



AUSTRALIAN
COPYRIGHT
COUNCIL



***Review of one per cent cap on licence fees paid
to copyright owners for playing sound
recordings on the radio***

March 2005

Review of one per cent cap on licence fees paid to copyright owners for playing sound recordings on the radio (March 2005)

Australian Copyright Council

1. The Australian Copyright Council is a non profit company. It receives substantial funding from the Australia Council, the Federal Government's arts funding and advisory body. The Copyright Council provides information about copyright via its publications, training and website, provides free legal advice about copyright, conducts research, and represents the interests of creators and other copyright owners in relation to policy.
2. Some of the organisations affiliated with the Australian Copyright Council have made separate responses to the Government's Discussion Paper *Review of one percent cap on licence fees paid to copyright owners for playing sound recordings on the radio*.

Cap should be removed

3. We confirm our support for the removal of the cap, and its replacement with a payment of equitable remuneration determined by the Copyright Tribunal in the absence of agreement between the parties.
4. The concerns that gave rise to the cap no longer apply. There is no justification for differentiating how payment is determined for this statutory licence from how it is determined for other statutory licences – that is, equitable remuneration determined by the Copyright Tribunal in the absence of agreement between the parties.
5. In addition, we think that the relevant international treaties – the Rome Convention and the WIPO Performances and Phonograms Treaty (WPPT) – require payment of equitable remuneration, for the reasons set out in PPCA's submission.

Benefits to performers

6. We note that, in practice, direct financial benefits to Australian performers from the removal of the cap will depend on the continuation of PPCA's voluntary artists' distribution scheme. In our view, the amendments to the performers' rights provisions in the Copyright Act, which came into effect on 1 January 2005, are unlikely to provide much financial benefit in practice to performers. The following provisions, in particular, limit the financial benefits to performers:
 - if a sound recording is commissioned, copyright vests in the commissioning party even if (as is likely) the performer is not a party to the commissioning agreement;
 - if a performer is an employee, the "performers' share" vests in the employer rather than the performer; and
 - there is virtually no financial benefit for performers from recordings made before 1 January 2005.
7. In our view, the amendments do not meet the requirements of the WPPT in law or in spirit. In particular, Article 6 of the WPPT requires the granting of an exclusive right to performers, but the recent amendments give only the potential of a shared right in certain circumstances.

Libby Baulch
Executive Officer
March 2005