice handle the compensation claims for the authors) with the Federal Association of German Industry.

11.11 The society restricts itself to the handling of claims which arise from the reproduction of scientific and technical periodicals with which commercial enterprises are mainly concerned, and then only those periodicals which are published by a publishing firm domiciled in the Federal Republic of Germany. The effect of this is that the collection society deals with some 300 publishers who publish in all some 1200 different publications.

11.12 The method of collection of compensation is by a stamp obtained from the centre which is pasted on to each page reproduced, or by way of an additional annual fee of 30 per cent of the annual subscription price in respect of the periodicals subscribed to by the individual commercial enterprise from which, on the basis of its experience, it will make reproductions during the year, or by an additional fee amounting to 20 per cent of the annual subscription price for all periodicals to which the enterprise regularly subscribes. If the subscription covers more than one copy of a periodical the additional fee only applies to the first copy. The enterprise may choose between any one of those methods of payment.

11.13 Compensation by the society is normally given on the basis that author and publisher are entitled to one-half each of the net proceeds and it is accepted that direct distribution of the author's share among the authors is not possible. The author's

share is thus paid to his respective author's association which is under an obligation to spend money so received on the social security of its members.

11.14 An Act dealing with the administration of copyright and related rights deals with various aspects of the activities of collecting societies including:

- (a) the authorisation of a collecting society to conduct business;
- (b) rights and duties of a collecting society;
- (c) supervision of collecting societies; and
- (d) various other matters.

Japan

11.15 A complete revision of Japanese copyright law was enacted by the Japanese Diet in 1970 following recommendations by the Government Copyright Council.

11.16 Article 30 of the Copyright Act of 1970 permits a user to reproduce by himself a copyright work for the purpose of his personal use, family use or other similar uses within a limited circle, without compensation to the copyright owner.

11.17 Article 35 of the Act also provides that without remuneration:

A person who is in charge of teaching in a school or other educational institutions established not for profit-making may reproduce a work already made public if and to the extent deemed necessary for the purpose of use in the course of teaching, provided that such reproduction does not unreasonably prejudice the interests of the copyright owner in the light of the nature and the purpose of the work as well as the number of copies and the character of reproduction.

11.18 Article 31 of the Act provides in substance that the reproduction of a work included in library materials (which is defined to mean books, documents and other materials held in the collections of libraries) within the scope of the non-profit making activities of libraries is permissible without remuneration where, *inter alia*, the reproduction is necessary for preserving library materials or where, at the request of a user of the library, for the purpose of his own investigation or research, the user is furnished with a single copy of a part of a published work or the whole of an article in a periodical which has been published for a considerable period of time. This article also provides for a copy of library materials which are rarely available through normal trade channels, because the materials are out of print or for other similar reasons, to be supplied without remuneration to other libraries.

The Netherlands

11.19 The Netherlands Copyright Act was recently amended with effect from 7 January 1973. Article 16 b of the Act provides that it shall not be deemed to be an infringement of the copyright in a literary, scientific or artistic work to reproduce it in a limited number of copies provided such reproduction is effected for 'the sole purpose of the personal practice, study or use' of the person who makes the copies, or orders the copies to be made exclusively for himself. However, in the case of books, pamphlets, newspapers, periodicals and all other writings' including scores or parts of musical works, it appears that the reproduction must be confined to a 'small portion' of the work, and the reproduction of the entire work is permitted only in the case of works that are out of print or of short articles published in newspapers or periodicals. Reproduction in the above circumstances is made without remuneration.

11.20 It also appears that under Article 17 of the Act copying on behalf of an enterprise, organisation or other establishment of articles in periodicals or in daily or weekly newspapers or small portions of books or pamphlets is permissible, provided that they are scientific works and that the number of copies made does not exceed that which the enterprise, organisation or establishment may reasonably need for the purposes of its internal activities. In addition, copies may only be transmitted to persons employed by the enterprise, organisation or establishment and any person

who makes copies or orders the making of copies shall pay equitable remuneration to the author of the work thus reproduced or to his successors in title.

11.21 In pursuance of power conferred under Articles 16 b and 17 of the Copyright Act, a Decree was promulgated which created a scheme relating to copying by public authorities, libraries, educational establishments and other institutions 'serving the public interest'. Article 2 of the Decree provides that without prejudice to the acts authorised under Article 16 b of the Copyright Act, the manufacture, by or on behalf of the public authorities, of reproductions of writings intended for members of their staff, or for third parties contributing to the performance of their tasks, shall not be considered to be an infringement of copyright in so far as the number of reproductions does not exceed the number required for the proper performance of the public service activities of the authorities. 'Writings' is defined to mean small parts of books, pamphlets, newspapers, periodicals and all other writings, including the score or parts of a musical work, to such complete works to the extent that it may reasonably be expected that no new copies thereof will be made available to third parties against payment in any form and to articles, news, or other texts appearing in a daily newspaper, journal, weekly magazine or other periodical.

11.22 Article 3 provides that without prejudice to acts already authorised under Article 16 b of the Copyright Act, the manufacture by libraries, or on their behalf, of reproductions of complete books, pamphlets, newspapers, periodicals and all other writings, including the score or parts of a musical work, where it may reasonably be expected that no new copies thereof will be made available to third parties against payment in any form, and of articles, news or other texts appearing in a daily newspaper, journal, weekly magazine or other periodical, shall not be considered an infringement of copyright if done for certain specified purposes. These purposes include the prevention of loss or damage to the original through loan of the work. Libraries are defined in the Decree to mean non-profit-making libraries that are concerned to a large extent with providing a public service and other libraries only in so far as they are engaged in a lending activity with these libraries.

11.23 Article 4 provides that without prejudice to acts already authorised under Article 16 b of the Copyright Act, the manufacture, by or on behalf of educational establishments, of reproductions of writings, where such reproductions are made for those receiving instruction or intending to undergo an examination, shall not be considered an infringement of copyright in so far as the reproduction is an essential complement to the textbooks required or recommended in the syllabuses or lecture programs. The number of reproductions must not be greater than the number of pupils or students requiring them for the purpose either of receiving the instruction or of preparing for an examination. The definition of 'writings' is provided in paragraph 11.21 above.

11.24 Article 5(1) provides that where more specific rules are not provided in Articles 3 and 4 of the Decree, Article 2 shall apply by analogy to libraries and educational establishments. Article 5(2) provides that Article 2 shall apply by analogy to other institutions serving the public interest.

11.25 Article 7 of the Decree provides for remuneration to owners of copyright in respect of copying under the above-mentioned Articles of the Decree. The amount of remuneration is 'O. 10 florins per page copied' effective from 1 January 1975, for reproductions made under Articles 2 and 3, under Article 4 in the case of higher educational establishments and Article 5. Lower remuneration is provided in respect of copying in educational establishments other than higher educational establishments.

11.26 An agency called Reprorecht has apparently been established to collect fees and distribute them to the relevant copyright owners but the Committee has no further information on the procedures it has adopted, except it appears that copyright

owners have to make claims in respect of copying and that they must do so within three years from the time of the reproduction of their work in respect of which remuneration is claimed.

New Zealand

11.27 The New Zealand Copyright Act 1962, as amended to 8 December 1971, contains a number of provisions permitting the reproduction of copyright works without remuneration which are in many instances similar in scope to existing Australian provisions. However the Act also provides in section 21 considerable freedom to users of copyright works to reproduce works in certain educational situations. The section provides:

The copyright in a published literary, dramatic or musical work, . . . or in a published artistic work, is not infringed by making or supplying a copy of the work . . . , if the copy is made or supplied by or on behalf of a teacher at any University or school, or the librarian . . . of the library maintained by any Government Department, local authority, public body, University or school, or of a library of any other prescribed class, not being a library conducted for profit, subject to the following conditions . . .

- (a) The copies in question shall be supplied only to persons satisfying the teacher or librarian or a person acting on his behalf that they require them for the purposes of research or private study and will not use them for any other purpose.
- (b) Except in the case of an artistic work, no copy shall extend to more than a reasonable proportion of the work . . . or to more than one article in a periodical publication, unless two or more articles in the same publication relate to the one subject matter,
- (c) No person shall be furnished with more than one copy of the same artistic work, or the same article, or the same part of any other work . . .

11.28 The section also provides that the copyright in a literary, dramatic, musical or artistic work is not infringed by reason only that the work is reproduced,

In the course of instruction, whether at a University or school or elsewhere or by correspondence, where the reproduction is made by a teacher or student. . . .

This provision enables, for example, the issuing to students of correspondence schools of photocopied material in respect of assignments.

Sweden

11.29 The prevailing law—the Copyright Act of 1960 as amended to 25 May 1973 and the Act concerning the Protection of Photographs of 1960 as amended to 25 May 1973—includes no special provisions about copying for educational purposes, and it appeared reliance had been placed by teachers on section 11 of the Copyright Act and a corresponding provision of the Photography Act in respect of copying done to aid instruction in schools. Section 11 of the Copyright Act provides that ‘A disseminated work may be reproduced in single copies for private use. Such copies may not be used for other purposes.’ According to Swedish authorities, the general understanding of this section was that it permitted the making of ‘a few copies’ for individual use. It appears that ‘a few copies’ was interpreted in a broad sense and the number of copies which could be made depended at least to some extent on the nature of the material copied, although in general it appears that three or four copies would normally be considered to fall within the scope of the words. While the operation of the section related specifically to some of the work of teachers it was considered this was generally too limited in scope to cover their needs.

11.30 Section 12 of the Copyright Act and section 6 of the Act concerning the Protection of Photographs provide that the King in Council may make provisions permitting reproduction of works and photographs by archives and libraries for the purposes of their activities.

11.31 By a Royal Decree of 2 June 1961 certain libraries, for example the National

Library, the National Archives and certain other libraries, without the consent of the author and without remuneration, may produce photographically, for the needs of their activities, copies of literary and artistic works or photographic pictures in certain circumstances. These circumstances include national defence, conservation of their collections, copying for loaning purposes of books or certain documents because of the fragility or rarity of a book or document, replacement to some extent of missing parts of a work and missing volumes or separate issues of periodicals where they cannot be furnished by a bookstore or by the distributor or by the publisher.

11.32 In addition the making of a single copy of an article appearing in a work of a composite character or in a newspaper or periodical, or of parts extracted from other published works, for borrowers engaged in studies or scientific research, rather than lending the original volume, is also permitted by the Decree.

11.33 On 1 July 1973, an agreement came into force between the Swedish Government and about 17 organisations, for example, the Association of Swedish Authors, the Association of Swedish Authors of Text Books, the Swedish Publishers Association and the Swedish Newspapers Association, in respect of photocopying in any compulsory comprehensive school run by the Government, or a municipality or county council and certain other educational establishments under the supervision of the National Swedish Board of Education.

11.34 We set out hereunder, in broad terms, our understanding of the agreement.

11.35 The agreement was devised in an attempt to resolve the unsatisfactory position of both teachers and copyright owners that had developed in the face of considerable copying of copyright materials within the educational system in Sweden. It does not extend to universities, nor in fact does it extend to private educational activities and certain other educational bodies. The agreement applies to every published literary or artistic work and to every published photograph where the person entitled to grant the right to photocopying has authorised a contracting organisation to grant that right on his behalf.

11.36 The basis of the agreement is that the various organisations would act in effect as collecting agents for members and obtain the power to grant the right to photocopying of their works, and the parties would proceed on the basis that all the organisations would take steps to ensure that all copyright owners whose works were likely to be copied would give one or other of the organisations the authority to act on his behalf in respect of the licensing of photocopying. In particular, in substance the agreement proceeds on the basis that the various organisations could be expected to represent 95 per cent of the copyright owners whose works were likely to be copied in schools. In the light of this, the relevant State authorities have considered themselves able to count on almost all the relevant copyright owners being represented by one or other of the organisations party to the agreement.

11.37 The agreement also contemplates that payments will be made in respect of copying of works in which the copyright was vested in persons who had not given an organisation the requisite authority. In this regard, the organisation undertook to make payments to persons falling outside the agreement, upon request, in respect of the photocopying of their work in the educational establishment falling within the scheme.

11.38 The agreement is not intended to deprive teachers of their right to copy in accordance with the existing law but the State undertook to get the teachers to make photocopies only in accordance with the agreement. However even if the existing law was resorted to for photocopying, the State undertook to treat this as photocopying done in accordance with the agreement.

11.39 Under the agreement every teacher has the right, subject to certain guidelines, to make photocopies that he needs for his own teaching activities. It appears that the agreement provides some limit on photocopying, for example, where a work is

available a teacher may not normally copy for the same pupils more than half of a work or more than 20 pages of that work. Remuneration is not payable where not more than three copies of a work are made. However in cases where this limit is exceeded, the State pays for all the copying (including the prescribed minimum amount) at an amount roughly equal to 0.01 of a Swedish crown per copy page. Slightly higher rates are paid in respect of the copying of newspapers, musical scores and slides. The above amount is broadly equal to one-third of an Australian cent per copy page.

11.40 The amount of photocopying is estimated as a result of certain sampling, based on statistics compiled every third year and covering a six months period from about 10 per cent of the schools involved. The amounts paid in respect of copying are paid to an organisation called BONUS formed by the contracting organisations. The agreement does not specify the ends for which the remuneration paid out by the State is to be used but we understand it is divided between the contracting organisations and used in the main for collective ends and, generally, not distributed to individuals.

11.41 The agreement was to apply for a period of three years from 1 July 1973. Although the system proceeds on the basis that there may be some copying of works of foreign authors in schools, it seems that no payments are made to organisations representing foreign authors or to any individual foreign author. It was estimated that the cost of the sampling of the copying done in schools in the second half of 1973 would be between 150000 and 200000 Swedish crowns and the Committee understands that the return to authors and publishers in respect of this period was about 900000 Swedish crowns. The joint meeting of the sub-committees on reprographic reproduction of the Intergovernmental Copyright Committee of the Universal Copyright Convention and the Executive Committee of the Berne Union in Washington in June 1975 was told that 'Some dissatisfaction had been expressed regarding the Swedish scheme: on the part of the authors there was criticism of the sample on which remuneration was based, while the school authorities were dissatisfied because of the resistance of teachers to logging reproduction even on a sample basis. There were doubts whether the present agreement would be extended beyond its initial three year term. The Swedish Government was considering whether to introduce a simplified system which would still provide some kind of remuneration, although no decision had been made as to the form such remuneration would take.'

11.42 The meeting was also informed that the BONUS organisation had concluded an agreement with a group of commercial enterprises, including several major companies, for remuneration on a copy page basis.

Switzerland

11.43 The Swiss Copyright Act (as amended up to 24 June 1955) provides certain limitations on the exclusive rights given by the Act. A relevant limitation is Article 22 which provides that, except for the construction of works of architecture, the reproduction of a work shall be lawful when the reproduction is destined exclusively for the personal and private use of the person reproducing it. Such reproduction however, 'shall not be utilised with gainful intent'.

11.44 In addition, Article 32 provides, that in the case of public performance of musical works with words, the reproduction of the words and distribution, whether gratuitous or otherwise, of copies of such reproduction to the audience shall be lawful in the case of published literary works of limited extent, or of extracts from a published literary work. The provision does not, however, apply to the libretti of operas or to other literary works destined, by their nature, to be set to music.

11.45 Articles 25, 26 and 27 provide certain rights of quotation of published works including the right in Article 27 to reproduce textually in collections published for teaching and expressly designated as scholastic manuals, other published works,

provided that they are of limited extent or that the reproduction is restricted to isolated portions. These rights are subject to an acknowledgment of source and author. Articles 26 and 27 also state that 'manifestly abusive reproduction shall not be permitted'.

11.46 The Swiss Act contains both civil and in some cases penal provisions for infringement of these rights. It is also of interest to note that by Article 23, the provisions of the Act do not apply to laws, ordinances and other decrees, to discussions, decisions and reports of public authorities, to reports of public administrations, or to the specifications of patents.

11.47 Another Swiss Statute and regulations made thereunder deals with the collection of royalties in respect of certain public performance rights and in particular collecting societies are required to be authorised to do so, and to be subject to the supervision of the Bureau of Intellectual Property.

11.48 Draft legislation was prepared in 1974 by an expert committee for the reform of the Swiss Copyright Act. It seems that it was proposed that a person may copy a work for himself without remuneration but not have a copy made on his behalf by a third party except in cases where copies of articles from periodicals, short extracts from writings, or musical works are made.

11.49 On the other hand, it was proposed that the author would have a claim to equitable remuneration in respect of the making of copies of articles from periodicals and short extracts from works, under a form of compulsory licence. The compulsory licence would extend to scientific institutions, firms or public administrations copying for the information of their staff, educational establishments copying for use by the teaching staff or by students, and libraries accessible to the public, copying for documentation purposes.

11.50 We are not aware of the precise details of any method by which it is proposed the remuneration should be collected and the Committee apparently considered that it should be left to interested parties to find a practicable solution. It appears the establishment of an organisation along the lines of a collecting society is envisaged. We have no information on how such a body would function and in particular whether the income derived from the proposed scheme would be distributed or used for a cultural or social fund.

United Kingdom

11.51 The Australian Copyright Act 1968 was based on the United Kingdom Act 1956. In general the provisions are similar although there are a number of differences. Because of the general similarity we do not propose to deal in detail with the provisions of this Act. A Committee under the Chairmanship of Mr Justice Whitford, a High Court Judge of the Chancery Division, is presently considering whether any changes are desirable in the law relating to copyright. We understand that this inquiry includes an examination of the problems arising from reprographic reproduction.

United States of America

11.52 Efforts have been made over a number of years to amend the law of copyright in the United States of America and in early 1976 a Bill S.22 was passed by the Senate and this Bill is now before a Committee of the House of Representatives. The Bill makes no provision for any changes to the law which would introduce a system of statutory licensing coupled with remuneration in respect of photocopying, but seeks to provide rules to keep the degree of photocopying within what the framers of the Bill thought were reasonable and practical limits.

11.53 The Bill S.22 provides two principal sections which limit the exclusive rights of the copyright owner in relation to reprographic reproduction.

11.54 In section 107 the Bill provides that, '... the fair use of a copyrighted work,

including such use by reproduction in copies or phonorecords . . . for purposes such as criticism, comment, news reporting, teaching, scholarship, or research is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:

- (1) the purpose and character of the use
- (2) the nature of the copyrighted work
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.'

The definition section of the Bill, section 101, contains a provision that the terms 'including' and 'such as' are illustrative and not limitative.

11.55 Section 108(a) of the Bill provides that it is not an infringement for a library or archives or any of its employees acting within the scope of their employment to reproduce no more than one copy of a work or to distribute such copy under the conditions specified in section 108, if the reproduction is made without any purpose of direct or indirect commercial advantage, the reproduction or distribution of the work includes a notice of copyright, and the collections of the library or archives are open to the public or are available, not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialised field. This section also makes provision for copying of copyrighted works by persons on non-supervised equipment within those bodies.

11.56 Section 108(b) to section 108(h) set out the reproduction permitted pursuant to section 108(a).

11.57 Section 108(b) permits the duplication in facsimile form of an unpublished work from the collection of a library or archives where the duplication is solely for the purposes of preservation and security or for deposit for research use in another qualified library or archives.

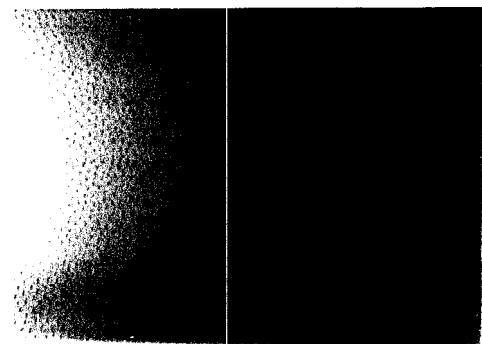
11.58 Section 108(c) permits reproduction solely for the purpose of replacement of a copy damaged, deteriorating, lost or stolen, if the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price.

11.59 Section 108(d) permits the making of a copy from the collection of a library or archives for a user of that library or archives or of another library or archives of one article in, or other contribution to, a periodical or copyrighted collection, or a small part of any other copyrighted work, if the copy becomes the property of the user and the library has no notice that it would be used for any purpose other than private study, scholarship or research and subject to certain provisions about notices warning of copyright.

11.60 Section 108(e) permits the making of a copy of an entire work or a substantial part of it from the collection of a library or archives, where the user makes his request from that or another library or archives, if the library or archives has first determined on the basis of a reasonable investigation that a copy of the copyrighted work cannot be obtained at a fair price and if the copy becomes the property of the user and the library or archives has no notice that the copy would be used for any purpose other than private study, scholarship or research and subject to certain provisions about notices warning of copyright.

11.63 Section 108(f)(1) provides that the section shall not be construed to impose liability for copyright infringement upon a library or archives or its employees for the unsupervised use of reproducing equipment located on its premises, provided that such equipment displays a notice that the making of a copy may be subject to the copyright law.

11.62 Section 108(f)(3) provides nothing in section 108 affects the right of fair use



provided by section 107 or any contractual obligations assumed at any time by the library or archives when it obtained a copy of a work.

11.63 Section 108(g) provides (subject to section 108(f)(3)) that the rights of reproduction and distribution in section 108 extend to the isolated and unrelated reproduction or distribution of a single copy of the same material on separate occasions but do not extend to cases where the library or archives or its employees:

- 1) is aware or has substantial reason to believe it is engaging in the related or concerted reproduction or distribution of multiple copies of the same material, whether made on one occasion or over a period of time, and whether intended for aggregate use by one or more individuals or for separate use by the individual members of a group; or
- 2) engages in the systematic reproduction or distribution of single or multiple copies . . . of material described in subsection (d).

11.64 Apart from the rights given under section 108(b) and (c) the section does not apply to a musical work, a pictorial, graphic or sculptural work.

11.65 On 6 August 1976 a Subcommittee of the House Judiciary Committee recommended certain amendments of the Bill to the House Judiciary Committee.

11.66 Included in these recommendations are the following:

- (a) That the words in section 107, ‘. . . for purposes such as criticism, comment, news reporting, teaching, scholarship or research is not an infringement of copyright’ to be amended to ‘. . . for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship or research, is not an infringement of copyright’.
- (b) The words in section 107 setting out the factors included in those to be considered in determining whether the use of a work in a particular case is a fair use be amended in the following way: ‘The purpose and character of the use’ be amended to become ‘The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes’, and ‘The amount and substantiality of the portion used in relation to the copyrighted work as a whole’ be amended by deleting the words ‘as a whole’.
- (c) That the very controversial section 108(g)(2) be amended by adding the following proviso: ‘Provided, That nothing in this clause prevents a library or archives from participating in interlibrary arrangements that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work’.
- (d) A new subsection (i) be added after 108(h) as follows, ‘Five years from the effective date of this Act, and at five-year intervals thereafter, the Register of Copyrights, after consulting with representatives of authors, book and periodical publishers, and other owners of copyrighted materials and with representatives of library users and librarians, shall submit to the Congress a report setting forth the extent to which this section has achieved the intended statutory balancing of the rights of creators, and the needs of users. The report should also describe any problems that may have arisen and present legislative or other recommendations, if warranted.’

Part 4

Summary of certain submissions

In this Part of the Report we have set out a summary of some of the factual matters that were presented to us either by way of written or oral submissions. We have not included, except in a few instances, any argumentative material. None of the material which was submitted to us was given on oath, nor was it subject to cross examination in the ordinary sense.

Of necessity it has not been practical to summarise all the submissions we received and the fact that a reference to a particular submission is not included in this Part of our Report does not mean that we have not paid due regard to that submission.

The submissions which we have summarised are listed in the following guide according to interest groups.

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1. Australian Copyright Council Limited

The Australian Copyright Council Ltd. made written and oral submissions to the Committee. The oral submissions were made on behalf of the Council by Mr G. C. O'Donnell, Chairman, and Mr D. Catterns, a legal research officer of the Council. The Council is a body having the following constituent organisations:

*Actors and Announcers Equity
Australian Book Publishers Association
Australian Journalists Association
Australian Society Of Authors
Australian Writers Guild
Contemporary Art Society of Australia
Fellowship of Australian Composers
Fellowship of Australian Writers
Institute of Australian Photography
P.E.N. International Sydney Branch
Poetry Society of Australia
Professional Musicians Union of Australia
Professional Photographers Association
Royal Australian Institute of Architects*

The basis of the written submissions provided for what was called a voluntary blanket licensing scheme, supplemented by statutory licences. In respect of copying under this scheme, the Council sought payment of an amount calculated on the basis of a per copy per page rate for each individual author; that is, it sought that each author be remunerated by way of an amount based on the number of pages copied and the number of copies made of each page of that author's work. It appeared that although originally it had not been intended to include foreign copyright owners, the final submissions provided that foreign authors be entitled *prima facie* to remuneration on the same basis as Australian authors, but only on the basis of reciprocity. In other words, no payments would be made to foreign authors unless a similar system of remuneration existed in the author's own country and reciprocal payment was made to Australian authors in that country.

The Council strenuously opposed 'payments being made to authors as a group or to authors' societies as an alternative to direct royalties'. In its written submissions, it stated: 'We are opposed to reprographic royalties being paid as grants, pensions, prizes, loans, subsidies, tax concessions or on any basis other than payment for actual use to the person whose work is actually used'. In particular, it submitted that there was no valid analogy to the public lending right in relation to copying.

In its written submission, the Council said: 'In most cases, direct recording of all copying is impossible. Accordingly, methods of statistical sampling of use will have to be designed as the basis of distribution to owners of copyright'. In oral submissions to the Committee, the Council argued that direct recording of copying in schools and universities on this basis was practicable by means of records suitable for processing by a computer. The Council arranged for evidence to be given on the practicability of such a system by Mr A. T. Bayes of IBM (Australia) Pty Ltd, and on the general question of statistical sampling by Dr R. W. Mellor of the Australian Bureau of Statistics. Mr Catterns, at the conclusion of his submissions, reiterated that a mixture of a direct recording system and a sampling system would be practicable.

The basic framework of the Council's proposals is to be found in the following paragraphs from its written submission:

'Public interest' copying under our proposals would thus take place at three levels:

- (i) Copying under voluntary licence: for remuneration and within limits agreed between users and owners.
- (ii) Copying under statutory licence: within same limits as voluntary limits in comparable situations, no remuneration.
- (iii) Copying where notice given—restricted to fair dealing, no remuneration.

