



COPYRIGHT AGENCY LIMITED

Agreement with Commonwealth of Australia

ATTORNEY-GENERAL'S DEPARTMENT

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THIS DEED OF AGREEMENT is made pursuant to Part VII Division 2 of the *Copyright Act 1968* on day of 2003.

PARTIES

COMMONWEALTH OF AUSTRALIA represented for the purposes of this Agreement by the Attorney-General's Department ('The Commonwealth Agent') and acting on behalf of such other Departments, Agencies and Commonwealth Corporations as may endorse this Agreement ('The Participating Bodies')

COPYRIGHT AGENCY LIMITED ACN 001 228 799, ABN 53 001 228 799 of Level 19, 157 Liverpool Street, Sydney, New South Wales (**CAL**)

RECITALS

- A.** Division 2 of Part VII of the Copyright Act 1968 (the Act) applies to the use of Copyright Material by the Commonwealth.
- B.** Under sections 183A-C of the Act, the Commonwealth may reach agreement with a relevant collecting society for the payment of Equitable Remuneration and the sampling of Government Copies for a period.
- C.** This Agreement between the Commonwealth Agent and CAL sets terms and a method for determining Equitable Remuneration payable for Government Copies in accordance with sections 183A-C of the Act and terms under section 183(5) in relation to certain copyright uses of certain Digital Works.
- D.** CAL was, on 18 December 1998, declared under section 153F of the Act as a collecting society for the purposes of Division 2 of Part VII of the Act in relation to Government Copies of Works (excluding Works in sound recordings, cinematograph film and broadcasts) and the declaration is still in force.
- E.** CAL and the Commonwealth Agent have agreed, as provided in section 183A(3) of the Act, for a sampling system to calculate the estimated number of Government Copies and for which the Commonwealth will pay Equitable Remuneration for Government Copies for the period and on the terms set out in this Agreement.
- F.** Under section 183 of the Act, other copyright uses require notice and agreement on terms for such use. Where CAL is authorised to license Communication of a Work under this Agreement, CAL and the Commonwealth Agent have agreed that the requirements of section 183 shall be satisfied by the terms set out in this Agreement.
- G.** The amount to be paid for Digital Copying of Copyright Material (excluding Newspaper Clips) in the first period as set out in the Agreement is a nominal amount agreed between the Parties for the purpose of enabling Remuneration to be paid for Digital Copying and Communication of

Copyright Material while data is collected and negotiations pursued in relation to future terms for Digital Copying and Communication.

- H. The terms of this Agreement build on and recognise the existence of a voluntary agreement, and the activity conducted under that agreement, between CAL and a large number of Commonwealth Departments and agencies in the period 1996 to 30 June 2001. That agreement provided for the determination of the payment of photocopying and facsimile copying by means of sampling the amount of copying undertaken.

WHAT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement capitalised terms have the following meanings unless the contrary intention appears:

1996 CAL Agreement means the agreement signed by CAL and the Commonwealth Agent, on behalf of certain Commonwealth Departments, corporations and agencies, on 21 February 1997 for remuneration for copying;

Accounting Period is to be interpreted in accordance with the nature of the payment to which it relates and, in particular, means:

- (a) in relation to Print Copying – a Year;
- (b) in relation to Digital Copying and Communication of Copyright Material other than Newspaper Clips – a Year; and
- (c) in relation to Newspaper Clips – a Quarter;

Act means the *Copyright Act 1968*;

Agency means an agency of the Commonwealth other than a Department or Commonwealth Corporation;

Agreed Rate means the overdraft rate for overdrafts of \$100,000 or more charged by CAL's Bankers from time to time plus 1% calculated on daily rests from the due date to the date of payment;

Agreement means this agreement between the Commonwealth Agent and CAL;

Artistic Work has the meaning given to that term in the Act;

Book has the meaning given to that term in the Survey Protocol;

Category means a category of Copyright Material subject to the Print Copying provisions of this Agreement, and includes:

- (a) a Book;

- (b) a Magazine, other than one that is subject to the Newspaper Clips provisions of this Agreement;
- (c) a Journal;
- (d) an Artistic Work;
- (e) a Musical Work

and any other category of Copyright Material that may be recognised from time to time for the purposes of Schedule 10 of this Agreement;

Commonwealth means the executive Government of the Commonwealth of Australia including the Commonwealth Corporations;

Commonwealth Agent means the Attorney-General's Department or such other Commonwealth Agency or Commonwealth Department that is substituted as the Department or Agency responsible for this Agreement;

Commonwealth Corporation means a Commonwealth statutory corporation that is an agent or emanation of the Commonwealth for the purposes of Division 2 of Part VII of the Act;

Communication means making a Work available in digital or other electronic machine-readable form to employees, members, contractors and agents of a Participating Body only by means of internal email or Intranet and not otherwise; for the avoidance of doubt, this term does not include external emails or the act of making a Work available to the public on an internet web page;

Contact Officer means the employee of a Participating Body nominated for the purposes of clause 2;

Copy Page Rate means the rates set out in Schedule 2;

Copy means:

- (a) for Newspapers,
 - (i) as a verb, to make a reproduction in a material form (other than a digital or other machine-readable reproduction) of the whole, or part of a Newspaper directly from a hard copy facsimile or paper edition of that Newspaper, or
 - (ii) as a verb, to make a digital or other machine-readable reproduction of the whole part or part of a Newspaper; and
 - (iii) as a noun, a reproduction so made;
- (b) for Copyright Material other than Newspapers,
 - (i) as a verb, to make a reproduction in a material form (other than a digital or other machine-readable reproduction) of the whole or a part of the Copyright Material;
 - (ii) as a verb, to make a digital or other machine-readable reproduction of the whole or a part of the Copyright Material; and

(iii) as a noun, a reproduction so made.

Copyright Material means a Work or a 'published edition of a work' within the meaning given to these terms in the Copyright Act;

CPI means the All Groups Consumer Price Index Number for the 8 capital cities published by the Australian Bureau of Statistics or any other Australian government body;

Department means a department of the Commonwealth;

Digital Copying means the act of making a reproduction in accordance with parts (a) (ii) and (b)(ii) of the definition of Copy in this clause;

Digital Work means Copyright Material in digital form;

Dispute Contact Officer means the employee of a Participating Body nominated for the purposes of clause 14;

Distribution Number means a fair and good faith estimate of the average daily number of Copies made of each Newspaper Clip supplied by a Press Clipping Service or In-House Press Clipping Service in that Quarter;

EFT Employees, for an Accounting Period, means the equivalent full time employees of a Participating Body as at 30 June of the relevant year;

Eligible Body means a Department, an Agency or a Commonwealth Corporation;

Endorsement means an endorsement lodged by an Eligible Body under clause 2, in the form set out in Schedule 1;

Equitable Remuneration means the equitable remuneration payable under section 183A of the Act;

Government Copy has the meaning given to that term in the Act;

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*;

In-house Press Clipping Service means a person or an undertaking contained within a Participating Body that supplies Newspapers Clips to the Participating Body;

Intranet means a system of electronic communication established by a Participating Body for internal use and generally accessible only to employees of a Participating Body;

Journal has the meaning given to that term in the Survey Data Processing Protocol;

Magazine has the meaning given to that term in the Survey Data Processing Protocol;

Musical Work has the meaning given to that term in the Act;

Newspaper means:

- (a) a Work published at regular intervals in a paper edition or electronically as a newspaper or similar periodical;
- (b) which is available for purchase without prior subscription;
- (c) but does not include a Journal or Magazine;

Newspaper Clip means a reproduction of Copyright Material published as a separate item or article in a Newspaper or Magazine which has been supplied to a Participating Body by a Press Clipping Service or an In-House Press Clipping Service;

Number of Clips means the number of Newspaper Clips supplied to a Participating Body by a Press Clipping Service or an In-House Press Clipping Service during a Quarter;

Page means:

- (a) for Digital Works, which, if printed, would be all that material produced on a single side of a single sheet of paper by a printer; and
- (b) for any other Work, all that material produced on a single side of a single sheet of paper by a copier (including a facsimile machine);

Participating Body means an Eligible Body that has elected to subscribe to the Agreement in accordance with clause 2.1;

Party means:

- (a) in relation to the Agreement as a whole - the Commonwealth or CAL;
or
- (b) in relation to endorsement of, and participation in the Agreement by a Participating Body as referred to in clause 2.1.3, - that Participating Body or CAL;

Press Clipping Service means an organisation licensed by CAL for the purposes of supplying Newspapers Clips;

Print Copying means the act of making a reproduction in accordance with parts (a)(i) and (b)(i) of the definition of Copy in this clause;

Print Music means a Musical Work embodied in paper form (i.e., 'sheet music');

Quarter means the period of three consecutive months in a Year commencing on 1 July, 1 October, 1 January and 1 April;

Remuneration means the amounts payable pursuant to clauses 4.1.1, 4.6, 5, 6, 7 and 8 by each Participating Body under this Agreement and includes Equitable Remuneration;

Sampling Body means the body agreed to by CAL and the Commonwealth to conduct a Survey;

Supply has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*;

Survey means a survey of Print Copying in accordance with the Survey Design conducted by a Sampling Body, and in Schedule 2 includes surveys undertaken under the 1996 CAL Agreement;

Survey Contact Officer means the employee of a Participating Body nominated for the purposes of clause 5;

Survey Design means the survey design developed by the Sampling Body in accordance with the outline set out in Schedule 9;

Survey Obligations means the survey obligations set out in Schedule 10;

Survey Data Processing Protocol means the survey data processing protocol, a summary of which is set out in Schedule 8;

Survey Report means any report given by the Sampling Body to CAL or the Commonwealth on the results and conduct of a Survey as provided in clause 5;

Survey Strata 1 means the Survey Strata for all Participating Bodies where the number of EFT Employees is less than 10 000;

Survey Strata 2 means the Survey Strata for all Participating Bodies where the number of EFT Employees is more than 10 000;

Tax Invoice has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*;

Term has the meaning ascribed to it in clause 3;

Tribunal means the Copyright Tribunal;

Work has the meaning given to that term in the Act; and

Year means a financial year from 1 July to 30 June.

