



SAI Global Submission to the Australian Law Reform Commission on Copyright and the Digital Economy

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SAI Global welcomes the opportunity to submit a response to the Australian Law Reform Commission's Issues Paper, *Copyright and the Digital Economy*. In particular, SAI Global would like to contribute to the discussion on Crown use of copyright material, particularly the issues referred to in Question 32 of the Issues Paper. Our position is that the statutory licensing scheme concerning the use of copyright material for the Crown in division 2 of Part VII of the Copyright Act 1968 (Cth) is adequate and appropriate in the digital environment for the reasons outlined in section 3 below.

In overview, SAI Global submits that:

- the current statutory licensing scheme in sections 183 and 183A is adequate and there is no need to reform it in order to better facilitate the digital economy. In particular, there is no need to extend it to local government or to extend the role of the collecting societies beyond exercises of the reproduction right;
- any shift towards expanded Crown free use exceptions would significantly disadvantage SAI Global and threaten, if not destroy, our market which in turn may impact the future development and distribution of Australian Standards;
- there is a clear distinction between taxpayer-funded copyright material where broader free exceptions and open access regimes might have a role to play and the position with respect to Australian Standard® publications; and
- permitting further free use of Australian Standard® publications through open access or similar regimes for Crown use would diminish any incentive for innovation or creation in this context.

SAI Global also notes the views expressed by Standards Australia in its submission to the ALRC on this question, which views it generally supports.

1. SAI Global - An Overview

SAI Global Limited is an Australian based company listed on the Australian Securities Exchange (ASX) and ranked in the S&P/ASX 200 index. It is one of the world's leading information services (including publishing), compliance, training and assurance organisations.

SAI Global is a leader in the use of web-based technologies for the production, distribution and licensing of intellectual property. Its Information Services (Publishing) division delivers Australian Standards and international standards, legislation, technical and regulatory up-date and news services. These products are delivered in hard copy and via on-line subscription and other web-based services. Through a publishing licensing agreement with Standards Australia Limited ("Standards Australia"), it holds the rights to publish and distribute Australian Standard® publications, and other Standards developed by international standardization bodies. SAI Global, through its wholly owned subsidiary Anstat Pty Limited, also has the rights to publish Victorian Government legislation in hard copy and the Australian New Zealand Food Standards Code.

2. Background to Australian Standard® products and their publication

2.1 Standards development process

The international Standards development process is vital for facilitating trade around the world. Its global network of technical experts and committees work to:

- Improve economic efficiency
- Facilitate business transactions
- Reduce the potential for technical barriers to trade
- Improve safety and the standard of living in all countries.

SAI Global is a key partner in the delivery of these economic and social benefits and its customers are highly dependent upon the efficiency and effectiveness of the national and international Standards development process.

2.2 *SAI Global's relationship with Standards Australia*

SAI Global is a strong supporter of Standards Australia and other national Standards bodies. While it has a business relationship with Standards Australia, and participates in a technical capacity on some standard development committees, SAI Global has no influence over Standards development in Australia or any other country.

In December 2003, Standards Australia granted to SAI Global an exclusive worldwide licence to publish, distribute, market and sell Australian Standard® publications. These rights extend for a 15-year period from December 2003 with an option to renew for a further 5-year term.¹ It is important to note that the ISO and IEC Standards are available in the global market through most national Standards bodies, and commercial publishing companies. Approximately 42% of all Australian Standard® publications are adoptions of International Standards developed by ISO (International Organisation for Standardisation) and IEC (International Electrotechnical Commission).

2.3 *Funding and distribution*

As reported in its submission to the Productivity Commission in 2006 regarding standard setting and laboratory accreditation, roughly 15 per cent of Standards Australia's total income is derived from royalties paid by SAI Global under our publishing licence arrangements.

SAI Global distributes Australian Standards at a low cost to the community. The table below shows a national retail price comparison for the same International Standards. Notably, the Australian versions of ISO Standards listed are less expensive through SAI Global than the international equivalents shown. This sample is reflective of the total collection of materials which SAI Global distributes and clearly demonstrates the value-for-money that Australian Standard® publication users enjoy.

