

SONY

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3 March 2008

Ms Helen Daniels
Assistant Secretary
Copyright Law Branch
Attorney-General's Department
Robert Garran Offices
National Circuit
BARTON ACT 2600

Dear Ms Daniels,

Submission - Copying Photographs and Films in a different format for private use

I am Company Secretary for Sony Australia Limited, which is part of the Sony group of companies.

I refer to the Issues Paper published by the Attorney-General's Department in January 2008 titled "*Copying photographs and films in a different format for private use. Review of sections 47J and 110AA of the Copyright Act 1968*" and to the draft Submission provided to you by our solicitors, Baker & McKenzie, on Friday 29 February 2008.

Please find attached Sony's final Submission in response to the Issues Paper. The attached Submission replaces the draft Submission.

Sony appreciates the opportunity to make the Submissions and the understanding of the Copyright Law Branch in relation to timing.

If you have any questions regarding these Submissions, please contact me on 02 9887 6643.

Yours faithfully,
Sony Australia Limited.



Clarrie Burton
Company Secretary

**SUBMISSIONS BY SONY AUSTRALIA LIMITED TO
COPYRIGHT LAW BRANCH, FEDERAL ATTORNEY GENERAL'S DEPARTMENT
RELATING TO COPYING PHOTOGRAPHS AND FILMS
IN DIFFERENT FORMAT FOR PRIVATE USE**

Sony Australia Limited (*Sony Australia*), which engages in marketing consumer electronics and information technology products, makes the following submissions in relation to the Issues Paper published by the Attorney-General's Department in January 2008 titled "*Copying photographs and films in a different format for private use. Review of sections 47J and 110AA of the Copyright Act 1968*".

These submissions supersede the draft submissions that were sent by Baker & McKenzie Solicitors on behalf of Sony Australia on 29 February 2008.

Summary of position

Sony Australia submits that section 110AA of the *Copyright Act 1968* (Cth) (**the Act**) should be changed to permit additional copying or 'device' shifting.

More specifically, Sony Australia submits that the scope of section 110A should be expanded to allow the owner of a copy (the earlier copy) of a film to make another copy (the later copy) of a film using the earlier copy in the following circumstances:

- (a) the earlier is a non-infringing copy of a film;
- (b) the purpose of the making the later copy is the private and domestic use;
- (c) the earlier copy or later copy is not sold, let for hire, offered or exposed for sale or hire, distributed for the purposes of trade; and
- (d) the laws against circumvention of technological protection measures or TPMs (such as encryption software, passwords and access codes) remain in place.

Response to Issues Paper

In response to issues 4 to 6 of the Issues Paper, Sony Australia submits that:

Issue 4: Current operation of section 110AA

- (a) ***Does section 110AA provide an appropriate balance between the rights of copyright owners and other interests?***

Sony Australia submits that at present, section 110AA of the Act does not provide an appropriate balance between the rights of copyright owners and the other interests, such as:

- (i) **consumer interests:** section 110AA fails to recognise reasonable consumer behaviour, such as 'device shifting' for private and domestic use;
- (ii) **consumer confidence in copyright laws:** section 110AA imposes a further set of technically specific restrictions that do not exist in relation to sound recordings;
- (iii) **technological advancements:** section 110AA fails to adequately address the increasing popularity of new technologies, such as hand-held audio visual devices. Furthermore, the current exception for videotapes is, or will shortly become, irrelevant.

(b) *If section 110AA is not appropriate, what are the options for achieving a better policy outcome?*

Sony Australia submits that section 110AA of the Act should be amended to allow:

- (i) the owner of a copy (the earlier copy) of a film to make another copy (the later copy) of a film using the earlier copy in the following circumstances:
- (ii) the earlier is a non-infringing copy of a film;
- (iii) the purpose of the making the later copy is the private and domestic use;
- (iv) the earlier copy or later copy is not sold, let for hire, offered or exposed for sale or hire, distributed for the purposes of trade; and
- (v) the laws against circumvention of TPMs (such as encryption software, passwords and access codes) remain in place

(together, the *Sony Australia's Proposed Amendment*).

In this way, section 110AA of the Act in relation to films would mirror the law in relation to sound recordings at section 109A of the Act.

