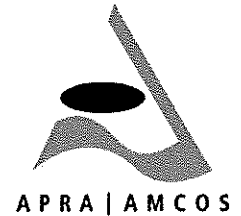


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16 February 2009



Department of Broadband, Communications and the
Digital Economy
GPO Box 2154
CANBERRA ACT 2601

By email: DEFutureDirections@dbcde.gov.au

Dear Madam / Sir

DIGITAL ECONOMY FUTURE DIRECTIONS – CONSULTATION PAPER APRA|AMCOS SUBMISSION

Australasian Performing Right Association Limited (**APRA**) and Australasian Mechanical Copyright Owners' Society Limited (**AMCOS**) (together, **APRA|AMCOS**) welcome the opportunity to make submissions in response to the Department of Broadband, Communications and the Digital Economy's consultation paper "Digital Economy Future Directions" (**Consultation Paper**).

1. Executive Summary and Background

1.1 Executive Summary

APRA|AMCOS' primary submissions in relation to issues raised by the Consultation Paper can be summarised as follows:

- (a) A key marker when assessing the success of Australia's transition to a digital economy ought to be the extent to which Australian content industries are able to successfully operate in the online environment such that they remain viable and in a position to contribute to the continued growth of Australia's digital economy.
- (b) When considering strategies aimed at maximising Australia's online participation and growing our digital economy, proper consideration should be given to the social and cultural value of Australian content in the online environment, as well as economic factors.
- (c) Any discussion of increasing access to public sector information (PSI) requires careful consideration of what content ought reasonably be included within the definition of PSI and also whether an appropriate balance has been struck between the benefits to innovation and the digital economy arising from providing the public with greater access to such content on the one hand, and the benefits of incentivising the original creators of the content included within that PSI on the other.

- (d) The vast growth of unlawful peer-to-peer file sharing in recent years acts as a major disincentive to investment in the content industries and is a fundamental impediment to any successful transition to a digital economy. Overcoming this challenge will require a combination of fair and equitable collective online licensing arrangements, a comprehensive education program for online consumers, and a clear and certain online industry code (legislatively mandated if need be) to assist in reducing the number of repeat or flagrant offenders.
- (e) The means by which we encourage and support new businesses participating in the digital economy (such as operators of social networking and video sharing sites) ought to be through appropriate and reasonable collective licensing arrangements, not by expanding the delicately balanced safe harbour regime under the Copyright Act further in favour of carriage service providers.
- (f) Australia's existing copyright laws do not need wholesale revision, nor do they unreasonably inhibit the operation of basic and important internet services. The promotion of innovation and growth in internet services and the digital economy, and the proper recognition and valuation of copyright content, are not mutually exclusive propositions. Innovation relies on the appropriate respect for, and valuation of, the creative process.

1.2 APRA and AMCOS

APRA's and AMCOS' joint objective is to secure the fairest and highest level of payments for our members, provide the strongest defence possible of their rights and the best customer service for both our members and our licensees.

APRA is a performing right collection society established in 1926 to administer the public performance and communication rights (often referred to collectively as performing rights) of its songwriter, composer and music publisher members. APRA represents over 55,000 music creators in Australia and New Zealand alone. In addition to representing the interests of its Australasian members, APRA represents the vast majority of the world's music creators through its reciprocal agreements with approximately 74 similar performing right societies throughout the world.

AMCOS is a smaller collecting society, whose membership also consists of songwriters, composers and music publishers, but whose area of copyright administration relates to the right of reproduction. Because music publishers have generally administered reproduction rights on behalf of songwriters, many fewer writers have historically required AMCOS' services than have required APRA's services. AMCOS has a membership base of approximately 4,850 members and has reciprocal agreements with approximately 38 similar mechanical right societies around the world.

Since 1997, APRA has managed the operational functions of AMCOS under contract. Whilst separate legal entities, APRA and AMCOS effectively operate as an integrated organization. APRA|AMCOS is a key organization within the Australasian music industry. It is actively involved in supporting and promoting music related creative communities and is widely regarded by its members as their voice on copyright issues.

