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Submission to Book Industry Strategy Group

31 January 2011

Copyright Agency Limited (CAL) welcomes the opportunity to make a submission to the Book Industry Strategy Group (BISG) about the fundamental role of copyright and rights management in the future of the Australian book industry. We are pleased to note that the topic of rights is one of the five key areas of focus identified by the BISG for its inquiry.

Summary of this submission

As acknowledged by BISG, copyright and rights management is integral to a flourishing Australian digital publishing industry.

CAL currently manages rights for authors, publishers and others under the statutory licences in the Copyright Act that allow educational and government use of content. Both educational institutions and publishers have adapted to the educational statutory licence, and CAL payments enable publishers to invest in new and innovative learning materials.

CAL also manages rights for other types of usage, including corporate use and media monitoring, and is making significant investments in systems that will enable it to extend and streamline its rights management services for digital content, including in collaboration with other rights management organisations.

One of the challenges for developing business models for digital content is that consumers commonly underestimate the investment required to produce it. Addressing consumer attitudes to the value of digital content will be important in the development of an Australian digital publishing industry. So will strategies to convert unauthorised to legitimate use of content.

The role of rights in publishing

The publishing industry is built on the foundation of copyright law; it provides the incentive for the creation, production and dissemination of new works by creating rights in those works, and thus a marketplace for trade in those rights amongst authors, publishers, distributors and others.

The business models for trading in rights in the digital environment are, of course, still emerging. New entities are involved in the supply chain, the role of publishers is changing, the opportunities for re-use and repurposing of content are enormous, and authors and publishers can establish direct relationships with their customers; these and other developments affect the ways that rights are managed.

The extent to which copyright stimulates innovation and delivers fair rewards to authors and publishers is, of course, undermined by widespread unauthorised use of content. While the effects of piracy on the book publishing industry have so far been much more limited than those on the music, film, software and games industries, this is likely to increase dramatically as e-publishing

grows. This development requires consideration of new approaches to combating unauthorised use of content, including addressing consumer attitudes to the value of digital content, and involving all participants in the supply chain in measures to inhibit unauthorised use of content.

About CAL

CAL is a non-profit company, referred to as a collecting society. It collects, and distributes to rightsholders, copyright fees and royalties for the use of text and images, including uses of digital content. CAL is a company limited by guarantee whose members are rightsholders, including writers, artists and publishers.

CAL has agreements with similar organisations in other countries that enable it to collect and distribute copyright payments for Australian works used overseas, and for foreign works used in Australia.

CAL was appointed by the Commonwealth Attorney-General in 1990 to manage the statutory licence in the Copyright Act for educational use of text and images (educational statutory licence), and by the Copyright Tribunal in 1998 to manage the statutory licence for government use of text and images (government statutory licence). These statutory licences allow uses of content without a copyright clearance provided fair payment is made to rightsholders.

CAL also licenses its members' works, and those of members of its overseas counterparts, for use by corporations, local governments and others. To date, this has mostly been through 'blanket' licences covering a range of repertoire, but CAL's transactional licensing services (clearances for individual works) will increase as a result of new services CAL is now able to offer.

CAL's governance

CAL's governance is affected by provisions in the Copyright Act relating to collecting societies, the Attorney-General's Department's Guidelines for Collecting Societies, CAL's Constitution, and the Code of Conduct for Copyright Collecting Societies. CAL's annual report is tabled in Parliament, and its adherence to the Code of Conduct is reviewed annually by the Code Reviewer, a former Federal Court judge.

CAL's current role in facilitating use of content

CAL facilitates the efficient use of content in a range of ways, including through its:

- management of the statutory licences for education and government;
- management of the statutory licence for people with disabilities (no fees are paid for these uses);
- multi-repertoire licences to corporations, local governments and others, as agent for rightsholders; and
- 'transactional' licences for individual works, as agent for rightsholders.

Educational statutory licence

The educational statutory licence was originally introduced, in 1980, to allow educational institutions to photocopy without infringing copyright, while compensating rightsholders for the loss of the

opportunity to license the works on terms of their choice. There were significant changes to the legislation in 1989, and then again in 2000 when the licence was extended to allow the digitisation of hardcopy material, and the use of digital content (including from the internet).

