



10 June 2014

Competition Policy Review  
Competition Policy Review Secretariat  
The Treasury  
Langton Crescent  
PARKES ACT 2600

[www.competitionpolicyreview.gov.au](http://www.competitionpolicyreview.gov.au)

### Competition Policy Review – Response to Issues Paper: PPCA Submission

Phonographic Performance Company of Australia (**PPCA**) thanks the Review Panel for providing PPCA with the opportunity to make a submission in relation to this review.

PPCA is a national non-government, non-profit Australian copyright collecting society which was established in 1969. PPCA operates on non-exclusive basis and grants licences for the broadcast, communication or public playing of recorded music and music videos. PPCA represents the interests of over 1,500 copyright owners, over 3,000 recording artists and over 30,000 record labels. PPCA's registered artists and record labels include small independent artists and labels to world renowned artists and major label record companies. PPCA distributes the licence fees that it collects from the provision of such licences to the record labels and Australian recording artists that are registered with PPCA.

The issues that are being considered by the Review Panel directly concern PPCA's licensors and registered artists, many of which are small businesses that rely on clear and effective competition laws in order to further their businesses. PPCA supports the separate submission made to this review by the Australian Recording Industry Association (**ARIA**).

As detailed in the submission made by ARIA, there are restrictions in Australia's Intellectual Property laws that have an adverse impact on competition. In particular, the *Copyright Act 1968* (the **Act**) includes statutory pricing caps which limit the amount of fees payable by radio broadcasters to sound recording copyright owners. The statutory pricing caps in the Act are only imposed on sound recording copyright owners and do not apply to any other copyright owners or creators.

These arbitrary and archaic statutory pricing caps were introduced nearly 50 years ago, to protect radio industry, and fail to acknowledge and fairly reward artists and labels for their creative efforts and contribution to the profitability of the radio industry. As noted in the ARIA submission to this review, these statutory pricing caps have been considered as a part of the review undertaken by the Ergas Committee. It is also important to note that the statutory pricing caps were considered in 1995 as a part of the Federal Government commissioned "Review of Australian Collecting Societies" (known as the *Simpson Report*).<sup>1</sup> The Simpson Report concluded that that the fees paid by broadcasters

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<sup>1</sup> See: <http://arts.gov.au/sites/default/files/pdfs/the-simpson-report-1995.pdf>

under section 152 of the Act were artificially low and that *“Broadcasters are in no need of the protection offered by the present cap. They are sufficiently well represented to be able to negotiate market rates without the protective arm of the government interfering in that process. Experience has shown that the best way of setting rates is by inter-parties negotiation with access to the Copyright Tribunal to determine matters that cannot be resolved in that way. It is recommended that the ceiling on the broadcast fee payable pursuant to section 152 be removed forthwith.”*<sup>2</sup>

It is clear that the statutory pricing caps are redundant regulation that stifles competition and creates market distortions. The pricing caps provide pricing protection for radio broadcasters while disadvantaging new services entering the market that use new technologies (which are not subject to the statutory pricing caps). The continuance of these statutory pricing caps may have the effect of impeding the development of innovative services. This would have the unwanted effect of disadvantaging Australian consumers and businesses.

PPCA would be pleased to provide additional information to the Review Panel in respect of any of the points raised.

Yours sincerely,



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<sup>2</sup> Section 13.1.5 of the Simpson Report.