



The Executive Director  
Australian Law Reform Commission  
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Dear Executive Director

### **Issues Paper – Copyright and the Digital Economy**

Cricket Australia appreciates the opportunity to make submissions on the Australian Law Reform Commission's (ALRC's) Issues Paper 'Copyright and the Digital Economy' (IP42) (**Issues Paper**).

This submission sets out background information regarding Cricket Australia as well as Cricket Australia's submissions regarding issues and questions raised in the Issues Paper that are of specific concern to Cricket Australia at this time.

Representatives of Cricket Australia welcome an opportunity to discuss this submission with the ALRC.

#### **1 Cricket Australia**

Cricket Australia (CA) is the national governing body and custodian of cricket in Australia. CA's vision is to develop the game of cricket in Australia with the aim of cricket being Australia's number one sport for viewership, fan passion, participation and team success. Cricket Australia is a not-for-profit company limited by guarantee whose members are the six State Cricket Associations, being Cricket New South Wales, Queensland Cricket, South Australian Cricket Association, Cricket Tasmania, Cricket Victoria and the Western Australian Cricket Association.

Following a recent governance restructure, the Cricket Australia board may consist of six State-appointed Directors and three independent Directors. The Board currently comprises five independent Directors and four Directors who also sit on their respective State Cricket Association boards.

#### **2 Media rights**

Cricket Australia controls the sale of media rights for cricket matches played in Australia involving the Australian cricket team including Test Matches, One Day Internationals and International Twenty20 matches.

Cricket Australia also controls the sale of media rights for domestic cricket tournaments such as the Sheffield Shield, the 'Big Bash League' Twenty20 competition and the domestic One Day tournament (currently known as the 'Ryobi One Day Cup').

These matches include some of Australia's most iconic and popular sporting events, such as the Boxing Day Test and Ashes series, as well as new events which are growing in popularity, such as the 'Big Bash League' Twenty20 competition.

Cricket Australia sells media rights by granting third parties rights to produce and communicate audio visual, audio, photographic and statistical coverage of the cricket matches and other related events (such as the Allan Border medal awards night) organised by or under the authority of Cricket Australia.

Copyright in the relevant audio-visual coverage will usually be owned by Cricket Australia solely and in some cases jointly with the relevant broadcaster.

Cricket Australia grants media rights across a broad range of platforms including free to air television, pay television, radio, online and mobile. Cricket Australia sells rights to events conducted in Australia, both within Australia and for broadcast into international markets.

Cricket Australia's current Australian media rights partners include the Nine Network (free to air television), Fox Sports (pay television and online), the Australian Broadcasting Corporation (audio) and Vodafone (mobile/wireless).

Media rights are by far the most significant source of income for Cricket Australia. Media rights typically account for 60%-80% of the total annual income for Cricket Australia, depending on the yearly touring and budgetary cycle.

The remainder of Cricket Australia's revenue is generated from other revenue streams such as sponsorship, merchandising and gate attendance.

### **3 Use of revenue by Cricket Australia**

After operating costs are deducted, which includes investment in innovative and first-to-market products for fans, Cricket Australia distributes all of its income to its members (the State Cricket Associations).

These funds are used by the State Cricket Associations to invest in the game of cricket, including junior, female, indigenous, grassroots and elite cricket programs. For the 2012 financial year Cricket Australia's distributions to the State Cricket Associations will exceed \$56 million.

Cricket Australia also directly funds a number of programs such as national junior development and cricket participation programs such as in2Cricket and T20Blast, high performance facilities, diversity programs, drug and alcohol education, charity and obesity initiatives.

The funding Cricket Australia earns from the sale of media rights is critical to keeping the game of cricket predominantly self-funding in Australia.

### **4 Digital content**

Digital content delivery is a critical way for Cricket Australia to communicate its cricket content to the public and engage with the next generation of cricket fans.