(c) *What the benefits and costs of those options?*

Sony Australia submits that the benefits of this option would be that it would:

- (i) reflect reasonable consumer behaviour, that is most likely occurring already;
- (ii) reflect the increasing popularity and use of new technology, such as hand-held audio-visual players, in the Australian marketplace;
- (iii) maintain consumer confidence in copyright laws in Australia, for example, consistency between copyright laws in relation to sound recordings and films.

Sony Australia submits that there would be no actual costs of this option as:

- (i) Sony Australia's Proposed Amendment or digital-to-digital copying would be limited to private and domestic use; and
- (ii) the laws against circumvention of technological protection measures or TPMs (such as encryption software, passwords and access codes) would remain in place. Furthermore, TPMs are readily available and frequently used by copyright owners in relation to films. Copyright laws should not step in where such mechanisms are available to copyright owners.

Sony Australia submits that its proposal satisfies the "three step test" contained in article 9(2) of the Berne Convention as Sony Australia's Proposed Amendment:

- (i) is clearly defined and narrow in scope as it relates to digital to digital copying within the limited realm of private and domestic use;
- (ii) would not conflict with the ways copyright owners normally generate revenue from their copyright as they have the capacity to control when, by whom and how copies of digital works are made through TPMs;
- (iii) would not cause unreasonable loss of income due to the availability of TPMs to copyright owners.

Issue 5: Should section 110AA be changed to permit additional copying?

(a) Under what additional circumstances should section 110AA permit a copy to be made of a cinematograph film for private and domestic use?

At present, section 110AA of the Act allows "format shifting" or the owner of a videotape embodying a cinematograph film in analogue form to copy the film in electronic form for his or her private and domestic use.

As mentioned above, Sony Australia submits that section 110AA should be changed to Sony Australia's Proposed Amendment, that is to allow:

- (i) the owner of a copy (the earlier copy) of a film to make another copy (the later copy) of a film using the earlier copy in the following circumstances:
- (ii) the earlier is a non-infringing copy of a film;
- (iii) the purpose of the making the later copy is the private and domestic use;
- (iv) the earlier copy or later copy is not sold, let for hire, offered or exposed for sale or hire, distributed for the purposes of trade; and
- (v) the laws against circumvention of technological protection measures or TPMs (such as encryption software, passwords and access codes) remain in place.

(b) What are the kinds and sources of films that are likely to be reproduced under any proposed changes?

The kinds and sources of films that are likely to be reproduced under Sony Australia's Proposed Amendment are:

- (i) free-to-air broadcast films (audiovisual works) digitally recorded onto hard disk drive or HDD. These are likely to be reproduced onto recordable digital versatile disk or DVD formats to be played in cars, holiday homes or family boats or onto hand-held audio visual players; and
- (ii) free-to-air broadcast films (audiovisual works) digitally recorded onto recordable DVDs. These should be able to be reproduced onto, for example, a recordable Blu-ray disc, which is a disc of a newer format which has greater recording capacity.

(c) To what extent are films likely to be reproduced under any proposed changes subject to TPMs (such as anti-copy measures) to block unlicensed copying?

"Unlicensed copying" blocked by the use of technological protection measures or TPMs will continue to be blocked under Sony Australia's Proposed Amendment.

(d) How would any proposed changes affect the normal market exploitation of films and other legitimate interests of copyright owners?

Sony Australia submits that its Proposed Amendment would not affect the normal market exploitation of films and other legitimate interests of copyright owners for the following reasons:

- (i) Sony Australia's Proposed Amendment is restricted to private and domestic use;
- (ii) neither the earlier copy or later copy under Sony Australia's Proposed Amendments is sold, let for hire, offered or exposed for sale or hire, distributed for the purposes of trade; and

(iii) the laws against circumvention of technological protection measures or TPMs (such as encryption software, passwords and access codes) would remain in place.

(e) ***How would any proposed changes improve achievement of the Government's policy objectives, including economic incentives for the creation and distribution of films?***

Sony Australia's Proposed Amendment will allow consumers to enjoy legally obtained content which is released without technological protection measures or TPMs (such as digitally recorded free-to-air films) in different formats and devices. This means that consumers can take advantage of technological advancements and enjoy such content in various locations to the extent that the use is private and domestic (for example, rumpus room, family car, boat and on public transport). This amendment therefore will provide consumers with more incentive to access and purchase entertainment content.

Please contact Mr Clarrie Burton, Company Secretary, Sony Australia Limited on 02 9887 6643 if you have any questions in relation to this Submission.

Sony Australia Limited