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Ms Kay Collins
Director
Intellectual Property and Competition Review Committee Secretariat
Attorney-General's Department
Robert Garran Offices
BARTON ACT 2600

**INTELLECTUAL PROPERTY AND COMPETITION REVIEW COMMITTEE
CAL'S RESPONSE TO THE INTERIM REPORT**

1. Introduction

- 1.1 The Copyright Agency Limited is pleased to provide its comments on the Interim Report of the Intellectual Property and Competition Review Committee. This submission also includes the further information requested by the Committee at the Committee's public meeting on 3 May 2000, and at the meeting between the Committee and NCIA representatives on 17 May 2000.
- 1.2 If the Committee has any questions or requests for further information regarding the matters raised in this submission, CAL will be happy to assist in providing that information.

A. PART A - MAJOR AREAS OF COMPETITION IMPACT

2. Parallel Importation

- 2.1 CAL has no substantive submission at this stage on the matters raised by the Committee in relation to the parallel importation of copyright material.
- 2.2 However, CAL draws the Committee's attention to the discussion paper prepared by Megan Richardson for the Centre for Copyright Studies on *The Benefits and Costs of Copyright; An Economic Perspective*. This report discusses the justification for restrictions on parallel importation. A copy of the Discussion Paper, which is currently being finalised, will be forwarded to the Committee shortly.
- 2.3 At the Committee's public meeting, the difference between intellectual property rights and ordinary property rights which provides justification for the special treatment of intellectual property goods was discussed. The main

question appeared to be whether this difference provided sufficient justification to place restrictions on parallel importation into Australia of intellectual property based goods.

- 2.4 Both the existence of clearly defined property rights and the ability to enforce them is essential to a properly functioning market. CAL draws the Committee's attention to the discussion of this issue in the Frontier Economics Report. Following our meeting with the Committee on 17 May 2000, Frontier Economics is preparing a further short submission. A copy of this further submission will be forwarded to the Committee in the near future.

3. Section 51(3) of the Trade Practices Act.

- 3.1 CAL understands that the Committee's recommendation in relation to s.51(3) of the Trade Practices Act is to delete s.51(3) from the Trade Practices Act and insert an express provision in the Copyright Act (and into other intellectual property statutes) to the effect that a condition in a licence or contract relating to the subject matter of copyright will not contravene Part IV of the Trade Practices Act, unless the effect of the condition is to substantially lessen competition in the relevant market.
- 3.2 CAL is still considering this proposal, and may wish to make a further submission to the Committee on this matter in the future.
- 3.3 In the part of its Interim Report dealing with s.51(3) of the Trade Practices Act, the Committee discusses the compulsory access regime contained in Part IIIA of the Trade Practices Act.
- 3.4 The Committee's discussion of the relevant essential services provisions and the operation of collecting societies raises many interesting issues to do with the ownership and rights to the use of intellectual property assets.
- 3.5 The formal regulation of markets should be undertaken with the goal of economic efficiency (including allocative efficiency) as its basis. The efficient allocation of resources is to be taken into account in determining relevant competition policy between the Commonwealth and the Australian States and Territories in accordance with clause (1) (3) (j) of the Competition Policy Agreement. CAL submits that principle should have equally important focus in this policy discussion.
- 3.6 In undertaking its core task of providing effective copyright licensing for consumers and providing payments for copying to copyright owners, CAL's operations involve three major internal processes; licensing of copyright works, managing records of copying and collecting and distributing the license fees to the relevant copyright owner.
- 3.7 A fundamental aspect in understanding the efficiency of the operation is that these internal processes are inextricably linked. If CAL were to conduct the

same function with third party access being provided to these processes by formal regulation, then it would only be at the expense of allocative efficiency. To operate at less than optimal economic efficiency obviously does not benefit the consumer or the public.

