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The Executive Director
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Copyright and the Digital Economy - Issues Paper 42

Scope

1. This is a submission prepared by Standards Australia Limited (**Standards Australia**) to the Australian Law Reform Commission (**ALRC**) in response to the ALRC's Issues Paper on Copyright and the Digital Economy (**IP 42**). Standards Australia appreciates the opportunity to make a submission to the ALRC in relation to IP 42 and to comment, in particular, on questions 32 to 34:

Question 32. Is the statutory licensing scheme concerning the use of copyright material for the Crown in div 2 of pt VII of the Copyright Act 1968 (Cth) adequate and appropriate in the digital environment? If not, how should it be changed?

Question 33. How does the Copyright Act 1968 (Cth) affect government obligations to comply with other regulatory requirements (such as disclosure laws)?

Question 34. Should there be an exception in the Copyright Act 1968 (Cth) to allow certain public uses of copyright material deposited or registered in accordance with statutory obligations under Commonwealth or state law, outside the operation of the statutory licence in s 183?

2. Standards Australia wishes to highlight the important relationship that exists between standards and legislation, and the potential adverse effects of expanding the scope of statutory licensing provisions under the *Copyright Act 1968* in the digital environment. The relationship between legislation and standards has been considered previously by the Australian Productivity Commission in its 2006 Research Report on *Standards Setting and Laboratory Accreditation (PC Report)*¹ and we have taken the opportunity to highlight some of the points made in the PC Report in our comments below.

¹ Australian Productivity Commission Research Report, *Standards Setting and Laboratory Accreditation*, 2 November 2006. See http://www.pc.gov.au/data/assets/pdf_file/0012/11325/standards.pdf.

Background

3. Standards Australia is a not-for-profit company limited by guarantee. It is recognised by the Commonwealth government as the peak non-government standards development body in Australia. Standards Australia develops Australian Standard® brand standards and a range of other publications (such as Handbooks, Commentaries, Australian Technical Specifications, Rulings and Miscellaneous Publications). Standards Australia also acts as Australia's representative to the International Organization for Standardization (**ISO**), the International Electrotechnical Commission (**IEC**) and the Pacific Area Standards Congress (**PASC**).
4. Standards make an important contribution to society by:
 - facilitating market exchange;
 - facilitating international trade, transport, communication and innovation; and
 - providing consumers with greater certainty about the safety and quality of products.²

Standards are also used by governments to address concerns about social issues and the environment.³ It is important, therefore, that standards development organisations be supported in their efforts to operate in a sustainable manner, to enable them to continue to undertake this valuable work.

5. Standards Australia receives funding from the Commonwealth government to support Standards Australia's international work and also receives funding from government and from industry to support the development of standards in particular areas. However, most of the standards development activities undertaken by Standards Australia are funded by Standards Australia from its own resources. In this context it is important to note that the royalties received by Standards Australia from the sale of standards and other publications represent around 15 per cent of Standards Australia's overall annual revenue⁴. Royalties therefore provide a significant contribution to Standards Australia's ongoing standards development activities.

Discussion

6. Any proposal to change the statutory licensing scheme concerning the use of copyright material "for the services of the Crown"⁵ in the digital environment must be carefully considered, taking into account the potential adverse impact that wide ranging licences may have on copyright owners and their licensees.

² PC Report, page xv. See http://www.pc.gov.au/__data/assets/pdf_file/0012/11325/standards.pdf

³ PC Report, page xv. For further details of the benefits of standards please refer to http://www.standards.org.au/StandardsDevelopment/What_is_a_Standard/Pages/Benefits-of-Standards.aspx.

⁴ Average for previous three financial years.

⁵ *Copyright Act 1968* (Cth) s183.

Standards Australia submits that there should be clear limits on the extent to which the Crown may communicate copyright material owned by third parties (such as non-Crown standards) in a digital environment. In the absence of such limits, a statutory licence in favour of the Crown may be transformed into a de facto licence in favour of the public at large.

7. Every Australian Standard® brand standard is developed through a consensus-based approach in accordance with a well-defined standards development process⁶. Compliance with the standard does not become mandatory unless and until it is specified as being mandatory in legislation or unless a particular body assumes an obligation to comply with that standard (for example by entering into a contract in which they assume that obligation).
8. Standards Australia supports the *referencing* of standards in legislation, where the relevant legislative body considers it appropriate to do so, and works closely with government to facilitate this⁷. However, Standards Australia would be concerned about the introduction of measures to permit the *full text reproduction* of standards (or parts of standards) within legislation, by way of statutory licence. Such an approach would significantly erode the legitimate interests of copyright owners and existing licensees and would give rise to a number of serious practical and legal issues⁸.
9. In its 2006 Research Report on *Standards Setting and Laboratory Accreditation*, the Productivity Commission considered the obligations on government to make legislation publicly available⁹, but also noted the practical and legal constraints on providing free or low cost access to standards made mandatory by legislation¹⁰. The Productivity Commission concluded that:

'funding to subsidise access to Australian Standards would be best made directly by the government agencies responsible for the relevant regulations. The cost of

⁶ Standards Australia's standardisation guides are available at http://www.standards.org.au/StandardsDevelopment/Developing_Standards/Pages/Standardisation-Guides.aspx.

⁷ Referencing is typically achieved by including, within the relevant legislation, details of the name of the standard and the year of publication.

⁸ Such issues were considered by the Productivity Commission in the PC Report at pages 128-129. The Productivity Commission referred to:

- The need to compensate SAI Global Limited (Standards Australia's exclusive licensee) and Standards Australia for lost revenue;
- Difficulties in developing a policy to deal with standards that are referenced as non-mandatory; and
- The significant copyright issues that arise when standards reference in legislation are essentially adoptions of international standards.

⁹ For Commonwealth legislation, the *Legislative Instruments Act 2003* requires legislative instruments to be published on an electronically accessible Federal Register of Legislative Instruments.

¹⁰ PC Report pages 128-129.

facilitating free or low cost access could then appropriately be considered in any assessment of the costs and benefits of proceeding with the regulatory standard.¹¹

10. Australian Standards are currently made available free of charge for reference purposes through libraries and copies of Australian Standards are available for purchase (in hard copy or electronic format) through our publisher SAI Global Limited. The Commonwealth has also provided funding to support making certain Australian Standards available to the public on-line free of charge (such as Australian Standards relating to health informatics).
11. Standards Australia continues to use the royalties it receives from the sale of its publications to support the standards development infrastructure of Standards Australia (including the administrative, project management and support services necessary for standards development). This standards development infrastructure helps support the involvement of a broad range of stakeholders in the standards development process (including consumers and community interests, employer representative bodies, government, industry, professional and technical associations, manufacturers, importers and suppliers, regulatory and controlling bodies, research and academic organisations, testing bodies, unions and employees and user and purchasing bodies).
12. While digital publishing is a valuable tool, this should not be used to negate the legitimate interests of standards developers in wishing to meet the costs of developing those standards and support future standards development activities.

Yours sincerely

Colin Blair
Chief Executive Officer

¹¹ PC Report, page129.