

Copyright – Australian Wagering Operators

INFORMATION REGARDING “COPYRIGHT” FOR AUSTRALIAN WAGERING OPERATORS

As required under the *Racing Administration Act 1998*, Australian Wagering Operators currently hold a NSW race field information use approval under which they may “use NSW race field information”.

Pursuant to the *Racing Administration Act 1998* and the *Racing Administration Regulation 2005*, Racing NSW may place on a NSW race field information use approval “conditions specifying the manner of use that is authorised under the approval” (33A(2)(b) of the *Racing Administration Act 1998* and clause 17(b) of the *Racing Administration Regulation 2005*).

Racing NSW has at all times reserved its position in relation to copyright in NSW race fields. Clause 7.4 of the Standard Conditions of a NSW race field information use approval states that such an approval does not grant the approval holder any right, title, interest or licence in relation to any intellectual property in the NSW race fields or NSW racing information. The grant of a NSW race field information use approval to Australian Wagering Operators was on that basis.

For Australian Wagering Operators to be able to use NSW race fields information under a NSW race fields approval by way of “displaying” NSW Thoroughbred Race Fields, by which Racing NSW means reproducing in material form in any medium (including, without limitation, on or via an Internet website), publishing, communicating to the public or making an adaptation of a NSW Thoroughbred Race Fields, or a substantial part of a NSW Thoroughbred Race Field, those Australian Wagering Operators will be required to hold a “NSW Race Fields Copyright Licence”.

Under the NSW Race Fields Copyright Licence, the licence fee for the NSW race fields will be 3% of an Australian Wagering Operator's Net Assessable Turnover (as defined in the NSW Race Fields Copyright Licence) calculated during the term of the licence. The calculation of Net Assessable Turnover incorporates an exempt turnover amount of \$5 million per financial year. However:

- If an Australian Wagering Operator holds a NSW race field information use approval, under which it is required to pay a fee calculated under the legislation, Racing NSW will not seek payment of any part of the fee under the NSW Race Fields Copyright Licence for so long as that Australian Wagering Operator continues to pay that fee under the legislation. This commitment is recorded in a separate document known as a “Deed Poll”, a copy of which is also found on the Racing NSW website.
- If an Australian Wagering Operator holds a NSW race field information use approval, but by reason of the exempt turnover amount it is not required to pay a fee under the NSW legislation, that Australian Wagering Operator will also not be required to pay a fee under the NSW Race Fields Copyright Licence as the exempt turnover amount will operate in the same manner.

The requirement to hold a NSW Thoroughbred Race Fields Copyright Licence is a matter which arises under the *Copyright Act 1968 (Cth)* and is not:

- the exercise of any power under the Race Fields Legislation in respect of a NSW race field information use approval; or
- a condition of a NSW race field information use approval.

The failure of an Australian Wagering Operator who displays the NSW race fields to enter into a NSW Thoroughbred Race Fields Copyright Licence will result in Racing NSW regarding that wagering operator as infringing its copyright .

It is essential that all Australian Wagering Operators hold a NSW Race Fields Copyright Licence if they want to "*display*" the NSW race fields.

Action required

Copies of the NSW Race Fields Copyright Licence and the Deed Poll are available on the Racing NSW website www.racingsw.com.au or by contacting Racing NSW on (02) 9551 7500. You are required to:

- complete your organisation's details on the front cover, and on page 1, of the NSW Race Fields Copyright Licence, and execute the document in the space provided on page 22; and
- complete your organisation's details in recital A in the Deed Poll.

Racing NSW will then execute the NSW Race Fields Copyright Licence and Deed Poll and return copies to you for your records.

ENQUIRIES

All enquiries in the first instance should be directed to Clare Wilson, Racing NSW on (02) 9551 7589