- 3.8 The purpose of microeconomic reform and the opening of markets to competition is to ensure the better matching of costs and benefits in a particular market. Maintaining government intervention in the form of compulsory licences continues to create inefficiencies and distorts the effective functioning of the market for supply of copyright works.
- 3.9 A further issue the Committee might consider is that the compulsory licences contained in the Copyright Act address the same public interest as Part IIIA by providing “third party access” to copyright owners material.
- 3.10 In CAL’s submission, such compulsory licences should only be permitted in the same limited circumstances as the ACCC can use to compel access as set out in Part IIIA of the Trade Practices Act, and protect the interests of the copyright owners through the payment of an access fee. For this reason, CAL opposes compulsory licences with no mechanism for the payment of a fee to the copyright owner, for example, copying by libraries.
- 3.11 CAL understands the public interest justifications for exceptions to copyright rights. However, our submission is that the existence and structure of compulsory licences, particularly those with no payment mechanism has a significant effect on the competitiveness of the copyright owners market.
- 3.12 This is particularly so when the coordinated manner in which libraries undertake copying under the exceptions is considered. Because of the coordinated nature of library supply and the lowered transaction costs for libraries from this network, a publisher or CAL cannot compete with library supply of copyright material.

4. Patents

- 4.1 CAL has no comments on the part of the Committee’s report dealing with the patent system.

B. PART B - OTHER AREAS OF COMPETITION IMPACT - THE COPYRIGHT ACT

In this part of the Submission, CAL's headings and comments follow the order in which the Interim Report discusses the issues.

5. Fair Dealing in the Digital Environment

- 5.1 CAL notes that the Committee has formed the opinion that in the face of the many factors which will affect, or potentially affect the market for copyright works, including technological changes, it is premature to alter the balance struck in the Copyright Act between owners and users of copyright material. The Committee notes that there are no demonstrable reasons at this stage for altering the current legislative approach.
- 5.2 CAL believes that the Committee's view is misconceived. There are sufficient indications of the impact on markets for copyright works of technological changes that a reassessment of the supposed balance is urgently needed.
- 5.3 The role of government is to ensure that markets are allowed to develop and that they operate efficiently. If they do not operate efficiently, it is at that point that the government may choose to intervene. However, the government's intervention in the form of the Digital Agenda Bill will have a significant detrimental effect on development of the relevant market.
- 5.4 It is currently proposed to assess the impact of the new compulsory licences on the market for copyright works in the three year review of the Digital Agenda Bill reforms. In CAL's submission, the effect on the market in this period will be serious. CAL submits that a preferable course is at this stage to limit the scope of exceptions to copyright.
- 5.5 This approach would ensure that the exceptions do not distort the development of the market for digital works. If, once the market develops, and it is found not to be operating to the public benefit, then it is at that point that government intervention may be necessary.
- 5.6 As a parallel, CAL notes that the current exceptions, including the deemed "reasonable portion" provisions (in the library and education compulsory licences) are government's response to the access limitations inherent when works are in a paper format. Such access limitations are not present in a digital environment, and consequently, compulsory licences framed in a similar way are inappropriate.

6. The Digital Agenda Bill

- 6.1 Copyright owners have made representations to government in respect of the Digital Agenda Bill. Their concern is that the copying permitted by the free

copying exceptions will prevent them from being able to compete in the market for the supply of copies of their own works.

