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Dear Sirs

The Nokia Corporation "Nokia Connects: Go" competition - Conditions of entry

The Arts Law Centre of Australia is a national community legal centre which advises, informs and advocates for the rights of thousands of artists and arts organisations each year. We are committed to encouraging best practice in competitions and prizes, and ensuring that the rights of the creators of copyright are not removed unnecessarily.

Our concerns about the competition terms and conditions:

We write to you having recently become aware of The Nokia Corporation (**Nokia**) *Nokia Connects: Go* competition (**the competition**) <http://nokiaconnects.com/2012/06/22/nokia-connects-go/> . While we commend Nokia on providing an opportunity for the global community to be involved in the making of creative content for others to view and interact with (**the works**), we are concerned that the terms and conditions for this competition (**competition terms and conditions**) <http://nokiaconnects.com/2011/12/22/terms-and-conditions/> do not reflect best practice and impose unduly harsh obligations on those who enter the competition (**entrant/s**).

We have reviewed the competition terms and conditions carefully, and are concerned that in their current form, they are unfair for the entrants. At this stage, the competition terms and conditions

require amendment before they would be considered “best practice” as there are a number of problematic areas, outlined below. We are aware that the competition has now closed; however,

the competitions terms and conditions remain binding on the entrants and the content they submitted in perpetuity. There is no legal impediment to Nokia now revising or easing those terms and conditions and we urge it to do so.

1. General Rules – Nokia’s right to use any submitted content for any purpose in perpetuity– non-exclusive licence

Although we agree that the competition offers the monthly winner an opportunity for exposure and Nokia products, the very broad rights given under the competition terms and conditions are granted by each and every entrant. So, regardless of whether an entrant is successful in the competition, they still give the same rights as the winning entrant does to Nokia.

This means the entrant who does not receive any reward from his or her participation in the competition gives away just as much as the entrant who receives the prize. Given the rights granted are so broad, this is particularly concerning, as it means that non-winning entrants cannot use their works in any exclusive relationship once they have entered the competition. This limits their ability to generate any future income from the work.

We find it difficult to believe that Nokia is likely ever to use the vast proportion of non-winning content submitted particularly once some time has elapsed - so why does it need to take a perpetual licence from every single entrant?

While we understand that there can only be one winner (each month), this is an unfair outcome for those who enter but don’t win. In this age of constantly changing and updating content, even a perpetual licence from the winners seems disproportionate. Does Nokia seriously believe that it will still want to use this content seventy years from now?

Nokia can easily fix this by limiting the grant of rights to only those who win the competition, and not to all entrants. Alternatively, a short term licence would cover any promotional uses during the competition and during a reasonable period (say 6 or 12 months) thereafter.

2. General Rules – Nokia’s right to use or alter any submitted content in any way without giving any credit to the creator – moral rights consents

Moral rights allow creators to be credited for their work, give creators a voice when their

work is derogatorily treated, and recognize the connection between creators and their work. The competition terms and conditions require entrants to consent to any infringement of their moral rights in the works they submit to the competition – effectively a complete relinquishment of moral rights. In theory, this allows Nokia to claim their work as its own, to attribute it to others and to treat it in a derogatory fashion. In doing so, these clauses prohibit the ability of entrants to have any recourse if their moral rights are infringed by Nokia or, potentially, third parties.

We are concerned that this requirement is unrelated to whether the entrant benefits by winning this competition. Consent by all entrants to infringements of their moral rights in their work, at the point of submission, is disproportionate and overreaching.

Instead, where Nokia does consider that its likely uses of winning entries might give rise to situations in which it may be problematic to attribute the author or that changes may be required, a more balanced approach would achieve the desired outcome. For example, a statement of a positive intention to attribute “wherever practicable” accompanying a moral rights consent in other situations reflects an acknowledgement of the creator consistent with best practice. Alternatively, Nokia could agree to seek consent to any substantial changes to content on a case-by-case basis, not at the point of submission of the entrant’s work. Preserving the integrity of the works – or obtaining specific consents for certain uses if necessary – is a fairer way to deal with works submitted in good faith by the entrants

3. Rules for Content Submissions –future use

Each entrant is agreeing to the use of their work in any way Nokia deems fit in the future including unlimited commercial exploitation rights with no obligation to share with the entrant any future commercial benefits. In theory, Nokia can plaster a non-winning image across all its digital platforms, license it for commercial use by a third party on billboards around the world, and sell reproductions of the work for decades to come without giving the creator anything further.

4. Rules for Content Submissions – entrant terms

Under the current competition terms and conditions each entrant must agree to a range of terms concerning, for example, the content, security and posting requirements of the work to be submitted to the competition. A number of these terms are reasonable as a means of protecting the integrity of the competition; however some are unnecessary and excessive.

For example, you ask each entrant to agree in advance that the content of his/her work does not contain material “that the Sponsor [Nokia] may reasonably deem unfit for publication”.

Presumably Nokia is best placed to say what it considers to be material “fit for publication”. Surely, an entrant whose content Nokia decides not to publish is ‘penalised’ sufficiently by failing to be declared a winner or otherwise see their content shared through the competition website and does not also need to be made liable for a breach of the terms of entry? Is Nokia planning to enforce this term against entrants who submit content that Nokia decides is not fit for publication?

Best practice, in our view, is not to seek such extensive terms from creators – particularly those who receive no commercial or financial benefit in return.

What would improve the competition terms and conditions?



We recommend that the competition terms and conditions be changed:

1. so that any licence granted differentiates between winning or short-listed entrants and non-winners and is limited in time and purpose,
2. so there is a positive obligation to attribute the creators wherever practicable and no blanket waiver of moral rights, and
3. to strike a fair balance between the commercial needs of Nokia and the obligations imposed on entrants.

Arts Law recognises the value of competitions like yours and applauds your eagerness to promote creativity in the global environment. Nevertheless, we urge you to review the competition terms and strike a balance between Nokia’s legitimate commercial objectives and respect for the artistic and creative authors of the submitted content. We would be happy to assist in this process, whether for this competition or other competitions Nokia may conduct in the future.

Please feel free to contact us to discuss this further.

Yours sincerely

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