



Australian Government

Attorney-General's Department

Information Law and
Human Rights Division

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Mr John Laughlin
Acting Director
Transport and Prices Oversight Branch
Australian Competition and Consumer Commission
By email: john.laughlin@accc.gov.au

Dear Mr Laughlin

Further submission - Draft ACCC guide for copyright licensees on copyright licensing and collecting societies

I refer to your telephone conversation with Justine Clarke on 13 March 2007 and thank you for permitting a further submission in response to the Australian Competition and Consumer Commission (ACCC) draft publication *Copyright licensing and collecting societies: a guide for copyright licensees* (draft guidelines).

The Department has a slight concern that the draft guidelines could leave the impression that the ACCC's views on pricing of licence fees will have a greater impact on their determination than may be accepted by the Copyright Tribunal of Australia, when making that determination. We have reviewed the other submissions the ACCC has received. We consider that some of these submissions underline our concern as some submissions have suggested that different or additional principles for the pricing of copyright licences should be included in the section of the draft guidelines that deals with the ACCC's views on the determination of the remuneration for the use of copyright material (chapter 8).

We note that the draft guidelines use the same quote from the Australian Competition Tribunal decision in *Re Applications by Australasian Performing Right Association Ltd* (1999) 45 IPR 53 at 113 in two places: page 29 and page 35. This quote is as follows:

Whilst the Copyright Tribunal might not be obliged to treat competition issues as paramount, we cannot accept that it would not take them into account and strive to determine what constitutes reasonable charges and conditions having regard to the wider public interest as well as to the interests of the immediate parties before it.

This quote is used in the section on the Copyright Tribunal's determination of rates of remuneration (chapter 6) as well as in the section on the role of the Copyright Tribunal in the chapter detailing the ACCC's views on the determination of the remuneration for the use of copyright material (chapter 8). It may not be clear to a lay reader that the Australian Competition Tribunal has no authority regarding the administration of the *Copyright Act 1968*.

While not doubting the care and expertise used by the Australian Competition Tribunal in reaching this considered view, the fact remains that the Copyright Tribunal's views on what it takes into consideration in exercising its jurisdiction are the safest guide on that matter. You have, quite properly, recorded and analysed the Copyright Tribunal's views in that regard in chapter 6.

The action officers for this matter are Chris Creswell and Justine Clarke who can be contacted on (02) 6250 6312 and (02) 6250 6712 respectively.

Yours sincerely



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