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Attention: Professor J. McKeough

The President
Australian Law Reform Commission
GPO Box 3708
SYDNEY. NSW. 2001.



31st October, 2013

Dear Professor

REFERENCE: COPYRIGHT AND THE DIGITAL ECONOMY (IP42)

Endeavour Education Pty. Limited (EE) makes this submission in response to the above reference.

Endeavour Education Pty Limited is a distributor/bookseller supplying textbooks and related material to schools in New South Wales and Northern Victoria since 1981 as well as supplying direct to the public.

The Australian Market

The market for educational publishing can be generally divided into three main areas:

Trade: Novels, general interest – produced in Australia and overseas.

Education Tertiary: generally produced in Australia for TAFE market and Overseas for University market.

Education School: Primary and secondary school texts are generally locally produced.

Our main sales are from the Education secondary school market and we source stock from local warehouses of publishers on an arms length basis. Publishers advertise a Recommended Retail Price and supply us at a discounted price.

From our sales records the general spread of publishers market for education secondary is;

Pearson	25%
Jacaranda Wiley	25%
Cengage	25%
Oxford University Press	9%
Cambridge University Press	9%
Macmillan education	2%
Others	5%
	100%

Sales can be to parents or to schools for book-hire where the school charges the parent a hiring fee. Victoria is nearly all booklist, other States are a mixture.

In the USA and UK publishers sell directly to schools as the market is larger and distribution is less costly. In Australia generally the publishers sell to specialist distributors/booksellers due to a smaller market and extensive distances for distribution.

EE sales as a distributor/bookseller are approximately \$6,000,000.00 per annum or 6% of the total market. The largest distributor/bookseller is Campion with 60-70% of sales.

Some publishers do sell directly to schools for book-hire and may discount the price to increase market share. This has been a trend for these publishers to take the easy sales.

At present the products are:

Textbook, textbook + digital copy, digital copy only which is the growth product.

In line with all facets of business the major growth in education distribution/publication has been in the digital area. For several years a number of distributors/booksellers have been attempting to devise a single log in system so as to save students the difficulty of remembering passwords for different digital products.

Copyright Agency Limited (CAL)

CAL has formed a retail entity called Learning Field (LF) (reference 1 and 2) for the purpose of selling complete digital textbooks.

LF has approached major publishers with a proposal (Reference 5) for the publishers to join in direct selling of digital textbooks.

CAL has invited a limited number of publishers to initially join LF (Reference 5) which has now increased to represent 93% of the digital textbook publishers. The Guidelines (Reference 6) do not appear to provide any mandate for this conduct.

LF has provided a trial of digital textbooks and a digital textbook sale proposal to two existing customers (Reference 5) – St. Andrew's Cathedral School, a booklist school and Danebank Anglican School, a book-hire school.

LF has advertised two options (Reference 3) – Pay \$160 and obtain up to 5 core digital textbooks or Pay \$250 and obtain core digital plus additional digital textbooks.

LF has advertised (Reference 4) for a Business Development Manager to exploit sale and delivery of digital textbooks. The publishers have agreed to supply their digital textbooks free of cost to LF and in return they will share the net proceeds in proportion to a market share formula. This equates to a profit sharing arrangement or dividend which it would appear the guidelines (Reference 6) do not provide a mandate for.

Submission

1. The LF Proposal (Reference 5) offers to improve publisher returns, address third party threats and allow industry to control its digital future. It seems that the guidelines (Reference 6) provide no mandate for this to occur.
2. In the opinion of EE LF affects the market in an anti-competitive way in that:
 - (a) With 93% of the publishing market LF already has the capacity to dominate the market and even to monopolise it.
 - (b) 93% of the publishers have been invited to join LF thus excluding minority publishers from access to the rapidly expanding digital market.
 - (c) Distributors/booksellers such as EE are also excluded from the market.

- (d) The entry into the digital market by LF means that only those publishers who sign up will have access thus creating a monopoly for those publishers. This in turn will lessen completion and reduce choices for consumers.
3. Without access to the digital market it is extremely likely that small publishers/distributors/booksellers such as EE will be forced to close.
 4. I do not believe that conduct of this kind on the part of a Government Agency should be tolerated or accepted.

