

Association of Liquor Licensees Melbourne Inc

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3 June 2016

Intellectual Property Arrangements Inquiry
Productivity Commission
GPO Box 1428
Canberra City 2601

Dear Sir/Madam

RE: Intellectual Property Arrangements – Music Copyright

The Association of Liquor Licensees Melbourne Inc (ALLM) welcomes the opportunity to provide further comments on the Productivity Commission's Intellectual Property Arrangements Draft Report issued in April 2016. We were disappointed that we were not invited to one of the stakeholders meetings. Nevertheless, we make this submission and trust we will have an opportunity to further elaborate our views during one of the upcoming public hearings later this month.

We agree with the direction the Productivity Commission is taking in attempting to achieve a fairer system, which balance the interests of rights holders, licensees and the consumers. It is our view the Commission's comment on Page 16 that *"Australia's copyright arrangements are weighed too heavily in favour of copyright owners, to the detriment of the long-term interests of both consumers and intermediate users"*, is valid. There is thus a need to reform the system that is heavily weighted in favour of rights holders.

We should be paying copyright for music played in our venues. The high level of fees paid in Australia, however, are out of step with the rest of the world, examples of which were provided in our initial submission. This is patently unfair, as these costs imposed on the industry are not internationally competitive. We don't believe this is fair.

A fair price for music copyright would be at levels levied on similar businesses in countries from which most of the music played in Australia originates, namely the USA and UK. The Commission comments on Page 19 that *".....most new works consumed in Australia are sourced from overseas"*. We agree with your assessment, as we estimate this to be between 70-90% in our industry.

Well Being and Living Standards

Disproportionately high copyright fees have a negative impact on our productivity, living standards and well being. It also has a negative impact on the Australian economy. In order to afford the excessive copyright fees some businesses will reduce local employment or services to afford to pay their copyright fees - money that would otherwise be spent in Australia. Much of this money is effectively redirected to overseas rights holders.

In the case of book imports, the Commission, on page 130, estimated that *“additional income flowing overseas is around 1.5 times that retained by local copyright holders. In effect, PIRs impose a private, implicit tax on Australian consumers that largely subsidises foreign copyright holders.”*

This applies even more so to music copyright because the price disparity with other collection societies on average is about 7 times greater. We demonstrated this in our initial submission where comparisons were made with overseas collection societies.

Safeguards

Your draft report, on page 134 offers licensees the option of having any grievances heard by the Copyright Tribunal.

Whilst the option exists, the chance of an individual business owner having the knowledge, budget and energy to take a matter to the Copyright Tribunal would be unlikely. Most licensees are small businesses who would not have the expertise to launch such proceedings in the first place. The safeguard is there, but it would be difficult without costly representation. A more sensible approach would be to fix the inherent problems by removing restrictions. This is what you have proposed for the book industry, by allowing licensees to purchase their copyright licenses from any legitimate service provider. The role of the Copyright Tribunal to hear grievances should remain.

It was the PCCA, who initiated proceedings at the Copyright Tribunal. They relied on a report they had commissioned by the Allen Consulting Group. In accepting their evidence, the Tribunal implemented the current higher price regime currently in place.

The submission made to your inquiry made by the American University Washington College of Law and members of the Global Expert Network on Copyright Users Rights seems relevant to this situation. They have criticised the report by Price Waterhouse Coopers commissioned by APRA & PCCA.

This robust analysis of the PWC report demonstrates how difficult it would be for an individual business owner to present a submission to the Copyright Tribunal over excessive copyright fees. Commissioned reports biased in favour of their clients can be very influential. You stated on page 134, that *“Absent other safeguards, collecting societies may have both the incentive and ability to charge excessive fees for collective licences”*. This situation enabled PCCA and APRA to gain disproportionately high royalty fees.

Parallel Importing

In our initial submission, we requested that Australian licensees be permitted to purchase copyright from legitimate overseas suppliers. On page 129 of your draft report, in respect to parallel import restrictions on books, you state that *“Prohibiting parallel imports enables IP rights holders to engage in geographic price discrimination. Such price discrimination — the ability to charge different prices for the same good in different countries, or to vary the quality of goods supplied in different countries — is only possible if rights holders can prevent consumers, retailers or importers from purchasing those goods from overseas markets directly.”*

The problem for Australian licensees is that the Australian collection societies; namely APRA & PCCA, charge local business fees that are significantly higher than what overseas collection societies charge.

By preventing Australian licensees from purchasing from overseas, current laws are promoting and allowing price discrimination to occur. It is counterproductive to charge local businesses high rates for predominantly overseas product. Allowing parallel importing will overcome this discrimination.

We conducted further research from New Zealand, where rates charged for dance events are currently set at 15.02 cents per person versus door percentages, which are roughly in line with pricing from the rest of the world. You may wish to refer to the following link for more information.

<http://apraamcos.co.nz/music-customers/licence-types/using-music-at-your-event/>

The same issues and restrictions affecting book importers, applies to music venues. Allowing parallel importing of music royalties will positively affect competition, trade and consumer welfare.

We trust that you will include this reform for music copyright in your recommendation to our government.

Vernon Chalker, Hank Oudendyk, Con Sarrou, Nic Albon, Zok Szoeker, Chris Leonards.

Committee - Association of Liquor Licensees Melbourne INC