

on the RECORD

The newsletter for PPCA Artists Spring 11/12

#18/11

welcome...

Welcome to another edition of *On The Record*, PPCA's artist and licensor newsletter.

When I joined the PPCA and was given a background on the challenges we face in representing recordings artists and labels, the issue that stood out for me was the 1% legislative cap placed on the licence fees paid by commercial radio for recorded music.

For the life of me I could not understand why a billion dollar industry like commercial radio needed Government protection from negotiating a fair and commercial rate with Australian artists for the use of their sound recordings

I can proudly say that the PPCA team is doing everything possible to change this ongoing injustice on behalf of Australian artists and record labels. In fact, we feel so strongly about this issue, that we took the fight to the High Court of Australia on May 10 and are currently awaiting a ruling.

We thank you for your ongoing support through your comments, blogs and social media posts.

After forty years of protection, all we ask is for the chance to negotiate a fair rate with the radio sector, so that Australian artists and labels are finally fairly rewarded for the use of their music - because at the end of the day, what would commercial radio be without the music of our great Australian artists?

In other news we have been busy relocating our Sydney office from Pyrmont to Surry Hills as well as continuing our support for Australian music through the Vanda and Young Songwriting Competition and industry conferences such as Bondi Wave and the WAMi Festival.

I also want to remind you that it is imperative to register or update your details with PPCA before 31st August for potential distributions. If you need any help, please call our Distribution Department on (02) 8569 1133 and one of our friendly staff will be happy to assist.

Cheers,
Dan Rosen
CEO, PPCA



PPCA at the WAMi Festival

2011 WAMi Festival

The annual WAMi Festival celebrates Western Australia's thriving contemporary music community by hosting a range of shows, professional development workshops and networking functions. This year, the official venue for the WAMi Festival was at the newly renovated Bakery at Northbridge, Western Australia.

This year, PPCA partnered with WAMi for the The WAMi Festival Workshops as part of the 2011 festival. Lynne Small, PPCA's Manager of Operations, Finance and Administration, held PPCA Information Sessions and discussed PPCA's vital role in safeguarding the rights of Australian recording artists and record labels.

Through education and proactive conference participation, PPCA helps emerging recording artists and labels to thrive in the music industry.

PPCA supports Bondi Wave Music Conf



Simon Moor - Kobalt Publishing, Lindy Morrison - PPCA,
Tony Harlow - Warner Music

PPCA Artist Director Lindy Morrison recently convened the Bondi Wave Music Conference for Waverley Council. This year the free conference attracted over 350 budding industry enthusiasts from across the Sydney basin. Along with Lindy, Warner Music CEO and PPCA Board Member Tony Harlow, Vivid Festival Director and Modular boss Steve Pavlovic, Tim Levinson from The Herd and

Brian Tarantino from Love Police all took time to share their thoughts on how young artists and managers can make a living in today's music industry.

We have moved!

Our new street address is **11-17 Buckingham St, Surry Hills NSW 2010**; a stone's throw from Central Station in Sydney.

Although we have packed up all our things and moved to Surry Hills, we will be keeping the same postal address. Please send any correspondence to PO Box Q20, QVB, NSW, 1230.

Don't forget to follow us on www.facebook.com/ppca.official and www.twitter.com/ppca for all the essential PPCA news for artists and licensors.

Let's Remove the Radio Cap

How PPCA is challenging the current 1% statutory cap on royalties paid by commercial radio to Australian artists and record labels for the use of sound recordings.



The History

The '1% cap' was first imposed in 1969, limiting the amount that Australian commercial radio broadcasters can be required to pay to artists and labels to no more than 1% of the station's gross annual revenue.

At that time the cap for the ABC was set at half a cent per head of population (i.e. \$0.005 per head) and, since 1969, has not been adjusted to reflect any movements in the cost of living or the expansion of the ABC radio networks (e.g. the introduction of the Triple J network).

These caps are well below the rates applicable in other similar territories around the world (including the UK and NZ) and unfairly limit the amounts paid to artists by radio broadcasters.

PPCA Chairman George Ash has stated, "*Commercial radio uses music to attract around nine million people every week across Australia. This enables them to drive significant revenues and whilst we are proud of our part in helping the radio industry raise revenue and drive profitability, this partnership or relationship with the industry is unfairly capped by an antiquated and unjust piece of legislation.*"

It is imperative labels and artists should be fairly rewarded for their contribution to radio's profitability and the lifting of this legislative cap will allow both industries to find a fair and positive long term commercial relationship where artists are rewarded justly for their creative works. "

The caps have been in place for over forty years. PPCA believes that they undervalue the use of sound recordings so that artists are effectively subsidising the provision of content to the highly profitable commercial radio sector.