1.3 APRA|AMCOS Repertoire and Licensing Activity

APRA licenses the public performance and communication rights in the approximately 10,000,000 works that it controls to more than 80,000 Australian businesses. Historically, the majority of APRA's licensees have been businesses such as live music venues, hotels and fitness centres, as well as analogue radio and television broadcasters. AMCOS typically licenses the reproduction rights in its repertoire to bodies such as record companies, film producers, and production studios, to record or synchronise music into a variety of media.

Increasingly, APRA|AMCOS' licensees are businesses that operate in the digital economy, providing services in the online and mobile environments, such as telecommunications companies, ISPs, music download service providers, mobile ringtone providers, webcasters and website operators (even operators of Web 2.0 user generated content services). Such companies rapidly are becoming key licensee stakeholders for APRA|AMCOS.

APRA|AMCOS are committed to providing access to their respective repertoires of works to any organisation that wishes to obtain a licence. We see no benefit to APRA|AMCOS members in using copyright legislation to block or prevent the development of new digital economy services. Rather, the enabling of such services through collective licence agreements is desirable, as it widens the horizon for the use of our members' works. Collecting societies exist to license their respective repertoires and APRA|AMCOS is dedicated to facilitating the easy and cost effective collective licensing of its content to all businesses and consumers participating in the digital economy, whilst at the same time working to secure an equitable level of payment by its licensees for the benefit and continued commercial viability of its music creator members.

1.4 APRA|AMCOS Revenues

APRA and AMCOS are separate not-for-profit organisations. APRA manages the AMCOS business, effectively collecting licence fees from licensees on behalf of their respective members before deducting its administrative costs and distributing the remainder to members and affiliate societies. In the year ending 30 June 2008, APRA|AMCOS total gross annual revenue was \$203.7 million with a net distributable income of \$178.6 million. APRA|AMCOS estimates that presently 8% of its combined domestic licensing revenues are generated from licences to operators of internet and mobile services. APRA|AMCOS considers that this percentage will increase dramatically as the Australian digital economy develops.

The Australian song writing community relies heavily upon APRA|AMCOS distributions as an important source of income. APRA|AMCOS' distribution of these revenues back to songwriters allows them to continue their creative endeavours. The income is fair remuneration for their innovation and creativity and provides these creators with an incentive to continue their creative endeavours, thereby adding to Australia's digital economy and also to its cultural identity.

2. What does success look like?

2.1 What markers of success can government, industry and other stakeholders establish?

APRA|AMCOS agrees with and wholeheartedly supports the Australian Government's goal of increasing the effective use of the internet and other networked information and communication technologies (ICTs) by Australian consumers and businesses to drive higher productivity growth and community participation in our digital economy. There will be many ways to judge Australia's success in this pursuit, but in the submission of APRA|AMCOS a key marker ought to be the extent to which Australian content industries are able to successfully operate in the online environment such that they remain viable and in a position to contribute to the continued growth of Australia's digital economy. Within the digital economy where APRA|AMCOS operates, we support and encourage the growth of legitimate music services and have a range of licences available to let businesses use our music and we have a strong track record in negotiating specific agreements for innovative new media services.

To maximise the potential contribution of Australia's content industries to the digital economy there are a number of significant challenges that will need to be overcome. The ease with which digital content can be distributed and copied dramatically increases the scope for unlicensed and illegal copying and distribution. These challenges are too great to be dealt with by the content industries on their own. Success will require sharing responsibility for overcoming these challenges across the value chain (including content creators, distributors and consumers) and will require involvement from both industry and government. These challenges comprise a significant barrier to the continued investment in and provision of online content offerings and will be discussed in further detail in section 4.1 below.