Yours Faithfully,



R.G. Stephenson

Director

References –

Reference 1	Media Release: Publishers Combine For World First Education Platform.	1 Page
Reference 2	LearningField: Key Features	1 Page
Reference 3	LearningField: Services and Pricing	1 Page
Reference 4	LearningField: Advertisement for a Business Manager	1 Page
Reference 5	LearningField: Proposal for Distributing Digital Textbooks to Australian School Students.	10 Pages
Reference 6	Copyright Amendment Act (1969) Declaration of Collecting Societies – Guidelines.	2 Pages

Reference 1

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MEDIA RELEASE: PUBLISHERS COMBINE FOR WORLD FIRST EDUCATION PLATFORM

Copyright Agency has today introduced LearningField.com.au, a world-first subscription based digital education resource for Australian high school teachers and students.

LearningField provides an unparalleled model of choice for teachers to tailor resources to meet specific student needs.

Initially in conjunction with four leading publishers Cambridge University Press, Jacaranda (Wiley), Oxford University Press and Pearson, LearningField provides a resource-rich digital platform which allows teachers to select the best material to support the differing needs of Years 7-10 students across all subject areas. At launch, the service will include a full range of digital content from Australian publishers.

LearningField Director, Copyright Agency's Ben Heuston, says, "Australian teachers are constantly searching for high-quality content to enhance learning. LearningField aims to meet that demand by providing aggregated content from credentialed educational publishers in an easy-to-use platform along with added extras, such as collaboration tools for assigning work.

"We want to improve learning outcomes by providing choice. When the teacher can pick the content that best suits their students' needs, the student is more engaged and that improves outcomes," says Mr Heuston.

The system, which has been trialed at a number of schools in Victoria and NSW in the past few months, "has generated an overwhelmingly positive response from teachers and administrators," Mr Heuston says.

Sarah Cullinan, who has co-ordinated the trial at North Geelong Secondary College, is delighted with the flexibility that the platform offers. "LearningField has been fantastic for our Year 9 students as it allows them access to four textbooks per subject when they previously only had one. From a teaching perspective this is a huge advantage as we are able to differentiate the learning tasks for the students and provide different students with different work depending on their needs."

Both teachers and students have reported high levels of engagement with LearningField. "LearningField is an exciting leap forward in e-textbooks for schools and has been enthusiastically adopted by our staff and students," says IT Manager at Penleigh and Essendon Grammar School, Brenton Harty.

For a single subscription fee, students and teachers can access the combined resources developed by Australian publishers by chapter or whole text and with advanced search functions. The content is mapped to the Australian curriculum, State curriculums and the NSW syllabus. It also provides single sign on with anywhere, anytime access including iPad, Android and PC readers.

Copyright Agency CEO, Jim Alexander, says "LearningField represents real innovation and a focus on providing wider access for teachers and students to the best Australian educational content."

Until launch, access to the LearningField site is by invitation only.

Further detail on LearningField can found [here](#).

Contacts for more information [here](#).

20 August 2013

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Reference 2

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KEY FEATURES

0

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Here's what you get if you sign up to LearningField.



Choice and Flexibility	<u>LearningField</u> is available as full textbooks and by individual chapters. Teachers have the freedom to choose between chapters from different textbooks, or even chapters from different year levels to suit individual students needs.
Subscription Access	<u>LearningField</u> is available on subscription, so gives the value of choice and flexibility. Users have "all you can eat" access within the offer and are not restricted to individual texts or a set number of chapters.
A Single Log-in	No need to manage multiple log-ins to multiple sites, a single log-in provides access to all the content regardless of what device is used. This makes access simple and efficient for both teachers and students.
Select and Send	Using a one step process teachers can assign a resource to a student - making digital fulfilment of resources quick and easy.
Access	You can access <u>LearningField</u> anywhere, anytime on a range of devices –iPad, Android and PC with more to come. Access the content at school or at home, online or offline.
Quality Content mapped to the Australian Curriculum	The content is mapped to the Australian Curriculum and the State variants. Teachers can refine search items by strands or sub-strands and search results provide the most relevant chapters. Save time getting to the content you need quickly. Teachers can also rate and recommend content, making it easier for other users to find the best material for their classes.
Superior Support	We develop a comprehensive support plan depending on the needs of a school. Our Support Managers work with you one on one to implement <u>LearningField</u> into the classroom.
Collaboration and Engagement	<u>LearningField</u> makes it easy to bring collaboration tools into the classroom. With <u>LearningField</u> you can start discussions, make announcements and assign homework. Users can also take notes, highlight text and share with others. Notes can also be collated.
Create Individual Learning Paths	With the flexibility of resources and collaboration tools combined, it makes it easier for teachers to individualise learning paths for students – taking advantage of how digital learning was meant to be.

