

Our Ref: 18523

19 November 2018

Australian Competition and Consumer Commission
GPO Box 520
Melbourne VIC 3001

By online submission

Dear Regulator

ACCC Draft Copyright Guidelines – Public consultation

The Australian Broadcasting Corporation (**ABC**) acknowledges the work of the Australian Competition and Consumer Commission (**ACCC**) in putting together the draft “ACCC Guidelines to assist the Copyright Tribunal in the determination of copyright remuneration” (**Copyright Guidelines**).

The ABC is grateful for the opportunity to comment on the Copyright Guidelines.

The ABC would like to acknowledge the following in respect of the Copyright Guidelines:

- The ABC supports the overall principle of preserving competition between individual copyright owners where feasible, and that the Copyright Tribunal may act as an important constraint on the exercise of a collecting society’s market power.
- While the Copyright Guidelines do note that there may be situations where the approaches to determining remuneration as set out by the ACCC may not be feasible in the circumstances, ABC submits that it should also be made clear that these approaches may not be appropriate or applicable in certain situations, and these Guidelines do not restrain the discretion of the Copyright Tribunal.

The ABC has a wide scope of copyright usages in its role as a public broadcaster and digital media services provider. The ABC recognises that the pricing approaches recommended by the ACCC are relatively detailed, including specifying the types of data which may be used and collection of such data. In the ABC’s view, these approaches may not be applicable or practical to follow depending on the particular matter at hand, or may be better used to cross-check against other pricing methods.

While the ABC recognises that under section 157A of the *Copyright Act 1968* (Cth), the Copyright Tribunal must have regard to the Copyright Guidelines where requested, we expect that the determination of the reasonableness of any pricing terms will continue to be considered on a case-by-case basis and the Copyright Tribunal will have discretion as to the significance of the Copyright Guidelines in each matter.

- The Copyright Guidelines states in several places that there may be an alternative for blanket licences with collecting societies, whether by direct licensing or availability of a substituted copyright material. The ABC notes there may be circumstances where there is no appropriate substitute material and/or where direct licensing is not possible (such as where the copyright or relevant rights have been assigned or exclusively licensed to the relevant collecting society).
- The ABC is both an owner and a user of copyright and has considered the Copyright Guidelines from both perspectives.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Connie Carnabuci', with a long horizontal flourish extending to the right.

Connie Carnabuci

General Counsel

ABC Legal

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