The effect of these proposals would be:

those owners of copyright who offer a licence (or join licensing agency) would receive remuneration and would thus play a part in the setting of the conditions (including remuneration) of copying; those owners who choose to remain outside licensing schemes have to file notice to this effect. They will receive no remuneration, but their work may not be copied beyond a 'fair dealing'; those owners who do not either offer a licence or file notice receive no remuneration; their work is copied within the same limits as for comparable works.

It will be seen that the proposals would enable any author who wished his work to remain outside the voluntary or statutory licensing provision to ensure that it did so. This would be achieved by means of an appropriate notice, such as an advertisement in the 'Gazette', or a notice filed in an appropriate registry. According to the Council, the need to remain outside these provisions arose in some cases from the nature of the work. An example of this was what were termed 'classroom kits' or 'worksheets' which require a large capital investment to produce a relatively few pages of material. No detailed submissions were made on the question of the extent to which the concept of notice was practicable.

'Public interest' copying was not defined, but in the course of its oral submissions the Council indicated that this was copying of a non-commercial nature and would include all copying in the educational field. The Council also suggested that copying in business houses and government departments might eventually be brought within either its proposed scheme or a similar scheme.

No details were provided of any method suitable for fixing the limits within which copying would be permitted under a voluntary licence, or of the number of copies which could be made, it being proposed that these could be agreed between users and copyright owners.

The amount payable per copy per page would be fixed by agreement, or, in default of agreement, by the Copyright Tribunal. The Council envisaged the possibility of differential rates for different types of works and certain statutory maxima/and minima amounts for copying. The amount payable would be based on all copying including that now permitted under section 14 of the *Copyright Act*, but it appeared that allowance would be made in the fixing of the rate for copying that is now permitted under section 14. It is to be noted that the Council's proposals were that all copying should be paid for, and that copying on coin-operated machines in University libraries should, at least, be sampled.

Although the concept of 'fair dealing' was attacked as being substantially impractical in respect of copying for private study and research for a number of reasons, including that 'it gives no certainty to users', it appeared that under the Council's proposals it would still be retained in cases where notice had been given and in cases of a direct recording system and a sampling system would be practicable.

licence would be a licence to copy works to which it applied, free of charge, within certain limits, being 'within the same limits as voluntary limits in comparable situations.' No submissions were made to indicate any practical way of fixing these limits. The Council also sought a statutory right of inspection to give owners reasonable access to inspect copying done under statutory and voluntary licensing and at least in the case of copying in university libraries it did not see any need for supervision by the university with respect to coin-operated machines.

The submissions dealt with the case of a licence being offered to an educational body by one or more copyright agencies and that body not accepting the licence. Mr Catterns stated, in the course of the Committee's hearings, that once the Council's scheme is introduced, 'the universities have a free go under the statutory licence. They will copy what they like until they are approached by an agency or agencies or an individual author. The act of someone approaching them, whether it be one agency or three, only has the effect of taking away from compulsory licence those particular works which the author or agency represents'.

If the educational body declined to accept the licence offered, it seems that copying from a work offered to it would be outside the scheme and left to be covered by any relevant provision of the *Copyright Act*, but any provisions in the Act relating to fair dealing would not apply. In effect, therefore, no copying beyond that of insubstantial parts of a work permitted under section 14 of the Act could take place of works the subject of the licence offered, unless the licence was accepted on terms agreed between the parties, or so far as concerns remuneration, as fixed by the Copyright Tribunal.

It appeared to the Committee that publishers under existing contracts would not necessarily have the power to grant the right to photocopy. This would appear to be particularly so in the case of journal articles.

The works falling within the free statutory licence would be works which were subject to copyright and in respect of which no notice had been given, and in relation to which the Council could not offer a voluntary licence. The Council had in fact set up a Copyright Agency and the Council intended that the owners of copyright should empower the Agency to grant licences in respect of reprographic reproduction. At the time when oral evidence was given, it seemed that the Agency had only been authorised to grant photocopying rights in respect of two authors, one being a poet, the other a writer of legal textbooks. We understand that more authors have now authorised the Agency to grant photocopying rights on their behalf.

The Council, in its oral submissions before the Committee, also indicated that collection and distribution of monies could be handled by a statutory corporation. This body would collect and process the information and hold the monies collected in respect of copying in trust for a specified period in order to enable authors, and agencies on their behalf, to claim the payments made by educational bodies. The Council appeared to suggest that the Government should be the source of funds in respect of copying in the educational sphere.

The written submissions also argued that 'No other component of the free flow of information is expected to work without pay. No one suggests that the teacher or librarian who copies, the Minister whose Department employs them, or the companies who supply the papers and machines should be paid less, or not at all, because educational copying is in the public interest. All others who supply services to schools and libraries do so at full price. If education is in the public interest and if, therefore,

it should be subsidised, then it is the "public" who should pay the subsidies, not authors'. In oral submissions, Mr Catterns argued that it is irrelevant that many authors of journal articles are academics who wish for wide dissemination of their articles. He also said that overseas authors and publishers are just as entitled to payment as are Australian authors and publishers. Attention was also drawn to the fact that even though only a small extract from a work comprising many pages was copied, a relevant factor in assessing the overall position was how many copies were made, for example, 100 copies of one page was a significant amount of photocopying and ten pages of a textbook copied in sufficient numbers for a class was a significant amount of photocopying.

The Council submitted in relation to copying in other spheres that it did not oppose 'reasonable provisions relating to copying of manuscripts and copy [sic] for conservation purposes'. It submitted, however, that copying by libraries for other libraries ought to be strictly limited in view of the current availability of, and likely development of, methods of facsimile transmission. It also suggested some changes to the law regarding copying by libraries for users of the library.

Statistical evidence

Dr R. W. Mellor, Director of the Sampling Section of the Australian Bureau of Statistics, provided information to the Committee concerning the question of sampling in relation to copying. The Committee arranged for his appearance as the result of a request by the Australian Copyright Council Ltd.

Dr Mellor discussed general principles of sampling with the Committee, and took as an example the sampling of copying in a library. He stated that one method of sampling would be to collect information by a card system from, say, all six machines in one part of the library, but to discard the cards from five of those machines. This would avoid alerting the user to the fact that only one machine was being sampled. Dr Mellor explained that estimates were more accurate when a work was photocopied frequently, and they were not very accurate when only little copying of a work took place.

He suggested that if one was concerned with rewarding authors who had indicated they wished to participate in a licensing scheme, there would need to be a simple way for copiers to identify in advance the works involved in the scheme so that no record would be made in respect of works outside the scheme. One method would require each of the works involved to be marked or to be identified from a list. However, it was also possible for the computer to sort out the relevant works although this increased the amount of computer time needed. The former method was preferable.

Dr Mellor directed his attention to the sampling of copying in schools. He stated that this would depend on what information was available in relation to matters such as the similarities between schools, what copying was done in them, how many machines were in each school, and the geographical location of the school. The selection of schools in groups would then occur, and the selected school would be asked to record all copying for a period long enough to allow for seasonal fluctuations (say six months or a year). Sampling should be concentrated on the larger copiers.

Dr Mellor prepared a note on sampling of schools based on a number of assumptions and upon these assumptions he worked out the standard error on various degrees of sampling. Based on a figure of 30 million photocopy pages being made in schools in

Australia, Dr Mellor calculated that if one-third (10 million copies) were sampled (which he envisaged being in one-third of the schools), and 5000 copy pages were made of a particular author's work, the standard error per cent on that figure would be 3.5. That is, there were two chances in three that the estimate was within plus or minus 3.5 per cent of the true figure, and there were 19 chances in 20 that the figure would be within plus or minus 7.0 per cent.

He indicated that, if 5 million of the assumed 30 million pages were sampled, the standard error per cent would be less than plus or minus 12.2 in cases where 1000 photocopy pages of a particular author's work were made. The standard error per cent became plus or minus 17.4 when the photocopy pages of a particular author's works dropped to 500.

If one sampled only 1 million pages out of a total of 30 million, the corresponding error per cent was 29.5 and 41.8 in respect of 1000 and 500 photocopy pages of an author's work respectively.

Dr Mellor stated that when he worked out the standard error figures in relation to schools he did so on the basis that there was some sort of homogeneity from school to school. He did not, however see much possibility of selecting one university as a sample of other universities, although sampling of one of several machines which were housed in a group in a university library was possible. He also indicated that it may be possible to sample colleges of advanced education. He stated that some rotation pattern in sampling of schools would be advantageous.

Evidence on the use of computers

Mr A. J. Bayes of IBM Australia Limited gave the Committee information on the use of computers in relation to the licensing scheme proposed by the Australian Copyright Council Ltd. His attendance was arranged by the Council.

Mr Bayes stated that it was envisaged that computer cards would be filled out for the copying of works within the proposed licensing scheme, and that the administration of the scheme would depend on how many works fell within it. If there were very few works in the scheme, a list of those works (perhaps in the form of a book like a telephone book) could be provided in the library; alternatively, some system of marking with a sticker those books in the library that were within the scheme could be employed. The completion of computer cards in relation to all copying would be a possible alternative, particularly if there was a large proportion of works in the scheme. He gave no estimate of the cost of marking books or of preparing a list of authors and works.

He stated that, once the system was installed, the running cost of dealing with cards in the computer, (whether this included sorting out the relevant from the irrelevant or not) including printing cheques, would be less than 1.5 cents per card. This would also include the collection of records of copying done in relation to particular authors, and the calculation of any amount due to authors. It would also include the cost of the cards (which were about \$4 per thousand) and of the incorporation of differential payments in the scheme, if necessary.

This figure, however, did not include the cost of writing the program for the scheme, which would be in the order of a few thousand dollars.

The figure also did not include the cost of getting cards from the library to the computer centre or of postage of cheques (from that centre) to persons entitled to payment, or of the cost of stamp duty on those cheques, or of bank charges in respect of the cheque. In addition, considerable costs may also be involved in the incorporation of further works into the scheme.

The organisation owning the library would also lose all record of the cards and there would be no way of retaining a copy of the cards upon which it would be billed. Problems would therefore be experienced with budgeting, although print-outs could indicate progressive spending within the stated running costs. Mr Bayes pointed out that it was possible to build into the computer some limited form of auditing.

Mr Bayes was also of the opinion that the computer cards could be filled in accurately.

2. *Mr P. Banki*

Written and oral submissions in support Of those Of the Australian Copyright Council Ltd were made by Mr P. Banki and were prepared as the work of a special research project sponsored by the Australian Council, for the Arts (now the Australia Council).

Mr Banki supported in substance the submissions of the Australian Copyright Council Ltd and submitted that a 'total scheme' be implemented, covering copying by all users. The proposed scheme would legitimise copying beyond present fair dealing limits, but only in return for an equitable remuneration to the owners of copyright.

Mr Banki referred to recent overseas surveys on copying in educational institutions, and in particular to surveys carried out in Britain, Sweden and Denmark. Mr Banki was of the view that while probably the main form of copying in universities was reprographic reproduction, in relation to schools the main form may be duplication from a typed stencil or, in the case of maps and diagrams, roneoed copies based on the tracing of the original. In oral evidence, Mr Banki submitted that the Committee should seek to have its terms of reference widened to include stenciled duplications.

Mr Banki, in his written submissions, stated that the real issue which the Committee must decide on 'relates to copying outside libraries—copying by staff in schools and universities; mass duplication in government departments and business houses'. While he advocated the implementation of licensing schemes to effect a proper balance of interest between owners of copyright and users of copyright material in these situations, the general thrust of his oral submissions related to 'public interest' copying. When attention was drawn to the lack of detailed submissions on copying in business houses and government departments, Mr Banki stated:

Perhaps if a scheme is recommended which enabled owners and users to negotiate, let us say, before the Copyright Tribunal, then no doubt, business house copying and government department copying could be negotiated on a voluntary basis.

Mr Banki summarised the statutes of certain countries which in general provided that a copy (or copies) of a copyright work might be made without remuneration for personal or private use and, in some cases, also provided for copying for other specified purposes provided that equitable remuneration was paid to the author.

In his oral submissions, Mr Banki also submitted that the Committee should commission its own statistics of copying in educational bodies in Australia, and that in making its recommendations the Committee should not be tied to the present law. In relation to this latter submission Mr Banki argued in particular that the concept of substantiality embodied in the present Act ought to be changed so that it would take

into account not only the amount of the work taken but the number of copies made. Mr Banki stated:

. . . I do not concede that 50 copies, which is my illustration, of one page of a text is necessarily insubstantial — that is only my view — but even if it is I think the new law ought to say that it is not.

The Committee spent considerable time with Mr Banki discussing the implications of statistical information contained in foreign surveys of copying in educational bodies, and, in particular, with the results of a survey carried out in Denmark. Mr Banki provided the Committee with a summary comprising copies of parts of a report prepared by the Copy-Committee of the Ministry of Education in Denmark, entitled *An Examination of Copying and Other Multiplication in Schools 1972–1973*, Report No 704, Copenhagen 1974. In a number of instances the summary provided was difficult to follow, and some matters were not clear either to Mr Banki or the Committee. This Copy-Committee was formed, according to the extract of the report, with the task of carrying out an inquiry into the extent to which published, printed material was copied or otherwise reproduced in public primary and high schools. It appears that the survey of copying was subject to the problem that teachers had been warned against illegal copying of published books and that ‘the Committee has furthermore not found it possible to give teachers a kind of “safe conduct” during the period of the survey, during which statistics could be kept of actual copying’. The Committee notes that this problem would exist in relation to any general survey in Australia because the Australian Copyright Council Ltd would not be in a position to authorise any copying beyond that presently permitted by the *Copyright Act*, and, if any copy was in breach of copyright, the person or organisation which was the subject of the survey would be at risk.

In view of these problems which affected the accuracy of the survey of material copied, it was decided in Denmark to send a questionnaire to schools to ascertain ‘the extent to which schools are furnished with copying facilities as well as a summary of copying done for the purpose of teaching, administration, etc.’, and also to send a questionnaire to 2 per cent of primary and high school teachers to examine ‘the extent of, composition of, and factors behind teachers’ requirements of copying of published, printed material’. In this way it was hoped to ascertain not only what was copied but also what teachers wished to copy.

The basic survey was carried out in respect of a large number of schools and dealt with the amount of copying during the school year 1972–1973 on machines belonging to the school, and, if applicable, outside the school. The report stated that it was established that there was a considerable variation in the activity of copying done in schools, depending on the size of the school and the highest level of education provided in the school. So far as can be ascertained from the report, it appears that of the total amount of copying— 102.5 million copy-pages during the school year 1972–1973 in public, primary and high schools— 19.7 million copy-pages were prepared on photocopying machines and 75.6 million copy-pages on ‘other (duplicator etc.)’ machines. It appears that of the 19.7 million copy-pages, 14.5 million were for teaching purposes; a somewhat similar proportion of copies made on ‘other (duplicator etc.)’ machines was for teaching purposes. It also seems that the average number of pages of all types of material copied varied from an average of about 73 to about 500 per pupil per year, and, apparently, approximately 15 per cent of this material was photocopied material used for teaching purposes. However, no details were available concerning the material photocopied, and there was no information to indicate whether or not the schools were in breach of copyright in making the copies.

The second part of the report dealt with the results of the questionnaire sent to teachers regarding the teachers' requirements for copying. Quite apart from the difficulty of interpreting the figures given, the Committee had no material upon which it could judge the relevance or otherwise of the copying requirements of teachers in Danish schools as compared with the requirements of teachers in Australian schools. The following is taken from the summary and conclusion of the report:

The school survey shows furthermore that the majority of copying is still done on ink duplicators and other less advanced equipment, as 75 per cent of the total number of copy pages of approximately 100 million pages in 1972-1973 have been done on these types of machines. The new types of equipment have, therefore, not resulted in a total change in the schools' activity in copying.

Copying in schools consists partly of self-produced material, partly of published, printed material. According to the teachers' survey, 40-50 million copy pages were produced in primary and high schools in 1972-1973 on the basis of approximately 3 million pages of published, printed material.

Mr Banki also discussed figures from a Swedish survey taken for the Agreement on copying in Schools, and figures from a survey carried out in the United Kingdom jointly by the Publishers' Association and the Council for Educational Technology, the report of which was published in January 1975. This report was submitted by Mr G. A. Ferguson, Director of the Australian Book Publishers Association, and is discussed in the summary of that Association's submissions.

Mr Banki provided the Committee with some statistics on the numbers of students in universities and schools in Australia in 1972 and 1973, the total expenditure of universities in 1972 and the numbers of copying machines imported in that year. The figure he gave for university and school students in the year 1972 was 2840951 and the corresponding figure for 1973 was 2854349. The figure for universities in 1972 was 130174 full and part-time students and in 1973, 133126. The total Australian budget for all universities' expenditure in 1972 was \$311640000. He said that the total number of photocopying machines imported in 1972— 'both electric and non-electric, both continuous roll and non-continuous roll',—was 13073, and the total value of these machines and parts for them was \$9629000.

Mr Banki also discussed with the Committee the question of the use of computers in relation to the copyright law, and suggested that there should be payment to copyright owners in respect of each print-out.

Mr Banki's submissions included two opinions from Professor Sawyer and a memorandum of advice from Mr Archibald, of Counsel.

3. *Australian Book Publishers Association*

The Australian Book Publishers Association made written and oral submissions to the Committee. The oral submissions were made on behalf of the Association by Mr G. A. Ferguson C. B. E., its Director.

The submissions of the Australian Book Publishers Association largely supported the proposal of the Australian Copyright Council Ltd for a voluntary licensing scheme under which the fees payable for copying would be subject to free negotiation through a copyright agency.

The Association had 91 members, 49 of which were Australian owned or controlled whilst the others were owned or controlled by residents of the United Kingdom, the United States of America or New Zealand. Membership was not open to journal publishers who did not publish books but some members of the Association did publish learned journals in various fields in addition to books. It was submitted that learned journals were particularly susceptible to damage from photocopying outside reasonable limits. The Association submitted that a compulsory scheme was not desirable, and that a voluntary scheme would be successful; it would be more suitable and attractive to copyright owners and would attract such widespread support from them that compulsion would be both unnecessary and undesirable.

The Association expressed general support for the conclusions reached by the Working Group on Reprographic Reproduction in Paris in 1973, and did not seek any change in the existing provisions of section 14, or the fair dealing provisions of sections 40, 41 and 42 of the Act. In this regard, the Association differed from the views expressed by the Australian Copyright Council Ltd. The Association thought that payment should be made for all copying beyond 'fair dealing' and it also thought that it would be difficult to be more specific in defining the concepts of 'a substantial part' and 'fair dealing' without, in many cases, unfairness resulting either to users or owners of copyright.

The Association referred to a publication entitled 'Photocopying and the Law', issued by the Australian Copyright Council in 1970 as a guide for librarians and teachers and other suppliers and users of photocopies of copyright works. It was said that the publication was supported then and now by the Association and that the publication pointed out that much copying could quite lawfully be done without any permission being sought or obtained, either because of the 'fair dealing' provision or because less than a 'substantial part' of a work was involved. Reference was made to the suggested limits of reasonable copying in the document. Reference was also made to a view expressed by the Society of Authors and the Publishers Association in the United Kingdom that generally authors and publishers had agreed that it would not normally be regarded as 'unfair' if, from a copyright work, a single copy of a single extract not exceeding 4000 words or a series of extracts (of which none exceeds 3000 words) to a total of 8000 words was made provided that in no case the total amount copied exceeded 10 per cent of the whole work. Poems, essays and other short literary works must be regarded as whole works in themselves, and not as 'parts' of the volumes in which they appear. Various other comments were made in this publication concerning the measure of copying which would normally not be considered as constituting infringement of copyright.

Mr Ferguson said that the members of the Association had differing views about photocopying. To some, depending upon the kind of books they published, copying was of little or no importance. To others, it was of great importance and of considerable concern. Mr Ferguson stated, 'At one end of the scale there are university presses and the other publishers of academic books of a restricted nature—even including poetry. . . . At the other end of the scale you have, for example, Little Golden Books. No one is ever going to photocopy Little Golden Books . . .' Mr Ferguson stated that novelists were also not likely to be concerned much with photocopying. It was, said Mr Ferguson, difficult, therefore, to say what was the view of the Association, because the members had differing views. In general, Mr Ferguson said that he thought those most concerned were publishers of academic material, broadly defined, including publishers of works for schools even at the primary level. Those

next concerned would be those who published work of a literary nature, initially for the general public, such as volumes of short stories and anthologies of poems, because these publishers were always hoping that their books would eventually achieve recognition in the educational system and lead to school editions. At the other end of the scale was the publisher of popular paperbacks which no one copied. Mr Ferguson said that a copyright owner wishing to enforce his rights faced a number of difficulties. One was that it was difficult to know what infringements were taking place, and it was difficult to decide whether more than a substantial part of a work had been copied or whether the act of copying was within the relevant fair dealing of the Act. Users also faced corresponding problems. Mr Ferguson mentioned that some forms of publishing, such as the publication of specialised journals of restricted appeal, especially in the scientific field, may be in the process of disappearing. Mr Ferguson said he thought there was a general realisation amongst publishers of specialised journals that printed publications may not be the future way of disseminating that kind of information.

The type of voluntary licence Mr Ferguson envisaged was one which placed limits on the length of extracts and the number of copies that could be made, and perhaps made provision for the purposes for which copying under licence could be done and for the exclusion of certain types of works. There should be opportunity for negotiation on the fee to be charged in relation to what was to be copied. The licensing scheme should apply not only to works by Australian authors but to works of authors who are nationals of all countries which are members of the Berne or Universal Copyright Conventions. Mr Ferguson said that he could not see any way of making educational authorities enter into licensing agreements if they did not wish to do so, other than by making increasing efforts to detect infringements and taking action in respect of infringements.

After dealing with the Swedish scheme relating to copying in government schools, the Association submitted that it was not desirable to have amounts paid to an authors' association as in Sweden, but that the amount collected should be divided between the individual author and publisher in the ratio agreed between them.

The Association expressed reservations (which Mr Ferguson modified to some extent in oral submissions) as to the likely accuracy of any sampling scheme and sought a reporting system whereby each licensee should record the details of the author, title and publisher of the work copied, the number of pages copied, and perhaps the International Standard Book Number.

Mr Ferguson referred the Committee to certain papers. The first was the *Report of a Survey of the Copying of Print Materials by Schools in the United Kingdom carried out by the Council for Educational Technology and the Publishers Association*, London, dated January 1975. This survey was only based on a small sample over a limited period and the Publishers Association, which analysed the survey, suggested that conclusions drawn from the results should be treated with caution. The Publishers Association pointed out that the majority of copying in the schools sampled was not done on photocopying machines, but on spirit or ink duplicators, and that some schools now had offset litho machines. In primary schools, about 96 per cent of the relevant copying was by duplicating, as was about 66 per cent of the relevant copying in secondary schools.

An analysis of the results showed that in primary schools, when parts of a 'publication' were copied, the average number of pages copied was 2.9 pages, the

average number of copies made per page was 67.2, and the number of pages provided for each pupil over a seven week period was 5.05, indicating that the copying per pupil was something less than one page per week. In secondary schools, the respective average figures were 4.9 pages from each work copied, 84.3 copies of each page and 6.57 pages being distributed to each pupil over seven weeks, that is, about one page a week. Only 3.5 per cent of copying of relevant material in primary schools and 7 per cent in secondary schools was carried out by photocopying. In the case of secondary schools, a further 26.8 per cent was reproduced on litho equipment but there was no use of litho equipment in primary schools. No accurate estimate was possible of the amount of infringement of copyright involved in this copying. It was found that the copying practice in schools was not at all uniform. In particular, it was said that in one school copying was almost universally of geography books, but in another of music.

Mr Ferguson also referred the Committee to a publication of April 1975 entitled *International Publishers Association's Comments on Reprography submitted to WIPO and UNESCO in view of the Washington Meeting, June 16 to 21, 1975*. These submissions argued for the creation of a fund to remunerate photocopying by requiring, at least in libraries and schools, every individual making photocopies of a work to make a photocopy of the title page and indicate on it the number of pages copied. The distribution of royalties was said to be not the responsibility of the users but the exclusive concern of authors and publishers or of the bodies they appointed to represent them. The comments ended with an appeal to public authorities concerned, and to Governments, to reaffirm the fundamental principle of copyright and urge all interested parties to engage in collective negotiation to ensure that authors and publishers are fairly rewarded for the use of their protected works.

Another paper dated 1975 set out a proposal made by the Subcommittee on Reprography of the Technical Committee on Author's and Publisher's Rights of the German Association for Industrial Property and Copyright and the ad hoc Committee of the Börsenverein. This paper referred to an estimate made in 1973 from a private source that 400000 copying machines existed in the Federal Republic of Germany and that the annual growth rate was 15 percent. It was also estimated that in 1973 8750 million copies were made. However the paper referred to the results of a study carried out in the Netherlands which showed that, of all the copies made by government agencies, educational institutions, private undertakings and libraries in the Netherlands, about 5.7 per cent were of copyrighted material. It pointed out that even on that basis there were about 438 million copies made of copyrighted material in Germany in 1973. It also stated that scientific journals were in a state of structural crisis due to the fact that modern, efficient and necessary documentation methods are competing with the traditional system of information and publication. The paper also pointed out that in the opinion of the Subcommittee 'the only practical approach is the introduction of a charge on copying machines'. The Subcommittee went on to point out the difficulties of distributing the proceeds and stated that 'the question of how proceeds derived from charges on reprography should be distributed by the collecting societies representing the interests of copyright owners has not yet been discussed in detail'. The Subcommittee was, however, agreed that authors and publishers should participate in the proceeds and that any solution would be unacceptable if an undue proportion of receipts were to be spent for administrative purposes.

Mr Ferguson said that greater freedom might be allowed to libraries in respect of copying of, for example, letters in certain circumstances. He also thought any

relaxation permitted where a work had been out of print for, say, two years, should have regard to the difficulty of deciding when a work was out of print and should not be lightly introduced. Mr Ferguson also dealt with the question of the publishing of American books for the Australian market.

