
**AUSTRALIAN COPYRIGHT COUNCIL'S SUBMISSION IN RESPONSE TO
THE EXPOSURE DRAFT – COPYRIGHT AMENDMENT (SERVICE PROVIDERS)
REGULATIONS 2018 (“EXPOSURE DRAFT”)**

JULY 2018

A. VIEW OF THE AUSTRALIAN COPYRIGHT COUNCIL

1. The Australian Copyright Council (**ACC**) has supported the *Copyright Amendment (Service Providers) Bill 2017 (Bill)* and appreciates the opportunity to respond to the Exposure Draft.
2. We acknowledge that other than the obvious need for consequential amendments to the *Copyright Regulations 2017 (Regulations)* to remove references to ‘carriage’, the main purpose of the release of the Exposure Draft is to seek feedback on the proposed procedure for establishing an industry code for newly defined service providers.
3. The ACC supports the introduction of an industry code relating to the expanded group of service providers and answers the questions posed by the Department as follows:

Designated Representatives

- 3.1 *Question 1: Are there any additional amendments needed to the Regulations to facilitate service providers’ compliance with the requirements in Division 2AA, Part V of the Act?*

The ACC is unaware whether any such amendments would be required, but appreciates that those falling within the expanded definition of service providers may identify certain anticipated practical issues. Should that be the case, the ACC requests the opportunity to provide further comments on any issues identified.

- 3.2 *Question 2: We seek views on the practical application of section 19 to service providers and whether additional clarification is needed for when a service provider administers a number of entities.*

The ultimate purpose of section 19 is to ensure that rightsholders can quickly and easily notify service providers of any infringing material to ensure the infringement is remedied in a timely manner. This is essential for a proper functioning safe harbour process.

With that in mind:

- The ACC would support the introduction of an extra requirement in section 19 that:
 - the websites of both the service provider and the entities they operate set out the information required by section 19(2); or
 - the websites of the individual entities contain a direct link through to the service provider’s webpage where the information required by section 19(2) can be quickly located.

Either of those options should be simple to implement. The advantage of the latter option is that where there may be a change in the designated representative of his/her contact details, those details need only be updated on one webpage.

- If there are further practical issues raised by service providers as part of the Exposure Draft submission process, the ACC seeks the opportunity to provide further comments.

Industry Codes

3.3 Question 3: Are any additional requirements necessary for the development of an industry code by the newly defined 'designated service providers'?

Question 4: Does the proposed designated service provider code scheme provide sufficient flexibility for designated service providers to work with copyright owners to develop a workable code?

The ACC acknowledges that the Exposure Draft generally outlines a process that will support the purpose of the revised safe harbour legislation, while having regard to the interests of both rightsholders and those who are to benefit from the safe harbour scheme.

We are mindful that, as was shown by the recent roundtable discussions overseen by the Department in relation to the Copyright Modernisation Review, there is potentially a significant number of groups who could, rightfully and justifiably, be involved in negotiating the proposed code. It would be undesirable for all parties if that process became unnecessarily burdensome or protracted, noting that such an impact is one of the reasons the scheme has traditionally been seen as a better alternative to litigation.

With those comments in mind, the ACC responds as follows to questions 3 and 4:

- We are unsure as to the reason why proposed section 18A(3) refers to items which 'may' be contained in an industry code, given that is inconsistent with section 18(b) and the remaining sub-sections of proposed section 18A. It would seem that for consistency's sake, those items should also be a requirement (ie, a 'must') of the future proposed code;
- Given the proposed regulations are to come into effect at the same time as the Bill, which in turn will commence 6 months after receiving Royal Assent, there is a possibility that protracted negotiations on the content of the proposed code could see the Bill being introduced without any code in place. With that in mind, the ACC:
 - commends a negotiation process similar to that recently adopted for the implementation of the revised Collecting Societies Code of Conduct;
 - believes the negotiation process might benefit from assistance from the Government (via the Department or otherwise) acting as a mediator;
 - would ask that a strict time-frame for negotiations be set by the Government; and
 - believes further consultation should take place as to an appropriate resolution mechanism in the event there is no agreement as to the form and/or content of the code.

For the sake of avoiding potential future ambiguity, the ACC would support an amendment to proposed section 18A(4)(b) that adds the words 'if applicable' after the phrase 'when it will cease to have effect', in the event that a specific end date does not form part of the proposed code.

3.4 *Question 5: Will the proposed amendments to section 18 of the Regulations (and consequently 18A) have any unintended effects?*

The ACC has had limited direct involvement with the actual take-down process, so is limited in its ability to answer. That said, our biggest concern is set out above in relation to a potential protected and expensive negotiation process without the implementation of an effective code.

For this reason, the ACC believes a formal review of the effectiveness of the code would be beneficial after a period of twelve months of the code being implemented.

B. ABOUT THE AUSTRALIAN COPYRIGHT COUNCIL

6. The ACC is an independent, non-profit organisation that represents the peak bodies for a significant cross-section of professional artists and content creators working in Australia's creative industries and Australia's major copyright collecting societies. A full list of our affiliates is available on our website, copyright.org.au, and also appear in the Schedule.
7. We are expert advocates for the contribution of creators to Australia's culture and economy. Copyright is important for the common good.
8. As part of our activities, we wish to foster collaboration between content creators and content users. One of the ACC's core values is a belief that copyright laws should, among other things, balance the interests of creators, consumers and service providers. Indeed, such an understanding on the part of the ACC is only heightened by the fact that we regularly provide legal advice and educational programs to affiliates, creators of all backgrounds, and representatives of user groups such as libraries and the education sector alike.

C. CONCLUSION

9. Thank you for considering the terms of this submission. Should the Department have any queries or require any further information, please let us know.

Grant McAvaney
Chief Executive Officer
Australian Copyright Council
6 July 2018

SCHEDULE: AFFILIATES OF THE AUSTRALIAN COPYRIGHT COUNCIL

As at the date of this Submission, membership of the Australian Copyright Council is comprised as follows:

1. Aboriginal Artists Agency
2. APRA AMCOS
3. Ausdance National
4. Australian Guild of Screen Composers
5. Australasian Music Publishers Association Ltd
6. Australian Directors Guild
7. Australian Institute of Architects
8. Australian Institute of Professional Photography
9. Australian Music Centre
10. Australian Publishers Association
11. Australian Recording Industry Association
12. Australian Screen Association
13. Australian Screen Directors Authorship Collecting Society Limited
14. Australian Society of Authors
15. Authentic Design Alliance
16. Australian Writers Guild
17. Christian Copyright Licensing International
18. Copyright Agency
19. Media Entertainment & Arts Alliance
20. Musicians Union of Australia
21. National Association for the Visual Arts
22. National Tertiary Education Union
23. Phonographic Performance Company of Australia
24. Illustrators Australia
25. Screen Producers Australia
26. Screenrights