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Collective Management of Copyright and Related Rights – A User’s Perspective

Presented by Charles Alexander

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Outline

- Background to current arrangements in Australia
- Controls exercised over collecting societies and licensing organisations
- Short analysis of the current arrangements



Anti-Competitive Effects

- Collective management contains significant anti-competitive elements BUT has the following benefits:
 - Efficiencies in administration
 - Negotiation cost savings
 - Containment of enforcement costs
 - Certainty of repertoire
 - Availability of widest range of works



Rise of Collective Management

- Music publishers in the early 20th century devised a system of collective management with cross-licensing arrangements
- Inquiry by Justice Owen in 1932 arising out of disquiet about market power of both music publishers and recording companies, particularly with regard to their negotiations with the Australian Broadcasting Commission
- Recommended:
‘(g) That the public interest demands harmonious relations be restored and maintained between the above parties and that some form of tribunal should, failing agreement, determine the disputes between the above parties.’
- The Copyright Tribunal was only created in 1968 following a recommendation of the Copyright Law Review Committee – ‘Spicer Report’



Licences Provided for by the Copyright Act

The Copyright Act makes provision for

- Voluntary licences
- Statutory licences



Voluntary Licences

- Voluntary licences are principally given in relation to music and sound recordings
- Some voluntary licences are given by Viscopy (artistic works) and CAL (literary works)
- Voluntary licences are also given by CAL on behalf of CopyCo, which represents newspapers and magazine publishers



Statutory Licences

- The 1912 Copyright Act in Australia provided statutory licences for ‘*records, perforated rolls or other contrivances*’. The royalty was fixed at 5%
- Also provided for applications to be made to the Privy Council for a compulsory licence if the author had died
- The statutory licence regime was expanded following the Spicer Report



Statutory Licences

- When introduced, the 1968 Copyright Act provided a statutory licence for broadcasting sound recordings. The rate was to be agreed or fixed by the Copyright Tribunal, but was capped at 1%.
- Technological advances led to statutory licences for:
 - Print copying by educational institutions in 1981
 - Copying broadcasts off-air by educational institutions in 1987
 - Retransmitting free-to-air broadcasts by subscription television operators in 2001



Current Statutory Licences

The current statutory licences are:

- to make records, films or works for certain broadcasting purposes
- to make copies of sound recordings for certain broadcasting purposes
- to play sound recordings in public
- to broadcast sound recordings
- for holders of print disability radio licences to make sound broadcasts
- for educational institutions to reproduce and communicate works
- for educational institutions to copy and communicate broadcasts
- for subscription television operators to retransmit free-to-air broadcasts



Collecting Societies

- The principal collecting societies are:
 - APRA - performing rights in music
 - AMCOS - mechanical rights in music
 - PPCA - sound recordings
 - CAL - print works in hard copy form and electronic form
 - Screenrights - television broadcasts
 - Viscopy - artistic works



Controls over Collecting Societies and Licensing Organisations

- Declaration of Collecting Societies by Attorney-General
- *Trade Practices Act*
- Copyright Tribunal
- Collecting Societies Voluntary Code of Conduct



Questions

- Does the current regime provide for the necessary access by users to copyright works and other subject matter?
- Does the current regime contain the administrative costs of conducting licensing operations?
- Does the current regime effectively curb the monopoly power of the collecting societies and licensing organisations?



Answers

Access

- Generally good
- Likely to be increasing issues with licences required for other jurisdictions – one stop shop



Answers

Administration Costs

- Contains costs considerably

BUT

- Propensity to become over-bureaucratic and inflexible



Answers

Curb on Monopoly Power

- Declaration by Attorney General – not an effective brake
- ACCC – generally good but restricted to voluntary licences
- Copyright Tribunal – high cost of litigation restricts its effectiveness
- Code of Conduct – some protection but not an effective constraint



Summary

- Generally, collective management works well to provide access and contain costs

BUT

- Significant issues with the (in)adequacy of curbs on monopoly power
- Possible solution: Copyright Ombudsman



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