4. Australian Music Publishers Association Limited

Written and oral submissions were made to the Committee by the Australian Music Publishers Association Ltd. Oral submissions were made on the Association's behalf by Mr A. J. Turner, its Executive Officer, and Mr C. Vaughan-Smith, its Vice-Chairman. Mr Vaughan-Smith was also Managing Director of Southern Music Publishing Co. (Australasia) Pty Ltd. The submissions included the following information:

The Association consisted of 15 member organisations being the largest publishers in Australia engaged in the business of publishing sheet music. The members of the Association, through their agreements and arrangements with overseas publishing firms, control in Australia and New Zealand the copyright in practically all musical works in current use.

The music publisher is usually assigned copyright (including rights in respect of photocopying but excluding performing rights) in the music by the composers of musical works, and generally the composer receives a 10 per cent royalty on the sale in Australia of sheet music. Publishers also share in the royalties paid to composers from performing rights. The Association acts as agent for the publishers in the collection of royalties for mechanical reproduction of musical works.

The Association generally expressed satisfaction with the provisions of Part III Division 5 of the *Copyright Act* which defines the limitations on copying of copyright musical works which may be done by or under the authority of librarians of libraries not established or conducted for profit. In particular, mention was made of subsections 3 and 5 of section 49 of the Act which exclude multiple copying and limit copying to a reasonable portion of the work. However it submitted that the provisions were largely disregarded and copyright owners' revenues were being eroded.

Whilst the Association had no detailed information of multiple copying in universities and other tertiary educational bodies, it submitted that copying was rife in both primary and secondary schools, where copies were supplied for class use.

It also submitted that copying by members of the public on unsupervised machines in libraries was rife.

It submitted that copying affects mainly short works suitable for class or choral singing rather than large musical works.

The effect of copying had been evidenced by the decision of two music publishers not to publish any more part songs. In addition, several of the major publishers had become so concerned with the fall off in the sales of part songs that they had refused to sell under six copies of such works.

Mr Vaughan-Smith stated that his organisation had no direct evidence that copying in schools was being carried out in breach of the Act and that he thought that publishers would be very reluctant to take legal action against schools, at least in many cases.

In the last five years there has been an increased growth in the number of local music publishers.

The Association had established its own licensing agency (ANZ Musical Copyright Agency) and it submitted that a scheme for remuneration of copyright owners in respect of copying in educational establishments using royalty stamps was practical. The Association envisaged the agency would probably operate so that it would first attempt to satisfy requests for copies of works by ascertaining what stocks in hand existed with individual publishers. Where none existed, it would, for a fee, copy the works itself and supply the copies to the particular school from which the request had been made. The fees would subsequently be remitted to the publisher. Alternatively, royalty stamps would be sent to the school requesting copies of a work so that they could be affixed to copies made at the school. At the time of the Committee's hearings, details of the working of the agency had not been finalised, and it was possible that ultimately the copying would be undertaken by the publisher itself.

All royalties for musical works are disseminated on the basis of each individual work. The Association would not want any system of blanket licensing and would not join the Australian Copyright Agency Ltd. Nor did the Association particularly want any licensing provisions written into the *Copyright Act* preferring rather that 'the Act be tied to the extent we are better able to operate existing licensing rights'.

Australian music publishers would probably hold sheet music stocks in respect of over 200000 recorded songs. It was stated that one publishing company's current catalogue of sheet music, in relation to popular music, showed 1000 titles in stock. The company also kept a file copy of sheet music that was out of stock. The company supplied from one copy up to 2000 copies of each title.

The method of payment of royalties to composers in relation to sheet music was described. In the case of the publishing company of which Mr Vaughan-Smith was Managing Director, royalties are paid twice a year; in one half-year period which was taken as an example, royalties were paid in respect of approximately 3000 titles. In the case of overseas composers, the company would account direct to their overseas publishers. The range of payments in relation to sheet music in one sample ranged from 5c to \$55 in respect of the six-monthly period. The company has approximately 40000 index cards in respect of different titles not all of which are active. The records are typed and handled manually. Larger companies might have five times as many titles. Mr Turner also stated that some companies are in the process of computerizing their files.

Details of the distribution of royalties from record sales were also described.

The Association submitted some recommendations for reform of the law such as the suggestion that the words 'research or private study' in relation to fair dealing in copyright works be preceded by the word 'individual', so that it would be clear that fair dealing would not encompass multiple copying under any circumstances.

5. Association of Australian University Presses

The written submissions of the Association of Australian University Presses were augmented by oral submissions of the President of the Association, Mr P. A. Ryan. The submissions included the following information:

The Association of Australian University Presses was formed in 1965 and embraces all the scholarly presses of Australian universities.

These presses are integral parts of their parent universities, and are non-profit organisations, established with the object of the publication of scholarly books and journals, and the dissemination of the results of research.

The Association submitted that reasonable copyright protection was essential to the publishing industry. While it accepted the reasonable needs of users of copyright material, the Association was of the opinion that there was at present considerable abuse of reprography that tended to make hazardous the publication of useful new books.

Mr Ryan gave some illustrations of copying with which he was familiar. In his experience the saleable print runs of scholarly works had diminished. In relation to Melbourne University Press, the figure in 1962 was about 2000 copies, but currently this had been virtually halved despite, as Mr Ryan put it, 'massive increases in the number of higher educational establishments'. Mr Ryan indicated that although reprography was not the sole reason for declining sales, at least half of the contraction in demand was due to unauthorised copying; and he gave at least one recent instance of an organised attempt by the official students' body at an important University to, as he said, 'pirate' whatever textbooks students needed. He also gave as an illustration of copying an example provided by a Senior Lecturer in Law at the University of Queensland in relation to a small monograph on Succession. The monograph was apparently cheaper to photocopy than to purchase and it was alleged that copying of the whole work was taking place on a substantial scale.

The Association also expressed concern about the copying of learned journals which, it was stated, were costly to publish and difficult to sustain financially. Mr Ryan indicated that the Melbourne University Press does not now publish journals. It once published two leading journals in their field, but economic problems forced the Press to discontinue them. When he indicated that increased postage charges were a factor in this change he stated:

I am unable to demonstrate an absolutely feasible chain of connection between reprography and the decline or static state of those journals, but I have no doubt that reprography was one of the reasons why, in spite of the larger potential market, we could not get the circulation up.

Mr Ryan thought that authors were not paid any fees for their contribution to these two journals and that the copyright was assigned to the Board of Management. He said that in some cases authors of books which the Melbourne University Press publishes do not receive royalties in respect of the sale of the work. This would particularly apply in the field of very specialised monographs.

In answer to certain questions put to him by the Committee, Mr Ryan expressed the view that production of highly technical journals in their present form was likely to end and be replaced by other methods, like the use of computers.

Another problem which Mr Ryan said arose out of reprographic reproduction was that it could interfere with the integrity of an author's work by, for example, the reproduction of works out of context in a teaching situation.

Mr Ryan informed the Committee that Melbourne University Press regularly receives requests from libraries to copy whole volumes of out-of-print works. The Melbourne University Press has recently had an arrangement with an American firm to provide copies of any of its works which were out of print. This involves the inquirer writing to America and awaiting the supply of the copy requested. While this obviously involves a delay in obtaining a copy of the work, Mr Ryan could not indicate the normal extent of the delay.

Mr Ryan was of the view that the making of multiple copies of copyright material in schools was the most serious problem to the copyright owner, and in this regard one of the problems faced in any attempt to enforce copyright in this field was the fear of reprisals such as the blacklisting of books published by a certain publisher throughout the educational system. Mr Ryan submitted that a practical licensing scheme coupled with a system of inspection and a threat of a penalty for abuse of procedures would prevent much of the abuse that occurs at present.

6. Australian Society of Authors

Written and oral submissions were made to the Committee by the Australian Society of Authors, The oral submissions were made on behalf of the Society by Miss Barbara Jefferis, its President. The submissions included the following statements and information :

The Society had a membership of over 1300. The Society endorsed the submission of the Australian Copyright Council Ltd in its entirety.

Miss Jefferis stated that with very few exceptions the writer was self-employed. The Society had never argued that limits should be placed on the new techniques of copying but that ways must be found of allowing the creators of copyright to share with the users of copyright in the benefits of the new techniques.

Subsidiary rights were now often more valuable to writers than royalties, and reprographic reproduction was, of its nature, a subsidiary right.

Miss Jefferis stated that if unrestricted copying were permitted without payment, serious economic loss would result to both the author and publisher; for example, there would be no sales for the reprint of a work. Writers have the same needs as anyone else engaged in the educational process to be paid for what they supply.

Miss Jefferis stated that if writers of technical articles did not wish to exercise their copyright privileges with respect to photocopying, they should not have to.

Miss Jefferis was of the opinion that there was an enormous amount of copying of the works of certain authors in the educational sphere and instanced, particularly, the copying of poems and of critical essays. She said that from personal observation a school student brought home for use an amount of roneoed material instead of being asked to buy a text book and that this material consisted principally of the works of Australian poets.

Miss Jefferis stated the majority of writers were forced to earn money by writing of other kinds, such as journalism or reviewing, or had to rely on other sources of income.

'7. Fellowship of Australian Writers

The written submissions of the Federal Council of the Fellowship of Australian Writers were augmented by oral submissions of Mrs J. Williams, the Federal Secretary. Mr J. S. Hamilton, the Secretary of the Victorian Fellowship of Australian Writers made oral and written submissions on behalf of the Victorian Fellowship.

The Committee received a telegram from the Federal Council of the Fellowship supporting the submissions of the Australian Copyright Council Ltd and, in particular, supporting its voluntary licensing scheme as a viable scheme to reward authors and publishers. It was alleged in a subsequent written submission that photocopying was seriously affecting writers' incomes and their ability to get their books published.

Mrs Williams, in oral submissions before the Committee, said that the Fellowship held the view that one of the major problems was that the *Copyright Act* was not observed in most libraries in Australia.

Mrs Williams said she was also a municipal councillor and as such was concerned with four libraries, one of which contained 46000 books. She was concerned with coin-operated machines in municipal libraries and submitted that libraries could well afford a fee to writers even when the charge made was 5 cents per copy. Mrs Williams cited one instance from her personal experience where the whole of a book, which was out of print, was photocopied by a student who required it for his work to secure a higher degree.

Mr Hamilton in oral submissions indicated that he preferred a freely negotiated agreement in respect of copying rather than a statutory licence upon payment of remuneration. He pointed out that the writer was sometimes self-employed and depended on royalties of various sorts for his living. Royalties from photocopying, he submitted, should be an integral part of the writer's earnings. Mr Hamilton also thought that illegal photocopying or copying where royalties were paid could disrupt the economics of publishing, and he submitted that, while the concept of fair dealing was necessary, wider copying should only be permitted by contractual agreements.

8. Society of Editors

The Society of Editors made a brief written submission to the Committee. In addition, oral submissions were made on its behalf by Mr B. J. Walby, its Chairman, and Ms J. Yowell, a member of its Committee. The submissions included the following information.

The Society had 80 members throughout Australia, who were mainly book and journal editors. The Society did not encompass newspaper editors in its membership. It was stated that an editor normally had the task of taking material submitted by writers and presenting it in a suitable form for the printer to reproduce it. This work often involved interpreting copyright law.

The Society's submissions dealt mainly with an outline of a scheme to collect information on photocopying and to provide for the payment of fees to publishers and/or authors in respect of photocopying. A survey of lending activity for public lending right payments was also proposed in concert with the above. The scheme for

photocopying covered copying in Australian libraries, but did not cover copying which took place away from the surveillance of librarians or other library staff, such as spirit duplicating, which often took place in educational establishments. The proposal involved:

. A representative sample of libraries chosen at random from all libraries in Australia.

• The recording of certain information, in respect of the library's photocopying, which would be transmitted immediately to a central collecting point by means of a teletype machine or computer terminal. Recording of both the International Standard Serial Number in the case of serials, and the International Standard Book Number in the case of monographs, was envisaged, together with the number of pages copied.

• From information received at the collecting centre, the amount due to author and publisher would be determined according to the number of pages copied. The amount could be calculated as a fixed percentage of the copying fee levied by the library concerned or, if no fee has been levied, a fixed fee for each page copied. Analysis of the information, billing and payments would be dealt with by the central collecting centre. It was envisaged that details of all material copied would be recorded, and it appeared that allowance would be made for non-copyright material and insubstantial parts of works.

. It was envisaged that eventually manual input of copying data at libraries would be superseded by input on machine-readable cards fed to a computer terminal installation at the library.

While the above scheme dealt with a particular kind of organised copying, the Society suggested that the 'considerable amount of under-the-counter photocopying taking place in schools and commercial establishments' could not be dealt with in the same way. It suggested that it may be necessary to set up a licensing agency to levy fees according to the amount of that copying done.

It was stated that if payments were made in respect of copying of journal articles authors would probably wish to establish their rights with their publisher at the contract stage. In any event, even if any payment went only to the publisher, the price of journals would be kept down and this would increase the wide dissemination of the journal.

It was stated that the number of journals was increasing but that the number subscribed to by libraries was decreasing due to subscription rates escalating at something like 25 per cent per annum.

It was stated that a loading for photocopying was already, to a large extent, indirectly incorporated into the purchase price of many books because print runs were diminishing.

Reference was made to the practice in the scientific field whereby an author submitting a paper to a journal received reprints which he could supply to persons interested who may have only seen an abstract of his work, or who did not have access to the journal. This removed the problem of making a request through the publisher. Reference was also made to the occasional practice of publishers including in an educational book a spirit duplicating master and also to the existence, in some cases, of a dual pricing policy where there was a reduced subscription to individuals and a higher price to libraries, in view of the likelihood of copying.

Mention was made of the difficulty experienced in interpreting provisions of the present *Copyright Act*.

9. Mr R. J. Noye

Mr Noye, by way of a written submission, informed the Committee that he had spent several years writing a history of Clare, a town in South Australia, for eventual publication. He feared that the effect of photocopying in schools would be disastrous for a localised publication such as his, with a limited market. He expected the local secondary school would purchase two or three copies and that students would satisfy their needs by photocopying sections which interested them. He mentioned that the standard 10 per cent royalty which he was to receive was small compared with the reseller's margin.

10. Mr R. Hughes

Mr Hughes, a composer of music, made written and oral submissions to the Committee. He informed the Committee that, while several years ago publishers had urged him to compose compositions of short duration suitable for choirs and solo instruments so that his work was more accessible to the public, he had been informed that no publisher will now accept compositions of this kind because, in view of the fact that such works occupy only a few pages, no safeguard existed against unauthorised photocopying. Mr Hughes mentioned an instance of multiple copying of a musical work in a school which had been brought to his attention. He considered such copying was prevalent and was a threat to part of his livelihood.

11. Library Association of Australia and the National Library of Australia

The above bodies made separate written submissions to the Committee. In addition, oral submissions were made on behalf of the Library Association of Australia by Mr J. Vaughan, its Executive Director, and Mr S. B. Page, Convenor of the Copyright Committee and University Librarian at Griffith University. Mr W. D. Thorn, Director of Social Sciences at the National Library of Australia, made oral submissions on behalf of that Library. The submissions included the following information:

The Library Association is an Association incorporated by Royal Charter and has a membership of 8500 librarians from all States and Territories and from all types of libraries.

A considerable amount of information was given to the Committee about various types of libraries in Australia. Detailed information was given about libraries of Australian universities, colleges of advanced education and schools, public libraries, and the approximately 1000 special libraries attached to commercial firms, learned societies, professional associations and government departments. The Association also described the facilities for copying and the extent and nature of the copying normally taking place in the various types of libraries.

The Association stated that costs prevented most libraries from subscribing to all the journals of peripheral interest to its users. Copying for inter-library loans assisted in the rationalisation of the acquisition of library materials. A copy of the 1966 Inter-Library Loan Code produced by the Australian Advisory Council on Bibliographical Services was submitted to the Committee.

Most photocopying in libraries was of journal articles. Mr Vaughan indicated that the cost of journals was increasing, and to purchase a journal and maintain it on the shelf costs about \$85 a year although the journal may cost only \$20. There was also evidence that subscription costs are rising in the order of 17 per cent to 20 per cent per year. Mr Vaughan stated that in America it was suggested that if any journal title within the Library was used fewer than six times a year it was less economical to buy the journal than to seek an inter-library loan. If a journal was going to be used more frequently than this then it was more economical to buy the journal due to the cost of inter-library lending.

The cost of inter-library lending was substantial. Mr Thorn said that a rough calculation at the National Library had shown that it cost that library between \$6 and \$8 to satisfy an inter-library loan, and that the library requesting the loan also incurred a substantial cost, which, Mr Page stated, had been calculated by a number of institutions at between \$4 and \$9. The cost of an inter-library loan was therefore a significant factor in deciding the cost element of a subscription to a journal.

Mr Page stated that there were some 10 to 12 million authors currently engaged in writing works and estimated that probably about 5000 of these were in Australia. Mr Page stated that the author index of *Chemical Abstracts*, which lists new material in chemistry, now includes something in the order of 200'000 authors per annum in one subject. Mr Vaughan expressed the view, on the basis of his experience with the STISEC Enquiry, that roughly 1 to 2 per cent of the world's output of published material was Australian.

Figures dealing with university libraries in 1973 showed that the total number of volumes held, including periodicals, varied greatly. The figure for one university exceeded 1 800000 volumes, and six others were in excess of 600000 volumes. Mr Page estimated that in a university library containing a million works 600000 authors might well be represented. The National Union Catalogue of Monographs in the National Library listed 3000000 works. Mr Page estimated that about 65 per cent of the intake of English language books in a university library is now American.

The total expenditure for acquisitions in 1973 for Australian universities showed that one university exceeded \$700000, another five exceeded \$500000, another seven exceeded \$200000 and a further four exceeded \$100000. In general, staff costs in university libraries exceeded by a considerable margin the cost of acquisitions. The staff costs within university and college of advanced education libraries presently range up to 68 per cent of total expenditure.

Figures for the libraries of colleges of advanced education supplied to the Committee showed that in 1973 only one library of a college of advanced education had a holding of more than 100000 volumes. The greatest amount spent on acquisitions appeared to be \$340000.

Considerable information was provided to the Committee concerning the developments taking place with regard to the provision of technical and scientific information. Copies of volumes 1 and 2 of the Report by the Scientific and Technological Information Services Enquiry Committee 1973 (the STISEC Report) were made available to the Committee. (See separate reference following). In 1975, the Australian National Scientific and Technological Library (ANSTEL) was created within the National Library of Australia to commence the implementation of the

STISEC Report, and ANSTEL produced a list of over 20000 serial titles, current and ceased, in the scientific and technological field.

Mr Thorn said that most of the copying done in the National Library was of overseas material and that the National Library was particularly concerned to comply with the provisions of the *Copyright Act*. The submissions of the National Library stated that anyone requiring a photocopy of any material is required to undertake in writing to use the copy for the 'purposes of research or private study'. All copying is undertaken by staff of the library and no coin-operated machines are available for use. If a request is made for the copying of any material which is still in print then it is met by a suggestion that an original copy be purchased. However reprints of journal articles are not readily available in Australia. The National Library does not make multiple copies except where the work no longer receives copyright protection or where the copying is authorised by the owner of copyright. The majority of inter-library loan requests are for specific and single periodic articles. A charge of 10c a page is made.

In 1974, 270000 copies, i.e., exposures, were made in the National Library. Where it was necessary to seek permission to copy from the copyright owner sometimes it was found to be time-consuming, and it was not always possible to trace the owner. This was particularly so with letters. Mr Thorn said that the National Library obtained a lot of periodicals by air, the delay before ordinary subscription copies were received being of the order of five months. Requests were made for copies of articles in publication received by airmail. Persons became aware of current articles often because of the recently introduced information alerting services which were becoming available in a number of fields, for example, MEDLARS in the bio-medical field.

A problem concerning unpublished works was mentioned. It was necessary to copy unpublished works for the purposes of preservation, to prevent students or others damaging the original, or because of deterioration in the original. The problem must be viewed in the light of the difficulty of ascertaining in whom the copyright vests, for example, if a number of letters are held in an archival collection it is completely impossible to seek permission to copy from the copyright owners. This problem was illustrated by Mr Thorn in relation to the papers of the late Sir Earl Page, which he said had been presented to the National Library and filled 15 filing cabinets.

Mr Thorn also gave an illustration of the problem of unpublished manuscripts which it may be desirable to copy for the purpose of preservation, or in order to provide a working document for research workers. He explained that some of these documents were produced by unincorporated associations, which had presumably ceased to exist, and even if still in existence posed an insoluble problem in relation to the ownership of copyright. Mr Thorn also gave examples of the need to permit the copying of some material which was out of print. For example, he referred to an extensive collection of material relating to Indonesia and the Dutch East Indies, and held by the National Library. This material, published in the 1920's and the 1930's, was completely out of print but not out of copyright.

The National Library suggested that the copying of a whole work should be permitted where it was out of print and the original publisher did not intend to reissue within a reasonable period of time. It also suggested that, because of changes in technology, machinery should be established to permit the on-going review of copyright matters.

Mr Vaughan and Mr Thorn also drew attention to the use of computers in information systems (e.g. MEDLARS). The Library Association of Australia explained that MEDLARS was a data base in which were recorded bibliographical references, each accompanied by assigned indexing terms (descriptors), and many by an author abstract, which identified periodical articles published in some 2500 international journals in the relevant field.

The MEDLARS service at the National Library will produce for the user either a list of references to articles published in a certain number of past years, or, on a continuing basis, a list of relevant references published in the most current, issues of the 2500 journals.

The indexing terms or abstracts which accompany the bibliographical citations were usually printed out with the bibliography as a guide to the user on the content of the articles.

The next generation of this bio-medical system named MEDLARS II was also being introduced into Australia. This was an 'on-line' facility which enables the "user to interrogate the data base in a reiterative way.

Other smaller data bases currently operational in Australia were a bio-science system known as BIOSIS, a chemical system known as CA CONDENSATES, a physics and electrical engineering system known as INSPEC, an educational system known as ERIC, an engineering system known as COMPENDEX and NTIS, a system covering United States Government reports.

It was stated by the Library Association of Australia that, following the introduction of these data bases, there had been an immediate attempt by the National Library, the CSIRO and other libraries to ensure that all periodicals covered by these data bases were held in Australia. This had led to the taking out of additional subscriptions to periodicals which had previously not been held in this country.

It was submitted that the use of such services was not likely to lead to a decline of subscriptions to journals.

The STISEC Report (1973)

The Council of the National Library of Australia appointed the Scientific and Technological Information Services Enquiry Committee in 1971, with the following terms of reference:

- A. Investigate the national need for scientific and technological information services in Australia, particularly from the user viewpoint.
- B. In relation to the national need, examine and report upon:
 - (i) the general availability of scientific and technological literature and in particular, the major deficiencies of that resource;
 - (ii) the means by which access to existing resources, including unpublished material, may be improved by the development of union catalogues, inter-library loan, photocopy, translation, location and other services of traditional library type;
 - (iii) information retrieval systems either in use or not yet available in Australia.
- C. Suggest means whereby needs identified by its enquiries maybe met in the national interest.

The Committee recommended in its report that the Australian Government establish a national scientific and technological information authority with certain specified functions and membership. Among the functions of the Authority recommended were.

- 1. To act as the Australian focus for international co-operation on matters concerned with the transfer, storage and dissemination of scientific and technological information.

2. To establish such additional services, including computer-based information services, translation services and a central documents collection, as may best be provided by a national centre.

The Report included the following information:

The types of libraries involved in providing services for scientists and technologists are National and State Libraries, the CSIRO library, Commonwealth and State Departmental libraries, university libraries and special libraries such as those of industrial firms and industrial organisations.

The CSIRO library system, several of the university libraries and one or two State libraries have major collections of scientific and technological documents which have given them *de facto* roles as back-up suppliers of documents, by inter-library lending, to other libraries in Australia.

A survey of users of scientific and technological information showed, *inter alia*, that 25 per cent did not have access to a library which had the sort of information required, 17 per cent had difficulty in acquiring information in particular subject fields and 10 per cent were unable to acquire as much as half of the literature they needed.

Australia probably had copies of many of the current journals in science and technology likely to be needed, although there was evidence that they were often effectively unavailable to many potential users because of their location or because there was far too little duplication of the titles in great demand. Thirty-three per cent of those scientists in industry had no ready access to a suitable library.

It has been estimated that Australia produces about 2 per cent of the total world output of information in science and technology, and, therefore, like most other countries, is vitally dependent on outside sources of information. However, unlike most technologically developed countries, Australia is at a geographical disadvantage in acquiring information and ensuring that it reaches the right people sufficiently quickly to benefit its industrial processes. This factor and low population density puts Australia at an industrial disadvantage and requires a greater effort to ensure good communications with the rest of the world than is needed by most other industrialised countries.

Australia had no national authority co-ordinating library activities, nor was there in Australia an equivalent of the (U. K.) National Lending Library to ensure prompt supply of scientific and technological literature, and no library comprehensively collecting the less accessible literature, such as theses, as does the National Diet Library in Japan.

As a nation Australia was not devoting enough resources to scientific and technological information activities and it was not providing adequate services to users of scientific and technological information. There was some development of computerised information retrieval systems. For example, since 1969, the National Library of Australia has been responsible under an agreement with the (U. S.) National Library of Medicine for running the Australian MEDLARS (Medical Literature Analysis and Retrieval System) Service. The Library was processing many hundreds of computer searches each month for Australian workers in the fields of health care and bio-medicine. A number of other services were developing such as a

computerised information retrieval service in the social sciences with its ERIC (Educational Resources Information Centre) data base.

The Committee recommended that the national authority should, *inter alia*, maintain a national collection of journals, monographs and other materials for which nationally there would be enough use to justify purchase of at least one copy.

It was stated that 'inter-library lending was indispensable to economic library service. In relation to science and technology, a library may achieve an 80 per cent coverage with 1000 journals, but would need to subscribe to 3000 for a 90 per cent coverage of the relevant literature.

The Committee's library survey showed that inter-library lending in science and technology comprised 177000 journal articles and monographs each year, and that about 32 percent of the monographs and 42 per cent of the journals required were not supplied from within the requesting State.

The cost of satisfying a loan request, exclusive of the original cost of the document, is variously estimated to be between \$1.50 and \$5.00.

Australia could not afford to store on library shelves around the country copies of little-used or unused journals, although every library should have what copies it needed of those journals most useful for its clientele.