RETAIL PRICE IN AUSTRALIAN \$					
Ref	Australian adopted version sold by SAI Global	ISO	ANSI (USA)	BSI (UK)	DIN (Germany)
9001	123	125	137	120	145
14001	104	111	121	209	145
22000	123	132	145	240	174
31000	104	119	130	215	120

1. Currency conversions by www.xe.com as of 22 November, 2012

¹ SAI Global Prospectus, 2003, p40.

2. Non-SAI Global supplier prices stated do not include additional exchange rate fees that would be added by a financial institution.

SAI Global is also committed to providing certain Standards at no cost to the user. At present over 1,500 Australian and International Standards and other normative publications are available for free on the SAI Global [InfoStore](#), particularly on the subject of telecommunications and healthcare technology. In addition, Australian Standards are currently made available free of charge for public reference purposes through public libraries in each State and Territory, and for student reference purposes in many tertiary education institutions.

2.4 *Accessibility and coherence*

Australia leads the world in providing access to Standards. Australian organizations benefit from a framework that effectively raises awareness of new, existing and updated Australian Standard® publications. Under licence from Standards Australia, SAI Global supports the accessibility of Australian Standards and International Standards by providing cost-effective:

- instant online delivery in PDF format
- fast print on demand service for hard copy
- sophisticated search engines that guide the visitor the Standards potentially relevant to them
- electronic watching services alerting Standards users to changed Standards
- marketing and information services
- complete collection of Standards
- customisable collections of Standards
- licences for the incorporation of Standards content (being copyright owned by Standards Australia) into clients' internal and external documentation

As a value-added service to Standards users, SAI Global continues to work to build a comprehensive collection of national, international and industry Standards. Currently this collection includes publications from ASTM in USA, British Standards Institution (BSI) in the UK, Deutsches Institut Fur Normung e. V. (DIN) in Germany), American National Standards Institution (ANSI) and Japan Industrial Standards (JIS). The collection provides a single reference point for Australian users of Standards.

SAI Global supports the current system of Standards development that allows many organizations to draft documents that are then subject to a consensus approval process before attaining Standards status. In line with this a key strength of the Australian system is that all approved Standards can be sourced through a single comprehensive collection. This is in stark contrast to the situation in the USA where there are in excess of 400 organizations developing Standards, even competing in industry sectors. While the Australian economy is 1/20th of the US economy, its Standards and laboratory accreditation systems are by comparison models of coherence and cooperation.

Under the current system, industry has access to national and International Standards sourced from a central point but accessed by many means. Increasingly this is delivered via subscription to an online database of Standards.

2.5 *Separation between the development and 'commercial' use of Standards*

By nature, the Standards development process encourages the courting of diverse interests including commercial interests. Standards development organizations must be kept separate from the commercial publishing and conformity assessment activities that are vital in a Standard's life cycle. In

separating a Standard's creation from its commercial application, a development body can maintain a sole focus on meeting its national interest obligation of achieving consensus among all stakeholders. In Australia, this has largely been achieved by separating Standards Australia from its commercial operations. A key benefit of this divestment has been the successful creation of a very significant endowment fund to service Standards development activities in Australia. Since this divestment, it is estimated that the SAI Global has contributed over \$200m to the endowment fund, which comprises of monies payable to Standards Australia arising from the sale of its publishing business to SAI Global, as well as returns on the sale of shares, royalties received under its publishing licensing agreement with SAI Global, and rental income received from properties leased to SAI Global. No other national or international Standards development organisation is in such an enviable financial position.