The Australian provisions for educational use allow significantly more extensive use of copyright material than those in other countries, particularly in relation to digital material. In contrast to educational institutions in other countries, Australian educational institutions can use nearly all content with minimal administrative requirements. Those uses include making available from a learning management system, intranet or electronic whiteboard, emailing, distributing on a memory stick or CD, and customising content in any number of ways.

Government statutory licence

The government statutory licence allows the Commonwealth and State government departments and agencies to use any copyright material for government purposes, irrespective of whether or not that material is commercially available.

Calculation and collection of copyright fees

CAL negotiates fair payment for rightholders with representatives of educational institutions, governments and other licensees.

If agreement about payment and other terms of use cannot be met through negotiation, they can be set by the Copyright Tribunal. The Tribunal is a specialist body, with judicial and lay members.

The levels of payment are related to usage of the content. CAL collects information about usage in a variety of ways, but mostly through surveys of usage in a statistical sample of licensees. In some cases, CAL receives comprehensive information about usage (for example, for digital press clippings).

Distribution of copyright fees

CAL collects and distributes more than \$100M a year in copyright fees; in 2009–10 it distributed more than \$136M. It uses the usage data it receives to identify which rightholders' content has been used.

Under CAL's current distribution model, where there is more than one rightholder in a work, CAL pays one rightholder on their undertaking to on-pay other rightholders. If the author is a CAL member, CAL pays the author, who on-pays other rightholders. Many authors, however, prefer to receive their CAL payments via their publisher rather than manage the on-payments. As a result, most payments are made to publishers, who on-pay other rightholders.

This feature of CAL's current distribution model is sometimes misunderstood, and CAL has taken steps to more clearly communicate the distinction between initial recipients and ultimate recipients of copyright payments.

In addition, CAL is moving towards a new distribution model that will make direct payments to multiple rightholders in a single work.

Effect of educational statutory licence on education and publishing

The educational statutory licence was introduced to enable unfettered use of content for education, while compensating rightholders for their lost opportunity to license educational use on their chosen terms.

Both the education sector and the publishing sector have since developed to incorporate the statutory licence into the ways they operate.

Because of the statutory licence, educational institutions can choose to purchase resources directly from publishers, or to compile customised resources from a variety of sources.

For example, in 2007–08, CAL understands that the amount spent on purchasing educational publications for secondary school students in Victoria was nearly 2.5 times that spent in NSW; in the same period, students in NSW copied more than double the number of pages copied by Victorian students in reliance on the statutory licence.

In the tertiary sector, customised resources produced in reliance on the statutory licence include the coursepacks produced in universities.

The statutory licence effectively enables publishers to efficiently outsource the management of ‘downstream’ uses of their content to CAL – that is, uses of their works not covered by direct licences from the publishers.

On the other hand, the statutory licence has replaced the market for custom publishing that exists in other countries such as the United States.

CAL and Australian publishing

Australian educational publishing

Australian educational publishers are amongst the most innovative in the world despite relatively small markets. An indication of this is the significant export of Australian resources.

CAL is aware that the quality of resources produced by Australian educational publishers, and the investment and expertise necessary to produce them, is not widely appreciated, including by governments. Nor is their early adaptation to the digital environment, and their ongoing commitment to harness the opportunities provided by technological developments for the benefits of Australian students.

CAL sees a role for the BISG to draw attention to the vital role of Australian educational publishers in achieving the Australian government’s aspirations to provide Australian students with the best education possible, including through the National Curriculum.

Through its Board membership, its publisher stakeholders and its role in IFRRO, CAL is aware of Australian educational publishers punching way above their weight in international markets regarding the quality and relevance of their content. For example, in the late 1990s, Australian publishers provided two of the most demanded brands of classroom materials for Tony Blair’s National Literacy Strategy due to their quality, innovation and relevance to modern education at the time. In effect, in a very competitive and sophisticated market, such successes simultaneously promote ‘brand Australia’. We need to repeat such successes in the digital age.

