



March 12, 2005

Ms Helen Daniels
Assistant Secretary
Copyright Law Branch
Attorney-General's Department
Robert Garran Offices
National Circuit
BARTON ACT 2600

By email: michelle.tippett@ag.gov.au

Dear Ms Daniels

I am writing to respond to the discussion paper on the *Review of the One Per Cent Cap on Licence Fees Paid to Copyright Owners for Playing Sound Recordings on Radio* on behalf of the Music Managers' Forum (Australia).

Formed in 1991, the Music Managers' Forum (MMF) is the national industry body for music managers and self-managed artists. We have some five hundred members who in turn represent the majority of Australian recording artists. The objective of the organisation is to raise the professional standards of music management. The MMF undertakes representations to government and others on matters affecting members' obligations, rights or interests.

MMF is aware that the Phonographic Performance Company of Australia (PPCA) has also prepared a submission to this review. The MMF has read the PPCA document and agrees with the substance of the submissions contained in it.

MMF supports the removal of s 152(8) *Copyright Act 1968* (Cth). The legislative cap is an unjustified economic distortion that short-changes Australian artists and artist managers of their rightful income from the playing of sound recordings on commercial radio. MMF's key arguments to the Government seeking the removal of the cap include the following:

- The operation of the cap imposes a substantial penalty on local recording artists, artist managers and record labels. It creates a distortion in the market where commercial radio stations, particularly FM stations, are being subsidised for a key input cost and Australian recording artists and record labels receive artificially low fees for the use of their product.
- The distortion is not only between artists and the commercial radio sector, but also within the industry, as talk-format, usually AM stations, pay market rates for their key input costs and high music-use stations, usually FM stations, do not.
- The cap diminishes the economic incentive for artists to continue in the field. PPCA figures demonstrate that the distribution of broadcast licence fees collected from commercial radio to artists is relatively low with the bulk of registered artists, over 63%, receiving a payment of less than \$100 for 2004. This is in a context where Australian artist incomes are already very low.
- MMF believes that the cap has a detrimental impact on the investment levels made by record labels and indeed independent artists themselves in the development of existing and emerging Australian recording artists. This in turn has a cultural impact on the Australian community.
- The cap on the broadcast licence fee is also inequitable in its application. There is no other copyright in Australia, relating to music or other material, that is the subject of a statutory price cap. The other copyright in music, for the musical work or song, has no cap and is based on a

sliding scale of rates ranging from 0.5% to 3.5% of commercial radio revenues based on music use. This leads to a distorted outcome where the songwriter in a band may receive a reasonable level of remuneration for his or her work whereas the band as a whole divides among its members the artificially low broadcast income in relation to the sound recording.

- International comparisons also demonstrate the distortion created by this cap, as there is no other comparable country that imposes a statutory price cap on the broadcast licence fee. This is borne out by consultations with the International Music Managers Forum of which MMF is a member. Other countries allow the parties to negotiate a fair market rate or for it to be determined by an independent specialist copyright adjudication body. Rates vary around the world from 0.5% to 4%.
- The fact that in Australia the performers gain their income on a gratuitous basis from the 'owners' of the copyright instead of themselves having rights against the users is an issue which may well be addressed in this inquiry.
- The cap in its present form provides limited bargaining scope for the parties to negotiate a fee above its present level of 0.4% of gross revenue of commercial radio stations. This can be seen with the gradual increase in the rate from less than 0.2% to 0.4% over the last 21 years and results from the station-by station application of the cap.
- The commercial radio sector is a highly profitable industry and should not be given ongoing price protection based on an outmoded and anomalous legislative provision.
- The conclusion that the cap is antiquated policy and out of step with current public policy is the recommendation of two independent reviews, one in 1995 and the other in 2001 that the cap be repealed.

In conclusion, the MMF supports the repeal of s 152(8) *Copyright Act* (Cth). The legislative price cap should be removed and the parties free to negotiate a fair market rate, or failing that have the Copyright Tribunal determine a rate if the parties can not agree, for the use of sound recordings. The present cap is creating distortions in the market, particularly artificially depressing the income received by recording artists and artist managers.

Please do not hesitate to contact the undersigned in relation to this submission.

Yours sincerely

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