
Alastair Smith -Submission on the draft copyright Code of Practice for S92A

Having read the draft code of practice, and the relevant sections of the copyright act, my submission is as follows:

While the Code is a valiant attempt to clarify the legislation, the underlying lack of clarity in Section 92a of the Copyright Act means that it would be wiser not to implement the Code, but to ask Parliament to reconsider the legislation, and produce an act that more appropriately addresses the realities of the online digital environment.

The legislation has many problems, including lack of clarity as to what constitutes an ISP, and an assumption of guilt upon accusation. Copyright is a balance between the rights of copyright holders to receive fair compensation for their endeavours, and the need for society to have access to information through fair dealing. In my view, Section 92a shifts the balance too far towards the rights of copyright holders. I would like to concentrate on one aspect of this, digital preservation.

In the move away from hard copy publication, where information was produced on paper and stored in archives and libraries, to digital online publication, we face the danger of losing our digital memories. Already many documents published from the early years of the web are not accessible. In 1997 I published a paper on criteria for evaluating information on the Internet (Smith 1997). Today, over half of the resources referred to in the paper are unavailable.

Experience has shown that one of the most effective ways of ensuring the availability of information on the web is the creation of multiple copies, by archiving programs, at mirror sites, etc. My concern is that S92a is likely to create an environment where the risk of an infringement accusation will inhibit the legitimate copying of material under fair dealing provisions, and result in fewer copies of material being preserved in the long term.

I encourage the TCF to not ratify the Code, but to encourage Parliament to lead the world in enacting imaginative copyright legislation that recognises the role of fair dealing in the 21st century digital online environment.

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Alastair Smith