Over the years, separate independent reviews have recommended repeal of the commercial radio 1% cap. The cap has been examined by two independent reviews commissioned by Government, one in 1995 (Simpson Review) and the other in 2001 (Ergas Review). Both concluded that the cap was unjustified and should be repealed, as did a review by the Attorney-General's Department in 2005. However, despite a commonly held view across a number of recent Governments that the cap should in fact be repealed, no action as of yet has taken place, leaving thousands of Australian artists and record labels under-compensated for the use of their sound recordings.

What You Need to Know

The Australian Constitution requires that any law effecting the acquisition of property – such as a licence of copyright – must be on just terms. On behalf of Australian artists and record labels, PPCA has initiated a High Court challenge to the current cap on royalties payable by radio for the use of sound recordings on the basis that the cap fails to meet the "just terms" test. The challenge is based on the acquisition of the rights in pre-1969 recordings as the legislation introducing the caps came into effect in 1969.

The matter was taken to the High Court on May 10, 2011 and PPCA now awaits a decision.

The Facts

- In Australia, rates paid by users of copyright material are set by agreement with copyright owners, or the Copyright Tribunal if the parties cannot agree, on a fair market basis without any statutory caps. The sole exception is the broadcast licence fee paid by radio stations for use of sound recordings. Section 152 of the Copyright Act provides that the Copyright Tribunal may not fix an annual licence fee (i) in excess of 1% of gross revenue of a commercial radio broadcaster for that broadcaster's use of published sound recordings, or (ii) in excess of half a cent (i.e. \$0.005) per head of population in respect of ABC radio broadcasts.
- The present rate of the commercial broadcast licence fee is about 0.4% of gross revenue of the commercial radio industry. This has been the product of industry negotiation over the last 24 years and has been wholly framed by the existence of the legislative price cap. This means that commercial radio across Australia pays approximately \$4 million/year for its use of sound recordings on 273 commercial radio stations. For many stations, the sound recordings drive their businesses. The current industry agreement has been extended on an interim basis several times by PPCA to allow the Government to consider removal of the cap.
- Even if we assume that the cap in place for the ABC was appropriate in 1969, by 2010 cost of living increases alone (CPI) would have increased the half cent rate to 5.2 cents per person – a tenfold increase further demonstrating the extent to which recording artists continue to subsidise broadcasters. (It is also important to note that PPCA only receives around \$104,000 per year from ABC radio to distribute to its registered artists and record labels, despite the extensive use of sound recordings by the network).
- PPCA only receives about one tenth of the radio broadcast revenue paid to APRA for use of the musical work, which is not constrained by any cap. The issue affects artists and record labels across Australia.
- If the commercial broadcasting industry is so fragile that it needs price protection on its inputs why are the creators of recordings singled out to provide such a subsidy? Why aren't other suppliers to the industry (e.g. suppliers of power or premises, or the workers providing their labour) also forced to supply their products at less than market rates?

Key Arguments

Our efforts to remove the price cap rest on the following key arguments:

Unique in Australian copyright:

There is no other copyright in Australia, relating to music or other copyright material, that is the subject of a statutory price cap.

Internationally out-of-step:

Across countries like the UK, Japan, New Zealand, Canada and France, a fair market rate is negotiated between the parties or determined by an independent specialist copyright body. Actual rates around the world vary from about 1.5% to 4%.

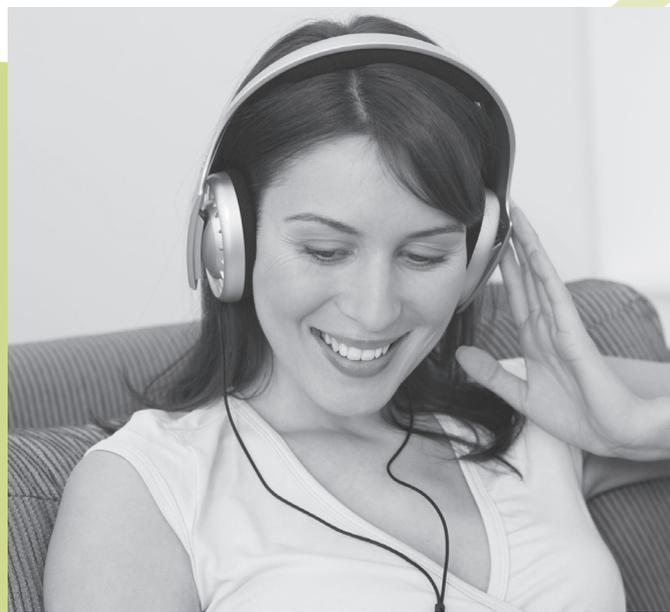
No economic justification:

Australian artists should be fairly rewarded for their contribution to commercial radio profitability, which has continued to rise steeply on an annual basis.

