



31 May 2013

Committee Secretary  
Senate Standing Committees on Environment and Communications  
PO Box 6100  
Parliament House  
Canberra ACT 2600

By email: [ec.sen@aph.gov.au](mailto:ec.sen@aph.gov.au)

Dear Committee Secretary,

**Inquiry into the effectiveness of current regulatory arrangements in dealing with the simultaneous transmission of radio programs using the broadcasting services bands and the Internet ('simulcast')**

We thank the Committee for providing PPCA with the opportunity to make a supplementary submission to this Inquiry. The purpose of our supplementary submission is to address some of the inaccuracies that have been made in the submissions jointly submitted by Australian Broadcasting Corporation, Commercial Radio Australia (**CRA**), Community Broadcasting Association of Australia and Special Broadcasting Service<sup>1</sup>, and the supplementary submission made by CRA dated 24 May 2013<sup>2</sup>. Whilst we do not propose to address every issue that we disagree with, there are a few misnomers that we would like to address:

- 1. Impact of simulcasting on educational institutions:** An aspect of the Radio Broadcasters' Submission that requires correction is their reliance on the effect that current regulation would have on educational institutions' use of internet simulcasts. The Radio Broadcasters misstate the law that applies in Part VA of the Copyright Act and claim as an "anomaly" that:

*"Educational institutions would not be able to copy from the online version of a simulcast, which may be a more convenient method of exercising their rights under the educational statutory licence. [See Part VA, Copyright Act]"<sup>3</sup>*

In actual fact, educational institutions remain able to use internet simulcasts in the same way as they use broadcasts under Part VA of the Copyright Act. This is because s 135C(1) of the Copyright Act provides a specific extension of Part VA to internet simulcasts that are provided by the broadcaster. Section 135C(1) is in the following terms:

*"This Part, and the rest of this Act so far as it relates to this Part or to a provision of this Part, apply in relation to a communication of the content of a free-to-air broadcast, by the broadcaster making the content available online at or after the time of the broadcast, in the same way as they apply in relation to the broadcast".*

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<sup>1</sup> Referred to as the Radio Broadcasters' Submission for the purpose of this supplementary submission from PPCA.

<sup>2</sup> Referred to as the CRA Submission for the purpose of this supplementary submission from PPCA.

<sup>3</sup> See page 10, paragraph 6.17(c) of the Radio Broadcasters' Submission.

In this respect, the Copyright Act is drafted in a way that recognises that there is a difference between a traditional broadcast on the one hand, and an internet simulcast provided by that same broadcaster on the other.

We note that the Copyright Advisory Group to the Standing Council on School Education and Early Childhood also set out, correctly, the effect that s 135C has on educational institutions' use of internet simulcasts in its submissions to this Inquiry on page 2.

- 2. Radio stations will have to pay twice:** PPCA refutes that claim made in the CRA Submission that the payment of licence fees to PPCA for the simulcasting of sound recordings *"is a money grab by the large multinational record industry which local regional radio stations simply cannot afford"*. Many of the signatories to the CRA Submission are in fact multimillion dollar companies that cannot by any means be considered as companies that require subsidisation or market protection.<sup>4</sup>

Despite this view, should a policy decision be made that particular broadcasters should receive some level of Government assistance or legislative protection, it does not automatically follow that such assistance should be funded by recording labels and artists, particularly when no other provider of inputs to the broadcasting sector is prevented from receiving market rates for their goods and services. The broadcasting sector is required to pay market rates for all of its business inputs – such as electricity, labour and importantly the licensing of musical works. Sound recording licensing costs are a cost that radio stations need to factor, like electricity and labour costs. If subsidies are required for regional radio broadcasters then this should not be at the expense of sound recording copyright owners and recording artists. Music composers and publishers are not subject to any restrictions and receive payment for the simulcasting and broadcasting of their compositions - so it is unacceptable that sound recording copyright owners and recording artists should be subsidising the broadcasting industry in this manner.

CRA has not engaged in any discussions with PPCA regarding the quantum of any licence fees payable so CRA cannot be in a position to speculate the affordability of such fees. Any determination of the licence fees would be subject to negotiation and if a licence scheme could not be agreed – then the Copyright Tribunal would be able to set the appropriate rate. In setting the rate, the Copyright Tribunal would consider a variety of factors, which may include the financial position of each of the contracting parties.

The CRA Submission states that its members will be required to pay twice for the same content and that regional radio *"pays to APRA and PPCA a total of up to 5% of their gross revenue"*. PPCA only receives 0.4%. The fact is that radio broadcasters have voluntary licences in place with APRA which permit the broadcasting and simulcasting of musical works. Simulcasting is a separate right and there should be no reason why sound recording copyright owners and recording artists should be denied the opportunity to be fairly remunerated for the use of their works (especially as composers have an unfettered right to do so).

- 3. Separate Content Regulations:** In the Radio Broadcasters' Submission it was speculated that broadcasters who wish to simulcast programs may now be subject to two sets of regulation for the same content that is broadcast. It is important to note that radio broadcasters would already be required to ensure that any non-broadcast material that they post online (for example vignettes, off-air interviews etc) would already be subject to regulation that is separate from the broadcast codes of practice. Therefore it is difficult to understand why any content that is simulcast by these radio stations would impose additional compliance and cost burdens on these stations, which must already be adhering to such requirements for the non-broadcast material they currently stream online.

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<sup>4</sup> Signatories include ARN, Southern Cross Austereo, Macquarie Radio Network and DMG Radio.

- 4. Further Ministerial Determination:** PPCA is of the view that the proposed and “urgent” revised Ministerial Determination as set out in the Radio Broadcasters’ Submission and the CRA Submission is inappropriate, especially in light of the fact that the matter is currently the subject of separate judicial and Government reviews.

PPCA appreciates the opportunity provided to us by the Committee to make this supplementary submission and we welcome the opportunity to discuss this further as a part of your review.

Yours sincerely,

**Lynne Small**  
**General Manager**