In the event that Australia is able to successfully address these challenges, the opportunities for the content industries to make a major contribution to the growth and development of Australia's digital economy are many and profound. In addition to its rich, but finite, mineral resources, Australia's greatest resource and potential export commodity is its intellectual property. A recent study by Price Waterhouse Coopers into the economic value of copyright industries to Australia found that in comparison with other economies analysed in the report, the Australian economy has a greater copyright intensity than average in terms of both value added by, and employment in, the copyright industries.¹ In particular the report found that the copyright industries contributed 10.3% to Australia's GDP, employing 837,000 Australians and contributing \$8.8 billion or 4.1% of all exports.²

While exports of Australian copyright products have grown in real terms by 0.6% per year over the period 1995/6 to 2006/7, imports have grown at 2.1%. In 2006/7 Australia had a trade deficit of just under \$20.8 billion in the copyright industries. While it is unlikely that Australia will ever evolve to a position where it is a net exporter of copyright products (given the size and reach of the US and UK industries), APRA|AMCOS submits that the evolution of the digital economy provides Australia with a genuine opportunity to redress this import / export

¹ Price Waterhouse Coopers, *Making the Intangible Tangible – the economic contribution of Australia's Copyright Industries* (2008), p.4

² Ibid, p.3.

imbalance. The internet plays an important role in allowing Australian content to be accessed and consumed easily in territories where historically this may not have been the case, thus helping to grow the export of Australian content.

2.2 Non-economic considerations

APRA|AMCOS submits that as government and industry consider strategies aimed at maximising Australia's online participation, in addition to the economic value assigned to Australia's content industries, proper consideration must be given to the social and cultural value of Australian content in the online environment.

The rationale behind taking appropriate measures to ensure the viability of the Australian music industry in the digital economy (and in doing so the continued creation of Australian music) is not just an economic argument. Australian music plays a fundamental role in developing and reflecting a sense of Australian identity, character and cultural diversity. Our local music and songs are a vital means of expressing our ideas, perspectives, values and identity and projecting them to the world. There is the potential for this Australian voice to be lost or diluted in the online environment where the quota of Australian content is not assured the exposure it enjoys in the broadcast media.

When considering the digital economy, APRA|AMCOS submits that the Australian Government ought to take a policy approach that recognises the cultural and social value of the Australian music community, as well as other Australian artistic communities. Culture should not be considered a commodity that is able to be traded or that is impervious to the effect of erosion through the wholesale import of foreign content. Valuing creativity is both a cultural and economic decision that has cultural and economic rewards.

3. Open Access to Public Sector Information

3.1 What are the priority issues that will facilitate the use of PSI?

In APRA|AMCOS' submission, any discussion of increasing access to public sector information (PSI) requires careful consideration of at least two priority issues:

- (a) what content ought reasonably be included within the definition of PSI; and
- (b) whether an appropriate balance has been struck between the benefits potentially arising to innovation and the digital economy from providing the public with greater access to such content on the one hand, and the benefits of incentivising the original creators of the content included within the definition of PSI on the other.

As to what content ought reasonably be included within the definition of PSI, if it is proposed that there ought to be open access to PSI without any remuneration to content creators, APRA|AMCOS submits that any PSI content which competes with commercially produced content ought to be excluded from the definition of PSI. In such circumstances, an obvious example of content which ought to be excluded from the definition of PSI is content produced and / or commissioned by public broadcasters such as the ABC and SBS.

As to what may be an appropriate balance of interests, please see section 3.2 immediately following.

3.2 If PSI is made open access, what licensing terms would best facilitate and promote its use and reuse?

If PSI is made open access, when considering what might constitute appropriate licensing terms, the Australian Government should not limit its consideration to asking what licensing terms would best facilitate and promote PSI's use and access. In APRA|AMCOS' submission, an equally important consideration ought to be what licensing terms best facilitate the balance between removing any barriers to innovation and the encouragement of creativity.

APRA|AMCOS has long supported the principle of open access to music for the benefit of both creators and the public. Fundamental to the application of this principle is appropriately balancing the creator's entitlement to receive equitable remuneration for use of their work, while at the same time allowing members of the public the flexibility of use and access they require, for a fair price. Fair and equitable remuneration for creators should be a key consideration when determining the licensing terms associated with an increased access to PSI.

APRA|AMCOS submits that a satisfactory balance with regard to public access to musical and literary works is presently achieved by the scheme of statutory licensing prescribed by the Copyright Act (for example section 183 allowing the use of copyright materials for the services of the Crown), with such statutory licences supplemented by APRA|AMCOS' voluntary collective licensing of rights on reasonable terms for all parties.

