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ICMP Submission to the Department of Communications and the Arts' 'copyright modernisation consultation'

ICMP

ICMP (International Confederation of Music Publishers) is grateful for the opportunity to contribute to the Department of Communications and the Arts' 'copyright modernisation consultation paper' (the Consultation Paper).

ICMP is the world trade association representing the interests of the music publishing community internationally. ICMP speaks out on behalf of music publishers across the world to safeguard their creative and economic interests and to help them meet new and emerging challenges in the music business. Our mission is to protect and promote copyright and to represent industry positions at international, regional and local levels.

Music publishers provide a bridge between the creative process and the market. As well as being rightsholders, they are the ultimate representatives of authors and composers. Music publishers are thus a key player in the music industry business and their role is to discover, nurture, develop and promote authors and composers. Their core business is licensing, through which they are able to ensure that the works of the authors and composers find a commercial outlet and that their creative output is rewarded. The economic importance of the licensing of intellectual property rights is crucial. Our members' business is based on these rights.

Constituent members of ICMP are music publishers' associations from Europe, Middle East, North and South America, Africa and Asia-Pacific. Included are the leading independent multinational and international companies and regional and national music publishers, mainly SMEs, throughout the world. Our member in Australia is the Australasian Music Publishers Association Limited (AMPAL), whose views we echo in this submission.

Views on the Consultation Paper

With this submission, ICMP fully supports our member, AMPAL's, views to the Consultation Paper. We also refer to our submissions in response to the Productivity Commission Issues Paper on Intellectual Property Arrangements in November 2015; the Productivity Commission Draft Report: Intellectual Property Arrangements in June 2016; and our submission to the Department of Industry, Innovation and Science consultation on the Productivity Commission inquiry into IP Arrangements in February 2017.

In light of the above, our comments will be general:

1. ICMP supports AMPAL's concerns with the introduction of a fair use exception in Australia.

No substantial evidence has been offered to support a conclusion that Australia should move to an open ended fair use exception. As mentioned in previous submissions, changing to this regime will inevitably result in legal uncertainty, which ICMP members have experienced directly in those



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jurisdictions where fair use has been introduced. In addition, the loss of revenue will leave no other alternative to rightsholders but to invest less in the creation of music. Specific exceptions of copyright to serve a well-defined purpose strike a proper and fair balance between the interests of users of copyright and those of the rightsholders.

2. ICMP supports AMPAL's position in relation to potential new fair dealing exceptions.

ICMP believes that Australia already has established and well-functioning copyright fair dealing exceptions and statutory licence schemes which encroach on the exclusive rights of copyright owners. The current system is well-balanced and takes into account the needs of both rightsholders and users, and has proven to be sufficiently flexible to meet the demands of the move from the analogue to the digital world. Therefore, extending the scope of existing exceptions is not the way forward to provide effective and quicker access to those that require it. As a result, an extension of the scope of the current exceptions, or introducing new exceptions, is undesired.

3. ICMP shares AMPAL's concerns in relation to any interference in parties' ability to freely negotiation contracts, in relation to the contracting out of exceptions issue.

ICMP is highly concerned about the consideration to interfere with individually negotiated contractual terms.

4. ICMP supports a workable solution to any orphan works problem as detailed in the AMPAL submission.

We also refer to our detailed comments made to the Productivity Commission's inquiry regarding Intellectual Property Arrangements in Australia and to ICMP contribution to Australian Copyright Reform.

For further information, please contact:

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