



4 July 2013

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

By email: ec.sen@aph.gov.au

Dear Sir

SIMULCAST INQUIRY

We have just become aware of this inquiry and wish to register our interest in the Committee's deliberations on this issue.

Summary

Having reviewed the submissions and other materials, it appears to us that the Committee is not being asked to consider any change to the Broadcasting Services Act (or any regulations or determinations made under it) that would have the effect of making internet only services (such as those operated by us) subject to the provisions of that legislation - Pandora would be strongly opposed to any measures that would have that effect. In the circumstances, we do not intend to take up the Committee's time with unnecessary and irrelevant submissions.

If our understanding of the Committee's deliberations is incorrect and the Committee is being asked to make a recommendation, or is contemplating making a recommendation, that would have the effect of making internet only services subject to the operation of the BSA, then we would ask that you notify us as a matter of urgency so that we can make submissions on that issue.

Background on Pandora

Pandora is a U.S. based corporation that operates a customisable internet radio service under the brand name "Pandora". It first commenced operations in the U.S. in 2005 and was originally available to users throughout the world. In 2007, access to the service was restricted to users located in the U.S. as the statutory licence under which Pandora operates in the U.S. does not extend to the transmission of the service beyond the U.S. border.

Following negotiations with rights owners between January 2011 and June 2012, the Pandora service became available again to users in Australia and New Zealand on 29 June 2012. These territories were the first non-U.S. countries to receive the Pandora service.



We have provided more information on the nature of the Pandora service in Attachment A.

Initial Observations

Although we do not presently intend to make any detailed submissions to the Inquiry, we would like to take this opportunity to make the following brief observations:

- It is apparent that the subject matter of this inquiry relates to, or arises from, a recent decision of the Federal Court of Australia which has the effect of denying commercial radio stations the right to simulcast without securing the appropriate, and separate, music copyright licences. In copyright terms, that is not a surprising decision from our perspective. As such, it appears to us that the commercial radio sector is simply seeking to secure an ongoing competitive advantage against services such as ours (which pay commercially negotiated rates for music licences that are, to our knowledge, appreciably higher than those currently paid by the commercial radio sector);
- The question that the Committee is, in effect, being asked to consider is whether an exception ought to be introduced into the copyright system to allow simulcasts to be undertaken without separate licence or separate licence fee. From our perspective, the introduction and implementation of any exceptions to the operation of copyright licensing requirements should only take place within the confines of the Copyright Act itself (so that the community is not required to consider multiple pieces of legislation to understand the complete copyright licensing regime). In that regard, we note that the ALRC has informed the Committee that it is presently considering this and related issues in its current copyright inquiry. We would respectfully suggest that this Committee decline to consider this issue any further and simply refer it explicitly to the ALRC for consideration and recommendation in the context of a potential amendment to the Copyright Act.

Yours Sincerely,

/ Christopher S. Harrison /

Christopher S. Harrison
Assistant General Counsel



ATTACHMENT A

NATURE OF PANDORA SERVICE

The Pandora service is delivered over the internet. It can be accessed via its website (www.pandora.com) and by any device that can connect to the internet, including mobile devices (such as iPhones, BlackBerrys and Android based mobile devices). Automakers Toyota, Honda, Nissan, GM, Ford, Hyundai, Kia, Mini, Mercedes and BMW have all publicly announced plans to integrate Pandora radio into their vehicles and over 50 models have already been rolled out with this capability in the U.S.

Pandora provides to users of its service one or more customised radio stations consisting of sound recordings, the contents of which are determined by Pandora based on a range of preferences that the user is able to express. Specifically, a user can express his or her preferences by providing one of the following inputs and, based on that selection, Pandora will stream to the user a radio station consisting of recordings determined by Pandora to be musically consistent with the preference indicated by the user. The available preference inputs are:

- The name of an artist whose music exemplifies the user's taste;
- The name of a particular recording (track) which exemplifies the user's taste; or
- A genre.

Importantly, no aspect of the service can be categorised as being “on demand” in the sense that the user can choose what artist or what track he or she wants to hear. Rather, Pandora's systems will generate a radio station of streamed recordings that it determines to be musically consistent with the preferences expressed by the listener.

The particular tracks streamed to a user are determined by Pandora's systems that (amongst other variables) compare the characteristics of a particular song or artist identified by a user against a catalogue of other recordings in Pandora's database. That database has been compiled by describing what has become known as the music genome of each recording. The creation of the music genome database requires the ongoing cataloguing of a complex series of characteristics in respect of each recording in its database. In order to create the music genome database, each recording must be assessed and analysed by a music specialist who is required to listen to that recording and describe it by reference to a series of hundreds of musical characteristics.

As such, the Pandora service is not the function of just a simple algorithm that, for example, merely suggests recordings based on popularity (eg concepts such as “people who liked this track, also liked that track”). Rather, it seeks to make a far more fundamental connection between individual recordings so that it significantly increases the likelihood that an individual user will like most, if not all, recordings streamed to him or her. Perhaps not surprisingly, the provision of the Pandora service is very labour intensive when compared to the operations of its competitors. However, that effort is reflected in its



ongoing success in the U.S. It currently has over 175 million registered users in the U.S., 60 million of whom regularly use the service on a monthly basis.

Distribution Channels

The Pandora service is delivered via the internet rather than the broadcasting services bands. It can be accessed via its website (www.pandora.com) and by any device that can connect to the internet, including mobile devices (such as iPhones, Blackberrys and Android based mobile devices). Automakers Toyota, GM, Ford, Hyundai, Mercedes and BMW have all publicly announced plans to integrate Pandora radio into their vehicles and some models have already begun to roll out with this capability in the U.S. Following the completion of local licence negotiations earlier this year (discussed below), Holden has already announced plans to launch integration of Pandora into its vehicles in Australia beginning in the first quarter of 2013.

Access to the Pandora service through mobile devices is typically undertaken via an “app” installed on that phone rather than accessing the website via a browser. Nonetheless, all access to the Pandora service is undertaken via the internet and streamed (ie communicated) to the relevant device. Beyond the buffering typically used for internet radio, no copies of recordings are stored (or are capable of being stored) on the user’s device.

Business Models

Pandora currently offers users two alternative versions of its service:

- Pandora – a free, ad supported service;
- Pandora One – an ad free, subscription based version of the service that has no limits on the amount of music per month that can be streamed.

Use

In 2008, the Pandora app became one of the most widely downloaded apps in the U.S iTunes store (Apple). In January 2012, the Pandora app was the #2 all-time downloaded free iPhone app and the #7 all-time downloaded free iPad app, according to Apple. Not surprisingly, more than 75% of Pandora’s total listening hours occur via mobile and other non-traditional sources (eg in car consumer electronics devices). Today, Pandora has over 175 million registered users in the United States with more than 58 million active monthly users who account for over 1 billion listener hours per month. Pandora also has more than 70% market share of internet radio among the top 20 internet radio services in the U.S. Given that we provide a customisable service to our users, it’s instructive to note that our listeners have created more than 3.2 billion “stations” since Pandora’s launch in 2005.