IFPI Position on the Copyright Legislation Amendment (Fair Pay for Radio Play) Bill 2023

November 2023

I. IFPI

IFPI is the voice of the recording industry worldwide, representing over 8,000 record company members across the globe. We work to promote the value of recorded music, campaign for the rights of record producers, and expand the commercial uses of recorded music around the world.

We also work closely with Collective Management Organisations (referred to by the recording industry as Music Licensing Companies ('MLCs')) in over 80 countries, including the Phonographic Performance Company of Australia ('PPCA'), and receive detailed financial reports from these MLCs.

It is against this backdrop that we provide our comments to the Copyright Legislation Amendment (Fair Pay for Radio Play) Bill 2023 ('the bill') amending the Copyright Act 1968. The proposal to remove the restriction to royalties paid by broadcasters to sound recording owners is long overdue. The royalty 'cap' amounts to a forced subsidy to the commercial radio industry, reduces the amount of funds available for investment in local talent, and is without precedent internationally.

II. MAIN ARGUMENTS

The Australian Copyright Act of 1968 restricts the Copyright Tribunal's freedom to determine a fair market price for the use of sound recordings by broadcasters. The Tribunal is restricted to set a tariff that is (i) no more than one percent of the broadcaster's gross earnings, and (ii) no more than 0.5 cents per head of the Australian population for the public broadcaster.

As explained below, this regime is discriminatory and an anomaly internationally.

The caps are an international anomaly

To the best of our knowledge no other country applies a similar artificial restriction to royalties paid by radio broadcasters to sound recording owners. These caps make Australia an outlier internationally.

The caps put Australian right owners at a disadvantage

Due to the caps, the income that Australian right owners receive for the broadcasting of sound recordings is many times lower than what record companies and artists receive in similar economies, i.e., around a sixth of what they receive in the UK or Canada, and one tenth of what they receive in Norway or Denmark (see Table 1 below). Because Australian right owners are deprived of substantial income from an important revenue source, they are at a competitive disadvantage compared to their international peers, including when they compete on foreign direct investment in the sector.

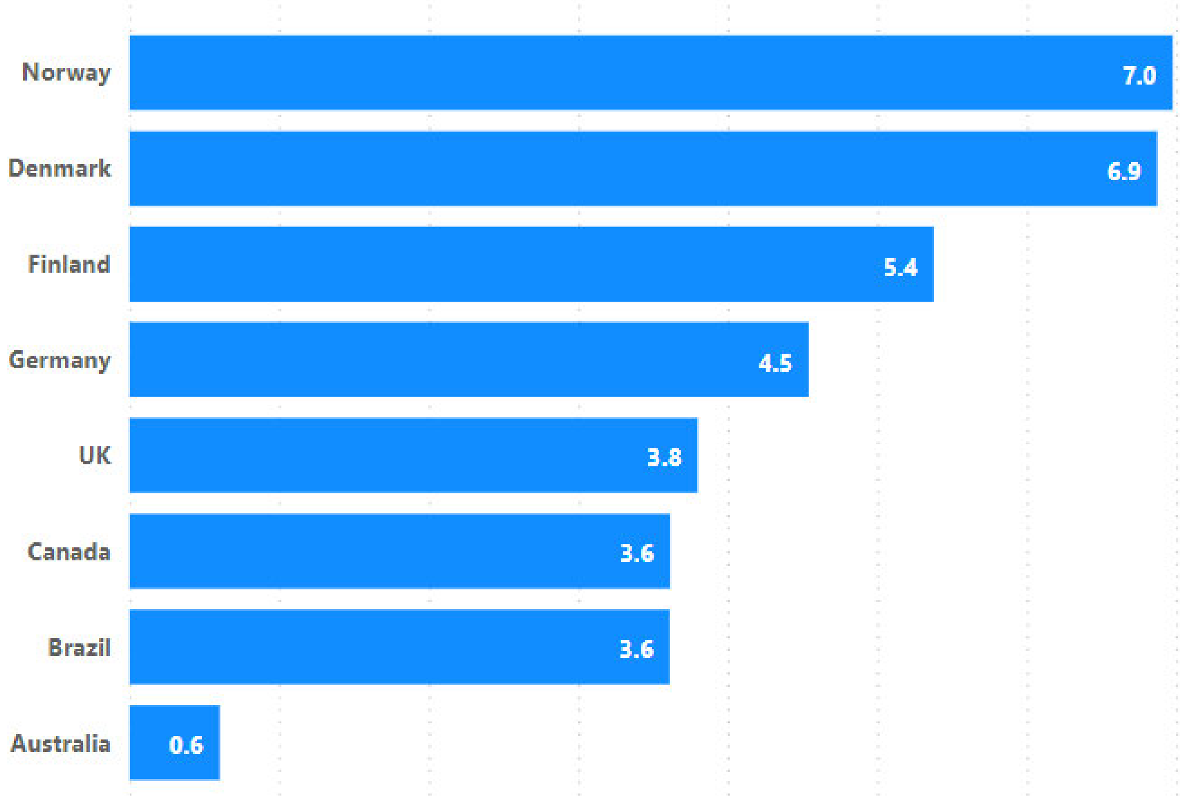

Table 1: Commercial radio income (including payments both for broadcasting and simulcasting) as % of radio industry (source: IFPI/sound recording rights CMOs).

There is no justification for the caps

The inherent unfairness of the current caps is particularly striking considering the importance of music as a key driver of radio revenue.

For instance, the UK regulator Ofcom's 2017 International Communications Market Report reports that Ofcom conducted consumer research about radio in nine countries and found that music is central to radio's popularity. As Ofcom puts it, *"Music is the key driver for [radio] listening"*.

Radio is also one of the most popular ways of consuming music. According to IFPI's 2022 Engaging with Music Report[1]:

[1] https://www.ifpi.org/wp-content/uploads/2022/11/Engaging-with-Music-2022_full-report-1.pdf

- 73 percent of consumers listen to the radio mainly for the music.
- 67 percent of consumers tune into their favourite radio station because of the music it plays.
- 63 percent of consumers report that, without music, they wouldn't listen to the radio.

There is no justification for restricting Australian right owners', or PPCA's as their representative MLC, freedom to negotiate, in line with international practice, agreements that better reflect the true value of sound recording rights for radio broadcasters.

The artificial restrictions to radios' payments to sound recording right owners diminish record labels' ability to invest in local artists and their music.

Record labels are the main investors in artists and their music. In 2022 record labels invested USD 7.1 billion in A&R and marketing, amounting to 29.7 percent of industry revenues[2]. The royalty caps, which reduce record labels' income from an important income source, has a negative impact on the Australian right owners' capacity to invest in the development of Australian artists and their careers.

We further note that tariffs that reflect fair market prices, would benefit Australian right owners and artists even when foreign recordings are used. Based on the commonly applied contractual practice in the industry, the local licensees or subsidiaries of international record companies get to keep a substantial part of the revenue they receive for the use of foreign recordings, which is then invested back in the developing local artists.

III. CONCLUSIONS

For all the above reasons we would strongly support the adoption of the bill and the removal of the so-called radio caps in the Copyright Act 1968.

Thank you for the opportunity to make this submission. We stand ready to assist with further information on any of the above points.

For further information, please contact:

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[2] IFPI investing in Music. Role of a Record Label - IFPI