PPCA SUBMISSION IN RESPONSE TO ACCC DRAFT COPYRIGHT GUIDELINES 2018

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PHONOGRAPHIC PERFORMANCE COMPANY OF AUSTRALIA LTD
REAL MUSIC • REAL ARTISTS • REAL IMPACT

ABOUT PPCA

Phonographic Performance Company of Australia Ltd ("PPCA") is a national non-government, non-profit Australian copyright collecting society which was established in 1969. PPCA operates on a non-exclusive basis and grants licences for the broadcast, communication or public playing of recorded music and music videos. PPCA represents the interests of sound recording copyright owners, recording artists and record labels. PPCA distributes the licence fees that it collects from the provision of such licences to the record labels and Australian recording artists that are registered with PPCA. PPCA's thousands of registered artists and record labels range from small independent artists and labels to world renowned artists and major label record companies.

1. INTRODUCTION

PPCA welcomes the ACCC's *Draft Guidelines to assist the Copyright Tribunal in the determination of copyright remuneration 2018* ("Draft Guidelines") and thanks the Commission for the opportunity to make these comments. We note that we have previously made a submission in response to the 2006 Draft Copyright Guide.[1] In that submission, we generally agreed with the Draft Guide but noted some further points to be addressed by the Guide (in relation to market power, review of licence fees, blanket licences). Those issues remain relevant to a consideration of the 2018 Draft Guidelines.

Since the 2006 Draft Guide was published, PPCA has been a party to three matters before the Copyright Tribunal of Australia, including *Phonographic Performance Company of Australia Limited (ACN 000680 704) under section 154(1) of the Copyright Act 1968*[2] in which the ACCC was a party ("the Fitness Case"). The Copyright Tribunal plays an important role in overseeing copyright licensing. This submission is based on our experience as a party to proceedings in the Copyright Tribunal.

Before proceeding, we would like to make a preliminary point about music and the Copyright Tribunal. The Draft Guidelines assert that "the major issues raised at the Copyright Tribunal have involved the different licence schemes operated by collecting societies holding the various rights in music."[3] We are concerned that readers may infer from this statement that the music industry is difficult or unwilling to negotiate licences. This is not the case. As a matter of practice, it is always PPCA's preference to negotiate licences. As a first step PPCA initiates consultation with the relevant party or peak industry body representing the sector to develop a licence scheme by mutual agreement. A proposed scheme is only referred to the Copyright Tribunal if agreement cannot be reached between the parties.

In our submission, the matters that come before the Copyright Tribunal need to be understood in terms of the relevant regulatory frameworks. Firstly, music was the first type of copyright material to be collectively managed. For example. APRA was established in 1926 and PPCA in 1969. Therefore, it is not surprising that the early matters before the Copyright Tribunal concerned music. Secondly, unlike the music collecting societies, Copyright Agency|Viscopy (which deals with text and images) and Screenrights (which deals with television and radio broadcasts) for the most part operate under statutory licences. This means that their licensing arrangements do not fall under s 175 of the *Copyright Act.* However, they are subject to the

[1] PPCA submission on ACCC, Copyright Licensing For Collecting Societies: A Guide For Copyright Licensees ('"Draft Guide'") February 2007 <https://www.accc.gov.au/system/files/Phonographic%20Performance%20Company%20of%20Australia%20Ltd.pdf>.
[2] [2010] ACopyT 1.
[3] Draft Guidelines, p 7.

jurisdiction of the Copyright Tribunal and have been parties to major proceedings before the Copyright Tribunal. In fact, of the six matters currently before the Copyright Tribunal, none involve music.[4]

2. EXECUTIVE SUMMARY

PPCA generally supports the Draft Guidelines, however, we believe that they would benefit from a number of qualifications:

1. In the current market for blanket licences of copyright material, it would make sense for the Draft Guidelines to address market power from both the perspective of licensor and licensee.
2. The discussion of the economics of copyright should acknowledge the important non-price considerations that impact copyright transactions.
3. The discussion of collective licensing should make it clear that market power is not *per se* anti-competitive.
4. It should also acknowledge the different ways that copyright collecting societies operate. For example, PPCA does not take an assignment of rights from its members and its licences are not exclusive.
5. It would be useful to incorporate examples of direct licences that currently occur into the Draft Guidelines and to provide greater practical guidance on how blanket licences could calculate discounts for direct licensing.
6. The discussion of pricing principles should deal with judicial estimation.
7. The discussion of benchmarking should note the pros and cons of all the different types of benchmarking.
8. Given the importance of survey evidence to constructing a hypothetical bargain, it is important for all parties to engage in the survey process from the outset.
9. We are not sure that a collecting society's operating costs are relevant to determining willingness to sell.