1.2 Interpretation

1.2.1 In the Agreement, unless the contrary intention appears:

(a) monetary references are references to Australian currency;

- (b) clause and sub-clause headings are for convenient reference only and have no effect in limiting or extending the language of the clauses to which they refer;
- (c) a cross reference to a clause number is a reference to all its sub-clauses;
- (d) words in the singular number include the plural and vice versa;
- (e) words importing a gender include any other gender;
- (f) a reference to a Party includes the employees and authorised sub-contractors and agents of that Party;
- (g) a reference to a Schedule is a reference to a Schedule to the Agreement, and includes any Schedule that may be substituted, or that is deemed to be substituted, in accordance with the Agreement;
- (h) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (i) a reference to an enactment, or a provision of an enactment, is a reference to that enactment or provision as amended, replaced or re-enacted from time to time during the Term.

1.3 Saving

Nothing in the Agreement shall be construed as in any way limiting or derogating from rights enjoyed or provided to a Participating Body to do, or authorise the doing of, acts comprised in the copyright in Works and subject matter other than Works.

2. EXTENT OF AGREEMENT

2.1 Subscribing to the Agreement

- 2.1.1 An Eligible Body subscribes to the Agreement by lodging an Endorsement with both CAL and the Commonwealth Agent.
- 2.1.2 An Endorsement may be lodged at any time up to 30 June 2003.
- 2.1.3 Each Endorsement lodged pursuant to this clause gives rise to a separate agreement between CAL and the Participating Body, which incorporates the terms set out in the Agreement as are applicable to the relationship of CAL and the Participating Body, and a reference to a 'Party' shall be taken to include the Participating Body, unless the contrary intention appears.
- 2.1.4 Each Participating Body must nominate a Contact Officer (as provided on the Endorsement) for the purposes of administration of and payment for Copying and Communication under this Agreement and must advise CAL and the Commonwealth Agent of any changes in the relevant details of that person.
- 2.1.5 CAL and a Participating Body may negotiate supplementary conditions at the time of an Endorsement, provided they are consistent with the Agreement and do not increase the liability of any other Participating Body. A copy of any such conditions must be notified to the Commonwealth Agent within 28 days of their finalisation.
- 2.1.6 Where a Participating Body ceases to exist during the Term, the Commonwealth shall remain liable for any payments due to CAL in respect of Copying and Communication of Copyright Material by that Participating Body up to the date of termination.
- 2.1.7 Where a new Eligible Body comes into existence and lodges an Endorsement, its rights and liabilities under the Agreement will be deemed to commence from the date the Eligible Body came into existence.
- 2.1.8 CAL acknowledges that the Commonwealth Agent is not able to compel the Eligible Bodies that are not Participating Bodies to subscribe to the Agreement.

3. TERM

- 3.1 Subject to clauses 3.2, 3.3, 12.3 and 15, this Agreement commences on 1 July 2001 and continues in force until 30 June 2006 (the Term).
- 3.2 The Term for Digital Copying and Communication of Newspaper Clips is agreed to have commenced on 1 July 2001 and shall end on 30 June 2004.
- 3.3 The Parties agree to a review of this Agreement after the survey data for a survey proposed for early 2003 becomes available. The review will include but not be limited to measuring Digital Copying and Communication and the valuation of such uses, the cost and effectiveness of Surveys and possible alternatives for determining Commonwealth payments, consideration of agreeing a separate page rate for payment for the Copying of Artistic Works and all issues concerned with Digital Copying of Newspaper Clips.

4. REMUNERATION

4.1 Liability

- 4.1.1 Each Participating Body agrees to pay CAL for:
- (a) Print Copying of Copyright Material other than Newspaper Clips and Print Music in accordance with Clause 5;
 - (b) Copying and Communication of Newspaper Clips in accordance with Clause 6;
 - (c) Print Music Copying in accordance with Clause 7;
 - (d) Digital Copying and Communication of Copyright Material other than Newspaper Clips in accordance with Clause 8; and
 - (e) past Copying not previously accounted for, in accordance with Clause 4.6.
- 4.1.2 Where a Participating Body was not in existence for part of an Accounting Period, CAL will, in calculating the liability of the Participating Body for that Accounting Period, make a pro-rata calculation based on the number of days in that Accounting Period during which that Participating Body was in existence.

4.2 Invoicing

4.2.1 Copyright Material other than Newspaper Clips

Each Participating Body will pay CAL Remuneration for Copying and Communication of Copyright Material other than Newspaper Clips during each Accounting Period as follows:

- (a) CAL will issue an invoice to each Participating Body in respect of successive Accounting Periods generally in accordance with the agreed timetable set out in Schedule 11 with the first invoice to be issued shortly after the signing of this Agreement;
- (b) invoices issued under the Agreement are payable within 30 days after their issue;
- (c) if, within 56 days from the date of issue by the Sampling Body of a final Survey Report, any error or omission is discovered by any Participating Body or the Commonwealth Agent or CAL in that Survey Report which affects the calculation of Remuneration for Print Copying, CAL will direct the Sampling Body to correct the error or omission and the amended figure will be used by CAL to recalculate the amount and to issue an amended invoice; and
- (d) notwithstanding paragraph (c), CAL shall be entitled to invoice the Participating Body immediately after the expiry of 28 days from the date of issue of a Survey Report on the available results.

4.2.2 Newspaper Clips

Each Participating Body will pay CAL for its Copying and Communication of Newspaper Clips during the Term of this Agreement as follows:

- (a) CAL shall issue an invoice to each Participating Body for each Quarter generally in accordance with the agreed timetable set out in Schedule 11 with the first invoice to be issued shortly after the signing of this Agreement;
- (b) the invoice will include or be accompanied by information specifying the Number of Clips, the Distribution Number and the amount per Newspaper Clip on which the invoice is based;
- (c) the Participating Body must pay within 30 days after the issue of an invoice by CAL; and
- (d) CAL may require the Participating Body to certify and confirm any change in Distribution Number or Number of Clips.

4.3 Calculation Details

4.3.1 CAL must, at the request of a Participating Body, provide the Participating Body with such details of the calculation of the amount invoiced to that Participating Body, as are reasonably required by the Participating Body.

4.4 Incorrect Payment

4.4.1 If a Participating Body underpays an invoice amount, whether due to an incorrect invoice from CAL or otherwise, the Participating Body must pay CAL the amount of the underpayment within 30 days after notice from CAL.

4.4.2 If a Participating Body overpays an invoice amount, whether due to an incorrect invoice from CAL or otherwise, CAL must at the Participating Body's election either:

- (a) pay the Participating Body the amount of the overpayment within 30 days after receipt of notice by CAL; or
- (b) offset the amount of the overpayment against any amount subsequently due by the Participating Body to CAL.

4.5 Interest

4.5.1 Each Participating Body must pay CAL interest at the Agreed Rate on each amount outstanding under this Agreement after the due date for payment. To avoid doubt, interest is not payable for the period during which payment was not made by reason of the Participating Body receiving an incorrect invoice.

4.6 Liability Subsisting Prior to Commencement of this Agreement

4.6.1 In addition to its other liability under the Agreement, and in order to discharge its entire liability for Print Copying prior to 1 July 2001, where:

- (a) a Participating Body was in existence prior to 1 July 2001, but was not a party to the 1996 CAL Agreement; and
- (b) CAL has not otherwise been paid for Print Copying undertaken by that Participating Body or by functional elements of the Commonwealth for which the Participating Body is now responsible;

the Participating Body shall pay an extra amount being 1.5 times the amount paid for the 2001-2002 Year for Print Copying of all Copyright Material including Newspapers.

4.6.2 At the election of the Participating Body, the amount payable under clause 4.6.1 may be paid as one lump sum, or by three equal installments paid over three years.

4.6.3 On payment, all warranties and indemnities provided by CAL under the 1996 CAL Agreement shall be applied in relation to the Participating Body as if it had been a subscriber to that agreement.

4.7 GST

- 4.7.1 CAL warrants that the Australian Taxation Office has ruled (“the Ruling”) that where payments of Equitable Remuneration are made under Parts VB and VII Division 2 of the Act, a taxable Supply has not occurred.
- 4.7.2 If the Australian Taxation Office amends the Ruling with the effect that a payment of Equitable Remuneration made under Part VII Division 2 of the Act is a taxable Supply, a Participating Body shall pay to CAL, in addition to the invoiced amount and effective from the date of amendment of the Ruling, an amount determined by CAL not exceeding the invoiced amount multiplied by the rate at which GST is payable by CAL in respect of payments of Remuneration.
- 4.7.3 CAL must issue a Tax Invoice to a Participating Body for a supply to which clause 4.6.2 applies within 7 days following payment of the GST inclusive consideration determined under clause 4.7.2.
- 4.7.4 Nothing in this clause requires the Commonwealth or a Participating Body to pay any amount on account of a fine, penalty, interest or other amount for which CAL is liable, to the extent that the liability arises as a consequence of a default of CAL, its employees or agents or any other event beyond the control of the Commonwealth.

4.8 Accounting and Reporting

- 4.8.1 CAL shall, as soon as practicable after each billing cycle referred to in Schedule 11, prepare a report of its activities relevant to the operation of the Agreement during that cycle including particulars of total Remuneration received from all Participating Bodies and shall send a copy of the report to the Commonwealth Agent.
- 4.8.2 From time to time as requested during the Term, CAL must provide the Commonwealth Agent with a statement which lists, in relation to each Participating Body and each category of liability listed under clause 4.1.1, the amounts invoiced, paid and outstanding, and the periods those invoices cover.
- 4.8.3 Upon request by the Commonwealth Agent, CAL shall provide a copy of all invoices or any particular invoice issued to a Participating Body.
- 4.8.4 Without limiting the operation of any other provision of this Agreement, CAL shall cooperate generally with the Commonwealth and comply with any reasonable request for information in relation to the operation of this Agreement.

5. PRINT COPYING OF COPYRIGHT MATERIAL OTHER THAN NEWSPAPERS CLIPS AND PRINT MUSIC

5.1 Remuneration

- 5.1.1 Remuneration for each Accounting Period for Print Copying of Copyright Material other than Newspaper Clips and Print Music is determined in accordance with the rates and formula set out in Schedule 2.

5.2 **Surveys**

- 5.2.1 The parties agree to the use of Surveys as a method for determining the number of Pages Copied across all Participating Bodies for the purposes of calculating Remuneration.
- 5.2.2 The Surveys shall be managed by the Sampling Body in a manner consistent with the Survey Design.
- 5.2.3 The parties acknowledge that each Participating Body will be classified as being a member of Survey Strata 1 or Survey Strata 2. It is anticipated that the number of Pages Copied per EFT Employee will vary between the two Survey Strata, and this variation will be reflected in the calculation of Remuneration under Schedule 2.