The small size of the Australian education market forces many small-to-medium educational publishers to specialise and seek in excess of 50% of their revenue from export. CAL is aware that collectively such Australian publishers, often family-owned and operated, regularly export to over 100 countries and in doing so, become disproportionately successful contributors to Australia’s economy and its image overseas.

Educational publishing, by its competitive nature, requires its members to be innovative. No publisher has a mortgage on the next best idea in a rapidly changing industry. This reality drives many publishers to enter or remain in business. Australia needs such entrepreneurial energy to enhance its protection of quality, culturally specific content as well as its relevance in the provision of intellectual property to the world in the digital age.

Significance of CAL payments to publishers

The viability of many of Australian educational publishers is dependent upon CAL's management of the customised use of their materials that is allowed and encouraged by the educational statutory licence. We understand that the BISG will receive further information about this in other submissions it receives, including those from educational publishers.

The importance of such payments to educational publishers is underlined by the parallel importance of Educational Lending Right (ELR) payments. Such payments are a counterbalance to the greatly diminished sales of textbooks in education, not because the content is no longer required or beneficial, but because technology makes it possible for educators to purchase very few copies of a book or to granulate the content and still make that content available to many students. Educational publishers now factor these revenues into their business plans as a necessary element of revenue to reach profitability and to justify the considerable expense and risk of developing new content to support ever-changing curricula.

Significance of CAL payments to authors and other creators

All payments by CAL require recipients to undertake to on-pay any amounts due to other rightsholders. Most payments to publishers result in on-payments to authors and other creators according to contractual arrangements.

Authors, and other creators such as illustrators and photographers, who are CAL members receive payments directly from CAL (on their undertaking to on-pay any amounts due to other rightsholders). Most, however, receive payments indirectly from their publishers under their contractual arrangements, for a range of reasons that include their preference for on-payments to be managed by their publisher.

CAL payments are thus a significant income stream for authors writing for the educational market, including those who self-publish. An example is Hazel Edwards, whose material, published on her website (www.hazeledwards.com), is specifically written for, and widely used in, schools.

CAL is moving to a distribution system, called CALdirect, that will make direct payments to multiple rightsholders in a single work. Amongst other things, that system will enable CAL to more accurately estimate the proportion of payments ultimately paid to authors and other creators.

CAL's Cultural Fund

CAL allocates a proportion of the licence fees it receives to funding a wide variety of projects that aim to encourage, and provide practical assistance to the Australian cultural community. The current priority area of funding is supporting innovation in the Australian creative industries to develop local and foreign markets for Australian works.

In 2010, CAL's members voted to increase the allocation from 1% to 1.5% of licence fees, which will enable funding of around \$1.5M for the Australian cultural community.

Some of this funding supports projects with a focus on online publishing. Recent examples include:

- **Blake Society Educational Website Development:** The Blake Society will use their funding from the CAL Cultural Fund to develop a website to showcase its poetry award and poetry entered for the award to the educational sector.
- **Emerging Writers Festival:** The Emerging Writers Festival is held online for ten days and allows emerging writers to learn about new digital technologies via panels, launches, interviews and events using the web-portal Webconnect.
- **Literature Live: Video conferencing into classes:** Six Australian authors will create the content to run the 'Literature Live!' festival, which will reach approximately 30 schools, including schools from remote and regional areas that do not usually have access to these creators.
- **Writing WA: Content development:** Writing WA will be collaborating with the Western Australian department of education to develop multi-media material related to a number of texts for use in schools.

Rights management in Australia's digital future

The digital environment provides challenges and opportunities for publishing and for rights management.

The challenges include unauthorised use of content, and reluctance by consumers to acknowledge the value of, and the costs of creating and publishing, digital content.

In addition to the emergence of new intermediaries, and the development of new business models, the opportunities include more efficient and effective mechanisms for monitoring and managing use of content, and payments for that use.

One of exciting possibilities offered by the online environment is a range of opportunities for content creators and publishers to develop direct relationships with the consumers of their content.

CAL believes, however, that for a range of reasons, rightsholders will continue to outsource at least some aspects of rights management. Those reasons include the efficiencies offered by specialist rights management organisations, and the marketing of licensed downstream uses of content offered by those organisations.

