

18<sup>th</sup> May, 1999

Committee Secretary,  
House of Representatives,  
Standing Committee on Legal & Constitutional Affairs  
Parliament House,  
CANBERRA ACT 2600

Dear Sir/Madam,

**RE: INQUIRY INTO THE ENFORCEMENT OF COPYRIGHT IN AUSTRALIA**

Thank you for the opportunity to submit to the Inquiry.

**INTRODUCTION**

ACME MERCHANDISING, specialises in licensed merchandise, principally, t-shirts and caps for music artists, movies, brands, sport, and lifestyle properties. For example, Sydney 2000 Olympic Games, Warner Bros., Star Wars, Harley-Davidson, Jack Daniel's, The Rolling Stones, Triple J Radio, ABC Enterprises.

We are a vertical operation based in Rockdale, Sydney employing between 125-150 staff, and commenced business in 1978.

**MAIN POINTS OF THIS SUBMISSION**

1. What sorts of materials does copyright protect?
2. The impact on Australian business of copyright infringement.
3. Likely future trends in the scale and value of copyright infringement.
4. The adequacy of civil actions in protecting the interests of plaintiffs and defendants in actions for copyright infringement including the adequacy of provisions for costs and remedies.
5. The role and functions of the Australian Federal Police, and State Police exercising Federal jurisdiction, in detecting and policing copyright infringement.

**1. What sort of materials does Copyright protect?**

ACME specialises in printed and embroidered apparel (t-shirts, sweatshirts, bandannas and caps) for adults and children.

Copyright Protection is a necessity for our business.

ACME enters license agreements to represent well known brands, companies, entities, and events, and bases our individualism and "demand" for our product, on the value perceived of the entity depicted on the article.

Protection of our images is therefore integral for us, and the entity we represent.

## **2. The Impact on Australian business of Copyright infringement**

Our business is based upon exclusiveness, brand management and protection of the entities represented.

Unauthorised copies greatly diminish a brands demand, and undermines the foundation of the business.

Essentially, what have you got, if unauthorised “copies” are permitted to compete?

Infringement takes away the “edge” a company represents, and has established.

Significant investment, employment, and focus is spent on building the brands and entities ACME, for example, represents.

Brand Management is important to any entity, corporation, or business. Brand Management represents positioning in the market, the ability to maintain continued demand for the product/service, and the “image” of the entity.

Infringed articles not only inhibit these aspects, they can undo the good done to establish the brand or entity in the first place.

Infringement in our business stems growth, employment, and domestic manufacture and the basis for sound business practice.

### **Revenue**

In ACME’s case, royalties are paid to the principal, for the “use” of their “mark”, images, logos, and names. License agreements are signed for each property represented.

These agreements identify amongst many other things:-

Advances: The money paid “up front”, and recoupable from royalties, based upon sales.

Guarantee: The guaranteed amount of money promised to the licensor, earned from royalties, for the Term.

Term: The length of time the Agreement is in place.

Royalty: The percentage paid the licensor, for every article sold. The average percentage is around 15% of the gross invoice price.

Distribution: Retail locations where the product is permitted to be sold.

Infringed articles totally undermine these core principals of representation.

### **3. Likely future trends in the scale and nature of Copyright Infringement**

#### **(i) Live Infringement**

The current penalties imposed for copyright infringement, is one of the most integral reasons, infringements will continue to grow. If they can get away with it, they will!!

With the Olympic Games being held in Sydney next year, I'm of the experienced opinion, bootleg product will be brazenly offered for sale to the public, from mobile vendors offering on the streets. Certainly we have approached all the civil remedy available to us, at considerable expense, and infringement continues!

#### **(ii) Retail Infringement**

Markets are a common area for "retail" infringing products with offenders continuing to re-offend. (Please see Attachment 1 – TMIS letter)

### **4. The adequacy of civil actions in protecting the interests of plaintiffs, and defendants in actions for Copyright infringement, including the adequacy of provisions for costs and remedies.**

Without appropriate penalties being imposed, the infringements will continue and grow.

We have been able to curb to a degree, infringements of the brands we represent, however the penalties imposed for infringement, and the unwillingness of Police to become involved, allows infringements to continue and grow.

With the Parallel Import bill being introduced next year, the inclusion of infringed articles will grow the problem further, which is another issue in itself.

### **5. The role and function of the Australian Federal Police and State Police exercising Federal jurisdiction, in detecting and policing copyright infringement.**

Copyright enforcement needs the assistance and support of POLICE to enforce the rights.

Problems experienced to date include:-

- Police resources don't allow assistance.
- "On site" police unaware of copyright issues and law.
- Unwilling to get involved, based upon the above.
- Unwilling to prosecute

Examples include "live" concerts and retailers stocking infringing product. On occasions where we have been able to gain assistance, charges have followed, however not on copyright issues, but other misdemeanors eg infringers selling illegitimate PEARL JAM product in Sydney, were apprehended by Police, and deported on the basis they were working on a visitors visa! (Please see Attachment 2 – Press Clippings)

Not addressed were the copyright issues, taxes, insurances, royalties etc. legitimate businesses must address.

One of the advantages infringers have, is price. Royalties and license agreements aren't entered into, "cash sales" are dominant, clear audit trails are non existent, and most often infringers are of "no fixed abode".

### **Conclusion**

I welcome this opportunity to advise my comments on this issue, and would appreciate the opportunity to discuss further.

Yours truly,  
**ACME MERCHANDISING**

**TONY BLAIN**  
**MANAGING DIRECTOR**

Encl.

1. TMIS letter dated 10<sup>th</sup> May, 1999
2. Press Clippings