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Memorandum to

Alan Coulter  
George Eichinski.

Computer imaging of material copied under the Educational Licence.

As I mentioned to you both I recently prepared a document on imaging and copyright which led me to the conclusion that where the University is entitled to copy, there is no difficulty about making a copy onto a computer database and making the images available over the network.

Roger Byrom agrees with my interpretation although a copyright authority has suggested that there is some possibility that bringing the image up on a screen is the making of a copy.

I think we should at least begin to discuss:

- whether we wish to be adventurous and embark on a project we would need to involve Roger Byrom in such a decision;
- whether there is a student audience which would use such a service;
- what technology we would use;
- and which administrative procedures.

For your information I enclose

- an excerpt from a paper which I gave at the recent ALIA Conference, which Roger had agreed with;

- an excerpt from a draft submission to AVCC which I prepared.

It could be useful for the three of us to get together to discuss this if both the Library and the Centre are interested.

*Derek*

Derek Fielding  
Pro-Vice-Chancellor (Academic Services)

*Excerpt from ALIA paper*

4.2.4 Recommended readings.

A number of universities are interested in the possibility of mounting recommended readings on a database and having students access the database as required. They ask whether the present educational copying licence permits this.

There does not seem to be any breach of copyright if an educational institution copies into computer memory readings which come within the limits for which educational copying is permitted. It would have to pay the normal fees.

What are the permitted uses of such readings held on computer?

If students simply access the database and read the material off screen, this would not appear to be an infringement if the reasoning under 4.2.1 above is correct and a screen display is not a copy in the legal sense.

If the educational institution used the database copy to make further copies for the purposes permitted by the Act, this again would seem to be permitted, the usual fees being paid.

The copyright situation is much less clear when one considers printing out by students from such a database. Such printing out is not covered by the provision [S.39A] which exonerates the institution from responsibility for copies made on what the Act calls "reprographic" machines in libraries. On the other hand a case might be made that such copying came within *fair dealing* since by the very nature of educational copying, the material being copied comes within the limits permitted by *fair dealing*.

This is all speculation by some-one who is not a lawyer. A court might decide, for instance, that by making the recommended readings available to students in this way the educational institution had contributed to a breach of copyright.

*Excerpt from draft submission*

Recommended readings.

Under Part VB of the Act educational institutions are able to make copies of published works, within certain prescribed limits, for educational purposes.

A number of universities are interested in the possibility of mounting recommended readings on a database and having students access the database as required. There does not seem to be any breach of copyright if an educational institution copies into computer memory readings which come within the limits for which educational copying is permitted. Such copying would, of course, require payment of the normal fees.

The situation regarding use of such material held in memory is much less clear.

Students may access the database and read the material off a screen. It is not clear whether a screen display is a copy for the purposes of the Act, although one authority (Lahore, James. Copyright Law, Sydney, Butterworths, 1988-9.20.180) has said that it may be. In these circumstances it is not certain whether a royalty should be paid on each occasion when a document is read on screen.

If the educational institution uses the electronically stored copy to produce further copies for educational purposes, this again would seem to be permitted, the usual fees being paid.

The copyright situation is much less evident when one considers printing out by students from such a database. Such printing out is not covered by the provision [S.39A] which exonerates the institution from responsibility for copies made on what the Act calls "reprographic" machines in libraries. On the other hand a case might be made that such copying is within *fair dealing* since by the very nature of educational copying, the material being copied comes within the limits permitted by *fair dealing*.