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***Comments on ACCC draft document
“Copyright licensing and collecting societies:
a guide for copyright licensees”***

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Australian Copyright Council

1. The Australian Copyright Council is a non profit company. It receives substantial funding from the Australia Council, the Federal Government’s arts funding and advisory body. The Copyright Council provides information about copyright via its publications, training and website, provides free legal advice about copyright, conducts research, and represents the interests of creators and other copyright owners in relation to policy.
2. Some of the organisations affiliated with the Australian Copyright Council are making separate responses to the ACCC’s draft guidelines.

The purpose of the draft guide

3. The Australian Copyright Council welcomes the publication of information for the public about its copyright rights and obligations.
4. The title of the draft guide indicates that it is intended to be read by copyright licensees. In the preface, however, the ACCC refers to an amendment introduced by the Copyright Amendment Act 2006. That amendment (new s 157A) requires the Copyright Tribunal, in certain cases, at the request of a party to a reference or application, to have regard to relevant guidelines (if any) made by the ACCC. We therefore seek clarification from the ACCC about whether its draft guide is intended to be a “relevant guideline” for the purposes of s157A.

General comments

5. Given that the intended audience is copyright licensees, we suggest that the ACCC review some of the language in the draft. At several points in the draft, the discussion of economics and competition law is technical and may be confusing for a lay audience.
6. The examples in the document relate solely to the public performance of recorded music. It would be useful to include examples based on other situations, such as reproduction of text or images.

Comments on specific chapters

Chapter 2

7. The reference to “make a copy of a published edition of a work” on page 7 should be deleted: this is a right of the owner of the copyright in the edition (eg the publisher)

rather than the owner of copyright in the work (eg the author of the work). A reference to the published edition copyright could be included on page 8.

8. The discussion on page 8 of exceptions to copyright infringement needs to be updated to reflect the 2006 amendments – for example, there is now a defence of fair dealing for parody and satire, and the home taping exception applies to all copyrights in a pre-recorded television program.

Chapter 3

9. The reference to the Audio-Visual Copyright Society on page 11 should be amended to reflect the fact that it does not offer any voluntary licences and consequently does not “represent” copyright owners in the way suggested here. Rather, it merely administers the listed statutory licence schemes.
10. We query the relevance of the reference in the first sentence on page 14 to a statement by the government in 2000 – before the Code of Practice was implemented – that it would consider a mandatory code if a voluntary code were not effectively implemented. To our knowledge, there has been no indication from the government that the Code was not effectively implemented.
11. If the reference to introduction of a mandatory code in the event of significant dissatisfaction with the Code is to remain, it would be useful to also include some information about the outcomes of the Code reviews conducted to date.
12. For example, the Code Reviewer’s 2005-2006 report says:

In the face of a wide opportunity for licensees and organisations representing licensees, and persons or bodies otherwise affected by the operation of the societies, as well as members, to make submissions, the almost complete absence of any submission to the review alleging a breach of the Code, while the one such submission that was made was without foundation, is evidence raising an inference that the Code is being observed.

...

... the Code appears to have a broad influence over and beyond its effect on particular actions. The very fact that it has been kept before the staff of the societies, not merely through induction courses, but in regular conferences and daily practice, on their websites, and as the subject of specific records, tends over time to create and reinforce attitudes consistent with the aims of the Code.

Chapter 4

13. The reference to copyright owners assigning rights to those collecting societies which offer voluntary licences (on page 18, under the heading “Voluntary licences”) is true only of APRA; other collecting societies are authorised by copyright owners on either an exclusive or non-exclusive basis to offer licences, but do not take an assignment of the rights.

Chapter 5

14. On page 20, under the heading “General process for dispute resolution”, it would be useful to footnote the URLs for the complaints-handling and dispute resolution procedures.

Chapter 7

15. In the discussion of the authorisation granted to APRA and PPCA in chapter 7, it would be useful to include information about why those organisations have received authorisation: for example (to quote from the ACCC’s authorisation), that “APRA administration generates significant public benefits” and that “it is far more efficient for APRA to administer performing rights than it would be a number of competing societies to do so ... users’ costs are reduced ... APRA’s arrangements also result in significant negotiations cost savings”.

Chapter 8

16. The reference to “owned” on the bottom line of page 36 appears to be a typographical error for “owed”.

Ian McDonald and Libby Baulch
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