5.3 **Conduct**

- 5.3.1 The Commonwealth and CAL must use their reasonable endeavours to ensure the Surveys are conducted in accordance with the Survey Design, the Survey Data Processing Protocol, and the Survey Obligations.
- 5.3.2 CAL shall take all reasonable measures to ensure that the Sampling Body provides reasonable notice to a Participating Body of the intention to include that body in a forthcoming Survey and of the details of the intended Survey, including its timing, extent and duration.

5.4 **Appointment of a Sampling Body**

- 5.4.1 There shall be a single independent Sampling Body.
- 5.4.2 Subject to this clause, the Sampling Body shall be ACNielsen (ABN 35 008 417 874).

5.4.3 CAL may at any time, subject to the approval of the Commonwealth Agent, appoint a Sampling Body other than ACNielsen. Such a request must be made, and agreed to, in writing and any new appointment must be notified in writing by CAL to all Participating Bodies within 28 days of appointment.

5.4.4 CAL shall be responsible for all payment to and costs of the Sampling Body arising from this Agreement, including costs incurred in developing, conducting, analysing and reporting on the Survey Design or any particular Survey.

5.4.5 The Sampling Body shall not be an agent of the Commonwealth for the purposes of this Agreement.

5.5 Timing

5.5.1 The parties will use their reasonable endeavours to ensure that:

- (a) a Survey will be conducted approximately once every eighteen months; and
- (b) at least two Surveys will be conducted during the Term.

5.6 Compliance

5.6.1 Where the duration of a Survey is extended at the direction of the Sampling Body as a result of non-compliance by a Participating Body with the Survey Design or Survey Obligations then the additional costs of the Sampling Body associated with that extension will be borne as follows:

- (a) for the first two weeks of the extension, by CAL; and
- (b) thereafter, by the non-complying Participating Body.

5.6.2 The parties acknowledge that the Sampling Body will be directed to give prompt advice to the Participating Body being surveyed where it anticipates that the duration of a Survey may be extended.

5.7 Reporting

5.7.1 CAL shall provide the Commonwealth, through the Commonwealth Agent, with full and free access to all or any particular information it might request relating to:

- (a) the development of the Survey Design;
- (b) any alterations to the Survey Design; and
- (c) implementation of the Survey Design, including any assumptions, extrapolations or interpolation of data or other statistical devices used in interpretation and analysis in order to yield Copy Pages figures.

5.7.2 From time to time during the Term of this Agreement, the Commonwealth Agent may designate the Australian Bureau of Statistics, or any other person

or organisation, as its representative for particular purposes under this clause.

- 5.7.3 Within a reasonable time after each Survey, CAL shall arrange for the Sampling Body to provide to the Commonwealth Agent, a report on the conduct of the Survey, a summary of the data collected, an analysis of the data containing, if the data set permits, calculation of sampling and non-sampling error, and the assumptions on which the Survey Design for the Survey was formulated. Such report shall contain such comments and recommendations as the Sampling Body considers appropriate.

5.8 Survey Contact Officer

- 5.8.1 Where a Survey is to be conducted in the offices of a Participating Body, the Participating Body shall nominate an employee at Senior Executive Service level or equivalent seniority to be the Survey Contact Officer for all matters relating to the conduct of a Survey within that Participating Body.

- 5.8.2 The Survey Contact Officer shall be responsible to ensure appropriate cooperation and assistance to CAL or the Sampling Body in relation to:

- (a) training of staff of the Participating Body – provided by CAL or the Sampling Body;
- (b) the effective conduct of the Survey; and
- (c) the resolution of any difficulties in the conduct of the Survey.

5.9 Processing of Survey data

- 5.9.1 CAL shall process the Survey records forms completed by Participating Bodies during a Survey in accordance with the Survey Data Processing Protocol summarised in Schedule 8.
- 5.9.2 CAL must supply a copy of the full Survey Data Processing Protocol to any Participating Body on request as specified in Schedule 8.

6. COPYING AND COMMUNICATION OF NEWSPAPER CLIPS

- 6.1 Remuneration for the Copying and Communication of Newspaper Clips is determined in accordance with the rates, formula and terms set out in Schedule 3.
- 6.2 Newspaper Clips shall be excluded from Surveys conducted after 1 July 2002.

6.3 Reporting of Copying

- 6.3.1 A Participating Body will authorise its Press Clipping Service and its In-House Press Clipping Service to provide CAL with full details of Newspaper Clips provided to the Participating Body in accordance with the process described in Schedule 4.

7. PRINT MUSIC COPYING

- 7.1 Remuneration for each Accounting Period for Copying of Print Music is calculated at the rate of 15.00000 cents per page of Print Music Copied.
- 7.2 Where a Participating Body Copies Print Music, that Participating Body must so advise CAL within 30 days of the date of signing this Agreement or if after that, within 30 days of the date of first Copying of any Print Music.
- 7.3 Where a Participating Body has informed CAL under clause 7.2, it must:
- (a) keep a record of Print Music Copied in the format of Schedule 5; and
 - (b) forward that log to CAL at the end of each Quarter in which Copying occurred.

8. DIGITAL COPYING AND COMMUNICATION OF COPYRIGHT MATERIAL OTHER THAN NEWSPAPER CLIPS

- 8.1 Remuneration for Digital Copying and Communication of Copyright Material is determined in accordance with the rates and formula set out in Schedule 6, except for:
- (a) Newspaper Clips; and
 - (b) Copyright Material which is available in electronic form and which is authorized for further digital reproduction or communication by virtue of a subscription or other licence granted by or on behalf of the rightsholder.

8.2 Collection of data

- 8.2.1 The parties agree that they will expend their best endeavours to enable collection of data by CAL on Digital Copying and Communication of Copyright Material other than Newspaper Clips.
- 8.2.2 The purpose of the data collection under this clause is to obtain data to assist distribution of Remuneration to CAL members and to enable the negotiation of future rates for Digital Copying and Communication of Copyright Material other than Newspaper Clips. To avoid doubt, the collection of data under this clause does not affect the liability for Digital Copying and Communication under Clause 4.1(d).
- 8.2.3 The collection of data under this clause will be undertaken in approximately 10 Participating Bodies volunteering to participate in the collection. Data will be collected in central data areas, such as libraries, of those Participating Bodies.
- 8.2.4 The collection of data under this clause will be undertaken in accordance with a protocol to be agreed between the Commonwealth Agent and CAL and in consultation with potential volunteer Participating Bodies. The protocol will deal with matters including identification of Digitally Copied or Communicated Copyright Material, confidentiality of data, manner of liaison

between the Commonwealth Agent, Participating Bodies and CAL, access to premises and data, resources and reporting by CAL to the Commonwealth on the results of the data analysis under this clause.

- 8.2.5 The development of the protocol and the collection of data will be undertaken in time to enable use and analysis of the data for the negotiation on rates for Digital Copying and Communication beyond 1 June 2004.

8.3 Warranties

- 8.3.1 Subject to clause 8.3.3, CAL agrees not to bring any action, claim, demand or proceeding, nor to make any application to the Tribunal or to any court, nor to seek any further order in any current proceedings, against any volunteer Participating Body arising in connection with any Digital Copying or Communication made by or on behalf of that Participating Body made at any time and disclosed or discovered during the data collection period.
- 8.3.2 Subject to clause 8.3.3, CAL agrees that it will not directly or indirectly encourage the bringing of any claim, action, demand, proceeding or application by any other person, whether for copyright infringement, breach of contract, or otherwise, and whether brought during or after the term of this Agreement, arising from or in connection with any Digital Copying or Communication made by or on behalf of a volunteer Participating Body during the data collection period.
- 8.3.3 The provisions of this clause shall not prevent CAL from assisting any member of CAL who brings any action, claim, demand, or proceeding or makes any application contemplated in those clauses by providing them with information if, and only to the extent that CAL is obliged to do so in the terms of its constitution or agreements with members.

9. EFT EMPLOYEES

9.1 Notification

9.1.1 A Participating Body must:

- (a) 30 days from the date of this Agreement, provide a notice to CAL advising the number of EFT Employees of the Participating Body as at 30 June 2002; and
- (b) on or before 31 March in each Year, provide a notice to CAL certifying the number of EFT Employees of the Participating Body in the preceding Year.

9.1.2 Where in any Year, a Participating Body fails to certify the number of its EFT Employees within 2 weeks of the due date, CAL may use the most recent published number or may use the number quoted in the Endorsement, and CAL must notify the Participating Body of the number to be used under this clause, two weeks prior to invoicing.

9.1.3 If the number of EFT Employees is considered by either CAL or a Participating Body to be a significantly anomalous measure for purposes of the Agreement, then the parties may agree upon an alternative measure, including average staffing levels.

10. RECORDS AND INFORMATION

10.1 Each Participating Body will:

- (a) keep accurate books of account and other records in sufficient detail to ensure that all amounts payable to CAL under this Agreement can be ascertained;
- (b) provide to CAL such information as CAL may from time to time request in connection with this Agreement; and
- (c) comply with all CAL's reasonable requirements for information and records during a Survey set out in Schedule 10;

provided that the Participating Body is not obliged to comply with a request for the provision of information which would contravene any applicable law.

10.2 Ownership

10.2.1 The title to copyright in all records of copying created in the course of a Survey vest on their creation in CAL and the Participating Body as tenants in common.

10.2.2 The Commonwealth and CAL agree to grant to the other reasonable access to the records referred to in this clause 10.2 for the purposes of this Agreement.

11. CONFIDENTIALITY

11.1 Obligation to maintain confidentiality

11.1.1 Subject to this clause 11, neither CAL on the one side nor the Commonwealth Agent or Participating Body on the other may use or disclose any confidential information of the other without the prior written consent of CAL in relation to its material and the Commonwealth Agent in relation to Commonwealth material. In giving written consent to use or disclose its confidential information, the Commonwealth may impose such conditions as it thinks fit, and CAL agrees to comply with those conditions.

11.1.2 In this clause 11, “confidential information” includes:

- (a) information marked as confidential, or agreed in writing to be confidential; or
- (b) information which by its nature is confidential, or information which CAL, or the Commonwealth, knows or ought to know is confidential.

