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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')**

The Australian Recording Industry Association (**ARIA**) welcomes the opportunity to provide a submission to the *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')*.

**Who is ARIA?**

ARIA is the peak trade body for the recorded music industry in Australia. This submission is made on behalf of over 120 ARIA members including local affiliates of the major international record companies, Australian independent record labels and a substantial number of smaller Australian record labels.

ARIA's primary objective is to advance the interests of the Australian recording industry by:

- acting as an advocate for the recorded music industry, both domestically and internationally;
- supporting Australian music and creating opportunities to help it be heard;
- staging the highly prestigious annual ARIA Awards event which recognises the achievements of artists in the Australian recorded music industry;
- playing an active role in protecting copyright, particularly in relation to music piracy;
- collecting statistical information from members and retailers and compiling numerous ARIA charts with data provided by over 1,100 retailers;
- providing, in certain cases, reproduction licences for various copyright users; and
- supporting the music industry's benevolent fund, Support Act Limited.

**ARIA's Position**

ARIA wishes to participate in the Inquiry as the regulatory arrangements being explored by the Committee directly concern our members and the recording industry. ARIA notes that the Phonographic Performance Company of Australia (**PPCA**) has made a comprehensive submission to this Inquiry and ARIA wholly supports the position set out in that submission.



ARIA would also like to reiterate the following points which are made in PPCA's submission:

- The communication of sound recordings via the internet is a separate right and a separate act of exploitation that is distinct from the right and act of broadcasting sound recordings. It is therefore ARIA's view that communication rights and broadcast rights must be valued and remunerated separately.
- Copyright law serves to promote creativity and innovation by protecting the rights of creators and their ability to receive equitable remuneration for their work. If the Committee were to make recommendations for change to the current regulatory arrangements for simulcasting by characterising simulcasting as broadcasts, it would undermine this purpose - adding to the negative impact on sound recording producers and performers caused by the statutory pricing caps and other inequities for sound recording copyright owners that are set out in the existing provisions of the *Copyright Act 1968 (Cth)*.
- The efficiency of the current regulatory arrangements for simulcasting cannot be reviewed in isolation. The operation of copyright within the digital economy is currently being considered within other government reviews (namely the *Convergence Review* and the *Australian Law Reform Commission Inquiry into Copyright and the Digital Economy*) and is also the subject of pending High Court proceedings.
- Any review of the efficiency of the current simulcasting regulatory arrangements must have regard to the statutory caps on broadcast royalties for sound recordings. These anachronistic and arbitrary caps introduced some 40 years ago, limit licence fees payable (a) by radio broadcasters to no more than 1% of the station's gross annual revenue, and (b) by the ABC to no more than half a cent (ie \$0.005) per head of population, thus failing to acknowledge and fairly reward artists and labels for their fundamental contribution to the radio industry's profitability.
- Any changes to extend the definition of broadcast to the online environment would also negatively impact the rights of creators of recorded music to receive fair market remuneration for their creative output, as their remuneration would be artificially constrained by the statutory caps.
- Finally, online only service operators would be disadvantaged if the privileges currently afforded to terrestrial broadcasters were extended to internet simulcasts – distorting the market by creating an anti-competitive, anti-innovation environment. If regulatory arrangements are changed so that internet simulcasts of radio programs are characterised as broadcasts, then the statutory caps would apply to the simulcasts made by radio broadcasters. The result would be to create an uneven playing field as operators of online streaming services who enter into voluntary commercial licences for the streaming of recorded music as a part of their services do not have the benefit of an artificial cap. Accordingly, any changes to the regulatory arrangements would have negative flow-on effects of impeding both innovation and emerging digital business models.

In light of the above, ARIA respectfully submits that the Committee should take the above factors into careful consideration before it makes any recommendations to change the current regulatory arrangements relating to the simulcast of radio programs.

We hope the above is of assistance. Please do not hesitate to contact us with any queries.

Yours sincerely,

**DAN ROSEN**  
Chief Executive Officer