

REMAKING OF THE COPYRIGHT REGULATIONS 1969 AND THE COPYRIGHT TRIBUNAL (PROCEDURE) REGULATIONS 1969

APRA AMCOS SUBMISIONS

1. APRA is Australia's oldest and largest collecting society. It is the collecting society in Australia in respect of the public performance and communication rights of songwriters and music publishers. AMCOS is the collecting society in Australia in respect of reproduction of music in certain formats. This covers the reproduction of musical works on CD, DVD, online, for use as production music, and for radio and some television programs. Together, APRA and AMCOS control the copyright for such purposes in almost all commercially available musical works, by virtue of assignments from its local members and affiliations with similar overseas societies. Since 1997, the two organisations have been administered in tandem, and these submissions represent the united view of both.
2. APRA AMCOS has more than 90,000 Australian and New Zealand members and 107,000 licensees. The membership is diverse, ranging from unpublished writers to major music publishers. APRA AMCOS represents hundreds of thousands of overseas members, and tens of millions of musical works, via its reciprocal arrangements with performing and mechanical right collecting societies throughout the world.
3. The Copyright Act 1968 is essential to APRA AMCOS' operations, and the associated Regulations are an important working document for the business.

Question 1: How should the Copyright Regulations 2017 require items (such as notices and inquiries) to be published? In particular, how should the Copyright Regulations 2017 require the following to be published?

- (a) A notice for the purposes of section 7 (Notice of intended publication of unpublished work kept in public library—paragraphs 52(1)(b) and (2)(b) of the Act).
- (b) A notice for the purposes of section 9 (Notice of intended making of record of musical work).
- (c) Inquiries for the purposes of section 11 (Inquiries relating to previous records of musical works—section 61 of the Act).
- (d) A notice for the purposes of section 121 (Information on use of copyright material for services of the Crown—subsection 183(4) of the Act).
- (e) Notice for the purposes of section 63 Advertising of applications and references).

4. APRA AMCOS has an interest in notices under categories (b) – (e) set out above. For all practical purposes, notices in connection with the statutory mechanical licence for the recording of musical works (Part III Division 6) are circulated via the APRA AMCOS copyright management system (currently CMS/CF). With the rapid development of download and streaming services, which are not covered by the statutory licence, digital reproductions of musical works are either licensed by

APRA AMCOS or by copyright owners directly, and the industry has adapted to make the inquiry notice procedure as streamlined and efficient as possible in a changing market.

5. For the rare occasions on which a manufacturer chooses to follow the procedure set out in the Act rather than use the APRA AMCOS system, APRA AMCOS has procedures in place to monitor the Gazette for references to reproductions of musical works controlled by APRA AMCOS.
6. In relation to advertisements for Tribunal proceedings, APRA AMCOS has always advertised its references to the Tribunal in a nationally circulated newspaper, as well as in relevant trade papers. No doubt future references will also be advertised online. APRA AMCOS notes the flexibility provided by proposed section 63(3) and (4), which APRA AMCOS respectfully submits is appropriate.
7. Accordingly, APRA AMCOS sees no reason to change the standard method of publication.

Question 2: Is the Copyright Regulations Exposure Draft subsection 7(2) requirement that a relevant notice be published at least 2 months, but not more than 3 months, before the publication (or subsequent publication) of a new work sufficient? Should the requirement merely be that a relevant notice be published at least 2 months before the publication of a new work (with no upper limit on how far ahead of the publication a relevant notice may be published)?

8. APRA AMCOS makes no comment in relation to this question.

Question 3: Are the prescribed requirements set out in proposed new section 18 appropriate?

Question 4: What requirements should the regulations prescribe for an industry code that enlivens condition 2 of item 3 of the table in subsection 116AH(1) of the Copyright Act?

Question 5: what procedure should the Copyright Regulations 2017 prescribe for the development of an industry code for the purposes of paragraph (b) of the definition of industry code (section 116AB of the Copyright Act)?

9. APRA AMCOS endorses the submissions made by the Australian Copyright Council and Music Rights Australia in response to these questions.

Question 6: Do you have any comments on the prescribed acts included in section 40 of the Copyright Regulations Exposure Draft or in the TPM Regulations Exposure Draft?

10. APRA AMCOS work closely with digital service providers in Australia, and also strongly support the existing provisions in the Copyright Act with regard to educational use.
11. Australia is one of the earliest adopters of many digital service providers, which rely on TPMs (among other things) to prevent their innovative businesses from being undermined by unlawful free access. APRA AMCOS opposes the introduction of any access regime that permits a student to self-determine whether an act constitutes a fair dealing.

12. APRA AMCOS endorses the submissions made by the Australian Copyright Council in response to these questions.

Question 7: is the infringement notice scheme that is set out in Part 8 still necessary?

13. APRA AMCOS endorses the submissions made by the Australian Copyright Council in response to this question.

Question 8: How can the Copyright Regulations Exposure Draft be amended to better facilitate informal proceedings in the Copyright Tribunal?

Question 9: is the newspaper publication requirement in sub-section 63(1) too burdensome (in terms of cost, or otherwise)? Should some other form of publication be required?

14. In the context of use of the Copyright Tribunal generally, APRA AMCOS has been a regular litigant. APRA AMCOS regards the Tribunal as an important body in the regulation of collecting society licensing.
15. The Copyright Act, in section 164, provides that proceedings in the Tribunal are to be conducted with as little formality as appropriate in the circumstances, and that procedure in the Tribunal is at the discretion of the Tribunal. APRA AMCOS believes that this provision provides ample flexibility to permit informal proceedings.
16. If proceedings in the Tribunal are formal, it is because the presiding member, and the parties, believe such formality to be appropriate having regard to the complexities of the case. APRA AMCOS note that in proceedings involving collecting society licence schemes, annual industry licence fees of many millions of dollars can be at stake, and the parties tend to be major corporate entities with significant resources. Where individual litigants are involved, it is APRA AMCOS' experience and observation that proceedings are in fact conducted with noticeably less formality.
17. By deleting some of the more technical regulations (such as provisions relating to service), the Exposure Draft requires the parties to consider such matters when before the Tribunal, and to have appropriate orders made. For example, it may be necessary to have the Tribunal make an order about how documents are to be served – such matters are appropriately matters for the Tribunal's discretion.
18. APRA AMCOS believe the current provisions for advertising references are appropriate, noting that they are subject to the overriding discretion of the Tribunal. For APRA AMCOS references that may affect large numbers of small and remotely located businesses, it remains appropriate in many cases that references be advertised in print media. APRA AMCOS expects that the Tribunal will in due course make orders for advertising references in appropriate online publications, but the proposed section 63(3) and (4) permit this, which APRA AMCOS respectfully submits is appropriate.

Questions 10, 11, 12 and 13

19. APRA AMCOS endorses the submissions of the Australian Copyright Council in response to these questions.