Usage information

Collection of usage information

Currently, most of the usage data CAL receives is from statistical samples of use, rather than comprehensive reports of use. This is largely because the compliance costs for providing comprehensive records of use, particularly for photocopying, is too burdensome.

Statistical surveys in educational institutions are carried out by independent research companies. Education representatives are consulted in relation to the survey design, and are provided with the survey reports.

CAL currently receives comprehensive records of use of digital press clippings: about 12 million records of use a year.

Technological advances will enable CAL, in collaboration with its licensees, to automate the collection and processing of usage data in other areas, for example to enable direct reporting from servers and optical character recognition.

How usage information is used

CAL utilises usage information in two ways:

- to distribute copyright fees collected; and
- to inform future negotiations between CAL and licensees to set rates of payment.

All CAL's agreements with licensees are for fixed terms with agreed rates of payment for the term of the agreement. While an agreement is on foot, those rates are not affected by usage data. Past usage data is, however, taken into account in negotiations for new agreements.

The implications of usage data for payments under current agreements by licensees is sometimes misunderstood, particularly in relation to the educational statutory licence.

Trends in usage

Unsurprisingly, the usage data indicates an upward trend in use of digital content. In universities, this has been accompanied by a downward trend in photocopying. In schools, on the other hand, photocopying has remained reasonably constant to date, but digital use is beginning to increase more dramatically.

The value of usage information to publishers

One of the considerable benefits CAL offers to publishers is information about usage of their content that is unlikely to be otherwise available to them. CAL envisages that this information will remain valuable to publishers even for directly licensed content, because of the 'downstream' uses of the content beyond the terms of the licence.

Implications of increasing usage of digital content

Increased availability of content in digital form enables much greater flexibility for users in the ways they can manage, adapt, combine and distribute the content. In this sense, content in digital form is more valuable to them than its equivalent in hardcopy. Paradoxically, however, users of content commonly underestimate the costs associated with creating, producing and distributing digital content, partly because the costs of distribution are perceived as minimal.

Thus, one of the implications of a trend to use of digital material rather than hardcopy is consumer attitude to the value of that material.

The opportunities for more efficient and comprehensive monitoring of usage are significant. For example, CAL can process the comprehensive usage data it receives for digital press clippings – about 12 million records a year – much more efficiently than the much smaller number of usage records it receives for surveys of hardcopy usage in school or, under current arrangements, digital usage in schools.

An increase in digital content increases the potential for unauthorised use of content, including through peer-to-peer networks. The tools for detecting unauthorised use will continue to evolve, but so will the means of unauthorised use, so converting unauthorised to legitimate use will continue to require a range of strategies.

New systems for managing rights

CAL is making significant investments in systems that will equip it to extend and streamline its rights management services for digital content. These systems will allow, amongst other things, rightsholders to upload information about their content, including metadata such as ONIX, using an online interface. This in turn will enable CAL to extend and simplify its licensing services.

The new systems will also allow licensees to manage clearances using an online interface.

Online rights clearances

CAL is about to launch an online service that will enable content users to get copyright clearances in simple, efficient ways. We will initially offer news content, and later extend the service to other content.

The service will also enable corporations and other licensees with annual multi-repertoire licences to easily renew their licences online.

Online publication of out-of-print books

One feature of the online environment is the opportunity to give new life to works that are no longer in print, but nevertheless of interest to niche markets. CAL acknowledges that there are different views about the extent to which the 'long tail' can provide income to rightsholders, but the combination of online access, streamlined rights management and sufficient safeguards to inhibit unauthorised use of content provide the right environment for republication of out-of-print works with income streams to rightsholders.

CAL has been involved in facilitating rights clearances for a number of projects aimed at giving new life to works. These include the Classic Works project in partnership with Sydney University Press (referred to in BSIG's commissioned research paper *Digital Technologies in Australia's Book Industry* at page 46), a project being developed with the National Library of Australia to provide access to the top 200 Australian works together with bibliographic and reference material held in the National Library, and BarNet's 1 to 100 project to digitise the first 100 volumes of the Commonwealth Law Reports.

