



13 February 2013

ARTISTS AND LABELS WIN COURT CASE ON RADIO SIMULCASTING

Artists and recording labels have won a Federal Court appeal which confirms that they are entitled to seek licence fees from radio stations for music streamed via internet simulcasts.

The Phonographic Performance Company of Australia (PPCA), representing recording artists and labels, has won a declaration that internet simulcasts of radio programs fall outside the definition of a “broadcast” under the Copyright Act and are therefore not covered by existing licences granted to Australian commercial radio stations.

The declaration means PPCA can now seek a separate rate for this activity and one which is not bound by the controversial statutory cap which limits the maximum amount commercial radio operators can be asked to pay for broadcasting music to just one per cent of their gross income.

The decision also opens the way for a fairer, level playing field for innovative music streaming companies who compete with commercial radio.

PPCA CEO Dan Rosen said, “This is an important win for artists and labels whose music is used widely on the internet to help drive profits for Australia’s radio industry. We have strongly argued that music streamed by radio stations on the web should be treated separately and is not a “broadcast” as defined by the Copyright Act and Broadcasting Services Act.

“Australia’s radio networks simulcast their leading programs via the web and on digital devices accompanied by advertisements and other revenue opportunities. As the range of devices increases, listening audiences and revenue opportunities are growing. Music is an essential component in all of this - it helps to attract audience numbers and build loyalty so it is important that artists and labels receive a fair share.

“Today’s decision overturns an earlier court ruling and delivers important clarity. It also brings us into line with other key markets around the world where commercial radio

operators have a licence for music used in internet programming. We can now move forward with the Australian radio industry to establish an appropriate commercial rate for this simulcast activity”, Mr Rosen said.

The appeal hearing centred on the interpretation of a legislative determination made by the Minister for Communications in 2000 that a “broadcasting service” does not include a service that makes radio programs available using the internet.

In a unanimous judgment a Full Bench of the Federal Court concluded that:

the delivery of the radio program by transmission from a terrestrial transmitter is a different broadcasting service from the delivery of the same radio program using the internet. (Justices Emmett, Besanko, Yates)

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About PPCA

PPCA is a national, non-profit organisation established in 1969 to provide non-exclusive licences for the public performance and broadcasting of protected sound recordings and music videos. PPCA distributions are made directly to copyright owners and to Australian recording artists registered with PPCA under its artist direct distribution scheme. Internet streaming tariffs will apply to all recordings (**both Australian and international**) which are protected under copyright law.