Cricket Australia and its licensees have been highly active in this area and have delivered a number of innovative digital content products, including:

- (a) the 'Cricket LIVE Australia app', an iPhone and Android app which allows users to view live cricket match coverage, score updates, replays, highlights and other similar content on compatible Smartphones and Tablets, as well as providing social media participation. CA has been live streaming cricket to mobile devices since 2005 and was the first sport to do so;
- (b) the 'Big Bash League app', an iPhone and Android app which allows users to view Big Bash League ball-by-ball live scores, live ball-by-ball audio, player profiles and team profiles, ticketing and social media participation;
- (c) the 'MyCricket' product including a website and app to support a national cricket management program that gives community cricket the ability to manage players, competitions, statistics, and their own website to streamline operations;
- (d) the cricket.com.au website which provides cricket match highlights, live score updates, interactive content and match centres and the ability to watch free, live streaming of Sheffield Shield matches and non-broadcast Ryobi Cup matches;
- (e) the bigbash.com.au website which provides BBL match highlights, live ball-by-ball score updates, interactive content, games, social media participation and match centers;
- (f) Cricket Australia TV (CATV) live streaming of international cricket into international territories where broadcast rights are not exploited;
- (g) the CATV YouTube channel, which provides a broad range of free cricket video content, including match highlights, profiles, interviews, press conferences and magazine style content;
- (h) archive clips dating back to 1979 free online via cricket.com.au and third party partner sites such as Ninemsn;
- (i) digital downloads via iTunes of archive content and finished programming such as DVD content.

Strong copyright protection is crucial to the ability of Cricket Australia and its licensees to continue to make these substantial investments and support new products to market for fans.

Copyright protection is particularly important in enabling Cricket Australia to grant exclusive rights to its licensees. Being able to grant exclusivity to licensees is crucial for Cricket Australia to be able to realise full value from the sale of its media rights.

## **5 Guiding principles for reform**

Cricket Australia considers that in any review by the ALRC of the *Copyright Act 1968* (Cth) (**Copyright Act**) the following principles should be taken into account:

- ◆ the benefits of copyright in encouraging innovation and investment must be recognised and supported (particularly innovation and the significant investment by existing rights holders);
- ◆ before proposing amendments to the Copyright Act there needs to be compelling evidence-based justifications for the amendments; and

- ◆ as copyright involves a careful balancing of the rights of numerous parties including rights holders, intermediaries and consumers, extreme care should be taken before making amendments which impact on this balance.

Cricket Australia has concerns regarding a number of the Guiding Principles for Reform set out in the Issues Paper, particularly as they characterise copyright as being an impediment to innovation.

For example in Guiding Principle 4 it is stated that '*new business models should be allowed to develop without copyright hindering these benefits*'. Guiding Principles 1 and 2 of the Issues Paper also focus on copyright being an impediment to innovation.

From Cricket Australia's perspective, rather than acting as an impediment to innovation or new business models, copyright provides an incentive for innovation by providing legal protection for the significant investments made by Cricket Australia and its licensees in producing and delivering content.

Cricket Australia and its licensees have a well established track record of substantial investment in technological innovation.

Some of the significant cricket coverage and content delivery innovations pioneered by Cricket Australia and/or its licensees include Hot Spot, Speed Gun and ball tracking technologies as well as premiering the 'miking-up' of players in International Twenty20 cricket and Spidercam in Test cricket (a cricket world first). Cricket has also provided interactivity for viewers such as Pulse and iPowow, which have engaged fans via handsets and tablets to vote and poll on cricket match elements such as who should be awarded the player of the match. Cricket Australia, along with 3 mobile (now Vodafone), were the first in Australia to stream sport via mobile in 2005. With iPowow, the 'Cricket LIVE Australia app' is now integrated into coverage by the Nine Network.

More recently, domestic cricket has seen umpire and player cameras used in the match to bring viewers closer to the action and CA and its licensees have continued to innovate with expanded social media integration initiatives to give fans a voice in the game.

Copyright protection has been crucial to Cricket Australia and its licensees in funding and protecting these investments.

Cricket Australia also has concerns with Guiding Principle 6 of the Issues Paper. Cricket Australia is not aware of any evidence that digital technology has resulted in reluctance by consumers to recognise copyright as a form of property or a widespread view that infringement of copyright is justified. Consumer trends show a willingness by consumers to seek legitimate content sources where the cost, timeliness of delivery and quality of the content is reasonable and in particular because non-legitimate forms of content are often unable to deliver the same quality and timely delivery.

Cricket Australia also strongly disputes the suggestion that licensing or exempting widespread infringement practices should be considered. A proper response to widespread infringement would be to review whether enforcement and public information and education are adequate, rather than exempting infringing conduct, which undermines the rationale and broad economic benefits of copyright and the rights of rights holders.

## 6 Cloud Computing

Cricket Australia is not aware of any evidence to support assertions that the Copyright Act is impeding the growth or development of cloud computing technologies and does not support new or amended exemptions to the Copyright Act regarding cloud computing.

