

Australian Copyright Council

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Response to recommendations to Government in Review of Australian Collecting Societies

Thank you for inviting our comments on the recommendations in the *Review of Australian Collecting Societies*, and on collective administration generally. We would be please to attend a round table meeting with representatives of the collecting societies to discuss issues raised in Review.

Responses to recommendations to Government

- (2) **That collective administration be the mid-way house between exercise of individual rights and compulsory statutory licence where mass usage requires that the community be given access to the rights on reasonable terms.**

We support statutory licences for uses which are consistent with Art 9(2) of the Berne Convention and Article 13 of TRIPS, and where the collecting society's repertoire is not sufficiently comprehensive to offer effective voluntary licences. A statutory licence enables the collecting society to license first, and then identify the rights owners for distribution.

- (3) **That there be a multiplicity of societies so that individual societies can represent the disparate interests of separate groups of rights owners.**

We support this recommendation.

- (4) **That the 1% limit (imposed in Section 152(8)) on fees payable by a broadcaster for the broadcasting of published sound recordings be repealed forthwith.**

We support this recommendation.

- (5) **That the half of one cent limitation (imposed in Section 152(11)) on fees payable by the ABC for the broadcasting of published sound recordings be repealed forthwith.**

We support this recommendation.

- (6) That the anomaly that negates the public performance right in sound recordings applying to the use of broadcasts (containing sound recordings) in public venues (imposed by Section 199(2)) be repealed forthwith.**

We support this recommendation. If the recommendation is accepted, then consideration should also be given to repealing section 199(3), which similarly “negates” the public performance right in a film if it is shown in public as a television broadcast.

- (7) That there be a further review of the rules of collecting societies as they relate to relationships with foreign societies and conversely, the rules of foreign collecting societies as they relate to relationships with Australian societies.**

We think that the relationship between Australian collecting societies and their foreign counterparts should be a matter for the Australian societies. In any event, we think little would be gained from such a review by the Australian Government.

- (8) That the Attorney-General reconsider the Guidelines for Declared Societies which obliges them to pay undistributable sums into the general distribution pool after a certain period.**

We think that allocation of funds for cultural purposes is a matter for the members of each society.

- (9) That discussions be held with the Australian Taxation Office to rationalise taxation arrangements for collecting societies.**

We support this recommendation.

- (10) That tax exempt status be formally accorded collecting societies that are appropriately structured and administered.**

We support this recommendation.

- (11) That all societies be encouraged to allocate a specific proportion of gross distributions and undistributable funds for cultural purposes.**

We think that allocation of funds for cultural purposes is a matter for the members of each society.

- (12) That Declared Societies be required to allocate a specific proportion of gross distributions and undistributable funds, to cultural purposes.**

We think that allocation of funds for cultural purposes is a matter for the members of each society.

- (13) That Government should not consider the imposition of statutory licences where commercial voluntary licences, collectively administered, are effective.**

This appears to be a similar recommendation to recommendation (2), and we support it. The recommendation is also consistent with international obligations.

- (14) That section 135ZM be amended or repealed so as to permit CAL to collect income in respect of artistic works at the same time as they are surveying educational institutions in respect of their use of literary works.**

We support the repeal of section 135ZM.

- (15) That educational institutions be provided with a statutory right to reproduce artistic works (other than those already covered by "fair dealing") subject to the payment of equitable remuneration to the copyright owner.**

If section 135ZM is repealed, we query whether it is necessary to introduce a new section specifically allowing the copying of artworks accompanying or illustrating text. Section 135ZL already allows an educational institution to copy an artistic work which has not been separately published, or which is not available for purchase. In the vast majority of cases, artistic works may be copied under one or other of these criteria. In the rare case that an artistic work which accompanies or illustrates copied text is separately published and available for purchase in an appropriate format, we submit that the institution should be not entitled to copy it without permission.

- (16) That there be no statutory licence introduced to grant access to copyright material for the purpose of multi-media exploitations.**

We support this recommendation. In addition, we submit that such a statutory licence would not comply with Australia's obligations under Art 9(2) of the Berne Convention or Article 13 of TRIPS.

- (17) That further inquiry be made as to the matters raised by the Societies as to how the Copyright Act might be amended to improve their effectiveness and efficiency.**

We support this recommendation.

- (18) That the jurisdiction of the Copyright Tribunal be expanded.**

We support an expansion of the Copyright Tribunal's jurisdiction to cover all collective licensing schemes. Any expansion of the Copyright Tribunal's jurisdiction must, of course, be accompanied by a corresponding increase of resources for the Tribunal.

As you are aware, the jurisdiction, powers and composition of the Copyright Tribunal were discussed at a conference hosted by the Commonwealth Attorney-General's Department, the Copyright Council and the Copyright Society in June 1995. The proceedings were published in the *Copyright Reporter*.

