



Music Rights Australia Pty Limited (“**Music Rights**”)<sup>1</sup> thanks the Joint Standing Committee on Treaties for the opportunity to comment on aspects of the Free Trade Agreement between the Government of Australia and the Government of the Republic of Korea (the “**KAFTA**”).

In particular, Music Rights, and its stakeholders ARIA<sup>2</sup> and APRA AMCOS<sup>3</sup>, wish to express their support for the inclusion of sections 28 and 29 in Chapter 13 of the KAFTA.

Music Rights Australia also wishes to express its support of the statements in Chapter 13 which recognise the importance of effective and adequate protection of intellectual property rights and which recognise that the parties are free to determine the appropriate method of implementing the provisions in the chapter.

### Online services and unlicensed use

Intellectual Property Rights have been, and will continue to be, central to the on- going development of the Australian music industry and the international music industry. Effective and efficient copyright laws promote continued development and investment in Australian talent and new business models.<sup>4</sup>

A vibrant online environment is central the development of the music industry. Currently there are over 30 licensed online music services in Australia and in 2013 ARIA wholesale figures showed for the first time that digital sales out stripped physical sales<sup>5</sup>.

The music industry has embraced the digital economy and continues to innovate in the digital landscape by bringing new business models online and supporting the development of licensed digital services. These services allow consumers to get their music when, where and how they wish to experience it across all types of devices at a range of price points (including free advertisement- supported services).

However, despite this range of services the Australian music industry must compete with persistent and unchecked use of unlicensed music online and the damaging impact which illegal streaming and downloading services have on it.

The Australian Copyright Act 1968 (the “**Act**”) does not contain effective, efficient or technology neutral provisions which could assist creative content owners to protect their work online.

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<sup>1</sup> [www.musicrights.com.au](http://www.musicrights.com.au)

<sup>2</sup> [www.aria.com.au](http://www.aria.com.au)

<sup>3</sup> [www.apraamcos.com.au](http://www.apraamcos.com.au)

<sup>4</sup> [www.promusic.org](http://www.promusic.org) lists over 500 licensed services available world- wide and the 30+ licensed services in Australia.

<sup>5</sup> ARIA whole sale figures 2013 [www.aria.com.au](http://www.aria.com.au)



## Myths abound about how rights protection can be improved in the online environment

The most pernicious and persistent of these myths is that increased access to affordable content will mean copyright infringement will stop and illegal steaming services will cease to offer music to consumers.

The current state of the music industry has exposed this myth and put paid to it.

Despite offering over 500 licensed online music services worldwide and over 30 licensed services locally The Digital Music Report 2014<sup>6</sup> states that an estimated 26% of internet users world-wide access unlicensed services. Nor has complete access and affordable content, including free with advertisements, stopped unacceptable levels of unlicensed use in the Australian market.

These licensed services offer music where, when and how fans wish to experience it. Yet illegal download and streaming sites continue to offer huge amounts of music which they do not license. These sites are funded by advertisements and give nothing back to the legitimate market<sup>7</sup>. ISPs' networks continue to be used to access unlicensed music through P2P technologies and despite multiple attempts over many years the ISPs have not co-operated with copyright owners to put in place processes to educate their customers so that this activity can be stopped, or at the very least, diminished. This infringing activity continues to undermine the copyright industries and the nearly 900,000 Australians (or 1 in 12 of the workforce) who work in them.<sup>8</sup>

There are currently no legal incentives in place to encourage online service providers to co-operate with copyright owners to address infringement on their networks. The section of the Act, which was intended to put in place the mechanisms which would facilitate this, does not function as it was intended to function. The section needs to be amended to address these inadequacies so that the relationship between section 101 and the 'safe harbour scheme' is realigned.

The copyright industries make an important contribution to the Australian cultural and economic environment<sup>9</sup> and as recently as 5 December 2013 the Attorney General stated: "without strong, robust copyright laws, they [the creative industries] are at risk of being cheated of the fair compensation for their creativity, which is their due and the Australian government will continue to protect them".<sup>10</sup>

It is clear our domestic law does not adequately protect the rights of the creative content industries in the online environment. In particular, the technology specific drafting of section 101 does not

<sup>6</sup> [www.ifpi.org](http://www.ifpi.org) The Digital Music Report 2014 page 40

<sup>7</sup> [www.digitalcitizensalliance.org/followthemoney](http://www.digitalcitizensalliance.org/followthemoney) Good Money Gone Bad: Digital Thieves and High Jacking the Online Ad Business

<sup>8</sup> PwC The Economic Contribution of Australia's Copyright Industries 2012 page 23

<sup>9</sup> PwC Report at page 15 Copyright contributes \$93.2 billion to the Australian economy

<sup>10</sup> The Senate Thursday 5 December 2013 page 989 Attorney General Senator George Brandis



accommodate P2P technologies which continue to be used to infringe copyright on ISPs' networks. This failure was identified in the *iiNet* case.<sup>11</sup>

On 14 February 2014, the Attorney General announced that the secondary liability provisions in the Act were possible areas for review.<sup>12</sup> At the time, Music Rights Australia supported the announcement of the review of section 101<sup>13</sup> and the other areas identified by the Attorney General and looks forward to participating in that review.

It is hoped the review will result in amendments to the Act which mean the intention of section 29 of the Australia US Free Trade Agreement and section 29 of the KAFTA are reflected in our domestic laws.

## KAFTA

Music Rights Australia supports the inclusion of sections 28 and 29 of the KAFTA and those provisions which recognise the importance of effective and efficient protection of intellectual property rights to the continued development of the Australian economy and its cultural economy.

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<sup>11</sup> *Roadshow Films Pty Ltd v iiNet Ltd* (2012) 286 ALR 466 [2012] HCA 16

<sup>12</sup> Address at the opening of the Australian Digital Alliance Fair Use for the Future Forum- Canberra 14 February 2014

<sup>13</sup> [www.themusicnetwork.com/australia-music-rights-calls-online](http://www.themusicnetwork.com/australia-music-rights-calls-online)