



Re Deregulation: Initiatives in the Communications Sector

Music Rights Australia¹ and its stakeholders APRA| AMCOS² and ARIA³ wish to thank the Minister for Communications, The Honourable Malcolm Turnbull, for the opportunity to comment on this important initiative.

Music Rights Australia welcomes the acknowledgement set out in the Deregulation in Communications Portfolio Framing Paper November 2013 (the **Framing Paper**) that there is a need for practical conversations about the objectives of the regulatory environment through the guidance of accepted principles. And that effective and appropriate regulation may embody a number of key elements, including:

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- It should establish rules that are clear, simple and practical for all users and that have a sound legal and empirical basis ; and
- 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).

The music industry has embraced the opportunities which the digital economy offers. There are currently over 30 licensed online services available to Australian music fans. These services make music available to consumers when, where and how they want it with a range of price points, including free for ad- supported streaming services⁴.

Despite this extensive range of services the industry continues to be undermined by the availability of unlicensed music online. This unfair competitive environment puts at risk local and international investment, jobs and future investment in new talent and services to meet consumer demand.

It is well known that Internet Service Providers' (ISPs) networks are used to undermine the ability of artists and those who invest in them to be properly rewarded for their creative endeavours online. Yet ISPs are currently under no practical obligation under the Copyright Act 1968 (the **Act**) to take steps to prevent this.

Music Rights Australia knows copyright reform is not directly within the Minister's portfolio but believes that the current inadequacies of the Act are relevant matters which

¹ <http://www.musicrights.com.au>

² <http://www.apra-amcos.com.au>

³ <http://www.aria.com.au>

⁴ www.promusic.org



should be considered by the Minister and the Department as they undertake this important review.

Australian ISPs are afforded the benefit of a safe harbour framework under the Act. This framework assumes that there will be corresponding legal incentives for ISPs “to cooperate with copyright owners in deterring the unauthorised storage and transmission of copyrighted materials”⁵.

The High Court decision in the iiNet⁶ case made it clear that the Act does not function in practical terms to address online infringement. The Act currently does not function as it was intended to function and there are no practical, effective or proportionate processes in place to allow rights holders adequate protection for their creative content online.

Music Rights Australia recognises this issue sits within the Attorney General’s portfolio and Music Rights Australia and its stakeholders APRA|AMCOS and ARIA continue to engage with the Attorney General and his Department on these matters. However, we wish to work with the Minister for Communications and his Department to ensure that the outcome of these discussions result in an internet which works for everyone and importantly that they result in a copyright environment which gives incentives for ongoing investment in new innovative services and talent.

Music Rights Australia does not propose any immediate reforms for Repeal Day but looks forward to ongoing discussions to ensure the creative industries have the appropriate protections and incentives to continue to develop and innovate.

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⁵ Article 17.11, Section 29 - Limitations on liability for service providers
http://www.dfat.gov.au/fta/ausfta/final-text/chapter_17.html

⁶ Roadshow Films Pty Ltd & Ors v iiNet Ltd [2012] HCA 16