When introduced in 1969, the cap was justified on the basis of the "special circumstances" then existing in relation to commercial radio. Whatever these circumstances were at the time clearly no longer exist – commercial radio is a highly profitable industry with annual revenues in excess of \$1 billion (the FM sector, as key beneficiary of the price cap, represents over 70% of the industry's total revenue and 86% of its profit).

Economic impact:

In PPCA's view, the effect of the cap is to impose a substantial penalty on record labels and Australian recording artists by effectively requiring them to provide a significant annual subsidy to the commercial radio industry, particularly the FM sector.



Content Dan Rosen, Lynne Small, Luke Woods, Stephenie Ho

Photos PPCA, Nick Blair (Kimbra image)

Previous editions of *On The Record* – PPCA's newsletter for artists can be viewed on our website, www.pcca.com.au

Competitive impact on AM radio:

Within the commercial radio industry, additional distortions are created with high music-use (typically FM) stations being subsidised in relation to one of their key input costs (i.e. sound recordings) whereas talk-format (typically AM) stations pay market rates for their key input costs.

In Conclusion

Under current copyright legislation radio broadcasters have a statutory right to broadcast recordings, providing they provide an undertaking that they will pay whatever licence fee the Copyright Tribunal determines. In effect this means that artists and labels cannot withhold supply of their material and, in determining what they should be paid for its use, the Copyright Tribunal is constrained by the cap. Consequently PPCA is taking this matter to the High Court on the basis that the current legislative caps, together with the forced supply, represent an 'acquisition of property on unjust terms' under the Australian Constitution.

What We Hope to Achieve

Should PPCA be successful in getting these unfair provisions set aside it will simply mean that the parties can then negotiate appropriate licence fees without the constraint of these artificial restrictions. If the parties are unable to agree the specialist independent body specifically established for this purpose (i.e. the Copyright Tribunal) will be able to make a determination, also unconstrained by the caps.

We feel there are two logical scenarios:

1. If the licence fees are currently at a fair market rate, then the cap should be removed because it is irrelevant and unnecessary.
2. If licence fees are below a fair market rate then the cap should be removed because it creates an unjustified subsidy by one industry to another.

How You Can Help

If you are passionate about music and feel that recording artists have been getting a rough deal in terms of the 1% cap on radio royalties for too long, then tell your friends, other musicians, next-door neighbours, in fact, tell anyone that will listen...we need your support.

For all of the latest news and updates on this case, check our website regularly, follow us on Facebook and Twitter or read one of the many passionate blogs on this very important issue impacting the future of our industry at www.pcca.com.au

For regular updates on proceedings, follow us on facebook and twitter.



PASS IT ON

Finished reading? Pass it on to your music industry colleagues or band mates!

Kimbra wins songwriting comp and travel courtesy of PPCA



Kimbra (Kimbra Johnson) has been announced as the winner of the 2011 Vanda and Young Songwriting Competition for her song 'Cameo Lover'.

On winning the competition, which included over 4000 entrants from around the globe, Kimbra said "It's a great gift being able to write and share songs and even more amazing to be recognised this early on in my career. You never imagine where a song can lead when you write it; it's awesome to have the hard work that went into Cameo Lover acknowledged at this level."

While entry fees raised over \$200,000 and go directly to Nordoff-Robbins Music Therapy, Kimbra will be receiving a prize package valued at over \$50,000, including \$1,500 cash for travel expenses, courtesy of PPCA.

David Vodicka returns as PPCA Licensor Representative



We welcome back David Vodicka who has been re-elected as Licensor Representative to the PPCA board for 2011.

Vodicka is Principal of entertainment law firm Media Arts Lawyers representing all areas of the music industry including musicians, artists, composers, recording, production, management and publishing entities and is also director of independent label Rubber Records and music publisher Rubber Music Publishing.

He is also Chairman of the board of AIR (the Australian Independent Record labels association), Vice President of WIN (Worldwide Independent Network) and MIFF (Melbourne International Film Festival) and is a current board member of ARIA (Australia Recording Industry Association).

Artist registration cut off looming!

Have you released any new tracks this year?

Did you know that you need to notify us of any new releases? Record labels do not provide us with this info, so be sure to get in touch as soon as possible. If you don't register your new tracks, you won't get paid!

This year's cut off date is 31st August for the 2011 distribution. If you have released a CD (or recordings on any format) within the past year and have not lodged your artist registration, any income earned for that release will be paid to your record label.



Please note – you don't need to wait until cut-off time to tell us about your new releases. Please email us at distribution.mail@ppca.com.au whenever you release a new song, album or video. If you're not sure what we have on file, feel free to confirm your list of registered recordings with us any time by calling our distribution department on (02) 8569 1133.

You can also check out our 'lost artists' list on the web to see if any of your friends have forgotten to keep their contact details up to date with PPCA. You don't want your payment delayed because you've moved and forgotten to let us know.

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