- 6.2 As discussed above, barriers to competition by publishers already exist in the supply of photocopies of articles and chapters of books to users. The exceptions permit libraries to supply an article to any user who requires it for the purposes of research or study. The library may charge their own costs to users. These costs do not include a fee to the copyright owner. No assessment of whether or not the dealing is fair is required.
- 6.3 The measures in the Exposure Draft referred to by the Committee were introduced into the Bill because of a policy recognition that in a digital environment the copies supplied by libraries will be an exact reproduction of the original.
- 6.4 A further measure directed to this issue is the inclusion of a definition of a library in the Bill.
- 6.5 CAL understands that the public interest behind the compulsory licences for libraries is to permit non-profit libraries to supply copies to disadvantaged users or in ways which do not conflict with the copyright owner's market. This public interest argument is not relevant to the making and supplying of copies by and for corporate libraries.
- 6.6 By virtue of the library copying provisions in the Copyright Act, corporate libraries are able to free ride in the market for the supply of copies of works. For this reason, CAL opposes any extension of the existing compulsory licence for libraries to permit digital copying.
- 6.7 The Committee refers to the discussion in the Report of the Standing Committee on Legal and Constitutional Affairs (LACA Committee) of the application of s.49 to the on-line environment. The LACA Committee concluded that there is every reason to expect that in a short time the present arguments regarding the capacity of libraries to act as commercial publishers may prove to be correct.
- 6.8 In CAL's view, this is already the situation. The library copying provisions have impeded the development of a competitive market for the supply of various types of works, and in themselves are anti-competitive.
- 6.9 CAL notes the Committee's comments that once impediments to competition have been identified "it is then necessary to look at the costs and benefits to business (including small business) and the economy generally of those restrictions". In CAL's submission, this is exactly the exercise that would be undertaken by the Copyright Tribunal in determining which copying by libraries should be subject to the payment of equitable remuneration if our proposal in paragraph 7.9 were adopted.

7. Do the library and archive provisions of the Digital Agenda Bill restrict competition?

- 7.1 CAL rejects the Committee's suggestion that the amendments to sections 49 and 50 in the Draft Bill are sufficient to ensure that libraries will not compete with publishers in the emerging market for the on-line delivery of copyright material.
- 7.2 The suggestion seems to be based on the Committee's discussion of what is an "article" in a periodical publication in an electronic environment and the conclusion that a separately published item on a website is not an "article".
- 7.3 In CAL's submission, the Committee's approach to this question is overly technical. The conclusion is based on a misunderstanding of the way in which copyright owners will choose to market their work in the digital environment.
- 7.4 An author or publisher may choose to market an article in either (or both) manners. They may provide the article on-line separately (on their own website) and, either at the same time, earlier or later, submit the work to an e-journal for publication.
- 7.5 The Committee concludes that if an item is not first published as an article in a periodical publication it will be a "work" for the purpose of Copyright Act.
- 7.6 Because of the demand for the work to be available in each formats, the outcome is that a copyright owner will not permit their works to be first published in a periodical publication. This would have an adverse effect on the public benefit outcome of maintaining a reasonable portion definition.
- 7.7 CAL agrees that persons should be able to access works for legitimate research and study purposes. CAL's concern is that the library provisions contained in the Act (and in their present form in the Bill) are a "blunt instrument" which allow systematic free riding access to works. Such free riding is not legitimately the subject of public interest exceptions.
- 7.8 A statutory licence which operates in the same manner as the statutory educational licence would be a sensible alternative for library copying where there is a public interest in libraries being able to supply copyright material to consumers.
- 7.9 The proposal would be to tailor the library copying provisions to permit remuneration to the copyright owner the amount of such remuneration, to be arbitrated by the Copyright Tribunal. The regulations could prescribe a set of public interest considerations to be used by the Copyright Tribunal in determining any fee to apply. Different fees may apply to different users (eg corporations).

- 7.10 The Copyright Tribunal could have jurisdiction over the other relevant terms of the licence.
- 7.11 Alternatively, in CAL's submission, free library copying exceptions should always be made subject to a test of their effect on the market. This approach would ensure that the scope of such exceptions is restricted to copying which would properly be the subject of a public interest exception to copyright.

8. Assumptions on Page 61 of the Interim Report.

- 8.1 CAL has the following comments in respect of the assumptions mentioned by the Committee on page 61 of its Interim Report:

Society already provides substantial direct and indirect subsidies to the creation of copyright material.

