



THE MUSICIANS'  
OF AUSTRALIA  
FEDERAL OFFICE

UNION

Submission by the  
**Musicians' Union of Australia**

to:  
**The Senate Standing Committee On Legal And Constitutional Affairs**  
regarding the:  
**Copyright Amendment Bill 2006**

**30/10/06**

The Musicians' Union of Australia has concerns regarding the above bill which can be categorised under two headings.

**1. Lack of compensation for proposed loss of rights.**

The bill proposes to permit various domestic exceptions for time and format shifting. This represents a loss of rights for copyright owners. Whilst recognising that the proposed exceptions have some merit as a response to the current technological climate we fail to see why copyright holders (particularly musicians whose incomes from music, both as composers and performers, are generally unfairly minimal) should bear, without recompense, the brunt of changes directed at the convenience of the rest of society.

In our submission to the "*Fair Use and Other Copyright Exceptions*" issues paper of May 2005 the Musicians' Union of Australia proposed a blank media levy to be distributed to copyright holders as compensation. We are aware that this proposal was attempted in the past and was struck down by the High Court. The Court's action was not because the idea was unconstitutional but due to the manner in which the previous legislation was framed.

If this solution is to be ignored then some other system of compensation for loss must be devised.

**2. Lack of protection of Performer's Rights**

The bill fails to address the anomalies created by the manner in which a form of "Performer's Copyright" was introduced in past amendments. This right was introduced in the 2005 amendments to the Copyright Act but was made a part of the "Maker's" right rather than a separate copyright of its own. The current "Collecting Society" for the maker's right principally represents a number of record companies. Whilst this may have been

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appropriate when the right only encompassed that of the owner of the master recording (formerly known as the "producer") it is certainly not appropriate when the right includes performers.

The current "Collecting Society" introduced an ad hoc scheme of distribution for certain classes of performers whereby these performers assign their rights to record companies. All other performers are excluded and the current collecting society has demonstrated no inclination to address this exclusion. One of the very significant outcomes of this approach is that funds collected for Australian performers by overseas collecting societies are not available to Australian artists. As a matter of course Australian Collecting Societies make reciprocal agreements with overseas Collecting Societies to collect royalties on each others behalf. This does not occur with respect to performer's copyright.

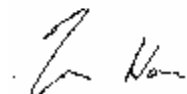
The proposed amendments to the Act deal extensively with Collecting Societies but do not appear to address these issues at all. The amendments refer to "Collecting Societies" representing a "class" of copyright holder. Since the "class" of "maker's right holder" includes performers, performers cannot have a collecting society of their own (as is the case in many overseas countries) should they desire it. This further means that a new society cannot be formed to "Collect" what the current society refuses to.

It is at least unclear if holders of performer's copyright in a sound recording are eligible to be "members" of the current collecting society. If they are not then they would also appear to be unable to apply to the Copyright Tribunal for an amendment to the current collecting society's distribution approach.

The reality, since the alleged introduction of "Performer's Copyright" in Australia, is that copyright holders are obliged to assign away this copyright and there is no body to protect their interests. The Act currently does nothing to prevent this and the absence of any attempt to do so in this bill is a shameful omission.

We would appreciate the opportunity to provide further clarification or information on these issues.

Yours sincerely,



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