COPYRIGHT – PAYMENT OF REMUNERATION FOR COPYRIGHT MATERIAL USED FOR THE SERVICES OF THE STATE

POLICY

Under s183 of the Commonwealth Copyright Act 1968 (the Act), State Government departments and agencies may do any of the acts comprised in copyright (reproduce, perform in public, communicate to the public, etc) without infringing copyright if the act is done for the services of the State. However, the State Government is required to pay remuneration for that use. Most statutory obligations of State Government agencies for remuneration for copying works and public performance of music are met through centrally funded whole of government agreements with the following copyright collecting societies:

- Copyright Agency Limited (CAL) for the photocopying and electronic copying of works (literary, dramatic, musical and artistic [excluding computer programs]) and published editions of works, other than works that are included in a sound recording, film or television or sound broadcast;

- Australasian Performing Right Association Limited (APRA) for the public performance of music through the use of radio and television receivers in public and work areas, background music in lifts and waiting rooms, etc; and

- Audio-Visual Copyright Society Limited (trading as Screenrights) for the copying of sound and television broadcasts.

Payment of remuneration to these designated collecting societies is arranged centrally by the Department of the Attorney General.

Exclusions

1. ‘Communication’ means to make available online or electronically transmit (whether over a path, or a combination of paths, provided by a material substance or otherwise) a work or other subject-matter, including a performance or live performance within the meaning of the Act. Therefore, emailing third party copyright material and placing third party copyright material on an intranet (eg, being accessible by staff within the agency or in other agencies) or on the internet (where it is publicly accessible) are each a communication of the copyright material.

Payments for the communication of copyright material are not included in the agreements being negotiated with copyright collecting societies. Under the Act [s183 (4) (5)], agencies are responsible for notifying copyright owners that their material has been used and agreeing terms, and, if required, paying for that use. In default of the agreement, the Copyright Tribunal can set the terms.
2. ‘Commercial’ performances of music in public and music on hold, ie telephone ‘waiting’ music, are not covered under any agreement between the State and any collecting society. For music on hold, agencies should ascertain from their telecommunications carrier whether the service includes all applicable copyright licence fees. If not, then agencies may need to enter into a separate licensing arrangement with individual copyright owners or with APRA and the Phonographic Performance Company of Australia Limited (PPCA), depending on who owns the copyright in the composition and recording. Further details can be found at www.apra-amcos.com.au and www.ppca.com.au

3. State Government educational institutions do not come under s183 of the Act. They are usually covered under separate agreements with copyright collecting societies under Part VB of the Act.

4. All entities listed in Schedule 1 of the Public Sector Management Act 1994 are excluded from whole of government copyright agreements, except for items 1, 2, 3, 4, 5, 11 and 18, as at the review of this circular on 30/10/2017.

Further details regarding the State’s statutory obligations under the Act and whole of government agreements are contained in the attachment.

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PREMIER

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Other relevant Circulars:
Circular/s replaced by this Circular: 28/95

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1 CAL’s members are authors, journalists, visual artists, surveyors, photographers and newspaper, magazine and book publishers as their non-exclusive agent to license the copying of their works to the general community. Under the Act, CAL is entitled to collect on behalf of every copyright owner in the world whose works are reproduced by the Commonwealth, State and Territory Governments for the services of that Government.

2 APRA represents composers, song writers and lyricists and collects and distributes licence fees for the public performance and communication (including broadcast) of its members’ musical works. The Australasian Mechanical Copyright Owners Society Limited collects and distributes ‘mechanical’ royalties for the reproduction of its members’ musical works for many different purposes, including the manufacture of CDs, music videos and DVDs, the sale of mobile phone ringtones and digital downloads, the use of production music and the making of radio and television programs.

3. Screenrights is a copyright collecting society for producers, distributors, script writers, music copyright owners, rights owners in artistic works, television broadcasts and sound recordings and other rights owners in film.

4 PPCA represents the interests of record labels and Australian recording artists for the broadcast, communication or public playing of recorded music, (eg CDs, tapes, records) or music videos.
Attachment – Premier’s Circular 2009/07

Background

Under s183 of the Commonwealth Copyright Act 1968 (the Act), State Government departments and agencies may do any of the acts comprised in copyright (reproduce, perform in public, communicate to the public, etc) without infringing copyright if the act is done for the services of the State. However, the department or agency must give notice to the copyright owner of the use of the copyright material and agree with that owner as to the terms upon which the copyright material can be used (ie, how much the State has to pay the copyright owner for the use). In default of an agreement, the Copyright Tribunal established under the Act can fix those terms.

Under s153F of the Act it is possible for copyright collecting societies to be declared by the Copyright Tribunal for copying by governments (including the State) of copyright material. This has the effect that the government no longer has to notify and agree terms with copyright owners individually, but must deal with any declared collecting society instead. These declared societies pay copyright owners the amounts the societies receive from governments for government copying, after payment of the societies' operating costs. CAL and Screenrights are the only declared collecting societies.

The declared societies are authorised by the Act to collect on behalf of all copyright owners whose works (literary, dramatic, musical and artistic) have been copied by the State's departments and agencies.