- 8.2 CAL does not dispute that society provides subsidies for the creation of copyright material. However, copyright owners do not believe that government intervention in the market to the extent that copyright owners ability to freely trade in their works is in the public benefit.

- 8.3 CAL recognises that subsidised supply by libraries to less advantaged users is the objective of government intervention. However, we take the view that to obviate the need for further subsidies of the type mentioned by the Committee, the market must allow copyright owners to trade in their own copyright material.

The Committee is not of the view that any direct dilution effect arising from these provisions would be sufficient to reduce the output or availability of copyright material.

- 8.4 CAL respectfully submits that the Committee's view is incorrect. Already, it is clear that publishers are withdrawing from certain sectors of the Australian publishing industry. The most affected publishing sectors are scholarly journals, topic books and academic monographs.

- 8.5 Users are also concerned about the decline in publishing in these areas, in particular the decline in monograph publishing. See NLA website for more information at www.nla.gov.au/niac/meetings/rtagenda.html

- 8.6 CAL draws the Committee's attention to the work of the National Scholarly Communications Forum in particular the number of "roundtables" held to discuss the future of Australian academic publishing – <http://www.asap.unimelb.edu.au/nscf/>

- 8.7 Publishers ascribe a major cause of the decision to allocate their resources to other publishing areas rather than to scholarly publishing to the effect of

photocopying and supply of their works through the library and educational copying licences.

Creators as a class and the wider community have an interest in promoting the use, access to and dissemination of information.

8.8 CAL agrees with the Committee's conclusion. However, CAL does not believe it is the role of copyright owners to subsidise commercial access to information. If the government believes that subsidised access is necessary, then the form that subsidy should take is through a direct subsidy to the user. This would permit the market to operate efficiently in the creation and provision of information.

Library and archives play a central role in the dissemination of information.

8.9 CAL agrees with the Committee's conclusion. However, it is not the role of copyright owners to subsidise the activities of libraries and archives. If the government decides, as it has done, that libraries are a vital industry, then the government should support the library industry, rather than legislating that part of the costs of the operation of the sector should be borne by the copyright owners.

9 Background to the CLRC Report on Simplification of the Copyright Act

9.1 In addition to the areas of the CLRC Report mentioned as being of interest to the Committee, CAL suggests that the Committee also review the CLRC Report in respect of the library copying provisions and the difficulty experienced in defining a reasonable portion of an electronic communication.

9.2 In addition, the CLRC's proposal that the record keeping and marking provisions of the library copying licence be removed will further reduce transaction the costs for libraries of relying on the library copying provisions.

10 Part 1 – Exceptions to the Exclusive Rights of Copyright Owners.

10.1 CAL notes that the Committee does not agree with the recommendation of the Legal and Constitutional Affairs Committee that a "first digitisation" firewall be implemented to permit the development of functioning markets for the supply of copyright works in electronic form.

10.2 CAL opposes the Committee's recommendation that first digitisation be permitted for fair dealing purposes. The argument advanced above about the affect on the market of a library copying provisions is equally true of the fair dealing provisions.

10.3 In the course of their inquiry, the LACA Committee received many written submissions and held a number of public hearings. In the course of taking

that evidence they considered and discussed in great detail the impact of free exceptions to copyright in an electronic environment.

10.4 In the face of this evidence, they developed a sensible compromise, of ensuring that the copyright owner retained the rights of first digitisation. This recommendation should not be disregarded by the Committee.

10.5 CAL agrees with the Committee that the benefits of the simplification proposals of the CLRC does not sufficiently justify the costs and uncertainties that it entails. CAL takes the view that the CLRC recommendations go far beyond simplification and involve radical changes to the balance between the rights of copyright owners and the interests of copyright users.

11 Part 2 – Categorisation of Subject Matter and Exclusive Rights and Other Issues.

11.1 CAL endorses the Committee's comments on Part 2 of the CLRC Report that the government, in its consideration of the CLRC Report should pay regard to whether the benefits to the community as whole of such a simplification are outweighed by the potential costs due to the uncertainty surrounding the operation of new regime.

