

13 November 2012

Executive Director
Australian Law Reform Commission

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CC: Attorney General the Hon. Nicola Roxon

Sent by email

Dear Executive Director,

Re: Copyright licence fees for dental practices

The Australian Dental Association Inc. (ADA) would like to thank the Australian Law Reform Commission (ALRC) for the invitation to provide comment on its Issues Paper, *Copyright and the Digital Economy*:

The ADA's feedback will be with respect to two specific questions within the Issues Paper:

Question 52. *Should the Copyright Act 1968 (C'th) be amended to include a broad, flexible exception? If so, how should this exception be framed? For example, should such an exception be based on 'fairness', 'reasonableness' or something else?*

Question 53. *Should such a new exception replace all or some existing exceptions or should it be in addition to existing exceptions?*

Required action:

As the peak national professional body representing more than 13,500 dentists and dental students across both the public and private health sectors, the ADA requests:

- 1. The Australian Law Reform Commission (ALRC) recommend to the Attorney General (A-G) the provision of an exemption for dental practices that broadcast copyright works and recordings within dental surgeries from having to pay licence fees to Copyright Collecting Societies (CCS) under the *Copyright Act 1968* (Copyright Act).**
- 2. The exemption is to apply to the broadcast of copyright works, whether it be audio (such as music from a CD or the radio), or video (such as from DVD or the TV), if the primary purpose of the delivery of the copyrighted material is to provide a therapeutic benefit.**
- 3. If necessary amend the *Copyright Act* to give effect to these recommendations.**

The ADA suggests that the A-G adopt a broader flexible exception that is based on ‘reasonableness’ or other criteria (such as therapeutic benefit) within the concept of fair use.

Comment:

Note that before the ALRC released the Issues Paper for comment, the ADA had made a request along the lines of the Requested Action directly to the A-G (See **Attachment A**).

The ADA supports the policy rationale underpinning copyright and the need for those who broadcast copyright works and recordings to provide recompense and acknowledgement to the original creators of these works. However, there are certain environments for which the playing of these works and recordings provide benefits that are beyond the usual purpose for which public broadcasts are made, and should therefore not require the payment of a licence fee.

In the case of dental surgeries, there are studies that identify fear and anxiety as being real constraints to patients visiting a dentist. The Australian Research Centre for Population Oral Health released research recently that approximately 18% of Australian adults have dental fear and anxiety, and that was causing them to avoid visiting the dentist.¹ (**Attachment B**)

The dental profession, in response to alleviating these fears by patients, has undertaken a number of measures to increase the comfort of patients and reduce the anxiety of patients undergoing treatment at the practice. For example:

- Many dentists offer headphones to their patients that provide a selection of radio music genres, relaxation therapies etc. to choose from.
- Some dentists also provide a video screen so that patients can watch television or video during their appointment. These facilities provide excellent distraction for patients who are anxious and may be otherwise too afraid to have dental treatment.
- Many patients these days carry iPhones or digital media players (e.g. iPods, MP3 players) with their own music and earphones. Dentists often encourage patients to wear these devices, again as a useful method of distraction and relaxation for anxious patients.

The playing of copyright works and recordings is one important way that the dental profession is trying to ensure that patients have the most positive experience when receiving treatment. Minimising patients’ reluctance to visit the dentist will result in higher rates of visitation, which will ultimately lead to better oral health. The playing of music assists dentists to provide therapeutic treatment. This issue has been the subject of many research studies that all support this proposition. It has also been the subject of a decision of the European Court of Justice. (See also **Attachment C** – Examples and Studies of the Therapeutic Value of Music in Dental Surgeries.)

The ADA’s understanding is that under the *Copyright Act*, CCS can require the payment of a licence fee for the broadcast of copyright works and recordings. The rate of this licence fee is scaled to the nature of the business operated, which in turn is affected by the number of people in the “audience” for the work played. The number and type of broadcast devices (i.e. CD player/iPod docking station etc.) and the physical area in which they are heard are important matters in determining what a dental practice’s possible licence fee will be.

The ADA submits that this requirement for dental practices to pay a licence fee to CCS to permit the broadcast of copyright works and recordings in dental offices and surgeries imposes an unreasonable and unnecessary regulatory burden on dental practices and upon the patients being treated. It discourages practices from providing a means to ‘settle’ and enable patients to relax and thus assist them to receive

¹ “The avoidance and delaying of dental visits in Australia”- Australian Research Centre for Population Oral Health, The University of Adelaide, South Australia. Australian Dental Journal 2012; 57: 1–5

dental treatment. The licence fee requirement does not acknowledge the therapeutic benefits provided by the playing of copyright works and recordings in a healthcare provider's practice, and also does not acknowledge the fact that such a practice is not seeking to 'attract' clientele (which would be the benefit of music playing by a retail business, for example). Australia-wide, according to a report by Access Economics, the mean core gross cost of regulatory compliance was \$64,200 per annum per dental practice in 2005, and is now likely to be closer to \$75,000. Dental practices differ from medical practices as the equipment and materials required by dental surgeries are akin to those of a mini hospital and so considerable investment is required to be made on behalf of the business practice owner to cover start-up costs and ongoing overheads. The requirement to pay a licence fee in the situation of healthcare providers would not assist in achieving better oral health outcomes.

The ADA would also like to specifically refer the Commission to a European Court of Justice ruling that dentists do not broadcast music for profit (**Attachment C**). According to reports, the judges explained that patients do not go to surgeries to listen to music but "with the sole objective of receiving treatment", and the number of people in a typical dental surgery "is not large, indeed it is insignificant". The court's rulings are legally binding across the 27-nation European Union. Reference is also made to the other studies referred to in **Attachment C**.

The ADA requests that the *Copyright Act* be changed to exempt businesses from being required to pay a licence fee to broadcast copyright work if that businesses' primary purpose is to provide a therapeutic benefit.

The ADA appreciates your consideration of this proposal and is happy to have a meeting to discuss this further.

If you require further information, please contact the ADA's Chief Executive Officer, Mr Robert Boyd-Boland, at ceo@ada.org.au or call 02 9906 4412.

Yours sincerely,



Dr F Shane Fryer
President