

**THE COALITION OF MAJOR PROFESSIONAL AND PARTICIPATION
SPORTS INCORPORATED**

**SUBMISSION TO THE DEPARTMENT OF COMMUNICATIONS AND
THE ARTS**

**REVIEW OF THE COPYRIGHT AMENDMENT (ONLINE
INFRINGEMENT) ACT 2015**

16 MARCH 2018



INTRODUCTION

COMPPS consists of the following organisations:

- Australian Football League (**AFL**);
- Cricket Australia (**CA**);
- Football Federation Australia (**FFA**);
- National Rugby League (**NRL**);
- Netball Australia (**NA**);
- Rugby Australia (**RA**) and
- Tennis Australia (**TA**).

These sports play a huge role in developing, promoting and presenting sport in Australia from the grass roots through to the international level. They are not-for-profit bodies and are responsible for the long-term development and sustainability of their sports.

Each of these organisations is the governing body and custodian of a major professional sport in Australia. They are mass participation sports - between them, they have over 9 million participants and 16,000 clubs.

COMPPS members provide a wide range of public benefits through a self-funding business model. A large portion of the revenue of COMPPS members is devoted to enhancing, promoting and developing sport for all Australians both at national and 'grassroots' level.

BACKGROUND

This document comprises COMPPS' submission to the Department of Communications and the Arts' (**the Department**) request for views from stakeholders in respect of the *Copyright Amendment (Online Infringement) Act 2015* (**Online Infringement Amendment**).

1 Copyright and COMPPS members

Strong and enforceable intellectual property laws are of fundamental importance to COMPPS members.

In particular, copyright is crucial to the exploitation and licensing by COMPPS members of media rights to the major sporting events and other content controlled by COMPPS members.

These media rights are exploited and/or licensed by COMPPS members across a range of platforms including free to air television, subscription television, radio, online, digital and mobile technology.

The revenue derived from the licensing of these rights is a very significant revenue stream for most COMPPS members.

In particular, live broadcasts and communications of sports events are very popular and constitute valuable rights for COMPPS members.

COMPPS members are innovative in exploiting their online and digital rights. They have made, and continue to make, significant investments to enable them to exploit their rights as broadly as possible and to enable the Australian community access to their content via various mediums.

The licensing of online and digital rights is a significant part of COMPPS members' revenue. The proportion and importance of revenue from online and digital rights as part of overall media rights revenue is expected to increase in the coming years.

Maintaining and growing media rights revenue is critical to the operation, survival and growth of COMPPS members and the sports they administer. In addition, the ability to develop new and valuable revenue sources by improving the ability of COMPPS members to deal in their existing rights and to develop new rights, will allow COMPPS members to:

- (a) maintain and increase their distributions to members and clubs (and in turn to athletes), which have high levels of community support and interaction;
- (b) increase investment in the development of their respective sports, including at grassroots level;
- (c) maintain relatively low admission prices for attendees at matches;
- (d) provide all Australians with the opportunity to participate in sports;¹
- (e) continue and increase support for important community relations programs;
- (f) continue to invest in facility development where appropriate and for the wider community benefit; and
- (g) continue to operate without significant reliance on Government funding.

The prevalence and scope of online copyright infringement and the limitations of traditional copyright law enforcement tools in dealing with online copyright infringement are significant concerns for COMPPS members.

In particular, COMPPS members face major challenges due to unauthorised online distribution and communication of coverage of sporting events and other content controlled by COMPPS members, for example through unauthorised live streaming sites.

As evidenced by the submissions made to recent international copyright law reviews, online copyright infringement and enforcement issues are also a significant concern for international sporting bodies.

¹ By way of example, COMPPS estimates that nearly half of all Australians attend at least one sporting event each year.

2 General Comments: Online Infringement Amendment

Online copyright infringement is a serious issue for COMPPS members.

COMPPS members have significant experience of Australian and overseas operated websites or services undertaking unauthorised and infringing communications of the sporting events and other content controlled by the COMPPS members. This copyright infringement can take different forms, such as the unauthorised live streaming of matches and events and the unauthorised communication of highlights packages of sporting content.

The nature of the sporting content exploited and licensed by COMPPS members makes it particularly important that efficient and timely injunctive relief or other similar remedies are available to block the operation of infringing sites or services. This is because the commercial value of sporting content is often associated with the live communication of the sporting content. Accordingly, the ability to block live streaming or other similar websites that infringe copyright is critical to the ability of COMPPS members to protect and preserve the value of this content, for the ultimate benefit of their respective sports.

