

## **SUBMISSION BY AMPAL TO THE COMMUNICATIONS ALLIANCE REGARDING THE INDUSTRY CODE: COPYRIGHT NOTICE SCHEME: PUBLIC COMMENT VERSION 20/2/15**

### **Introduction**

The Australasian Music Publishers Association Limited (AMPAL) welcomes the opportunity to respond to the Communications Alliance's Industry Code: Copyright Notice Scheme: Public Comment Version 20/2/15 (the Code).

AMPAL is the trade association for music publishers in Australia and New Zealand. Our members include large multi-national companies as well as many small to medium enterprises. AMPAL's members represent the overwhelming majority of economically significant musical works enjoyed by Australians. We are an affiliate of the International Confederation of Music Publishers (ICMP) and work closely with APRA AMCOS, Music Rights Australia and the Australian Copyright Council.

Music publishers invest in songwriters across all genres of music. They play a critical role in nurturing and commercially exploiting their writers' musical works. AMPAL and our members also recognise the immense cultural and artistic significance of the works that music publishers represent.

AMPAL is a member of the Australian Copyright Council and we endorse its submission.

We also refer to our submission to the Online Copyright Infringement Consultation in September 2014 and our comments regarding online copyright infringement.

We make the following comments in relation to the Code:

### **Comments**

AMPAL welcomes any initiative that aims to 'drive down the rate of online copyright infringement ... in Australia.'<sup>1</sup> Therefore we recommend that the Code be implemented, subject to final negotiations between ISPs and Rights Holders. It is important that internet users are educated in issues of online copyright infringement and we acknowledge that the Code seeks to achieve this. We also acknowledge the steps which have been taken to consider consumer privacy in the code. The safe guards that have been built into the code should address any privacy concerns which people may have.

However, while we support the implementation of the Code in its current form, AMPAL remains concerned that the obligations on ISPs contained in the Code are weak, and that ideally, stronger measures should be taken by internet service providers (ISPs) in order to sufficiently address online copyright infringement. Noting that the effectiveness of the Code will be assessed after eighteen months, AMPAL wishes to raise the following specific concerns with the Code at the outset:

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<sup>1</sup> Communications Alliance media release, 20 February 2015, 'Rights Holders and Internet Service Providers Publish Draft Code to Combat Online Copyright Infringement'.

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1. The Code applies to 'residential fixed, internet Account Holders only'.<sup>2</sup> AMPAL submits that ideally the Code should apply to all Australian internet users.
2. The Code does not place a general obligation on ISPs to monitor and detect online copyright infringement. AMPAL submits that ideally the Code should include such a duty using ISPs' monitoring and filtering techniques.
3. The Code does not require ISPs to block access to infringing material. AMPAL submits that ideally the Code should include provisions obliging ISPs to take such action following provision of the relevant information by Rights Holders and/or following discovery of copyright infringing websites by ISPs' monitoring and filtering techniques.
4. The process for issuing an Infringement Report under the Code is overly burdensome on Rights Holders, in requiring its issuing process to be independently audited, having to instigate the process, indemnify ISPs, and comply with the procedural requirements under paragraph 3.4 of the Code, in comparison to the relatively light obligations placed on ISPs under paragraphs 3.5 and 3.6 of the Code. This is particularly concerning for the majority of our members who are small to medium enterprises. Ideally the issuing process for Infringement Reports for Rights Holders would be simplified.
5. The assistance provided by ISPs to Rights Holders following the issue of a Final Notice, as described in paragraph 3.12 of the Code is only in the form of facilitated discovery. AMPAL submits that ideally additional options should be available to Rights Holders in the form of sanctions or mitigation procedures to be imposed on Account Holders. Rights Holders are severely limited in the realistic damages that they can recover. Litigation in this area is costly and difficult particularly for the small to medium enterprises that make up a large proportion of all rights holders.
6. While the issue of costs is currently being negotiated, AMPAL is concerned that a 'cost-per-notice' situation similar to that imposed in New Zealand could arise whereby ISPs could potentially approach the Code as a profit-making exercise. The ISP and the rights holder communities should have a shared incentive to create a safe and legal online experience for consumers.

## Conclusion

Again, AMPAL welcomes the cooperation of ISPs in developing the Code, and recommends its implementation. We acknowledge that the code is not a silver bullet that will solve all the problems which the music industry faces online from unlicensed use but it will help to educate consumers about where they can find licensed music, to respect the music publishers' and songwriters' rights and importantly it gives rights holders an avenue to have a proportionate, effective process to ensure their creative content is protected online.

However, the issues noted above mean that the Code may not be as successful as it could be in combating online copyright infringement. While the currently proposed Code is an important initial step, AMPAL submits that a revised code addressing the above issues should be developed in the future. Only with a concerted effort by ISPs, Rights Holders and government can the damaging effects of online copyright infringement be addressed.

Please contact us if we can be of any further assistance.

**Jeremy Fabinyi**  
General Manager

**Matthew O'Sullivan**  
Company Secretary

**20 March 2015**

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<sup>2</sup> The Code, paragraph 3.1.7.