The Committee could not attempt precise identification of Australia's actual holdings of scientific and technological literature, so it decided to use information already available from other surveys, supplemented by selected studies. These studies showed, *inter alia*, that:

In April 1971, of the journals abstracted by *Metals Abstracts*, using the latest available list (1969) there were 138 titles for which no current subscriptions in Australia were identified, although some of these included foreign language journals for which English translations were held.

In 1967 the National Library conducted a study to determine coverage in Australia of the 2300 bio-medical journals regularly indexed by *Index Medicus*, in preparation of the introduction of MEDLARS to Australia. It was discovered that 72 per cent of the journals were held in Australia while a further 8 percent were ordered by libraries alerted to their absence by the study.

In the chemical field, the CSIRO Central Library during 1971-72, as a prelude to its pilot computer tape project with *Chemical Condensates*, checked the coverage of the 1000 most important (i.e., most cited) journals abstracted by the *Chemical Abstracts Service*. Of this 1000 only 138 were not held in Australia, although of these only seven were in the English language.

A survey was made of the holdings of current scientific and technical journals in respect of the year 1971 and nine libraries were found to hold in excess of 4500 titles with the University of Sydney holding the most (15 700).

The Committee conducted a survey amongst a percentage of members of each of the 28 largest scientific and technological societies and institutions. The survey indicated that, for a fairly high percentage of inquiries for information, immediate response was considered necessary. Ten per cent of inquiries demanded answers within the hour, 30 per cent within a day, 40 percent within a week and the remaining 20 per cent could wait for over a week.

It was found that over a test period, approximately 83 per cent of scientific and technical monographs and serials sought through inter-library lending were eventually located in Australia, and that the average delay was five days from within the same State, and 14 days from elsewhere in Australia. It was thought that this delay probably

discouraged many users from making requests. The survey revealed a claimed average of 47 days to retrieve material sought overseas.

The report stated that assistance in location finding of material was provided by the three major national union catalogues. The National Union Catalogue of Monographs, housed in the National Library, for example, gave locations for an estimated 3000000 monograph titles encompassing all disciplines and is expanding at the rate of 500000 cards each year.

The Committee prefaced its report by stating, *inter alia*, that 'The evidence gathered and considered by the Committee leaves it in no doubt that there is immediate need in Australia for a greatly improved and more closely co-ordinated system to collect scientific and technological information and to disseminate it with a minimum of delay to those who need it'

12. Australian Archives

Written submissions were made to the Committee on behalf of the Australian Archives. These submissions concerned primarily, although not exclusively, the archives of the Australian Government. The submissions included the following information:

The majority of archives are unique documents, and comprise records which have been designated for permanent preservation in their original context. Apart from official government papers and records, many are documents submitted to various agencies of the government voluntarily, or on request, by members of the public offering comment or information, making claims or representations, fulfilling a statutory requirement, or in other ways directly involved in the business of government. They include manuscripts, letters, drawings, plans, photographs, pamphlets, various forms and other documents. Very little of the material in archives has been published.

The Australian Government's policy on access to Australian Government records provides that most records are open for public study at the end of 30 years beginning on 1 January in the year after that in which the records were created. However, this policy is not without exceptions, such as in relation to World War II records. There are also certain restricted papers which are not available for public access.

Frequently the Australian Archives felt it necessary to supply copies of material in its custody which were available for public access. A charge was made in respect of copying. The main purpose for which copies may be required were on request by a member of the public, for use by Australian Government agencies, for internal use within the Australian Archives, for deposit in other institutions and for production in courts of law. Most copies were made by Xerox or other instant copy methods although some were prepared for microfilm by reader/printer and other processes. The Australian Archives stated that the present Act was not adequate for a number of reasons to deal with the copying which it felt was necessary to carry out its functions. In particular, it expressed concern that Part III Division 5 of the Act did not appear to relate to it. In addition, in relation to section 183, it stated that it was not practical for an archives institution to identify and contact the owners of copyright in the works in its custody which it may wish to copy.

The Australian Archives also discussed the question of the publication of archives and made detailed comments on various sections of the Act and recommendations for their amendment.

13. Australian Advisory Council on Bibliographical Services

Written submissions were made to the Committee by the Australian Advisory Council 011 Bibliographical Services. The submissions included the following information:

The submissions dealt with a number of matters, but principally with problems of scholars and researchers associated with the operation of section 51 of the *Copyright Act*, and with the failure of the law to recognise a distinction between what the Council termed non-literary and literary materials. The latter were works written for the purpose of publication, while the former were letters, memoranda, diaries and journals, minutes of meetings of groups and organisations, reports prepared for the internal purposes of an organisation, and financial and other business records of other organisations, all of which were characterised by a clear presumption that they were not written with publication in mind.

It was submitted that the operation of section 51 caused inconvenience to research workers who frequently work with unpublished documents such as letters from a private person, or persons, the date of whose death was unknown, or if known, it was impractical to ascertain the present owner of copyright. Such letters form the bulk of manuscript collections in libraries and form a considerable proportion of records in government archives.

It was also pointed out that section 50 dealt only with published materials and, that therefore, no provision was made for making copies of unpublished works by libraries for other libraries.

Criticism was also made of section 52 and the procedure outlined in regulation 5 of the Copyright Regulations as being too expensive, cumbersome and restrictive to research workers.

The importance of greater access to documents was illustrated with a number of examples such as the Australian Joint Copying Project.

Various recommendations were made to the Committee to resolve the problems the Council outlined.

14. Library of New South Wales

Written and oral submissions were made to the Committee by the Council of the Library of New South Wales. The oral submissions were made on the Council's behalf by the Honorable Mr Justice Else-Mitchell, its President, and Mr R. F. Doust, its Secretary and Principal Librarian. The submissions included the following information:

The Library of New South Wales is the State Reference Library with collections of over 1250000 books, volumes of manuscripts and similar items. In addition, the Library holds a large amount of research material such as maps, single manuscripts, pamphlets, unbound periodicals, photographs and historical pictures, which cannot be readily measured statistically. The Library of New South Wales consists of the General Reference Library, the Extension Service (which serves remote areas of the State and acts as a back-up for public libraries) and five other collections including the Mitchell Library and the Dixon Library and Galleries. The Australian collections

are primarily research collections used by scholars and consist of a very considerable amount of manuscript material which is unpublished.

A substantial number of copies of material were made by the Library for users. Between 1 July 1973 and 30 June 1974, the number of individual copies was 173140 in 15918 separate orders. None of the copying was 'done by members of the public and none was done on coin-operated machines. A base cost of 10c per copy was made by the Library. Microfilming and other photographic processes were also undertaken by the Library. The Library required persons seeking the copying of any material, *inter alia*, to sign an undertaking that the copies would not be used for any purpose other than that of research or private study, and it stated that every effort had been made to comply with the provisions of the *Copyright Act*.

There were some areas of difficulty with the *Copyright Act*. These related particularly to copying of unpublished works, where, it was stated, the reasonable needs of scholarship were being impeded. For example, the Library was unable under section 51 to copy unpublished war diaries for the National Library or to copy an unpublished sketch made in 1930 of a building for inclusion in a thesis for a university higher degree. The Library also stated that there were many instances where it would be proper for a copy of an unpublished work to be supplied for the purposes of research or private study, but where at present, the period of time prescribed by section 51 must apply. Various recommendations were made for reform of the law, for example, in respect of sections 40, 49 and 50.

A major problem associated with copying in libraries was also to know if a work was in copyright, for example, in relation to newspaper articles. In addition, there was difficulty in ascertaining in whom the copyright in the material resided, particularly in relation to unpublished works.

Copying was done in the Library to replace missing pages torn from books, particularly if the item was known to be out of print, and to provide 'for use' copies of manuscript material in the Australian collections in order to conserve the originals. It was the normal practice not to lend single issues or bound volumes of journals but to provide photocopies of articles at the expense of the requesting library.

During the period 11 September 1974 to 31 December 1974 the Library gathered statistics on the copying it carried out. The statistics showed that, over that period, the number of serials from which extracts were copied was 622, the number of monographs from which extracts were copied was 1268 and 963 copies were made from other material, which included manuscripts, maps, pictures, etc. These figures included material not subject to copyright protection and were said to be incomplete. The Library stated that multiple copies of material were not made for any one user.

The Library did not seek to provide copies, but only did so as a service to the public and it is not keen to extend this service, and Mr Doust stated that he did not see any great advantage in entering into any licensing agreement permitting more extensive copying. Eleven staff were employed in copying and three do more difficult photo-printing in the photocopy laboratory. The Library stated that any individual and additional recording that would have to be done by the Library in respect of individual items copied would add to staff costs and it would be inevitable either that copying would have to be restricted or abandoned or that these costs would have to be passed on to the user.

The Library received about 20000 periodicals. In addition, it held about 30000 which had ceased publication. Experience had shown that journals, including those of scientific societies, have a fairly unstable existence and change or cease to exist with the financial resources of the body that published them, and with reading habits. Photocopying was not seen as having a significant effect on the viability of a journal.

The submissions also drew attention to likely future developments in the use of copyright material such as facsimile transmission from one part of a library's collection to another, or between libraries.

15. Library Board of Western Australia

Written and oral submissions were made to the Committee by the Board. The oral submissions were made on the Board's behalf by the State Librarian, Mr F. A. Sharr. The submissions included the following information:

The Library Board of Western Australia is responsible, *inter alia*, for the operation of the State Reference Library, which provides a photocopying service for members of the general public. The Board is not responsible for the provision of such services in the public libraries of Western Australia, the responsibility for which rests with the local authorities, but it supplies these libraries with stock on a per capita basis. The circulation stock of the Board at the time submissions were made was close to a million volumes.

There were 145 public libraries in Western Australia, 33 of which were in the metropolitan area of Perth.

In relation to all photocopying carried out in the State Reference Library for members of the public who came to the library, the applicant was required to fill in a form, in which he declared to the Board certain matters, and to pay a fee of 15c a page. All copying in the Library was carried out by the Library staff.

Other photocopying was carried out to satisfy inter-library loans and for internal administrative purposes and occasionally to replace damaged or missing pages particularly in multi-volume encyclopedias. With regard to inter-library loans, frequently the administrative costs involved in invoicing and payment on the part of the libraries involved was greater than the cost of the photocopy.

Statistics were obtained analysing photocopying carried out in the State Reference Library for the first six months of 1973. 3985 instances of photocopying by the Board took place for the use of readers in the State Reference Library, or for transmission to other libraries in response to inter-library loan requests. In broad outline, 46 per cent of these instances were in respect of periodicals and serials, 29 per cent in relation to books, 25 per cent in relation to other material. including, for example, extracts from newspapers, archives and government publications. Of the periodicals and serials, 46 per cent related to science and technology, 6 per cent to imaginative literature (including book reviews) and 48 per cent to other material. Of the books 40 per cent related to science and technology, 8 per cent to imaginative literature and 52 per cent to other non-fiction, and of all the books, only 51 per cent were said to be in print and only 8 per cent were published in Australia and in print. No estimate could be made of the books which were in copyright. The number of periodical titles published in Australia from which copies were made was very small compared with

those published overseas and, in general, this copying was probably of whole articles. In relation to copying from books published in Australia and in print (of which there were 89 instances representing 8 per cent of the total copying instances in relation to books for the period), the probable number of pages copied in each instance was three. Included in the 89 instances would be some copying from government reports and similar publications.

Readers who required a photocopy often required it immediately and, with regard to periodicals and journals, unless the item to be photocopied was to be found in the current issue of a popular periodical there was no prospect of locating a copy in Perth for purchase. Virtually all journals purchased by the State Reference Library were obtained either from the eastern States or from overseas, with by far the greater proportion from overseas. Even if reprints of articles were available, a situation which is the exception rather than the rule, the time factor involved in acquiring them prohibited their use. The time required to obtain material from overseas is in the region of six months from the date of order to the date of receipt.

Permission from the copyright owner was sought in cases of copying of unpublished photographs, letters and manuscripts, and great difficulty was experienced in identifying and locating copyright owners. In relation to photographs, inquirers were usually told that they must either obtain the permission of the copyright owner or sign a statement indemnifying the Library Board of Western Australia should the owner take legal action.

The provisions of the present *Copyright Act* make it possible to supply material, which would not be available in a local library, to people in as geographically diverse areas as Wyndham and Derby. It was the policy of the Board to facilitate access of all citizens to as wide a range of material as if they lived in the metropolitan area.

The Library Board concentrated its holdings on works of practical application rather than on works which would be more suitable for an academic library. At the time of the submission the Library had about 8500 current periodicals. There were few multiple copy subscriptions to periodicals. Lack of storage space, as well as financial considerations, contributed to the decision not to purchase multiple copies of works.

The Library had a policy of not making more than one copy to satisfy each request.

Of some books, as many as 50 copies (or more) were bought by the Board for the public libraries.

16. *South Australian Branch of the Library Association of Australia*

The South Australian Branch of the Library Association of Australia made written and oral submissions to the Committee. The oral submissions were made on behalf of the Branch by Mr R. C. Sharman, its President. The submissions included the following information:

The Branch was concerned that the present law imposed too many hindrances on the librarian in the discharge of his duty to make information available to users of the library.

The Branch made some detailed submissions in relation to sections 49,50 and 51 of the Act.

Mr Sharman indicated that problems were being experienced in relation to the use of unpublished works, such as letters, deposited in libraries. In many cases, a scholar was unable to make full use of a document in a library without taking a copy of it, and this is often not permissible because copyright in the work remains with the author.

There were 23 local government councils conducting free public library services, about half of which were in the metropolitan area and half outside that area. The State Library provided book stocks for these libraries. In addition to the public libraries, there was, in the State, a number of institute subscription libraries, as well as libraries belonging to educational bodies, and a few special libraries, such as that at the Weapons Research Establishment.

There were few public libraries with photocopying facilities within the library, but several had access to such facilities in buildings nearby. The State Library housed two photocopying machines for the use of readers, one operated by staff and the other, which was supervised, by readers themselves. The State Library copied for the purpose of replacing mutilated pages in books but, if a large section was missing, it would attempt to buy a new copy of the work.

The State Library had about 900000 books and it purchased 50 copies of many popular works for the State libraries system. It seldom purchased only one copy of an Australian book or of a South Australian book. Mr Sharman estimated that about 13 per cent of all the books in the State Library were published in Australia.

17. State Library of Tasmania

The State Library of Tasmania made written submissions to the Committee. The submissions included the following information:

Copying took place within the State Library system in both public libraries and some departmental libraries coming under the control of the State Library. Copying was done for members of the public, for teacher librarians, for internal library purposes, and for "inter-library loans.

Material was copied mainly at the request of users of the library and usually consisted of one copy per reader of an article from a periodical or a limited section of a book per reader, as permitted by the *Copyright Act*. If a library user asked for copying to be done which would infringe the copyright in the work, he was asked to arrange permission from the author or publisher before copying would be done by the library. Copying of sheet music was refused if it was thought that it still had copyright protection. Extracts from newspapers no longer current were copied.

Most copying was from English and American publications, and usually periodicals acquired on subscription and not easily available in Tasmania. It was said that reprints would take some time to purchase and would, in many cases, not be available. Multiple copies for one individual or institution were not made.

The problems associated with the copying of unpublished works deposited in a library and available for public access were mentioned, and a number of recommendations were made for reform of the law.

18. *New South Wales Museum of Applied Arts and Sciences*

Written submissions were made to the Committee by the New South Wales Museum of Applied Arts and Sciences. The submissions included the following information:

The library of the museum is a special library existing primarily to serve the museum's curatorial, scientific, educational and technical staff, and while it is not a general public library, it engages in borrowing from and lending to other institutions on an inter-library loan basis.

Submissions were made that any amendment to the *Copyright Act* should not result in restrictions to the free flow of information and the dissemination of knowledge, particularly as the research worker in Australia already labours under the handicap of his geographical isolation from world centres of learning. It was stated that books and journals from overseas arrived in Australia up to two months later than elsewhere. It was submitted that ready and immediate access to the very latest scientific literature was most important for the advancement of scientific research everywhere, and this was reflected in the frequent exchange of copies of published scientific papers by their authors. The submissions pointed out that the library of the museum itself held stocks of reprints of papers published by officers of the museum. These reprints were supplied on request.

While it could be argued that publishers had a moral entitlement to some kind of compensation for possible loss of profits as a result of extensive copying, any scheme for remuneration must be practical. The submissions expressed a fear that a compensation scheme would result in an immense burden on library administration, and that the cost would greatly exceed the amount of any compensation the scheme would be likely to provide.

19. *Mr S. L. Ryan*

Mr S. L. Ryan, the State Librarian of the State Library of Queensland, made personal written and oral submissions to the Committee. The submissions included the following information:

In the State Library all photocopying was done by Library staff and a form of declaration was required before copies would be made for users of the Library. Mr Ryan submitted that the Copyright Act at present placed some unnecessary burdens on librarians in this regard.

Mr Ryan was of the view that the majority of copying in the Library was of material which was unlikely to be reprinted, such as journal articles.

Mr Ryan mentioned the need to preserve primary sources of out-of-print material. He also referred to the fact that some libraries, particularly university libraries, had felt the need to make some multiple copies, particularly of articles from journals, for

student use in the library. A need arose in part from the delay in getting books, which was increasing, and which, according to Mr Ryan, is now up to five months in respect of books from England. Mr Ryan also pointed out that an increasing percentage of books becomes out of print much more rapidly than in the past.

As an example of the need to make copies of journal articles, Mr Ryan referred to requests to supply two, three or four copies of an article to departmental scientists or engineers situated in various parts of the State. This was a much more effective and quicker method than the circulation of the actual article.

20. University of Adelaide

Written and oral submissions were made to the Committee by the University of Adelaide. Oral submissions were made on its behalf by the University Librarian, Mr I. D. Raymond. The submissions included the, following information:

The University of Adelaide supported the submissions of the Australian Vice-Chancellors' Committee.

The University of Adelaide has a central library and a number of branch libraries which housed altogether about 750000 volumes with a library staff of approximately 130. The libraries served about 10000 students and staff. Branch libraries were at, for example, the Waite Agricultural Research Institute, the Department of Music, the Medical School and the Law School. The central library held about 60000 to 70000 volumes.

Photocopying facilities existed in branch libraries and the central library housed about nine or ten coin-operated self-service machines, two of which were staffed during the day and during that period were not coin-operated. However, each individual machine was not attended, but in general one machine at each location was attended during the day-time. A charge of 5 cents per copy was made. For much of the academic year, the library was open for up to 82 hours a week, and to provide fully supervised machines for this period would require an increase of at least 100 per cent in copy charges.

Extended observation of copying in the library led to the conclusion that copying was mainly of odd pages from books, single articles, or parts of articles from periodicals, personal notes and papers, correspondence and administrative papers. The making of multiple copies of copyright material seemed seldom to occur. Imaginative literature was in only slight demand for copying. Copying of whole books or whole issues of journals was seldom attempted by users, both because the library staff tried to prevent it, and because the cost was a deterrent.

Mr Raymond expressed the view that most of the copying was of other than imaginative literature and consisted of articles in periodicals and articles of an informational nature written by people who were not earning their living by writing that type of material.

The University of Adelaide spent about \$500000 per year on first copies of books and periodicals.

It was estimated that in 1975 the University would spend \$230000 on current

periodicals, and, in addition, a proportion of total monies on back issues of periodicals which varied from year to year. About \$50000 to \$60000 per year would be spent on binding of periodicals. Of \$200000 spent on books, approximately \$40000 would be spent on the purchasing of multiple copies.

On occasions there was a demand for making more than one copy of an article in a journal for library use. The library staff made copies of articles or parts of books for placing on the reserve system, and occasionally more than one copy was made of a journal article at the instigation of departments. Every time a book was put on reserve, an effort was made to secure another copy to put on open shelves for lending. In some cases, 10 or 12 copies of a book were purchased.

It was estimated that the University carried subscriptions to about 7000 journals. A considerable number of journals was also obtained free or on exchange. In addition, the Waite Institute obtained something like 3000 journals, most of which came on exchange. Some multiple subscriptions were made by the University and there were probably two or more subscriptions to between 100 and 200 journals. The equivalent of about 50000 volumes was held by the University on microfilm or microfiche. Mr Raymond estimated that less than 10 per cent of the books in the library would be Australian,

Mr Raymond expressed the view that it would be very difficult for the University to carry out any detailed sampling of what was copied on machines in the Library, except in relation to inter-library loans which required signed requests. Even if the sampling were done over a short period, it would be difficult to get staff to supervise copying on the coin-operated machines for that short period. If students were required to fill in records of what they copied, the process of copying would be slowed down and some students would do their copying on other machines outside the campus. Students can borrow books, and fourth year students, honours students and senior students can also borrow periodicals from the library. Mr Raymond estimated that for a three-week survey period the University would probably have to put on 20 extra staff to supervise copying during the hours that the library was then open. He said he would not rely on an accurate record of copying by students. The accuracy of such a record would depend on the goodwill of the students which in turn would be affected to some extent by the attitude of student leaders to the whole operation.

Probably no more than 100000 of the 750000 volumes in the library were borrowed or used regularly, and a large number of volumes in the library were old books which would not have copyright protection. If it were permissible, probably more multiple copies of articles would be made by the library for use in the reserve system but no more copies would be made for inter-library loans nor would there be copying of whole books for users of the library.

21. *Mr L. Jolley*

Mr Jolley, University Librarian of the University of Western Australia, made personal written and oral submissions to the Committee. His submissions included the following information:

When a demand for a copy of a particular article arose usually additional copies or reprints of the periodical could not be purchased. In the rare cases where reprints

were available, the time lag in obtaining them was far too great for such reprints to have any value.

Many publishers of periodicals refused to entertain claims for non-receipt of periodical parts if these claims did not reach them before the end of three months from the date of publication of the periodical part. Many overseas periodicals did not reach Australia within three months of publication. In Western Australia the position was made more difficult by the decision of the shipping lines to by-pass Fremantle on the outward voyage from Europe.

In the case of a learned journal, quite frequently one article was required reading for a very large number of students, and multiple copies of this article were made and kept in the library. It would be impracticable and financially impossible for a library to buy five copies of an issue of a journal every time this demand arose.

Most libraries purchased second copies of journals where there was an established continuing demand for more than one copy. In the University of Western Australia about 15 copies of *Nature* were purchased partly due to the geographical distribution of departments requiring the use of journals.

Copying in the University library was undertaken both by library staff who handle requests from readers and by readers using coin-operated self-service photocopyers. These machines were not normally directly supervised, but had notices displayed nearby warning users about the *Copyright Act*.

The overwhelming bulk of copying in the library was of overseas publications and of single articles from journals.

A requirement to keep individual records of copying on coin-operated self-service machines would mean that these machines would disappear and a heavy burden would be placed on staff-operated copiers. Otherwise, the records kept on non-supervised coin-operated machines would not be very accurate.

One of the reasons that some scientific journals tend to go out of existence and others to come into existence was that science was becoming more and more specialised. It seems likely that the method of dissemination of technical information may change, and instead of publication of a whole journal, publishers may only publish a contents list, or a brief extract, and those who required copies of the articles would purchase them separately. The use of computerised systems, such as MEDLARS, would also become more prevalent in this area.

The size and number of some journals, such as the *Physical Review*, posed storage problems.

Microfiche copies of overseas journals, if available, could be obtained in Perth within ten days by airmail, compared with three or four months by sea. The University subscribed to some journals on microfiche.

Mr Jolley also made submissions to the Committee on some matters which fell outside its terms of reference.

22. Mr G. G. Allen

Mr Allen, Principal Librarian of the Western Australian Institute of Technology, made personal written and oral submissions to the Committee. His submissions included the following information;

Photocopying carried out in the T. L. Robertson Library of the Institute was by manned over-the-counter service and not by self-service machines. The direct labour cost of such a service appeared to be about 5 cents per page copied.

An analysis of 2754 requests made in the Library in August and September 1974 for copies of books and periodicals showed that the total number of pages copied was 16186, an average of 5.88 pages per request. The average percentage copied of a book was 2.46 per cent, and of a periodical, 5.28 per cent. Of the total number of pages copied, 2888 being 17.8 per cent, were of Australian published material. However, of these, 709 pages were not subject to copyright so the Australian copyright material that was copied was 2179 pages, being 13.8 per cent of the total pages copied. The average percentage of complete volumes of Australian material copied was 3.09 per cent for books and 6.55 per cent for periodicals. Most of the material copied was less than three years old. It was therefore likely that much of the material copied would be in print, at least that proportion residing in books, but the current pattern of periodical publications is quite different and even after only a few months it is often difficult to purchase back issues of journals, particularly odd issues.

The nature of the copyright material copied during the survey was analysed with the following results: bibliographical etc. material 22.9 per cent, encyclopedias 17.6 per cent, sociological material 12 per cent, medicine 9.2 per cent and scientific material 6.9 per cent. Copying from engineering material amounted to 4.1 per cent of total copying, psychological material 4 per cent and management material 3.9 per cent. Copying from the category of language and literature amounted to only 1 per cent of the material copied, despite the fact that the Institute had a Department of English and Language Interests.

Mr Allen stated that he had no reason to suppose that the results of the survey would not be reasonably representative of the whole year's activities.

In Mr Allen's view, copying from journal articles usually amounted to copying of the complete article.

In making the survey, it was found that many copying records were incomplete or incorrect, or were, for other reasons, unacceptable.

23. University Librarian, Griffith University

The University Librarian of Griffith University, Mr S. B. Page, made written and oral submissions to the Committee which included the following information:

There was a need to copy publications and unpublished documents for preservation purposes and to microfilm journals for the purpose of more efficient storage in the library.

Mention was made of problems which existed within the University with respect

to incompatible formats of copyright material and the need to put such material in a more convenient form. However, these problems concerned principally material outside the terms of reference of this Committee.

Mr Page stated that problems existed in obtaining books published outside Australia in time for courses. He provided the example of difficulties encountered when obtaining extra copies of specialised books and journals for the School of Modern Asian Studies in the University. These were almost all published overseas. He stated that there was a need in this kind of situation to copy chapters of books and journal articles for reserve collections in the library.

