

21 April 2004

The Director
Copyright Law Review Committee Secretariat
Attorney- General's Department
Robert Garran Offices
National Circuit
Barton ACT 2600

Dear Ms Phillips

**CLRC REVIEW OF CROWN COPYRIGHT
SUBMISSION BY APRA AND AMCOS**

Australasian Performing Right Association Limited

The Australasian Performing Right Association (APRA) is a non-profit organisation, established in 1926, which represents over 33,000 Australasian composers, songwriters and music publishers. It owns or controls the rights of public performance and communication in musical works of its members and members of affiliated societies throughout the world.

Australasian Mechanical Copyright Owners Society

The Australasian Mechanical Copyright Owners Society (AMCOS) is a non-profit company representing over 200 music publishers in Australasia. It administers certain reproduction rights on behalf of its members and affiliates. APRA administers the operations of AMCOS, under contract.

APRA and AMCOS thank the Copyright Law Review Committee for the opportunity to make these submissions and consent to its reproduction and making it available on the CLRC website.

The contact person in relation to these submissions is Kate Haddock, General Counsel of APRA/AMCOS at Banki Haddock Fiora, Level 10, 179 Elizabeth Street, Sydney NSW 2000.

Issue 1: The Committee seeks your views as to whether government ownership of copyright material should extend to all works and subject-matter. For example, should it only apply to literary works? Should artistic works such as architectural plans be excluded.

APRA/AMCOS submits that the Crown should not be treated differently to anyone else regarding the ownership of copyright and creation of any work, the subject of copyright protection.

APRA/AMCOS further submits that the Crown should appropriately negotiate and contract regarding any departure from the usual provisions regarding copyright ownership.

So far as “*musical works*” are concerned, the composer if a member of APRA will have the right to participate in the distribution of licence fees or remuneration collected for the public performance and communication of that “*musical work*”. APRA/AMCOS support the inclusion in any contract relating to the ownership of copyright in musical works, a provision that assignments are subject to the prior rights of APRA.

APRA/AMCOS has been provided with a copy of the Australian Copyright Council’s submissions and supports its view that sections 176(2), 177 and 178(2) of the Act should be repealed.

Issue 2: The Committee seeks your views as to whether the government should enjoy all the exclusive rights of copyright.

If the government is a copyright owner, APRA/AMCOS believes it should be treated as any other copyright owner. APRA/AMCOS repeats its comments relating to the prior rights of APRA in relation to the vast majority of musical works.

Issue 3: The Committee seeks your views as to whether moral rights should apply in the context of government copyright.

Given that moral rights are currently enjoyed by the creator of a work, APRA/AMCOS does not see any reason to alter the current provisions in the Act regarding moral rights in respect of government ownership.

Issue 4: The Committee seeks your views as to whether the legislative scheme establishing government ownership of copyright material is appropriate. In particular, should the government acquire ownership of copyright material by virtue of:

- (a) *sections 176 and 178 (works, sound recordings and cinematograph films made by, or under the direction or control of, the government),*
- (b) *section 177 (works if published by, or under the direction or control of, the government),*
- (c) *section 35(6) (works made pursuant to the terms of employment under a contract of service or apprenticeship)?*

For the reasons set out above and because of the necessary doubt concerning the meaning and interpretation of the phrase “*direction and control*”, APRA/AMCOS supports the view that sections 176, 177 and 178 provisions of the Act ought to be repealed.

APRA/AMCOS submits that the provisions of section 35(6) are sufficient to protect the interests of the government as an employer.

Issue 5: The Committee seeks your view as to whether the Copyright Act should make express provision with respect to copyright in materials produced by:

- (a) *the executive;*

- (b) *the judiciary; and*
- (c) *the legislative.*

In our experience, this issue does not impact on APRA/AMCOS members in its usual course of government activities. APRA/AMCOS expresses no view in relation to this issue other than to note that there may be a case to have some material produced by the Government, such as legislation and judgments, the subject of a separate category under the Act.

Issue 6: The Committee seeks your views as to what entities should be included as part of ‘the Commonwealth or a State’ for the purposes of the Copyright Act and how this should be determined.

APRA/AMCOS agrees that there is some uncertainty surrounding which bodies are considered the Crown, and supports an approach which gives certainty to Government and users as to who is “the Crown”.