3. PURPOSE OF THE GUIDELINES

It is worthwhile noting at the outset the purpose of the Copyright Guidelines. These are expressed in the following terms:

> *The ACCC considers that the Copyright Guidelines should focus on providing a framework that focuses on countering any market power held by collecting societies and providing material to assist parties preparing economic evidence to support their claims. Indirectly, they can also facilitate licence negotiations and thereby reduce the number or scope of matters requiring determination by the Copyright Tribunal, as well as assist the Copyright Tribunal in matters that are brought before it*. [5]

In our experience, licences are generally negotiated between the collecting societies and large industry organisations or other commercial entities. For example, entities such as Free TV, Foxtel, Commercial Radio Australia, Apple, Spotify, Google, Australian Hotels Association and Fitness Australia. In these negotiations, it would be wrong to overstate the market power of the collecting societies. Rather, market power should be viewed from both the perspective of licensor and licensee. We address this further below at 5.1 in relation to *Collective Licensing* and 6.2 in relation to *Benchmarking*.

[4] See < http://www.copyrighttribunal.gov.au/current-matters>.

[5] *ACCC Draft Copyright Guidelines 2018*, p 9.

Beyond that, we agree that the Draft Guidelines should assist the parties to prepare economic evidence to support their claims. However, they should not fetter the discretion of the Copyright Tribunal in carrying out its role. We note that in complex matters of the type that PPCA has generally referred to the Copyright Tribunal, we would expect to provide as much assistance to the Copyright Tribunal as possible. Depending on the nature of the matter this would generally mean putting before the Copyright Tribunal the types of economic evidence outlined in the Draft Guidelines, as well as evidence of other matters generally considered by the Copyright Tribunal. For example, market rates, comparable bargains, previous agreements or negotiations, comparisons with other jurisdictions (acknowledging, as the ACCC does, that direct comparison is often very complex and subject to many adjustments), rates set by other licensors, capacity to pay, and relevant administrative costs.

We also agree that properly articulated Guidelines have the potential to facilitate licence negotiations. That is, parties are aware of the approach that the Copyright Tribunal might take in considering the licence scheme.

4. THE ECONOMICS OF COPYRIGHT

We generally support the way the Draft Guidelines characterise the economics of copyright. However, we think that some points require clarification.

1. The exclusive rights of the copyright owner not only enable the copyright owner to be remunerated for their work, they also enable them to control their artistic output. That is, there are important non-price considerations that will affect a copyright owner's willingness to sell. It would be useful for the Guidelines to acknowledge this.

2. Likewise, the discussion about individual copyright owners and market power requires clarification. Whether or not a copyright owner has market power and whether substitutes exist depends on the market. For example, it is likely that JK Rowling has a substantial degree of power in the market for Harry Potter content. While individual creators may seldom have such power, individual copyright owners commonly do (e.g. Microsoft). We therefore suggest clarifying what is meant by "individual copyright owner".

3. Unlike widgets, preferences in relation to copyright material rely heavily on personal taste. This means that the identification of substitutes is not necessarily straight forward. In our submission, this should also be noted in the Draft Guidelines.

5. COLLECTIVE LICENSING

5.1 Market Power

We note that the Draft Guidelines proceed from the perspective that a collecting society offering a blanket licence may have market power. PPCA is different to most collecting societies in that PPCA is not a declared society and it does not take an assignment of rights. We take this opportunity to address some points about collective licensing generally, and about PPCA specifically.

5.1.1 Market Power and Competition

An assessment of market power will depend on the relevant market. Furthermore, the mere presence or absence of market power does not necessarily lead to anti-competitive behaviour. As we stated in our submission in response to the 2006 Draft Guidelines, the guidelines should address the counterfactual. In our submission, the Draft Guidelines need to be careful to avoid any suggestion that market power alone is anti-competitive.

