



31 July 2013

Ms Sabina Wynn
The Executive Director
Australian Law Reform Commission
GPO Box 3708
Sydney NSW 2001

Dear Ms Wynn

Submission by J. Albert & Son Pty Ltd (*Alberts*) in response to the ALRC's "Copyright and the Digital Economy" Discussion Paper

As Managing Director of Alberts , I welcome the opportunity to respond to the Discussion Paper.

Alberts' view

Alberts is a family-owned company established by my great-great grandfather in 1885, the main business of which is the creation, protection and exploitation of music copyright. In its early days, Alberts' copyright interests tended towards acquisition of local rights for overseas musical works. That changed in 1964 when Alberts established Albert Productions, an enterprise with the express purpose of being a developer and (in due course) exporter of music copyrights. Alberts went on to work with some of Australia's most significant artists and writers including the Easybeats, the Angels, Rose Tattoo, John Paul Young and AC/DC. In association with Alberts, AC/DC has gone on to become one of the most successful rock bands of all time, and helped Alberts become a net-exporting Australian copyright owner.

Alberts is a member of the following Australian copyright collecting societies and trade associations: AMPAL, APRA|AMCOS, ARIA and PPCA. I am aware that a number of these organisations, together with the Australian Copyright Council, have tendered submissions to the ALRC. Alberts is broadly supportive of those submissions and the information contained within them. Rather than restate their position, my aim is to provide a perspective from an independent family company that is actively engaged in the music business.

Far from being one of the so-called "large, powerful and greedy multinational companies" to which the Issues Paper alluded, Alberts is small (around 25 staff) and proudly independent. It has longstanding agreements with Australian songwriters and artists under which Alberts represents their works and ensures they are compensated for exploitation of those works. Alberts is very much at the commercial coalface of the issues raised in the Discussion Paper, both locally and internationally.

In Alberts' view, with one notable exception (being the radio remuneration caps), the Australian copyright laws as they currently stand generally serve all stakeholders in the music industry's digital economy fairly and with a reasonable degree of certainty. The fact that Australia has amongst the highest representation of multinational digital music services in the developed world is, in Alberts' view, testament to that.

Fair Use

In Alberts' experience, current copyright law in Australia has evolved with considerable care to ensure that the fragile tension between the established rights of a copyright owner and the wishes of a copyright user is allowed to subsist. Such a comprehensive revision as that suggested in the fair use proposal risks breaking that tension and having the unintended consequence of "resetting" parties' negotiating positions. For example, a potential user who would currently not be able to fall within the clear fair dealing exceptions may use the broader fair use provisions to make a claim (validly or otherwise) to some entitlement to fair use (however tenuous) in order to bargain down a copyright owner for a voluntary licence or permission. The consequence would be that the changes may impact negatively on the value of that copyright and, in turn, impact on copyright creators and investors' decision to invest in the creation and/or acquisition of Australian copyrights.

Furthermore, a copyright user availing themselves of a broader fair use defence may also potentially raise the spectre of section 202 of the Copyright Act 1968 in tandem with fair use, which may in turn impact on a copyright owner's confidence to protect its own rights and/or achieve a voluntary licence on fair remuneration terms. This could further erode confidence in the value of the owner's rights.

For companies like Alberts to invest in the development of local copyright, it is important that there is a likelihood of commercial return. That investment has always depended on stable copyright laws, complemented by industry practices which have the effect of "filling in the gaps" for buyers and sellers of copyright products. It follows that significant change to copyright laws, particularly changes that may be detrimental to investors' interests, may well impact proposed investment adversely.

In summary, Alberts feels that the fair use proposal, in practice, places too much subjectivity into the hands of users and has ramifications which can be more onerous on copyright owners than is currently the case. Even though the onus is on the user to establish the fair use, the owner is still put to the initial burden of establishing title, and may also have to fend off a section 202 claim. Practically speaking, these are all tools available to users seeking a more attractive deal from owners, without any genuine public interest being met.

Remuneration Caps

The other area of interest to Alberts is the proposed abolition of the remuneration caps contained in section 152 of the Copyright Act 1968. As an owner of Australian sound recordings that pre-date the introduction of these caps, it seems that no public interest is served by its retention, only the specific commercial interest of radio broadcasters. In our international commercial dealings, we have found this anomalous provision to be puzzling in its lack of synchronicity with most other countries' regimes. No other sector is protected in this way, and its abolition would place commercial radio on a more fair and even footing with the rest of the community of commercial music users. Alberts therefore wholeheartedly supports the abolition of the remuneration caps.

Conclusion

Few local companies have done more to advance the cause of Australian music copyrights and their creators internationally than Alberts. The fact that Alberts has remained in the business of copyright for over 100 years, and the business of creating and exporting Australian copyrights for almost 50 years, is testament to Alberts' belief in the cultural and economic potential of original Australian works and subject matter. As the ALRC continues its deliberations, I would urge it to consider those most involved in copyright creation and exploitation, and would welcome giving more of that perspective should the ALRC consider it to be of use.

Kind regards

A handwritten signature in black ink, appearing to be 'DA', with a stylized flourish at the end.

David Albert
Managing Director