



7<sup>th</sup> May 2013

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

By email

Dear Committee Secretary,

**Re: Inquiry into the effectiveness of current regulatory arrangements in dealing with the simultaneous transmission of radio programs using the broadcasting services bands and the Internet ('simulcast')**

I write in my capacity as General Manager of the Australian Independent Record Labels Association (AIR). AIR is a non-profit, membership based organisation that represents the interests of 200 member labels as well as the wider independent music sector in Australia. I have attached more information on the organisation at the end of this letter regarding the breadth of AIR's membership and representation.

This letter is in response to the terms of reference published for the Senate Standing Committee on Environment and Communications inquiry into *'the effectiveness of current regulatory arrangements in dealing with the simultaneous transmission of radio programs using the broadcasting services bands and the Internet ('simulcast')*.

We welcome the opportunity to contribute to this very important discussion.

AIR does not have the resources to provide a lengthy submission, but endorses the position taken by the Phonographic Performance Company of Australia (PPCA) in its submission.

There are five key points AIR would like to bring to the Committee's attention:

1. Copyright law, and the right to equitable remuneration for the use of creative content, is the cornerstone of the digital economy. Copyright and the right to equitable remuneration is also crucial to the livelihood of all of our members.

2. This inquiry focuses on a single issue which itself is currently being considered as part of other processes, both government and judicial, and forms part of much more complex policy issues in relation to copyright, convergence and the digital economy.
3. The communication of sound recordings via the internet has a separate value to the broadcast of sound recordings, and this is recognised in many other comparable territories to Australia.
4. The issue cannot be properly examined without considering the current legislative cap applicable to licence fees applying to the use of sound recordings by broadcasters, and
5. The extension of the current privileged position of terrestrial broadcasters in relation to their access to sound recording content into the on-line environment creates a market distortion given the unfair advantage it provides them when compared to services operating solely in the on-line environment.

AIRs members are not major multinational corporations. Our members are small Australian businesses and artists that operate in a high risk environment, investing both time and financial resources into the creation of sound recordings. Through such investment, and the associated nurturing of creative talent, they contribute enormously to the Australian contemporary cultural landscape.

Their ability to build livelihoods, sustainable business models, and continue the cycle of investment and creative output, is based on the protections afforded to rights holders through Australia's copyright framework. As a result, we urge the Committee to recommend against any diminution of our members' rights as, in our view, this will inevitably result in a reduction in the markets they would otherwise have reasonably expected to be able to exploit in the normal course of their businesses. In AIR's view, the ability to consider and separately licence the on-line use of sound recordings is a reasonable expectation of rights' holders and content creators, and is in line with circumstances in comparable jurisdictions (eg New Zealand, the UK, Germany, Ireland, Canada and the US).

In particular we draw the Committee's attention to PPCA's submissions in respect of sections 152(8) and 152(11) of the Copyright Act (1968). These sections are often referred to as "the caps". AIR wholeheartedly supports the statements of PPCA – we cannot accept that the small businesses we represent should have their potential earnings curtailed in order to subsidise the business model of the highly successful commercial radio sector and the ABC. All we ask is the opportunity, when necessary, to have the value of our content assessed by the specialist independent arbiter (the Copyright Tribunal) in the context of the then current market. The right to be able to freely negotiate licence fees for the use of our member's creative output should not be diminished.

Any move to now characterise the delivery of radio programs over the internet as a 'broadcast', which would then afford the operators of such a service the same level of statutory price fixing currently in operation in the traditional terrestrial broadcast context, would constitute a further unacceptable assault on the rights of sound recording creators to attain a reasonable market rate for the use of their creative output.

Further, this would extend the existing market distortion into the developing on-line environment, and negatively impact the competitiveness of those investing in innovative new digital services for

consumers. This will further erode our member's ability to earn a livelihood from their creative works.

In our view, even a cursory examination of the current services and offerings available to music consumers, demonstrates that the music industry is willing to enter into commercial arrangements with service providers to provide innovative and varied delivery models, which have been to the benefit of music consumers.

The music business has always been high risk. In recent years this risk has been exacerbated by the high volume of product accessed illegally via online platforms, and the resulting overall reduction in industry revenues. In order to sustain their businesses and continue to support and participate in the global digital economy our members need certainty and a robust framework of rights protection. Such a framework also encourages continued creative endeavour, and the production of original Australian content. The recent lobbying by the commercial radio sector to have Australian music content quotas removed from digital services coupled with any reduction in the protection of our members rights will have an impact on the production of Australian content and the ability for Australian voices to be heard.

AIR's members are certainly not in a position to extend into developing new digital markets the unfair impact of the anachronistic price protections currently contained in sections 152(8) and 152(11) of the Copyright Act. Similarly, one category of digital economy participants (ie non-traditional broadcasters who are developing on-line music offerings) should not be competitively disadvantaged in comparison to traditional broadcasters also seeking to operate in that on-line market.

Given the above we urge the Committee not to recommend change to the current regulatory regime for the simulcast of sound recordings over the internet.

Please do not hesitate to contact the undersigned should you require any further information.

Yours faithfully,

Nick O'Byrne

**General Manager**

**Australian Independent Record Labels Association.**

## **THE AUSTRALIAN INDEPENDENT RECORD LABELS ASSOCIATION (AIR)**

AIR is a not-for-profit, non-government association dedicated to promoting a commercially viable music industry environment that is conducive to growth and development of the Australian independent sector. AIR represents the business and cultural interests of approximately 220 member companies who invest in, and release the music of an estimated 6,000 independent artists annually. The independent sector comprises between 20% and 40% of Australia's recorded music market more than 90% of the different titles available for sale.

The independent sector provides rich musical and cultural diversity of Australian music. Independent labels are indeed the only labels that specialise in the "arts" including jazz, classical, contemporary classical music, world-music, indigenous music and niche contemporary genres like dance, blues, country, electronic, punk or metal.

AIR maintains strong relationships with ARIA, MCA (Music Council Of Australia), AMIN (The Australian Music Industry Network), APRA (The Australasian Performing Rights Society), Music Rights Australia and international organisations like WIN (Worldwide Independent Network), Merlin, AIM (The Association of Independent Music, UK), A2IM (American Association of American Independent Music) and IMPALA (Independent Music Publishers and Labels Association, Europe).