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The Hon. Malcolm Turnbull MP
Minister for Communications
Parliament House
Canberra ACT 2600

By email: Deregulation@communications.gov.au

Dear Minister,

Malcolm

Deregulation: Initiatives in the Communications Sector

Thank you for your letter of 26 November 2013. ARIA welcomes the opportunity to comment on this important initiative and we support the Coalition Government's commitment to encourage innovation and reduce the regulatory burden for business and the community.

We understand that the primary intention of this initiative is to provide advice on those areas of reform that can be implemented within a short timeframe, specifically the repeal of burdensome and redundant regulation. However, as you would appreciate, the regulatory issues facing the music industry are not discrete issues that relate solely to the *Broadcasting Services Act 1992 (BSA)*, the *Telecommunications Act 1997* or the *Radiocommunications Act 1992*. As set out below, many of the regulatory issues that affect the music industry have a copyright implication and do not exclusively fit within the remit of the Communications portfolio. Consequently such reforms will require an ongoing dialogue between the music industry, the Minister and the Attorney General. In this regard, ARIA supports the submission made by Music Rights Australia to this review.

Notwithstanding this, as an industry association that represents the interests of Australian recording artists as well as numerous record companies, ARIA is pleased to note the principles set out in the *Deregulation in the Communications Portfolio Framing Paper November 2013 (Framing Paper)* which set out a number of key elements that may underpin effective and appropriate regulation:

- *It should produce benefits that outweigh the costs, including those imposed on industry (compliance), government (enforcement) and consumers (reduced innovation, fewer services and higher prices).*

As noted in the submission made by Music Rights Australia, the music industry is an active participant and investor in the digital economy through its development and adoption of new technologies and innovative business models. However, the prevalence of unlicensed activities in the digital marketplace creates market distortions which have a negative impact on the continued investment in innovation and Australian recording artists. It is only with an effective copyright framework that such innovation will continue. ARIA understands that copyright reform is not within the scope of your portfolio, but it is an important factor in the consideration of any regulatory reforms to be undertaken as a part of this initiative.

- *It should minimise market distortions and harness competition to deliver policy outcomes by aligning market incentives with regulatory objectives.*



- *It should be consistent with other regulations and policies, including those relating to competition, trade and investment.*

The statutory pricing caps set out in the *Copyright Act 1968* (the **Copyright Act**) which limit the amount of fees payable by radio broadcasters to sound recording copyright owners, is a clear example of a regulation that creates market distortions, harms competition and is inconsistent with other regulations and policies. This cap is an anachronism from Australia's bygone era of protectionism. It is clear that this regulation has manifestly outlived its usefulness and is now redundant regulation. There is no sound policy reason for the Government to be setting prices between commercial industries, and more specifically for an arbitrary price set by Government in 1968 to determine what commercial radio stations should pay for music in 2013.

ARIA understands that the statutory caps set out in the Copyright Act are outside the initial scope of this initiative. However, any proposed changes to the current regulatory arrangements must consider the removal of the redundant statutory cap and we look forward to continuing a dialogue with you in relation to this.

ARIA is pleased that you have included a broad range of policy objectives, which are referred to as the "*Enduring concepts*" in the Framing Paper. ARIA is also heartened that these concepts will form part of the initial basis for discussion with industry. As set out in the "*Enduring concepts*", ARIA supports the inclusion of the concept of "Australian identity". One of the objectives set out in the BSA is to "*promote the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity*"¹. This objective is replicated in Code 4 of the Commercial Radio Industry Codes of Practice (**Codes**)². Under Code 4 of the Codes, all members of Commercial Radio Australia are required to broadcast minimum quotas of Australian music. ARIA is a strong proponent of the preservation and promotion of the Australian identity through our support of Australian music. It is important that any regulatory changes do not undermine the concept of "Australian identity" through changes to Code 4.

We look forward to discussing this with you and working with the Government on this important reform agenda.

Yours sincerely,

A handwritten signature in black ink, consisting of a stylized, cursive 'D' followed by a horizontal line extending to the right.

Dan Rosen
Chief Executive Officer

¹ Section 3(1)(e) *Broadcasting Services Act (Cth) 1992*

² http://www.commercialradio.com.au/index.cfm?page_id=1170