Mr Page pointed out that back issues of journals were either difficult to obtain or were not available, there were delays in obtaining permission to copy, and requests to copy were not welcomed by publishers. Such individual requests to reproduce parts of works would probably be also uneconomic for the publisher to handle.

Mr Page was of the view, however, that the recording of, and payment of a fee for, multiple copying of a chapter or more of a book was feasible and reasonable, provided the University did not have to identify the author.

The making of multiple copies of chapters of books or of articles from journals in university libraries was very common.

24. Australian Vice-Chancellors' Committee

The Australian Vice-Chancellors Committee made written and oral submissions to the Committee. The latter were presented by Professor (now Sir Zelman) Cowen and Mr T. G. Matthews, Vice-Chancellor and Legal Officer respectively of the University of Queensland, and Mr D. C. Pearce, Reader in Law at the Australian National University. The submissions included the following information:

The total number of students in Australian universities was, at the time the submissions were made, approximately 140000, and the academic staff approximately 12000.

From an examination of the usage of paper, it was estimated that coin-operated machines in university libraries produced approximately 16500000 sheets per annum. It was estimated, although it was thought to be only a rough estimate, that approximately the same number of sheets were used by the teaching, research and clerical staff on non-coin-operated machines.

It was estimated that in 1974 the average number of sheets used per student on coin-operated machines was 120, and if one assumes that four subjects is a reasonable enrolment for each student, a total of 30 sheets per subject per student. A proportion of this copying was of material consisting of students' lecture notes or like material, but no accurate estimate could be made of this.

The amount of copying depended to a substantial extent on the period of the year being examined, and varied from university to university. Such information as was available to the Australian Vice-Chancellors' Committee indicated that the bulk of the copying was either of single articles, or parts of single articles from periodicals, or of short extracts from monographs, and that informative material was much more likely to be copied than imaginative material.

The Australian Vice-Chancellor's Committee was of the view that no simple

sampling technique would produce any useful results to establish what works were being copied, and that, in any event, accurate statistical information could not be obtained unless a sample was taken, if not over a full year, at least during varying typical periods over the year.

Mr Matthews produced tables showing the lack of consistency in the choice of textbooks in universities in Australia which pointed to likely difficulties which would arise in relation to the sampling of copying. They showed, for example, a comparison of the psychology books recommended for first year students in the Universities of Tasmania, Western Australia, La Trobe and Sydney. Of the 12 prescribed books on the list of the University of Tasmania, only two were on the list of either of the other Universities, one being on the list of the University of Sydney and one being on the list of the University of Western Australia. Of the five textbooks or books for preliminary reading in the University of Western Australia, only one was on the list of either of the other three universities. Of the six on the list of prescribed and preliminary reading for La Trobe University, none was on the corresponding lists for the other three universities. Of the eight on the University of Sydney list of textbooks, only one was on the list of any of the other three universities. A somewhat similar position was shown to exist in relation to first year English (with regard to Australian literature). For example, in comparison between Monash University, the University of Queensland, the University of Newcastle and the University of Western Australia, of the twelve books on the prescribed list for Monash University three also appeared on the University of Queensland list, three on the University of Western Australia list and none on the University of Newcastle list. Of the nine prescribed books on the list for the University of Queensland three appeared on the Monash list and two on the University of Newcastle list and none on the list of the University of Western Australia. Of the 16 prescribed books on the University of Newcastle list, two appeared on the list of the University of Queensland and two on that of the University of Western Australia and none on the list of Monash University. Of the 12 books on the prescribed list for the University of Western Australia, three appeared on the list of Monash University, two on the list of the University of Newcastle and none on the list of the University of Queensland.

At present, the universities keep no record of copying on coin-operated machines, nor do they make a record of the details of the material copied on other machines. It was estimated that to supervise coin-operated machines to obtain a complete record of what was being copied would be extremely costly and that, in relation to the University of Queensland alone, labour costs would exceed \$115000 per annum. Mr Matthews estimated that the total labour costs for such supervision in all the universities would be over \$1 000000 and that this, apportioned over 16.5 million sheets, represented about seven cents a sheet for labour costs. He was also of the view that it would be necessary to add approximately 100 per cent to the labour cost figure to cover the costs of overheads.

It appeared from statistics submitted by the Library Association of Australia, of the total volumes in libraries, that there were in the order of 8 million or more volumes held in university libraries, and, according to Mr Pearce, something in the order of 2500000 journal articles came to Australia annually. It was stated by Mr Bryant, representing the library of the University of Sydney, that in 1975 the University would spend approximately \$1 million on books and periodicals and, of this figure, \$385000 would be spent on periodicals.

Evidence was given by Mr Pearce and Professor Cowen that, at least in relation to

certain journals published in Australia, practice varies as to whether the author assigns copyright to the publisher or retains it himself.

Professor Cowen expressed the view, in relation to scientific journals, that almost invariably the author welcomed photocopying in order to have his work disseminated.

The Australian Vice-Chancellors' Committee submitted that material was copied for a variety of reasons. The reasons put forward were:

1. the need to obtain a small part of a printed work for study or research,
2. because material was out of print,
3. to preserve the original works from wear and tear, to allow articles or extracts to be used by large numbers of students; to distribute articles or extracts through decentralised library facilities and to permit borrowing of material in certain cases. These needs were felt particularly in relation to articles in periodicals whose publishers were not prepared to reprint individual issues and in general, would not supply back numbers after a very limited period. In this regard Professor Cowen thought that there was a need to permit limited multiple copying of articles in journals for the use of students.
4. for greater convenience in private study,
5. for copies of material which has only recently been published, for example, where the availability of a work published in the United States has been delayed as a result of the British Publishers Agreement.

The Australian Vice-Chancellors' Committee submitted that the growth of photocopying had been stimulated by changes in teaching techniques which had led to extensive issuing of materials to students who now required greater access to a large quantity of diverse material. The Committee viewed copying as an essential part of the modern educational system.

Mr Pearce analysed the submissions of Mr Banki concerning overseas legislation and submitted that the legislation showed that a considerable degree of copying without remuneration was permitted in nearly all of the countries Mr Banki cited, and that the rights given to users of copyright material were much greater than those given to users in Australia under the present 'fair dealing' concept embodied in the Act.

The Australian Vice-Chancellors' Committee stressed the two-sided aspect of copyright legislation and submitted that it should not confer an absolute discretion to prevent copying in situations where the wider and less well defined interests of the public demand that it be permitted. It also submitted that it had not seen any evidence that a workable system could be devised whereby a royalty for photocopies could be paid to particular authors and/or publishers in respect of the particular work copied although it saw substantial arguments for recognizing a right, on the part of authors and publishers, to receive some recompense for possible loss arising from the technological advances made in education over recent decades. It recommended that if anything was to be done in this regard an analogy to the Public Lending Right might be considered the appropriate way of providing remuneration and that it be paid only to Australian authors and publishers.

The Committee suggested various reforms of the present Act, in particular relating to sections 40, 50 and 200.

25. Australian Department of Education

The Australian Department of Education made written and oral submissions to the Committee. Oral submissions were made on its behalf by Mr J. Price and Mr J. R. Brummell. The submissions included the, following information:

The Department of Education has a direct responsibility for the provision of education in the Australian Capital Territory and the Northern Territory. The submissions represented the views of the Department, the Interim A.C.T. Schools Authority and Northern Territory education authorities.

Published material made use of in the classroom includes a substantial amount of material with a highly derivative content, for example, sets of mathematical tables. In this regard Mr Price made reference to a book of which he himself was an author, entitled *Map Guide to Modern History*.

The submissions stressed the importance of copying in the educational process as a means of widening access to published material.

Textbooks became out of date in a relatively short period of time. This compelled educators to rely more on material in magazines, journals etc. for more up-to-date information. The individualisation of learning also results in the textbook playing a less significant part in the classroom.

It was stated that to provide each of the approximately 1400 secondary schools in Australia with a clerical assistant to monitor photocopying at a salary of \$5000 a year would involve an annual cost of \$7000000. In addition, there would probably be resistance from teachers if they were required to carry out a recording procedure for copying. Both schools and educational systems would be likely to forego photocopying rather than meet such expenditure.

In an attempt to ascertain the extent to which reprographic reproduction was being undertaken in schools in the A. C. T., the Department of Education conducted a survey of all schools in the A. C. T., to which there was a 70 per cent response. Schools indicated that limited time and staff resources prevented their giving detailed weekly estimates of the amount of copying in schools, but it was possible to gain from the survey an overall impression of the situation.

It was stated that all government and non-government schools in the A.C.T. had reprographic facilities, with high schools having a variety of these. Primary schools had several duplicators, and at least one photocopying machine, which generally was not coin-operated, and which was not used by students. The majority of high schools had coin-operated machines available, usually in the library, for student use, as well as other types of copying machines for teachers' use.

In almost half the primary schools, access to copying facilities was limited, with a few schools requiring the approval of the principal or assistant principal. Teacher access was unrestricted in the majority of high schools. Any restrictions on access were generally due to the cost of operation. Student access to coin-operated machines was unrestricted in some schools.

The nature of copying was described including copying outside the terms of reference of this Committee. In both primary and high schools, the bulk of copying consisted of multiple copying of a single page or a few pages for distribution to classes. There was some, but not a great deal, of copying of whole chapters of books. In addition, multiple copying of sections of journals and periodicals did occur in high schools, usually by school librarians to overcome the problems of loss, damage or

unavailability of material, but Mr Price did not think journal copying was particularly significant in schools. Probably a quarter to a half of the copying was of material prepared in the school.

The material copied included diagrams, maps, illustrations, poems, reading passages, sheet music, as well as internal material such as administrative circulars and original material in the nature of work sheets and tests designed by teachers. This type of copying was of a supplementary nature, which supported and reinforced work being done in the class. Teachers also copied for their own benefit, for example, material related to teaching methods.

Copying by students formed only a minor part of the total copying in high schools, and was in the form of a single copy for their own use of one or two pages of material such as maps or illustrations.

While one school estimated that as little as 5 per cent of the material copied was Australian, the figure for almost half the primary schools ranged from 80 to 100 per cent. Apart from material copied for a number of junior high school subjects where there was a high proportion of Australian content, most of the material copied in high schools was published overseas.

One reason given for copying was that it was frequently more practicable to copy material when there was a waiting period of up to six months for the delivery of material from suppliers, especially from overseas.

It was submitted that it would appear unlikely that schools would substantially increase their purchases of books if they did not have access to copying facilities.

The recommended minimum stock of books under Australian Government library standards for a primary school of 500 pupils was 7500, and for a secondary school of 1000 pupils 15750. It would be unusual to find a library having more than 20 copies of an author's work, but multiple copies in libraries were not unusual. However, in relation to text books distributed to classes, the figure could be much higher, and it was thought a figure of 200 would not be unrealistic.

Mr Price stated that the vagueness of the Act was probably the main difficulty faced by schools in seeking to ensure that they worked within the law.

The Department saw problems in relation to the Australian Copyright Council Ltd's proposals for voluntary licensing such as the expense and difficulty of a sampling procedure of copying in schools.

Mr Price thought that the scheme envisaged by the Australian Copyright Council Ltd was so administratively difficult and expensive that schools would reject it.

Mr Price thought that a two-tiered pricing system including in the higher rate permission to copy would be acceptable if the rate was reasonable.

The Department of Education referred to copying outside the terms of reference of the Committee, and also made recommendations for reform of the law. For instance, it suggested that multiple copying for a class should be permitted provided the material did not exceed a quantitative proportion of the published work.

26. Premier's Department of New South Wales relating to government schools

The Premier's Department of New South Wales made written and oral submissions to the Committee concerning copying in New South Wales Government schools. The oral submissions were by Mr R. Winder and Mr H. Carey who were officers of the New South Wales Department of Education. The submissions included the following information:

New South Wales schools in general had widespread access to copying machines of various kinds and the use of the machines was considered an integral and essential part of modern educational technique. It would not be unusual for any one of the 320 secondary schools in New South Wales to possess:

- 2 or 3 3M dry copiers
- 1 thermal copier
- 1 scanner for preparation of stencils
- 1 ink duplicator for multiplication of copies from master sheets
- 3 spirit duplicators
- 6 or 7 sound tape recorders
- 1 video tape recorder
- and a number of overhead projectors and machines for preparing slides for projection.

Similarly, a primary school, and there were 1969 such schools, may have one or two copiers, duplicators and a number of sound recorders for staff use.

Schools varied greatly in size, staffing and administration. Some schools had trained teacher librarians but there were almost 500 smaller schools with one or two teachers and about 10000 ancillary staff in New South Wales Government schools. present all the time. There would therefore be approximately 900 schools without staff to exercise any kind of supervisory or participatory recording of copying.

There were 2200 government schools in New South Wales and in addition about 804 non-government schools. There were approximately 900000 students, 39000 teachers and about 10000 ancillary staff in New South Wales government schools. Expenditure on stationery for copying machines in these schools in 1973 was estimated to be in excess of \$1.8 million.

Schools varied in their arrangements for the provision and use of copying machines. Some schools required the completion of forms and applied volume control to copying. Others allowed staff free access to machines, and some schools had coin-operated machines for students. The amount of supervision varied, some schools had close supervision of the machines and others had free access.

The total expenditure on government schools, excluding works of a capital nature, was in the order of \$520 million. If the government accepted a voluntary licensing scheme for the remuneration of authors, the Department of Education would be concerned that the cost associated with it would be made from additional funds rather than from funds already provided. There was therefore a danger that such a scheme might reduce the general provision of educational services.

The scheme proposed by the Australian Copyright Council Ltd seemed complex and undesirable. Detailed reasons were given for this view. For instance, it was

suggested that the system of negotiation on limits of copying set by owners would offer less security to users than having the limits fixed by law. The limits set by owners may also vary from copyright agency to copyright agency and over time and the scheme may not include certain classes of works for which there was a copying need. Problems such as the costs of supervision of copying and the practical difficulties associated with lists of works not within such a scheme were also involved.

The Department of Education was of the view that the making of multiple copies for use by teachers should be permitted by law, and that amendment of the law should be such that teachers and students having access to machines could observe the requirements of the law without the necessity for supervision of machines by staff with special expertise. The Department would not want a position where copying required ancillary staff to make judgments about the legality of copying certain material.

Mr Winder stated that while the Department of Education advocated liberalisation of the law, it had not yet determined its attitude towards some kind of remuneration to authors and publishers. Mr Winder stated that no scheme of remuneration which he had considered seemed practicable and workable.

Mr Winder stated that he had never received or heard of any complaint concerning breaches of the *Copyright Act* in New South Wales Government schools, but such complaints could be made to, say, an inspector of schools or a regional officer, who, he felt, would examine any complaint properly. However, the Government had received representations on reprographic reproduction in which it was claimed that the established patterns of use and need infringed existing provisions of the *Copyright Act*.

Mr Winder stated that most teachers copied for time, convenience or non-availability considerations.

Mr Winder stated that copying was not becoming a substitute for the purchase of multiple copies of books for students, and that Departmental library policy with regard to books was often to buy a number of copies (usually from four to eight but occasionally up to 20) for the library. Where the book was a textbook, then most schools had hiring schemes.

Mr Winder stated that great difficulties would occur if licensing was undertaken school by school.

It was also stated that prescription of books applied only to external examination years at schools and this is now only the Higher School Certificate year. Mr Winder stated that textbooks generally varied from school to school.

Mr Winder was of the view that photographs and works of art were frequently copied in schools, and that there was substantial use of journal materials and newspapers in the 5th and 6th form years.

The Committee also received submissions from Mr Carey on matters which fell outside its terms of reference, such as the copying of broadcast radio and television programs, which the Department had felt should be considered.

27. Queensland Department of Education

The Queensland Department of Education made written and oral submissions to the Committee. The oral submissions were made on its behalf by Mr P. J. Pegg, School Library Adviser, Miss M. Messer, Assistant Supervisor, Secondary School Library Service, and Mr J. G. Kitt, Co-ordinator of Television and Radio Services. The submissions included the following information.

There were 1059 primary and 118 secondary schools within the responsibility of the Department. Information was supplied to the Committee concerning the kinds of media equipment available for use in schools and the use to which such equipment was put.

Some types of photocopying machines were available to schools. These were diffusion transfer, thermal, dual spectrum and electrostatic machines, of which the latter was the most likely to be used in view of cost and quality considerations. Coin-operated self-service machines were often located in school libraries and a charge, usually of 5c per sheet, was made in respect of copying.

Mr Pegg stated that every high school and about 60 per cent of the primary schools in the State would have a thermal copier which could be used to make an ink stencil or master copy for the production of multiple copies of material. However these copiers are only able to copy from single sheets.

Mr Pegg stated the Department spends approximately \$200000 a year on media equipment for schools although on occasions this figure is much higher. The allocation of monies between primary and secondary schools is approximately half and half.

Following legal advice, guidelines for copying were circulated to all schools.

Mr Pegg stated that the Department had not made any survey of copying in schools. He did state, however, on the basis of his experience that copying of poems was one area where copyright infringement could occur but that generally there was not a great deal of infringement. From his experience, most teacher librarians tended to refuse requests where teachers wished to copy sheet music. In his view, most copying in schools was single sheet copying and in most cases single copies.

The Department was concerned that there should be direct negotiations between the copyright owner and the Department where any multiple copying of more than insubstantial amounts of copyright material was undertaken. It was considering a proposal, which had not been formularised, which envisaged that in situations where multiple copies were required, the teacher, through the principal of the school, would communicate directly to the Department, setting out on a form the author, title, publisher, and the extent of the extract, the number of copies required and the period for which they would be required. The Department would then negotiate with the owner of copyright for that use.

Mr Pegg stated that staffing proposals to implement the scheme were in operation and that he thought the scheme could be administered by two people, with professional staff to oversee their work and handle specific problems referred to them. Miss Messer thought that there might not be much call for the service and not enough work for two people.

Mr Pegg stated that staffing required in schools for the scheme would be accommodated within the present structure.

Requests would probably be handled individually although in some cases

economies of scale could be considered and requests could be combined.

Miss Messer explained that it was difficult to cost the operation of the scheme because it was difficult to forecast how much the scheme would be used.

Mr Pegg stated that the scheme would be particularly applicable to correspondence schools and the school of the air, and that communication could occur by telex in the case of more isolated regions. He thought that a system of arbitration or a procedure to fix a rate of copying when rates charged were unreasonable or could not be agreed on was reasonable, but he did not envisage a compulsory licence which he thought would not be fair to copyright owners.

Mr Pegg stated that a distinction should be made between educational and commercial use of copyright material, and that a lower charge should be made for educational use.

Mr Pegg stated it would not be feasible to make a record of each copy of copyright material made in schools, whether substantial or insubstantial, without an increase in staff, cost to the schools, and a reduction in accessibility to material in the school. Inconvenience and staffing problems would also arise if a decision had to be made in each instance whether copying was substantial or not, particularly in relation to copying on coin-operated self-service machines.

Criticism was made of section 49(3)(b) of the *Copyright Act* as being unrealistic since it was submitted that no economically viable system yet devised could guarantee that a person, once supplied with an item, would never again be supplied with that item. In addition, the sections did not take account of the situation where copies required for temporary purposes may be destroyed when a task in hand had been completed, but additional copies may later be required for purposes not necessarily foreseen at the time of destroying the first copy. It was submitted that several copies of some material could be required by one person for different purposes in different disciplines, and that this should be permitted.

The Department made several recommendations for reform of the law, and mentioned matters which fell outside the terms of reference of this Committee, such as the performance of works in the course of educational instruction, the copying of phonograph records, and the recording of television and radio broadcasts.

28. New South Wales Colleges of Advanced Education

A written submission on behalf of the colleges of advanced education in New South Wales was submitted to the Committee. In addition, oral submissions were made on behalf of the colleges by Mr P. Allmond, Deputy Registrar, New South Wales Institute of Technology, Mr I. D. Wren, Secretary, Northern Rivers College of Advanced Education and Ms M. Caldwell, Librarian of the New South Wales Conservatorium of Music. The submissions included the following information:

There were 16 colleges of advanced education in New South Wales, and some 25 institutions in New South Wales which offered courses in advanced education, accounting in all for approximately 28000 students. The New South Wales Conservatorium of Music, which offered a number of courses in advanced education, was also a party to the submission.

The colleges varied greatly in size, the largest being the New South Wales Institute

of Technology with some 6000 students. The colleges had a high proportion of part-time students.

In response to the needs of industry and commerce colleges of advanced education were developing a number of areas of study not previously treated in Australia, and this involved appointment of academic staff from overseas. They, and other lecturers, frequently recommended texts and other literature not easily obtainable in Australia, and certainly not in bulk. Considerable multiple copying took place to enable reasonable access by students. In addition, the time lag involved in purchasing books from overseas, and the expense of many books and periodical subscriptions, which was often well beyond the resources of the student or the college, exacerbated the problem of limited availability of material.

If the practice of multiple copying of material were to cease, part-time students and external students would be seriously disadvantaged.

It was common for lecturers to make multiple copies of problems for circulation as class exercises. Multiple copying may also consist of the making of three or four copies of a number of articles for use in the library. In the larger colleges, individual departments had their own copying machines for the use of staff.

In the New South Wales Institute of Technology, most copying was undertaken for lecture purposes. Most material copied was of an overseas origin. A survey in the last six months of 1974 in the Faculty of Architecture illustrated the extent to which multiple copying was carried out. On average about five pages per copyright item were copied, and over the period about 300 copyright items were copied. Most of the items were from journals and relatively few were from books.

Students had access to coin-operated self-service machines in the libraries of most colleges. The cost of using such machines was about 5 cents per copy. Administrative and other staff were also involved in copying.

The colleges also drew attention to the need to copy audio and audio-visual material for educational purposes and discussed other matters which fell outside the terms of reference of this Committee.

Copying of music raised a number of problems. It was difficult to determine whether some music had copyright protection, particularly with the presentation of various editions of works. In addition, with publishing costs rising, many publishers appeared unwilling to reprint material for which there was little demand. Where material was unavailable, either because it was out of print or had been placed on hire only, staff and students were not stopped from making necessary copies, although the institutions would not make them on an official basis for loan to outsiders. An increasing amount of music, particularly modern music and music in little demand, is now available only on hire. This is particularly inconvenient where the music is required for students for rehearsal and familiarisation only, and not for public performance. This system also extends to music which no longer has copyright protection. Music was copied where extra copies were required for orchestral parts, one example being where the teaching institution had been unable to purchase sufficient copies. Another example was copying for class use where the item was from a complete work or collected edition that was unsuitable because of physical size for this purpose, or where a work was unavailable and was required urgently,

Multiple copying was a severe drain on the funds of a college and any additional cost in the way of a fee for individual copies could be financially prohibitive to the student.

Statistics were supplied to the Committee indicating the planned increase in library holdings of books and periodicals. In addition, a comparison of reading lists for courses in education at 15 Australian colleges of advanced education and teachers colleges was submitted, in order to establish whether there was any common pattern with respect to the prescribed books. The lists were for compulsory and elective strands of three-year courses for primary and lower primary teachers. A total of 546 titles were listed and of these:

428 titles (78.4 per cent) were listed by 1 college only
 83 titles (15.1 per cent) were listed by 2 colleges only
 18 titles (3.3 per cent) were listed by 3 colleges only
 8 titles (1.5 per cent) were listed by 4 colleges only
 7 titles (1.3 per cent) were listed by 5 colleges only
 1 title (0.2 per cent) was listed by 6 colleges only
 1 title (0.2 per cent) was listed by 7 colleges only

Mr Wren also submitted a detailed analysis of costing one request for a single reproduction, and of making some payment to an individual author thereof, on the basis of existing procedures carried out in the Northern Rivers College of Advanced Education. He stated that these procedures would also be applicable to the majority of the colleges. The cost of the procedures was \$4.10, including \$2.80 for account staffs time if a separate payment was to be made to each author. Mr Wren stated that experience with the use of computers in accounting matters had not been, by any means, satisfactory, and government regulations at present required an independent verification of every account that was placed or received.

A suggestion was made that, where a book or journal was purchased by an educational institution, a small licence fee should be paid on purchase, payable by the bookseller directly to the author, which would entitle the institution to carry out a certain measure of copying from the book or journal for educational purposes.

29. *National Council of Independent Schools*

The Council made a brief written submission to the Committee. In addition, oral submissions were made on its behalf by Mr P. N. Thwaites, Chairman of the Council and Principal of Geelong College, and Mr A. McL. Scott, the Council's Executive Officer. The oral submissions included the following information:

The National Council is a national body representing at the time submissions were made 320 independent schools, which were affiliated through State associations. Some schools also falling within the National Catholic Education Commission were represented by the National Council. Independent schools had about 22 per cent of the Australian school-student population, but not all were members of the National Council.

Mr Thwaites stated that the schools represented all claimed to be autonomous and independent. Most schools had coin-operated self-service machines and, in addition, a great many had a reprographic section within the school administration for staff copying.

The use of wider source materials in schools had promoted copying. In addition, the problem of storage of materials was becoming more important, and Mr Thwaites considered that in the future it might be desirable to retain some older material, such as old periodicals, by recording them on microfilm or microfiche.

Mr Thwaites did not think that there was any significant copying of music in breach of copyright because music teachers were usually aware of their legal responsibilities in this regard. He stated that he did not believe that there was a great deal of multiple copying of substantial sections of works in schools, although there probably was of small extracts. Multiple copying of substantial parts of works would probably be of a poem or diagram.

Mr Thwaites saw great difficulty and cost for schools in keeping an accurate record of material photocopied, particularly of that copied on coin-operated self-service machines.

Because of the nature and diversity of independent schools, it would not be easy for any central body to represent them in negotiations in relation to copying carried out in independent schools.

Mr Thwaites stated that the whole trend in educational activity militates against teachers providing large parts of books to students by photocopying. He thought that very few teachers would now want to provide students with more than small sections of books by copying. However, in certain exceptional situations, such as a book being unavailable for some time, copying of substantial portions occurred.

Mr Thwaites stated that, although some teachers had difficulty in obtaining books in time for courses, the inconvenience could, in his opinion, usually be circumvented by efficient ordering practices.

Mr Thwaites thought that about 30 pages of photocopied material, reproduced out of books and issued to a student in a year, would be the maximum amount of copying undertaken in any of the independent schools. Mr Scott was of the opinion that this was a high estimate.

Mr Scott was of the opinion that there would be more copying from periodicals than from books in schools.

