



29 April 2013

Ms Sonya Fladun  
Inquiry Secretary  
Standing Committee on Infrastructure  
and Communications  
PO Box 6021, Parliament House  
Canberra ACT 2600

Dear Ms Fladun,

Thank you for your invitation to provide a submission to the Committee.

Universal Music Australia Pty Limited ("UMA") is a leading Australian recording company. UMA was incorporated in 1955 and is a subsidiary of Universal Music Group ("UMG"). UMG's major recording labels include Island, Def Jam, Mercury, Polydor, Universal, Motown, Interscope, Geffen, A&M, Decca, Deutsche Grammophon and Verve.

In 2012, Universal Music Holdings Limited acquired the recorded music assets of the EMI Group, including EMI Music Australia Pty Limited ("EMI Australia"). EMI recording labels include EMI, Capitol Records, Capital Records Nashville, Virgin and Blue Note Records. The acquisition was given unconditional informal clearance by the ACCC.

UMA (now incorporating EMI Australia) employs 155 staff and has offices in Sydney, Melbourne and Brisbane. UMA's principal activity is music recording. UMA discovers, develops, records, markets and promotes recording artists across the full range of music genres and distributes its artists' music to physical and digital retailers. UMA's local recording artists include Gotye, Megan Washington, Bernard Fanning, The Presets, Empire Of The Sun, Boy & Bear, Matt Corby, The Hilltop Hoods, Sarah Blasko and Birds of Tokyo (to name but a few).

The business of investing in and producing recorded music is extremely risky. UMA invests many millions of dollars annually in the production of local artist recordings, however very few of these recordings succeed. It is UMA's general experience that nine out of ten artist

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albums will lose money. Typically it is impossible to pick the winners. As a result, UMA operates in a market which is inherently uncertain and unstable.

While the inherent risks have remained, the recorded music business has changed significantly over the past decade. Firstly, total revenues from legitimate recorded music sales have declined severely, both globally and in Australia, over the past ten years. In real terms, revenue has more than halved over that period.

This significant decline in the overall size of the recorded music industry started when digitisation of music content began to take off in the early 2000s. The prevalence of illegitimate music download and streaming platforms in the digital space has led to a rapid decline in willingness to pay for recorded music.

In volume terms, according to 2011 figures from the International Federation of the Phonographic Industry, unauthorised music consumption is estimated to account for some nineteen out of twenty downloads (or around 95%). The enormous impact of piracy on the supply of authorised recorded music has dramatically reduced the resources available to UMA and other record companies to invest in new music. It has also fundamentally affected the way in which record companies make music available to consumers.

The ready availability of unauthorised alternative sources of both download and streaming services is therefore now entrenched as a fundamental feature of the recorded music market in which artists, recording companies and retailers of recorded music alike seek to develop sustainable business models. Piracy has already irreparably damaged the recorded music industry and will continue to be a major competitor to legitimate sales for as long as it remains unchecked. In 2009, the Australian Government stated in the report *Australia's Digital Economy: Future Directions* that it is an enabler of the effective and lawful use of the internet and that it will facilitate "appropriate solutions" to the problem of unauthorised file sharing. While some other territories have introduced legislative means to help deal with the problem of unauthorised access to music, Australia's recorded music industry is still waiting for the Government here to act.

The prevalence of free pirated music has exerted strong downwards pressure on the price of recordings and has forced recording companies to make their music available as widely and to as many legitimate platforms and channels as possible. UMA makes its content available to digital music services in Australia on a non-exclusive basis. As a result UMA's repertoire

is widely available in digital form from multiple online music services. These services include a-la-carte download services and music streaming services (which can be divided into ad funded and subscription funded services).

While the growth in legitimate digital music services in recent years has been very strong, the dramatic decline in physical sales since the industry peaked in 2001 has not been matched by the increase in digital sales.