Cricket Australia understands that cloud computing services have been publicly offered for well over 10 years. It therefore appears to Cricket Australia that cloud computing services have been offered successfully and without detriment to the consumer for a long period of time within the existing Australian copyright framework.

It also appears to Cricket Australia that the growth and popularity of cloud technologies and new cloud products and services during this period directly contradicts assertions that the Copyright Act is impeding cloud computing.

The Issues Paper refers to the recent *Optus TV Now* case<sup>1</sup> as providing an example of a new or emerging cloud computing service which was impeded by copyright.

Cricket Australia considers that the decision of the Full Federal Court in the *Optus TV Now* case and the implications of this case with respect to cloud computing have been misunderstood and overstated in the Issues Paper.

The *Optus TV Now* case did not deal with the general legality of storing data in a cloud based system. Instead the case dealt with a very specific issue regarding whether the exemption in section 111 of the Copyright Act (which permits recording of broadcasts for certain private and domestic use) extended to a commercial operator who made a recording on behalf of an individual. The case affirmed that existing copyright law exemptions allow private and domestic use of cloud computing services.

The suggestion that the decision in the *Optus TV Now* case is a significant impediment to cloud computing services generally or has wide ranging implications for cloud computing providers is misguided.

Cricket Australia strongly opposes any new or amended exemptions for cloud computing services which would impact on the value of Cricket Australia's media rights. In particular, Cricket Australia opposes any exemptions which allow commercial operators of a cloud computing service to conduct for commercial gain copying and/or retransmission of Cricket Australia's content without permission.

Any such exemption would have a significant, negative impact on the ability of Cricket Australia to exploit its media rights (in particular its online/digital rights) and would unreasonably prejudice the rights of Cricket Australia and its licensees.

Such an exemption will allow commercial operators to 'free ride' on Cricket Australia's highly valuable cricket content, for example by allowing such commercial operators to retransmit the content for commercial gain without having to obtain Cricket Australia's permission or to contribute to the development and health of the game

## 7 Copying for private use

Cricket Australia does not support further amendments to the Copyright Act regarding 'format shifting' and 'time shifting'.

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<sup>1</sup> National Rugby League Investments Pty Limited v Singtel Optus Pty Ltd [2012] FCAFC 59 (27 April 2012)

The 'format shifting' and 'time shifting' exemptions in the Copyright Act necessarily involve a careful balancing of the interests of individuals and rights holders. Cricket Australia considers that the current provisions achieve an appropriate balance.

### *Format Shifting*

Cricket Australia opposes any amendments to the Copyright Act to allow commercial 'copying services' to make copies on behalf of individuals.

The current format shifting provisions were introduced to allow format shifting by individuals for private and domestic use<sup>2</sup>. Cricket Australia does not see any justification for these exemptions being extended to allow commercial operators to profit from making copies of content without the consent of the copyright owner/rights holder.

Cricket Australia also opposes the format shifting provisions of the Copyright Act being extended to allow 'digital to digital' copying.

'Digital to digital' copying will significantly increase the risk of widespread infringement, as it allows high quality reproductions to be made, which can then potentially be uploaded onto file sharing, bit torrent or other similar sites.

There is also a risk that providing specific exemptions for 'digital to digital' copying may encourage the circumvention of technological protection measures and/or cause confusion regarding the permissibility of circumventing technological protection measures to conduct 'digital to digital' copying.

Cricket Australia also does not support a broad, single exemption for format shifting.

The existing format shifting provisions have been carefully drafted after significant review and consultation to take account of the specific issues regarding copying of particular types of content in particular formats. A broad exemption which does not address these issues would not be a desirable outcome.

A broad format shifting exemption of this type would also lack certainty and increases the risks of parties resorting to litigation to attempt to determine the parameters of the exemption, resulting in significant costs, delays and uncertainty.

### *Time Shifting*

Cricket Australia does not support amendments to the time shifting provisions in section 111 of the Copyright Act.

Cricket Australia is concerned that the impetus for proposed amendments to these provisions appears to be a misinterpretation of the decision of the Full Federal Court in the *Optus TV Now* case.

