

AMPAL submission to Department of Communications and Arts' review of the Copyright Regulations 1969 and the Copyright Tribunal (Procedure) Regulations 1969

AMPAL

The Australasian Music Publishers' Association Limited (AMPAL) welcomes the opportunity to respond to the Department of Communications and the Arts' review of the *Copyright Regulations 1969* and the *Copyright Tribunal (Procedure) Regulations 1969*.

AMPAL is the trade association for music publishers in Australia and New Zealand. Our members include large multi-national companies as well as many small businesses. AMPAL's members represent the overwhelming majority of economically significant musical works enjoyed by Australians.

Music publishers invest in songwriters across all genres of music. They play a critical role in nurturing and commercially exploiting their writers' musical works and providing returns to songwriters. AMPAL and our members also recognise the immense cultural and artistic significance of the works that music publishers represent, and their contribution to Australia's cultural heritage.

AMPAL is a member of the Australian Copyright Council and we endorse its submission, and we endorse the submission of Music Rights Australia, as set out below.

AMPAL notes that the Department's consultation process is intended to draw stakeholder views on whether the Copyright Regulations Exposure Draft and the TPM Regulations Exposure Draft are fit for purpose, including whether they may be further simplified or modernised. AMPAL also notes that the Department is not seeking views on whether substantial policy changes should be made to the provisions in either Exposure Draft. We set out our comments below.

Comments on the Consultation Paper and Exposure Drafts

AMPAL's submissions are made in relation to the safe harbour and technological protection measure aspects of the Consultation paper and the Exposure Drafts.

AMPAL supports the Australian Copyright Council's position that the regulations dealing with safe harbour and technological protection measures are part of broader policy consideration, and so changes should not be made to these regulations merely because of the sunset of the *Copyright Regulations 1969* (the **Regulations**). However, if the Department does not proceed on the basis of the Australian Copyright Council's position, then AMPAL makes the following comments in respect of those parts of the regulations.

In response to questions 3, 4 and 5, of the Consultation Paper, AMPAL notes that the Consultation Paper requires that stakeholders should make their submissions with reference to the current safe harbour scheme applicable under the *Copyright Act 1968* (the **Act**). The below comments are made on the basis of no changes being made to Division 2AA sections 116AA -116AJ of the Act. AMPAL supports Music Rights Australia's comments in relation to the need for stakeholders to review and comment on any further proposed changes to the Regulations if any changes to the relevant sections of the Act were to be considered, as a matter of procedural fairness.

As the Department is not seeking views on policy changes to the Exposure Drafts, in response to questions 3 and 4 of the Consultation Paper, AMPAL notes that the proposed new section 18(a) replicates the current section 20B in the Regulations. As Music Rights Australia states, to its knowledge, there has not been an attempt by industry to instigate

negotiations around the development of an Industry Code since the current section 20B of the Regulations was introduced. Therefore, it is difficult to envisage that the requirements set out in the new section 18(a) will result in the voluntary development of an Industry Code. AMPAL refers to the further comments of Music Rights Australia in relation to questions 3 and 4 of the Consultation Paper.

In response to Question 5, AMPAL refers to the submission of Music Rights Australia.

In response to Question 6, AMPAL highlights the Australian Copyright Council's comments regarding the timing of the Review of Technological Protection Measure Exceptions under the Act and the new recommendations. Nonetheless, AMPAL does not support the introduction of TPM exceptions based on broad copyright exceptions such as fair dealing and flexible dealing. AMPAL opposes section 40(2)(a) of the TPM Regulations Exposure Draft on the basis that it is overly broad and, furthermore, it does not accord with Article 17.4.10(a) of the Australia-United States Free Trade Agreement. AMPAL refers to the further comments of the Australian Copyright Council and Music Rights Australia in relation to the Question 6 of the Consultation Paper and the TPM Regulations Exposure Draft.

Conclusion

AMPAL thanks the Department for the opportunity to make this submission to its review. Please contact me if we can be of any further assistance.

Matthew O'Sullivan
General Manager

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