12 Collecting Societies

12.1 CAL endorses the Committee's comment that appropriate mechanisms for enforcing copyright owners rights, including collective management and enforcement should be part of a functioning market for the supply of copyright material.

12.2 Of course the degree to which CAL or other collecting societies exercise significant market power depends on the definition of the "market". For example, the relevant market may be the market for a particular book, or for books in a particular subject area, rather than for "photocopies of works". Further, collecting societies differ from individual copyright owners in that they cannot refuse to supply the work and they do not set prices, which is done through the Copyright Tribunal.

12.3 Consequently, new and second hand copies of these works compete with photocopies made under the statutory licence. As a non-exclusive agent, CAL also competes with direct licences from the copyright owner. CAL draws to the Committee's attention to the CONFIDENTIAL report by The Allen Consulting Group prepared for the purpose of CAL's Copyright Tribunal application with universities which analyses the market in these terms.

12.4 With the emergence of the internet and the electronic dissemination of works, the market for copyright licences and clearance becomes international. For example, copyright users in Australia can obtain on-line

clearances from copyright owners and document delivery services which will authorise the copying of works in Australia.

13 Collecting Societies and Competition Policy

- 13.1 In this part of its Interim Report, the Committee quotes extensively from the submission made to it by DCITA. In CAL's view, many of the opinions and conclusions expressed in the DCITA submission are based on misinformation about the relationship between collecting societies and their members, and a misunderstanding of the role and function of declared societies. CAL is preparing a separate response to the matters raised in the DCITA submission. We will make that response available to the Committee in the near future.
- 13.2 The DCITA submission claims that there is a lack of available information about the evaluation of the administration of rights, even whether creators are operating outside collecting society structures. CAL appreciates that such information is of interest to a wide spectrum of groups in the community. However, CAL is also conscious of the privacy implications of providing access to much of the information it holds.
- 13.3 Where CAL can provide access to its operational statistics regarding membership, collection and distribution it does so. CAL's goal is to make the information available in a way which does not identify private information regarding individual payments to individual copyright owners, but does provide meaningful information to others.

14 Review Mechanisms for the Operation of Collecting Societies

- 14.1 On page 72 of its Interim Report, the Committee makes three recommendations regarding collecting societies. CAL has the following comments in relation to those recommendations.

Recommendation 1. The Committee is inclined to recommend that the wider economic aspects of a collecting society's conduct should also be taken into account in reviewing a society's declared status and in particular determining whether the society is "functioning adequately" as a collecting society. Issues such as the adequacy of the societies dispute resolution mechanisms could play a part in this evaluation.

- 14.2 CAL agrees with the Committee's recommendation. In our view, the wording in the Act, the approach taken by the Attorney-General, and the obligations imposed by the Corporations Law and trust law mean that the recommendation of the Committee already applies.
- 14.3 Certain submissions to the Committee assert that the role of the Attorney-General in the review of the declared status of collecting societies does not provide sufficient supervision of the activities of declared societies.

- 14.4 As a declared society, CAL's experience of the prudential supervision by the Attorney-General is at odds with these assertions. CAL meets regularly with representatives of the Attorney-General's department regarding aspects of our operation and concerns about aspect of the statutory licences.
- 14.5 CAL also regularly responds to requests from the Attorney-General regarding aspects of the administration of Part VB. For example, last month the Attorney asked CAL about the requirement that copyright owners be members before payments can be made to them for copying under the statutory licence.
- 14.6 However, because of CAL's view that it is undesirable that the responsibilities and obligations of declared societies are not contained in a single "plain English" document, CAL supports the development of a code of conduct for declared societies. The analysis of responsibilities (the 8 requirements) set out in the DCITA submission provides a useful summary of these existing obligations.