(19) That there be established the position of Ombudsman of Copyright Collecting Societies.

We do not object to appointing an Ombudsman, but query whether such a position is necessary, particularly given the moves made by the societies since the review to give more information to members and others about the societies' activities.

The societies' licensees have access to the Copyright Tribunal in relation to the conditions of licence schemes. The members of each society have rights under the constitution of the society and under the Corporations Law. In addition, CAL and AVCS require a declaration from the Attorney-General, and the Attorney-General may revoke that declaration under certain circumstances.

(20) That the definition of "licence" in section 136(1) be amended.

We support this recommendation.

(21) That the Tribunal have as wide a jurisdiction as possible in respect of licences and licence tariffs including the variation, approval and interpretation of all licensing schemes whether the relevant rights are administered under voluntary or statutory licence.

We support this recommendation.

(22) That the Tribunal have the right to review determinations of the Ombudsman.

As noted above, we query whether it is necessary to appoint an Ombudsman. If the Tribunal were to be given the task of reviewing an Ombudsman's determinations, it would need more resources so that this function did not reduce resources for dealing with licence scheme applications.

(23) That the procedures of the Tribunal be examined to see how matters might be dealt with, faster and more cheaply.

We support this recommendation. As noted above, this issue was discussed at the conference hosted by the Commonwealth Attorney-General's Department, the Copyright Council and the Copyright Society in June 1995.

(24) That guidelines be drawn up and an approval mechanism instituted, by which those collecting societies which can demonstrate that their structures, procedures, functions and conduct is within those guidelines, are accorded the status of "Qualified Societies".

We support this recommendation if the guidelines are similar to those in the Part VA Division 3 and Part VB Division 6 of the Copyright Act.

- (25) That such guidelines be drawn up in consultation with the Trade Practices Commission and the societies.**

We support this recommendation.

- (26) That Qualified Societies retain the protection of Section 51(3) of the Trade Practices Act.**

We support this recommendation.

- (27) That a society's input agreement should not be in breach of section 45 if the society is Qualified and the output agreement should not be in breach of section 45 if it is either (a) statutory or (b) approved by the Copyright Tribunal.**

We support this recommendation.

- (28) That where there is a purported abuse of a Qualified Society's monopoly power, the prior certificate of the Attorney General be a pre-condition to raising section 46(1) in legal proceedings.**

We support this recommendation.

- (29) That VI\$COPY be included in the National Cultural Strategy.**

This has already occurred.

- (30) That s135ZM of the Copyright Act be immediately repealed.**

This appears to be the same as recommendation as (14) above, and we support it.

- (31) Amendment to Part VB of the Copyright Act to provide a statutory licence for the reprography by educational institutions of artistic works which accompany text.**

This appears to be the same as recommendation as (15) above; we query whether such an amendment is necessary.

- (32) That Government provide seed funding for the establishment of a collecting society for the visual arts.**

This has already occurred.

- (33) That the Government commit to fully accountable seed funding for VI\$COPY for a minimum of seven hundred thousand dollars over two years and a maximum \$1.1 million over five years, depending on the speed with which s. 135ZM is repealed and the statutory educational copying right is introduced.**

The Government has provided seed funding for the establishment of VI\$COPY.

- (34) That Government not treat its contribution to establishment costs as some species of loan but rather require that at break-even point, the Society be required to pay an amount equivalent to fifty percent of the Government's grant into the Society's Cultural and Benevolent Fund and to spend the remaining fifty percent on informing the relevant rights owners about the Society and its services.**

This recommendation seems to have no relevance now that VI\$COPY has been established.

- (35) That VI\$COPY be declared as the copyright collecting society to administer the rights granted under the new statutory licence subject only to review of its Articles and Memorandum to ensure equity of membership, control and accountability and its compliance with the criteria set out in this Report for Qualified Societies.**

As noted above, the query the necessity of a new provision specifically allowing the copying of "accompanying" artworks, when such copying would invariably be allowed under s135ZL.

An application by VI\$COPY to be the declared collecting society for owners of copyright in artistic works for the purposes of Part VB would be a matter for the Attorney-General under s135ZB.

- (36) That no organisation have the ongoing right to appoint members to the board of the company. All members must have the right to board membership and no one organisation should have an automatic right to membership or control.**

We support this recommendation.

- (37) That, as a matter of urgency, further study be made of the impact of new technologies on copyright collecting societies and potential new methods of collection.**

Each of the collecting societies is getting information and analysing the effects of technological developments on its activities on an ongoing basis, and there are a number of initiatives for standardising data exchange.

Libby Baulch
Executive Officer
10 September 1996