

Mr James Penprase  
Assistant Secretary - Media Reform Branch  
Online Safety, Media and Digital Platforms Division  
Department of Infrastructure, Transport, Regional Development, Communications and the Arts  
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6 September 2022

Dear Mr Penprase

### **Consultation Paper on the Review of the Alston Determination**

I am writing on behalf of the Copyright Advisory Group (CAG) to the Australian Education Senior Officials Committee (AESOC) in response to the Consultation Paper on the Review of the Alston Determination.

We welcome the consultation and the proposal to make a new determination, which replicates the current Alston Determination. We support the extension for a minimum of three years but given the complexities of the issues involved, we think a longer time period such as five years may be necessary to provide certainty and stability to industry and the education sector while allowing time for the government to consider, and consult on, a broader suite of regulatory reforms.

From CAG's point of view, if the Alston Determination is allowed to expire it is highly likely that it would have significant and immediate practical and financial impacts on schools, TAFEs and universities.

Whilst the Alston Determination is directed towards the definition of 'broadcasting service' in the *Broadcasting Services Act 1992*, there are significant flow on effects in copyright.

Under the *Copyright Act 1968*, 'broadcast' is defined as:

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

This definition shapes the application of many parts of Australia's copyright law.

For example, educational institutions have a Statutory Licence under the *Copyright Act 1968* which applies to broadcasts and certain online transmissions of broadcasts (see ss.113P(2) and 116P(6) of the Act).

A shift in the scope of the Statutory Licence would have significant implications financially for Australia's schools, TAFEs and universities. For example, Australian schools currently pay \$28.8 million per annum to copy and communicate broadcasts covered by the Statutory Licence administered by Screenrights. Expanding the scope of this licence would impose significant financial implications on schools, and make Australia the only country where schools may need to pay to use freely available internet sites such as YouTube<sup>1</sup>.

In addition to the issues related to the Statutory Licence, there are issues related to exceptions in the Copyright Act. For example, a number of educational activities that schools, TAFEs and universities conduct are covered by existing exceptions that apply to broadcasts. Changes to the definition of broadcast could significantly broaden or narrow the scope of those exceptions, depending on how the transition is managed and implemented.

These are complex issues that will need careful consideration. We urge the Department to proceed with its recommendation that the Alston Determination be continued without change for a minimum of three years.

I would be happy to meet with you to discuss further.

Yours sincerely



Delia Browne  
**NATIONAL COPYRIGHT DIRECTOR**

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<sup>1</sup> In 2016, a QUT report stated that YouTube was the most popular source of digital content used in Australian schools (<http://geteducation.com.au/youtube-popular-digital-content-australian-classrooms/>). From our work with schools, it's likely this finding is still correct today.