Mr Thwaites stated that the most senior students at school would only copy perhaps a couple of pages at a maximum from a copyright work.

30. Catholic Education Commission of Victoria

Father F. Shortis, a member of the Catholic Education Commission of Victoria, and also principal of a school, made oral submissions on behalf of the Commission, including the, following information:

In nearly all secondary schools with which Father Shortis was concerned, some sort of photocopying equipment was available in addition to duplicating machines, and a number of schools had scanning machines. Most of the photocopying machines in the 150 secondary and approximately 300 primary schools with which the Com-

mission was concerned were coin-operated and supervised by a librarian only to a very small extent.

Father Shortis considered that the photocopying machines were used extensively by students on a coin-operated basis. They were also used by teachers to make single copies and some multiple copies. He did not think the multiple copying of copyright works occurring in schools was extensive or that it involved (except in relation to certain kinds of works) substantial portions of the works, but he indicated that the degree to which multiple copying was being done varied from school to school and according to the teaching technique employed and the level of the class involved.

Father Shortis estimated that the amount of material handed to pupils in the form of multiple copies was in the order of 30 pages per pupil per year and he estimated that 80 per cent of this would be single page extracts and only 4 or 5 per cent would consist of copies of more than two pages. Poems, weather maps and statistics were the kinds of things of which multiple copies of more than a insubstantial part would be most likely to be made. He said that in his view most material copied was Australian, although the proportion varied from subject to subject. He stated that in some schools only 10 per cent of the material copied would be overseas material. He also said that no complaint had been received by him personally or by the Commission in respect of copying in schools with which it was concerned.

Father Shortis also said that with changing teaching techniques there was an increasing diversity in the texts used both within schools and from school to school and that he could not see teachers or students logging reliably copying done without supervision.

31. South Australian Institute of Teachers

Written and oral submissions were made to the Committee by the South Australian Institute of Teachers. The oral submissions were made on the Institute's behalf by its Vice-President, Mr L. E. Gelding. The submissions included the following information:

The Institute had at the time submissions were made about 18000 members, made up of teachers in government and private schools, at pre-primary, primary and secondary levels and certain other teachers.

It was estimated that at least half of all the copying in schools was carried out by students on coin-operated self-service machines and that the rest was carried out by teachers for students. Of the former, in the great majority of cases a small section of a book (a page or a half a page) is copied and only one copy is made. Of the latter, the material reproduced is usually a small section, for example, a copy of one page for use on an overhead projector, or enough photocopies of a passage for distribution to a class or a section of a class.

Photocopying in primary schools would probably not exceed a total of ten pages per pupil per year, and in most instances this would not exceed a single page. Even less copying would be done for pre-primary schools. Some of the copying done at all levels is carried out by way of heat copying which, of its nature, restricts the amount of material copied.

The growth of copying has arisen from the introduction of new teaching techniques

which employ wider source materials. It was, therefore, not realistic to try and prevent copying in educational situations. Some restriction on the use of coin-operated self-service machines by students results from the 5 cents a copy charge made in respect of copying on those machines.

Usually in primary and secondary schools textbooks are purchased for loan or hire respectively to students for the whole or part of the school year.

One particular problem confronting teachers was that there was often difficulty in obtaining books including some Australian books within a reasonable period of time. For example, problems sometimes arose when supplies of books ordered during the previous year did not arrive in time for the start of the new school year, and in those situations it was necessary to make copies of chapters of books so that classes could get under way. However, such instances occurred infrequently. Most of the books used for primary schools were published in Australia for primary schools.

Mr Gelding stated that he did not think that teachers would make use of any greater freedom to photocopy.

32. Copyright Sub-Committee of the Western Australian Teacher Education Authority

Written and oral submissions were made to the Committee by the Copyright Sub-Committee of the Western Australian Teacher Education Authority. The oral submissions were made on its behalf by Mr R. S. Penny, Supervisor, Media Services, Mt Lawley Teachers College and Mr L. H. McGrath, Assistant Vice-Principal at Churchlands Teachers College. The submissions included the following information:

The Western Australian Teacher Education Authority is a statutory body responsible for co-ordinating the work of the five autonomous teachers colleges in Western Australia. In 1975, there were approximately 3300 students in the colleges concerned and a staff of almost 400.

The Authority's Advisory Committee established a Copyright Sub-Committee in 1974 and the submissions are those of this Sub-Committee only.

It was submitted that both the educational user and the owner of copyright could benefit from a much wider use of copyright material than is presently permitted.

It was said that the trend towards 'resource-based learning' and the growth of modern copying devices led teachers into problems of obtaining copyright permission for the reproduction of copyright works. For instance, increasing emphasis was being placed on the use of up-to-date articles such as are published in many professional journals, and it was often desirable that an article should be duplicated in sufficient numbers for each student to gain access to it during a particular week. Similarly, a lecturer may wish to present to a class of say, 30, a copy of a poem. The Sub-Committee stated that such problems were often more serious in the case of external courses. For example, the case was cited of 80 students doing an external studies course in Aboriginal teacher education and the students who required a particular article for their study were scattered all over Western Australia. Obtaining a copyright clearance, it was submitted, was normally a complex and involved process and many materials

were comparatively minor and might not warrant the time and cost of such applications. However there was a need to make multiple copies of many types of materials for efficient access and use.

The submissions also drew attention to a number of matters not within the terms of reference of this Committee, such as 'off-air' recordings and copying of commercial discs by teachers colleges.

33. *Mr J. K. White*

Mr White, Senior Lecturer in Educational Technology in the Educational Technology Unit of the Victoria Institute of Colleges made personal written and oral submissions to the Committee, which included the following information..

Mr White had recently completed post-graduate study. He described the copying, mainly of journal articles, undertaken in the course of this study as well as the copying needs of a lecturer preparing for a class, and stressed the value of copying in the educational process. He also drew the Committee's attention to problems part-time students faced in obtaining access to material prescribed for university courses.

Mr White stated that a surcharge for copying was levied on the purchase price of some copyright material and he stated that he hoped that such a loading on the purchase price would have a general application to printed material.

Practical problems associated with the recording of copying on self-service machines in educational establishments were discussed with the Committee, and Mr White made recommendations for reform of the law to permit limited reproduction of copyright material for use in teaching. He also drew attention to the use of new technologies in the educational process, to the problems of transfer from one medium to another, and to some matters outside the terms of reference of this Committee.

34. *Mrs A. Zoureff*

Personal written and oral submissions were made to the Committee by Mrs A. Zoureff, who was then manager of a branch book store at La Trobe University. The submissions included the following information:

Mrs Zoureff drew attention to the number of book titles which were prescribed by academic staff at the University but which were found to be unavailable on order, usually because they were out of print. Referring to the academic year 1974-1975, she stated that by 31 July 1974 of the total books ordered some 200 titles were unavailable and most of those had been ordered in lots of 40 to 220 copies per title. These titles represented well over 10 percent of the texts ordered. Nearly all the books which were unavailable were not written by Australian authors.

She divided the books that were unavailable into the following categories:

Out of print	138 titles
Will take several months to be available	28 titles
Advised reprinting—but no date	5 titles
No Australian or British Rights	22 titles
Other difficulties	7 titles

Mrs Zoureff informed the Committee that there was at least one publisher in America who sold photocopied editions of out-of-print books, but that there was considerable delay in obtaining a book by this means. She said shipping delays were common and that, at the time of making her submissions, shipments from the U.S.A. were estimated from 12 to 16 weeks and from the U.K. from 16 to 20 weeks. These periods could well be extended by strikes and lack of available shipping.

Mrs Zoureff thought that photocopying part of a book did not affect the sale of a book because the copier was probably never in the market for the whole book. She also said that she did not believe authors complained about the photocopying of journal articles.

Mrs Zoureff also pointed out that photocopying machines were becoming cheaper and that students may be expected to photocopy at home in the future.

35. Mr C. W. Dunnett

In personal written and oral submissions, Mr Dunnett, Supervisor of the Educational Technology Centre, Education Department of South Australia, referred *inter alia* to the work being done by the Educational Technology Centre and in particular, to the preparation by the Centre of material for use in schools and to the production of multi-media material. He informed the Committee that there were approximately 700 government schools and 160 non-government schools in South Australia. These included 62 metropolitan high schools, 41 country schools, 48 area schools and a number of Aboriginal schools and special rural schools. Mr Dunnett's personal opinion was that very little photocopying took place in schools, and that the expense of copying on the machines which were available put limits on the amount of copying undertaken in schools.

36. Commonwealth Scientific and Industrial Research Organisation

The CSIRO made written and oral submissions to the Committee. The oral submissions were made on its behalf by;

Dr C. K. Coogan	Senior Principal Research Scientist in the Division of Chemical Physics and leader of the Solid State Chemistry Section
Mr P. J. Judge	Officer-in-Charge, Central Information, Library and Editorial Section
Mr P. H. Dawe	Chief Librarian
Mr T. J. Healey	Officer in Head Office concerned with industrial property matters
Mrs Y. B. Esplin	Regional Information Officer for Sydney,

The submissions included the following information:

The CSIRO had a total staff of some 7200, of whom about one-third were research scientists. They were located in more than 100 laboratories throughout Australia. The CSIRO is the largest single employer of research scientists and employs a large percentage of all research scientists employed in Australia.

The scientists of the organisation were served by a Central Information and Library Service and by 65 Divisional or Regional libraries under the administrative control of the Divisions concerned. Forty of these libraries were attached to scientific laboratories and about half as many were field station book holding centres which provided some support to research staff located at isolated stations. The libraries interacted strongly with each other and with other libraries in Australia and overseas. Total requests for loans from other libraries were approximately 16000 a year for monographs and about 38 000 a year for journal articles. Individual CSIRO libraries in all made annually 5500 requests for loans of monographs and 27000 requests for journal articles from other libraries. Of these requests about 80 per cent were met from within the CSIRO library system itself.

All libraries had copying facilities and provided copies on request to scientists within the CSIRO and to libraries or individuals outside the CSIRO if they were satisfied that the copies were for a purpose permitted by the relevant provisions of the *Copyright Act*. It was estimated that the total photocopy pages made by the libraries was in the order of 27000 a month or 324000 per annum. Almost 40 per cent of the total copying occurred in the two largest libraries. It was also estimated that about the same number of photocopies was made by individual scientists themselves on a self-serve basis so that total copying was about 650000 pages per annum.

The standard pricing policy in the organisation was 10 cents per sheet but practice in implementing the charge varied.

Warning notices on copyright were posted next to machines in about 50 per cent of the libraries and all CSIRO librarians had been instructed upon the provisions of the *Copyright Act*.

Copying was of articles in journals or sections of books or journals mostly published overseas, or of material of a 'non-copyright' nature.

It was estimated that about 70 per cent of the copying was of material subject to copyright and that about 90 per cent of the copying was from journals most of which had been published overseas and by an institute or society.

Dr Coogan stated that monographs were not normally copied at all, but occasionally an individual copied tables, diagrams or abstracts or perhaps the conclusions than an author reached.

The CSIRO did not make multiple copies of copyright works and it endeavored to ensure that all copying fell within the fair dealing provisions of the Act.

There was some copying of damaged material particularly where it could not be replaced.

Copies were made of copyright works to provide a scientist with a desk copy to annotate or to avoid a long loan of a work from a library when it may be required by others, as well as for economic or other reasons. In the case of journals, additional copies were generally not available within a reasonable time.

In cases of identified frequent demand, multiple subscriptions might be taken out for certain journals, whether the journal was Australian or not. Where a Division found that a journal was in constant demand, it was expected to purchase it and not to borrow it from another CSIRO library.

While photocopies of contents pages of some important journals were sent to some outlying stations, Divisional libraries were expected to be self-sufficient in such journals. For instance, the CSIRO had 35 subscriptions to *Scientific American*, and 22 to *Chemical Abstracts* the latter of which cost \$3000 each per annum.

About two-thirds of the journals received were on exchange for CSIRO journals or other report material.

Australian scientists have the handicap of being geographically isolated from most of the world's scientists and being geographically dispersed within Australia. Dr Coogan, who had considerable experience with the activities of the CSIRO and its officers, gave detailed information on the effect this problem had on access to the latest scientific information. He also described in detail the work of scientists. He pointed out that many scientists exchanged material with other scientists in the same field. This may be in the form of reprints of articles supplied by the publisher or it may be photocopies of other material from books, journals or non-copyright documents. In the CSIRO, scientists receive up to 200 reprints of their own articles for this purpose.

The CSIRO itself publishes about 12 journals which are sold or exchanged for other journals throughout the world. Dr Coogan stated that a CSIRO scientist in his laboratory usually submitted a paper to one of these journals or to the American Institute of Physics journals of which there are approximately 40 relevant to the work of the CSIRO, or to the Institute of Physics in the United Kingdom. Page charges had to be paid by the CSIRO and in respect of the American journals this was of the order of \$100 per page.

Dr Coogan stated that he thought 99 per cent of the journals to which authors from the CSIRO submit papers paid no fee of any kind to the author. He stated that scientists write papers for the purpose of disseminating information and the results of their work and were delighted to see their papers copied. Obtaining payment for a paper would not be a factor in placing a paper in a particular journal.

Dr Coogan stated that most journals were produced by scientific societies whose aim was to spread information about their particular discipline and he cited policy statements by two bodies, the British Institute of Physics and the Institute of Physics in the U. S. A., in which each welcomes the making of a single copy of a particular paper by anyone desiring to use it, although he stated that both were worried about the question of multiple copying. Dr Coogan referred the Committee to an article by H. William Koch entitled 'Copyrighting Physics Journals' in *Physics Today* (February 1974) concerning the attitudes of the Director of the American Institute of Physics to copying of its journals. The article illustrated the problems faced by publishers where institutions or governments systematically made wholesale copies of all journals without payment and alleged that subscription losses in the U.S.S.R. were very substantial because in the past some 400 copies of the whole of every issue of 15 American Institute of Physics journals were regularly made there. The article also alleged a serious loss of income due to wholesale copying of single articles by institutions in the United States of America.

Dr Coogan stated that it had been found that the most common number of papers for a scientist to have published was only one, and that in his laboratory about 50 journals would cover 99 per cent of all publications relevant to his work. Large increases in subscription costs had forced him personally to cease purchasing some journals of particular interest to himself.

Dr Coogan explained that the information explosion has been so great that in the last decade current estimates were that two million papers per annum were produced relevant to science. The number of scientific journals is now estimated at between 45000 and 50000.

Mr Dawe stated that it was difficult to replace copies of journals missing from the library's collection or which did not arrive, even if a request by air mail was sent almost immediately. He was of the view that publishers no longer found it economic to deal with single requests.

Dr Coogan pointed out that the article by Koch stated that it had been estimated that an average physics article was of special interest to only six readers because of the wide diversity of scientific interests. This highlighted the impracticability of

purchasing journals merely to obtain one single article.

Mr Dawe stated that libraries represent at least 80 per cent and perhaps 85 to 95 per cent of the market for scientific journals other than the most popular ones. He also referred to the increased cost of journals due to inflation and changes in the exchange rate. Mr Judge said that a few years ago a good scientific journal could exist if it published about 800 copies, and there were about 800 libraries around the world which could be relied upon to buy a good scientific journal, but the rise in printing costs and pressure on library budgets has affected the position.

Mr Dawe also pointed out that the number of libraries in tertiary institutions in Australia had increased dramatically in recent years, increasing the market for journals.

Dr Coogan stated that about 10 per cent of the shelf space in libraries would be taken up with monographs and the rest with journals,

The CSIRO seldom published monographs and almost all such scientific works written by CSIRO scientists were published by commercial publishers. The CSIRO had about 120000 monographs and these were being added to at the rate of about 8000 per annum.

Dr Coogan expressed concern at the implications of any restrictions placed on photocopying, such as copying being available but only through a supervised system during office hours, which would reduce the efficiency of working scientists. Mr Dawe stated that at present the practice regarding the recording of copying varied, but usually only the number of pages copied and sometimes the name of the officer copying was recorded. The representatives of the CSIRO considered the sampling scheme proposed by the Australian Copyright Council Ltd unworkable for scientific papers.

The use of computer-based abstract services such as INSPEC was described to the Committee. Mr Judge described the practical interrelationship between *CA Condensates* and *Chemical Abstracts* and stated that it was found that it was necessary to retain subscriptions to the printed form (*Chemical Abstracts*) although the current information service was available on tape. It was also stated that the use of computerised systems sometimes meant that abstracts of articles were available before copies of the journal arrived in Australia.

The CSIRO made a number of recommendations to the Committee such as the possible introduction of a two-tiered pricing policy for copyright material and also raised the question of the protection of material stored on magnetic (or paper) tapes. It also made submissions on matters which fell outside the terms of reference of the Committee.

37. Professor P. V. Angus-Leppan

Professor Angus-Leppan, Head of the School of Surveying at the University of New South Wales, made personal written and oral submissions to the Committee. The submissions included the following information:

The submissions referred to the use of copies of scientific and technical papers in one school within the Engineering Faculty of the University of New South Wales. It

was submitted that the School's use of this material, could be taken as typical of such use within an Engineering, Applied Science, or Science Faculty within the University,

Research workers often found it necessary to reproduce papers because of the inability of libraries to make loans of journals for extended periods and because of the requirement in the scientific field of intensive use of a paper over an extended period.

Researchers, who include staff and graduate students, often copied whole journal articles. Articles were sometimes copied from journals to which the copier subscribed personally because he wished to have the article in a more convenient form. Copies of a large number of articles may be collected before research was commenced in earnest. In general, the amount of copying done for research purposes from monographs would be quite small, and multiple copying, except on rare occasions, would not occur.

Students who were required to write essays or papers for seminars needed to be able to copy material. This ability to copy is a vital part of the teaching program in senior years where copying differs little from that of researchers. In lower years, where there was copying for essays, minor projects, and other assignments, a need existed for multiple copying. This was so because of the limited supply of material for assignments, and the great demand for such material over short periods. This need encompassed copies of journal papers, and occasionally, individual chapters of a monograph.

In general, writers of scientific articles did not receive a fee for writing, and in the case of technical and scientific monographs, the income which the author received from his publications was generally insignificant. The chief purpose of scientific and technical writing, as distinct from writing which popularises science, is communication of information. Professor Angus-Leppan submitted that the reproduction for study, teaching and research purposes of scientific papers and parts of technical and scientific monographs should be permitted by law, and, at least in almost all cases, without payment.

The School of Surveying had 350 undergraduate students, 17 higher degree students and 20 members of the teaching staff. It made approximately 25000 photocopies per annum, of which approximately 25 per cent were from journals and books, and nearly all of which were single copies. The above statistics related to copying done for teaching and research within the School. Students also had access to self-service machines in the main university library, but not in the School's library.

Professor Angus-Leppan was involved in the scientific field as an educator and scientist, an author of a number of papers in journals, an editor and publisher of five different books, and also had experience with a small publications section within his School.

Professor Angus-Leppan stated that the journals in the area of surveying and engineering were run by associations or societies and not on a profit-making basis.

He also mentioned his experience, within the School, of a small circulation internal report on matters which members of staff wanted published but which were either too specialised or too long to get into a journal. This report had developed into a series of regular publications with a circulation of 350 copies. A charge for copies to cover costs was made.

In the case of specialised scientific monographs, Professor Angus-Leppan stated that his experience had been that commercial publishers did not appear keen to publish such works. In one such case, the University itself had published the proceedings of an international conference.

Professor Angus-Leppan stated that as far as the publications of his department

were concerned he was only too pleased if anyone copied them or disseminated the information contained in them, particularly as interest in these publications may come mainly from overseas, and then generally from only one or two organisations or individuals in each country.

Professor Angus-Leppan stated that problems sometimes existed in relation to unavailable texts for students and in such cases he submitted that the making of multiple copies of the work for a class should be permitted. Professor Angus-Leppan also made recommendations for a change in the law relating to out-of-print works in cases where there was no intention to reprint.

38. *Institution of Engineers, Australia*

Written and oral submissions were made to the Committee by the Institution of Engineers. Oral submissions were made on the Institution's behalf by its Vice-President, Dr N. R. Sheridan. The submissions included the following information:

The Institution is a learned society of a major professional body for engineers in Australia. It had 28000 members who represented all branches and modes of practice of the profession.

The Institution published original papers in its serials to keep members informed of recent technical developments, and to inform the members of related professions and the public of engineering achievement. It published a journal and as well published technical papers in *Transactions*, of which there were three sets, each dealing with matters interesting a branch of the profession. It was the practice to provide members with only a copy of the transactions relating to the field with which the member was concerned.

The Institution did not pay the authors of the papers and required that they had no objection to the reprinting of the material by others.

Cost increases had made it difficult for the Institution to provide members with copies of its serial publications and there were also indications that members only required a selected number of publications provided they had access to libraries where the Institution's publications would be available. The Institution therefore believed its obligations could best be met by ensuring its publications were readily available in libraries as well as to abstracting and indexing services, and it welcomed photocopying by libraries as a means of disseminating the information at no cost to the Institution and no loss to the author. With the above system it envisaged publishing a much smaller number of copies of serials with a consequent saving in cost. A similar system existed with respect to English Engineering Societies except that members wrote to the societies and requested individual papers.

The Institution did not sell many transactions to anyone other than members but was however examining the position and anticipated that there would be a library market for them. Dr Sheridan stated that it would anticipate selling 1000–1 500 copies to overseas libraries.

Some consideration had been given to increasing the charge made to libraries for serial publications, but no simple way had been found to make such charges.

Authors retain copyright in the papers published by the Institution. However difficulties sometimes arise in this regard since in some cases the copyright may vest in the author's employer.

The Institution had published proceedings of a conference on microfiche, and it was looking to the possibility of publishing generally in microform, which is more economical. However this might have to await the development of reasonably inexpensive readers and reader/printers for the individual.

Dr Sheridan stated that he was not aware of any journals in the scientific and engineering field that paid authors for contributions although he did not include in this category semi-technical or popular journals.

The Institution would co-operate in a scheme to provide remuneration for copying to authors of monographs. It paid royalties to authors of monographs which it published and considered one way of providing remuneration was by differential charging in respect of multi-user services such as libraries.

Dr Sheridan stated that in an engineering establishment there was a need to make multiple copies of articles to co-ordinate the work of particular engineering projects which may involve up to 20 or more people. However there was no such need in relation to monographs where the only copying undertaken would be of tables and particular data. Dr Sheridan stated that if a monograph was considered important a copy would be purchased.

Dr Sheridan stated that difficulty was being experienced with the concept of fair dealing embodied in various sections of the Act, and he considered that it should be clarified, particularly in relation to serials.

Mention was also made of matters which concerned the operation of the Institution's library, such as the need to copy unpublished material for conservation purposes.

39. Law Society of New South Wales

The Council of the Law Society Of New South Wales, forwarded written submissions to the Committee. The submissions consisted of a report of the General Legal Committee of the Law Society on copyright law and reprographic reproduction as it affects lawyers in New South Wales. The submissions included the following information:

The Council of the Law Society suggested that out-of-print material ought not to be afforded copyright protection, so far as photocopies required for use by the legal profession in its day to day conduct of client's affairs was concerned and, in particular, it submitted that all Crown copyright should be waived to allow reproduction in any form by any person, provided that person made no charge in excess of the cost of the making of the reproduction.

Individual members of the profession, it was stated, found difficulty with a number of types of Crown material. Very often current or reprinted Acts or Rules were unavailable from official sources for months at a time because they were out of print or, were, in the case of new legislation, not yet available. In these circumstances, it was submitted that copying this material ought to be permissible when copies were required for the purpose of advising members of the public of their legal rights and duties or of serving the Court in the conduct of litigation for clients. Particular difficulties arose with amendments to Acts, and the unavailability of the *Stamp Duties (Amendment) Act 1974* was cited as an example.

Individual members of the profession also had difficulty with other government publications such as Gazettes, and documents, such as certificates of Birth, Death and Marriage, and of Valuation. Copies were frequently required for briefing counsel, informing clients and adversaries, or for file purposes. In the case of valuation certificates copies were required with probate applications to the Supreme Court and with a Federal Estate Duty return. It was submitted that since every man is deemed to know the law, he should be able to see it in written form by means of photocopies if it is not available in printed form for purchase. It was also submitted that access to unpublished judgments ought not to be restricted by the copyright law.

The Law Society in the work of its Council and Committees very often found it necessary to distribute materials for consideration prior to meetings and in this situation it was submitted there should be no legal impediment to the distribution of reproductions where material was unavailable in sufficient copies. It was also submitted that the same considerations apply to the work of the Society as for lawyers acting for their clients and that any recommendations made in respect of copying by lawyers should extend to the Law Society and perhaps other similar bodies.

40. Institute of Patent Attorneys of Australia Inc.

The Institute of Patent Attorneys of Australia made written and oral submissions to the Committee. Oral submissions were made on the Institute's behalf by Mr D. J. Ryan, President, and Mr A. G. McKee, the Past President. The submissions included the, following information:

The Institute includes amongst its members almost all patent attorneys who are registered under the Australian *Patents Act* 1952–1 973 and who practice in Australia.

In the normal course of business of a patent attorney, copyright documents were copied for various purposes. These include copying of Australian and foreign patent specifications which were not available immediately or at all from the initial source, and copying of catalogues, brochures, pamphlets, advertisements, instruction manuals and other like documents, in whole or in part, for the purposes of discussing them orally or in writing with a client or with another party on behalf of a client. Copying of documents for the purpose of providing evidence for the hearing of opposition or other proceedings under the Acts relating to patents, trade marks and designs was also carried out.

Particular emphasis was placed on the need to make a number of copies of articles from technical journals for the purpose of seeking advice from counsel, solicitor and technical experts.

It was also sometimes necessary to translate documents, and, in addition, to copy extracts from legal textbooks. This occurred, for example, in the provision of advice on Australian law to clients in the U.S.A.

41. Mr A. H. Douglas-Brown

Mr Douglas-Brown, student representative on the Student's Guild of the Western Australian Institute of Technology, made personal written and oral submissions to the Committee. The submissions included the following information:

There were 4000 registered borrowers at the T. L. Robertson Library, and another 2000 persons who used the Library for reference purposes without borrowing. There were approximately 100000 volumes in the Library, and there was a high demand for some books, especially those that were out of print or otherwise unobtainable.