Issue 7: The Committee seeks your views as to whether all material produced as part of a government function be deemed to have been created by the government. If so, in whom should copyright vest?

APRA/AMCOS cannot support the above statement as a general proposition. As stated above, APRA/AMCOS submits that the provisions of section 35(6) of the Act adequately protect the Government in respect of works created in the course of employment.

Issue 8: The Committee seeks your views as to the appropriate duration of government copyright. Should it be the same as for non-government copyright material?

APRA/AMCOS sees no reason for the Crown to have any different system regarding the duration of copyright protection, for material protected by Crown copyright.

Issue 9: The Committee seeks your views as to the application of the exceptions to government copyright material. Should the exceptions apply to government copyright material in the same way as they do to non-government copyright material? Should there be a special exception for copyright material owned by the government?

APRA/AMCOS submits that there should not be any special exception for copyright material owned by the Government. APRA/AMCOS also sees no reason why the existing exceptions would not apply to material the copyright in which is owned by the Crown.

Issue 10: The Committee seeks your views as to whether the licence in s182A to reproduce legislative materials and the decisions of courts and tribunals should be expanded to allow multiple copies? Alternatively, is a blanket licence scheme an appropriate model?

APRA/AMCOS does not propose to make any specific submissions on this issue.

Issue 11: The Committee seeks your views as to the appropriate nature and scope of prerogative rights. Should the prerogative rights in the nature of copyright be clarified or replaced by legislation?

AND

Issue 12: The Committee seeks your views as to any issues arising under the Commonwealth Constitution and how these may affect the possible options for reform.

APRA/AMOCOS does not propose to make any substantive response to these issues other than to note that given that prerogative rights are of infinite duration, it is clearly in the interests of both Government and users that both the scope of prerogative rights and the identity of “the Crown” be clarified.

Issue 13: The Committee seeks your views as to the practical operation of the law relating to the administration or licensing of copyright material. In particular, should government practice be encouraged to achieve uniformity throughout the different Australian jurisdictions?

We understand that the practice of copyright management within various Government departments differs widely.

Whilst APRA/AMCOS does not propose to make any substantive comments on this issue, we note that uniformity of practice relating to both the administration and/ or licensing of copyright material would clearly be a desirable outcome for both governments and users.

Issue 14: The Committee seeks your views as to the appropriateness of the law relating to government ownership of copyright given the operation of freedom of information and privacy laws in regulating access to, and use of, personal and government information.

APRA/AMCOS believes that different policy considerations clearly come into play given the information that can be accessed under Freedom of Information and that protected by the new privacy laws and queries the relevance of copyright in itself to these considerations.

Issue 15: The Committee seeks your views as to the effect of new technologies on government ownership of copyright material. In particular:

- (a) does copyright continue to be relevant?***
- (b) how does one safeguard against the distortion or inappropriate use of government material made available through new technologies?***
- (c) is facilitating government information online inconsistent with the policy objectives behind government ownership of copyright?***

New technologies do pose challenges for all copyright owners and there should be no reason why the government is in any different position. However, it is clear that new technology, and particularly the Internet does assist the Government with one of its broad objectives, namely to facilitate for the general public greater access to particular information and material.

Issue 16: The Committee seeks your views as to whether, as a matter of public policy, the government should own copyright in materials produced by the:

- (a) executive arm of government?***
- (b) legislative arm of government?***
- (c) judicial arm of government?***

APRA/AMCOS believes that the focus in respect to these materials is availability and public access, not who owns copyright. APRA/AMCOS supports some investigation into the proposal as submitted by the ACC – namely, that some of these materials be included in an exception that allows public access, and that there is no copyright.

Issue 17: The Committee notes that these models, and other overseas models, do not treat government copyright material in a uniform manner and seeks your views as to whether any of them provide useful models for Australia.

APRA/AMCOS makes no submission in relation to this issue.

Issue 18: The Committee seeks your view as to options for reform, legislative or otherwise, and the costs and benefits of those options.

APRA/AMCOS makes no submission in relation to this issue.

Issue 19: The Committee seeks your views as to any transitional issues arising out of the options for reform.

APRA/AMCOS makes no submission in relation to this issue.

Issue 20: The Committee seeks your views as to any other matters arising out of this Issues Paper.

APRA/AMCOS makes no submission in relation to this issue.

Please do not hesitate to contact me if APRA/AMCOS can further assist the Committee.

Yours sincerely

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