2.6 *Economic benefits of standardization*

Standards must be developed when there is a demonstrated need and where there is an underlying objective of facilitating commerce. There are numerous economic benefits of standardization. These include:

- Trade facilitation
- The elimination of duplication
- Confidence
- Interoperability
- Supply chain efficiency
- Lower transaction costs
- Increased consistency
- Safety
- Efficiency
- Effectiveness
- Enhanced quality
- Environmental protection
- Risk management
- Business process improvement

In a bid to measure these benefits of standardization to an economy a number of studies have been undertaken. In April 2000 the German Institute for Standardization DIN published a study titled, *Economic benefits of standardization*,

(http://www.normung.din.de/sixcms_upload/media/1350/engl_zusammenfassung.pdf).

The survey conducted across Germany, Austria and Switzerland confirmed the strategic value to companies of contributing to International Standards work through the national Standards body, and the competitive advantage that brings.

In the United Kingdom the Department of Trade and Industry (DTI) published a study in June 2005 that concluded that standardization contributed 2.5 billion pounds Sterling annually to the UK economy.² In the United States, the Government has instructed its agencies to use where possible the voluntary Standards developed by private Standards development organizations, in lieu of developing separate regulations or Standards.

² DTI Economics Paper No.12 The Empirical Economics of Standards June 2005

With the globalisation of business, the efficiency of trade will increasingly put pressure on governments and international bodies to develop common standards. SAI Global will support Standards Australia in its work in this area and Australian business by ensuring publication of access to new international standards as they are developed.

2.7 *SAI Global's involvement*

SAI Global's role is essential in the delivery of the economic and social benefits that arise from the development and publication of Standards. The development of Australian Standard® publications and the accessibility of Standards are largely dependent on the revenues that SAI Global derives from its Information Services (Publishing) division. When viewed holistically, Australian Standard® publications are privately funded on a copyright user-pay basis. Never has it been more true that copyright provides an incentive to publish important content than is the case with SAI Global and Australian Standard® publications. Without the protection that copyright affords, SAI Global would not have the incentive to publish and distribute Standards.

3. **Issues Paper**

a) **The distinction between taxpayer-funded copyright material and Australian Standards**

Australian Standard® publications and their development, publication and distribution are largely privately funded, unlike taxpayer-funded copyright material such as legislation or the Census of Population and Housing, where open access regimes might have a role to play. Analogous to any other privately-funded copyright work, the author and publisher, being Standards Australia and SAI Global, rely upon publishing revenues to sustain their respective businesses.

b) **Current statutory licensing scheme - Question 32**

The current statutory licence scheme for Crown use of copyright materials, as set out in sections 183 and 183A of the Act, gives the Commonwealth and State governments rights to use copyright material "if the acts are done for the services" of the relevant government. SAI Global notes the following in relation to the statutory licence:

- i. It is already very broad. The courts in Australia have interpreted "for the service of" to include supplying third parties and other acts done for the purpose of performing a duty or exercising a power of the relevant government.³
- ii. Section 183 extends to the Crown "doing any acts comprised in the copyright" which would include the rights of communication which are so important in an online world. The role of the collecting societies under section 183A is limited to the reproduction right and copies made under the statutory licence. Any communication online of copyright material under the statutory licence would need to be notified and paid for under section 183 (rather than via the collecting society under section 183A).
- iii. The better view⁴ is that the licence is in addition to other rights of the Crown to use copyright material. For example, fair dealing rights might allow the use of a fair amount of a work for certain purposes without payment, implied licences might allow use in other cases and express statutory provisions in yet others. These are existing free use exceptions or rights. In other cases the statutory licence applies and allows use, including use of the whole of the work (not just a fair part), but in return for equitable remuneration.

³ Discussed in Gilchrist, "Crown Use of Copyright Material" *Canberra Law Review* (2010) 1 at 27.

⁴ See Gilchrist, *ibid*.