In Australia, a-la-carte downloads are offered by a large number of providers including Apple iTunes, Telstra Bigpond, JB HiFi, BanditFM, Optus, Vidzone, Nokia, Guvera and more than 14 other services. The launch of the first digital download retail service in 2003 by Apple iTunes brought with it a revolution in the way music is consumed. When iTunes launched, the principal commercial objective for Apple was to increase sales of its hardware devices, which, at the time, were iPods. Apple was able to persuade the record companies to make available their entire music content in unbundled form (that is, as individual tracks) in digital format at very low prices. This was a new way of selling music for a recording industry that had traditionally relied on album sales. Ten years later, Apple continues to use iTunes to drive sales of its hardware devices, today mainly the iPhone and iPad. Record companies like UMA continue to offer highly attractive low cost terms to iTunes and other digital retailers to continue to maintain a strong presence for authorised online music suppliers in the face of the continued presence of piracy.

UMA's policy of making virtually all of its repertoire available in digital form to consumers as permanent downloads via iTunes, BigPond and the other services provides significant consumer benefits. As almost all recordings are offered on a completely unbundled basis as single tracks, consumers are given a maximum degree of choice. In addition, ease and convenience of purchase is significant. It can be done from any place with internet access at any time of the day or night. Also, consumers now have considerably more recordings to choose from. Download services can offer a much greater selection of titles to their customers with a significantly larger number of less popular works being offered online than in the physical world.

In addition to the download services mentioned above, UMA has invested millions of dollars in its own a la carte download service, Get Music, while EMI Australia has invested heavily in its direct to consumer download service, The InSong. Combined, the large



number of download services in this country give Australian consumers great variety across all genres of music, at varying price points.

For consumers who do not wish to pay to download and own their favourite track or album, music streaming services offer an access based experience. Over the past few years, streaming services have emerged as a new and innovative retail service and have seen strong growth. Examples of streaming services offered in Australia include internet radio providers such as Pandora, Rdio and Last FM (offering a free music experience), and ad funded and subscription services including Spotify, JB HiFi, Vevo, MCM, Sony Music Unlimited and many others, all allowing consumers some element of choice in the music they wish to listen to. A number of these services are ad-funded, meaning they are free to consumers, while others are subscription based, which means the consumer pays a monthly subscription fee which provides unlimited streaming access.

In addition, UMA has invested heavily in a local streaming service called Songl. Songl has been established under a joint venture between UMA, Sony Music Australia and Southern Cross Austereo. The creation of, and investment in, Songl demonstrates UMA's support of the model of music streaming in Australia. UMA believes that subscription services will continue to grow strongly in the coming years.

The retail price charged to consumers by Australian digital providers is set by the particular digital provider. UMA has no say in the setting of that retail price. UMA provides its content to retailers according to wholesale price rate cards. UMA has rate cards that apply to physical records and rate cards that apply to digital content. The rate cards set out the prices of the different album and track pricing tiers with multiple tiers being offered. Rates for campaign discounts, which are commonly demanded by digital retailers as a condition for including particular products within a promotional campaign, are also included. There are further categories for deluxe products, compilations and video products.

UMA's wholesale prices are set taking into account a number of factors relevant to UMA's operations in Australia. As set out above, the recording industry is an inherently risky business with the vast majority of artist recordings not returning a profit. The ten percent of releases that actually succeed provide the revenue that is necessary to cover the large losses on the others.



UMA invests heavily in Australian artists as well as providing significant funding to a number of independent Australian labels. In addition, the company carries substantial labour and operating costs. All of these investment and operating expenses must be covered by UMA's local revenues. In addition, once an artist's album has been recorded, UMA must invest heavily in the marketing and promotion of such album. It is vital to an album's success for UMA to achieve local media support including radio play, videoclip play and online exposure. UMA also invests heavily in television and radio marketing campaigns.

UMA cannot achieve success for an artist in Australia by simply sending digital files to Australian online services from one of its overseas affiliates. Success in this country is dependent on the artist services, marketing, promotion, sales and distribution functions carried out by UMA locally. UMA's Australian artists cannot successfully build careers in this country without UMA investing considerable funds at a local level.

Given that artist and label investment and operating costs are different for each UMG subsidiary around the world, it is not surprising that there are differences in the wholesale pricing of UMG subsidiaries. The creation and supply of recorded music is to a significant extent a fixed cost business. UMA incurs significant upfront costs in relation to the creation of artist recordings and the promotion and marketing of that artist's repertoire. It is unrealistic to expect that these costs, and therefore the wholesale music prices that are calculated from these costs, to be uniform throughout all countries of the world.

