Submission to Review of Copyright Regulations 1969 and the Copyright Tribunal (Procedure) Regulations 1969

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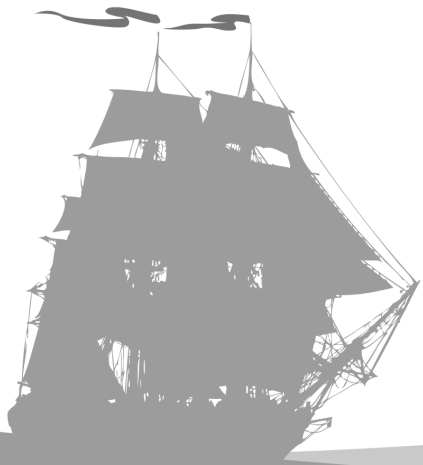

Submission to Review of Copyright Regulations 1969 and the Copyright Tribunal (Procedure) Regulations 1969

The Pirate Party thanks the Department of Communications and the Arts for the opportunity to provide comment on the exposure drafts of the *Copyright Regulations 2017* and the *Copyright Legislation Amendment (Technological Protection Measures) Regulations 2017*.

Our first comment is that the time for consultation is very limited. In spite of our best efforts to come to grips with these regulations, it has been very difficult in the timeframe allowed, or indeed address the specific questions you have asked in your consultation paper.

We appreciate the desire for ”fit for purpose” type comments and in any case our submission will only run to a few pages.

We appreciate that Technical Protection Measures or TPMs may be legally circumvented in order to allow for interoperability or in order to view region-limited material which has been legitimately purchased. However, we think that making the circumvention of TPMs in any circumstances illegal is problematic. If you must, protect the underlying material as a matter of general principle, but we think you should consider TPMs as sitting totally outside a legal system of regulation and penalties.

We observe that in overseas jurisdictions the ability of owners to maintain their own equipment has been compromised by intellectual property regimes. So long as someone is not copying someone else’s material for commercial purposes of sale, you should be able to control, adapt to your own purposes and maintain anything you have purchased, as an extension of the prerogative to provide interoperability and view any content regardless of the region where it was legitimately purchased.

We suggest that legal protection for TPMs is a can of worms best left unopened, but at a minimum circumvention for the purposes of establishing interoperability be expanded to also include the adaptation and maintenance of legitimately purchased items for personal use.

We note that general exemptions for research, review, parody and satire are allowed for in the act, but in the regulations are only explicitly

tied to broadcast and research in recognised educational institutions. We are anxious that the general exemptions provided in the act will continue, and trust this will continue to be the case.

A further enhancement would be implementing ”fair use provisions” as recently recommended by the Productivity Commission and other bodies over the years, which would be our preferred option.

We have a broad concern over the approach to copyright infringement by Carriage Service Providers in that it will likely mean a scrutiny of non-commercial copying, where overseas experience is that such copying does not affect commercial sales of copyrighted material, and there has been no Australian research - for example by the Productivity Commission - that validates such claims by copyright holders.

Certainly, we recognise that copying made with commercial intent is a legitimate concern, but remain concerned that the penalties are out of proportion in comparison to those for violent crime, and wonder about the whole rationale for civil matters becoming criminalised.

The process of notices of claimed infringement notices and counter notices does seem reasonable on the face of it. Nevertheless, we have concerns that legitimate uses for review, research and so on will be quashed through an abusive use of the legal process. We would like to see additional ”safety valves” built into the legislation, where if there is reason to believe that claims are vexatious or intimidatory, their progress stops based on the identification of that concern.

While we could imagine a rights-holder making a few claims a year, representing legitimate claims, we could imagine some legal house making thousands of claims a year, which would clearly be outside of the intent of the regulation, an echo of the ”patent trolling” we see overseas. We would be happier if there were another ”safety valve” in the legislation to prevent this from happening.

It has been hard to understand the intent of the ”industry code”, particularly in the time allowed for consultation. While we recognise the ability of rights holders to identify alleged infringing material through publicly available means for openly available and published material as would any member of the general public, anything in addition to

this would represent a gross violation of privacy and would most likely be an onerous requirement on the CSP. We note the Act stipulates technical measures should not ”impose substantial costs on carriage service providers or substantial burdens on their systems or networks.” Still, we wonder what will happen when the rubber hits the road and there is a three way conflict between the wants of rights holders, the burden of the approach, and privacy issues.

John August

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