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Friday 3rd June 2016

To:

Productivity Commission  
GPO Box 1428  
CANBERRA CITY ACT 2601

**SUBMISSION TO THE PRODUCTIVITY COMMISSION DRAFT REPORT INTO  
AUSTRALIA'S INTELLECTUAL PROPERTY ARRANGEMENTS**

From:

The Association of Australian Musicians (AM)  
The Australian Independent Musicians Association (AIMA)  
The Australian Guild of Screen Composers (AGSC)

**1. Who We Are**

The Association of Australian Musicians is a non-profit industry trade group representing the interests of tens of thousands of professional Australian musicians.

AM understand the valuable role that regulation serves to preserve and enhance Australian culture and protect and create jobs in the new economy. We are committed to striking the right balance between the needs of musicians, the public, and the businesses that drive our digital, education, tourism. health and entertainment economies.

We have developed a range of reforms that will boost productivity in the Australian music industry, which will subsequently create tens of thousands more jobs in Australia, and increase music exports and inbound music tourism.

AM is governed by an Executive Committee in conjunction with an Advisory Committee (see Appendix for membership lists), comprising some of Australia's finest musicians and music industry professionals, alongside a representative cross-

section of our membership.

The Australian Independent Musicians Association is an online musicians forum operated by AM with 6,830 members who are Australian independent musicians, composers, producers, managers, agents and radio presenters. AIMA facilitates vigorous debates about a wide range of topical issues that are faced by music industry workers.

## **2. Overview of Our Concerns**

Of Australia's 22 million people, 2.2 million (10%) have studied music beyond school level, 220,000 perform with other musicians regularly in public as hobbyists and semi-professionals, and there are more than 20,000 professional musicians. (Source: Australia Council Artfacts.)

The Australian Performing Rights Association (APRA|AMCOS), the peak music royalty collection agency, collects more than \$240,000,000.00 every year in composition royalties, which is shared between publishers and more than 90,000 Australian composers that are currently registered and earning royalties with APRA. 88% of APRA members are independent musicians, not signed to a major label or publisher. (Source: APRA)

The Productivity Commission's proposed copyright reforms would directly compromise the work and livelihood of all of these people, and subsequently, workers in other music related industries would be adversely affected; compromise the objectives of the Broadcasting Services Act 1992, which is "to develop and reflect a better perception of the identity, character, and cultural diversity of Australia"; and drive talented creative people away from Australia in an unprecedented national brain-drain, as Australian artists would seek residency and citizenship in other countries in order to retain their rights, control and ownership of their intellectual property.

Further, if other countries did not adopt the same changes to copyright as proposed for Australia, it would result in the grossly unfair situation of APRA collecting royalties for up to 70 years after the death of composers from other countries with music earning royalties in Australia, while Australian composers would lose their income 15-25 years after works are created. This would unfairly disadvantage Australian composers in their own country.

On the other hand, copyright in perpetuity will set an example to the whole world that Australia values creative people, which would engage more people in the creative industries, which is currently one of the US's greatest export industries.

Without local music, our country would have no soul, no voice. The draft report contains changes that will compromise the health of our creative industries, and hence Australia's cultural identity.

### 3. Specific Concerns

Ensure that copyright laws adopted effectively protect Australian independent musicians.

Specifically :

- Copyright to persist for all time (that is, replace current lifetime plus 70 years arrangements with copyright in perpetuity, that is assignable just like an item of real property).
- Copyright beneficially assigned to a collecting society to revert to the executor unless otherwise provided for in an artist's will.

The long-term effects of reducing life of copyright from 70 years after the death of a composer to 15 or 25 years from the date of creation would unfairly disadvantage the Australian music industry and all creative arts.

### 4. Fair Use

The Fair Use provisions as seen in the US devalue the work of tens of thousands of Australian musicians, which in turn has a negative flow-on effect to many other industries.

The Australian Copyright Council have put out an [information sheet on Fair Use](#), one of the key issues covered in this report. This has some very useful information.

