



**Thoughts on the Exposure Draft:  
*Copyright Amendment Bill 2006:  
Exceptions and other Digital Agenda  
review measures***

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# Legal background

- Libraries often do not own copyright in collection items ...
- ... but they and their patrons often perform acts that are within the “exclusive rights” of the copyright owner.

# Infringement

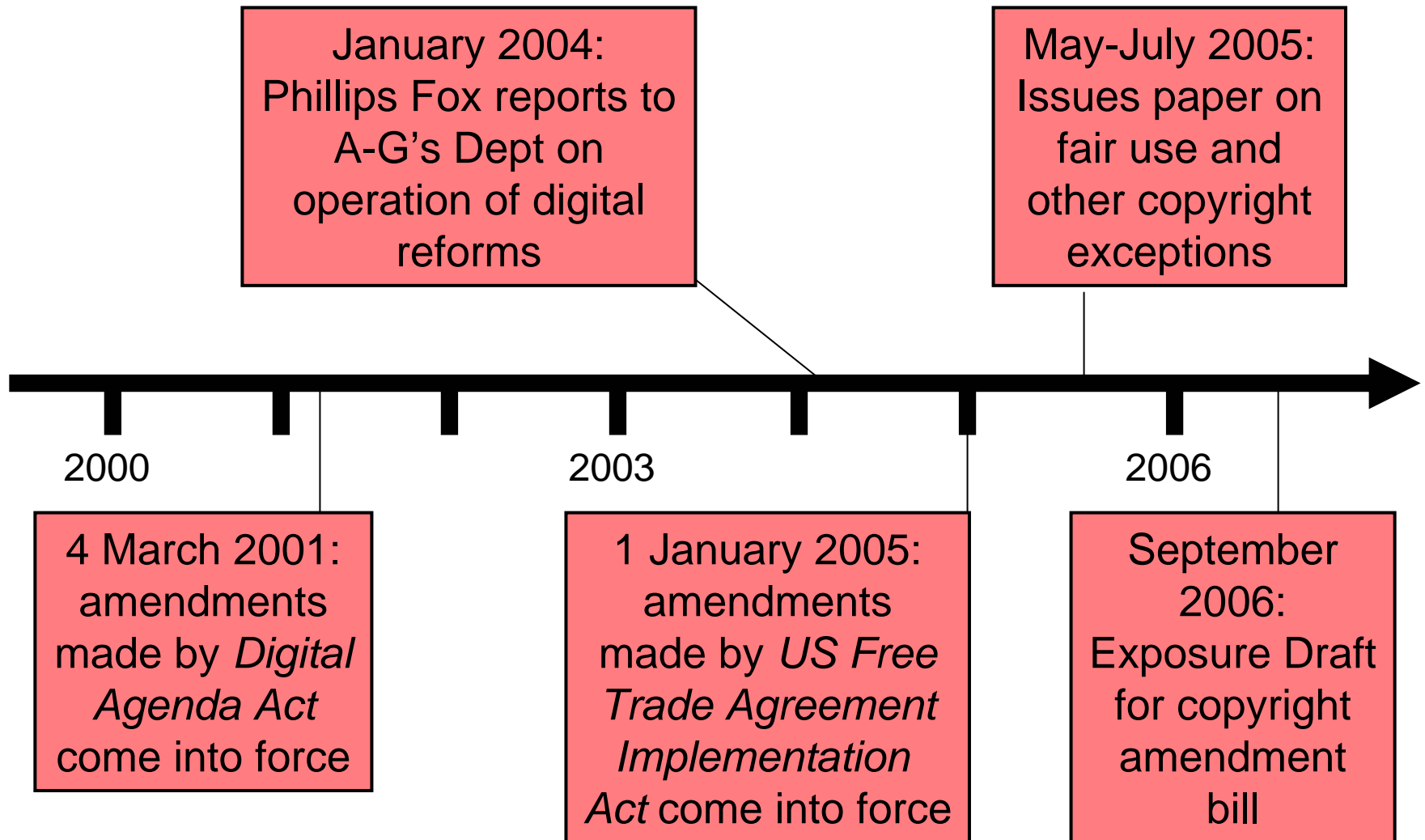
**Infringement for 3P to perform  
an exclusive act without  
the copyright owner's consent**

**Dealings with  
less than a  
substantial  
part of a work  
(quality important)**

**Obtaining the  
consent of the  
copyright owner  
(i.e. a licence)**

**Statutory  
exceptions,  
eg: fair dealing;  
libraries and  
archives  
provisions**

# Timeline



# Key changes

- “Flexible dealing” exception for cultural institutions (and others).
- Special exception for key cultural institutions reproducing significant works.
- Changes to quantitative exception in fair dealing; similar changes to ss 49 & 50.
- Other miscellaneous changes.

# Flexible dealing

- Copyright in a “work” or “subject-matter” not infringed by a **use** where:
  - the circumstances of the use amount to a **special case**;
  - the use is covered by one of the **subsections**;
  - the use does not conflict with **a normal exploitation** of the work / subject-matter; **AND**
  - the use does not unreasonably prejudice **the legitimate interests** of the copyright owner (or their licensee).

# Flexible dealing

- Subsection (2) applies where:
  - a use is made by or on behalf of a library or archives:
  - the use is for the purpose of **maintaining or operating the library or archives** (including operating the library or archives to provide services **of a kind usually provided** by a library or archives); and
  - the use is not partly for the purpose of the body obtaining a **commercial advantage**.

# Key cultural institutions

- Applies where, “under the law of the Commonwealth or a State or Territory, the body administering the library or archives has the function of developing and maintaining the collection”.
- An authorised officer must be “satisfied that the work is of historical or cultural significance to Australia”.
- Allows a single reproduction or copy to be made (except for original artistic works).
- Availability of exception subject to commercial availability requirements.

# Fair dealing – section 40

- A reproduction of an article in a periodical publication is a fair dealing.
  - This does not apply if another article in the publication is also reproduced for different research or a different course of study.
- A reproduction of a published work is a fair dealing if no more than a reasonable portion (as defined in section 10(2) and (2A)) is taken.
- Reproduction of greater than a reasonable portion of work can still constitute a fair dealing.

# Miscellaneous

- Reproductions made under ss.49 and 50 can be made from a replacement copy made under s.51A(1).
- Sections 49 does not apply to a request for two or more articles in the same periodical publication unless the articles are requested “for the same research or course of study”.
  - Similar amendment in section 50.
- In assessing reasonable portion in ss.49 and 50, the rules in ss.10(2) and (2A) are exhaustive.

# Miscellaneous

- Factors that must be taken into account when making a commercial availability declarations are listed.
- Definition of library in ss.49 and 50 means “a library whose collection is accessible to members of the publish directly or through interlibrary loans”.

# Thanks for listening!

- We publish free stuff online:
  - Hudson and Kenyon, *Copyright and Cultural Institutions: Guidelines for Digitisation* (2005, 155 pages) - [www.law.unimelb.edu.au/cmcl](http://www.law.unimelb.edu.au/cmcl).
  - Hudson, 'Cultural Institutions, Law and Indigenous Knowledge: A Legal Primer on the Management of Australian Indigenous Collections' (2006, 95 pages) - [www.ipria.org](http://www.ipria.org).
- Bound copies are available for purchase.