



20 November 2018

Committee Secretary
Senate Standing Committees on Environment and Communications
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PPCA Submission to the Senate Standing Committee on Environment and Communications Review of the Copyright Amendment (Online Infringement) Bill 2018

The Phonographic Performance Company of Australia (**PPCA**) would like to thank the Environment and Communications Legislation Committee for the opportunity to make a submission on the Copyright Amendment (Online Infringement) Bill 2018 (the **Bill**).

PPCA is a national non-government, non-profit Australian copyright collecting society which was established in 1969. PPCA operates on a non-exclusive basis and grants licences for the broadcast, communication or public playing of recorded music and music videos. PPCA represents the interests of copyright owners, recording artists and record labels. 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. PPCA's thousands of registered artists and record labels range from small independent artists and labels to world renowned artists and major label record companies.

PPCA endorses the submission made by Music Rights Australia (**MRA**) to the Committee. In addition, PPCA would like to comment on the new Ministerial power to exclude search engine providers from the application of the section.

Subsection 8B Ministerial Power to Exclude

Sub section 8B gives the Minister the power to declare by legislative instrument that certain search engine providers or a class of search engine providers are excluded from the application of the Copyright Act's site-blocking scheme.

The inclusion of section 115A(8B) inclusion appears to have been made at the request of the digital community during previous consultations to overcome concerns about the potential impact of section 115A on online search engine providers.

While PPCA does not oppose the inclusion of section 115A(8B), it does submit that it has been our experience that such legislative instruments can cause confusion amongst parties as to the instrument's intended purpose and effect, and this in turn can lead to expensive and lengthy litigation.

Accordingly, PPCA suggest that any declaration under section 115A(8B) should only be made in the most extreme cases and after due public consultation. This is particularly the case because section 115A is a no-fault remedy and online search engine providers are not held liable for copyright infringement under the section. They are merely required to “take such steps as the Court considers reasonable so as not to provide a search result that refers users to the online location”, which is the subject of the primary site blocking orders.

Section 115A would be diminished and its purpose thwarted were declarations to be made without cogent evidence being presented and public consultation before the Minister’s power is used.

It is PPCA’s view that the checks and balances within section 115A make such declarations unnecessary, as the high evidentiary burden which Applicants carry to satisfy the primary purpose or effect tests and the other factors which the Court may consider before orders are made would prevent unintended consequences in the application of section 115A to online search engine providers.

With the aforementioned comments in mind, PPCA supports the passing of the Bill as currently drafted before the Senate.

Please do not hesitate to contact us if you need any further information or assistance.

Yours faithfully,

Lynne Small
GENERAL MANAGER