11.1.3 The Commonwealth Agent or a Participating Body may at any time require CAL to direct its officers, employees, agents and sub-contractors involved in the conduct of the Survey to give written undertakings substantially in the form specified in Schedule 7 or as otherwise agreed. CAL shall use its best endeavours to promptly arrange for all such undertakings to be given.

11.2 Exclusions

11.2.1 CAL may use confidential information of the Commonwealth and each Participating Body to determine monies payable to CAL under this Agreement and distributions to members of CAL and, for this purpose, disclose confidential information to CAL’s auditors.

11.2.2 The obligations on the parties under this clause 11 will not be taken to have been breached to the extent that the confidential information:

- (a) is used or disclosed by a Party solely in order to comply with obligations, or exercise rights, under this Agreement;
- (b) is disclosed to a Party’s auditors, legal or probity advisers, or its internal management personnel, on a need to know basis;
- (c) is disclosed by the Commonwealth to any Commonwealth Minister;
- (d) is disclosed by the Commonwealth in response to a request or direction of a House, or a request by a Committee, of the Parliament of the Commonwealth of Australia;
- (e) is authorised or required by law to be disclosed;

- (f) was already in the receiving Party's possession at the time of receipt from the other Party;
- (g) has been held by the receiving Party for a period in excess of six years; or
- (h) is in the public domain other than by breach of an obligation of confidence.

11.2.3 Where the Commonwealth discloses confidential information pursuant to clause 11.2.2, the Commonwealth must notify the receiving person of the existence and the content of this clause 11 and the sensitivity of the information to be disclosed.

12. PROTECTION OF PERSONAL INFORMATION

12.1 CAL agrees with respect to all services to be performed under the Agreement:

- (a) to comply with the Information Privacy Principles set out in section 14 of the Privacy Act 1988 ('The Privacy Act') which concern the collection, solicitation, security, use and disclosure of Personal Information to the extent that the content of those principles applies to the types of activities CAL is undertaking under the Agreement, as if it were a record-keeper as defined in the Privacy Act;
- (b) to cooperate with any reasonable demands or inquiries made by the Privacy Commissioner;
- (c) to ensure that any person who has an access level which would enable that person to obtain access to any Personal Information is made aware of, and undertakes in writing to observe the Information Privacy Principles referred to in clause 12.1(a);
- (d) to comply in so far as is practicable with any policy guidelines notified to CAL and laid down by the Commonwealth or issued by the Privacy Commissioner from time to time relating to the handling of Personal Information;

- (e) to comply as far as practicable with any reasonable direction of the Commonwealth to observe any recommendation of the Privacy Commissioner relating to any acts or practices of CAL that the Privacy Commissioner considers breach the obligation in clause 12.1(a); and
- (f) to indemnify the Commonwealth in respect of any loss, liability or expense suffered or incurred by the Commonwealth arising out of a breach of the obligations of CAL under this clause or any misuse of Personal Information by CAL or any disclosure by CAL in breach of an obligation of confidence whether arising under the Privacy Act or otherwise.

12.2 In this clause, 'Personal Information' has the meaning given in the *Privacy Act*.

12.3 This clause 12 shall survive the expiration or termination of this Agreement.

13. INDEMNITIES

13.1 Subject to clause 13.2, CAL indemnifies the Commonwealth Agent and each Participating Body against all damages reasonably incurred by the Commonwealth or Participating Body as a result of or arising out of any breach by CAL of this Agreement.

13.2 In accordance with the Act, payment by a Participating Body to CAL under this Agreement will relieve the Participating Body of its obligations under section 183(4) and 183(5) of the Act, where the payment is for:

- (a) the making of Government Copies; or
- (b) a Communication of Copyright Material under Part VII Division 2 of the Act where the owner of copyright in the Copyright Material has authorised CAL to collect Remuneration for that Communication.

13.3 The Parties acknowledge that the indemnities granted by this clause 13:

- (a) only cover liability for actions for breach of Part VII Division 2 of the Act; and
- (b) are not granted in respect of any liability of a Participating Body for the use of Copyright Material in any manner other than as provided in clause 13.2; and

- (c) without restricting the generality of Clause 13.3(b), are not granted in respect of the use by a Participating Body of Copyright Material available in electronic form by virtue of a subscription or other licence granted by or on behalf of the rightsholder; and
- (d) will not apply if the Participating Body is in breach of a term of this Agreement such as to contribute materially to that liability.

13.4 The indemnities provided in this clause shall survive the expiration or termination of this Agreement.

14. DISPUTE RESOLUTION

14.1 Dealing with disputes

14.1.1 The Parties must, without delay and in good faith, attempt to resolve any dispute, which arises out of or in connection with this Agreement, including a dispute as to any amount payable under this Agreement, in accordance with clause 14, prior to commencing any proceedings.

14.1.2 If a Party requires resolution of a dispute it must first give notice of such dispute to the other Party in accordance with the provisions of clause 17.1.

14.1.3 The Parties acknowledge that compliance with the remaining provisions of this clause 14 is a condition precedent to any claim for relief or remedy whether by way of proceedings in a court of law or otherwise in respect of such disputes.

14.2 Resolution by management

14.2.1 The Party to a notified dispute must immediately submit full details of the dispute to:

- (a) in the case of CAL the chief executive of CAL or his nominee;
- (b) in the case a particular Participating Body - the Dispute Contact Officer
- (c) in the case of the Commonwealth Agent an officer at Senior Executive Service (SES) level or equivalent seniority nominated by the Commonwealth Agent.

- 14.2.2 If the dispute is not resolved within 30 days of submission of the dispute to the persons referred to in clause 14.2.1, or such other time as they agree, either Party may pursue any other legal remedy available to the Party.
- 14.2.3 For the purposes of clause 14.2.1, the Participating Body must, within 30 days after:
- (a) the date of this Agreement, notify CAL of the name, position and contact details of the Dispute Contact Officer nominated for the purposes of this clause; and
 - (b) any change in the particulars of the Dispute Contact Officer, notify CAL of the change.
- 14.2.4 Despite the existence of a dispute, the Parties will continue to perform their obligations under this Agreement unless precluded by the nature of the dispute.
- 14.2.5 This clause does not apply to action by either Party under clause 15.1.1 or either Party commencing legal proceedings for urgent interlocutory relief.

15. TERMINATION

15.1 Default

15.1.1 Notwithstanding clause 14 if either CAL or the Commonwealth Agent (the Defaulting Party):

- (a) commits a breach of any obligation under this Agreement which is not capable of remedy; or
- (b) continues to breach any obligation under this Agreement (other than a breach which is not capable of remedy) for 30 days after receiving notice from the other Party (the Innocent Party) of that breach,

the Innocent Party may, by notice to the Defaulting Party, terminate this Agreement and recover from the Defaulting Party all losses, costs and expenses incurred by the Innocent Party.

15.1.2 If:

- (a) an application or order is made for the winding up or dissolution of CAL;
- (b) a receiver or receiver and manager, official manager, trustee, provisional liquidator or similar officer is appointed for all or any part of the assets or undertaking of CAL;
- (c) CAL enters into, or resolves to enter into, an arrangement, composition or compromise with, or assignment for, the benefit of its creditors

generally, or any class of creditors or proceedings are commenced to sanction such an arrangement, composition or compromise;

- (d) CAL stops payment of or is unable to pay its debts within the meaning of the *Corporations Law*;
- (e) CAL ceases to carry on business; or
- (f) CAL is no longer the declared collecting society for the purposes of Division 2 of Part VII of the Act;

the Commonwealth Agent may, by notice to CAL, terminate this Agreement and recover from CAL all losses, costs and expenses incurred by the Commonwealth.

15.2 Notice

- 15.2.1 If the Act is amended to incorporate any new statutory licensing regime with respect to Government Copying, including a statutory licensing regime for which CAL is not the only collecting society declared under the Act, either Party may at any time, by notice in writing to the other Party, terminate those provisions of the Agreement that relate to Government Copying as from a date specified in the notice not prior to the coming into operation of that amendment.
- 15.2.2 The Agreement may be terminated with effect at the end of a current Year, by either CAL or the Commonwealth Agent giving three months' notice in writing to the other Party.
- 15.2.3 A Participating Body may terminate its involvement in the Agreement with effect at the end of a current Year, on three month's notice in writing, subject to the Participating Body making arrangements with CAL otherwise to meet its statutory obligations, and in default, as determined by the Copyright Tribunal.

15.3 Effect

- 15.3.1 Termination does not affect any right or obligation arising under this Agreement up to the date of termination, including any obligation of a Party to make payments to another Party under this Agreement.

16. COMPLIANCE WITH COMMONWEALTH POLICIES AND DIRECTIONS

- 16.1 CAL must, when using the premises or facilities of a Participating Body, comply with all reasonable directions and procedures of a Participating Body relating to occupational health (including the Commonwealth's smoke free work place policy), safety and security in effect at those premises or in regard to those facilities, as notified by the Participating Body or as might reasonably be inferred from the use to which the premises or facilities are being put.
- 16.2.1 CAL must comply with its obligations, if any, under the Equal Opportunity for Women in the Workplace Act 1999, and must not enter into a subcontract under the Agreement with a subcontractor named by the Director of Equal Opportunity for Women in the Workplace and published at www.eowa.gov.au as an employer currently not complying with that Act.
- 16.3 Access to any premises or a part of any premises may be denied by a Participating Body during the course of a Survey where it appears to that Body that it would be contrary to the public interest to allow such access, including in particular, on the grounds of national security.

17. MISCELLANEOUS

17.1 Notices

- 17.1.1 Any notification of dispute or other communication (other than a routine communication from a Participating Body) which may be given to CAL under the Agreement shall be deemed to have been duly given if it is in writing and signed on behalf of the Commonwealth by the Secretary of the Commonwealth Agent and it is delivered by hand, posted or a copy is faxed to CAL at the address below:

Copyright Agency Limited
Level 19
157 Liverpool Street
SYDNEY NSW 2000
Attention: Licensing Manager
Telephone: (02) 9394 7600
Facsimile: (02) 9394 7601

- 17.1.2 Any notification of dispute or other communication (other than a routine communication to a Participating Body) which may be given to the Commonwealth Agent under the Agreement shall be deemed to have been duly given if it is in writing and signed by or on behalf of CAL and it is delivered by hand, posted or a copy is faxed to the Commonwealth Agent at the address below:

The Secretary
Attorney-General's Department
Robert Garran Offices
BARTON ACT 2600
Attention: Assistant Secretary, Copyright Law Branch
Telephone: (02) 6250 6313
Facsimile: (02) 6250 5929

- 17.1.3 A notification of dispute or other communication sent by post shall be deemed to have been given at the time when, in due course of the post, it would have been delivered at the address to which it is sent.
- 17.1.4 A facsimile is deemed to have been received on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the addressee.

