



# ARTS LAW CENTRE OF AUSTRALIA

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18 March 2005

Ms Helen Daniels  
Assistant Secretary  
Copyright Law Branch  
Attorney-General's Department  
Robert Garran Offices  
National Circuit  
BARTON ACT 2600

By Email: michelle.tippett@ag.gov.au

Dear Ms Daniels

## **Response to Review of One Per Cent Cap on Licence Fees Paid to Copyright Owners for Playing of Sound Recordings on Radio**

Thank you for the opportunity to comment on the review of the one per cent cap on licence fees paid to copyright owners for playing of sound recordings on radio.

### **Introduction**

The Arts Law Centre of Australia (Arts Law) is the national community legal for the arts. Arts Law provides expert legal advice, education and advocacy services to arts practitioners in a variety of disciplines. Musicians, composers, songwriters and performers make up a significant proportion of the artists Arts Law assists<sup>1</sup>.

### **Comments**

Arts Law supports the Phonogram Performance Company of Australia's (PPCA) submission to the Attorney-General's Department in response to the review of the one per cent cap on licence fees. Consequently, Arts Law believes the cap on licence fees paid to copyright owners of sound recordings on commercial radio should be lifted. Further, Arts Law expressly recognises the limited financial resources of the community broadcast sector and specifically supports the retention of the cap in section 152(8) of the *Copyright Act 1968* (Cth) (the Act) with respect to community radio licence holders (as defined in the *Broadcast Services Act 1992* (Cth)), and the separate cap provided for the Australian Broadcasting Corporation in section 152(11) of the Act.

Arts Law supports the view that removing the cap will benefit Australian artists and performers and lead to an increased income for record labels investing in Australian recording artists, and enhanced cultural opportunities as a result of increased investment in local Australian artists and performers.

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<sup>1</sup> Over 20% of enquiries handled in 2003. This was the largest of any individual arts sector.

Arts Law also appreciates the concern of the Media Entertainment Arts Alliance (MEAA) that performers may not benefit from the lifting of the cap. Under the amendments made to the Act by the *US Free Trade Amendment Implementation Act 2004* (Cth) the Act has been amended to ensure that the maker of a sound recording of a live performance will be the person who makes the recording and the performer or performers who performed in the performance, unless they are in the course of employment or the recording was commissioned. Arts Law has been advised that since 1 January 2005 performer's releases and recording agreements have required performer's to assign any rights they are entitled to in the sound recording of their performance.

It is our view that it is important performer's entitlements should be passed on to the performer and any distributions be safeguarded. Arts Law notes that the PPCA makes distributions of 47.5% to Australian recording artists through the Direct Artist Distribution (DAD) Scheme, however, if the artist is not registered with the PPCA the full amount of distribution is paid to the record company or licensor who is then responsible for accounting to the artist in accordance with the relevant recording agreement. Arts Law believes there should be an assurance that any economic benefits will flow through to artists in the form of an appropriate distribution system.

Arts Law looks forward to hearing the outcome of the review of the one per cent cap on licence fees.

Yours faithfully

Robyn Ayres  
Executive Director