COMPPS and its members were broadly supportive of the introduction of the Online Infringement Amendment in 2015.

COMPPS members wish to be able to seek injunctive relief under website blocking legislation that is effective, cost efficient and protective of the copyright owner's rights.

3 Response to review questions

Question 1

How effective and efficient is the mechanism introduced by the Online Infringement Amendment?

Although COMPPS' members have not yet made an application to the Federal Court for orders under section 115A of the Online Infringement Amendment, they have closely monitored the proceedings undertaken and injunctions issued for other copyright owners.

COMPPS' view is that the mechanism for obtaining injunctions under the Online Infringement Amendment is a straightforward and effective instrument for allowing copyright owners to obtain injunctive relief preventing access to overseas online locations, which infringes or facilitates the infringement of copyright.

COMPPS is grateful for the judgments in the Federal Court proceedings under the Online Infringement Amendment, which have resolved various procedural and operational issues in connection with applications under the Online Infringement Amendment. Those judgments provide a useful roadmap for rights owners in future applications and will assist the Court efficiently and promptly dealing with future applications.

However, the evidentiary burden on rights holders remains onerous and the costs involved in commencing Federal Court proceedings can be material.

In summary, COMPPS believes that the mechanism introduced by the Online Infringement Amendment is a positive and effective contribution to the options available to copyright owners.

Question 2

Is the application process working well for parties and are injunctions operating well, once granted?

No COMPPS member has yet sought an injunction under section 115A of the Online Infringement Amendment and therefore COMPPS is not in a position to comment on the operation of the application process or existing injunctions.

Question 3

Are any amendments required to improve the operation of the Online Infringement Amendment?

COMPPS requests the Department consider the following amendments to the Online Infringement Amendment:

a) Extension to cover Australian online locations

The process under section 115A of the Online Infringement Amendment is only available in respect of online locations outside Australia.²

COMPPS believes that the process should not be restricted to only apply to online locations outside Australia but should be extended to apply to online locations in Australia.

In our view, if an efficient and effective mechanism has been developed for addressing infringement of copyright of online locations outside Australia, then it follows that the mechanism should be extended to apply to online locations within Australia as well. This mechanism would be of particular assistance where there are difficulties in identifying the operator of the online location.

Such an amendment is consistent with the purpose of the Online Infringement Amendment to 'reduce online copyright infringement'³ and would give copyright owners the option of taking infringement proceedings under the existing provisions of the Copyright Act or under section 115A of the Copyright Act (with its associated onerous evidentiary requirements).

² Section 115A(1)(a) of the Online Infringement Amendment

³ Explanatory Memorandum, *Copyright Amendment (Online Infringement Bill) 2015*.

b) Removal of 'primary purpose' requirement

In order to grant an injunction under Online Infringement Amendment the Federal Court must be satisfied that the primary purpose of the online location is to infringe, or to facilitate the infringement of, copyright.⁴

COMPPS has previously raised, and remains of the view, that the 'primary purpose' requirement is an unnecessary requirement as it imposes an onerous evidentiary burden on rights holders. COMPPS believes that injunctive relief under the Online Infringement Amendment should be available if a copyright owner can demonstrate that the relevant online location infringes the copyright of the relevant rights holder or there is a real risk that the overseas operated website has or will infringe the copyright of the rights holder.

4 Other matters - enforcement of copyright

COMPPS has previously and consistently raised concerns about the adequacy of Australian copyright laws to assist with infringement claims of copyright owners.

Digital technology makes copying and dissemination of copyright material much easier. This has led to a proliferation of unauthorised use of copyright material. It can be difficult to identify the infringer in the digital environment where the infringement occurs from a virtual location, and conventional detection methods are often not effective.

However, the costs of enforcing copyright remain high and the procedures for enforcement have not been significantly updated for the digital age (other than the introduction of the Online Infringement Amendment).

Introducing more effective and cost-efficient mechanisms to enforce copyright should strengthen the rights of copyright owners such as the COMPPS members.

COMPPS urges the Department to consider these matters as part of the ongoing monitoring and review of the Copyright Act.

⁴ Section 115A(1)(c) of the Online Infringement Amendment

5 Contact details

Should the Department have any questions in relation to this submission or require any further information from COMPPS or its members please contact Malcolm Speed at

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