The *Optus TV Now* case re-enforced that individuals who make copies of broadcasts for private or domestic use for watching the broadcast at a more convenient time will have the benefit of the exemption in section 111. In fact, the Full Federal Court held that the individual users of the

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<sup>2</sup> *Explanatory Memorandum, Copyright Amendment Bill 2006 (Cth)*, 6

Optus TV Now service would have been able to rely on the section 111 exemption<sup>3</sup> in circumstances where they themselves had made the copies of the copyright material.

It therefore appears to Cricket Australia that the time shifting provisions are operating as the legislature intended.

The *Optus TV Now* case unanimously held that commercial operators cannot seek to take advantage of an exemption intended to allow private or domestic copying by individuals.

Cricket Australia considers that the distinction between copying by individuals and copying by commercial operators (whether on behalf of individuals or otherwise) is a critical distinction.

Allowing commercial operators to conduct copying on behalf of individuals will significantly prejudice Cricket Australia's ability to exploit its media rights, in particular its digital/online rights.

Cricket Australia also considers that it would act as a disincentive to the development of new and innovative digital cricket products by Cricket Australia and its licensees, as such products would have to compete with those of the commercial operators who would be able to exploit Cricket Australia's highly valuable content without paying a media rights fee to Cricket Australia or otherwise contributing to the development and long term health of the game.

Cricket Australia does not believe that the principle of technological neutrality should allow commercial operators to 'free ride' on content they have not created or paid a rights fee for at the expense of rights holders (or, in the case of Cricket Australia, at the expense of the funding of innovative products and services and state, local and grassroots cricket).

Cricket Australia considers that the 'time shifting' exemption in section 111 of the Copyright Act already achieves the right balance between the interests of individuals and rights holders and that no amendments to the exemption are necessary or justified.

## **8 Back up and data recovery**

Cricket Australia is not aware of any evidence to support an exemption for back up and data recovery, particularly given the existing statutory licences that exist in copyright law and given such requirements can be met in agreements between rights holders and third party commercial organisations.

Should such an exemption be introduced, the exemption should only apply to non-infringing copies of content and should ensure technological protection measures cannot be circumvented and copies cannot be exploited commercially.

## **9 Online Use for social, private or domestic purposes**

Cricket Australia does not support amendments to the Copyright Act being made to more extensively permit online uses of copyright materials for 'social, private or domestic purposes' or in 'user generated content'.

Cricket Australia does not consider that this type of exemption is required or justified.

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<sup>3</sup> *National Rugby League Investments Pty Limited v Singtel Optus Pty Ltd* [2012] FCAFC 59 (27 April 2012) at 92

The Copyright Act already provides sufficient scope for this type of use by way of the fair dealing exemptions. In addition, the requirement that a substantial part of a work or other subject matter be reproduced before copyright is infringed prevents insubstantial use from amounting to an infringement.

Cricket Australia also has concerns regarding the uploading and sharing of 'user generated content' on the internet as being classified as 'social, private or domestic use'.

In Cricket Australia's experience uploading and sharing of content on the internet often involves the unauthorised uploading and distribution of Cricket Australia's highly valuable content, such as broadcasts of cricket matches. Cricket Australia is forced to spend a significant amount of time, money and effort managing this type of unauthorised uploading and distribution of cricket content to protect its rights and the rights of its licensees.

Cricket Australia employs a management service to monitor and manage the take down of illegal and pirated live streams of Cricket Australia's match coverage as well as misuse of Cricket Australia's archive content and other intellectual property. Cricket Australia also monitors the use of its content on video sharing sites such as YouTube to ensure correct attribution and the integrity of the game of cricket and its players.

Cricket Australia also considers that uploading and sharing of content on the internet, where it can be viewed and reproduced without control by a large number of people (and in many cases all users of the internet) and monetised either by the uploader or a platform operator (such as a video sharing site), cannot properly be considered to be private, domestic or social use.

These platforms also generally require the uploader to agree to terms and conditions of use for the platform that include attributing ownership to the platform of all content uploaded. The uploader and the platform are therefore dealing in content to which they do not have rights and so are directly infringing CA's copyright and impacting CA's use, management and commercialisation of that same content.

A general exemption for social, private or domestic use of copyright materials, particularly where that 'social, private or domestic' use is online, would unreasonably prejudice the rights of Cricket Australia by:

- (a) undermining the media rights granted by Cricket Australia (including the exclusivity of those rights). For example, the value and exclusivity of online rights granted by Cricket Australia to display highlights of cricket matches would be significantly undermined if individuals were able to upload their own highlights packages to video sharing sites or share via social media under the protection of a 'user generated content' exemption;
- (b) permitting third parties (for example video sharing sites) to gain financially from Cricket Australia's highly valuable content that the video sharing site has not paid a rights fee for; and
- (c) impacting on Cricket Australia's funding and, as a result, the funding of State Cricket Associations, local cricket clubs and the sport of cricket generally.