17.2 **Amendment**

This Agreement may only be varied by the written agreement of CAL and the Commonwealth Agent.

17.3 **Assignment**

Neither Party may assign its rights under this Agreement without the prior written consent of the other Party.

17.4 **Entire Agreement**

This Agreement embodies the entire understanding and agreement between the Parties as to its subject matter.

17.5 **Waiver**

No waiver of any term of this Agreement is binding on a Party unless it is in writing and executed by or on behalf of that Party. Any such waiver is not a waiver of any other breach.

17.6 Further Assurance

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

17.7 Severability

Each provision of this Agreement will, unless the context otherwise requires it, be read and construed as a separate and severable provision, so that if any provision is void or otherwise unenforceable for any reason, then that provision will be severed and the remainder will be read and construed as if the severable provision had never existed.

SCHEDULE 1

**Form of Endorsement
(Clause 2)**

Election by an Eligible Body to Subscribe to Agreement

Name of Participating Body:

Is the Participating Body a Department, Agency or Commonwealth Corporation?
(Specify which)

Specify any elements of the Participating Body that are to be excluded from the Agreement (eg. Boards, statutory authorities or agencies, commissions) [Please attach a separate sheet if extra space is required]:

Specify any associated elements or bodies which are to be included in the Agreement (eg. Boards, statutory authorities or agencies, commissions) [Please attach a separate sheet if extra space is required]:

State the current EFT numbers for the Participating Body constituted as described above and whether this EFT Employee includes or excludes any of the bodies mentioned above for exclusion:

Specify whether the Participating Body (or any of the agencies, boards, statutory authorities or commissions etc) was represented under the Previous CAL Agreement:

SCHEDULE 1

Address of the Participating Body (including relevant agencies, boards, statutory authorities or commissions):

Name and contact particulars of the Contact Officer(s):

Does the Participating Body subscribe to a Press Clipping Service? If so please provide details of the Service

Does the Participating Body have an In-House Newsclipping Service?

Date of the Notice: _____ 2003

Signed by: _____

[NOTES:

This form of Notice is to be used for a Participating Body to subscribe to the Agreement between Copyright Agency Limited and the Commonwealth, so as to become a Participating Body. The Notice is issued under clause 2 of the Agreement, and is to be served simultaneously on both CAL and the Commonwealth (Attorney-General's Department), at their addresses stated in clause 17.

The Contact Officer is responsible for operation of the Agreement in relation to the Participating Body. He or she will be expected to cooperate generally with CAL and the Sampling Body in accordance with this Agreement, and in particular should furnish details of EFT Employee numbers from time to time.

Each notice served pursuant to clause 2 gives rise to a separate contract between CAL and the Participating Body, incorporating terms as set out in the Agreement. The form may also be used from time to time during the term of the Agreement to vary the above particulars.]

SCHEDULE 2

PRINT COPYING OF COPYRIGHT MATERIAL OTHER THAN NEWSPAPER CLIPS AND PRINT MUSIC

(Clause 5)

Part A: Page rates

1. As at 30 June 2001 the page rates for Magazines, Books and Journals are as follows:

Category of Copyright Material	Rate
Magazines (by definition excludes Newspaper Clips)	5.13756 cents per Page
Books	6.42195 cents per Page
Journals	15.41268 cents per Page

Part B: Calculation of Remuneration

2. The Remuneration payable by each Participating Body for each Accounting Period for each Category of Copyright Material set out in Part A of this Schedule is calculated as follows:

$$\text{CP} \times \text{EFT} \times \text{CPR} \times (\text{CPI}/\text{Base CPI})$$

Where,

CP = the number of Copy Pages of the relevant Category per EFT Employee for the relevant Survey Strata, averaged over the four (or if the fourth Survey has not been conducted then the last three) most recent Surveys of the Commonwealth conducted by CAL from 1 January 1995 to the date of invoicing (excluding data on Copying of Newspaper Clips). The Surveys conducted under the 1996 CAL Agreement are to be included as if they had been conducted under this Agreement – thus data on Copying of Newspaper Clips is to be excluded in this calculation.

EFT = the number of EFT Employees of the Participating Body applicable to the Accounting Period.

CPR = for each Category of Copyright Material set out in Part A of this Schedule - the rate specified.

Base CPI = 133.8 which number is agreed to represent the CPI for the Quarter ending 30 June 2001.

CPI = the CPI for the last Quarter of the relevant Accounting Period.

SCHEDULE 3

COPYING AND COMMUNICATION OF NEWSPAPER CLIPS (Clause 6)

Part A: Rates

1. As at 30 June 2001 the rates for Copying and Communication of Newspaper Clips are as follows:

Type of Copy	Rate
Print Copy	\$0.0128439 cents per Copy per Newspaper Clip
Digital Copy and/or Communication	In accordance with the table in para 2(b) below

Part B: Calculation of Remuneration

2. Remuneration for each Accounting Period payable in respect of Print Copying, Digital Copying and Communication of Newspaper Clips is calculated as follows:

(a) Print Copying

For Print Copies, the formula is:

$$\text{CN} \times \text{DN} \times \text{NPR} \times (\text{CPI}/\text{Base CPI})$$

Where,

CN = Number of Newspaper Clips supplied to the Participating Body during the Quarter which are copied by the Participating Body.

DN = Distribution Number of Print Copies.

NPR = The rate specified in Part A of this Schedule for Print Copies of Newspaper Clips.

Base CPI = 133.8, which number is agreed to represent the CPI for the Quarter ending 30 June 2001.

CPI = The CPI for the invoiced Quarter.

SCHEDULE 3

Working example

Background Note: A Press Clipping Service or In-house Press Clipping Service will supply CAL with exact data of number of Newspaper Clips supplied to the Participating Body during each Quarter. For the purposes of this example assume that this number is 9000 (that is, 100 Clips per day for each of the 90 days of the Quarter). Multiply this by the average number of Print Copies of each Clip supplied during this period, say 50 (Distribution Number), and then multiply by the rate for Print Copies of Newspaper Clip rate.

Scenario 1

Data:

- 9,000 clips are received for a quarter (total clips)
- on average, each of the clips are copied 50 times (distribution number)

Calculation:

9,000 clips x 50 = 450,000 (i.e. total copies)

450,000 (total copies) x 0.0128439 (rate)

= \$5,779.75 (plus CPI adjustment)

Scenario 2

Data:

700 clips are received for a quarter

600 clips are copied 15 times and distributed to senior management

150 of these clips are copied on average, 400 times and distributed to most employees

Calculation:

$[600 \text{ clips} \times 15] + [150 \text{ clips} \times 400] = 69,000$

69,000 (total copies) x 0.0128439 (rate)

= \$886.23 (plus CPI adjustment)

Scenario 3

Data:

1,000 clips are received for the quarter

250 clips are copied on average 250 times for distribution

Calculation:

$250 \times 250 = 62,500$

62,500 (total copies) x 0.0128439 (rate)

= (802.74 (plus CPI adjustment)

SCHEDULE 3

(b) Digital Copying and Communication (Intranet/Email)

Remuneration for Digital Copies and Intranet Communication of Newspaper Clips is calculated and payable in accordance with the following table:

Number of Employees	In-House Press Clipping Service per Digital Newspaper Clip made available electronically for up to 90 days	Press Clipping Service per Digital Newspaper Clip made available electronically for up to 90 days	Per Digital Newspaper Clip stored on an intranet or electronic database longer than 3 months: (Stored from post expiry of the 90 days)		
			Year 1	Year 2	Year 3 +
1 – 1000	\$1.25	\$0.25	\$0.20	\$0.10	\$0.05
1001 – 2000	\$1.35	\$0.35	\$0.20	\$0.10	\$0.05
2001 – 3000	\$1.45	\$0.45	\$0.20	\$0.10	\$0.05
3001 – 4000	\$1.55	\$0.55	\$0.20	\$0.10	\$0.05
> 4000	\$1.65	\$0.65	\$0.20	\$0.10	\$0.05

(c) The above formula for Newspaper Clip Copying and Communication is subject to the following:

- (i) a Participating Body shall not be liable to pay additional Remuneration for multiple intranet or other electronic access to a Newspaper Clip by an Employee; and
- (ii) payments are not subject to CPI adjustment.

SCHEDULE 3

WORKING EXAMPLES

Scenario 1:

Data:

- 9000 Newspaper Clips are supplied electronically to the Participating Body for the Quarter (total Newspaper Clips)
- and these are all emailed to 300 users:

Calculation:

9,000 clips x 0.25 (for up to 1,000 staff) = \$2,250

Scenario 2:

Data:

- 9000 Newspaper Clips received for a quarter (total clips)
- all are placed on an Intranet accessible to all staff (the number of staff being, for example, 3200):

Calculation:

9000 (clips) x 0.55 (for up to 4,000 staff) = \$4,950

Scenario 3:

Data:

- 9000 Newspaper Clips received for the quarter
- 5000 of these clips are put into a centralised electronic database available to 500 authorised staff only
- remaining Newspaper Clips are not electronically communicated to more than 1 person:

Calculation:

5000 (clips) x 0.25 (for up to 1,000 staff) = \$1,250

Scenario 4:

Data:

- 10,000 Newspaper Clips received and placed on an Intranet site
- 10,000 staff have access to these clips).
- All of the Clips are retained for 1 year and then removed from electronic access:

Calculation:

10 000 clips x 0.65 (4,000 and above staff) + 10 000 x 0.20 (retention fee for 1 year) = \$8,500

SCHEDULE 4

Newspaper Clip Copying and Communication Protocol

(Clause 6)

The procedure for determination of Copying and of Works published in Newspapers (ie Newspaper Clips) is as follows:

1. The Participating Body will authorise its Press Clipping Service to supply to CAL full details of Newspaper Clips supplied to the Participating Body, together with the Number of Clips for that Participating Body.
2. Subject to the grant of that authorisation, CAL will be responsible for obtaining the Number of Clips and other information from the Press Clipping Service.
3. Where the Participating Body conducts an In-House Press Clipping Service, or where a Participating Body has itself converted a Work published in a Newspaper into a digital or other electronic machine-readable form, the Participating Body will:
 - (a) provide CAL with Copying information in the format and manner to be agreed upon by the Parties; or
 - (b) failing agreement, the Participating Body will:
 - (i) provide CAL with the following information by email within 14 days after the end of each Quarter, for each Copy made during the preceding Quarter by conversion into digital or other machine-readable form:
 - (a) Title of Work;
 - (b) Title of Newspaper;
 - (c) Author, where known;
 - (d) Publisher, where known; and
 - (e) Date of publication;

Number of Newspaper Clips

4. Each Participating Body will advise CAL of:

- (a) Its Distribution Number;

For example, where a Participating Body receives a bundle of Newspaper Clips and these are photocopied in their entirety 60 times for distribution within the Department, the Distribution Number is 60.

