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Dear Mr Laughlin

ACCC's request for comments on draft publication
Copyright licensing and collecting societies: a guide for licensees (the **Guide**)

The Special Broadcasting Service (**SBS**) thanks the ACCC for an invitation to comment on all aspects of the Guide that is intended to provide general information to users of copyright material to help them negotiate licensing arrangements with collecting societies.

Taking each chapter in order, SBS's comments on the Guide are as follows:

Chapter 2: 'Copyright protection in Australia'

We understand that the Guide will be updated in conformance with the Copyright Act that came into effect in January 2007. Therefore, we anticipate that in chapter 2, 'Copyright protection in Australia', amendments such as those suggested below will be made to the following paragraph on page 8:

"Copyright will not be infringed in certain circumstances if acts which would otherwise infringe copyright have been performed for the purposes of research or study, criticism or review, [insert "parody or satire"], reporting news and for judicial proceedings or providing professional advice. There are various other narrow statutory exceptions to copyright infringement under the Copyright Act, including educational use, use by libraries and archives, [insert "use by broadcasters"], public recitation and performance, home copying of live broadcasts [insert "private copying"], various uses of artistic works, old films, computer programs, temporary reproductions in the course of communication and use of a legal copy."

Chapter 4: 'Licensing and remuneration for use of copyright material'

We have a few editorial comments on this chapter, 'Licensing and remuneration for use of copyright material'.

"Voluntary licences"

The opening sentence states:

"Where owners of copyright have assigned their rights to collecting societies, collecting societies may enter into voluntary licence arrangements with copyright users". (page 18)

For accuracy, this sentence should be amended to read:

*"Where owners of copyright have [**"assigned or otherwise transferred"**] their rights to collecting societies, collecting societies may enter into voluntary licence arrangements with copyright users" or similar wording so that this text is consistent with the description of 'input' arrangements that occurs on page 32.*

At the end of this section there is a sentence which states,

"copyright users may be able to enter into a transactional licence directly with copyright owners" (page 19).

It would be instructive if the Guide explained how copyright owners might enter into a licence directly with copyright owners; and that in some cases they might be required to "opt-out" of licensing arrangements with collecting societies, such as APRA. We will return to this issue in our comments on chapter 7 below.

Chapter 6: 'The tribunal'

In contrast with the ACCC's understanding of the proceedings of the Copyright Tribunal, SBS believes that to take a matter to the tribunal involves a significant investment of time and considerable resources that can act as a disincentive to copyright users.

It should also be noted that the jurisdiction of the tribunal includes only collecting societies where the main business of the body is granting licences (Copyright Act ss136 (10(b)(iii))).

Chapter 7: 'The role of the ACCC'

In the section about the 'Relationship between collecting society authorisation and remuneration' commencing,

*“The ACCC considers that collecting societies should make **input** and **output** arrangements that minimise the anti-competitive effect their operation...” (page 33)*

we suggest that the technical terminology ‘input’ and ‘output’ be explained in plain English for users.

Later in this section the paragraph beginning:

“In particular, arrangements will be less anti-competitive if they:

- *do not prevent direct negotiation between copyright owners and users...”*

could also be expressed more straightforwardly. Altogether, this section should document and provide examples to demonstrate how the ACCC sets input arrangements (*Re: Applications by Australian Performing Right Association* (1999) 45 IPR 53). APRA’s “Opt Out and Licence Back” provisions might be also be outlined ^(Attachment 1).

Chapter 8: “Remuneration for the use of copyright material”

In the section “Pricing of copyright material”, the subsection ‘Price greater than marginal cost’ we note that this language is quite technical for the ordinary reader and, in particular, we suggest the last sentence might be qualified to explain some of the ‘risks’ associated with producing copyright material.

Further, in the subsection ‘Price discrimination and licence fee structure’ where it states:

“There may also be scope for ‘two part tariffs’ in setting remuneration for copyright material. This is where copyright licensees pay a base fee for access to the copyright material and an additional fee according to use. This additional fee could be based on, for example, each hour of use, each item of copyright material used or the number of people that have access to the copyright material.”

we suggest that this type of tariff structure requires an example.

Thank you for the opportunity to make a submission on the draft Guide. Please do not hesitate to contact me if you require any further information about this Submission.

Yours sincerely

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