In addition, other costs such as artist royalties and royalties paid to music publishers for the sale of underlying musical works in a recording are relevant and another significant cost to UMA. Again, these costs differ from territory to territory and therefore have a direct impact on the wholesale prices charged by the particular UMG subsidiary in each territory. In other words, the input costs in the UK, Japan, the U.S., Australia and the other territories in which UMG operates are different.

As far as retail prices go, as stated previously, iTunes and all other retailers (physical and digital) are free to decide at what level to price their music offerings. The issue of what price a digital retailer charges its consumers for UMA sound recordings is entirely a matter for that retailer.

It remains the case though that digital tracks are today sold at substantially lower prices when compared to physical single prices only a few years ago. In fact, recorded music in

Australia is cheaper than ever. The price of physical albums in this country has fallen considerably in the past ten years, as has the price of digital albums. In fact, UMA's average physical album price has fallen approximately 48% (in CPI adjusted terms) in the period 2003 to 2011, while UMA's average digital album price has fallen more than 11% (in CPI adjusted terms) during the same period. As stated above, these considerable price falls have occurred during a period of collapse in overall industry revenues as a result largely of piracy.

UMA notes the comment of Mr Tony King, Vice President Apple Inc, that "in this digital age, the content industry still perhaps runs with old fashioned notions of country-borders, territories or markets". UMA disagrees with Mr King's view that territorial rights are an "old fashioned notion". When an artist signs a recording agreement with UMA, that artist grants UMA rights to record and release his / her recordings in a particular country or countries. Some artist agreements grant world wide rights, while some grant rights for only Australia and New Zealand. Others may grant rights for a particular group of countries (eg. Australia, NZ, UK and Europe) or for the world excluding a particular country or group of countries (eg. the world excluding North America). It thus follows that UMA only has rights to sell an artist's recordings in Australia if in fact that artist's agreement with UMA (or UMG) includes Australia as a territory. In turn, UMA cannot grant a digital retailer the right to sell recordings in territories for which UMA does not have rights.

One example of split-territorial rights is UMA's artist, Matt Corby. Matt has signed an agreement with UMA that grants UMA rights to his recordings in Australia and New Zealand. Separately Matt has entered into an agreement with Atlantic Records in the United States, a label of Warner Music Group, for the rest of the world.

Under UMA's agreement with Matt, UMA has paid a considerable advance to gain the rights to Australia and New Zealand, and UMA understands that Atlantic has likewise paid a significant advance to secure the rights for the rest of the world. It is thus imperative that UMA ensures that Matt's recordings are made available by it for sale in Australia and New Zealand only. To do otherwise would place UMA in breach of its agreement with the artist and infringe on the rights the artist has granted to another record label.

The success of legitimate online music services in a market which remains characterised by illegal downloading depends (among other things) on being able to offer consumers music online through a fully legitimate service that respects and abides by relevant rights issues.

Ensuring that UMA's digital retail customers in Australia only make available recordings for which UMA has Australian rights is an important part of the legitimate online music environment.

In summary, with the advent of the digital age Australian consumers have more choice and more convenience than ever when it comes to accessing their favourite music. Consumers can purchase recordings – individual tracks and albums – from a large number of online retailers, at prices which have dropped massively over the past decade and are at their lowest level. Alternatively, consumers can access streaming services for free, or pay a small subscription fee to listen to their favourite tracks when and where they choose. The expansion of online services has seen the price for individual sound recordings come down significantly compared to the price for physical singles and albums. This has in turn increased the pricing pressure on physical products so that Australian consumers are benefiting in relation to both online and offline sales of music in this respect. In the background, pirated music and illegal downloads continue to place strong downwards pricing pressure on recording companies like UMA. Despite the ongoing threat, and the irreparable damage such piracy has caused, UMA continues to invest heavily in the creation and promotion of new music by new Australian recording artists.

UMA hope that the Committee finds the information contained in this submission to be useful.

Yours sincerely

George Ash  
President, Universal Music Asia Pacific