

Google could be 'gagged' by new laws: expert

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Internet search engines such as Google could be crippled by changes to copyright law in Australia that look set to be implemented by the Federal Government, a Copyright expert from The Australian National University argues.

Dr Matthew Rimmer from the ANU College of Law argues that the *Copyright Amendment Bill 2006* (Cth) – which has come before the Australian Parliament this week – fails to protect commercial entities in its new Copyright exemption provisions for libraries, archives and research purposes.

“The Australian Government has actually narrowed the defence of fair dealing for research and study,” Dr Rimmer said. “There are new minor Copyright exceptions on time-shifting, format-shifting, non-commercial use by libraries and archives, and satire and parody. However, such provisions have been so narrowly framed that they are largely unworkable and inoperable.

“Search engines such as Google will be in particular strife under such a regime. As a commercial entity, they will not be allowed to take advantage of these exceptions.”

Dr Rimmer said that this could have major implications for the ability of search engines to engage in large-scale digitisation projects, provide thumbnail images, index news stories, and archive and cache web content.

“The proposed laws need to be further developed if we’re going to foster the technological innovation and creativity promised by companies like Google,” Dr Rimmer said. “It would be better if we adopted an open-ended defence of fair use as exists in the United States. The US Supreme Court has described the defence of fair use as ‘the guarantee of breathing space for new expression within the confines of Copyright law’. The Bench has also called the defence ‘an engine of free expression’.

“Not only does the defence cover particular purposes such as criticism, comment, news reporting, teaching, scholarship, and research, the US courts have held that the defence of fair use embraces such activities as time-shifting and space-shifting, parody and transformative uses, reverse engineering, and the use of thumbnail images in search engines. This provides a much wider safe harbour than that offered by the Australian Copyright Amendment Bill 2006 (Cth).

Dr Rimmer also said that the proposed Australian laws did not provide enough clarity on time-shifting (eg. recording programs from TV) or space-shifting (eg. converting music from one format to another), and that the exemptions for satire and parody were unclear and unwieldy.

Source: ANU

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