3.3 Should licensing terms distinguish between commercial uses and non-commercial uses and reuses?

APRA|AMCOS submits that great care needs to be taken when using the terms "commercial" and "non-commercial" in this context. These concepts are not existing terms of art under Australian copyright law and their definitions in the context of the creative commons licensing movement are full of uncertainty. As technology, consumer trends and new business models evolve, there are constantly new measures of what is "commercial" and what is "non-commercial".

For example, different entities in the value chain will have a different perspective on what is commercial and non-commercial. A band seeking a record and publishing deal may use a social networking website to expose their music to a wider audience and consider this non-commercial. However, the website selling advertising from the band's page, and the entity actually exercising the copyright in the band's music, is acting in an unequivocally commercial manner.

4. **Digital Confidence**

4.1 What evidence shows the possible barriers preventing greater online content offerings?

The Consultation Paper notes that with the increase in broadband offerings, the Australian content industries have significant concerns about the apparent extensive piracy of content on peer-to-peer networks.³ In the experience of APRA|AMCOS, this is to seriously understate the gravity and reality of the challenges facing Australia's content industries in this regard. In the case of the

³ *Digital Economy Future Directions Consultation Paper*, p.10

music industry, unlawful file sharing quite simply threatens to put the whole music sector out of business. IFPI's *Digital Music Report 2009* estimates that 95% of tracks downloaded over the internet are downloaded without payment to rights holders.⁴ Estimates on the economic and employment damage suffered by the music industry as a result of online piracy vary, however Jupiter Research valued the loss at GBP 180 million for 2008 in the UK alone.⁵ Turning to Australia specifically, according to Music Industry Piracy Investigations (MIPI):

- 18% of the Australian population (or 2.8 million people) illegally download music regularly on the internet via file-sharing networks every year;
- 1 in 3 children in the 14 – 17 year age group illegally download music regularly;
- On average, Australians download approximately 30 songs a month via unauthorised file-sharing networks, totalling one billion songs being illegally traded by Australians per year;
- A recent iPoque study in Europe suggests that the illegal file sharing traffic is producing more traffic on the internet than all other applications combined and therefore is substantially negatively impacting on the speed and cost of the network. In Australia, 20% of the population engaged in file sharing use up close to 60% of bandwidth.⁶

The vast growth of unlawful file sharing in recent years acts as a major disincentive to investment in the content industries and is a fundamental impediment to be resolved before there can be any truly successful transition to a digital economy.

4.2 What can be done to address these barriers preventing greater online content offerings?

In the submission of APRA|AMCOS, a multi-faceted approach to this problem, involving government and all industries participating in the digital economy, is required. First, the re-education of online consumers in the digital economy will be crucial. Many users, especially younger demographics have become accustomed to copying and sharing content online for "free". While close to 70% of Australians agree that illegal file sharing is stealing, only half of all 14 – 24 year olds agree with this statement.⁷ Entertainment Media Research in the UK found that 71% of people who said they file shared more heavily in 2008 cited the fact that they could obtain music without payment as the number one reason for their activity.⁸

It is imperative that consumers and businesses who participate in the digital economy are provided with a better understanding of what conduct is legitimate and legal and what is not. APRA|AMCOS supports education programs that emphasise the value of creativity in all its forms and the respect of ownership. We work directly and indirectly with educational institutions and organisations to provide information and relevant educative cross-curricula resources. We support the aims of MIPI in both educating the wider public in relation to intellectual property ownership and also the ramifications of intellectual property theft. APRA|AMCOS also provides ongoing educational opportunities for its members and the wider music community, with national topic based 'roadshows' and most recently a three day conference focussing on the creative and business process of

⁴ IFPI, *Digital Music Report 2009* (January 2009), p.5

⁵ Ibid, p.22

⁶ See www.mipi.com.au/about_piracy/musicpiracy.htm

⁷ See www.mipi.com.au/about_piracy/musicpiracy.htm

⁸ IFPI, *Digital Music Report 2009* (January 2009), p.22

song writing. However, in our submission, there remains a need for a government enacted and broad educative campaign relating to the importance of the creation and ownership of intellectual property.