13 August 2013

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SERVICES AND PRICING

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We offer two levels of subscription to LearningField.



Offer	Price per student per annum (including GST)	Provides access to <u>LearningField</u> material for:
Core Subject Offer	\$160	English, Mathematics, Science, History & Geography.
All Subject Offer	\$250	Core Subject Offer material + other elective subjects across The Arts, Languages Other Than English, Technology, Human Society and its Environment, Religion and PDHPE/PASS.

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Reference 4



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Job Summary

Business Development Manager: LearningField

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Job Description

Full time role: Business Development Manager

Exciting Sales opportunity to grow and build an industry solution revolutionising the consumption of digital School's content. Integral team member in a fast growing digital business within a well funded member organisation Melbourne-based with an excellent balance between remuneration, hours and benefits

LearningField, a new digital platform initiative provides a single place for the delivery and consumption of Digital content, supported by the leading School Publishers. We are looking for a talented, results focused and enthusiastic Sales Manager to play a pivotal role in its next round of its growth in the Australian marketplace.

The successful candidate will be highly motivated with excellent communication and organisational skills and have the ability to source new business and deliver superior customer service. A passion for learning and great selling skills are essential. The ability to build, maintain and grow relationships with both internal and external stakeholders and achieve sales goals is required. Some interstate travel is expected.

The successful candidate will be enthusiastic about promoting quality online resources, driving student outcome improvement and supporting teachers to do the same.

Some of your responsibilities will include:

- Developing new prospects and selling this best in class offering in a complex solution sale;
- Achieving KPIs and sales targets;
- Supporting the training and implementation of an intuitive online product with teachers, students and schools; and
- Building short term tactical and long term strategic plans for the sales of the LearningField solution

You would report to General Manager of the business, and be a key driver of its overall success. Over time, as the business grows, there would be an opportunity for the successful candidate to progress into a Sales Management role and bring on and support your own sales team.

The ideal candidate will be able to start immediately.

We offer a competitive and flexible salary package, including an uncapped bonus plan, commensurate with your skills and experience. This is a full-time role, although a four day a week part-time arrangement would be considered for an exceptional candidate.

Please forward a cover email clearly articulating your fit for this role and your CV to Bheuston@copyright.com.au by Wednesday June 19 2013

Please note that this role is based in Melbourne, and is only available to Australian and New Zealand citizens or Permanent Residents.

[Apply Here.](#)

Employment Agency: Copyright Agency

Job Source: LinkedIn

Job Location: Melbourne Area, Australia

Date: more than 1 month ago

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Distributing digital textbooks to Australian school students

LearningField: The digital distribution platform for Australian secondary school textbooks

- Servicing customer needs better – choice, single sign-on, all in one place
- Industry platform open to all publishers at improved returns than traditional models
- Address third party market threats and allow the industry to control its digital future
- Copyright Agency is doing this on behalf of the industry to serve its members

The LearningField offer has six key elements

1 **Quality Content**
All you can eat subscription access to quality publisher content