The procedure adopted by the Library for photocopying which required the applicant to fill in a form and have the copying done by Library staff, was time-consuming due to the need to queue and complete forms.

Approximately half a million pages were copied on library machines in 1973. Mr Douglas-Brown described the nature of the copying taking place.

Mr Douglas-Brown said that, in his opinion, students were unlikely to co-operate in filling in cards in connection with the use of coin-operated self-service machines; this would apply also to cards suitable for use in a computer, although he added that a reasonable number of students would fill in such cards in a conscientious manner.

Appendix A

Summary of recommendations concerning reprographic reproduction

Copying within the concept of fair dealing

- (1) The words in section 40 of the *Copyright Act 1968–1973* ‘for the purpose of research or private study’ be replaced, so far as it applies to reprographic reproduction, by the words ‘for the purpose of research or study’. Two members of the Committee would extend this recommendation to the phrase ‘for purposes such as research, study, private or personal use’. Copying within the amended section to remain without remuneration to the copyright owner.
(2.18, 2.64-2.68)
- (2) The Act be amended to make it clear that the installation and use of self-service copying machines in libraries does not of itself impose any liability for copyright infringement upon the librarian or librarian’s employer provided notices in a form prescribed by regulation are displayed drawing users’ attention to the relevant provisions of the Act.
(2.53)
- (3) For the purposes of section 40, the concept of ‘fair dealing’ be retained, but a provision should be added to the section, so far as it applies to reprographic reproduction. along the following lines:
 - (a) In determining whether a dealing with a work in any particular case is a fair dealing the factors to be considered shall include:
 - (i) The purpose and character of the dealing;
 - (ii) The nature of the work;
 - (iii) The amount and substantiality of the portion taken in relation to the whole work;
 - (iv) Whether the work can be obtained within a reasonable time at a normal commercial price;
 - (v) The effect of the dealing upon the potential market for or value of the work; and
 - (b) Without restricting the meaning of the expression ‘fair dealing’ the making of one copy for (*research or study).
 - (i) in the case of copying from a ‘periodical publication, of not more than a single article or, where more than one article relates to the same subject matter, those articles; or
 - (ii) in the case of copying from an edition of a work, of not more than one chapter or 10 per cent of the number of pages in that edition, whichever is the greater,
 is a fair dealing-with the work.
(2.60)
- (4) The Act be amended to make it clear that sections 40 and 43 maybe applied to copying by a library or archives, if that copying is not otherwise permitted and

* the words in brackets should correspond with the words used in section 40.

also that the provisions of Divisions 3 and 5 of Part 111 apply to published editions of works dealt with in section 88.

(2.69 and 2.70)

Copying by a library for users

- (1) The words 'reasonable portion' in section 49(3) of the Act be retained but a provision be added that, in the case of copying from an edition of a work, up to one chapter or 10 per cent of the number of pages in that edition, whichever is the greater, shall be deemed to fall within the words 'a reasonable portion'.
(3.17 and 3.18)
- (2) The words that 'he requires the copy for the purpose of research or private study and he will not use it for any other purpose' in section 49(3) be amended so that the words 'for the purpose of research or private study' correspond with the words adopted for section 40.
(3.21)
- (3) A provision be added to the Act permitting the copying in a library of an entire work or more than a reasonable portion of it where that work forms part of a collection in the library if the librarian has first determined on the basis of a reasonable investigation that an unused copy of the work cannot be obtained within a reasonable time at a normal commercial price and makes a declaration to this effect, and provided a declaration is also made by the user of the library that the copy is required for a purpose specified in section 49(3) as proposed to be amended and provided the declarations are open for inspection upon reasonable notice and are retained by the library for a period of 12 months.
(3.19)
- (4) A library be permitted to supply copies within the limits of section 49 as proposed to be amended without having to require payment for the copies. However, it should not be permitted to make a profit from supplying copies under this section, or under section 50.
(3.24)
- (5) There be no requirement for the librarian to be satisfied as to the purpose for which the copy is required under section 49, but the Act should provide that the condition is fulfilled if the librarian or a person acting on his behalf receives in good faith a signed statement by the person requesting the copy, declaring that the purpose for which the copy is required falls within the words of the section and that he will not use the copy for any other purpose. The Act also provide a penalty where the user of the library makes a false declaration.
(3.26)
- (6) The provisions of section 49 be extended to "archives which should be suitably defined."
(3 . 3 4)
- (7) Section 112 dealing with reproduction by libraries of published editions of works be amended to conform with the recommendations made with respect to section 49.
(3.36)
- (8) Copying within section 49 to remain without remuneration to the copyright owner.
(3.05, 3.14)

Copying by libraries for other libraries

- (1) The restriction in regulation 4 of the Copyright Regulations which states that the protection of section 50 does not apply where the supplying library has

previously supplied a copy of the work to the requesting library unless the librarian of the supplying library is satisfied that the copy so previously supplied has been lost destroyed or damaged, be eliminated except in the case where the requesting librarian requires the copy for the shelves of his library.

(4.15)

- (2) Section 50 of the Act be amended so that it is an infringement of copyright for the requesting library to supply the copy obtained from the supplying library otherwise than in the case where the librarian of the requesting library or the person acting on his behalf receives in good faith a signed statement by the person requesting the copy declaring that the purposes for which the copy is required fall within the same purposes as we recommend for section 49, and further that he will not use the copy for any other purpose. The librarian of the supplying library should be protected by section 50 provided he is informed that the declaration has been obtained in the requesting library. A penalty be provided for a false declaration.

(4.16)

- (3) Where a librarian requests through the inter-library loan system a copy of an article or other work or of part of an article or other work for its own collection, the making of such a copy not be protected by section 50 unless, if a copy has previously been supplied by the librarian of the supplying library to the requesting library, the librarian of the requesting library is satisfied that the copy previously supplied has been lost, destroyed or damaged and so informs the supplying library.

(4.17)

- (4) The same provisions recommended with regard to the words 'a reasonable portion' for section 49 be incorporated in section 50.

(4.19)

- (5) The requirement in section 50 that before more than 'a reasonable portion' of the work may be copied the librarian by whom or on whose behalf the copy is made must not know the name and address of any person entitled to authorise the making of the copy and could not by reasonable enquiry ascertain the name and address of such person be replaced by a provision that the librarian has first determined on the basis of a reasonable investigation that an unused copy of the work cannot be obtained within a reasonable time at a normal commercial price and makes a declaration to this effect and provided the declaration is open for inspection upon reasonable notice and is retained for a period of twelve months.

(4.20)

- (6) Section 50 be extended to archives, which should be suitably defined.

(4.21)

- (7) Copying within section 50 to remain without remuneration to the copyright owner.

(4.09)

Copying of published and unpublished works for preservation and certain other purposes

- (1) An unpublished work may be copied by a library or archives for preservation or security or for research use in that or another library or archives but provision be made to ensure that this does not cause the work to become a published work.
- (2) Where a published work held by a library or archives is damaged, deteriorating, lost or stolen, the library or archives be permitted to make a replacement copy

if after a reasonable investigation the librarian has determined that an unused copy of the work cannot be obtained within a reasonable time at a normal commercial price and makes a declaration to this effect. The declaration is to be open for inspection upon reasonable notice and is to be retained by the library for a period of twelve months.

(5.10)

- (3) It not be an infringement of copyright for a library or archives to make one microfilm or microfiche copy of any work in the collection of the library or archives where it is intended to destroy the original.

(5.12, 5.13)

- (4) The words 'for the purpose of research or private study' in section 51(1)(d) be replaced by the words adopted for section 40.

(5.14)

- (5) Section 51(2), which permits the copying by a librarian of the library of a manuscript, thesis or similar literary work that has not been published, for supplying to a person who satisfies the librarian, or a person acting on behalf of the librarian, that he requires the copy for the purpose of research or private study and that he will not use it for any other purpose, be amended, as far as concerns reprographic reproduction, so that the words 'for the purpose of research or private study' be replaced by whatever words are adopted for section 40.

(5.15)

Multiple copying in non-profit educational establishments

- (1) A library of a non-profit educational establishment be permitted to make up to six copies of a single article in a periodical without infringement of copyright and without remuneration to copyright owners for use within the library provided that the librarian making the copies intended that they would only be used in the library and would ultimately be destroyed.

(1.46 and 6.02)

- (2) If multiple copies of more than an insubstantial part of a published work other than an article in a periodical are required in a library conducted by a non-profit educational establishment the library be permitted to make up to six copies of that work thereof without remuneration in any case where the work has not been separately published, or if it has been separately published, it has been ascertained after reasonable inquiry that copies cannot be obtained within a reasonable time at a normal commercial price. This right should be subject to the condition that the librarian making the copies intended that they would only be used in the library and would ultimately be destroyed.

(1.50, 6.02)

- (3) (a) The Act be amended to provide for a statutory licence scheme permitting a non-profit educational establishment to make multiple copies of parts of a work and in some cases of whole works for classroom use or for distribution to students, subject to recording any copying taking place under the scheme and an obligation to pay an appropriate royalty if demanded by the copyright owner or his agent within a prescribed period of time (say three years).

(6.39)

- (b) The records to be kept in respect of this copying to show as a minimum, the title of the work copied, the number of pages copied, the number of copies made, the author of the work (where known) and the publisher of the work.

(6.52)

- (c) The proposed statutory licensing scheme to extend to the making of copies of published literary, dramatic or musical works in the following circumstances:
 - (i) where the work concerned is not separately published—the whole of that work may be copied;
 - (ii) where the work concerned has been separately published, but copies cannot be obtained within a reasonable time at a normal commercial price—the whole of that work may be copied;
 - (iii) not more than one article in the same periodical publication may be copied unless the articles relate to the same subject matter;
 - (iv) in any other case, not more than a reasonable portion of the work may be copied.
- (d) Where a work or part of a work that may be copied under the proposed scheme contains an artistic work by way of illustration or explanation, then the making of the copy not be an infringement of the copyright in the artistic work.

(6.58, 6.59)
- (e) Legislation provide that up to 10 per cent of the number of pages in an edition of a work or one chapter, whichever is the greater, should always be regarded as a reasonable portion.

(6.60)
- (4) The making of multiple copies in any non-profit educational establishment of up to two pages or 1 per cent of the number of pages (whichever is the greater) in an edition of a work or of two or more works in any period of 14 days be permitted without remuneration and without infringement of copyright provided (except in the case of a diagram, map, chart or plan) the part copied does not comprise or include a separate work.

(6.67)
- (5) The Act to permit a teacher or lecturer to make without remuneration and without infringement of copyright of up to three copies of a copyright work or part of a work for the purpose of classroom instruction within the limitations described in paragraph 6.58.

(6 . 6 8)
- (6) A non-profit educational establishment conducting educational courses by correspondence or on an external study basis for students be allowed to prepare, without requests from students, such copies as may be appropriate for the students of journal articles or reasonable portions of works to the same extent as a librarian could provide copies for a person on request made under section 49 of the *Copyright Act*. This should not extend to material reproduced as part of lecture notes.

(6.73)

Copying in other circumstances

- (1) The Crown or a person authorised by the Crown be entitled to copy a work in circumstances where a private individual would be entitled to copy it without obligation to the copyright owners. If it be accepted that this is the result presently achieved by section 183 of the Act, no change in the Act would be required.

(7.10)
- (2) The Crown not be permitted to rely on section 183 for the making of multiple copies of works for use in government schools, and the recommendations made

in respect of multiple copying in non-profit educational establishments to apply to government and non-government educational establishments alike.

(7.11)

- (3) The following words be added to section 43, 'or by a fair dealing with such a work for the purpose of or in the course of the provision of professional advice by a legal practitioner or patent attorney as to the legal rights or obligations of a person'. Two members of the Committee would omit the words 'as to the legal rights or obligations of a person'.

(7.16)

Crown copyright

- (1) The Act make it clear that any act that is excluded from infringement of copyright under that Act should equally not be an infringement of any prerogative copyright of the Crown.

(8.06)

- (2) The Act be amended to make it clear that a person is entitled to make reprographic reproductions of a statute, or an instrument made under authority of a statute, an order, judgment or award of a Court or other tribunal, or of the reasons for decision of a Court or other tribunal. The sale of a copy so made should not be permitted, except that this would not prevent the cost of making the copy being recovered from a person to whom the copy is supplied.

(8.07)

Appendix B

Part I—Persons who attended the preliminary meeting of the Committee (3 and 4 September 1974)

Miss P. Aylward, Fellowship of Australian Writers
 Mr P. Banki, Legal Research Officer, Special Research Project, Australian Copyright Council
 Mr D. K. Catterns, Australian Copyright Council
 Mr J. A. Clayton, Federal Executive Officer, Australian Reprographics Council
 Mr D. Cooney
 Mr R. M. Cooper, Allied Reprographics
 Mr R. F. Doust, Principal Librarian, Library of New South Wales
 Mr C. W. Dunnett, Educational Technology Centre, South Australian Department of Education
 Mrs P. Fanning, National Library of Australia
 Mr G. A. Ferguson, Director, Australian Book Publishers Association
 Mr J. D. Fernon, Library of New South Wales
 Miss D. Hill, Australian Society of Authors
 Mr T. Hurley, Education Vice-President, Australian Union of Students
 Miss B. Jago, Fellowship of Australian Writers
 Mr D. Lieberman, Secretary and Legal Counsel, IBM Australia Limited
 Mr C. R. McClay
 Mr J. McFadden, Secretary, Australian Music Publishers Association Limited
 Mr G. C. O'Donnell, Chairman, Australian Copyright Council
 Miss L. Ollit, Delegate, Fellowship of Australian Writers
 Mr I. A. Paterson, IBM Australia Limited
 Miss D. G. Peake, New South Wales Institute of Technology
 Mr D. C. Pearce, Australian Vice-Chancellors' Committee
 Mr C. Pickford, Executive Director, Australian Record Industry Association
 Mr R. W. Sylvester, General Manager, Rank Xerox (Australia) Pty Limited
 Mrs L. Symes, Library Association of Australia
 Mr R. Vassie, Factory Manager, Ozapaper Limited
 Mr J. Vaughan, Executive Director, Library Association of Australia
 Mr C. Vaughan-Smith, Managing Director, Southern Music Publishing Co. (Australasia) Pty Ltd
 Mr A. P. Whitlam, Regional Counsel, S. E. Asia, Rank Xerox Limited
 Mr A. G. Williams, Secretary, Environmental Impact Reports Pty Limited
 Mrs F. R. Winter, Library, University of New South Wales
 Mrs A. Zoureff

*Part 11—Persons and organisations from whom
written representations were received*

Mr G. G. Allen
Professor P. V. Angus-Leppan
Association of Australian University Presses
Australian Advisory Council on Bibliographical Services
Australian Archives
Australian Book Publishers Association
Australian Copyright Council Ltd
Australian Department of Education
Australian Museum
Australian Music Publishers Association Ltd
Australian Society of Authors
Australian Vice-Chancellors' Committee
Mr P. Banki
Catholic Education Commission of Victoria
Catholic Education Office, Sydney
Commonwealth Scientific and Industrial Research Organisation
Copyright Sub-Committee, Western Australian Teacher Education Authority
Mr A. H. Douglas-Brown
Mr C. W. Dunnett
Environmental Impact Reports Pty Ltd
Fellowship of Australian Writers
Mr P. Gill
Mr W. A. Gold
Mr R. Hughes
Institute of Patent Attorneys of Australia Inc.
Institution of Engineers, Australia
International Publishers Association
Mr I. M. Johnstone
Mr L. Jolley
Dr T. Kennedy
Mr J. S. Langrehr
Law Librarians Group, Library Association of Australia
Law Society of New South Wales
Mr W. A. Lee
Mr A. Le Marne
Library Association of Australia
Library Board of Western Australia
Library of New South Wales
Mr R. Mansfield
Museum of Applied Arts and Sciences (N. S. W.)
National Council of Independent Schools
National Library of Australia
New South Wales Colleges of Advanced Education
Mr R. J. Noye
Mr S. B. Page, Librarian, Griffith University
Mr D. W. Perry
Premier's Department of New South Wales
Public Service Board, Canberra

Queensland Department of Education
 Mr S. L. Ryan
 Mr A. Schwartz and Ms A. Cone
 Society of Editors
 South Australian Branch of the Library Association of Australia
 South Australian Institute of Teachers
 State College of Victoria Libraries
 State Library of Tasmania
 Mr A. J. Staunton
 Sydney Opera House Trust
 Team 7 Consultants
 University of Adelaide
 Victorian Fellowship of Australian Writers
 Mr J. K. White
 Mr A. J. Wilson
 Mrs A. Zoureff

Part III— Organisations from which oral submissions were received

<i>Name of organisation represented</i>	<i>Name of witness</i>
Association of Australian University Presses	Mr P. A. Ryan
Australian Book Publishers Association	Mr G. A. Ferguson, C.B.E.
Australian Copyright Council Ltd.	{ Mr G. C. O'Donnell Mr D. Catterns
Australian Department of Education	Mr B. J. Price { Mr J. R. Brummell
Australian Music Publishers Association	Mr A. J. Turner
Australian Society of Authors	Mr C. Vaughan-Smith
Australian Vice-Chancellors' Committee	Miss B. Jefferis { Professor (now Sir Zelman) Cowen Mr T. G. Matthews Mr D. C. Pearce
Catholic Education Commission of Victoria	Father F. Shortis
Commonwealth Scientific and Industrial Research Organisation	{ Dr C. K. Coogan Mr P. J. Judge Mr P. H. Dawe Mr T. J. Healey Mrs Y. B. Esplin
Fellowship of Australian Writers	Mrs J. Williams
Institution of Engineers, Australia	Dr N. R. Sheridan
Institute of Patent Attorneys of Australia Inc.	{ Dr D. J. Ryan Mr A. G. McKee
Library Association of Australia	{ Mr J. Vaughan Mr S. B. Page
Library Board of Western Australia	Mr F. A. Sharr

*Name of organisation
represented**Name of witness*

Library of New South Wales	{ The Honorable Mr Justice Else-Mitchell Mr R. F. Doust
National Council of Independent Schools	{ Mr P. N. Thwaites Mr A. McI, Scott
National Library of Australia	{ Mr W. D. Thorn Mr P. Allmond
New South Wales Colleges of Advanced Education	{ Mr I. D. K. Wren Ms M. Caldwell Mr R. Winder
Premier's Department of New South Wales	{ Mr H. Carey Mr R. C. Sharman
South Australian Branch of the Library Association of Australia	Mr L. E. Gelding
South Australian Institute of Teachers	{ Miss M. L. Baxter Ms M. Robins
State College of Victoria Libraries	{ Mr P. J. Pegg Ms M. Messer Mr J. G. Kitt
Queensland Department of Education	Mr I. D. Raymond
University of Adelaide	{ Mr B. J. Walby Ms J. Yowell
Society of Editors	Mr J. S. Hamilton
Victorian Fellowship of Australian Writers	{ Mr R. S. Penny Mr L. H. McGrath
Western Australian Teacher Education Authority	

Part IV—Individuals who made oral submissions

Mr G. G. Allen
 Professor P. V. Angus-Leppan
 Mr P. Banki
 Mr A. J. Bayes
 Ms A. Beckman
 Mr A. H. Douglas-Brown
 Mr C. W. Dunnett
 Mr R. Hughes
 Mr L. Jolley
 Mr R. Mansfield
 Dr R. W. Mellor
 Mr J. S. Langrehr
 Mr S. B. Page
 Mr S. L. Ryan
 Mr A. J. Staunton
 Mr D. A. M. Thompson
 Mr J. K. White
 Mr R. C. Wray
 Mrs A. Zoureff

Part V—Inspections made by the committee

During the course of the Committee's work, members of the Committee visited the institutions listed below for the purposes of inspecting copying facilities and seeing at first hand the kinds of practices adopted by these institutions.

1. University of Western Australia
2. Western Australian Institute of Technology
3. South Australian Institute of Technology
4. University of Queensland
5. Hackett Primary School
6. Watson High School
7. National Library of Australia
8. Sydney Church of England Grammar School (Shore)
9. New South Wales Department of Education Correspondence School
10. Sydney Boys High School
11. New South Wales Institute of Technology

Appendix C

Opening remarks of Chairman at preliminary meeting of Committee 3 and 4 September 1974

May I make it very clear at the start that this meeting is mainly for the purpose of getting together with those people who have expressed an interest in the Committee's work and who are able to attend so that there can be an informal inter-change of ideas at this early stage.

As you will know from the second notice which appeared in the press on 19 August, the Committee has asked for written submissions, observations, information or other material with respect to matters within the terms of reference before 15 October 1974, and indeed as soon as possible, together with an indication from those proposing to make written submissions whether they expect to present oral evidence or oral submissions thereafter so that the probable location of the Committee's sittings can be decided as soon as possible.

The Committee does not intend to bind itself to any specific form of procedure, but broadly it proposes to consider all written submissions and then to hear oral material. It proposes to arrange to have a transcript made for the use of the Committee, but it does not at the present time propose to make the transcript available other than to its own members.

It is anticipated that the Committee will sit in public, but if any person wishes to place any material before it in private it will consider any such representations. It wishes to keep its method of procedure flexible and it is prepared to listen to any views which may be held as to a method by which it should proceed.

We have had some preliminary discussions amongst ourselves and we have endeavored to read as much background material as we can. By this I mean we have endeavored to read about the way the problems within our terms of reference have been considered and dealt with in other countries. In particular we have looked at the recommendations which have been made at an international level and at some of the legislation which deals with the problems or is being considered as a method of dealing with the problems in other countries.

May I say that if any person knows of any material which it is thought we should read he should notify the Secretary of the details of the material, and where it can be obtained, and we will endeavour to look at it.

We propose a little later to ask those of you who are present and who would care to do so to inform the Committee in a preliminary way of the extent of the submissions you propose to make to the Committee later. In so doing it would be appreciated if you would state your name and the organisation, if any, which you represent. It is not proposed that very much time should be taken up by each person, although it may be found that the Committee invites further discussion on matters as they are raised.

May we also say that we have endeavored to communicate with various bodies whom we thought may be interested in the work of this Committee and if any of you know of any organisation which may not be aware of the Committee's activities but which might be interested to place some material before it, would you please advise the Secretary and he will communicate with that organisation.

When we get to our more formal sittings to hear oral evidence and submissions

it is clear that the Committee will have to sit in places additional to Sydney. Although we do not anticipate applying any strict rules in relation to the material we will be prepared to receive, provided it appears to be substantially within our terms of reference, any such material should be as accurate and as precise as possible and presented with such documentary support as is reasonably available.

Our present view is that our task is to make precise recommendations within our terms of reference and we also consider that we should be careful to ensure that any recommendations we may make, if they are accepted, will be capable of implementation in a practical manner.

We have considered what, if anything, we should do to let you know some of the questions which we will be considering, we have therefore, prepared a list of headings for this purpose entitled 'Some Relevant Questions'. This is a rather formidable document and we had some doubt whether we should circulate it, but we felt that it might stimulate thought.

We appreciate that most people will only be dealing with a very limited number of questions posed by it, and all should feel free to select only topics which they consider to be of particular concern to them.

We wish to make it clear that persons who have only an interest in certain aspects are still invited to make submissions to us. We do not suggest that this list contains all the matters which are relevant for our consideration or that all the matters in it are relevant for our consideration, but we think this list will assist persons contemplating presenting evidence to the Committee.

In certain cases very detailed information may be desirable. You may find that one question suggests a series of other questions. For example, in respect to a library it might be useful to distinguish between scientific and technical books, scientific and technical periodicals, other periodicals, novels and fiction generally, government publications, musical scores, unpublished works, pamphlets, newspapers, and others.

We hope that we will receive submissions on other aspects within our terms of reference which we have not listed in the document 'Some Relevant Questions'.

In making your submissions you will undoubtedly make it clear to us what you are doing, what you wish to do, and what you think you ought fairly be able to do.

Copyright Law Committee on Reprographic Reproduction *'Some Relevant Questions'*

A. What is the present position?

I. Under what circumstances is copying taking place:

- (a) In universities and other bodies providing tertiary education, through their libraries or otherwise by or for—
 - (i) teaching staff;
 - (ii) research staff;
 - (iii) students;
 - (iv) others.
- (b) In schools through their libraries or otherwise by or for—
 - (i) teachers;
 - (ii) pupils.
- (c) In public libraries:
 - (i) by or for members of the reading public;
 - (ii) by or for any special class of persons;

- (iii) for internal library purposes, for example, conservation of missing or deteriorated copies;
 - (iv) for inter-library loans.
 - (d) In commercial libraries.
 - (e) In government departments.
 - (f) In commercial undertakings.
 - (g) Elsewhere.
- II. What is the nature, extent and quantity of material copied and for what purpose is it copied? Consider the case of books, periodicals, music, and other material.
- Is the material copied published in Australia or elsewhere?
- Is the material copied published by an Australian publisher?
- Has permission to copy been sought from the author or publisher? If sought is permission usually granted? If so on what terms? Have any difficulties been experienced in seeking permission?
- Are published copies of works copied readily available, in particular with regard to periodicals, journals and newspapers? In the case of journals is it possible to readily purchase reprints from the publishers or agents of particular articles required ?
- What are the circumstances, if any, in which multiple copies are made? What was the date of publication of material copied?
- Is any unpublished material copied?
- III. What is the actual effect of copying on sales and on the financial rewards to authors and/or publishers ?
- Can precise quantitative illustrations be given of the detrimental effect, if any? If copying had not taken place would the number of copies sold have been increased and, if so, what would be the measure of financial advantage to authors and/or publishers ?
- Does the position differ in regard to the type of publication copied and to whether the author and/or publisher is Australian or not?
- IV. What are the benefits, if any, of the copying at present carried out to teachers, students, researchers, libraries, the commercial community, the public, or any other recognizable group in the community?
- V. What is the nature of the machines and techniques used or likely to be used for copying ?
- What is the cost of copying, including its relationship to the cost of printing and reprinting ?

B. What position should be achieved?

To what extent should each of the matters referred to in (A) be changed and what position should be achieved?

To what extent, in what circumstances, if any, and by whom should free copying without permission be allowed?

Should limited copying, and if so to what extent, be permitted as a right on the payment of some royalty or without payment of royalty or only in some instances with or without the payment of royalty?

