



COPYRIGHT AGENCY LIMITED®

An update on the surveyors' copyright case

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More information

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In 2008 the Australian High Court confirmed that surveyors own the copyright in survey plans lodged with the NSW government, and are entitled to payment when government copies and communicates (e.g., scan and emails information to another party) reproductions of those plans.

Since then, Copyright Agency Limited (CAL) has been in extended negotiations with the NSW government to determine appropriate payment for their copying and communication of survey plans. As part of these negotiations CAL has worked closely with key surveyor members to establish an equitable fee for the use of survey plans.

After CAL and the NSW government were unable to agree on payment, CAL referred the matter back to the Copyright Tribunal to set a rate. The first step was an alternative dispute resolution process in 2010. CAL and NSW were, at this time, still unable to reach an agreement and the case is currently back before the Tribunal.

In December 2010 CAL submitted its evidence to the Tribunal in support of its position regarding the rate of payment. CAL's evidence consisted of a statement from its CEO and a report by Alex Sundakov – executive director of Castalia Strategic Advisors, a specialist international consultancy on infrastructure regulation and competition policy issues. His report identified the main user groups of registered survey plans and considered how the rate of payment would be determined in a workably competitive market.

The report noted that, in certain circumstances, the Land Property Management Authority (LPMA) is the only agency that receives survey plans and is the only agency from where plans can be obtained. This means that the LPMA has substantial discretion in setting the rate of payment and analysing this behaviour is not helpful when trying to determine equitable rate of payment because it does not occur in a competitive market.

Sundakov suggested that the rate of payment could be determined by observing the general market behaviour of the marginal users of survey plans (architects and builders). After making these observations, it would be possible to infer the value of copyright that these users place on a plan. Against that background, the Sundakov report suggested a rate of payment for the use of survey plans.

The NSW government submitted its evidence to the Tribunal in May 2011, which included a report by Dr Philip Williams from international economic consultancy, Frontier Economics. In his report, Dr Williams sets out the principles underlying the economic analysis of copyright and how these principles relate to the copying of survey plans. He provides a critique of the economic analysis undertaken by Alex Sundakov and suggests an alternative method for how an economist might reach an equitable rate of payment.

Both parties met at the Tribunal on 17 June for further directions. The Tribunal ordered a detailed timeline for the finalisation of evidence, production of documents, issuing of subpoenas and general case management. It is expected that if all goes to timetable, the parties will be able to apply for a hearing date shortly.

The decision of the Copyright Tribunal in this matter will finalise over a decade's worth of work by surveyors for the right to be paid fairly for the use of their plans by governments.

Who is CAL?

Copyright Agency Limited (CAL) provides simple ways for people to reproduce, store and share words, images and other creative content, in return for fair payment. In doing so, it connects the creators, owners and users of copyright material.