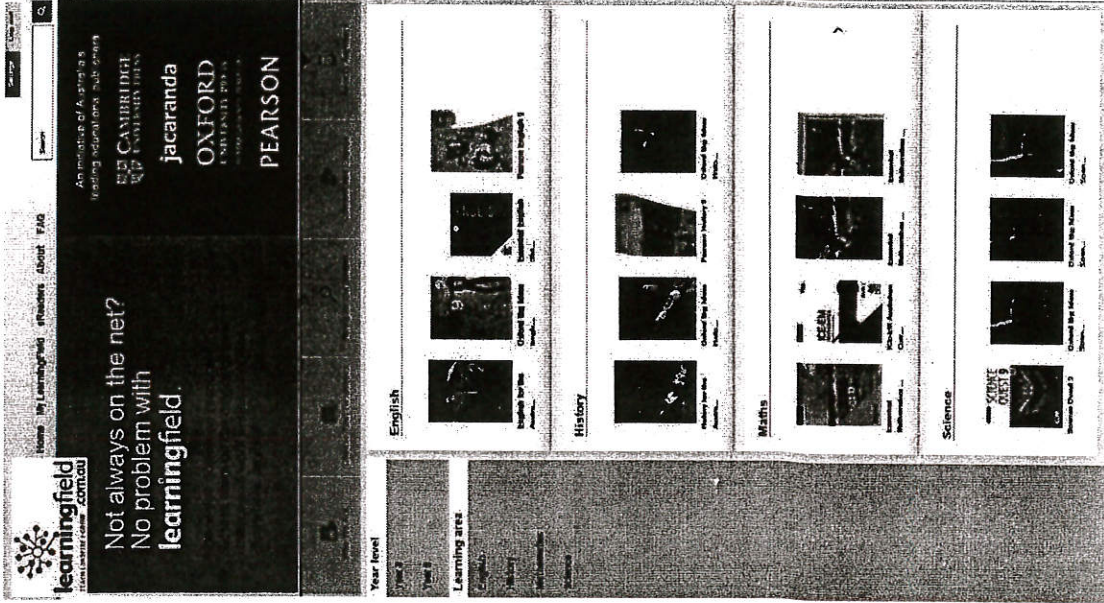
2 **Context**
Mapped to the Australian Curriculum and State variants, rated and recommended by teachers

3 **Flexibility**
Content choice across subject, infrastructure, device & teaching styles





4 **Access**
Single sign on with online and offline access on multiple devices

5 **Engagement**
A learning space to manage class groups

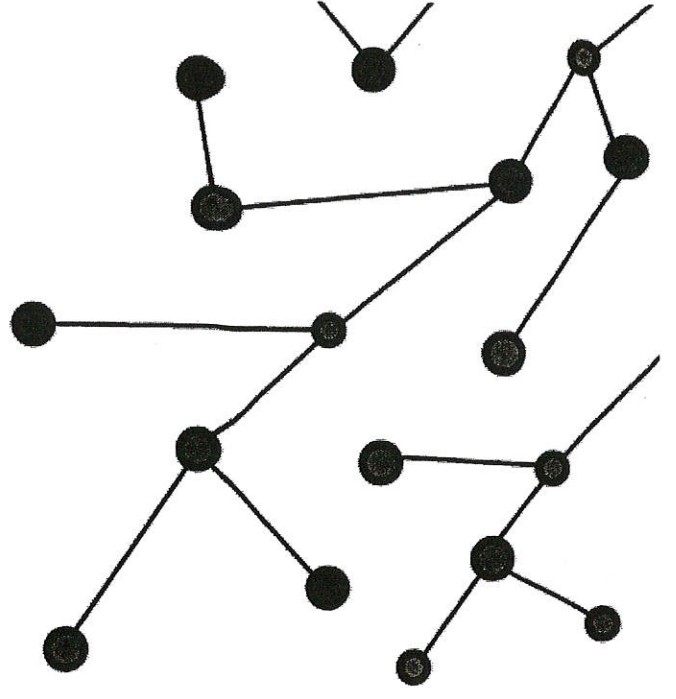
6 **Support**
School IT environment, in depth teacher training, ongoing support and feedback loops



