



3 June 2016

Intellectual Property Arrangements Inquiry
Productivity Commission
GPO Box 1428
CANBERRA CITY 2601

Dear Commissioners,

Submission to the Productivity Commission in response to the Draft Report of the Inquiry into Intellectual Property Arrangements

Phonographic Performance Company of Australia (**PPCA**) provided a submission to the Productivity Commission inquiry in relation to the *Intellectual Property Arrangements Issues Paper* and we thank the Productivity Commission for the opportunity to provide comment regarding the draft report (the **Draft Report**).

As previously advised, PPCA is a national non-government, non-profit Australian copyright collecting society which was established in 1969. PPCA operates on non-exclusive basis and grants licences for the broadcast, communication or public playing of recorded music and music videos. PPCA represents the interests of copyright owners, recording artists and record labels. PPCA distributes the licence fees that it collects from the provision of such licences to the record labels and Australian recording artists that are registered with PPCA. PPCA's thousands of registered artists and record labels range from small independent artists and labels to world renowned artists and major label record companies.

PPCA is concerned that the Productivity Commission has not taken into account the significant evidence based submissions made by the creative sectors in relation to the licensing practices and operation of the sector. Many of the recommendations and findings are not founded on any new evidence and are not reflective of the practices of the Australian music industry today.

PPCA is confining its response to the Draft Report to a few specific issues that are of most relevance to our organisation. PPCA supports the submissions made by the Australian Recording Industry Association (**ARIA**), Music Rights Australia, the Australian Copyright Council and Australasian Performing Right Association Ltd (**APRA**) in relation to the matters we have not specifically addressed. In particular, we support ARIA's comments relating to fair use and the comments made by Music Rights Australia regarding the safe harbour scheme and addressing online copyright infringement.

The Analytical Framework

PPCA notes that the Productivity Commission has not provided any persuasive evidence to demonstrate that Australia's copyright framework is not operating efficiently and that it is not adaptable to meet the requirements of the evolving digital landscape. Many of the examples provided to support the Productivity Commission's standpoint of "copy(not)right"¹ are theoretical and do not have regard to the application and

¹ Draft Report at page 16

importance of copyright in ensuring that content creators and content owners have the opportunity to earn a livelihood and create innovative business models. Any changes to the *Copyright Act 1968 (Cth)* (the **Copyright Act**) must be based on evidence and demonstrated need. The introduction of further exceptions to the Copyright Act will not increase innovation. All participants in the music ecosystem – whether they are recording artists, managers, record companies or online music providers, need a strong copyright framework to enable continued investment in Australian recording artists and to enable further investment in new technologies and business models.

Copyright Term and Scope

PPCA supports the comments that have been made by ARIA to the Productivity Commission. PPCA is an organisation that represents the interests of 1,800 copyright owners, over 3,000 registered recording artists and over 30,000 record labels. Due to this, PPCA strongly believes that the ability for artists and labels to earn a livelihood from the exploitation of their creative endeavours should not be unnecessarily curtailed through a reduction in the term of copyright.

Copyright Accessibility: Licensing and Exceptions

The implementation of the proposed recommendation in relation to geoblocking will have a detrimental effect on the ability of Australian businesses and the creative industries to create new content services and invest in the creative sector. Existing and nascent Australian business models which produce and disseminate content – whether it is music, film or television programs will be impeded, as investors will be discouraged from investing in local services. The money that would otherwise be invested in these Australian businesses and sectors will inevitably be directed to offshore content providers and producers. This is surely not a result that is aligned with Australia's goal to be a leading innovative nation and one that values the importance of the Australian creative industries.

Code of Conduct for Copyright Collecting Societies

As a collecting society, PPCA subscribes to the Code of Conduct for Copyright Collecting Societies (the **Code of Conduct**) which was established in 2002. The Productivity Commission has requested information as to whether the code of conduct for collecting societies is sufficient to ensure they operate transparently, efficiently and at best practice.²

In order to respond to this, it is important to note that self-regulation is not unique to the Australian collecting societies and such practices are in place across other industries. In fact, the self-regulation model that currently underpins the Code of Conduct was a part of the then Federal Government's commitment to effective industry self-regulation as an alternative to government regulation, with the overall objective of reducing regulatory costs on business.

