

1 March 2019

Ms Kate Reader/Ms Morag Bond
General Managers, Digital Platform Inquiry
Australian Competition and Consumer Commission

By email: kate.reader@accc.gov.au; morag.bond@accc.gov.au

Dear Ms Reader and Ms Bond

Submission in relation to Preliminary Recommendation 7 of the Australian Competition and Consumer Commission's 'Digital Platform Inquiry - preliminary report'

The Coalition of Major Professional and Participation Sports (**COMPPS**) and its members appreciate the opportunity to make a submission to the Australian Competition and Consumer Commission in relation to the 'Digital Platforms Inquiry - preliminary report' (**Preliminary Report**).

1 INTRODUCTION

COMPPS consists of the following member organisations:

- (a) Australian Football League;
- (b) Cricket Australia;
- (c) Football Federation Australia;
- (d) National Rugby League;
- (e) Netball Australia;
- (f) Rugby Australia; and
- (g) Tennis Australia.

Each member of COMPPS is the governing body and custodian of a major professional sport in Australia. COMPPS members play a large role in developing, promoting and presenting their sport from the grass roots through to the international level. They are not-for-profit bodies and are responsible for the long-term development and sustainability of their sports.

COMPPS members provide a wide range of public benefits through a self-funding business model. A large portion of the revenue of COMPPS members is devoted to enhancing, promoting and developing sport for all Australians.

One of COMPPS' roles is to facilitate a response to public inquiries on behalf of its member sports.



This document comprises COMPPS' submission in relation to Preliminary Recommendation 7 of the Preliminary Report.

2 IMPORTANCE OF COPYRIGHT PROTECTION AND MEDIA RIGHTS TO COMPPS MEMBERS

Strong and enforceable intellectual property laws are of fundamental importance to COMPPS members.

In particular, copyright is crucial to the exploitation and licensing by COMPPS members of media rights to the major sporting events and other content controlled by COMPPS members.

These media rights are exploited and/or licensed by COMPPS members across a range of platforms including free to air television, subscription television, radio, online, digital and mobile technology.

The revenue derived from the licensing of these rights is the single most important revenue stream for most COMPPS members. Live broadcasts and communications of sports events are very popular. The exploitation of the rights to broadcast and communicate this content are very valuable for COMPPS members and underpin their operations as not-for-profit entities.

COMPPS members are innovative in exploiting their online and digital rights. They have made, and continue to make, significant investments to enable them to exploit their rights as broadly as possible and to enable the Australian community access to their content via various mediums.

The licensing of online and digital rights is an increasingly important revenue stream for COMPPS members. The proportion and importance of revenue from online and digital rights as part of overall media rights revenue of COMPPS members is expected to increase in the coming years in accordance with changes to the way sporting content is delivered and consumed.

Maintaining and growing media rights revenue is critical to the operation, survival and growth of COMPPS members and the sports they administer, and allows COMPPS members in carrying out their charters as not-for-profit entities, to:

- (a) maintain and increase their distributions to members and clubs (and in turn to athletes), which have high levels of community support and interaction;
- (b) invest in the development of their respective sports, including at grassroots level;
- (c) maintain relatively low admission prices for attendees at matches;
- (d) provide all Australians with the opportunity to participate in sports;
- (e) continue and increase support for important community relations programs;
- (f) continue to invest in facility development where appropriate and for the wider community benefit; and
- (g) continue to operate without significant reliance on Government funding.

3 COPYRIGHT INFRINGEMENT OF COMPPS MEMBERS' CONTENT

The prevalence and scope of online and digital copyright infringement and the limitations of traditional copyright law enforcement tools in dealing with online copyright infringement are significant concerns for COMPPS members.

COMPPS members face major challenges due to unauthorised distribution and communication of coverage of sporting events and other content controlled by COMPPS members on or via

digital platforms, including via unauthorised live streams or unauthorised communication of highlights packages on or via digital platforms.

The nature of the sporting content exploited and licensed by COMPPS members makes it particularly important that efficient and timely action can be taken to prevent unauthorised communications. This is because the commercial value of sporting content is often associated with the live communication of the sporting content.

Digital technology makes copying and dissemination of copyright material much easier. This has led to a proliferation of unauthorised use of copyright material of COMPPS members' content. It can be difficult to identify the primary infringer in the digital environment where the infringement occurs from a virtual location, and conventional detection methods are often not effective.

