

COMMONWEALTH OF AUSTRALIA
Copyright Act 1968

IN THE COPYRIGHT TRIBUNAL OF AUSTRALIA
FILE NO. CT1 OF 2021

REFERENCE BY: Australasian Performing Right Association Limited ABN 42 000 016 099
Australasian Mechanical Copyright Owners' Society Limited ABN 78 001 678 851 (**APRA AMCOS**)

under Section 154 of the *Copyright Act 1968* (Cth)

ORDER

TRIBUNAL: PERRAM J (President)

DATE: 6 DECEMBER 2024

WHERE MADE: SYDNEY



THE TRIBUNAL NOTES THAT:

1. In conferring and notifying objections to evidence pursuant to order 4 of the Orders of the Tribunal of 30 October 2024 the parties are to have regard to the Tribunal's decision in *Audio-Visual Copyright Society Ltd v Foxtel Management Pty Ltd (No 3)* (2005) 64 IPR 560, [2005] ACopyT 1, and the principles stated therein.

THE TRIBUNAL ORDERS THAT:

Evidence and tender bundle

2. By 4 December 2024, APRA AMCOS file and serve:
 - a. A supplementary statement from Mr Mallett addressing the redacted paragraph 7 of the Fifth Statement of Richard Charles Mallett dated 20 November 2024 (**Fifth Mallett Statement**);
 - b. A supplementary report from Mr Hall setting out his opinion based on the supplementary statement from Mr Mallett referred to in order 2(a) above;



- c. An unredacted version of the Fifth Mallett Statement, excluding paragraph 7 of that statement;
 - d. Copies of Files 2 and 3 of Exhibit RCM-2 to the Fifth Mallett Statement; and
 - e. A category C version of its submissions in response dated 27 November 2024.
3. By 6 December 2024, Netflix to provide to the parties and to the Tribunal a list of paragraphs of the lay and expert evidence which are withdrawn, and any supplementary report from Mr Ockerby arising, by reason of:
- a. Non-production of exhibits PJ-1 and JD-11; and
 - b. Its undertaking not to read paragraph 13 of the Statement of Mr Paul Jones dated 2 July 2024.
4. By 28 January 2025, each party to serve on the others a list of any documents to be included in the Hearing Book.

Findings of Fact

5. By 6 December 2024, APRA AMCOS file and serve:
- a. its response to Stan's findings sought in relation to the alternative scheme proposed by it;
 - b. its response to Netflix's findings sought in relation to the alternative scheme proposed by it.
6. By 6 December 2024, Network Ten All Access Pty Ltd (**Ten**) file and serve:
- a. its response to Stan's findings sought in relation to Stan's proposed scheme;
 - b. its response to Netflix's findings sought in relation to Netflix's proposed scheme.

Summons

7. By 6 December 2024, the parties are to email the Associate to the President of the Tribunal any request that the Tribunal issue a summons and give notice to the other parties of that request.
8. By 13 December 2024, any party that is the subject of a summons sought in accordance with Order 7 is to:

- a. Email the Associate to the President of the Tribunal indicating their consent to any identified documents or categories of documents; and
 - b. File and serve any affidavit evidence and submissions of no more than 5 pages setting out their objections to any identified documents or categories of documents sought.
9. By 20 December 2024, any party seeking a summons in accordance with Order 6 file and serve any affidavit evidence and submissions of no more than 5 pages responding to any submissions filed pursuant to order 8 in respect of the summons requested.
10. Unless the Tribunal accedes to any request made in submissions filed in accordance with orders 8 and 9 above for an oral hearing, the Tribunal will deal with any request for a summons made pursuant to order 7 above on the papers.
11. Orders 8 to 11 of the Orders dated 30 October 2024 be vacated.