5.1.2 Constraints on Collective Licensing

The landscape for collective licensing of copyright material is dynamic and has changed substantially since the 2006 Draft Guide was released. The rise of digital subscription licensing models and social media mean that a copyright collecting society will often be negotiating with large multinational corporations. This much has been acknowledged by the ACCC in its current Digital Platforms Inquiry.

In addition to the Copyright Tribunal's oversight of licensing arrangements, copyright collecting societies in Australia also adhere to a Code of Conduct. As the Bureau of Communications and Arts Research acknowledged in its recent Draft Report on its Review of the Code of Conduct for Australian Copyright Collecting Societies:

> *The collecting societies bound by the Code … must comply with applicable provisions of the Corporations Act 2001 (Cth), and a range of broader legal obligations set out in other legislation. These include privacy, fair trading and competition obligations. Collecting societies must also adhere to obligations set out in numerous international treaties, and reciprocal agreements between international collective management organisations (CMOs) and their affiliates.*[6]

Therefore, in our submission, there are significant constraints on the market power of copyright collecting societies in Australia. These should be acknowledged in the Draft Guidelines.

5.1.3 PPCA is different

In relation to PPCA specifically, it is important to note that PPCA operates somewhat differently to other copyright collecting societies. For example, unlike APRA|AMCOS, PPCA does not take any assignments of copyright and its licensing schemes are not exclusive. This means PPCA actually provides an additional means by which to obtain relevant licences and thus *increases* opportunities for competition. Our licensors are increasingly our competitors.

[6] Bureau of Communications and Arts Research, Review of Code of Conduct for Australian Collecting Societies Draft Report February 2018 p 15.

PPCA does not share its pricing information with its licensors and does not discuss such terms with its licensors when setting rates.

It should also be noted that PPCA's licences with regard to the broadcast of sound recordings by commercial radio stations are subject to a statutory cap of 1% of the radio station's gross annual revenue. This anachronistic cap is not based on any economic modelling and dates back to when the *Copyright Act* was enacted in 1969.[7] A similar cap, albeit based on a rate per head of population, applies to the radio broadcast of sound recordings by the ABC.

5.2 Blanket Licensing

The Draft Guidelines state:

> *As a broad principle, the ACCC considers that collective licensing of copyright material via blanket licences should only occur where direct licensing is not efficient*.[8]

In our submission this statement does not acknowledge the reality of PPCA's circumstances, where prospective licensees always have the option to either take advantage of PPCA's licence offerings or obtain alternative licences through one or more rights holders directly or from a background music supplier offering some form of blanket sound recording licence.

As summarised above, currently direct licensing may occur in a number of ways:

1. There are situations where users go directly to a copyright owner for particular recordings, or blanket cover for the recordings of that rights owner or exclusively use the recordings of that rights owner. An example may be a supermarket chain going directly to a particular record label and entering an arrangement to use only that record label's repertoire. From the record label's perspective this secures for it not only the public performance revenue, but also all of the reproduction revenue related to copying and distributing the recordings to the various supermarkets. The retail chain needs no other licences for the sound recordings (although they may for the musical works), so this is a simple, binary licensing issue.

2. Another example is where a background music supplier acts as an aggregator or intermediary – enters into an arrangement with one or more rights owners (e.g. record labels), and is able to on sell (perhaps in conjunction with their background service offering) the "blanket" licence that they have been able to create (generally covering significantly fewer repertoire owners than the blanket PPCA licence). In effect, they do exactly what PPCA does – i.e. enter into non-exclusive agreements with rights owners to be able to sub-license their repertoire for public performance – but are not subject to any of the additional oversight applicable to a society, such as the obligations set out in the Collecting Societies Code of Conduct. We have seen examples of this where background music suppliers have developed products that are (a) exclusively built around one rights owner's material, or (b) based on agreements they have executed with a number of rights owners, to create a broader blanket licence. In our experience a common issue is when such licences are exceeded through the use of recordings not provided by, or within the scope, of the licence with their background music supplier. This may arise when a venue decides to play a particular CD or has a DJ perform recorded music within the venue, resulting in unlicensed use.

3. The last example relates most commonly to events and festivals. In such circumstances, the following hypothetical example scenario is not unusual: There are eight acts booked

[7] s 152 *Copyright Act* 1968.
[8] p 14.

to perform at a festival, and five utilise sound recordings. One of those five acts may be an electronic artist who is only playing their own recordings and either (a) can grant permission themselves to themselves / the festival promoter, or (b) uses their relationship to enter into a direct arrangement with the relevant record label. In such instances PPCA's relevant tariff incorporates a mechanism to pro rate the PPCA licence fee. However, it must be noted that this involves significant administration by PPCA and the licensee, and is much more costly to manage. This is discussed further below.