What should be the position in regard to multiple copying?

Is there any analogy to the public lending right approach in relation to copying?

C. Should any and, if so, what changes be made to the present relevant law of copyright?

Particular attention is drawn to ss. 14,40,41,49, 50, 51 and 200 of the *Copyright Act 1968*.

Is s. 14 appropriate'?

Are the fair dealing provisions of ss. 40 and 41 too wide or insufficiently wide? Apart from the question of the appropriate width of the provisions, are they too precise or insufficiently precise'?

How is the present law observed and enforced?

What should be embraced by the words 'research or private study' and if any change is to be made to these words what purposes should the appropriate words cover'?

Is the provision for copying by libraries appropriate and, if not, what changes should be made'?

Is a librarian sufficiently or excessively protected by s. 49?

What provision, if any, should be made in respect of coin-operated copying machines in libraries or elsewhere?

What is the position in other countries?

What regard, if any, should be paid to the position in other countries? Is it reasonable to provide rights of remuneration for copying where there is no such right in the country of origin and/or where there is no reciprocal right in that other country in respect of copying of the work of Australian authors?

D. Should any and, if so, what changes be made to the position apart from changes in the relevant law of copyright?

Is something analogous to payment for lending rights appropriate and, if so, should it be limited to Australian authors'?

How should any remuneration for copying under either a compulsory licence or a licence freely granted be fixed?

Should there be any supervision over any remuneration for compulsory or voluntary licences or for copying done thereunder and, if so, by what type of body and how should any such body be established or controlled?

What effect has the position under international conventions, including any revisions not so far adhered to by Australia, upon the recommendations which should be made?

What measures have been adopted in other countries and what has been the result ?

E. General

What are the likely developments with regard to copying, including any in relation to microfilm and microfiche techniques, computers, or advanced technology either existing or likely to exist in the next decade?

Note: Any submissions are likely to be more persuasive if supported by detailed material, for example, the provisions of detailed examples of photocopying calculated as numbers per week or per month, whether the copying is of single copies or multiple copies; whether, for example, a library subscribes to a certain number of journals for more than one copy; what determines whether more than one subscription for the one journal is held; specific examples of loss of sales through copying; examples of the type of equipment used and details of costs and so on.

Our Terms of Reference are as follows:

To examine the question of the reprographic reproduction of works protected by copyright in Australia and to recommend any alterations to the Australian copyright law and any other measures the Committee may consider necessary to effect a proper balance of interest between owners of copyright and the users of copyright material in respect of reprographic reproduction. The term 'reprographic reproduction' includes any system or technique by which facsimile reproductions are made in any size or form.

3 September 1974.

Appendix D

References in Report to sections of the Copyright Act 1968-1973

<i>Section number</i>	<i>Paragraph number</i>
8(2)	8.04,8.05
10 'work'	I.15
'judicial proceeding'	7.14
13(1)	2.10
14(1)(a)	1.25, 2.10
18	3.33, 7.05
31(1)	1.14, 1.25,2.10,6.50
33	2.22,2.23
36(1)	2.10, 2.15, 2.51-2.53
38	6.09
40	1.22, 1.25, 1.45,2.07-2.10,2.14-2.16, 2.27,2.54-2.69, 3.19,3.35,4.22,6.60, 6.70,6.74, 11.03
41	2.08, 2.70, 3.35,4.22,6.70, 6.74
42	2.08.2.70
43	1.25:2.08, 3.35,4.22, 7.15, 7.16
48	3.16
49	1.25, 1.39, 3.15-3.34, 3.35,4.14,4.18,6.72, 6.73
50	1.25, 1.39, 3.24,4.09,4.104-.21
51	1.25, 5.02, 5.14, 5.15
53	3.16
58	6.44
88	2.69
115(4)	9.01-9.03

What are the likely developments with regard to copying, including any in relation to microfilm and microfiche techniques, computers, or advanced technology either existing or likely to exist in the next decade?

Note: Any submissions are likely to be more persuasive if supported by detailed material, for example, the provisions of detailed examples of photocopying calculated as numbers per week or per month, whether the copying is of single copies or multiple copies; whether, for example, a library subscribes to a certain number of journals for more than one copy; what determines whether more than one subscription for the one journal is held; specific examples of loss of sales through copying; examples of the type of equipment used and details of costs and so on.

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3 September 1974.

Appendix E

Relevant sections of the Copyright Act 1968-1973

7. Subject to Part VII. this Act binds the Crown but nothing in this Act renders the Crown liable to be prosecuted for an offence.

8. (1) Subject to the next succeeding sub-section, copyright does not subsist otherwise than by virtue of this Act or of the Designs Act 1906–1968.

(2) This Act does not affect any prerogative right or privilege of the Crown.

10. In this Act, unless the contrary intention appears—

‘artistic work’ means—

- (a) a painting, sculpture, drawing, engraving or photograph, whether the work is of artistic quality or not;
- (b) a building or a model of a building, whether the building or model is of artistic quality or not; or
- (c) a work of artistic craftsmanship to which neither of the last two preceding paragraphs applies;

‘drawing’ includes a diagram, map, chart or plan;

‘engraving’ includes an etching, lithograph, product of photogravure, woodcut, print or similar work, not being a photograph;

‘infringing copy’ means—

- (a) in relation to a literary, dramatic, musical or artistic work—a reproduction of the work not being a copy of a cinematography film of the work;

“(e) in relation to a published edition of a literary, dramatic, musical or artistic work—a reproduction of the edition, being an article the making of which constituted an infringement of the copyright in the work, recording, film, broadcast or edition or, in the case of an imported article, would have constituted an infringement of that copyright if the article had been made in Australia by the importer;

‘judicial proceeding’ means a proceeding before a court, tribunal or person having by law power to hear, receive and examine evidence on oath;

‘literary work’ includes a written table or compilation;

‘photograph’ means a product of photography or of a process similar to photography, other than an article or thing in which visual images forming part of a cinematography film have been embodied, and includes a product of xerography, and ‘photographic’ has a corresponding meaning;

‘work’ means a literary, dramatic, musical or artistic work;

13.(1) A reference in this Act to an act comprised in the copyright in a work or other subject-matter shall be read as a reference to any act that, under this Act, the owner of the copyright has the exclusive right to do.

(2) For the purposes of this Act, the exclusive right to do an act in relation to a work, an adaptation of a work or any other subject-matter includes the exclusive right to authorize a person to do that act in relation to that work, adaptation or other subject-matter.

14. (1) In this Act, unless the contrary intention appears—

- (a) a reference to the doing of an act in relation to a work or other subject-matter shall be read as including a reference to the doing of that act in relation to a substantial part of the work or other subject-matter; and
- (b) a reference to a reproduction, adaptation or copy of a work, or to a record embodying a sound recording, shall be read as including a reference to a reproduction, adaptation or copy of a substantial part of the work, or to a record embodying a substantial part of the sound recording, as the case maybe.

(2) This section does not affect the interpretation of any reference in sections 32, 177, 180, 187 and 198 of this Act to the publication, or absence of publication, of a work.

18. For the purposes of this Act, a library shall not be taken to be established or conducted for profit by reason only that the library is owned by a person carrying on business for profit.

31. (1) For the purposes of this Act, unless the contrary intention appears, copyright, in relation to a work, is the exclusive right—

- (a) in the case of a literary, dramatic or musical work, to do all or any of the following acts :—
 - (i) to reproduce the work in a material form;
 - (ii) to publish the work;
 - (iii) to perform the work in public;
 - (iv) to broadcast the work;
 - (v) to cause the work to be transmitted to subscribers to a diffusion service;
 - (vi) to make an adaptation of the work;
 - (vii) to do, in relation to a work that is an adaptation of the first-mentioned work, any of the acts specified in relation to the first-mentioned work in sub-paragraphs (i) to (v), inclusive, of this paragraph; and
- (b) in the case of an artistic work, to do all or any of the following acts :—
 - (i) to reproduce the work in a material form;
 - (ii) to publish the work;
 - (iii) to include the work in a television broadcast;
 - (iv) to cause a television programme that includes the work to be transmitted to subscribers to a diffusion service.

(2) The generality of sub-paragraph (i) of paragraph (a) of the last preceding sub-section is not affected by sub-paragraph (vi) of that paragraph.

32. (1) Subject to this Act, copyright subsists in an original literary, dramatic, musical or artistic work that is unpublished and of which the author—

- (a) was a qualified person at the time when the work was made; or
- (b) if the making of the work extended over a period—was a qualified person for a substantial part of that period.

(2) Subject to this Act, where an original literary, dramatic, musical or artistic work has been published—

- (a) copyright subsists in the work; or
- (b) if copyright in the work subsisted immediately before its first publication—copyright continues to subsist in the work, if, but only if—

- (c) the first publication of the work took place in Australia;
- (d) the author of the work was a qualified person at the time when the work was first published; or
- (e) the author died before that time but was a qualified person immediately before his death.

(3) Notwithstanding the last preceding sub-section but subject to the remaining provisions of this Act, copyright subsists in—

- (a) an original artistic work that is a building situated in Australia; or
- (b) an original artistic work that is attached to, or forms part of, such a building.

(4) In this section, ‘qualified person’ means an Australian citizen, an Australian protected person or a person resident in Australia.

33.

(2) Subject to this section, where, by virtue of this Part, copyright subsists in a literary, dramatic or musical work, or in an artistic work other than a photograph, that copyright continues to subsist until the expiration of fifty years after the expiration of the calendar year in which the author of the work died.

(3) If, before the death of the author of a literary, dramatic or musical work—

- (a) the work had not been published;
- (b) the work had not been performed in public;
- (c) the work had not been broadcast; and

(d) records of the work had not been offered or exposed for sale to the public, the copyright in the work continues to subsist until the expiration of fifty years after the expiration of the calendar year in which the work is first published, performed in public, or broadcast, or records of the work are first offered or exposed for sale to the public, whichever is the earliest of those events to happen.

(6) Copyright subsisting in a photograph by virtue of this Part continues to subsist until the expiration of fifty years after the expiration of the calendar year in which the photograph is first published.

36. (1) Subject to this Act, the copyright in a literary, dramatic, musical or artistic work is infringed by a person who, not being the owner of the copyright, and without the licence of the owner of the copyright, does in Australia, or authorizes the doing in Australia of, any act comprised in the copyright.

38. (1) The copyright in a literary, dramatic, musical or artistic work is infringed by a person who, in Australia, and without the licence of the owner of the copyright—

- (a) sells, lets for hire, or by way of trade offers or exposes for sale or hire, an article; or

(b) by way of trade exhibits an article in public, where, to his knowledge, the making of the article constituted an infringement of the copyright or, in the case of an imported article, would, if the article had been made in Australia by the importer, have constituted such an infringement.

(2) For the purposes of the last preceding sub-section, the distribution of any articles—

- (a) for the purpose of trade; or
- (b) for any other purpose to an extent that affects prejudicially the owner of the copyright concerned,

shall be taken to be the sale of those articles.

40. A fair dealing with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, for the purpose of research or private study does not constitute an infringement of the copyright in the work.

41. A fair dealing with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, does not constitute an infringement of the copyright in the work if it is for the purpose of criticism or review, whether of that work or of another work, and a sufficient acknowledgement of the work is made.

43. The copyright in a literary, dramatic, musical or artistic work is not infringed by anything done for the purposes of a judicial proceeding or of a report of a judicial proceeding.

48. In this Division—

- (a) a reference to an article contained in a periodical publication is a reference to anything (other than an artistic work) appearing in such a publication; and
- (b) a reference to a librarian of a library includes a reference to a person in charge of a library.

49. (1) Subject to this section, the copyright in an article contained in a periodical publication is not infringed by the making of a copy of the article or of part of the article by or on behalf of the librarian of a library that is not established or conducted for profit.

(2) Subject to this section, the copyright in a published literary, dramatic or musical work other than an article contained in a periodical publication is not infringed by the making of a copy of part of the work by or on behalf of the librarian of a library that is not established or conducted for profit.

(3) The last two preceding sub-sections do not apply in relation to a copy of an article, or of part of an article, contained in a periodical publication or a copy of part of any other published literary, dramatic or musical work, as the case may be, unless—

- (a) the copy is supplied only to a person who satisfies the librarian, or a person acting on behalf of the librarian, that he requires the copy for the purpose of research or private study and that he will not use it for any other purpose or, if the person is a member of a Parliament and the librarian is the librarian of a library the principal purpose of which is to provide library services for members of that Parliament, that he requires the copy for the purpose of the performance of his duties as such a member and that he will not use it for any other purpose;
- (b) the person to whom the copy is supplied has not previously been supplied by the librarian, or by a person acting on behalf of the librarian, with a copy of the same article or part of an article or of the same part of a work; and
- (c) where the copy is supplied to a person other than a member of a Parliament—the person is required to pay for the copy an amount not less than the cost of making the copy.

(4) Sub-section (1) of this section does not apply in relation to a copy of, or of parts of, two or more articles contained in the same periodical publication unless the articles relate to the same subject-matter.

(5) Sub-section (2) of this section does not apply in relation to a copy of part of a published literary, dramatic, or musical work unless the copy contains only a reasonable portion of the work.

(6) The regulations may exclude the application of sub-section (1) or sub-section (2) of this section in such cases as are specified in the regulations.

50. (1) Subject to this section, the copyright in an article contained in a periodical publication or in any other published literary, dramatic or musical work is not infringed by the making of a copy of the article or other work, or of part of the article or other work, by or on behalf of the librarian of a library.

(2) The last preceding sub-section does not **apply in** relation to a copy of an article or other work or of part of an article or other work unless—

- (a) the copy is supplied only to the librarian of another library; and

- (b) where the work is not an article contained in a periodical publication and the copy is a copy of the whole of the work or of a part of the work that is more than a reasonable portion of the work—at the time when the copy is made, the librarian by whom or on whose behalf it is made does not know the name and address of any person entitled to authorize the making of the copy and could not by reasonable inquiry ascertain the name and address of such a person.

(3) The regulations may exclude the application of sub-section (1) of this section—

- (a) where the copy is supplied by the librarian of the other library to a person otherwise than in accordance with the regulations; and

- (b) in such other cases as are specified in the regulations.

51. (1) Where, at a time more than fifty years after the expiration of the calendar year in which the author of a literary, dramatic or musical work, or of an artistic work being a photograph or engraving, died, and more than seventy-five years after the time at which, or the expiration of the period during which, the work was made, copyright subsists in the work but—

- (a) the work has not been published; and

(b) a copy of the work, or, in the case of a literary, dramatic or musical work, the manuscript of the work, is kept in a library or other place where it is, subject to any regulations governing that library or other place, open to public inspection, the copyright in the work is not infringed—

- (c) by the making of a copy of the work by a person for the purpose of research or private study or with a view to publication; or

- (d) by the making of a copy of the work by, or on behalf of, the person in charge of that library or other place if the copy is supplied to a person who satisfies the person in charge that he requires the copy for the purpose of research or private study or with a view to publication and that he will not use it for any other purpose.

(2) Where a manuscript, or a copy, of a thesis or other similar literary work that has not been published is kept in a library of a university or other similar institution, the copyright in the thesis or other work is not infringed by the making of a copy of the thesis or other work by or on behalf of the librarian of the library if the copy is supplied to a person who satisfies the librarian, or a person acting on behalf of the librarian, that he requires the copy for the purpose of research or private study and that he will not use it for any other purpose.

58. (1) If at any time after the expiration of one year after the commencement of this Act it appears to the Attorney-General that the royalty, or the minimum royalty, payable in respect of records generally or in respect of records included in a particular class of records is not equitable, he may request the Copyright Tribunal to hold an inquiry into the matter and report the result of its inquiry to the Attorney-General.

(2) At any time after the Tribunal has made a report in relation to the royalty, or the minimum royalty, payable in respect of records generally or in respect of records included in a particular class of records, the regulations may provide that the relevant provision of this Act, in its application in respect of records generally or in respect of records included in that class of records, as the case may be, shall have effect as if it were subject to such variations as are provided by the regulations, being such variations as the Governor-General thinks equitable.

(3) Before making regulations for the purposes of the last preceding sub-section, the Governor-General shall take into account the report of the Tribunal.

(4) Where the Tribunal has made a report in relation to the royalty, or the minimum royalty, payable in respect of records included in a particular class of records (whether the report related only to records included in that class or also

related to other records), the Attorney -General shall not, before the expiration of five years after the report was made, request the Tribunal to hold an inquiry under this section in relation to the royalty, or the minimum royalty, as the case may be, payable in respect of records included in that class.

88. For the purposes of this Act, unless the contrary intention appears, copyright, in relation to a published edition of a literary, dramatic, musical or artistic work or of two or more literary, dramatic, musical or artistic works, is the exclusive right to make, by a means that includes a photographic process, a reproduction of the edition.

92. (1) Subject to this Act, copyright subsists in a published edition of a literary, dramatic, musical or artistic work, or of two or more literary, dramatic, musical or artistic works, where—

- (a) the first publication of the edition took place in Australia; or
- (b) the publisher of the edition was a qualified person at the date of the first publication of the edition.

(2) The last preceding sub-section does not apply to an edition that reproduces a previous edition of the same work or works.

96. Copyright subsisting in a published edition of a work or works by virtue of this Part continues to subsist until the expiration of twenty-five years after the expiration of the calendar year in which the edition was first published.

112. (1) Subject to this section, the copyright in a published edition of a work or works is not infringed by the making by, or on behalf of, a librarian of a reproduction of part of the edition.

(2) The last preceding sub-section does not apply in relation to a reproduction of a part of an edition unless—

- (a) the reproduction is supplied only to a person who satisfies the librarian, or a person acting on behalf of the librarian, that he requires the reproduction for the purpose of research or private study and that he will not use it for any other purpose or, if the person to whom the reproduction is supplied is a member of a Parliament and the librarian is the librarian of a library the principal purpose of which is to provide library services for members of that Parliament, that he requires the reproduction for the purpose of the performance of his duties as such a member and that he will not use it for any other purpose;
- (b) the person to whom the reproduction is supplied has not previously been supplied by the librarian, or by a person acting on behalf of the librarian, with a reproduction of the same part of the edition;
- (c) where the reproduction is supplied to a person other than a member of a Parliament—the person is required to pay for the reproduction an amount not less than the cost of making the reproduction; and
- (d) the reproduction contains only a reasonable portion of the edition.

(3) The regulations may exclude the application of sub-section (1) of this section in such cases as are specified in the regulations.

115. (1) Subject to this Act, the owner of a copyright may bring an action for an infringement of the copyright.

(2) Subject to this Act, the relief that a court may grant in an action for an infringement of copyright includes an injunction (subject to such terms, if any, as the court thinks fit) and either damages or an account of profits.

(3) Where, in an action for infringement of copyright, it is established that an infringement was committed but it is also established that, at the time of the infringement, the defendant was not aware, and had no reasonable grounds for suspecting, that the act constituting the infringement was an infringement of the copyright, the plaintiff is not entitled under this section to any damages against the

defendant in respect of the infringement, but is entitled to an account of profits in respect of the infringement whether any other relief is granted under this section or not.

(4) Where, in an action under this section—

- (a) an infringement of copyright is established; and
- (b) the court is satisfied that it is proper to do so, having regard to—
 - (i) the flagrancy of the infringement;
 - (ii) any benefit shown to have accrued to the defendant by reason of the infringement; and
 - (iii) all other relevant matters,

the court may, in assessing damages for the infringement, award such additional damages as it considers appropriate in the circumstances.

116. (1) Subject to this Act, the owner of the copyright in a work or other subject-matter is entitled in respect of any infringing copy, or of any plate used or intended to be used for making infringing copies, to the rights and remedies, by way of an action for conversion or detention, to which he would be entitled if he were the owner of the copy or plate and had been the owner of the copy or plate since the time when it was made,

(2) A plaintiff is not entitled by virtue of this section to any damages or to any other pecuniary remedy, other than costs, if it is established that, at the time of the conversion or detention—

- (a) the defendant was not aware, and had no reasonable grounds for suspecting, that copyright subsisted in the work or other subject-matter to which the action relates;
- (b) where the articles converted or detained were infringing copies—the defendant believed, and had reasonable grounds for believing, that they were not infringing copies; or
- (c) where an article converted or detained was a plate used or intended to be used for making articles—the defendant believed, and had reasonable grounds for believing, that the articles so made or intended to be made were not or would not be, as the case may be, infringing copies.

132.

(2) A person shall not, at a time when copyright subsists in a work, distribute—

- (a) for the purpose of trade; or
- (b) for any other purpose to an extent that affects prejudicially the owner of the copyright,

an article that he knows to be an infringing copy of the work.

148. (1) This section applies where the Attorney-General requests the Tribunal in pursuance of section 58 of this Act to hold an inquiry in relation to the royalty, or the minimum royalty, payable in respect of records generally, or in respect of records included in a particular class of records.

(2) Where such a request is made, the Tribunal shall hold the inquiry and shall give every person or organization that the Tribunal is satisfied has a substantial interest in the matter to which the inquiry relates an opportunity of presenting a case to the Tribunal.

(3) As soon as practicable after the completion of the inquiry, the Tribunal shall make a report in writing to the Attorney-General setting out the result of the inquiry.

176. (1) Where, apart from this section, copyright would not subsist in an original literary, dramatic, musical or artistic work made by, or under the direction or control of, the Commonwealth or a State, copyright subsists in the work by virtue of this sub-section.

(2) The Commonwealth or a State is, subject to this Part and to Part X, the owner of the copyright in an original literary, dramatic, musical or artistic work made by, or under the direction or control of, the Commonwealth or the State, as the case may be.

177, Subject to this Part and to Part X, the Commonwealth or a State is the owner of the copyright in an original literary, dramatic, musical or artistic work first published in Australia if first published by, or under the direction or control of, the Commonwealth or the State, as the case may be.

183. (1) The copyright in a literary, dramatic, musical or artistic work or a published edition of such a work, or in a sound recording, cinematography film, television broadcast or sound broadcast, is not infringed by the Commonwealth or a State, or by a person authorized in writing by the Commonwealth or a State, doing any acts comprised in the copyright if the acts are done for the services of the Commonwealth or State.

(4) Where an act comprised in a copyright has been done under sub-section (1) of this section, the Commonwealth or State shall, as soon as possible, unless it appears to the Commonwealth or State that it would be contrary to the public interest to do so, inform the owner of the copyright, as prescribed, of the doing of the act and shall furnish him with such information as to the doing of the act as he from time to time reasonably requires.

(5) Where an act comprised in a copyright has been done under sub-section (1) of this section, the terms for the doing of the act are such terms as are, whether before or after the act is done, agreed between the Commonwealth or the State and the owner of the copyright or, in default of agreement, as are fixed by the High Court.

200. (1) The copyright in a literary, dramatic, musical or artistic work is not infringed by reason only that the work is reproduced or, in the case of a literary, dramatic or musical work, an adaptation of the work is made or reproduced—

- (a) in the course of educational instruction, where the work is reproduced or the adaptation is made or reproduced by a teacher or student otherwise than by the use of an appliance adapted for the production of multiple copies; or
- (b) as part of the questions to be answered in an examination, or in an answer to such a question.

(3) For the purposes of sections 38 and 103 of this Act, in determining whether the making of an article constituted an infringement of copyright, the last two preceding sub-sections shall be disregarded.

Appendix F

Bibliography

We think it useful to set out a short list of official publications, books and articles relevant to the field of our inquiry. This list does not attempt to be, nor is it, exhaustive. We also point out that some of the material written on the subject of reprographic reproduction is arguably less than impartial.

Apart from the published material below, the Committee has been also assisted by some unpublished material which has been obtained by the Secretary through departmental sources, or by members of the Committee individually. This material has not been listed.

1. Official publications

- Those reports of Committees referred to in paragraph I. 10 of this Report. Committee on Inquiry into Public Libraries. *Public Libraries in Australia*. Australian Government Publishing Service, Canberra, 1976.
- Copyright* (Monthly review of the World Intellectual Property Organisation: formerly United International Bureaux for the Protection of Intellectual Property). Particular mention is made of the letters published in this journal, for example,
- Pedrazzini, M. M. 'Letter from Switzerland'. *Copyright*, December 1975, pp. 247-252.
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- Stromholm, S. 'Letter from Sweden'. *Copyright*, February 1976, pp. 59-65.
- Copyright Bulletin*; *Copyright Bulletin: Quarterly Review*, Unesco, Paris. Particular mention is made of the comparative legal studies published in this journal, for example, 'Comparative Study of Copyright Law: The Right of Reproduction'. *Copyright Bulletin: Quarterly Review*, vol. IV, no. 3, 1970, pp. 9-42.
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- List of Scientific and Technological Serials*. National Library of Australia, Canberra, 1975.
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- Records of the Conference for Revision of the Universal Copyright Convention* (Paris, July 1971) Unesco, Paris, 1973.
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- Report to the Council of the National Library of Australia by the Scientific and Technological Information Services Enquiry Committee: May 1973* (The STISEC Report). 2 vols., National Library of Australia, Canberra, 1973, 1975.

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- Report of a Survey of the Copying of Print Materials by Schools carried out by the Council for Educational Technology and the Publishers Association.* The Publishers Association, London, January 1975.
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- United States. *Amended Copyright Revision Bill Reported by the Subcommittee on Courts, Civil Liberties and the Administration of Justice to the Committee on the Judiciary of the House of Representatives.* (94th Congress 2d Session) dated August 6, 1976.
- United States. *Hearings before the Subcommittee on Patents, Trade Marks and Copyrights of the Committee on the Judiciary, United States Senate, July 31 and August 1, 1973.*
- United States. *Hearings before the Subcommittee on Patents, Trade Marks and Copyrights of the Committee on the Judiciary, United States Senate, 90th Congress, March-April 1967.* 4 Parts and Index.
- United States. *Hearings before the Subcommittee on Patents, Trade Marks and Copyrights of the Committee on the Judiciary, United States Senate, 89th Congress, August 1965.*
- United States. *Hearings before Subcommittee No. 3 of the Committee on the Judiciary, House of Representatives, 89th Congress, May-September 1965.* 3 Vols.
- United States. *1964 Revision Bill with Discussions and Comments, September 1965.*
- United States. *Preliminary Draft for Revised U.S. Copyright Law and Discussions and Comments on the Draft, September 1964.*
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