Expert conclave of Mr Hall, Mr Ockerby and Mr Samuel and joint report

12. To enable the preparation of a joint report from Mr Hall, Mr Ockerby and Mr Samuel:
 - a. By 14 February 2025 the legal representatives of the parties are to exchange draft lists of the questions to be provided to Mr Hall, Mr Ockerby and Mr Samuel concerning the issues on which they agree, the issues on which they disagree, and areas in relation to which any expert considers they do not have expertise (**Expert Questions**);
 - b. By 7 March 2025 the legal representatives of the parties confer to seek to agree on the Expert Questions;
 - c. If agreement on the Expert Questions cannot be reached, then by 12 March 2025, the parties are to provide the Tribunal with:
 - i. a marked-up version of the Expert Questions showing the areas of disagreement;
 - ii. mutually convenient dates for the relisting of the matter for a case management conference to resolve the disagreement about the Expert Questions; and
 - iii. Resolution of any remaining dispute as the Expert Questions is to be referred to Registrar O'Connor for determination.

- d. By the week commencing 17 March 2025, a conclave of Mr Hall, Mr Ockerby and Mr Samuel is to commence, in the absence of the lawyers for the parties, but in the presence of Registrar O'Connor (the **Facilitator**), and conducted in accordance with the guidelines stated in section 7 of the Federal Court of Australia's *Expert Evidence Practice Note (GPN-EXPT)* for the purpose of preparing one or more joint reports (**Joint Report(s)**) addressing in relation to the Expert Questions: (a) the issues in relation to which they agree; (b) the issues in relation to which they disagree; (c) a brief statement of areas of disagreement; and (d) the areas in relation to which any expert considers they do not have expertise.
 - e. By 4 April 2025 the experts are to provide the legal representatives of the parties and the Tribunal with the Joint Report(s) addressing the Expert Questions.
13. By 13 May 2025, APRA AMCOS provide the Tribunal and each of the parties with an electronic hearing book consisting of:
- a. Documents relating to the financial/valuation expert witness evidence; and
 - b. Financial/valuation expert witness statements and/or reports marked up with rulings,
- wherein the materials comprising the part of the electronic hearing book made pursuant to this Order 13 will be a new volume of the electronic hearing book made pursuant to Order 6 of the Orders dated 30 October 2024.
14. The matter be set down for the cross-examination of Mr Hall, Mr Ockerby and Mr Samuel on 21 to 23 May 2025.



Statements of agreed and disputed matters

15. By 20 June 2025, the Applicants, Netflix, Stan, and Ten (the **Active Parties**) are to confer, prepare, and file with the Tribunal:
- a. a narrative statement of facts which are agreed;
 - b. a list of facts which are not agreed, with each such fact accompanied by any submissions of each of the Active Parties on each such fact, as filed in accordance with the orders above;
 - c. a statement of agreed matters of expert evidence; and

- d. a statement of disagreed matters of expert evidence accompanied by any submissions of each of the Active Parties on each such matter, as filed in accordance with the orders above.



Final written submissions

16. By 4 July 2025, the Applicants are to file and serve closing written submissions in chief in support of the APRA AMCOS Amended Scheme but not including the variations proposed by the Netflix Scheme ('Stream A in chief').
17. By 25 July 2025:
- a. each of Netflix, Stan, and Ten is to file and serve closing written submissions in answer to the submissions referred to in Order 16 ('Stream A in answer');
 - b. Netflix is to file and serve closing written submissions in chief on the variations proposed by the Netflix Scheme ('Stream B in chief'); and
 - c. Stan is to file and serve closing written submissions in chief in support of the Stan Scheme ('Stream C in chief').
18. By 15 August 2025:
- a. the Applicants are to file and serve closing written submissions in reply to the submissions in Order 17(a) ('Stream A in reply');
 - b. each of the Applicants, Stan and Ten are to file and serve any closing submissions in answer to the submissions in Order 17(b) ('Stream B in answer'); and
 - c. each of the Applicants, Netflix and Ten are to file and serve closing written submissions in answer to the submissions in Order 17(c) ('Stream C in answer').
19. By 5 September 2025:
- a. Netflix is to file and serve written submissions in reply to the submissions in Order 18(b) ('Stream B in reply'); and
 - b. Stan is to file and serve closing written submissions in reply to the submissions in Order 18(c) ('Stream C in reply').

Submissions Book

20. By 12 September 2025 the Applicants are to file and serve a Submissions Book containing the parties' submissions filed in accordance with orders 16 to 19 above, with references hyperlinked to the electronic hearing book filed in accordance with order 6 made on 30 October 2024.

Date that entry is stamped: 6 December 2024




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The Hon Justice Nye Perram, President