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Dear Sir,

Reference is made to Clause 18.5 titled “Improving Dispute Resolution” of the Productivity Commission’s draft report dated the 29<sup>th</sup> of April 2016. Towards the end of Clause 18.5, suggestions are invited from the public with the statement : **“*The Commission welcomes additional information on improvements to the existing court system that would facilitate greater access to IP dispute resolution, including by SMEs*”**.

This invitation is followed by six (6) questions under the heading : Information Requests 8.1 – These six (6) questions read as follows :

- *Would changes to the jurisdiction of the Federal Circuit Court improve access to dispute resolution by small– and medium–sized enterprises?*
- *Should additional rules be introduced, **such as caps on the amount of costs claimable in a case?***
- *What is the **upper limit on damages claims** the court should hear?*
- *Are there resourcing impediments to the proposed reforms to the Federal Circuit Court?*
- *Can greater use be made of **cost orders** in the Federal Court, including for discovery, to reduce costs further?*
- *Should additional Federal Court rules be introduced, **such as caps on the amount of costs claimable in a case?***

The statement that appears higher up under Clause 18.5 reads :

*One possible option for improving potential use of the Circuit Court by SMEs could be to differentiate its jurisdiction from the Federal Court based on the value of damages being sought.*

Whilst Draft Recommendation 4.1 and Draft Finding 4.2 make it more than evident that the most dominant inputs to the draft report have been provided by the Legal Profession, the nature of these two inputs reveal that the original (and underlying) intention of the Legal Profession has always been to **DENY** authors/creators their royalties entitlement in exchange for the exploitation of their original artistic works.

Since Draft Recommendation 4.1 and Draft Finding 4.2 are **NOT SUPPORTED** with empirical evidence as to the true impact of IP Law – **Copyright Law in particular** – on the Australian economy, these destructive proposals indicate that there is a conspicuous amount of bias and prejudice against authors, creators and innovators on the part of the Legal Profession.

There is further indication of bias and prejudice throughout the draft report that the Legal Profession is **NOW** attempting to minimize the traditional **JUST** and **EQUITABLE** remunerations owing to authors, creators and innovators through the application of the percentage points prescribed by Section 219 of the original Australian Copyright Act, 1968 ... by proposing to introduce **CAPS** placed on the amount of damages that can be awarded by the Copyright Tribunal, the proposed dedicated IP Court or the Federal Circuit Court.

During the public hearing conducted at the Productivity Commission's Rattigan Room in Melbourne on Thursday the 23<sup>rd</sup> of May 2016, both commissioner Chester and commissioner Coppel displayed some encouraging signs of approval for the re-introduction of Section 219 of the original Australian Copyright Act, 1968.

**We read further down still within Clause 18.5 :**

*In responding to the ACIP recommendations to establish an IP tribunal, the Australian Government (2013) questioned the likelihood that parties would use such a service if determinations were non-binding, as well as concerns about Australia's constitutional prohibition on vesting judicial power in a non-judicial body.*

Based on the recent progress made in the fields of computer sciences and electronic technology, it cannot escape observation that there is now a great deal of merit in the establishment of an IP Tribunal that would consist mainly of members drawn from a pool of technical subject matter experts.

**In light of the above, the adoption of the ACIP recommendations should be seriously considered for the following reasons :**