PPCA is of the view that the Code of Conduct is sufficient and ensures that participating collecting societies operate transparently, efficiently and in line with best practice. This is particularly the case when the genesis of the Code of Conduct is considered. In 1998, collecting societies were subject to a report titled "*Don't Stop the Music!*" The report was presented to the Government, and recommended amongst other things, the creation of a voluntary code of conduct for copyright collecting societies. The code was to be developed collaboratively between the applicable Government departments, the collecting societies, user groups and

² Draft Report at page 136

other interested parties. The recommendation further provided that the code of conduct should outline standards of acceptable licensing practices and activities.³

In drafting the code, the objectives were:

- to promote fair and consistent practices for copyright collecting societies in their dealings with their members and licensees/potential licensees;
- ensure that members of copyright collecting societies and licensees/potential licensees understand the role of collecting societies and are aware of their rights and responsibilities concerning the collecting societies; and
- ensure the availability of low cost mechanisms by which licensees and copyright collecting societies are able to resolve disputes.

The principles and considerations that formed the basis of the Code of Conduct over a decade ago are still applicable today. The changes in technology that have occurred in the interim period have not had an impact upon the fundamental way in which collecting societies govern themselves, respond to complaints and conduct their operations with the public and other businesses.

The drafting of the Code of Conduct was a consultative process between the collecting societies and the Government. A forum was also convened during the code development phase to discuss aspects of the code and to obtain feedback from licensees, users, peak bodies, stakeholders and other interested parties. Submissions were also received from attendees at the forum which were incorporated (as applicable) into the draft code.

The Code of Conduct was developed following wide-ranging consultation to ensure that the correct framework and checks and balances are in place for collecting societies.

Sufficiency

As a result of the extensive review and consultation process for the drafting the Code of Conduct, any inferences that the code lacks sufficiency are unfounded. Apart from the input from the collecting societies, the Government, licensees, stakeholders, peak bodies and other interested parties, the following resources were also given consideration in the formulation of the Code of Conduct:

<ul style="list-style-type: none">• Government Benchmarks for Industry based Customer Dispute Resolution (1997)	<ul style="list-style-type: none">• A report on the Task Force on Industry Self-Regulation (August 2000) which set out principles for industry self-regulation (including complaints/dispute resolution, administration etc.)
<ul style="list-style-type: none">• Consumer Affairs publication: Codes of Conduct Policy Framework (1998)	<ul style="list-style-type: none">• Australian Standard 4269 on Complaints Handling
<ul style="list-style-type: none">• Codes of Conduct from other industries	<ul style="list-style-type: none">• Constitutions/Articles of Association from each collecting society
<ul style="list-style-type: none">• Attorney-General's Guidelines for declared collecting societies	

³ Recommendation 6. See http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_representatives_Committees?url=laca/inquiryincopy.htm (last accessed 3 June 2016)

The Code of Conduct sets standards for the collecting societies in relation to acceptable licensing practices, the provision of information and education about collecting societies and dispute resolution procedures. It also provides an obligation for regular reviews. The breadth of the obligations set out in the Code of Conduct is sufficient for balancing the interests of all relevant parties and participants.

Transparency, Efficiently & Best Practice

The collecting societies' compliance with the Code of Conduct is overseen by an independent Code Reviewer. The Code Reviewer has typically been a former Federal Court judge, and the position is currently held by the Hon Dr Kevin Lindgren AM QC. Each year the Code Reviewer is appointed to review each society's compliance with the Code of Conduct. The Code Reviewer publishes a report in respect of this. The report is a public document and in PPCA's case, a copy of the report is published on the PPCA website each year.⁴

Even though the Code of Conduct came into effect in July 2002, it is subject to regular review and was reviewed in 2005, 2007, 2011 and most recently in April 2014. The Code of Conduct prescribes these reviews and also invites submissions regarding the operation of the Code of Conduct from the societies, their respective members, licensees and the general public.⁵ This review is advertised and it is also convened as a public hearing.

The fact that public consultation is mandated as a part of the review ensures that there is transparency in relation to the operation of the Code of Conduct. It also provides safeguards to ensure that efficiency and best practices are met.

As PPCA previously noted to the Productivity Commission, Australian collecting societies, unlike our counterparts in the United Kingdom, have been subject to annual compliance review since 2002. This contrasts with the United Kingdom where, following the Hargreaves review⁶, the first independent assessment was announced and launched in 2014.

We look forward to engaging further with the Productivity Commission prior to the completion of the final report.

Yours sincerely,

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⁴ See: <http://www.pcca.com.au/ppca-footer/footerlink-code-of-conduct/> (last accessed 3 June 2016)

⁵ Code of Conduct clause 5.3

⁶ Professor Ian Hargreaves, Digital Opportunity A Review of Intellectual Property and Growth (May 2011)