

28 November 2025

Legal and Constitutional Affairs Legislation Committee
Parliament House
Canberra ACT 2600

Dear Committee Members

SUBMISSION IN SUPPORT OF THE COPYRIGHT AMENDMENT BILL 2025

The Australasian Music Publishers' Association Limited (AMPAL) welcomes the opportunity to make a submission to the Legal and Constitutional Affairs Legislation Committee regarding the Copyright Amendment Bill 2025 (**Bill**) to amend the Copyright Act 1968 (Cth) (**Act**).

AMPAL represents over 55 music publishing companies across Australia and New Zealand, responsible for licensing, promoting and protecting the musical works and accompanying lyrics (collectively, **musical compositions**) of songwriters and composers. Our members range from major global publishers to local independents, and collectively, they support the development of thousands of Australian music creators.

To the best of our knowledge, AMPAL has not previously been formally consulted by the Commonwealth Government in respect of the matters addressed in the Bill. Consequently, in reviewing AMPAL's submission, please bear in mind that this is the first opportunity AMPAL has had to provide input, whereas other organisations may have provided their input at earlier consultation stages.

Executive Summary

AMPAL supports Schedule 2's remote learning amendments to section 28 of the Act as reasonable modernisation. While AMPAL also supports Schedule 1 amendments relating to orphan works, we take this opportunity to flag for consideration the sophisticated infrastructure already in place for locating owners of musical compositions.

In our experience, most musical compositions are not orphans in the modern digital landscape. The music publishing industry's investment in comprehensive rights management systems means musical compositions operate within a fundamentally superior locatability context when compared to other forms of copyright (such as sound recordings).

Schedule 1: Orphan Works - Key Observations

1. Musical compositions are overwhelmingly locatable

Modern music publishing operates through comprehensive digital databases maintained by collecting societies. Metadata systems routinely track millions of musical compositions globally, while industry infrastructure manages complex licensing arrangements and royalty distributions for vast catalogues.

We acknowledge that international models, such as Canada's Copyright Board process, operate restrictively and grant very few licences annually. In comparison, there is a foreseeable risk under Australia's approach that users may attempt to strategically (even capriciously) claim inability to locate owners of works readily identifiable through proper industry consultation.

2. The discretionary framework creates uncertainty

Proposed section 116AAE(8)(f) provides that courts "may" take into account "any relevant industry guidelines" when assessing whether a reasonably diligent search was conducted. Under current drafting, users could potentially seek to satisfy this requirement without consulting industry databases, provided they convince a court their alternative methods were "reasonably diligent."

Our approach: AMPAL does not seek special treatment for musical compositions. That said, AMPAL submits that the music industry's infrastructure demonstrates how the Bill's provisions should operate in practice. Consulting collecting societies represents a readily accessible, low-burden step that courts would naturally expect as part of reasonably diligent searching - not because music deserves special treatment, but because reasonable people searching for owners of musical compositions would logically consult primary authoritative sources (e.g. APRA AMCOS).

3. International precedent supports high standards

Search standards: The UK Orphan Works Licensing Scheme requires that applicants conduct diligent searches with detailed evidence, produces guidance ensuring searches meet high standards, and provides discretion to refuse licences if searches are inadequate. While Australia's regime operates as a limitation of liability rather than a pre-use licensing system, the UK experience offers useful guidance that searches which fail to consult authoritative data systems should be deemed inadequate.

Transparency mechanisms: The UK maintains a searchable Orphan Works Register containing details of all applications and decisions. Within Australia's court-centric framework, users successfully establishing limited liability could register basic identifying information in a publicly accessible database, facilitating rights holders' discovery of uses and supporting the "re-emergence" process.

4. Compensation must reflect market rates

The Bill requires "reasonable payment" and consideration of impact on copyright owners. However, further clarity would be beneficial in order to prevent market distortion.

International precedent: UK regulations require the IPO to set licence fees by referencing prices for similar non-orphan works, confirming compensation should be benchmarked against prevailing commercial rates, not set as a discounted alternative.

AMPAL believes that the phrases "reasonable payment" and "reasonable terms" would benefit from referencing standard commercial licensing rates. Without this anchoring, orphan works provisions risk creating a discounted pathway that distorts markets and incentivises strategic avoidance of standard negotiations.

Payment security: The UK holds licence fees for rights holders and pays them when owners emerge (within 8 years). Similar principles could be considered for Australia also: clear mechanisms ensuring payments which are judicially ordered, are held securely and distributed promptly upon owner identification.

Recommendations for Schedule 1

To ensure Division 2AAA of the Act achieves its legitimate purpose while providing adequate safeguards, AMPAL recommends:

1. **Support industry-led guideline development.** AMPAL would envisage collaborating with APRA AMCOS to develop comprehensive industry guidelines for searching musical compositions, serving as the "relevant industry guidelines" contemplated by section 1116AAE(8)(f). AMPAL would encourage Government to engage with other copyright sectors to facilitate comparable guidelines across all creative industries.
2. **Clarify the evidentiary role of industry bodies** through regulations applicable across all categories, allowing relevant organisations to submit evidence regarding consultation, information provided, and database presence.
3. **Signal through explanatory materials or ministerial statements** that courts should give meaningful weight to published industry guidelines when assessing search adequacy. While courts will naturally scrutinise whether users consulted obvious authoritative sources, formal Government guidance would provide valuable clarity.
4. **Provide guidance** that "reasonable payment" and "reasonable terms" should reference standard commercial licensing rates, ensuring compensation provisions operate effectively and prevent market distortion.
5. **Establish transparency mechanisms** requiring users who successfully establish limited liability to register basic identifying information in a publicly accessible database, facilitating rights holder re-emergence.
6. **Consider secure payment mechanisms** for holding and distributing court-ordered payments, with clear processes ensuring prompt distribution when owners are located.
7. **Include review provisions** assessing Division 2AAA's effectiveness within three years, examining whether it applies to genuinely unlocatable works, whether compensation reflects market value, whether searches utilise available resources, and whether transparency mechanisms facilitate re-emergence.

Schedule 2: Remote Learning Amendments

AMPAL supports the proposed section 28 amendments that modernise educational instruction exceptions for remote and hybrid learning.

These amendments balance legitimate educational needs with copyright protection, providing necessary clarity for educational institutions using musical compositions in modern teaching contexts. For this reason, AMPAL supports their adoption as drafted.

Conclusion

Schedule 1 (Orphan Works): AMPAL does not oppose facilitation of legitimate uses of genuinely orphan works. That said, clear guidance from Government would provide greater certainty, reduce unnecessary litigation over adequate searching, and encourage development of "relevant industry guidelines" (contemplated by section 116AAE(8)(f)) across all copyright sectors, strengthening Division 2AAA's overall operation. In this regard, AMPAL makes the above recommendation, and furthermore,



would be open to playing a role in the development of "relevant industry guidelines" for musical compositions.

Schedule 2 (Remote Learning): AMPAL supports these amendments as sensible modernisation that balances educational needs with copyright protection.

Yours sincerely


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