- If experts from other fields of study – e.g. experts who have a higher level of knowledge and often also a higher level of intellectual capacity than lawyers – are not involved in the final determination made by the recommended model of the IP Tribunal (the dedicated IP Court or the Federal Circuit Court) consisting of experts, these experts will certainly feel the humiliation of being treated as subordinate to the judges assigned to adjudicate future cases brought before the IP Tribunal, the proposed dedicated IP Court or Federal Circuit Court.
- The cause for this humiliation will be that the judges assigned to debate IP cases before the proposed model of the IP Tribunal, the dedicated IP Court or Federal Circuit Court would be relying essentially on the said experts' **HIGHER LEVEL OF KNOWLEDGE as well as their HIGHER INTELLECTUAL CAPACITY** to help them (judges) understand all the ramifications that are pertinent to the various subject matter/s brought before the court for adjudication.
- It is most unfair in this 21<sup>st</sup> century that the lives of people who are intellectually superior could be so seriously affected by the flawed judgments pronounced by people who through their absurd reasoning have always demonstrated such a poor understanding of the workings of modern technology.
- The introduction of the proposed **CAPS** to recoverable **COSTS** and **DAMAGES** to be awarded by the Federal Circuit Court (or the proposed IP Tribunal or dedicated IP Court) would result in a huge discrepancy between the amount of royalties normally awarded to authors/creators and the highly contrived amount of the remunerations anticipated to be awarded with the introduction of the said proposed **CAPS** ... in the event that the proposed re-introduction of Section 219 is recommended by the Productivity Commission for adoption by the Federal Government in August 2016.
- The introduction of the proposed **CAPS** to any of the specialized branches of the Federal Court would bring the status of the Federal Court well **BELOW** that of the Melbourne County Court and probably on a par in status with the Melbourne Magistrate Court.
- Unless the remunerations owing to authors/creators (through the introduction of these proposed **CAPS**) are equivalent in financial value to the authors' (traditional) royalties calculated by the application of the percentage points prescribed by Section 219 of the original Australian Copyright Act, 1968, the

prospects of an author's royalties entitlement being **UNJUSTIFIABLY** reduced by the imposition of the said proposed **CAPS**, would also automatically result in a proportionate and justifiable reduction in the quality of the content of original artistic works (i.e. from excellence to mediocrity) with no or very little potential for the finished product to achieve commercial success at the box office.

- This would mean that the incentive for creating works of excellence in accordance with the “National Programme for Excellence in the Arts” (as announced by the Minister for the Arts in 2015) would be replaced by a self destructive **COUNTER INCENTIVE** to produce the direct opposite.
- Another end result will be that original artistic works that are specifically devised with intent to not only achieve commercial success at the box office, but to also generate growth in GDP, would be systematically reduced so as to match the anticipated financial value of authors' drastically reduced remunerations as a result of the introduction of these proposed **CAPS**.
- It is to be remembered that **ALL** monopolies were declared **VOID** in 1624 under the reign of James I. This means that if the Judiciary decided to act as a monopoly in 2000 (and again in 2016) the Judiciary would automatically declare itself to be also **VOID**.
- Ultimately, the imposition of the proposed **CAPS** to the amount of royalties to be awarded to authors/creators by the proposed changes to the jurisdiction of the IP Tribunal, dedicated IP Court or Federal Circuit Court, would surely attract the introduction of **SIMILAR CAPS** to the remunerations earned by Government lawyers, so as to compensate for the damage done to the national economy by the Legal Profession as a result of their introduction of Marxist ideologies to the Australian Justice System.
- The introduction of **SIMILAR CAPS** to the remunerations of Government lawyers would justifiably reduce these lawyers' salaries in line with the proposed reduction to authors/creators' traditional remunerations that can be expected to be awarded with the introduction of the said proposed **CAPS**. This course of action would surely be applauded by the Treasury as an effective solution to the treasury's current spending problem.

**The overwhelming amount of evidence which indicates that the legal profession's dishonourable and underlying intention is to either **DENY** authors their royalties entitlement altogether, or to now**

**attempt to **REDUCE** authors' hard earned incomes to be exchanged for their works "of excellence" can be listed as follows :**

