



Australian Government
Attorney-General's Department

**Information Law and
Human Rights Division**

04/11791

4 October 2005

Mr Scott Gregson
Acting General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 199
DICKSON ACT 2602

Dear Mr Gregson

Australasian Performing Right Association application for authorisation: draft determination

I refer to the letters of 31 August and 23 September 2005 from Mr Gavin Jones, Director, Adjudication Branch, indicating that the ACCC had made its draft determination on the above application and that cinema operators have requested a pre-determination conference. Submissions on the draft determination were also invited.

The following comments are made by way of a submission on the draft determination. The references to paragraphs are to paragraphs in the draft determination.

Para 2.16

It appears that three references to the Competition Tribunal should be to the Copyright Tribunal.

Para 2.28

The Government accepted in part – not in full – the recommendation in the Ergas Committee report on collecting societies.

Para 6.102

Should the reference to the Competition Tribunal be to the Copyright Tribunal?

Para 6.111

The draft asserts that “the Governments response to the [Ergas Committee] report agreed, that guidelines should be developed [by the ACCC] to guide the Copyright Tribunal in its determinations”. In fact, as is clear in the extract quoted in para 6.112 from the Government’s decision on the report, the Tribunal is to have the *discretion* to take account of the guidelines whose “*main purpose... would be to facilitate licence negotiations and minimise resort to the Tribunal*” (emphasis added). We suggest that the assertion that the guidelines are to guide the Tribunal

misrepresents both their purpose and their legal impact on the exercise of jurisdiction by the Tribunal, as envisaged in the Government's decision.

The action officer for this matter is the undersigned.

Yours sincerely

CC Creswell

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