Such an exemption would also unreasonably impede Cricket Australia's rights (as a copyright owner) to determine how and where its content is used and portrayed so as to protect the integrity



of the game of cricket and its participants and those who invest in the game such as commercial partners, sponsors and Government.

Any such exemption is also inherently uncertain. A number of the key concepts proposed in the exemption are extremely difficult to define, such as when purposes are '*social, private or domestic*', when use is '*commercial or non commercial*' and when use does not '*conflict with normal exploitation of the copyright material and does not unreasonably prejudice the legitimate interests of the owner of the copyright*'.

If an exemption based on these concepts is introduced, Cricket Australia is concerned that rights holders and other parties will have no recourse but to take court action to determine the scope of the exemption. The costs, time and uncertainty associated with such litigation would clearly be an undesirable outcome.

Cricket Australia also has concerns that such a general exemption will encourage reduced co-operation with rights holders by video sharing platforms or other similar third parties.

## **10 Transformative use**

Cricket Australia does not support transformative uses of copyright being more freely permitted or amendments being made to the Copyright Act to further exempt such uses.

Cricket Australia wishes to express its alarm regarding the suggestion in Question 16 of the Issues Paper that any use of a publicly available work in the creation of a new work could amount to 'transformative' use for the purposes of such an exemption.

Cricket Australia fails to see why a work being publicly available means it should be able to be used without the consent of the owner/rights holder in a 'transformative' work.

Cricket Australia does not consider there is any justification or evidential basis for a general exemption for 'transformative' use. The fair dealing provisions of the Copyright Act and the requirement that a substantial part be used before copyright is infringed already provides sufficient scope for transformative uses of material subject to copyright.

Any such amendment would also be inconsistent with the fundamental right of copyright owners/rights holders to control the use of their material in derivative works or adaptations.

Cricket Australia does not consider that it would be appropriate to amend the Copyright Act to provide a general exemption for material which appropriates, without permission or compensation, the original works of others.

Cricket Australia is also concerned that the Issues Paper focuses on 'transformative' use as innovation or the creation of new cultural works. This approach overlooks the fundamental rights of copyright owners/rights holders not to have their work appropriated without consent and the fact that copyright in its current form encourages investment in the creation of the original content.

Cricket Australia also considers that a general exemption for 'transformative' use would fail to meet the requirements of the 'three-step test' under Article 9(2) of the *Berne Convention for the Protection of Literary and Artistic Works*.

This is because a general 'transformative use' exemption would not be an exemption limited to special cases.

In addition, such an exemption would unreasonably prejudice the rights of Cricket Australia and other copyright owners/rights holders, including by:

- (a) taking away the fundamental right of Cricket Australia to determine how its content is exploited. These rights are particularly important for sporting bodies such as Cricket Australia, who need to be able to control the use of their content for purposes related to the protection of the reputation and integrity of the sport, for example, Cricket Australia strictly controls the association of betting related messages and alcohol related messages and imagery with Australian Cricket as well as ensuring fairness and balance in reporting on cricket and its participants and having fans, particularly young fans, in mind when discouraging use of content showing anti-social behavior such as streaking, violence, racial vilification, swearing or content of players or spectators coming to harm such as a batsman being struck by a cricket ball.
- (b) allowing third parties to 'free ride' on the content of Cricket Australia by permitting use of Cricket Australia's highly valuable content without permission or compensation to help grow the game of cricket now and into the future; and
- (c) interfering with the rights granted by Cricket Australia to its licensees, for example by undermining the exclusivity of online rights granted by Cricket Australia. This could negatively impact on the funding of Cricket Australia (and consequently the State Cricketing Associations, local cricket clubs and the sport of cricket generally).

Cricket Australia also considers that any transformative use exemption would lack certainty. Concepts such as when use is '*transformative*' and the distinction between '*commercial*' and '*non commercial*' use are inherently difficult to define.

Cricket Australia is concerned that rights holders and other parties will have no recourse but to take court action to determine the scope of any 'transformative use' exemption, resulting in unreasonable costs, time and further uncertainty.

