

Copyright Law and Policy Section
Department of Communications and the Arts
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# SUBMISSION BY AMPAL TO THE DEPARTMENT OF COMMUNICATIONS REGARDING THE COPYRIGHT AMENDMENT (DISABILITY ACCESS AND OTHER MEASURES) BILL 2016

## Introduction

The Australasian Music Publishers Association Limited (AMPAL) welcomes the opportunity to make a submission to the Department of Communications regarding the Copyright Amendment (Disability Access and Other Measures) Bill 2016 (the Bill).

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 a member 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 members are also members of APRA and AMCOS and we endorse their submission.

AMPAL is affiliated with the Australian Copyright Council and Music Rights Australia, and we endorse their submissions. We also endorse the submission of ICMP.

## Comments

AMPAL’s comments are restricted to Schedule 2 of the Bill.

AMPAL is opposed to the proposed amendments to the *Copyright Act 1968* (Cth) set out in Schedule 2. We are not convinced that any ‘service provider’ should fall within the scope of the safe harbour regime. In our submission, services going beyond the activity of a strictly neutral intermediary should not be eligible for safe harbour protection. It is unnecessary for the current safe harbour provisions to be expanded without evidence that such an amendment is required. AMPAL is not aware of online service providers’ development being inhibited in Australia due to the current safe harbour laws.

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Furthermore, we refer to Music Rights Australia’s and ICMP’s submission setting out the international experience of safe harbour protections being inappropriately used by commercial entities to the detriment of copyright owners. These entities are far beyond being neutral intermediaries, and can draw significant revenue from advertising, and then compete with legitimately licensed services. Expanding Australia’s safe harbour scheme will inevitably make it even more difficult and costly for Australian rights holders to take action against these entities.

Proportionality must be a feature of a balanced IP system. AMPAL submits that current levels of copyright infringement diminish the proportionality of the rewards for the effort exerted in composing songs, and is harming songwriters and composers and music publishers. The valuation of music has been transferred from those who create and those intermediaries that assist in the creative process and invest in music such as music publishers, to other intermediaries such as Google who profit enormously from the creations of others, without contributing to or investing in the creative process and who are protected by safe harbour laws in other jurisdictions. Expanding the scope of Australia’s safe harbour laws can only exacerbate this problem, and its associated impact on the value that creators’ works contribute to Australia’s rich cultural heritage, as well as their economic contribution.

If the rationale to expand the operation of the safe harbour scheme is to make Australia’s laws consistent with those of other jurisdictions such as the United States (and we note Music Australia’s submission that this is unnecessary and not desirable), the other aspects of those laws relevant to rights holders such as a workable industry code of conduct for service providers, must also be introduced. Comparisons with the US law must also be considered in the context of the US system of statutory damages, which is not a part of Australian law. We refer to the comments of Music Rights Australia in their submission regarding the original intention of the legislature in restricting the scope of the safe harbour scheme in Australia.

In addition, unless section 101 of the *Copyright Act 1968* (Cth) is amended so that all service providers must take reasonable steps to assist rights holders to address infringing activity on their networks where they have knowledge of that infringement, it is not appropriate for the safe harbour laws to be extended to those service providers. The balance originally envisaged by the legislature must be maintained. The safe harbour scheme must not act as a disincentive for services to engage in legitimate music licensing. In this regard, we refer to the submission of Music Rights Australia setting out its proposals for amending section 101. If the safe harbour laws are to be expanded, contrary to our submission, we also endorse the proposed amendments to the Bill put forward by Music Rights Australia in their submission.

AMPAL also respectfully submits that it is not desirable for the government to be proposing this amendment to the *Copyright Act 1968* (Cth) while the Productivity Commission’s review of intellectual property arrangements is on foot. We also note that a review of safe harbour laws is currently being undertaken in the US by the US Copyright Office, and European copyright laws more broadly are currently being reviewed by the European Commission, and refer to ICMP’s comments in their submission in this regard.

The music industry has been transformed in the digital age. The industry has been innovative in adapting, and music copyright owners including music publishers have been very flexible in entering into licensing schemes to allow a broad range of legal services. The Digital Content Guide ([www.digitalcontentguide.com.au](http://www.digitalcontentguide.com.au)) sets out the range of these services. What has made this transition possible is a strong, flexible copyright framework providing certainty for creators and other copyright owners. Australia’s IP system has adapted well to changes in economic, commercial and technological changes in the past, and if it remains as a robust IP framework, it will continue do so into the future.

## Conclusion

AMPAL thanks the Government for the opportunity to comment on the Bill. AMPAL is opposed to the proposed amendments to the *Copyright Act 1968* (Cth) set out in Schedule 2 of the Bill for the reasons outlined above. We also agree with the concerns and proposals raised by Music Rights Australia in their submission.

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

Matthew O’Sullivan
General Manager

12 February 2016