Summary of Whole of Government Agreements

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<tr>
<th>Collecting Society</th>
<th>Included in Agreement</th>
<th>Not Included in Agreement</th>
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<tr>
<td>CAL – Agreement in place since 1995 for the payment of remuneration for the reproduction of copyright works made for the services of the State.</td>
<td>• Photocopying and electronic copying (including printing, scanning and downloading) of works (literary, dramatic, musical and artistic [excluding computer programs]) and published editions of works, other than works that are included in a sound recording, film or television or sound broadcast.</td>
<td>• Emailing third party copyright works within and outside the WA government.</td>
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<td>• Electronic or digital copying of newspaper clips.</td>
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<td>• Emailing newspaper clips within and outside the WA government.</td>
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<td>• Placing newspaper clips on intranet sites.</td>
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<td>• Placing third party copyright works on WA government internet and intranet sites.</td>
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<td>• Copying of surveyors’ plans (negotiations are still taking place with CAL and the State).</td>
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<td>Australasian Performing Right Association – Agreement signed in 2004 and covers the public performance of music, including by the use of radio and television.</td>
<td>• Music used in staff training, canteens, socials, Ministerial functions, briefings.</td>
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<td>• Music piped in government occupied buildings where no licence already exists with the landlord or the music supplier.</td>
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<td>• Music piped through railway stations and platforms.</td>
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<td>• Music ‘on hold’.</td>
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<td>• Commercial performances of music, eg Olympic Games, grand prix, Australia Day celebrations, State festivals.</td>
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<td>• Playing of radios and music players in the work place for personal use.</td>
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<td>Screenrights – Agreement signed in 2012 for the copying of sound and television broadcasts.</td>
<td>• All broadcasts by all free-to-air and pay television stations.</td>
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<td></td>
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<td>• All broadcasts by all radio stations.</td>
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<td>• Communication of sound and television broadcasts.</td>
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<td>• Playing of DVDs and videos.</td>
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<td>• Making copies of DVDs and videos.</td>
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</table>

(a) Under the Act [s183 (4) (5)], agencies are responsible for notifying copyright owners that their material is going to be used, or has been used, and agreeing terms, and, if required, paying for that use. It is recommended that agencies notify the copyright owner prior to the copyright work being reproduced in the event that terms or remuneration cannot be agreed.

(b) Payments made to third party press clipping services will usually include remuneration for copyright. See section on Newspapers for more detail.

(c) CAL also offers Downstream Licences that allow clients of press clipping services to internally distribute and store their press clippings by email or intranet.

(d) Where radios and music players are permitted in the work place, it is recommended that staff use personal ear phones so that others, including staff, cannot hear the music, thereby minimising the risk of any claim that the music constitutes a public performance which is remunerable.
Membership of Copyright Agency Limited

On 4 March 2011, Cabinet approved the State, through the Department of the Attorney General, to become a member of CAL. Through its membership, the State receives payments for the copying of government copyright works to which it is entitled. These payments are used to offset the State's copyright liability which is paid for centrally.

Since the State has a single membership of CAL, agencies which are included in whole-of-government copyright agreements are unable to be individual members of CAL.

Note that in the past, government agencies have been advised not to join CAL as advice from the State Solicitor’s Office has confirmed that departments are generally not separate legal entities and therefore may lack the necessary legal status to become a member of a company such as CAL. Similarly, most agencies which are statutory corporations do not have the power under their constituent legislation to become a member of a company.

Surveys

From time to time agencies will be requested to supply information or participate in sampling surveys under the agreements with CAL and Screenrights. The survey results will be used to determine the amount of copying and from this information the State’s liability for payments will be calculated. Agencies are required to ensure that the State meets its statutory obligations under the Act and comply with survey requirements.

Newspapers

CopyCo Pty Ltd has appointed CAL as its agent for the purpose of licensing articles contained in most Australian newspaper and magazine publications (excluding Fairfax Business Media Publications). Activities such as making electronic copies of newspaper clippings, emailing clips internally or storing clips are not included in the State’s remuneration agreement with CAL.

If your agency wishes to undertake these activities, then you must:

1. Notify the copyright owner and agree terms for the intended use;
   Or
2. Employ a press clipping service which is licensed by CAL. For further details on the various licences available and rates see CAL’s website www.copyright.com.au

Managing Copyright Costs

Government

Government’s centrally funded liability is based on the number of reproductions of third party copyright works that are made by agencies. Costs can be managed through a number of strategies, including:

(a) Avoiding the reproduction of third party copyright works where feasible.

(b) Checking whether third party copyright works have a free licence, ie Creative Commons icon on a document. Further information on Creative Commons can be found in the Australian Copyright Council’s Information Sheet, Creative Commons Licences at www.copyright.org.au.

Agencies

Agencies’ liability for copying activities that are not included in whole-of-government agreements can be reduced by:

(a) Using links rather than uploading material on to the intranet and internet.
NB – Avoid deep link as they may bypass copyright notices that normally appear on a website’s home page, thereby resulting in possible copyright implications.

(b) Removing third party copyright material from the intranet and internet as soon as it is no longer needed.