Alongside this educative approach, an industry code of practice in relation to the identification of copyright infringement and protection of copyright material on the internet must be developed as a matter of urgency (an **Industry Code**). Of course, the Copyright Act already contemplates just such an Industry Code under its safe harbour regime (indeed APRA|AMCOS submits that without such an Industry Code the delicate balance of interests under the existing safe harbour regime is skewed unfairly in favour of carriage service providers). Unfortunately, the Regulations to the Copyright Act prescribe that the Industry Code should be agreed as a result of a "open voluntary process by a broad consensus of copyright owners and carriage service providers", but it has become clear after three years of failed negotiations that such a consensus is unlikely to be reached by agreement. In the submission of APRA|AMCOS, the Industry Code exists in name only; there is no delicate balance and the current situation is unfairly skewed against the 837,000 Australians working in copyright industries and Government intervention in the formulation of an appropriate Industry Code is urgently required.

We note that without an Industry Code, copyright owners are forced to sue consumers individually for the uploading or downloading of copyright material. Although this is a procedure that is supported by some ISPs, including most notably, Telstra, APRA|AMCOS does not believe this was the Government's intention when drafting the legislation.

APRA|AMCOS has found the recent experience of various international territories to be instructive. Closest to home, last week the New Zealand government commenced the implementation of its graduated response system following the enactment of their *Copyright (New Technologies) Amendment Act 2008* requiring ISPs to adopt and reasonably implement a policy of terminating the accounts of repeat infringers. APRA|AMCOS was, and continues to be, supportive of the introduction of this legislation. Pursuant to the legislation, the New Zealand ISPs are required to formulate a Code of Practice in relation to the termination of repeat infringers' accounts. The New Zealand content and ISP industries have made a substantial effort to formulate an mutually acceptable Code, however there remain a number of significant issues on which the industries are simply unable to agree. The Code is meant to come into practice on 28 February 2009. We understand that New Zealand government is willing to consider its involvement in formulating an appropriate and reasonable Code if the industries are unable to agree one themselves.

Throughout Asia, governments are also taking proactive steps to resolve the impasse between industries: the Hong Kong government launched a discussion forum between content industries and ISPs in 2008 and has said it is prepared to legislate if necessary; in South Korea the government has issued for consultation a draft law introducing a system of graduated sanctions against online infringement, including terminating the accounts of repeat offenders; and in Japan the government, along with national police, established a consortium of ISP, music and film trade associations to agree measures against copyright abuse on Japan's largest ISP network.⁹

Of particular interest to APRA|AMCOS are recent developments in the United Kingdom where the Department for Business Enterprise & Regulatory Reform (**BERR**) has just released its report in response to its 2008 consultation process

⁹ Ibid, p.25

on legislative options to address illicit Peer-to-Peer file-sharing.¹⁰ The report concluded that voluntary agreement between the stakeholders will be unlikely to be reached, consistent with the experience in Australia, and therefore the UK Government is proposing to introduce a legislative code which will mandate a two step approach:

1. A specific obligation will be placed on ISPs to notify alleged infringers of rights (subject to reasonable levels of proof from rights-holders) that their conduct is unlawful; and
2. ISPs will be required to collect anonymised information on serious repeat infringers (derived from their notification activities, not from monitoring their customers' activities), to be made available to rights-holders together with personal details on receipt of court order.¹¹

The report acknowledges that issues of practical detail as to how this code will be implemented remain to be agreed (such as standards of evidence, cost sharing, and appeals). Again, the UK government indicates in its report that it would be sensible for these practical details to be agreed between industry parties rather than imposed by legislation. However, given the ongoing and "marked polarisation of views between the rights holder community and consumers and the ISPs over what action should be taken" that the report admits has characterised the debate so far,¹² APRA|AMCOS is concerned that this decision to leave many practical details to be agreed by the competing industry parties may not be successful.

