

**COPYRIGHT LAW REVIEW COMMITTEE: COPYRIGHT AND CONTRACT
SUBMISSION BY
PHONOGRAPHIC PERFORMANCE COMPANY OF AUSTRALIA LTD
("PPCA")**

PPCA is pleased to make this submission to the Copyright Law Review Committee ("CLRC").

- 1 We note and agree with the submissions by the International Intellectual Property Alliance ("IIPA"), International Federation of Phonographic Industries ("IFPI"), and the Australian Record Industry Association ("ARIA"). Accordingly, we do not propose to set out the same observations in this submission.
- 2 As the CLRC is aware, PPCA is a collecting society which provides blanket licences to users for the public performance and broadcast of sound recordings and music videos. PPCA's licences are non exclusive and provide the user with the licence required to properly access the statutory licences under sections 108 and 109 of the Copyright Act ("the Act"), referred to in paragraph 28 of the Issues Paper. In addition, PPCA licences offer licensees an arbitration dispute resolution in addition to the access provided by the Act to the Copyright Tribunal.
- 3 We confirm that PPCA licences do not exclude or modify the exceptions provided in the Act.
- 4 In regard to issue 4, we believe that the provisions of the Act can be modified by agreement inter parties except section 47H. We believe that this is desirable and in the interests of the user and owner. We do not comment on whether section 47H of the Act should be changed. We agree with the further observations made on issues 1, 2, 3 and 4 in the submissions referred to in point 1 above.
- 5 In regard to issue 5, PPCA has always held the view that various statutes including the Trade Practices Act and the Fair Trading Act apply to the provision of goods and services, including the copyright component of these goods and services. Indeed, PPCA quite some time ago, sought and obtained a Trade Practices authorisation applying to both its public performance and broadcast licence activities. PPCA conducts its activities at all times in accordance with consumer, competition and copyright statutory provisions and case law judgments. We do not believe that there is need for any further statutes or provisions in addition to existing statutes in this regard.
- 6 In regard to issue 6 (mass market agreements), we believe that these are necessary in some instances and that the present statutory and case law rulings in this regard are adequate.

- 7 In regard to issues 6, 7, 8 and 9 we agree with the observations made in the submissions referred to in point 1 above.
- 8 By way of further comment on the general theme of the inquiry as outlined in paragraph 3 of the Issues Paper we note that the present carve outs applying to sound recordings are amongst the most generous in the world to users. In particular, we refer to the so called ephemeral provisions in section 107 of the Act which provide broadcasters with a 12 month period to maintain copies of sound recordings which would otherwise be infringements. The 12 month period is excessively generous and is in stark contrast to ephemeral periods provided in other countries such as periods of up to one month.
- 9 Section 152 (8) of the Act imposes a price cap on the broadcast licence fee payable by commercial broadcasters of 1%. While CLRC acknowledges the need to "maintain an appropriate balance between the rights of copyright owners and ... users", this situation (which has existed for over 30 years) is the most unbalanced limitation applying in the Act and must be repealed accordingly. The ERGAS committee acknowledged the existence of this anomalous situation when it recommended that section 152 (8) of the Act be amended to remove the broadcast fee cap in order to achieve "competitive neutrality and remove unnecessary impediments to the functioning of markets on a commercial basis".
- 10 We make the following recommendations:
- (1) Section 152 (8) and (11) of the Act be repealed to remove the broadcast fee cap, so that PPCA broadcasters are able to negotiate a realistic payment rate based on existing market conditions and the relevant circumstances.
 - (2) Section 107 of the Act be amended to remove the 12 month ephemeral right applying to broadcasters. Section 107 need only state that broadcasters can make a copy of a sound recording in association with other matter provided they obtain a licence from the copyright owner as agreed or as set by the Copyright Tribunal.

END

Emmanuel Candi
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Sydney
10 August 2001