### 5. AM and AIMA support the following comments made by Music Australia:

<https://musicaustralia.org.au/2016/05/governments-inquiry-into-intellectual-property-arrangements-causes-anger/>

*The [recommendations highlighted in the report](#) are potentially devastating for all creative industries, not just publishing. Bands and musicians have just as much reason to be concerned, particularly when copyright is such a crucial revenue source.*

*The most perturbing aspect of the commission's report is its recommendation that the term for copyright in Australia be shortened from 70 years after a creator's death to 15-to-25 years after the content has been created.*

*Since many musicians rely on royalties from their copyrighted material, the ramifications of such a recommendation becoming official policy are obvious. Music makers would essentially be stripped of their rights to their own work within 15 years.*

*Music Australia is currently drafting a response to the report, citing other*

*recommendations such as not pursuing action against consumers who circumvent geoblocking technology and the issue of fair use as also being cause for concern.*

*“The report is recommending fair dealing be replaced with fair use,” they write. “This is another contested issue – the task will be to strike a balance that encourages innovation by rights users, while also properly remunerating rights owners, without undue complexity.”*

*“There are recommendations in the report that would drastically change intellectual property arrangements, which are not backed by sound evidence. This brings into question the motivations behind this approach, and the potential for adverse impacts.”*

*According to the [Canberra Times](#), the 15-to-25-year time period was agreed upon by the commission after ABS figures showed three-quarters of original literary works were retired after a year, with the commercial life of a book ranging between 1.4 and five years.*

*But such a conclusion completely ignores other creative industries that rely on copyright as its lifeblood, particularly music, [which is becoming more and more dependent on syncs and other intellectual property matters](#) to sustain itself.*

*Summary of key issues for music:*

- *Copyright term – the report makes a draft finding that an optimal term for copyright would be 15 to 25 years after creation; considerably less than 70 years after death. This would have huge impacts for creators many of whom rely on royalties for income and for superannuation.*
- *Geoblocking – the report recommends the Government should not take actions to prevent consumers from circumventing geoblocking technology. This is a technical issue, but will be publicly supported by consumers who resent high prices in territories like Australia. But it will have significant effects on the right of creators to control their works.*
- *Fair Use – the report is recommending fair dealing be replaced with fair use. This is another contested issue – the task will be to strike a balance that encourages innovation by rights users, while also properly remunerating rights owners, without undue complexity.*
- *Evidence base – there are recommendations in the report that would drastically change intellectual property arrangements, which are not backed by sound evidence. This brings into question the motivations behind this approach, and the potential for adverse impacts.*

## 6. Moral Rights

Shortening life of copyright as proposed by the Productivity Commission risks the moral rights of creators over their works during their own lifetime.

## 7. AIMA online poll

AIMA ran an online poll last week inviting members to choose between three choices: extending life of copyright in perpetuity, maintaining existing life of copyright, and shortening life of copyright to 25 years after a work is created, as proposed by the Productivity Commission. 80% of respondents chose to extend life of copyright in perpetuity.

## 8. UK Green Party's 2015 proposal to shorten life of copyright "slammed as an 'appalling injustice'"

- The Guardian (UK) 23rd April 2015: "Green party plan to limit copyright attacked by writers and artists"

"Manifesto proposal to make copyright shorter to reduce restrictions on shared cultural heritage slammed as an 'appalling injustice'."

<http://www.theguardian.com/politics/2015/apr/23/green-party-plan-to-limit-copyright-attacked-by-writers-and-artists>

- The Telegraph (UK) 23rd April 2015: "Authors criticise Green Party plan to reduce copyright to 14 years"

*"Kate Pool, deputy chief executive of the Society of Authors told the Telegraph: "You don't get quality creativity without investment for pretty obvious reasons. Think of school and medical textbooks. The person who invests their time and expertise in writing them needs to earn a living. Readers seek the intellectual content of a work, not its packaging."*

*"But once a work is out of copyright, the author makes no money from it, and has no control over how it is exploited, even though middlemen still do. Think of Jane Austen. If she were living today, under the Green Party's proposals everyone would be making money out of her works apart from her."*

*"The creative industries are one of this country's biggest generators of income and taking away copyright protection will effectively wipe that out. I really struggle to see how the Green Party can think this is a good plan."*

<http://www.telegraph.co.uk/culture/books/booknews/11557810/Authors-criticise-Green-Party-plan-to-reduce-copyright-to-14-years.html>

## **9. A level playing field versus increased grant funding**

Rather than reducing rights and compensating musicians with increased government funding, Australian musicians want a level playing field so the industry can stand on its own merits and grow to provide increased employment opportunities, music exports and inbound music tourism, and develop a greater sense of understanding and pride in Australia's national identity as a clever and innovative nation.