- (b) If the Distribution Number for each Newspaper Clip varies, the average number of Newspaper Clips distributed;

SCHEDULE 4

For example, where a Participating Body receives 500 separate Newspaper Clips in the relevant Accounting Period, of which 100 are Copied and distributed to 60 people, and 400 are Copied and distributed to 20 senior management staff, the Distribution Number is $((100 \times 60) + (400 \times 20)) / 500 = 28$.

(c) Their Contact Officer and contact details.

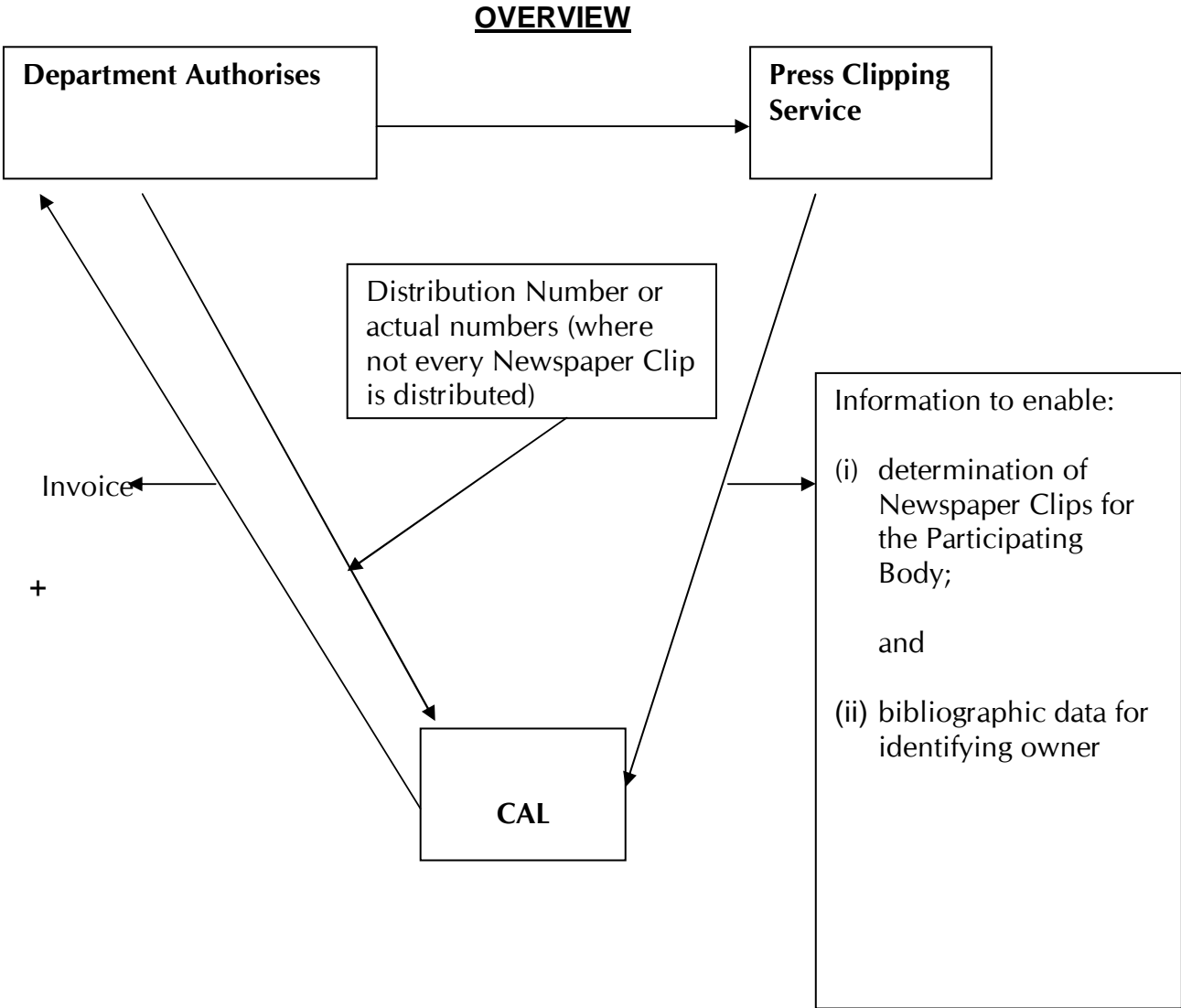
5. This protocol comes into effect as and from 1 July 2002.
6. For any period commencing after 1 July 2002 – to the extent that this Agreement is not in force so as to enable the adherence to this protocol beginning on 1 July 2002, and it is not practically possible to obtain the details of Newspaper Clips for any Quarter or part of a Quarter, the data collected for the Quarter immediately following shall be applied, or applied pro rata, to the Quarter or part of a Quarter for which data is not available.

2001 - 2002

7. For the year 2001 – 2002, the liability for the level of Copying of Newspaper Clips shall be determined by either:
 - (a) obtaining details of supply from the Press Clipping Service of the Participating Body for the whole year (the supply of which the Participating Body hereby authorises) together with a good faith estimate by the Participating Body of the Distribution Number; or
 - (b) applying the method provided for in paragraph 6 above; or
 - (c) a combination of 7(a) and 7(b).
8. The method in paragraph 7(a) shall be used if possible provided that CAL shall be entitled at its discretion to seek written advice from the Participating Body of the method used to calculate the Distribution Number (to be supplied within 14 days of request) and in default CAL shall have complete discretion to choose either method 7(b) or 7(c).

SCHEDULE 4

9. The following diagram represents the intended operation of this Schedule.



SCHEDULE 6

DIGITAL COPYING AND COMMUNICATION OF COPYRIGHT MATERIAL OTHER THAN NEWSPAPER CLIPS AND MUSIC COPYING (Clause 8)

1. The Remuneration payable by each Participating Body for Digital Copying and/or Intranet Communication of Copyright Material other than:

- (a) Newspaper Clips; and
- (b) Copyright Material which is available in electronic form and which is authorized for further digital reproduction or communication by virtue of a subscription or other licence granted by or on behalf of a rightsholder

is as follows:

Year	Formula
2001-2002	* \$0.50 cents x EFT employee
2002-2003	* \$1.50 x EFT
2003-2004	* \$1.50 x EFT
Beyond 2004	To be determined

* There is no CPI adjustment.

SCHEDULE 7

Form of Confidentiality Undertaking

(Clause 11)

A DEED DATED THE _____ day of _____ .

PARTIES

[Insert name and address for service of Participating Body] (“the Agency”)

and

[Insert name and address for service of the Confidant] (“the Confidant”)

RECITALS

- A. The Agency and Copyright Agency Limited ABN 53 001 228 799 (“CAL”), are parties to an agreement (“the Agreement”) dated _____ between CAL and the Agency relating to the making of government copies of certain copyright material.
- B. In connection with the performance of that Agreement, the Confidant may become aware of information belonging to or in the possession of the Agency that is confidential.
- C. The Agency requires, and the Confidant agrees, that it is necessary to take all reasonable steps (including the execution of this Deed) to ensure that the Agency’s confidential information is kept confidential and that the Confidant’s involvement in undertaking activity under the Agreement does not involve any conflicting interest.

AGREED COVENANTS

1. RECITALS

The parties acknowledge the truth and accuracy of the Recitals in every particular.

2. INTERPRETATION

2.1 Definitions

In the interpretations of this Deed unless the contrary intention appears or the context otherwise requires or admits the following expressions shall have the following meanings:

“the confidential information” means information that

SCHEDULE 7

- (a) is by its nature confidential;
- (b) is designated by the Agency as confidential; or
- (c) the Confidant knows or ought to know is confidential;

but the obligations imposed by this Deed will not be breached to the extent that the confidential information:-

- (d) is used or disclosed solely in order to allow CAL to comply with its obligations, or exercise rights, under this Agreement;
- (e) is in the public domain other than by breach of an obligation of confidence.

“notice” means notice in Writing given in accordance with this Deed; and

“writing” means any mode of representing or reproducing words, figures, drawings or symbols in a visible form.

2.2 General

Unless the contrary intention appears:

- (a) monetary references are references to Australian currency;
- (b) the clause and subclause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (c) a cross reference to a clause number is a reference to all its subclauses;
- (d) words in the singular number include the plural and vice versa;
- (e) words importing a gender include any other gender;
- (f) a reference to a person includes a partnership and a body whether corporate or otherwise;
- (g) a reference to a clause or subclause is a reference to a clause or subclause of this Deed; and
- (h) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

3. NON DISCLOSURE

- 3.1 Unless specifically authorised or envisaged by the Agreement, the Confidant must not disclose the confidential information to any person without the prior written consent of the Agency.

SCHEDULE 7

- 3.2 The Agency may grant or withhold its consent in its absolute and unfettered discretion.
- 3.3 If the Agency grants its consent, it may impose conditions on that consent. In particular, but without limiting the generality of the preceding sentence, the Agency may require that the Confidant procure the execution of a Deed in these terms by the person to whom the Confidant proposes to disclose the confidential information.
- 3.4 If the Agency grants consent subject to conditions, the Confidant must comply with those conditions.
- 3.5 The obligations of the Confidant under this Deed shall not be taken to have been breached where the confidential information is legally required to be disclosed.

4. RESTRICTION ON USE

Unless specifically authorised or envisaged by the Agreement, the Confidant will use the confidential information only for the purposes of its dealings with the Agency and to assist CAL in determining monies payable to and distribution for members of CAL.