- The Government of the day in the year 2000 changed the definition of the French word "**AUTEUR**" upon which ALL universal Copyright Laws have unequivocally relied since the ratification of the Berne Convention.
- The Government of the day in the year 2000 removed **Section 219** from the original Australian Copyright Act, 1968.
- The Chief Justice of the High Court of Australia made an official declaration during the Francis Gurry Lecture at the Melbourne University in August 2012, that the definition of the **RIGHTS** under the **WIPO** (World International Property Organization) convention definition of IP Law are **RIGHTS** that **DO NOT EXIST** as **LEGAL RIGHTS**.
- The Chief Justice of the High Court of Australia ignored the fact that the Australian Copyright Act, 1968 is a Statute Law that was enacted (and later amended) by the popularly elected Legislative Government of the day, whilst being fully aware that – by virtue of the Australian Constitution – the **LEGAL RIGHTS** that are inherent to **ALL Statute Laws** enacted by the Legislative Government in the Commonwealth of Australia, are **RIGHTS** that **DO EXIST** as **LEGAL RIGHTS**.
- The Productivity Commission's Draft Recommendation 4.1 and Draft Finding 4.2 come in as a stark **CONFIRMATION** that Government lawyers have always had an underlying intention to **DENY** authors their due remunerations altogether, after the evasion of the resolve of one particular IP dispute for a period of time that has exceeded the proposed reduced term of copyright protection.
- The proposed introduction of **CAPS** to the amount of damages that the IP Tribunal, the dedicated IP Court or the Federal Circuit Court could award authors/creators, is indicative of the legal profession's dishonourable intention to now attempt to **REDUCE** the traditional amount of royalties that authors have always been entitled to in exchange for the exploitation of their original artistic works.

There is also a need to point out that the proposed reduction of the term of Copyright from 50 to 15-25 years from an author's original artistic work's point of completion ... to the replacement of "Fair Dealing" with "Fair Use" ... bear evidence that the

underlying motive of the Legal Profession now comes out loud and clear – i.e. **classification of an original artistic work as an “Orphaned Work” by the Legal Profession – whilst evading their legal obligation to identify its author/creator ... then apply the principle of “Fair Dealing” or “Fair Use” to exploit the “ALLEGED” Orphaned Work without having to pay any royalties to its author.**

When we refer to Mr. Donald Richardson’s **Submission number 138**, we cannot ignore what this submission reveals in terms of the deeply entrenched culture that exists within the Legal Profession. This submission bears witness that lawyers have always demonstrated a propensity to apply their own personal interpretation to what **STATUTE LAW** prescribes in written form.

**So, replacing “fair dealing” with “fair use” would still allow lawyers to manipulate the interpretation of Statute Law for their own convenience, if a prescribed list of the factors that specifically qualify as “fair dealing” or “fair use” is not also included in the proposed changes.**

Can we blame our trading partners for wanting to transfer the jurisdiction in relation to their business affairs conducted in Australia to their own Court System?

Lawyers must come to terms with the reality that Intellectual Property is **NO DIFFERENT** from any other form of property – **PHYSICAL** or **INTELLECTUAL**, **TANGIBLE** or **INTANGIBLE** ... **ALL** properties are indisputably either inherited or are the fruits of the labour of the people who own them.

If the Federal Government adopts the **DESTRUCTIVE** recommendations proposed by the Productivity Commission as far as the relentless evasion of one particular IP dispute by lawyers, or as far as the minimization of an author’s royalties entitlement by the introduction of proposed **CAPS** is concerned, this action would be seen as **EQUIVALENT** to the replacement of the Australian flag with a yellow hammer and sickle on a red background.

Who knows what this dangerous precedent will bring in the future? Extending similar Marxist ideologies to **REAL ESTATE** and **MINING PRODUCTS** and then perhaps to **ALL** other forms of property as well, will be an absolute disaster for the Australian economy.

I am sure that because this draft report contains both **positive** and **negative** views, the many adverse reactions expressed in some 460 public submissions from such a broad range of professions will provide valuable information to the Federal Government to eventually devise a very efficacious and **JUST** set of IP laws.

To speculate otherwise would be to draw the conclusion that the Productivity Commission has proved itself to have been most **COUNTER PRODUCTIVE** in its endeavour to return the national economy to surplus after the damage caused to it by the Legal Profession.

I would therefore ask the Commission **NOT** to convey these **negative and unfounded findings** and these **self destructive recommendations** to the Federal Government for adoption as Law in August this year.

Sincerely yours,

Robert J. Bouvet

Dated this 18<sup>th</sup> day of July 2016.