As Cricket Australia opposes any 'transformative use' exemption, it does not consider that amendments to moral rights provisions of the Copyright Act will be necessary or appropriate. Cricket Australia does however note that a transformative use exemption would be particularly difficult to reconcile with a moral right of integrity. As a result, the introduction of a general 'transformative use' exemption would likely necessitate further, complex amendments to the moral rights provisions of the Copyright Act.

## **11 Retransmission of Free to Air Broadcasts**

Cricket Australia understands that retransmission of free to air television broadcasts is currently undertaken by pay television operators such as Foxtel, as well as broadcasters in regional and remote areas.

CA's view is that the statutory licensing scheme for the retransmission of free to air broadcasts should not permit retransmission beyond these current practices (i.e. retransmission by licensed television broadcast means).

Cricket Australia does not support the statutory licensing scheme for the retransmission of free to air broadcasts applying to retransmission of free to air broadcasts over the internet or IPTV.

Statutory licences should only be enacted in limited circumstances where there are significant public policy reasons for doing so. Cricket Australia is not aware of any public policy or other justifications for extending the statutory licensing regime to internet retransmissions.

Allowing third parties to retransmit free to air broadcasts over the internet would also significantly prejudice the ability of Cricket Australia to exploit and grant exclusive online rights in respect of its cricket content. It would also adversely impact the value of domestic and overseas television coverage agreements that may contain holdback provisions restricting the use of broadcast content online during an event, or for a prescribed period of time after an event and/or permit the use of content online during an event by Cricket Australia only on its own digital platforms.

Such an extension of the statutory licensing scheme would allow commercial operators to exploit Cricket Australia's highly valuable cricket content (for example by retransmitting the live free to air coverage of international cricket matches over the internet) without consent and with the commercial operator only required to pay a modest statutory licence fee, which is unlikely to match the going market rate for such content use if otherwise licensed.

In addition there are significant risks of internet retransmissions of free to air broadcasts being received overseas. This could adversely impact Cricket Australia's international media rights deals. Geoblocking technologies are capable of being circumvented and cannot be relied on to prevent such retransmissions being able to be received overseas.

Allowing third parties to retransmit free to air broadcasts over the internet would also significantly prejudice the ability of Cricket Australia and the State Cricket Associations to exploit and grant protections to sponsors and other commercial partners. Online content can be easily placed within a sponsored page or frame or have advertising inserted in and around the content, which can conflict with a sponsor (or sponsor's product) that has invested in Australian Cricket.

Cricket Australia does not believe that the current Copyright Act can be construed to support an argument that the existing retransmission regime applies to either retransmission over the internet or retransmission by IPTV. If necessary, the Copyright Act should be amended to clarify that the regime does not apply to retransmission over the internet or by IPTV.

## **12 Fair Dealing**

From Cricket Australia's perspective there remains significant uncertainty with the application of the fair dealing exemption for the reporting of news<sup>4</sup> in the digital environment.

Cricket Australia made detailed submissions about these issues to the Attorney General's 2005 Review of *Fair Use and Other Copyright Exemptions (2005 Submissions)* and the 2009 Senate Environment, Communications and the Arts Committee's *Inquiry into the Reporting of Sports and the Emergence of Digital Media (2009 Submissions)*.

As detailed in the 2005 Submissions and 2009 Submissions, Cricket Australia has concerns that the highly valuable content of Cricket Australia (such as highlights packages of cricket matches) is not adequately protected against un-licensed commercial exploitation online for

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<sup>4</sup> Sections 42 and 103B of the Copyright Act

'entertainment' and other similar purposes under cover of the exemption for the reporting of news.

The cricket matches Cricket Australia organises (in particular international Tests, One Day and Twenty20 matches) are high profile, popular sporting events which generate significant domestic and international news coverage.

Cricket Australia values this news coverage and works closely with media organisations covering Cricket Australia events (both rights holder and non rights holder media). Cricket Australia provides significant support, benefits and access to these media organisations to assist with their news reporting activities.

Cricket Australia has no desire to impede the genuine reporting or dissemination of cricket news.

However, Cricket Australia is concerned by the ongoing uncertainty in the application of the fair dealing exemption for the reporting of news in the context of increasing trends in the use of valuable sports content to provide 'entertainment' coverage and to drive traffic to websites or apps for commercial gain, rather than for the genuine reporting of news.