5. SURVIVAL

This Deed will survive the termination or expiry of the Agreement providing for the performance of services by the Confidant (whether directly or indirectly).

6. POWERS OF THE AGENCY

6.1 Production of Documents

- 6.1.1 The Agency may demand in Writing the delivery up to the Agency of all documents in the possession or control of the Confidant containing the confidential information, other than documents required to be retained by CAL under clause 14 of the Agreement.
- 6.1.2 The Confidant must immediately comply with a demand under this clause 6.
- 6.1.3 If the Agency makes a demand under this clause 6, and the Confidant has placed or is aware that documents containing the confidential information are beyond his or her possession or control, then the Confidant must provide full particulars of the whereabouts of the documents containing the

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confidential information, and the identity of the person in whose custody or control they lie.

- 6.1.4 In this clause 6.1, “documents” includes any form of storage of information, whether visible to the eye or not.

6.2 Legal Proceedings

The Confidant acknowledges that the Agency may take legal proceedings against the Confidant or third parties if there is any actual, threatened or suspected breach of this Deed, including proceeding for an injunction to restrain such breach.

7 CONFLICT OF INTEREST

- 7.1 The Confidant shall not during the course of this Deed engage in any activity or obtain any interest likely to conflict with or restrict the Confidant in properly undertaking the work envisaged under the Agreement and shall immediately disclose to the Agency such activity or interest.

8 NO EXCLUSION OF LAW OR EQUITY

This Deed must not be construed to exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the confidential information.

9. WAIVER

- 9.1 No waiver by the Agency of one breach of any obligation or provision herein contained or implied shall operate as a waiver of another breach of the same or of any other obligation or provision herein contained or implied.
- 9.2 None of the provisions hereof shall be taken either at law or in equity to have been varied waived discharged or released by the Agency unless by its express consent in Writing.

10. REMEDIES CUMULATIVE

10.1 Cumulative

The rights and remedies provided under this Deed are cumulative and not exclusive of any rights or remedies provided by law or any other such right or remedy.

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10.2 Other Instruments

Subject to the other covenants of this Deed, the rights and obligations of the parties pursuant to this Deed are in addition to and not in derogation of any other right or obligation between the parties under any other deed or agreement to which they are parties.

11. VARIATIONS AND AMENDMENTS

No term or provision of this Deed may be amended or varied unless such amendment or variation is reduced to Writing and signed by the parties hereto in the same manner as this instrument.

12. APPLICABLE LAW

This Deed shall be governed and construed in all respects in accordance with the law of the Australian Capital Territory and the parties hereto hereby submit to the jurisdiction applicable of the Courts of the said Territory and the Commonwealth of Australia in respect of all matters arising hereunder or relating hereto.

13. NOTICES

13.1 A notice or other communication which may be given to or served on the Confidant under this Deed shall be deemed to have been duly given or served if it is in Writing signed by the Agency and is either delivered by hand, posted or a copy transmitted electronically to the Confidant at any registered office of the Confidant or posted to the Confidant's address set out herein or such other address as may be notified in Writing to the Agency from time to time.

13.2 A notice or other communication which may be given to or served on the Agency under the Deed shall be deemed to have been duly given or served if it is in Writing, signed by or on behalf of the Confidant and is either delivered by hand, posted or a copy transmitted electronically to the Agency at the address set out herein or such other address as may be notified in Writing to the Confidant from time to time.

13.3 A notice sent by post shall be deemed to have been given at the time when, in due course of transmission, it would have been delivered at the address to which it is sent.

13.4 A notice sent by facsimile transmission shall be deemed to have been given when the machine on which the notice is sent reports in Writing that the notice has been transmitted satisfactorily.

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EXECUTION

SIGNED SEALED AND DELIVERED)

by _____) _____

[insert name of Agency representative]) (signature of Agency
representative)

in the capacity as _____)

[insert Position])

in the presence of _____) _____

[insert name of Witness]) (signature of Witness)

SIGNED SEALED AND DELIVERED)

by _____) _____

[insert name of Confidant]) (signature of Confidant)

in the presence of _____) _____

[insert name of Witness]) (signature of Witness)

SCHEDULE 8

Summary of Survey Data Processing Protocol

Introduction

1. This document summarises the rules for the processing by CAL of Commonwealth survey record forms.
2. It is the aim to eventually reduce substantially the need for survey participants to identify the material type and to correctly allocate the exemption code. The content of the protocol reflects this overall aim.
3. The complete Processing Protocol is a document agreed by the Commonwealth Agent and CAL and amended by agreement.
4. CAL must supply a copy of the Processing Protocol to any Party within 14 days of a written request to CAL.

Role of data researchers

5. CAL employs librarians with expertise and experience in the retrieval of information as data researchers. It is the role of the data researcher to utilise various resources to verify, validate and complete records provided by the survey participants.
6. The researcher is also required to identify copyright owners.
7. In performing these tasks researchers employ their best judgments based on accepted research tools to reach decisions about copyright material. Standard library resources, the Internet and government publication guides may all be used.

Data sorting and set up

8. When survey record forms are provided by the Sampling Body various identification numbers are added by CAL including codes to identify the relevant Participating Body, the location within the Participating Body that is surveyed (work area) and the distribution period for which the data is relevant.
9. Participating work areas in each department or agency are also sorted by reference to the entries on the survey summary sheets. Incomplete identifying data is referred back to the Sampling Body for resolution.

Data processing

10. The data is checked for accuracy and consistency and discrepancies are adjusted so that the total pages copied is not anomalous to the other information provided regarding volume of copying. Total pages of copying discrepancies will be resolved on a good faith basis using available

SCHEDULE 8

information. This occurs for both the photocopy record forms and the copying declaration forms.

11. Discrepancies of over 1000 pages will be the subject of specific consideration to determine if further verification is required. Such verification will be considered at the Sampling Body's discretion.

Categories

12. The Categories into which copying is classified are as follows:

Artistic Work - such as a map, photograph, drawing or if a particular copy is coded as an artistic work in the photocopying record form.

Note: Artistic works are not currently charged at a separate rate from that applicable to a Book, Journal Magazine or Newspaper and they will be allocated for liability purposes in accordance with the source from which the artistic work was copied.

Journal - a periodical publication not generally available in newsagency containing material of a more scholarly or professional nature.

Book - a publication that has an ISBN or is generally classified as a book in accepted library publications of books or is a work divided into chapters.

Magazine – a periodical publication generally available in a newsagency and generally published no less frequently than monthly.

Default material types - certain material not readily identifiable as a Book, Journal, Newspaper or Magazine will be classified into one of these categories in accordance with the scheme set out in paragraph 8.5 of the Survey Data Processing Protocol which categorises such document types as conference papers (Journal), law reports (Journal), client newsletter (Magazine) and training manuals (Book).

Exempt - this includes all Commonwealth published and unpublished material as well as material for which a licence has been obtained (subject to verification) or is otherwise exempt from payment because of the utilisation of section 43 of the Copyright Act being a reproduction for the purposes of judicial proceedings or for the purposes of the provision of professional legal advice. (Reliance is not placed on other exemptions in the Copyright Act.)

Other - any remaining material, such as web pages, transcripts and pamphlets is to be allocated on equal basis across all categories of copying with an adjustment to take account of the non-inclusion of newspapers in the survey process.

Exclusions

13. Photocopying by persons not included in the survey is excluded from processing.
14. Works in the public domain are excluded.

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Data checking and amendment

15. CAL will ensure that data is checked by a person who is not a data researcher employed by CAL to verify that the data has been processed in accordance with the processing protocol and that no records have been duplicated or omitted.

Audit

16. AC Nielsen or a similarly qualified body will audit the data processing undertaken by CAL using a sample size of between 3% - 5% percent of all copying records. Where necessary, AC Nielsen may seek clarification and/or amendment by CAL of copying records. Following completion of this process, AC Nielsen will confirm in writing to CAL and the Commonwealth Agent that the audit has been completed.

SCHEDULE 9

Survey Design

Introduction

1. The Survey Design devised by the Sampling Body to determine the estimated number of Print Copies of Works (excluding Newspaper clips) made by the Commonwealth is agreed to have the characteristics and parameters set out in this Schedule.

PART A Objectives of the Survey and Survey Design

2. The Survey, including the Survey Design, should deliver:
 - **fairness** in the assessment of the amount of Remuneration payable;
 - **minimal fluctuation** in the amount of Remuneration payable from one Accounting Period to the next;
 - **appropriate apportionment** between Participating Bodies of the remuneration payable by them;
 - **minimum administrative burden** to Participating Bodies in the conduct of sampling;
 - **clarity & simplicity** and the avoidance of disputes;
 - **appropriate balance** between accuracy, burden, reliability, validity and cost.

Part B Survey Design

3. There will be a single Survey Design for all Participating Bodies.
4. Data will be collected and calculated to generate an estimate of Copy Pages per full time employee (FTE) for Survey Strata 1 and Survey Strata 2.
5. The determination of samples to be taken as part of the global survey and the factors that delimits the sample (eg time, place, organisation) in devising the Survey is a technical choice to be made by the Sampling Body based on its Survey Design. These factors should generally be readily accessible (eg, as published statistics from annual reports or the like or obtainable from information systems already in place in the Participating Bodies), measurable and free of ambiguity.
6. For Survey Strata 1 the estimates for any given Accounting Period during the Term of the Agreement will be determined from Surveying in a spread of Participating Bodies at specified times. This analysis will be aggregated and weighted according to the Survey Design. The selection of Participating Bodies and the Surveying within each Participating Body is determined by the Sampling Body based on the Survey Design utilising data provided by the Participating Body and having regard to the objectives and criteria in Part A above.

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7. For Survey Strata 2 the estimates for any given Accounting Period during the Term will be determined from data provided from Surveying within one of the agencies in Survey Strata 2. There are currently three Commonwealth agencies eligible for Survey Strata 2 – Department of Defence, Centrelink and the Australian Tax Office. Each agency is to be sampled in turn.
8. It is agreed that the Survey Design adopted by the Sampling Body, in relation at least to the first sample undertaken under this Agreement, will follow the structure and pattern of past sampling of Commonwealth copying. For Survey Strata 1, no less than 5 – 6 departments or agencies will be selected for sampling. For Strata 2 the Australian Taxation Office is the agency that will be surveyed in the first survey under this agreement.
9. For both Survey Strata 1 and 2, data collected in sampling under the 1996 Agreement may be utilised in calculating estimated usage for the Accounting Period. A rolling (simple) average of the data generated in up to the four most recent surveys (including the 3 surveys conducted under the 1996 Agreement) will be utilised to generate an estimate of Copy Pages of each Category of Copyright Material, per Accounting Period, per FTE.

