

26 April 2013

Committee Secretary
Senate Standing Committees on Environment and Communications

By email: ec.sen@aph.gov.au

Dear Sirs

The effectiveness of current regulatory arrangements in dealing with the simultaneous transmission of radio programs using the broadcasting services bands and the Internet ('simulcast')

This submission is made on behalf of the Copyright Advisory Group to the Standing Council on School Education and Early Childhood (**CAG**). CAG represents almost all government and non-government schools in Australia, as well as the majority of TAFE colleges.

Although schools are not *directly* impacted by the regulatory regime that applies to Australian media, for the reasons set out below any recommendation by the Committee regarding the appropriate model for regulating broadcasting may have unintended consequences for schools.

CAG makes this submission in the hope that the Committee will take these concerns into account when considering the effectiveness of current regulatory arrangements in dealing with 'simulcast' transmissions.

Summary of CAG submission

Schools in Australia rely on a statutory licence under the *Copyright Act 1968* to copy radio and television broadcasts for their educational purposes. Any change to the definition of "broadcast" in the *Copyright Act 1968*, or "broadcasting service" in the *Broadcasting Services Act 1992*, has the potential to significantly change the scope, operation and costs of that educational statutory licence.

If the Committee is minded to recommend changes to the definitions of "broadcast" or "broadcasting service", CAG respectfully requests:

- (a) the Committee first consider the likely impact on the statutory licence for education contained in Part VA of the *Copyright Act 1968*, and seek input from affected stakeholders; or
- (b) the Committee make clear its recommendations are not intended to affect the scope and operation of that statutory licence.

**NSW Department of Education & Communities – National Copyright Unit
Standing Council on School Education and Early Childhood (SCSCEEC)**

Level 1, 35 Bridge Street, Sydney NSW 2000 GPO Box 33 Sydney NSW 2001 T (02) 9561 8876 F (02) 9561 1499
E delia.browne@det.nsw.edu.au

Using radio and television broadcasts in Australian schools

CAG wishes to draw the Committee's attention to a matter that is of great importance to Australian schools.

The Copyright Act 1968 (**the Act**) contains an educational statutory licence (Part VA of the Act), which permits educational institutions to copy and communicate "broadcasts" for educational purposes, without having to seek the permission of the copyright owner, provided that they agree to pay remuneration and otherwise comply with the terms of Part VA.

The appropriateness of this statutory licence for the digital environment is a matter that is currently being considered by the Australian Law Reform Commission in its review *Copyright and the Digital Economy*.

As the Committee would be aware, 'broadcast' has the meaning given to it in s10 of the Act:

"a communication to the public delivered by a broadcasting service within the meaning of the Broadcasting Services Act 1992...."

Section 135C of the Act provides that the Part VA licence also applies to the communication (ie, making available online or electronic transmission) of the content of a free-to-air broadcast (including radio broadcasts), by the broadcaster making the content of the broadcast available online at or after the time of the broadcast, in the same way as it applies in relation to the broadcast. This allows educational institutions to copy and communicate free-to-air broadcasts that are made available or "simulcast" online at the same time as being broadcast via traditional channels, or have subsequently been made available online by the broadcaster.

Scope of the Part VA licence

Schools rely on the Part VA licence to copy and communicate a very broad range of broadcasts, including news programs, documentaries and drama, for classroom use. In financial year 2011/12, Australian schools paid \$17.7 million to Screenrights, the declared collecting society for the purposes of Part VA. This money is distributed by Screenrights to the underlying rights holders in the musical works, sound recordings, scripts etc that are contained in a particular program.

As is clear from the above, the scope of the Part VA licence is directly linked to the definition of "broadcasting service" in the *Broadcasting Services Act 1992* (**BSA**). As that term is currently defined, certain sorts of communications, including communications via IPTV, online communications (other than those that fall within s153C of the Act) and communications via mobile devices such as phones, are outside the scope of the Part VA licence.

CAG is aware that many stakeholders recommend the adoption of a more technology-neutral approach to media regulation.¹ This is also an issue at the centre of the Committee's enquiry.

This raises the prospect of either a change to the definition of "broadcasting service" (either narrowing or broadening the scope of activities that currently come within the definition), or, as the Convergence Review recommended, the replacement altogether of the concept of a "broadcasting service" with a technology-neutral concept that is defined so as to apply to communications across various platforms.

Any such change would have a direct impact on schools and the operation of the Part VA licence.

The need for consultation on the definition of "broadcasting service"

CAG requests that the Committee take these matters into account if and when it begins to consider particular regulatory models or changes. CAG will watch the progress of the inquiry with interest.

I would, of course, be pleased to provide any further information that the Committee may require or to meet with Committee members to discuss these issues further.

Yours sincerely
Delia Browne

NATIONAL COPYRIGHT DIRECTOR

National Copyright Unit
Level 1, 35 Bridge Street, Sydney NSW 2000

¹ As seen, for example, in many of the submissions to the Convergence Review in 2011.