

6 October 2017



Ms Helen Owens

Assistant Secretary, Content and Copyright
Department of Communications and the Arts
By email: Copyright.Regulations@communications.gov.au

Dear Helen,

RE: Remaking of the Copyright Regulations 1969 and the Copyright Tribunal (Procedure) Regulations 1969

Communications Alliance welcomes the opportunity to briefly comment on the Department of Communications and the Arts (DoCA) consultation on the remaking of the Copyright Regulations 1969 (Copyright Regulations) and the Copyright Tribunal (Procedure) Regulations 1969. This letter is not confidential and may be placed on DoCA's website.

We understand DoCA is seeking views on whether the Copyright Regulations Exposure Draft is fit for purpose, including whether it may be further simplified or modernised, not whether substantial policy changes should be made to the Exposure Draft.

The consultation paper proposes minor changes to the Copyright Regulations related to Division 2AA of Part 5 of the Copyright Act 1968 (Copyright Act). Division 2AA deals with limitations on remedies available to rights holders against carriage service providers (CSPs). That is, if an industry code exists and is adhered to, the remedies a rights holder could seek against a CSP may be limited.

Communications Alliance's comments are confined to question 5 of the consultation paper which seeks comment on any procedures the new Copyright Regulations should prescribe for the development of an industry code for the purposes of paragraph (b) of the definition of industry code (in s. 116AB of the Copyright Act).

Section 116AB of the Copyright Act provides that 'industry code' means:

- (a) an industry code that
 - (i) meets any prescribed requirements, and
 - (ii) is registered under Part 6 of the Telecommunications Act 1997 (Telecommunications Act); or
- (b) an industry code developed in accordance with the Copyright Regulations.

This definition effectively provides two ways an industry code for the purposes of Division 2AA could be developed.

An industry code as defined in paragraph (a) above must meet any "prescribed requirements" and must be registered under Part 6 of the Telecommunications Act.

Regulation 20B of the existing Copyright Regulations prescribes requirements for the development of an industry code referred in in paragraph (a) of the above definition (but not paragraph (b)). In addition, to satisfy the definition of an industry code in paragraph (a), the registration process prescribed under Part 6 of the Telecommunications Act must also be followed.

Part 6 of the Telecommunications Act contains established processes for developing (and registering) an industry code. These processes include requirements for the body/association developing the industry code to:

- publish a copy of the draft code;
- seek and consider submissions from industry participants and the public; and
- consult government regulators (such as, the Australian Competition and Consumer Commission, Telecommunications Industry Ombudsman and Information Commissioner). See s. 117, Telecommunications Act.

These processes allow a robust and thorough consideration of issues both from the perspective of CSPs, rights holders, other industry participants and the public in developing an industry code under paragraph (a).

The Copyright Regulations do not contain any processes for developing an industry code under paragraph (b).

As industry codes developed under Division 2AA affect the rights and remedies of relevant parties (rights holders and CSPs), Communications Alliance believes that such codes should also be subject to a robust and thorough development and consultation process.

As such, Communications Alliance considers that any processes prescribed by the Copyright Regulations for developing an industry code under paragraph (b) should be consistent with processes in paragraph (a) (that is, consistent with the processes in Part 6 of the Telecommunications Act). Such processes should ensure there is opportunity for consultation with industry participants, the public and relevant government regulators.

Communications Alliance believes that consistent processes across both approaches to developing industry codes for the purposes of Division 2AA would ensure the Copyright Regulations 2017 are fit for purpose.

Yours sincerely,



John Stanton
Chief Executive Officer