It is not uncommon for PPCA to have relationships with licensees that utilise PPCA's blanket offerings for some activities, and use forms of direct licences (or alternative blanket licences obtained from other sources) for other activities.

5.3 Direct Licensing

The Draft Guidelines favour direct licensing over blanket licensing and state that "blanket licence fees should be reduced to reflect the licensee's lower willingness to pay for the remaining repertoire that excludes the works that have been directly licensed". Consistent with the ACCC preferences outlined in the Draft Guidelines, PPCA has substantial experience with licensing arrangements where some of the rights have been licensed directly from the copyright owner. For example, a licensee might obtain a licence directly from a record label, and approach PPCA to license the remaining repertoire. Further examples are outlined above at 5.2.

As the Draft Guidelines acknowledge, the difficulty is calculating the discount. While the ACCC suggests that "this may be resolved as practices and technology advance" [9] in our experience, it is ambitious to assume that technology will necessarily be able to overcome these issues in the medium term. For example, in the case of streaming services, theoretically it should be possible for a licensee to provide data on the PPCA licensed streams used so that the licence fee can be pro rated. In reality, it is often difficult for a licensee to provide data that is sufficiently detailed and accurate to calculate the discount.

This issue is even more pronounced in the context of a small business which may use a variety of sources (such as CDs, internet radio and streaming services) to play recorded music in their business over the course of a licence period[10]. In our experience, such businesses are not capable of reporting at the level of detail that would allow even general pro rating of fees based on the repertoire to be excluded because of direct licences. Even if this were possible, the likely overheads for a collecting to society to check reporting and audit compliance are likely to make this approach inefficient.

One area of public performance where PPCA does routinely make adjustment for direct licensing is its music events and festivals licence referred to above.[11] These are generally small numbers of licences for relatively big events, and involve significant administration by PPCA. The licences are established based on the actual line up of performers at the event, and the analysis of whether or not each of those performers are utilising PPCA sound recordings in their set. If they have obtained direct licences to cover the sound recordings used in their set, that set duration is excluded from the calculation to determine the fee tier. However, in our submission it would be impossible and impractical to undertake such a task for general ongoing public performance by venue licensees.

[9] p 16.
[10] Note that the majority of PPCA's licences are for a twelve month period.
[11] see http://www.ppca.com.au/IgnitionSuite/uploads/docs/Tariff%20E4%2001%2007%202018[1].pdf).

PPCA notes that the Draft Guidelines put forward a methodology for calculating a discount based on the methodology used in the United States.[12]

> *Adjustable Fee Blanket Licence = Blanket fee – [(blanket licence fee - floor fee) x direct licence ratio].*
>
> *A reasonable AFBL fee should:*
> - *seek to reflect what a licensee would expect to pay in a competitive market or bargaining process between a willing buyer and willing seller, and*
> - *not deter direct licensing by 'double charging' direct licensees for rights they have already paid for.*
> - *An AFBL fee will likely vary across licence schemes and licensees reflecting differences in:*
>   - *the value of repertoire that individual licensees have licensed directly with copyright owners, and*
>   - *the licensees' willingness to pay for a blanket licence.*

This methodology raises the interesting issue of how to value repertoire, which is relevant to all pro rating methods previously mentioned. For example, how should the sound recordings of well-known artists (such as included in the PPCA repertoire) be valued compared with the recordings of unknown artists? A simple pro rata by the number of tracks included would not be appropriate.

Given the ACCC's view that direct licensing should be encouraged, it would be useful for the Draft Guidelines to provide more practical guidance for managing this issue.

6. PRICING PRINCIPLES

The Draft Guidelines acknowledge that the Copyright Tribunal has considered a number of approaches to pricing determinations including judicial estimation, benchmarking and the construction of a hypothetical bargain.

6.1 Judicial Estimation

We note that the Draft Guidelines do not discuss judicial estimation or include any explanation of why the ACCC does not support judicial estimation as an approach to determining pricing. In our submission, a process of estimation based on the evidence before the Copyright Tribunal can be a valid method of determining price.