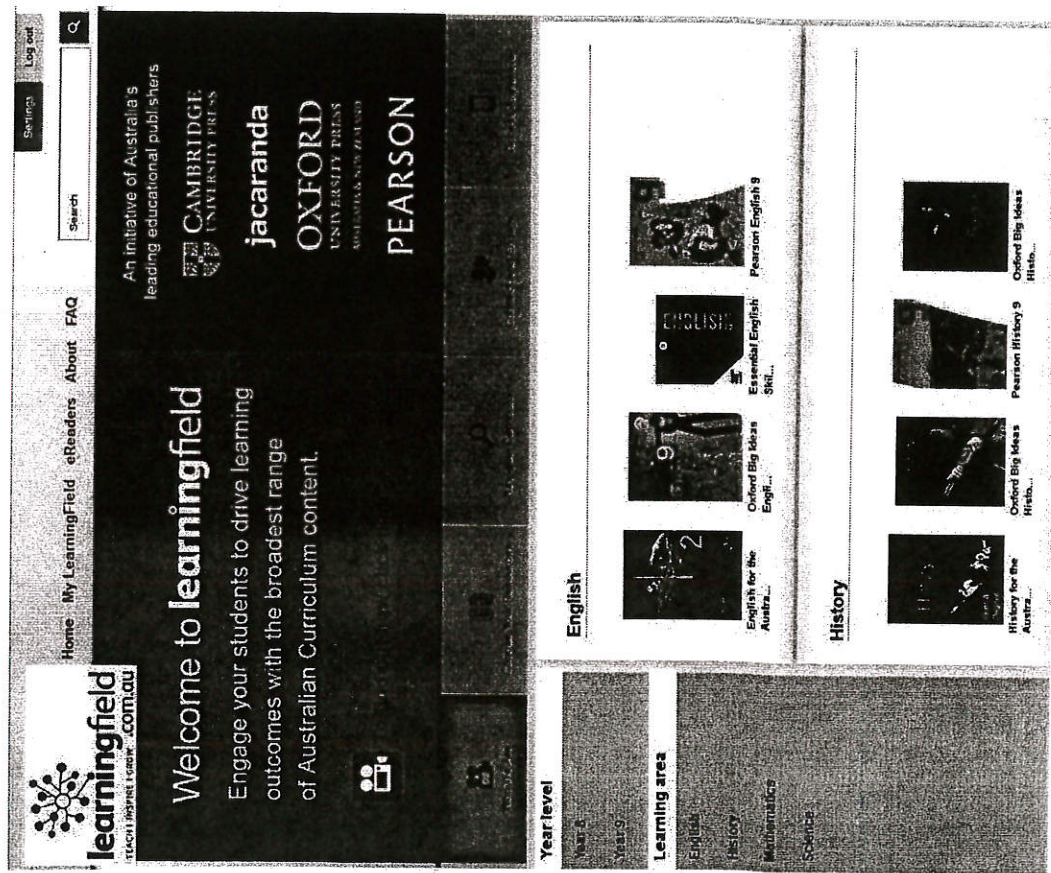
Feedback to LearningField has been overwhelmingly positive to date

 <p>"A subscription model – absolutely. It suits the way better teachers teach and you have the whole book for less able teachers."</p> <p>Chris Waterman Director ICT</p>	<p>"It's very good. I have been impressed by the level of support and this product works. We are looking for a one stop shop"</p> <p>Matt Hall Head ICT</p> 
 <p>"It is a reasonable price [the \$160 bundle]. I think I can organise to make it happen and get the parent body to agree."</p> <p>Maria Christoforatos Digital Resources Co-ordinator</p>	<p>"Conceptually I like the idea. Choice is your best selling point...teachers like to pick and choose chapters."</p> <p>Richard Ford Head of Learning</p> 

Demonstration of Platform



LearningField provides all-you-can-eat subscription access to quality publisher content



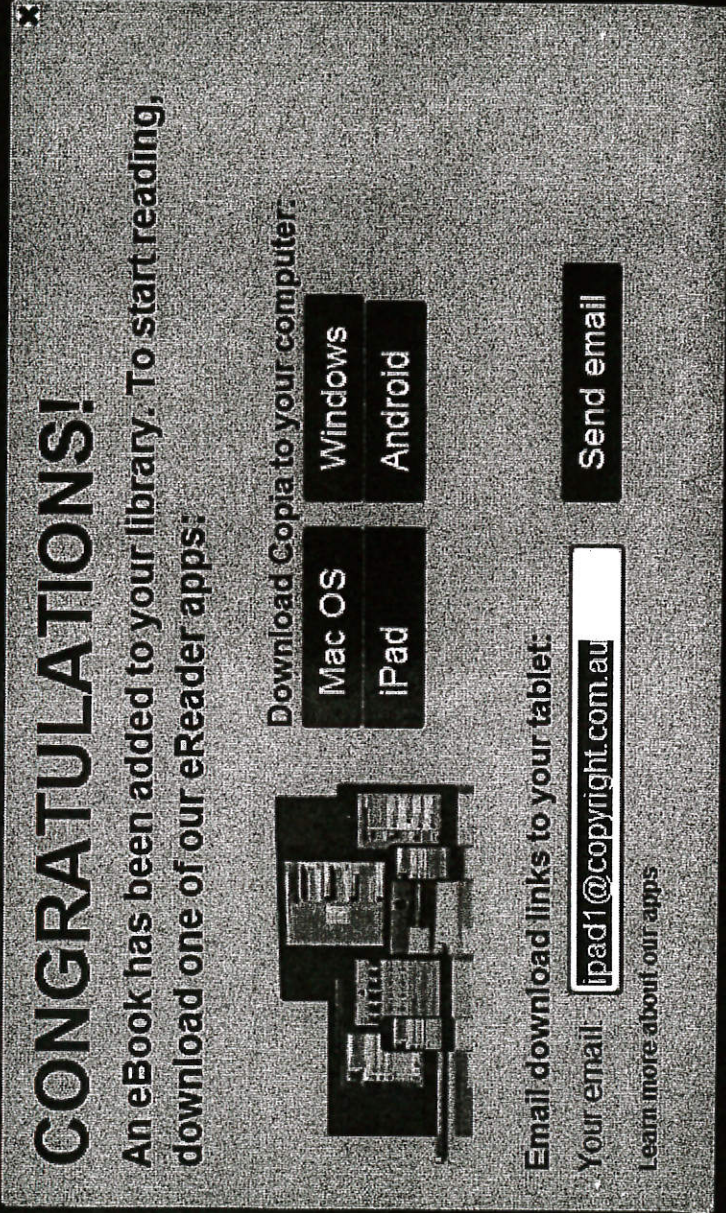
Content is mapped to the Australian Curriculum, rated and recommended by teachers