Yours sincerely,

John Prior, Adrian Keating, Tim Williams and Tania Smith  
Executive Committee of The Association of Australian Musicians

And

Guy Gross  
President of The Australian Guild of Screen Composers

And

AIMA members:

Liz Gibbs, Peter Prize, Rokk Lattanzio, Nathan Power, Ric Herbert, Bernie Keenan, Robert Bryant, Mal Ronay, Kerry Ian McKenna, Matthew J Nightingale, Wayne Grech, Sally Williams Schloegl, Annie McCue, Scott Astill, Justine Jones, Michael China Walker, Glenda Phipps, Otto Parise, Tim Austin, Pat Eyre, Kate Ferguson, Rick Ballan, Nathan Power, Cm Gill, Phil Egan, Arun Kendall, Anita Darling, Pete Donohue, Shane Hillman, Clint Williams, Justine Leonard, Bernard Fudge, Neil Beaver, Jeff Tynan, Jay Phillip Koulias, Chris Timms, Monique Wakelin, Akova, Brodie Everist, Kevin Hinds, Garth McDonald, Jan Soh, Allan Wayne Hopwood, Keith Hall, Gus Johnson, Bill Jacobi, Garth McDonald, Kevin Williams, Peter Hearne, Sue E Lucas, Grant Byrne, Andrew Stewart, Mark Dickinson, Jessie Bixby, Scott Whatman, Pete Bufo, Greg Black, Cal Millar, Tim Austin, Craig Martin.

## APPENDIX 1

### The Association of Australian Musicians – Executive Committee



**Adrian Keating**

Adrian was Principal violinist with The Australian Opera & Ballet Orchestra for over 25 years and director of the The Sydney Lyric Orchestra.



**Sean Wayland**

Internationally renowned Australian jazz pianist and band leader currently based in New York.



**David Redhill**

David is a composer and guitarist, Chief Marketing Officer and Partner of Deloitte Australia and Australian Marketer of the Year.



**John Prior**

John is a multi-award winning musician, composer and producer with Matt Finish, Mammal Music and Unity Gain Studios and AM Secretary.



**Tania Smith**

Tania coordinates our administration team with experience in music promotion, management and accounting services.



**Bob Spencer**

Bob is an acclaimed guitarist from The Angels, Skyhooks and Raw Brit and a Weekend Warriors coach.



**Tim Williams BA LLB GradDipLegPrac MAIES**

Tim is a musician, lawyer and law teacher and has worked with NSW Police, NSW Rural Fire Service, ABS, DSS, the Olympic Games.

## **The Association of Australian Musicians – Advisory Committee**



**Nathan Brenner**

Chairman of the Australian Music Managers Forum, manager of Split Enz, Men At Work, Australian Crawl, Australia Council Grants Assessor, Entertainment Industry Audit Specialist, past VicMusic board member.



**Peter Bayliss**

Artist manager and music business accountant.



**Grace Knight**

Acclaimed pop vocalist from Eurogliders, jazz vocalist on the hit soundtrack album *Come In Spinner* and solo artist.



**Jeff Duff**

A regular performer on Australian television and headline performer at leading Australian jazz festivals.



**Dexter Moore**

Multi-award winning artist and audio-video producer.



**Jeff Lang**

Internationally acclaimed and ARIA award winning blues and roots singer, songwriter and multi-instrumentalist.



**Anita Monk**

Musician, Wrokdwn music journalist and producer.



**Mick Pacholli**

Artist management, agent, TAGG gig-guide, publisher of Toorak Times newspaper and Toot Suite.



**Nia Robertson**

Singer-songwriter, Victorian Government senior manager.



**Jo Volta**

Self-managed independent artist.



**Peter Prize**

Musician, photographer, graphic designer, blogger.