



Envato Pty. Ltd. | ABN 11 119 159 741
PO Box 16122, Collins St West, VIC 8007 Australia
121 King St, Melbourne, VIC 3000 Australia
www.envato.com

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Intellectual Property Arrangements
Productivity Commission

Sent by email: intellectual.property@pc.gov.au

To the Productivity Commission

RE: Public inquiry into Australia's intellectual property system

Envato Pty Ltd (**Envato**) welcomes the opportunity to make this submission to the Productivity Commission's Issues Paper on Intellectual Property Arrangements.

Purpose of our Submission

The purpose of our submission is to ask the Productivity Commission to consider recommending that Australia's existing copyright safe harbour scheme is expanded to apply to a broader set of online businesses so that Australia attracts more online businesses to start up, remain in, and grow in Australia.

An introduction to Envato

Founded in 2006, Envato is privately owned, headquartered in Melbourne, Australia, and is a completely online company with an ecosystem of sites and services to help people get creative. In September 2014, one of our sites, ThemeForest.net, which allows individuals to sell website themes they have created, was the 90th most visited website in the world according to web analytics service Alexa. That site is currently the most visited Australian-owned website in the world. Themeforest.net is part of our Envato Market platform, which is an online marketplace that provides a service connecting many creators of digital items (such as website themes, photos, music tracks and illustrations) with buyers of those items. This e-commerce marketplace platform model is analogous to that used by other global platforms such as eBay and Etsy. On our education site, Tuts+, over 5 million people each month learn skills through online tutorials and course on topics including code, illustration, photography, web design, and more. We also operate an online marketplace called Envato Studio where freelancers sell their services.

We have over 250 staff globally, and have paid out more than \$300 million to our community of creative sellers. Recently, JobAdvisor awarded us the title of Australia's Coolest Company for Women and we were named as one of the Best Places to Work in Australia in the 2015 BRW Awards. Our co-founder Cyan Ta'eed was also recognised as the Victorian Telstra Business Woman of the Year 2015, and co-founders Collis Ta'eed and Cyan Ta'eed earned an EY Entrepreneur of the Year award in 2015. Our legal team won a LexisNexis Legal Innovation Index Award 2015.

Expanding the reach of the existing safe harbour scheme

Since 2005, 'carriage service providers' have had the benefit of remedies available against them for copyright infringement being limited in relation to certain online activities, by adhering to specified conditions in the so-called "safe harbour scheme". The scheme was implemented via amendments to the Copyright Act 1968 (Cth) in response to the Australia-United States Free Trade Agreement yet in Australia it remains relatively restricted when compared with similar regimes in other countries, such as the United States, Singapore and Korea.

The scheme was designed to give rights holders an efficient way to seek removal of infringing content from networks and reward service providers for collaborating with rights holders by granting legal protections. The existing scheme provides regulatory certainty for those few entities that fall within the safe harbour provisions of the Copyright Act 1968 (Cth), whilst respecting and balancing the needs of rights holders and users of the relevant services. For some time there has been debate about whether the provisions of the safe harbour scheme cover a sufficient range of service providers and we believe the time has come to revisit the scheme to bring it more in line with Australia's trading partners.

Currently, the Australian safe harbour scheme applies only to commercial internet service providers, and not to other online businesses and service providers such as Envato. The regulatory disparity between the safe harbour scheme here in Australia and that of our trading partners creates disincentives for innovation, and the creation and growth of Australian based internet services. The lack of breadth and robustness in the Australian safe harbour scheme means that Envato and other business that offer online platforms operate under some regulatory uncertainty.

Internet regulation in Australia must develop in line with international norms and best practice if Australia is to gain a reputation as a hub for innovation and foster online businesses. Expanding the copyright safe harbour scheme is a central part of that journey and will enable internet platforms, search engines and myriad other internet services to operate fully from Australia within a more certain copyright regulatory framework. A thoughtfully constructed safe harbour scheme strikes a suitable balance between various stakeholders. It would continue to respect the needs of rights holders, provide a practical mechanism for rights holders to request a take-down of works they claim rights over, provide a mechanism for a response by the website user responsible for the relevant work, and safeguard the provider of the relevant online service.

Online platforms around the world use the US Digital Millennium Copyright Act (DMCA) as a proxy global scheme for dealing with copyright claims. In the absence of a relevant Australian safe harbour regime, Envato utilises the US regime as a basis for dealing with copyright claims in the global digital economy, including by Australian rights holders. In our view the DMCA safe harbour processes have generally proved to be useful, and efficient, for rights holders, users of our platforms and Envato. As an Australian headquartered company, having an equivalent regime under Australian copyright law would provide Envato with greater certainty and enable more structured and efficient communications with rights holders. In essence, the safe harbour scheme in Australia is largely analogous to the DMCA scheme as both are designed to limit the remedies that are available against carriage service providers (or 'provider of online services' in the US) for infringements of copyright that relate to the carrying out of certain online activities. Under both schemes a carriage service provider or a provider of online services must satisfy certain conditions to take advantage of the limitations. Under the DMCA regime, Envato meets the criterion of

being a 'provider of online services' and could rely on the DMCA process whereas under the Australian scheme the narrow definition of 'carriage service providers' precludes Envato from seeking the benefit of the safe harbour scheme.

Australia's existing copyright safe harbour scheme should be expanded to apply to a broader set of online businesses so that Envato and other online business can operate under increased regulatory certainty, and adopt more efficient processes for addressing copyright claims, ultimately attracting more online businesses to start up, remain in and grow in Australia.

Copyright law underpins every aspect of our modern digital existence and reform should be front and centre of any modern digital economy. This review provides an important opportunity to focus on how the Copyright Act 1968 (Cth) can create opportunities for tomorrow's innovators. We welcome the opportunity to discuss our submission with the Productivity Commission and are available to answer any questions the Productivity Commission may have. You can contact us by post to:

General Counsel
Envato Pty Ltd
PO Box 16122 Collins Street West
Victoria 8007 Australia

Yours sincerely,

Chaman Sidhu
General Counsel & Company Secretary
Envato Pty Ltd