

Association of Artist Managers
Meg Williams
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NSW 2010

Tuesday April 30, 2013

To the Senate Committee on Environment and Communications,

Re: Inquiry into the effectiveness of regulatory arrangements to deal with the simultaneous transmission of radio programs

The Association of Artist Managers (AAM) brings together the industry's leading music managers, providing a peak body to address the issues facing managers and their artists. The AAM represents managers at every level of their career. The current board of directors, of whom this document is signed by, represent some of Australia's most important and relevant artists today including Sarah Blasko, Paul Kelly, Bob Evans, PVT and the Rubens, to name a few.

We are writing on behalf of our members in response to the terms of reference published in respect of the Committee's inquiry into *'the effectiveness of current regulatory arrangements in dealing with the simultaneous transmission of radio programs using the broadcasting services band and the Internet ('simulcast')*.

The AAM is a fairly lean organisation, and does not have the internal capacity to respond comprehensively on this issue. However, we firmly believe that this is an important issue, and part of a much broader and more complex debate into issues directly impacting our members. Consequently we are keen to participate in the process.

We support the position outlined in the detailed submission made by the Phonographic Performance Company of Australia (PPCA).

AAM members are involved in supporting creators, and helping them to develop sustainable careers. Although, in recent years, the digital environment has provided enormous opportunities for artists to connect and interact with their fans, it has also been a vehicle for the widespread dissemination of unauthorised content. This has severely impacted the earnings of the recording industry as a whole, and has a resulting and significant impact on the earnings of artists. Despite this our clients have enabled the use of their work on digital platforms, and music consumers can now access millions of sound recordings across a wide range of authorised innovative services of varying degrees of sophistication and commensurate price points.

As Australia Council research has demonstrated (*Don't give up your day job: an economic study of professional artists in Australia*, published in 2003) the average earnings of artists are low, and considerably less than other occupations requiring similar periods of professional training. In our experience this situation remains the same today.

If artists are to continue to create, and produce the quality content modern digital services rely upon, they need the protection of a robust copyright law to provide certainty, protection and a basis for investment in these inherently high risk endeavours.

Such protection allows creators, and their representatives on their behalf (eg Artist Managers), to seek fair remuneration when their creative output is used as a business input in a commercial context.

For the AAM the core issue here is how rights holders are recompensed when their recordings are used as a key input to online services (for example, by internet radio). At present, under the Australian Copyright Act, sound recording rights holders have the exclusive right to authorise the internet communication of their recordings. In a practical sense, this means that those wishing to use recordings must first seek permission (ie a licence on agreed terms) to do so. Users can approach rights holders individually, or can avail themselves of standard blanket licence schemes operated by the sound recording copyright collecting society PPCA.

In circumstances where the parties are unable to reach agreement on terms of use, both are able to refer the matter to the Copyright Tribunal – the independent specialist body established under the Copyright Act to determine the terms that should apply to the use of copyright material.

However, due to an archaic anomaly in the Act, radio broadcasters currently benefit from a legislative cap on the price that can be set by the Tribunal in relation to the broadcast use of sound recordings. The impacts resulting from the operation of these caps are detailed in the PPCA submission. Basically they have the effect of (a) preventing the Tribunal from awarding a market rate for the broadcast of sound recordings, and thus (b) severely hampering the ability of sound recording rights holders to negotiate a fair market rate for their product. As a result, since their introduction in 1969, the caps have created a situation in which the recording industry has effectively subsidised the costs applicable to a key input of the commercial radio industry – namely the use of the sound recordings that underpin their business model.

The music industry understands the importance of the rapidly developing digital economy, and has engaged with service providers to ensure Australian consumers have access to a diverse and sophisticated range of online music services. In each of those instances the rights holders have

been able to engage in commercial negotiations to agree a fair market rate for the use of recordings, knowing that the Copyright Tribunal is available to independently determine terms if they are unable to agree.

Should the regulatory arrangements be amended to recast the internet delivery of radio programs by existing broadcasters as a 'broadcast', rather than an online simulcast or internet stream, the anachronistic price caps currently relating to terrestrial broadcasting only will be imported into the developing digital economy. This is completely unacceptable to sound recording rights holders, who ask only for the ability to seek equitable remuneration in the context of current markets. It is also grossly unfair to those offering internet only music services, who must compete with traditional broadcasters now seeking to expand into the digital market, and who do pay current market rates (without the benefit of a price cap regime).

As a result the AAM, on behalf of its members, urges the Committee not to make recommendations impacting the current regulations for the internet simulcast of sound recordings. Any such isolated amendments, absent the repeal of the out-dated price caps contained in section 152 of the Act, will only magnify the existing injustice to sound recording artists and rights holders, while also distorting competition in the on-line radio market.

Thank you for the opportunity to participate in this process, and please do contact us if we can be of any further assistance.

CONTACT: Meg Williams, Executive Director

Signed by the AAM Board of Directors on behalf of the members of the Association of Artist Managers; including Bill Cullen, Graham Bidstrup, Catherine Haridy, Briece Abbott, Claire Collins, Tom Harris and Greg Carey