In APRA|AMCOS' submission, given the clear inability of copyright owners and carriage service providers to agree over the last three years on a shared responsibility for and implementation of a clear set of reasonable, proportionate, cost effective sanctions for copyright infringement, there is a strong argument for the Australian Government to adopt a legislative approach and introduce an Industry Code where even the parameters and practicalities of the code determined by the legislature after consultation with industry. Of course, Australia already has a legislative model for a code where minimum standards are legislated – Schedule 5 of the *Broadcasting Services Act 1992*. APRA|AMCOS would welcome the opportunity to provide further detailed submissions to the Australian Government on what it considers to be an appropriate Industry Code should the Government decide to proceed in this manner.

5. Ensuring Australia's regulatory framework enables the digital economy

5.1 Should the existing copyright safe harbour scheme for carriage service providers be broadened?

APRA|AMCOS does not believe that the existing copyright safe harbour scheme for carriage service providers ought to be broadened. As the Consultation Paper notes, the safe harbour scheme was introduced into the Copyright Act as a result of the Australia – United States Free Trade Agreement with the purpose of providing "carriage service providers" with legal incentives to co-operate with copyright owners to deter unauthorised infringement of copyright material.¹³ As discussed in section 4 above, to date there has been no co-operation by

¹⁰ BERR, *Government Response to Consultation on legislative options to address illicit Peer-to-Peer file-sharing* (29 January 2009). For an instructive analysis of Britain's digital economy, see also BERR, *Digital Britain – The Interim Report* (January 2009).

¹¹ BERR, *Government Response to Consultation on legislative options to address illicit Peer-to-Peer file-sharing* (29 January 2009), p.5

¹² *Ibid*, p.2

¹³ *Digital Economy Future Directions Consultation Paper*, p.16

Australian ISPs in this regard. Until such time as the Australian ISP industry agrees (or is legislatively required) to commit to an Industry Code which introduces a reasonable and efficient mechanism for the identification and prevention of copyright infringement occurring on the ISPs networks, APRA|AMCOS considers that these "carriage service providers" ought not be afforded any protection by the safe harbour regime under the Copyright Act. To the extent that the provisions of the legislation provide shelter from action for those who are involved in the infringement of copyright, the beneficiaries of those limitations should be compelled to comply with the conditions attached to such protection. The limitations set out in the Copyright Act are significant, and reduce comprehensively the remedies that are available to copyright owners whose rights have been infringed. APRA|AMCOS submits that such powerful restrictions on the rights of copyright owners must be strictly limited within the confines of the relevant public policy. It is not the policy of the Copyright Act to further restrict the rights of copyright owners in circumstances where their rights are being infringed.

In any event, the safe harbour regime will not apply if it is found to be the case that an ISP who does not take positive steps to prevent copyright infringement by its subscribers over its network (when notified of such activity) is liable for authorising such copyright infringement pursuant to section 36(1) of the Copyright Act. If that is the case the ISP will not be able to rely on the defence under section 39B of the Copyright Act because it is doing more than merely providing facilities for transmitting, routing or connections.

In particular, APRA|AMCOS does not consider it appropriate for the definition of "carriage service provider" to be broadened to include social networking sites and video sharing sites. The operators of such sites cannot be argued to be merely providing facilities for transmitting, routing or connections. In the view of APRA|AMCOS, the operators of such websites are clearly content service providers – indeed they may be considered as the new broadcasters. Recent media reports regarding Facebook and the selling of advertising on that site (as well as the value placed on information Facebook holds about its users) support that proposition.

APRA|AMCOS agrees that the facilitation and encouragement of such sites in Australia may be beneficial to our digital economy. However, the means by which we ought to facilitate and encourage the development of such sites is through appropriate licensing arrangements, not by the expansion of the delicately balanced safe harbour regime under the Copyright Act. In the United States, copyright owners and technology companies have even agreed a set of copyright principles that ought to apply to all Web 2.0 and UGC sites, principles which may go some way to facilitating the appropriate licensing of such sites by copyright owners.¹⁴ In so far as APRA|AMCOS is concerned, we are very open to licensing our repertoire of works to such sites on fair and equitable terms and indeed we are already in the process of doing so. In this regard please see attached confidential Schedule 1 setting out APRA|AMCOS licensees in the online environment. In addition to that list of licensees APRA|AMCOS is in negotiations with a number of other operators of such sites and is close to finalising those arrangements.