Example: This example is based on actual data. It shows Strata 1 Copy Pages for print copying (other than newspapers) that will be applicable to those Accounting Periods prior to the availability of data from Survey 4. (Survey 4 data is likely to be available after mid 2003)

Strata 1 data	Survey 1 Copy Pages per FTE pa.	Survey 2 Copy Pages per FTE pa.	Survey 3 Copy Pages per FTE pa.	Total Copy Pages per FTE	Average Copy Pages per FTE pa.
Magazine pages	28.69	34.38	90.19	153.26	51.08
Book pages	42.37	26.50	65.27	134.14	44.71
Journal Pages	73.80	34.60	77.15	185.55	61.85

10. The estimates for the Commonwealth as a whole of copying per FTE in each Participating Body that is surveyed is to be determined on the basis of the exercise by the Sampling Body of its professional judgement and skill, and in good faith. The aggregation and weighting of the data from each of the sampled agencies to generate an overall estimate of copying for the strata per FTE will be carried out on the basis of professional skill and judgement by the Sampling Body, and in good faith.

SCHEDULE 10

Survey Obligations

1. Definitions

For the purposes of this Schedule:

- (a) **Copyright Survey Coordinator (CSC)** means an employee of a Participating Body appointed in accordance with paragraph 5.1 of this Schedule to perform the role of copyright records officer;
- (b) **Copyright Survey Manager (CSM)** means an employee of a Participating Body appointed in accordance with paragraph 5.1 of this Schedule to perform the role of copyright records officer;
- (c) **Surveyed Location** means the location selected by the Sampling Body within a Participating Body at which a Survey is conducted; and
- (d) **Records** means the Survey Record Forms and bibliographic attachments (barcodes) and copying summary sheets.

2. General

2.1 Each Participating Body will use its reasonable endeavours to ensure that at each of its Surveyed Locations they:

- (a) comply with the provisions of this Schedule; and
- (b) comply with all reasonable requirements of CAL or the Sampling Body in connection with Surveys; and
- (c) provide all other assistance reasonably required by CAL or the Sampling Body in connection with Surveys.

2.2 Each Participating Body must, prior to the commencement of each Survey:

- (a) ensure that employees referred to in paragraph 6.1 of this Schedule and attend training seminars provided by CAL or the Sampling Body; and
- (b) provide CAL and the Sampling Body with a training room and other facilities necessary to properly conduct this training.

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3. Access

Subject to local arrangements relating to the security of the material stored at the location or the security of the premises, each Participating Body must ensure that, during usual business hours during Surveys, the Sampling Body:

- (a) has access to each of the Participating Body's Surveyed Locations and other premises in its possession or under its control relevant to the Survey; and
- (b) are able to consult with employees and contractors of the Participating Body,

as reasonably required by the Sampling Body for the purposes of Surveys.

4. Record keeping

4.1 Each Participating Body must use its reasonable endeavours to ensure that at each of its Surveyed Locations Records are kept during each Survey which:

- (a) are accurate, complete and legible;
- (b) record all Copies made during the Survey, including Copies that are provided to any person or received from any person, at the Surveyed Location;
- (c) are completed at the Surveyed Location as and when Copies are made or received; and
- (d) are provided in completed form to the Sampling Body at the end of each period during the Survey.

4.2 CAL warrants that there will be a standard Survey Record Form and completion procedure developed by the Sampling Body and used by Participating Bodies, when sampled, to record copies made by them.

4.3 The Survey Form should provide for the name of the Participating Body and, in respect of each copy - the details to be entered (which comprise the 'Survey Record') as agreed between CAL and the Commonwealth Agent.

4.4 The details of the form will generally cover:

- identification of title and Category of the work;
- (in the case of Magazines and Journals) name of the article copied;

SCHEDULE 10

- (in the case of Magazines and Journals) the date of the issue;
- the name of the author of the material copied;
- unless Exempt - the name of the publisher of the material copied;
- (where known) the ISSN/ISBN of the copy;
- page numbers copied;
- the number of copies made;
- the total number of Copy Pages; and
- the date of making the copy.

4.5 Where the particulars in a Survey Record are incomplete, illegible or inaccurate, or where the Copyright Owner of the material copied is otherwise unable to be identified, CAL and the Participating Body may confer in an attempt to identify the Copyright Owner.

4.6 Each Participating Body must, as requested by CAL or the Sampling Body, promptly provide all further particulars in respect of Records provided by it, which are inaccurate, incomplete or illegible.

5. **Copyright Survey Manager and Coordinator/s**

5.1 Each Participating Body must, subject to 5.2, appoint one CSM and one or more CSCs at each of its Surveyed Locations to assist in the proper performance by the Participating Body of its obligation during Surveys.

5.2 The CSM and CSCs appointed must be suitably qualified and authorised employees of the Participating Body.

6. **Training and compliance**

6.1 Each Participating Body must ensure that, at each of its Surveyed Locations:

- (a) all employees and contractors are advised of the requirements of the Survey, including with respect to:
 - (i) the keeping of Records; and
 - (ii) including in the Records details of Copies made by or on behalf of the Participating Body at each of its Surveyed Locations (or elsewhere on its behalf);

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- (b) each CSM, CSC and other relevant employees of the Participating Body in:
 - (i) the library;
 - (ii) the central print facility;
 - (iii) administration; and
 - (iv) any other locations nominated by the Sampling Bodyparticipate in training seminars held for the purposes of the Survey;
- (c) employees and contractors maintain during the Survey the Copying practices normally adopted by them at other times; and
- (d) employees and contractors take all reasonable steps to ensure the completeness and accuracy of the Records.

7. Compliance at Surveyed Locations

- 7.1 Prior to the commencement of a Survey of a Participating Body, it must, for each of its Surveyed Locations, notify CAL or the Sampling Body (at the request of CAL or the Sampling Body) of the steps taken to comply with the provisions of this Schedule.

SCHEDULE 11

Indicative Listing of Time-line of Billing, Surveys and Review for CAL Agreement

* Subject to Print Music having been copied.

Time of Event	Event	Liability	Period covered	Explanatory notes (as to source of liability etc)
April - May 2003	Invoice 1	Newspaper clips	July 02 – March 03	Clause 6
May - June 2003	Invoice 2	A. Copying of print materials (including music) B. Digital C. Past copying D. Newspaper clips	July 01 – June 03 July 01 – June 03 Prior to July 01 July 01 – June 02	A. Clause 5; excludes liability for newspaper clips. Based on data from surveys 1-3) B. Clause 8 C. Clause 4.6; arises only for Participating Bodies which were not Parties to the previous agreement with CAL D. Schedule 4, Item 7
February -April 2003	Survey 4			
July – August 2003	Invoice 3	Newspaper clips	April - June 03	Clause 6
July 2003	Invoice 3(b)*	Music	Previous 6 months	Clause 7
July 2003	Review of Survey 4, Digital Review and Digital Newspapers.			To be completed by June 2004
October – November 2003	Invoice 4	Newspaper clips	July-September 2003	Clause 6

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January - February 2004	Invoice 5	Newspaper clips	October – December 2003	Clause 6
January 2004	Invoice 5(b)	Music	Previous 6 months	Clause 7
April 2004	Invoice 6	A. Print Copying B. Digital	July 03 – June 04.	A. Clause 5; excludes newspaper clips; based on data from surveys 1-4 B. Clause 8
April - May 2004	Invoice 7	Newspaper clips	January – March 2004	Clause 6
June 2004	A. End of review period. ends - 30 June 2004. B. Commencement of any amendments resulting from review. C. Expiry of term of agreement for Digital Copying and Communication of Newspaper Clips (30.6.04)			A. Clause 3.3 B. Clause 3.3 C. Clause 3.2.
July 2004	Survey 5 (tentative)			
July – August 2004	Invoice 8	Newspaper clips	April-June 2004	Clause 6
October – November 2004	Invoice 9	Newspaper clips	July -Sept 2004	Clause 6

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January 2005	Invoice 9 (b)*	Music	Previous 6 months	Clause 7
January – February 2005	Invoice 10	Newspaper clips	October – December 2004	Clause 6
April 2005	Invoice 11	A. Print Copying	July 04 - June 05.	A. Clause 5; excludes newspaper clips; based on methodology to be determined by review.
		B. Digital		B. Clause 8
April - May 2005	Invoice 12	Newspaper clips	January - March 2005	Clause 6
July 2005	Invoice 15(b)*	Music	Previous 6 months	Clause 7
July – August 2005	Invoice 13	Newspaper clips	April - June 2005	Clause 6
July 2005	Negotiations for new agreement to commence			Agreement expires 30 June 2006
July 2005	Survey 6 (tentative)			
October – November 2005	Invoice 14	Newspaper clips	July - September 2005	Clause 6
January 2006	Invoice 14(b)*	Music	Previous 6 months	Clause 7
January – February 2006	Invoice 15	Newspaper clips	October – December 2005	Clause 6
April 2006	Invoice 16	A. Print Copying	July 05 - June 06	A. Clause 5; excludes newspaper clips; based on methodology to be determined by review.
		B. Digital		B. Clause 8

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April - May 2006	Invoice 17	Newspaper clips	January – March 2006	Clause 6
July – August 2006	Invoice 18	Newspaper clips	April - June 2006	Clause 6
July 2006	Invoice 18(b)*	Music	Previous 6 months	Clause 7
30 June 2006	Agreement expires			Clause 3.1

SIGNED IN TWO COPIES AS AN AGREEMENT

Signed for and on behalf of the **Commonwealth of Australia**, as represented by the Attorney-General's Department, by in the presence of:

.....
Signature of witness

.....
Signature of authorized person

.....
Name of witness (print)

.....
Office held

.....
Name of authorized person (print)

Signed for and on behalf of **Copyright Agency Limited** in the presence of:

.....
Signature of witness

.....
Signature of authorized person

.....
Name of witness (print)

.....
Office held

.....
Name of authorized person (print)