- iv. In relation to the reproduction right, the statutory licence requires payment to be based upon the number of copies made which is to be calculated using a sampling system. This method of calculating payment is clearly not as appropriate in the case of the communication right where one communication could be the equivalent of a single copy (e.g. where the work is electronically transmitted to a single user on a basis which prevents further copies being made) whereas another communication could be the equivalent of many thousands of copies (e.g. where the work is put online and publicised to all members of a trade association who access and download it and send it online to others). In these situations section 183 would require the Crown to give notice of the particular communication to the copyright owner and agree a price or have the Copyright Tribunal determine it. We submit that this is absolutely appropriate and that a sampling regime administered by a collecting society would not be appropriate.
- v. The statutory licences do not extend to local government. Whereas duties in respect of public health or education or the like arguably justify allowing a government to do acts comprised in the copyright in a work without needing to seek the owner's consent, including reproducing or communicating the whole work, the same public interest does not exist at the local government level. In the case of Australian Standard® publications, SAI Global does in fact make them all available to local government for purchase / licence on reasonable terms. But to have hundreds of councils around Australia, with little or no copyright compliance infrastructure or culture, all able to communicate the whole of a work online under the statutory licence would risk under-reporting, a lack of security and an inability to ensure the obligation to pay is fully complied with. SAI Global is not aware of any compelling argument or case that an extension of the section 183 licence to local councils is necessary to meet any public interest that cannot be met by commercial distribution of standards.

SAI Global submits that the current mix of free exceptions and the Crown statutory licence get the balance right between the interests of copyright owners and those of the Crown, and the public that the Crown serves. There is no evidence that any acts which currently require a statutory licence need to be free, that the licence imposes undue burdens on governments or hinders access to or use of works such that new free exceptions, or changes to the statutory licence, are required.

Equitable remuneration for copying or communicating standards is critical to the viability of SAI Global because it supports its sale and licensing of standards. If the Crown decides to copy an entire Standard without buying a copy, SAI Global has a lost sale and is compensated for this at a relatively modest price (25 cents per page in some cases) if the use is picked up in a sample survey by Copyright Agency Limited. If the Crown communicates the standard online to hundreds of people then SAI Global will lose many sales and this is also compensated if the use is picked up in a sample survey by Copyright Agency Limited. This is vital to SAI Global being able to invest in its publishing and distribution activity and infrastructure, including innovations to improve the range of works and the way that they are made available, and to SAI Global being able to pay royalties that in part support the development of standards by Standards Australia. The statutory licence already encompasses the new digital right of communication and so is well adapted to the digital economy.

c) Response to suggestions that Standards should be free to those compelled to comply with them

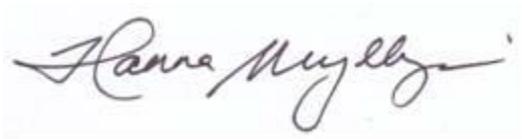
In its 2006 Research Report on *Standards Setting and Laboratory Accreditation*, the Productivity Commission considered whether Standards should be available for the public to access free of charge. The Productivity Commission found that:

*'funding to subsidise access to Australian Standards would be best made directly by the government agencies responsible for the relevant regulations. The cost of 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.'*⁵

SAI Global submits that this remains an approach that is preferable to granting free rights to copy and communicate to the Crown (which might be exercised to facilitate free distribution to and use by the public) which would undermine the financial model which underpins the development, publication and distribution of Standards. Governments have chosen to leave these activities to the commercial sector and SAI Global in particular. Any broad fee use exception in favour of government uses would give it (and the public) the benefit of these activities without having to meet or contribute to the costs.

Conclusion

SAI Global submits that the statutory licensing scheme concerning the use of copyright material for the Crown in division 2 of Part VII of the *Copyright Act 1968* (Cth) is adequate and appropriate in the digital environment in the context of Australian Standard® publications. Any shift towards free use exceptions or broader statutory licences in the context of Australian Standard® publications would threaten SAI Global's publishing market. Australian Standards and their publication and distribution are not funded by the Commonwealth and should not be treated analogous to taxpayer-funded copyright material. Given the benefits that Standards deliver to the public, there are good reasons to maintain the current balance in copyright law which provides SAI Global and Standards Australia with the incentive to develop and publish much-needed Standards, and to be innovative in the way that they are made available to the public.



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⁵ PC Report, page 129.