Sports such as cricket are particularly susceptible to this type of conduct, as the significant events from a day's play of cricket (such as wickets falling, batsmen reaching milestones, dropped catches) are able to be captured in a reasonably short video package or series of clips.

Such use has the potential to significantly undermine Cricket Australia's digital licensing program, including the granting of rights to show highlights packages online or communicate other cricket content online.

The current reporting of news exemption provisions in the Copyright Act lack clarity and do not provide any guidance on the extent and boundaries of the exemption.

As outlined in its 2005 and 2009 submissions, Cricket Australia would support legislative or regulatory amendments being made to the reporting of news exemption to provide greater clarity regarding when the exemption applies. Cricket Australia suggests that such amendments could cover matters such as guidance on the distinction between reporting news and providing content for entertainment or aggregation purposes and requirements that use for the reporting of news not materially impact on the rights holders ability to exploit its rights.

Cricket Australia does not consider that any other amendments to the fair dealing provisions of the Copyright Act are necessary.

### **13 Fair Use**

Cricket Australia does not support the introduction of a 'fair use' exemption into Australian copyright law.

Cricket Australia is not aware of any evidentiary basis or other justification for introducing this type of exemption.

Proposals to introduce a 'fair use' exemption have already been considered in detail in a number of Australian enquiries including the Attorney General's 2005 *Review of Fair Use and Other Copyright Exemptions* and the *CLRC's simplification review*.

Cricket Australia also notes that the recent UK *Hargreaves Review* recommended against introducing a fair use exemption into UK copyright law.

Cricket Australia has concerns that a broad 'fair use' exemption would lack certainty and would result in increased litigation as rights holders and other parties sought to determine the scope of the exemption. The complexities and costs of such litigation would be exacerbated by the lack of applicable case law underpinning such an exemption.

## **14 Contracting out**

Cricket Australia has no issue with parties contracting out of Copyright Act exemptions.

To the extent contracting out could be relevant to Cricket Australia (such as in Cricket Australia's media rights agreements) the relevant agreements are entered into by sophisticated commercial organisations who have substantial resources. Cricket Australia does not see any reason why these types of parties should not be able to contract out of copyright exemptions, if they so wish.

## **15 Other significant copyright issues**

### **15.1 Enforcement**

The high cost of enforcement and the lack of efficient enforcement mechanisms are a significant issue for Cricket Australia, particularly in the digital environment which is characterised by significantly increased infringement as well as logistical and cost impediments to the monitoring of (mis)use of content and the taking of effective enforcement action.

Cricket Australia considers that reforms to copyright enforcement should be a key feature of any amendments intended to address copyright and the digital economy.

### **15.2 Database rights and statistics**

Statistics and data are increasingly important for sporting bodies such as Cricket Australia.

There is significant demand from consumers for the provision of live statistics, detailed data and analysis and other similar products as part of broader content offerings (so called 'second screen' offerings such as mobile and tablet apps).

Cricket Australia considers that any review of copyright and the digital economy should consider legislative amendments to provide database and other similar compilation rights.

## **16 Summary**

Cricket Australia does not agree with the implications in the Issues Paper that the Copyright Act is blocking innovation or requires urgent reform in the manner suggested in the Issues Paper.

Copyright law involves a careful balancing of the interests of parties such as rights holders, intermediaries and consumers. Cricket Australia considers that the Copyright Act currently achieves largely the right balance.

The Copyright Act enables CA and other sporting organisations to maximise value from media rights deals and to drive and encourage innovation to sustain their existence without compromising an individual's right to access and use content.

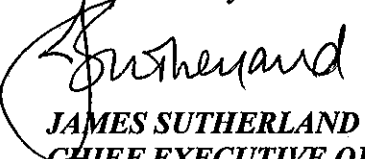
If amendments to the Copyright Act are proposed there should be a significant evidential basis justifying the amendment, rather than assertions that amendments are required or that innovation is being stifled.

Cricket Australia also submits that works and products that piggyback on Cricket Australia's content should not be given undue weight or importance, particularly when compared with the funding activities undertaken by Cricket Australia and its licensees which ultimately benefit innovative but also State, Club and junior cricket and the community at large.

Cricket Australia also urges the ALRC to consider the implications of any proposed reforms on the existing arrangements of Cricket Australia and the implications reforms could have on the future viability and self-funding model of Cricket Australia, State and local cricket associations and the sport of cricket generally.

Cricket Australia looks forward to discussing the matters raised in this submission in due course.

Yours faithfully



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