



## **Australian Libraries Copyright Committee**

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Mr James Barker  
Director  
Copyright Law Review Committee Secretariat  
Attorney-General's Department  
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BARTON ACT 2600

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7 March 2000

Dear Mr Barker

### **Copyright Law Review Committee Draft Report Jurisdiction and Procedures of the Copyright Tribunal**

The Australian Libraries Copyright Committee and the Australian Digital Alliance has reviewed the CLRC Draft Report and would like to submit the following comments for the Committee's consideration.

The ALCC/ADA is a cross-sectoral committee with representatives from the following organisations:

- Australian Council of Archives
- Australian Library and Information Association
- Australian School Libraries Association
- Council of Australian University Librarians
- Federal Libraries Information Network
- National Library of Australia

The Australian Digital Alliance is a unique coalition of public and private sector interests formed to promote balanced copyright law and provide an effective voice for a public interest perspective in the copyright debate. ADA members include schools, universities, Internet industry groups, consumer groups, major cultural institutions, computer software producers, scientific and other research organisations, libraries and individuals.

If you have any queries regarding this submission, please contact me on 02 6262 1273 or email [kbeard@nla.gov.au](mailto:kbeard@nla.gov.au).

Yours sincerely

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### **Copyright Law Review Committee Draft Report Jurisdiction and Procedures of the Copyright Tribunal**

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#### **Australian Libraries Copyright Committee & Australian Digital Alliance Submission**

#### **Introduction**

1. The ALCC/ADA welcomes the CLRC Draft Report on the *Jurisdiction and Procedures of the Copyright Tribunal*, and thanks the Committee for the opportunity to comment on the recommendations.
2. In particular we would like to draw the Committee's attention to:
  - the need for an Ombudsman of Collecting Societies
  - the opportunity that exists to establish procedures for dealing with untraceable copyright owners
3. Whilst copyright collecting societies are currently being scrutinised by many different review mechanisms, the need to ensure their market power is checked by an independent and reasonably accessible arbitrator has not diminished. Fair pricing arrangements and access to copyright works is an issue of continued importance for the library sector in their capacity as providers of information for the wider community. It is in the best interests of the community for the Copyright Tribunal to have at its disposal the widest possible jurisdiction for review of collecting societies.

#### **Commentary**

##### **Jurisdiction of the Copyright Tribunal**

4. The Committee's recommendation in paragraph 11.12 that the jurisdiction of the Tribunal be extended to encompass all collectively administered licence schemes (voluntary or statutory) and involving all forms of copyright material, is strongly supported by the ALCC/ADA.
5. We also support the recommendations concerning record keeping arrangements in Parts VA and VB, and S 47A of the Act.



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6. The decision of the majority of the Committee in paragraph 11.102 to include transactional licences within the amended jurisdiction of the Tribunal is welcomed by the ADA/ALCC also.
7. All other recommendations in Chapter 11 of the Report are supported by the ALCC/ADA.

### **Untraceable Copyright Owners**

8. We would draw the Committee's attention to the Recommendations in Chapter 18 concerning untraceable copyright owners. Whilst not originally mentioned in the Issues Papers, the ALCC/ADA would like to support the Committee's intention to consider this subject. Where multimedia and new technologies are increasingly diversifying the types of material being utilised by copyright users and indeed how the material is used, it can sometimes be very difficult to trace the owner of the copyright. Whilst it is recognised that providing for access and use where the owner is untraceable should not be perceived as equating 'copyright' with a 'right to remuneration', it is sensible to make arrangements for use of material in these circumstances.
9. The Copyright Tribunal is an appropriate organisation to administer the scheme.
10. The suggested method of approaching the issue, outlined in Chapter 18, is acceptable to the ALCC/ADA. Whilst cost recovery for service provision is welcomed, care should be taken to ensure that application costs and administration expenses are kept to a minimum.
11. The process of assessing applications should be transparent. We would also raise the issue of whether some simple form of appeals/review process should be implemented for the benefit of applicants.
12. The development of guidelines pursuant to this scheme would benefit from industry comment. For instance, the determination of what is defined as an 'adequate search' for a copyright owner should not be unreasonably demanding on the applicant.
13. In summary, the ALCC/ADA strongly supports the instigation of a Copyright Tribunal scheme for licensing works by untraceable copyright owners.

### **Membership of the Copyright Tribunal**

14. We support the Committee's recommendation in Chapter 19 that more members be appointed to the Tribunal.



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15. Copyright expertise, industry experience and ensuring equal representation from both the owner and user groups should all be factors in the selection of members to the Tribunal.
16. Again we support the AV-CC's suggestion that the Chair of the Copyright Tribunal be taken from a rotating panel of judges.

### **Alternative Dispute Resolution**

17. All the recommendations regarding alternative dispute resolution outlined in Chapter 21 are supported by the ALCC/ADA. A mechanism for ADR would reduce costs and facilitate speed of dispute resolution.
18. It is particularly important that ADR mechanisms exist for the benefit of smaller users.
19. The need for effective ADR mechanisms is increased in light of recommendations by the Committee to expand the jurisdiction of the Copyright Tribunal.

### **Ombudsman**

20. The Committee should reconsider its decision not to recommend the establishment of an Ombudsman of Collecting Societies by the government.
21. The ADA/ALCC note that the establishment of an Ombudsman might sensibly be a step that is reviewed following the establishment of an ADR process, in the event that such a process is perceived to be insufficient.
22. A perception of inefficiency by users should be sufficient to evaluate the need for an Ombudsman.
23. We note that the Ombudsman Recommendation came after the only review of collecting societies ever conducted and was the result of extensive consideration.