The screenshot shows the LearningField website interface. At the top, there is a navigation bar with links for Home, My LearningField, eReaders, About, and FAQ. A search bar is located on the right side of the navigation bar. Below the navigation bar, the main content area displays search results for the keyword 'History'. The results are organized into a list of 6 matches. Each match includes a small thumbnail image, a title, and a brief description. The matches are as follows:

- 1** Oxford Big Ideas History 9 Australian Curriculum Workbook
eBook | Oxford University Press
Relevant chapters: 5.0 World War I (1914-1918) | Get chapter | see 8 more v
- 2** Oxford Big Ideas History 9 Australian Curriculum Student Book
eBook | Oxford University Press
Relevant chapters: 5.0 World War I | In your library | see 10 more v
- 3** History for the Australian Curriculum Year 9 Electronic Workbook
eBook | Cambridge University Press
Relevant chapters: Chapter 7 World War I (1914-19) | In your library | see 7 more v
- 4** History for the Australian Curriculum Year 9
eBook | Cambridge University Press
Relevant chapters: Chapter 7 World War I (1914-19) | In your library | see 9 more v
- 5** History Alive 9 for the Australian Curriculum
eBook | John Wiley & Sons Australia

On the left side of the screenshot, there is a sidebar with the LearningField logo and tagline 'TEACH | INSPIRE | GROW .com.au'. Below the logo, there are sections for 'Year level' (Year 3, Year 4, Year 5) and 'Learning area' (English, History, Mathematics, Science).

**Content is accessed through a single sign on
with anywhere, anytime access**



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LearningField provides a learning space to manage class groups

The screenshot displays the LearningField website interface. At the top, there is a navigation bar with links for Home, My LearningField, Readers, About, and FAQ. A search bar and user profile information (Settings, Log out, (0) messages) are also present.

The main content area is divided into two sections:

- My Groups:** A list of groups including 'Science Year 9' (Private | Library: 3 | Members: 10) and 'History Year 9' (Private | Library: 4). Each group entry includes a description and a 'Member' button.
- My LearningField Activity Feed:** A feed of activity posts from Louise Adler, including:
 - Reading 'History for the Australian Curriculum Year 9, page 5' on Feb 20 at 6:21 PM.
 - Reading 'History for the Australian Curriculum Year 9, page 5: powers in a late' on Feb 20 at 6:21 PM.
 - Reading 'Pearson Science 9' on Feb 20 at 5:48 PM.
 - Reading 'Science Quest 9' on Feb 20 at 5:48 PM.
 - Writing a note in 'Oxford Big Ideas Science 9 Australian Curriculum Student Book, page 14' on Feb 12 at 6:49 PM.

At the bottom of the page, there is a footer with the LearningField logo and the tagline 'TEACH | INSPIRE | GROW' followed by the website URL '.com.au'.

COPYRIGHTAGENCY

Next Steps

- Content Licence Agreement
 - Standard contract
 - Non exclusive licence
 - Secure download
- Supply content
 - Copyright Agency ingests into LearningField
 - Copyright Agency maps to Australian Curriculum and to State variants with your help

Reference 6

Copyright Amendment Act (1989) Declaration of collecting societies Guidelines

As set by the Attorney-General's Department, June 1990

OUTLINE

This document deals with requirements for declaration of collecting societies under:

- Part VA (educational copying of broadcasts); and
- Part VB (educational photocopying).