5.2 Does Australia's copyright law unreasonably inhibit the operation of basic and important internet services? If so, what are the nature of such problems and practical consequences? How should these be overcome?

In recent years, the basic framework of Australia's copyright law has been the subject of extensive analysis and amendment. APRA|AMCOS' view is that

¹⁴ See www.ugcprinciples.com

Australia's existing copyright laws do not need wholesale revision at this point in time. Nor, in our submission, do Australia's existing copyright laws unreasonably inhibit the operation of basic and important internet services.

The Consultation Paper suggests that some technology companies believe existing copyright law may not provide for particular internet services that are important for the digital economy and are hampering innovation.¹⁵ APRA|AMCOS does not agree, and will be interested in reviewing what evidence the technology companies put forward to support their assertion. Their argument assumes that the promotion of innovation and growth in internet services and the digital economy, and the proper recognition and valuation of copyright content, are mutually exclusive propositions, conceiving of copyright law as a barrier to, rather than a facilitator of, innovation. In the submission of APRA|AMCOS, this argument is misconceived. The very purpose of copyright law is to provide incentive and reward for creative endeavour. Innovation relies on the appropriate respect and valuation of the creative process.

Furthermore, as the Consultation Paper notes, it is important that Australia consider these issues in the context of its obligations under the various international treaties to which it is signatory. One such obligation that we suggest needs to be considered in this context is the Three Step Test codified by Article 13 of the Berne Convention which enshrines the right of creators to have the ability at all times to control and financially benefit from his or her creativity.

In practice, the adequate protection of copyright in content, such that content creators are fairly remunerated for their work and incentivised to continue to invest in and produce future content, is fundamental to ensuring the development of new online business and growth of our digital economy. Content functions as a driver for a whole range of digital businesses. As the Consultation Paper acknowledges, the entertainment industry is a key digital economy industry sector, fundamental to attracting Australians to participate in the digital economy.¹⁶ The Australian Communications and Media Authority report to which the Consultation Paper refers provides some interesting insights in this regard: the consumption of news, sport and weather content is the equal second most popular activity on the internet after email; YouTube was the eighth most popular website recorded in Australia in May 2008; in excess of 25% of Australian internet users engaged in downloading audio content in February 2008 and 20% of users downloaded video content.¹⁷

The BERR Interim Report *Digital Britain* notes that as we move towards a digital economy, there will naturally be a tension between providing reasonable rewards for creativity, which have historically required a measure of protection for the creator's rights, and the freedom to allow that content to be used to permit further innovation and creativity.¹⁸ However, in the submission of APRA|AMCOS, it is not necessary or appropriate at this point in time to make further wholesale legislative amendments to our existing copyright laws, particularly any such changes that enable access to copyright material at the expense of equity for the creators of that material. The existing copyright regime in Australia has already been extensively amended over the last five years through a number of reviews and the AUSFTA amendments, and a delicate balance has been reached.

¹⁵ *Digital Economy Future Directions Consultation Paper*, p.17

¹⁶ *Ibid*, p.9

¹⁷ ACMA, *Telecommunications Today – Report 6: Internet activity and content*, (September 2008), p.15, 27

¹⁸ BERR, *Digital Britain – The Interim Report* (January 2009), p.39

APRA|AMCOS' view is that any tension between creator and user rights can be overcome through a combination of a fair and equitable collective online licensing arrangements, supported by a comprehensive education program for online consumers, and finally backed up a clear and certain Industry Code to assist in reducing the number of repeat or flagrant offenders. If APRA|AMCOS is supported in these objectives, we believe we can make a significant contribution to building a digital economy in Australia where opportunities abound for rights holders and digital distributors alike.

Thank you for allowing APRA|AMCOS the opportunity to make these submissions on this very important area of policy development. Please do not hesitate to contact me should you have any questions regarding the above submissions.

A handwritten signature in black ink, appearing to read 'Brett Cottle', followed by a period. The signature is fluid and cursive.

Brett Cottle
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