CAL has also had some involvement in the Google Book Settlement, by providing information to Australian authors and publishers about the implications of the settlement for them, and their options for involvement in the settlement.

CAL envisages that it will provide assistance with rights clearances for future projects that will enable access to out-of-print works with income streams to rightsholders. Such projects could also address the desires of libraries to provide greater access to the printed material in their collections.

Collaboration between rights management organisations to streamline clearances

CAL envisages greater collaboration between rights management organisations, both in Australia and overseas, to streamline rights management for licensees using material from different repertoires.

Needs of people with disabilities

CAL has been appointed by the Attorney-General to manage the provisions in the Copyright Act that allow institutions to reproduce copyright material into suitable formats. These provisions allow for the payment of equitable remuneration to copyright owners, but CAL's board has determined that CAL will not seek payment for these uses.

CAL does, however, play an active role in creating awareness about the operation of the statutory provisions, and liaises between print disability organisations and rightsholder organisations to further facilitate access to content by people with a print disability.

Steps taken by CAL to further facilitate access for people with a print disability include:

- the establishment and administration of an online Masters Catalogue (masters.copyright.com.au), which enables institutions assisting people with a print disability to check if another institution has already made a copy of a work in a suitable format (such as Braille) in reliance on the statutory licence, and to acquire that copy from that institution (thus avoiding the expense of making a new copy in the format);
- commissioning the Australian Copyright Council to write and publish guidelines on access to copyright material by the print disabled, and sample licences for publishers to license uses not covered by the statutory licence (www.copyright.org.au/disability); and
- a forum, in September 2009, of people with a print disability, institutions assisting them, publishers and policy makers to identify practical steps publishers can take to facilitate access, such as adopting production process that produce files in formats suitable for conversion to suitable formats for the print disabled.

CAL will continue to work with its members, and organisations assisting people with a disability such as Vision Australia, to facilitate access to content in digital formats, including by encouraging the publication of material in formats accessible for people with a disability.

Regional and remote communities

The National Broadband Network (NBN) will provide the infrastructure for the delivery of content to Australia's regional and remote communities. Its success in doing so will depend on the quality of that content, and its inclusion of Australian content.

The government will need to develop policies aimed at ensuring that the promise of its investment in infrastructure is fully realised through the delivery of world-class Australian content.

Unauthorised use of digital content

Unauthorised use of digital content will be a growing impediment to the growth of Australian online publishing unless steps are taken to curb its impact. CAL is a signatory to the submission to the BISG by the Australian Content Industry Group (ASIG), which proposes government facilitation of an agreed framework for fostering legitimate use of content.

Future development of collective rights management

CAL envisages that technological developments will enable rights management by collecting societies to become even more efficient, and enable greater collaboration between collecting societies in Australia and abroad to further streamline rights clearance services.

Issues to be included in the BSIG report

CAL asks BSIG to include the following matters in its report to the government:

- an acknowledgement of the fundamental role of copyright law in providing the foundation for the creation, production and distribution of content (print and digital), and investment in innovative ways of doing so;
- a recommendation that the government have a role in educating the public about the investment, risks and expertise involved in producing world-class Australian content, and the cultural, educational and economic value of that content;

- a recommendation that the government facilitate a roundtable of representatives of content owners and internet service providers with a view to formulating an agreed framework for fostering legitimate consumption of online content, as proposed in the ACIG submission to BISG;
- an acknowledgement of the world-class resources produced by Australian educational publishers, the demonstrated ability of Australian educational publishers to innovate in a rapidly changing environment, and the dependence of the success of the National Curriculum on resources produced by Australian educational publishers;
- an acknowledgement that the success of the National Broadband Network (NBN) is dependent on the quality of the content that will be available on the network, and a significant proportion of that content being Australian; and
- a recommendation that the government develop policies to ensure the availability of world-class Australian content for delivery via the NBN.

Further information about CAL or rights management

CAL would be very pleased to provide any other information that may be of interest or assistance to BISG in relation CAL's operations or rights management more generally.

Yours sincerely



Jim Alexander