As the Copyright Law Review Committee acknowledged in its Report on the *Jurisdiction and Procedures of the Copyright Tribunal*[13] :

> *In the circumstances where it has been required to use judicial estimation to arrive at a determination of equitable remuneration, the Tribunal has taken a range of factors into account. Those factors include:*
>
> - *previous agreements between parties;*[73]
> - *negotiations between the parties preceding the application to the Tribunal;*[74]
> - *comparison of determinations under similar legislative regimes in other jurisdictions;*[75]
> - *comparison between royalties set by other licensors/collecting societies;*[76]

[12] p 16.
[13] Copyright Law Review Committee, *Jurisdiction and Procedures of the Copyright Tribunal,* 2000, pp 114-115.

- *the capacity of the licensee to pay;*[77]
- *the value to the licensee of the use of the copyright material;*[78]
- *the general public interest and the interest of consumers;*[79] *and*
- *the administrative costs of a licensing body.*[80]

In the *Phonographic Performance Company of Australia Limited (ACN 000 680 704) under section 154(1) of the Copyright Act 1968* (Cth)[14] ("Nightclubs Case)" the Tribunal referred to the judicial estimation as:

> *the rate determined by the Tribunal after taking into account a range of matters such as:*
> - *previous agreements or negotiations between the parties;*
> - *comparison with other jurisdictions;*
> - *comparison with rates set by other licensors, capacity to pay, value of the copyright material, the general public interest and the interests of consumers; and*
> - *administrative costs of a licensing body (see Audio Visual Copyright Society Ltd v Foxtel Management Pty Ltd No. 4 68 IPR 367 at [131] and [142]).*[15]

This was the approach adopted by the Copyright Tribunal in the Fitness Case. In our submission it would be a mistake to interpret the subsequent appeal against that determination as indicating the invalidity of judicial estimation as an approach to pricing. Rather, *Fitness Australia Ltd v Copyright Tribunal [*2010] FCAFC 148 simply stands for authority that if the Copyright Tribunal is to adopt that approach, it must ensure that the parties have an opportunity to respond to the evidence upon which the determination is based.

6.2 Benchmarking

PPCA agrees with the statement in the Draft Guidelines that benchmarking is a valid method of determining price, or to use as a sanity check against other methodologies. We offer the following comments about the specific types of benchmarking referred to in the Draft Guidelines.

6.2.1 Existing Market Rates

The Draft Guidelines express concern about using existing rates as a benchmark because of the potential for market power to influence those rates.

> "*Generally speaking, if there is evidence that bargaining power is unequal, then existing market rates are likely to reflect the exercise of market power by one of the negotiating parties*".

This statement assumes that market power is necessarily anti-competitive. For the reasons noted at 5.1 above, in our submission, this statement needs to be qualified as market power in and of itself will not lead to a substantial lessening of competition.

The statement also raises the issue of what the ACCC would consider "evidence" of unequal bargaining power and whether this refers to the market power of the licensee as well as the relevant collecting society? As noted at 5.1 above, it is increasingly common for collecting societies to negotiate licence agreements with large multinational corporations which may

[14] [2007] ACopyT 1.
[15] Ibid. at 11.

wield substantial power. Therefore, in our submission, market power should be assessed from both the licensor and the licensee's perspective.

6.2.2 Same material different uses

PPCA agrees that the same material for different uses can provide a worthwhile benchmark. This works for the simple example provided in the Draft Guidelines. We note, however, that this type of benchmarking can lead to disputes about whether the bargain is comparable. For example, in our submission, the example given at 5.3 of the Draft Guidelines is not a comparable bargain. That is because the market for personal use of recorded music is not comparable with the market for commercial uses, such as playing recorded music in fitness classes. Another example is *Phonographic Performance Company of Australia Limited under s 154(1) of the Copyright Act 1968 (Cth)*[16] where the Copyright Tribunal declined to accept PPCA's 2010 agreement with Free TV as a benchmark for PPCA's agreement with Foxtel.

6.2.3 Other jurisdictions or comparable more competitive markets

In our submission, using other jurisdictions as a benchmark needs to be approached with caution. This is because different market conditions are likely to apply. For example, until recently, the US has not protected pre-1972 sound recordings and hence no royalties have been paid for the public performance of such recordings. Furthermore, it is unlikely that the Copyright Tribunal would have sufficient useful evidence relating to market variations between the territories.

