

Laughlin, John

From: David Rome [David.Rome@avcc.edu.au]
Sent: Thursday, 1 February 2007 3:58 PM
To: Laughlin, John
Cc: Transport Prices-Oversight; Angela Magarry; Paul Stubing
Subject: Submission to the ACCC in relation to draft guidelines on copyright licensing
Attachments: NERARreport 31 Jan 07.pdf

Dear Mr Laughlin

The AVCC welcomes the opportunity to make representations to the Australian Competition and Consumer Commission (ACCC) regarding the ACCC's draft guidelines on copyright licensing, and I apologise for being a day late in lodging these comments.

The Australian Vice-Chancellors' Committee (AVCC), the peak body representing 38 Australian universities, acts as a consultative and advisory body for all university affairs.

Statutory copyright licences

The AVCC notes that s 157A of the Copyright Act 1968 ("the Act") provides that in making a decision on a reference or application under Subdivision H of Part VI, Division 3 of the Act, the Copyright Tribunal ("the Tribunal") must, if requested by a party to the reference or application, have regard to relevant guidelines (if any) made by the ACCC.

Subdivision H of Part VI, Division 3 of the Act applies to references and applications relating to licences and licence schemes.

Licence is defined in the Act to mean:

"a licence granted by or on behalf of the owner or prospective owner of the copyright in a work or other subject-matter to do an act comprised in the copyright."

Licence scheme is defined in the Act to mean

"a scheme (including anything in the nature of a scheme, whether called a scheme or tariff or called by any other name) formulated by a licensor or licensors and setting out the classes of cases in which the licensor or each of the licensors is willing, or the persons on whose behalf the licensor or each of the licensors acts are willing, to grant licences and the charges (if any) subject to payment of which, and the conditions subject to which, licences would be granted in those classes of cases."

It follows from the above definitions that s 157A of the Act applies to voluntary licences only, and not to statutory licences such as the educational statutory licences contained in Parts VA and VB of the Act. There is no equivalent provision which directs the Tribunal to have regard to ACCC guidelines when making a decision on a reference or application under Subdivision C of Part VI of Division 3 of the Act (relating to applications or references relating to Part VA of the Act) or Subdivision D of that same Part (relating to applications or references relating to Part VB of the Act).

The AVCC notes that, quite rightly, the ACCC draft guidelines do not discuss the various factors and principles which may be relevant to the determination of equitable remuneration payable in respect of the statutory licences, but deal only with factors relevant to the pricing of copyright material which is the subject of a voluntary licence or licence scheme.

For better certainty, the AVCC considers that it would be appropriate for any ACCC guidelines to contain an express statement to the effect that they are intended to relate only to voluntary licences or licence schemes, as other unrelated factors may be relevant to the determination of equitable remuneration payable in respect of statutory licences.

Voluntary licences and licence schemes

1/02/2007

The AVCC has had the opportunity to review the report prepared by NERA Economic Consulting at the request of Minter Ellison (refer attached).

Subject to the comments above in relation to the scope of the ACCC draft guidelines, the AVCC is in broad agreement with the approach set out in the NERA report. The AVCC urges the ACCC to take greater account of the issues discussed in that report in formulating guidelines relevant to the pricing of copyright material in the context of voluntary licences and licence schemes.

David Rome
Chief Executive Officer

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