It also covers matters that might give rise to the withdrawal of the declaration of a Society.

A need for regulation arises from the monopoly position conferred on declared societies to operate the above schemes.

Fundamental objectives of regulation are to ensure:

- that each society diligently collects all money to which it is entitled, and none to which it is not;
- that the society manages its operations efficiently and does not incur improper expenses;
- that the distribution of royalties to relevant copyright owners is fair, and is seen to be fair;
- that the society maintains an even hand as between current and future beneficiaries.

In sum, the requirements are directed to efficiency, honesty and equity.

A degree of control could be achieved by means of existing laws relating to companies, fraud, winding up, and so on. But Parliament clearly expects a higher standard of the collecting societies. In some instances therefore the requirements go beyond the general law, while in other cases they appropriately re-emphasise standards contained in general law.

It is important to understand that the detailed requirements for declared collecting societies operate at a number of distinct levels:

1. requirements of the Act directly concerning the society's behaviour, eg. those relating to rights of membership and the provision to the Attorney-General of annual reports, etc, and alterations of rules;
2. requirement of the Act that the rules contain a certain provision, *namely prohibition on the payment of dividends*;
3. requirements of the Regulations that the rules contain certain provisions, eg. a provision limiting the percentage of revenue which can be given for cultural or benevolent purposes. These provisions must be provisions (in the words of the Act) "necessary to ensure that the interests of the collecting society's members who are relevant copyright owners or their agents are protected adequately", and must include provisions about a number of matters stated in the Act.

It should be noted that, in imposing requirements as to the provisions of the Society's rules, (2) and (3) above are bringing to bear the existing law governing the obligations of companies to comply with their rules.

4. mere "guidelines" which may relate directly to the society's behaviour, eg. requirement of "even-handedness", or which provide guidance on the Attorney-General's interpretation of the laws referred to in (1), (2) or (3) for the purposes of exercising his or her discretion to declare a collecting society.

In the detailed notes which follow, references are given where appropriate to the Act or Regulations to indicate the level at which each requirement operates. Notations of the form: "Act para (a)" are references to the stated paragraph in each of ss. 135P(3) and 135ZZB(3), which relate respectively to the two schemes. Notations of the form: "Regs para (a)" are references to the stated paragraph in each of rr. 23J(1) and 23JM(1), which also relate respectively to the two schemes.

The detailed requirements are necessarily expressed in general language in places. Once established, societies will need to make their own interpretations. Neither the Attorney-General nor his or her Department has power over a society's day-to-day operations or decisions, notwithstanding the statutory requirements to report to the Attorney-General and notify changes in rules. Only where the Attorney-General or the Department becomes aware of conduct by the Society that may constitute non-compliance with the Act, regulations or other guidelines, will the society's attention be drawn to the possibility that the conduct might constitute grounds for revocation of its declaration.

DETAILED GUIDELINES

1. Guarantee Company (Act para (a))

The society must be a company limited by guarantee and incorporated under a law in force in a State or Territory relating to companies.

2. Membership Rights (Act para (b))

Membership should be open to all "relevant copyright owners" or their agents. (In the case of Part VB, this stipulation relates to the *class of relative copyright owners in respect of which the society seeks declaration*, or their agents.) It would not be acceptable to *impose* any substantive collateral conditions, eg. that members *assign* rights to the society, or agree to constitute the society as their collecting agent for any other purpose. In particular, it would not be acceptable to *require* members to constitute the society as exclusive licensee (so as to prevent parallel licensing by the owner). It would not be acceptable to require that members assign to the society rights to collect royalties from equivalent foreign schemes. The society's monopoly relates to operation of the statutory scheme only. Purely procedural conditions (eg. completion of an application form listing repertoire) would be acceptable. It would also be acceptable to require an agent purporting to act on behalf of a principal (author) to indemnify the society against claims from the author in respect of any money distributed to the agent.

3. Dividends (Act para (c))

The society's rules must prohibit the payment of dividends to its members.

4. Voting Rights

The society's structure should be such as to avoid the potential for, or appearance of, victimisation of minority shareholders, eg. those represented directly rather than through other collecting societies.