7. CONSTRUCTING A HYPOTHETICAL BARGAIN

7.1 Willingness to Pay

PPCA agrees with the Draft Guidelines in relation to WTP. While stated preference methods may be preferable to revealed preference methods to determine WTP, as the Draft Guidelines acknowledge the survey is vital to the utility of the stated preference approach.

> *The utility of any survey data in negotiating or determining a licence fee will turn on its reliability, impartiality and responsiveness to the key factors that affect the WTP for the use of the works in question.* [17]

PPCA agrees that designing and carrying out a useful survey remain the key challenge. For this to be effective, it is important that all parties engage in the survey design process from the outset. It would be helpful for the Draft Guidelines to emphasise this point. It is also worthwhile noting that this involves considerable time and expense, a burden that is largely borne by the licensor.

As noted at 4 earlier in this submission, substitution is not straightforward when dealing with copyright material.

In our submission, it is useful for the Draft Guidelines to set out these issues for the Copyright Tribunal and for parties to proceedings before the Copyright Tribunal. The worked examples in the Appendix are also a useful addition to the Draft Guidelines.

[16] [2016] ACopyT 3.
[17] 25.

7.2 Willingness to Sell

7.2.1 Assessing the costs of a collecting society

PPCA is concerned by the Draft Guidelines which focus on the collecting society's operational costs in determining WTS. In our submission, the Draft Guidelines should focus on the cost of the subject of the licence, in PPCA's case, the cost of the sound recording. In our submission, the costs of the collecting society are an ancillary matter.

In our view, basing licence fees on a collecting society's operational costs is likely to diminish the willingness of copyright owners to license their repertoire to the society, and thus reduce the options available to those seeking licences.

As noted at 5.1.3 above, PPCA's revenue is also constrained by the statutory cap on radio broadcast licences and this has a significant and direct impact on the revenue to cost ratio of PPCA (particularly when compared to similar societies not affected by such a cap).

We are also concerned that the Draft Guidelines make a passing reference to a perceived lack of transparency in a collecting society's operating costs. PPCA's distribution policy which contains information regarding PPCA's operating costs is published on the PPCA website and it is drawn to the attention of all prospective licensors and registered artists before registering with PPCA. Further, PPCA's annual report, containing the audited financial reports of the entity for each year of operation are also feely available on its website. In this regard, we refer the Commission to the reporting obligations of each collecting society and to the Collecting Societies' Code of Conduct.[18]

We note also that a focus on marginal costs, while potentially increasing the use of copyright material, does not consider the importance of licence fees in influencing the future and continued production of creative output, and the public interest in the creation of such new copyright material.

7.3 Division of surplus

7.3.1 Multilateral negotiation

As the Draft Guidelines acknowledge the final stage of determining price is the division of surplus. Because of the layered nature of copyright material, the surplus will often need to be divided amongst multiple copyright owners. For example, consumers of music will often require a licence from both PPCA and APRA.

In 2019, PPCA, together with APRA|AMCOS will commence the operation of "OneMusic Australia" which will be administered on behalf of both societies by APRA|AMCOS. Under this licensing initiative, licensees will be able to obtain public performance licences which include a licence for both musical works and sound recordings in a single transaction, when they need to access both rights. OneMusic Australia's licensing schemes are being developed to ensure that OneMusic Australia clients can also obtain partial licences (e.g. for only musical works or only sound recordings) in circumstances where that is all they require.[19]

[18] Available on our website. See <http://www.ppca.com.au/IgnitionSuite/uploads/docs/Code%20of%20Conduct%20March%202017.pdf>.

[19] See various licence scheme consultation papers available at <http://www.onemusic.com.au/consultations/>.

8. CONCLUSION

PPCA generally supports the Draft Guidelines but, as discussed above, we consider that the Draft Guidelines may benefit from clarifying the approach to market power, noting the differences that exist between each of the copyright collecting societies and providing more practical guidance on how to deal with direct licensing.

While we are grateful to the ACCC for preparing these new Draft Guidelines, it is important to emphasise that they should be seen as a tool to assist the Copyright Tribunal in carrying out its function under s 157 of the *Copyright Act.* The Draft Guidelines should not be seen as fettering the discretion of the Copyright Tribunal to take into account all relevant matters in the exercise of its jurisdiction.

Please do not hesitate to contact us if we can provide any further assistance.

Lynne Small
General Mananger