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John Laughlin
Acting Director
Transport & Prices Oversight Branch
Australian Competition and Consumer Commission
GPO Box 520
Melbourne VIC 3001

Dear Mr Laughlin

Copyright licensing and collecting societies: a guide for copyright licensees

CAL welcomes the opportunity to comment on the draft ACCC publication, *Copyright licensing and collecting societies: a guide for copyright licensees* (the Guide).

We believe the Guide will provide licensees with a useful resource to assist them to understand the operations of CAL and other collecting societies, and the relationship between the monopoly position of copyright societies and competition laws. We hope the Guide will further the appreciation by users of copyright works of the role collecting societies play in the information economy – facilitating access to the work of Australian and foreign creators.

Following are several suggestions to enhance the usefulness of the Guide.

Clarifications

- p. 8. We note a reference in the final paragraph of page 8 of the Guide to 'narrow exceptions' other than the fair dealing exceptions. We believe this description of, in particular, the statutory licences and library copying exceptions, is not entirely accurate. The statutory licences granted under the Australian *Copyright Act* are in fact much broader than exceptions granted under comparable overseas jurisdictions. We therefore suggest the removal of the adjective 'narrow' from this paragraph.

- p. 11 CAL believes the brief description of collecting societies on page 11 would be enhanced in relation to CAL with further explanation of our voluntary licensing initiatives, which are of increasing importance to users of copyright material. We suggest the addition of the following sentences which would give readers of the Guide a better idea of what these licences cover. For instance "CAL offers voluntary licences for use

of print and electronic works by corporations, local government, religious organisations, and not for profit associations and organisations.

- p.17 CAL suggests that the scope of works CAL represents by virtue of our declarations for the educational Part VB licence, and the government Part VII licence be more accurately defined. Reference to the declarations would be appropriate.

The declarations refer to, for Part VB, works “other than a work included in a sound recording or cinematograph film” and for Part VII “works other than works included in a sound recording, cinematograph film or a television or sound broadcast.” CAL therefore represents a spectrum of works, including: books, journals, artistic works, survey maps and plans, photographs, poetry, short stories and plays. We think it would be helpful for licensees to understand the breadth of the repertoire of works represented by CAL. We therefore suggest that the Guide say “CAL represents for the purposes of the statutory licences in the educational and government sectors a spectrum of works including: books, journals, artistic works, survey maps and plans, photographs, poetry, short stories and plays.”

- p. 18 The reference to voluntary licensing being dependent on assignment of rights is not technically correct. CAL never takes an assignment of rights to offer works under voluntary licences which we administer. We only ever take a non-exclusive licence which allows us to include those works in the repertoire offered to licensees. CAL would therefore suggest that the first sentence under the heading “Voluntary Licensing” be amended to read: “Where owners of copyright have given collecting societies a mandate to license the use of their works, collecting societies may enter into voluntary licence arrangements with copyright users.”
- p.31 Page 31 of the Guide refers to the role of the ACCC, the Trade Practices Act, and the market power of collecting societies. It draws attention to the possible breach of the Trade Practices Act if this market power is abused. However, in CAL’s view the role of the Copyright Tribunal, recognised by the *Australian Competition Tribunal* in 1999, is to ensure that all considerations, including competition factors, are taken into consideration in the Copyright Tribunal’s determinations.

Case Studies

We note that all the case studies contained in the Guide relate to use of music. We would like to suggest inclusion of case studies about the use of other copyright materials.

For example we suggest:

- An example relating to CAL could be inserted describing how, if a company wants to purchase a voluntary licence to enable them to photocopy or place copyright works on an intranet, such as journal articles, they could apply to CAL for a licence.

For example:

“Companies such as an accounting or pharmaceutical firm, can obtain a licence from CAL for photocopying and intranet use of literary works, such as journal articles, by completing a standard application form.”

Description of Collecting Societies

We feel that there is not sufficient emphasis in the Guide on the real benefits provided by organisations like CAL in facilitating efficient access to copyright works. Linked to this is the impetus on collecting societies not to abuse any market monopoly position which exists by virtue of their declared status, or by the rights their members voluntarily grant to them.

CAL is not guaranteed its declared status as a collecting society and has had its tender challenged in the past. The tender is awarded by the AG's department or the Copyright Tribunal, and this process allows for competition in the services we deliver and illustrates how our market power/performance is not unchecked.

Conclusion

Thank you for the opportunity to provide comment on the Guide. We have endeavoured to keep our comments short and relevant. Should you require any further clarification, please do not hesitate to contact us.

Yours sincerely,



Caroline Morgan
General Manager Corporate Services