Recommendation 2. The Committee supports the CLRC's draft recommendation and is of the preliminary view that all licensing arrangements administered by collecting societies (including voluntary licences) should be included in any review mechanisms regarding collecting societies.

- 14.7 CAL supports the Committee's recommendation in this regard. For many years CAL made this submission to government. We are pleased that the CLRC and the IPCR support our approach.

Recommendation 3. The Committee is also inclined to support the CLRC's draft recommendations that a society's input agreement not be subject to the review of the Copyright Tribunal. The Committee believes that at the very least, the societies input arrangements should continue to be subject to review by competition bodies such as the ACCC and the Australian Competition Tribunal. In taking this view, the Committee notes that these arrangements may distort competition between producers of copyright material and may distort the allocation of resources to the production of copyright material.

- 14.8 CAL supports the Committee's conclusion, subject to our comments at paragraph 15.2 below.

15. Committee Proposal for Further Review

- 15.1 On page 73, the Committee comments that the above recommendation is linked to the Committee's deliberations on the options for amending s.51(3). The Committee indicates that its view is that at least some aspects of the operations of the collecting societies should be subject to ACCC authorisation on a periodic basis.
- 15.2 At its public meeting on 3 May 2000, the Committee seemed to suggest the view that the review by the ACCC of input arrangements would be through

existing mechanisms. CAL would strongly resist the proposal that authorisation by the ACCC be a requirement before a collecting society could operate because of the regulation that already exists and the inordinate cost of the authorisation procedure.

16 Declaration of Collecting Societies for the Statutory Licences

- 16.1 On page 74, Committee indicates that it is inclined to recommend that the statutory licence provisions should permit the declaration of more than one collecting society for each class of rights holders.
- 16.2 CAL notes, however, that the result of the Committee's recommendation would result in serious practical difficulties for copyright owners and copyright users. The recommendation, if implemented, would increase transaction costs to the extent that these costs outweigh the pro-competitive benefits of such an arrangement.
- 16.3 In considering this issue the Committee should review the history of the statutory licence in Part VB of the Copyright Act.
- 16.4 The statutory licence was introduced in 1981. At this time there was a market failure in the market for supply of copies of works to educational institutions. This was in a large part due to the move away from text based teaching to resource based teaching, which led to demand for photocopies of a range of text based resources. This demand was coupled with the sizeable transaction costs incurred in obtaining permission to copy.
- 16.5 Because of the minimal risk of detection, and the small penalty if detected (the equivalent of the licence fee payable) the opportunity cost of infringement was very low, so most users copied anyway.
- 16.6 The government's purpose in intervening in the market and legislating for a statutory licence was to stimulate the development of a functioning market.
- 16.7 However, because of the form taken by the 1981 licence with its onerous compliance and administration costs, the transaction costs of relying on the licence were still significant. Consequently, a functioning market did not emerge until the Copyright Agency Limited began to administer its own contractual licence on behalf of its member copyright owners in 1986.
- 16.8 Concern expressed by educational institutions that CAL did not represent all copyright owners whose works they wanted to copy led the government to introduce the declared society concept into the statutory licence in 1990.
- 16.9 The above history suggests that the efficiencies gained from a single declared society outweigh the pro-competitive benefits of multiple societies because the single representation by one society enables the scheme to operate efficiently.