COMPPS has previously and consistently raised concerns about the adequacy of Australian copyright laws to assist with infringement claims by copyright owners in the digital environment.

As noted in the Preliminary Report, the costs of enforcing copyright remain high and the procedures for enforcement have not been significantly updated for the digital age (other than the introduction of the *Copyright Amendment (Online Infringement) Act 2018*). These issues are particularly acute with live sports content where there is a need to be able to address copyright infringement on a real time basis.

4 SUBMISSIONS AND COMMENTS

COMPPS and its members appreciate that in Part 4.7 of the Preliminary Report the ACCC acknowledges some of the difficulties faced by certain rights holders¹ in enforcing their intellectual property rights in the context of digital platforms. COMPPS members have also experienced these difficulties.

COMPPS does not support the mandatory take down procedure administered by ACMA proposed in Preliminary Recommendation 7 as the first or only solution for addressing the difficulties with copyright enforcement.

COMPPS continues to support reform of the authorisation provisions in sections 36 and 101 of the *Copyright Act 1968* as the most appropriate and effective first step in addressing the unauthorised use of copyright material on digital platforms and for creating an environment for the development of enduring and fit for purpose solutions for the removal of infringing content on digital platforms.

Preliminary Recommendation 7

COMPPS is concerned that the mandatory takedown code proposed under Preliminary Recommendation 7 in isolation will not materially assist with the protection of its Members' valuable copyright. In particular, Preliminary Recommendation 7 does not adequately address longstanding but solvable issues with the underlying copyright legislative framework.

COMPPS believes that any takedown regime introduced under the current legislative framework is not the appropriate first step to address the problem of copyright infringing content on digital platforms, and that the introduction of any mandatory takedown regime should only occur *after* the Australian copyright laws relating to authorisation liability have been strengthened to protect rights holders.

¹ The Preliminary Report has been prepared in the context of the terms of reference of the current inquiry. The terms of reference are of limited scope, and COMPPS and its members have not been consulted as part of the inquiry.

COMPPS is concerned that a takedown regime of the kind proposed will not be efficient, and is likely to entrench some or all of the recognised problems with the current takedown procedures of the digital platforms (such as the burden of targeting infringing content remaining with the rights owner). The takedown regime will also be administratively burdensome and costly for rights holders.

COMPPS further notes that the proposed takedown regime is unlikely to address its Members' problems and concerns in a meaningful way. For example, a 'notice and takedown' regime of the kind that operates in the US would be ineffective to deal with unauthorised live streaming of sporting content where instant takedowns are required.

Authorisation liability

Clear and effective authorisation provisions are fundamental to the operation and regulation of copyright law in Australia, and to the extent and nature of any takedown regime.

COMPPS strongly supports the reform of the authorisation liability provisions of the *Copyright Act* as the most appropriate next step in dealing with the ongoing issue of copyright infringing content on digital platforms.²

This reform should involve clarifying liability for infringement under the *Copyright Act* and making it clear when digital platforms (and others) are under an obligation to remove copyright infringing content.

This change is necessary to strengthen the protections of rights owners, make them fit for purpose for the digital era and would not require extensive changes to the *Copyright Act*.

The absence of a legislative regime that creates obligations on digital platforms to remove copyright infringing content (and liability for digital platforms who do not comply with those obligations) has hindered the development of effective, enduring, technology based and fit for purpose solutions to the unauthorised communication of copyright content on digital platforms. COMPPS believes fixing authorisation liability is necessary to create an appropriate incentive for digital platforms to address copyright infringement and assist in developing commercial or industry wide solutions, such as the development of takedown regimes. Authorisation liability reform needs to occur prior to introducing any mandatory takedown regime.

COMPPS submits that the ACCC should include a new recommendation in its final report as part of the inquiry calling on the Government to reform the authorisation liability provisions of the *Copyright Act*.

5 CONTACT DETAILS

Should the Ministry have any questions in relation to this submission or require any further information from COMPPS or its members please contact Jo Setright at jsetright@compps.com.au or at:

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² For the avoidance of doubt, COMPPS does not support the extension of the safe harbour provisions under the *Copyright Act* to apply to all of the activities of digital platforms.

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Yours sincerely



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