- 16.10 CAL also refers to MCEETYA's comments at the Committee's public meeting that for reasons of efficiency, schools and TAFE's preferred to deal with only one society.
- 16.11 This view, in CAL's submission, is due to uncertainty concerning the repertoire of each collecting society and the calculation of the fees owing to each collecting society for copying of each work in the repertoire of one or other society.
- 16.12 The Committee concludes that the ACCC should consider whether certain aspects of the operation of collecting societies should be subject to greater competitive disciplines. CAL submits that this outcome may be reached by market discipline rather than through the agency of the ACCC.
- 16.13 Copyright collecting societies are under significant pressure from rightsholders to reduce their operating costs. Systems development is a significant proportion of these operating costs. This pressure will force the existing tendency to outsource operations to become more pronounced.
- 16.14 Already commercial arrangements exist between Australian collecting societies for the conduct of various aspects of their operations. For example, CAL provides distribution and data processing facilities for our New Zealand counterpart. We have also offered to make our systems available to VISCOPY.
- 16.15 In the Netherlands, a company called CEDAR provides distribution functions for a number of different collecting societies. CEDAR itself, is not a collecting society.
- 16.16 In CAL's view, competitive outcomes will result from an efficiently functioning market for the supply of the services involved in the conduct of a collecting society.

17 Alternate Dispute Resolution

- 17.1 CAL supports the Committee's recommendation that collecting societies should implement alternative dispute resolution procedures. CAL does not believe, however, that there should be a requirement that the ADR mechanisms be "approved".
- 17.2 For declared societies, CAL accepts that, the existence of ADR procedures may form part of the government's review of the effectiveness of the operations of a society. However, in respect of non-statutory societies, CAL believes that the role of the ACCC and the Australian Competition Tribunal provide sufficient regulation, and that a separate approval process is not necessary.

18 Copyright Term

- 18.1 CAL attaches our submission to government on the possibility of extending the term of copyright protection to 70 years. In CAL's view, extending the term is necessary to permit Australia to remain competitive with our trading partners.
- 18.2 The public benefit that accrues to Australia from being part of an international copyright trading system, outweighs arguments to the effect that the detriment of a longer term of copyright will increase the costs of administering the copyright system.
- 18.3 The acceptance by the US and the EC to an extension of copyright term seeks to maintain the incentive behind copyright protection in a changed environment.
- 18.4 CAL's argument in support of the extension of the copyright term of protection have been attacked as being self interested and in favour of the sectional interests of copyright owners.
- 18.5 There are equally valid arguments that the extension of the term of copyright is also of benefit to copyright consumers, through the increased efficiency of their operations in a globally harmonised environment.
- 18.6 For example, if Australian producers are to compete in the world market then they will need to be aware of the variations in the term of copyright protection between countries when obtaining permission to include material in their publications.

19 Crown Ownership of Copyright

- 19.1 CAL agrees with the Committee's conclusion in relation to the special treatment of Crown copyright.

20 Proxy Caching

- 20.1 CAL appreciates the comprehensive analysis of caching and proxy caching contained in the Report. The Committee's analysis indicates that ISP's gain significant commercial advantage from proxy caching. Given this conclusion, CAL is surprised that the Committee concludes that because of its significance in promoting the efficiency of exchanges over the internet, it should be permitted.
- 20.2 CAL does not agree with the Committee's conclusion that the answer is for copyright owners to rely on technological restraints to prevent or control proxy caching.
- 20.3 The competitive advantage obtained by ISP's from proxy caching should not be disregarded. CAL submits that an appropriate response is for the

government to refrain from specific market intervention in respect of proxy caching. The market, which already includes exceptions to copyright owners rights can then decide in which instance proxy caching is use of copyright and controlled by the copyright owner.

- 20.4 CAL's submission is that the free market response that should be sponsored by government is the development of an industry code of practice regarding proxy caching.

21 Computer Software

- 21.1 The Committee suggests that a possible way of achieving Australia's policy objective is to remove compilations from the category of literary works and include them in a new category of collective works. This is a radical action which may have unintended consequences. CAL suggests that the better response is to suggest that the issue be reviewed by the government at the time of its review of the CLRC Report.

22. Conclusion

- 22.1 CAL appreciates the opportunity provided by the Committee for further input into its deliberations, as provided by the Interim Report. If the Committee requires any further submission or additional information, CAL will be happy to assist. CAL looks forward to receipt of the Final Report.

Yours faithfully

Michael Fraser
Chief Executive