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Attachment 6

**CODE OF CONDUCT
FOR
COPYRIGHT COLLECTING
SOCIETIES**

Amended: April 2005

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1. INTRODUCTION

1.1 Background

- (a) Collecting Societies in Australia provide a range of valuable services to both Members and Licensees. By administering copyright on behalf of Members, Collecting Societies:
- (i) promote the creation and dissemination of copyright material;
 - (ii) represent the interests of creators and owners of copyright material;
 - (iii) make it easier for people to obtain permission to use copyright material;
 - (iv) streamline the process of collecting remuneration and/or licence fees for the use of copyright material; and
 - (v) reduce the transaction costs for both Members and Licensees associated with the use and exploitation of copyright material.
- (b) Each Collecting Society aspires to:
- (i) achieve best practice in the conduct of its operations;
 - (ii) be responsive to the needs of Members and Licensees;
 - (iii) ensure transparency and accountability in the conduct of its operations; and
 - (iv) achieve efficiency in the process of allocating and distributing payments to Members.
- (c) In recognition of the services they provide, Collecting Societies expect that:
- (i) Licensees and other users of copyright material will respect the rights of the creators and owners of that material, and in particular their right to receive fair payment for the use and exploitation of copyright material; and

- (ii) Licensees and other users of copyright material will use that material only in accordance with:
 - A. the terms of a licence or other permission; and/or
 - B. the *Copyright Act 1968*, the Copyright Regulations, any other applicable legislation, relevant decisions of courts or tribunals (including the Copyright Tribunal), and other binding legal requirements, conditions or guidelines.

1.2 Scope

This Code applies to those Collecting Societies that have agreed to be bound by the Code.

1.3 Objectives

The objectives of this Code are:

- (a) to promote awareness of and access to information about copyright and the role and function of Collecting Societies in administering copyright on behalf of Members;
- (b) to promote confidence in Collecting Societies and the effective administration of copyright in Australia;
- (c) to set out the standards of service that Members and Licensees can expect from Collecting Societies; and
- (d) to ensure that Members and Licensees have access to efficient, fair and low cost procedures for the handling of complaints and the resolution of disputes involving Collecting Societies.

2. OBLIGATIONS OF COLLECTING SOCIETIES

2.1 Legal Framework

Each Collecting Society will comply with:

- (a) the *Corporations Act 2001* and the Corporations Regulations;
- (b) the *Copyright Act 1968* and the Copyright Regulations;
- (c) its Constitution;
- (d) the Attorney-General's Guidelines for Declared Collecting Societies (where applicable);
- (e) its obligations under the *Privacy Act 1988*, including the National Privacy Principles, or any Privacy Code that applies to the Collecting Society; and
- (f) any other applicable legislation, relevant decisions of courts or tribunals (including the Copyright Tribunal), and other binding legal requirements, conditions or guidelines that apply to the Collecting Society.

2.2 Members

- (a) The membership of a Collecting Society will be open to all eligible creators of copyright material, and to anyone who owns or controls copyright material, in accordance with the Constitution of the Collecting Society.
- (b) Each Collecting Society will treat its Members fairly, honestly, impartially, courteously, and in accordance with its Constitution and any Membership Agreement.
- (c) Each Collecting Society will ensure that its dealings with Members are transparent.
- (d) Each Collecting Society will provide a copy of its Constitution to a Member at the time that the Member first joins the Collecting Society, or at any time on request. A Collecting Society will also provide a copy of its Constitution to a potential Member on request.

2.3 Licensees

- (a) Each Collecting Society will treat Licensees fairly, honestly, impartially, courteously, and in accordance with its Constitution and any licence agreement.
- (b) Each Collecting Society will ensure that its dealings with Licensees are transparent.
- (c) Each Collecting Society will:
 - (i) make available to Licensees and potential Licensees information about the licences or licence schemes offered by the Collecting Society, including the terms and conditions applying to them, and about the manner in which the Collecting Society collects remuneration and/or licence fees for the use of copyright material;
 - (ii) to the extent it reasonably can, having regard to the complexity of the questions of fact and law necessarily involved, take steps to ensure that all licences offered by the Collecting Society are drafted so as to be plainly understandable to Licensees, and are accompanied by practical and suitable explanatory material; and
 - (iii) consult with relevant trade associations in relation to the terms and conditions applying to licences or licence schemes offered by the Collecting Society.
- (d) Licence fees for the use of copyright material will be fair and reasonable. In setting or negotiating such licence fees, a Collecting Society may have regard to the following matters:
 - (i) the value of the copyright material;
 - (ii) the purpose for which, and the context in which, the copyright material is used;
 - (iii) the manner or kind of use of the Copyright Material;
 - (iv) any relevant decisions of the Copyright Tribunal; and

- (v) any other relevant matters.

2.4 Distribution of Remuneration and Licence Fees

- (a) Each Collecting Society will maintain, and make available to Members on request, a Distribution Policy that sets out from time to time:
 - (i) the basis for calculating entitlements to receive payments from remuneration and/or licence fees collected by the Collecting Society (**Revenue**);
 - (ii) the manner and frequency of payments to Members; and
 - (iii) the general nature of amounts that will be deducted from Revenue before distribution .
- (b) Each Collecting Society will distribute payments to its Members in accordance with its Constitution and Distribution Policy.

2.5 Collecting Society Expenses

Each Collecting Society will deduct from its total Revenue:

- (a) the expenses of managing and operating the Collecting Society; and
- (b) any other amounts authorised by its Constitution. These may include, for example, the costs of promotional activities, educational programs, cultural funds, donations in support of creators and owners of copyright material, membership of industry associations, or other charitable purposes.

2.6 Governance and Accountability

- (a) The Board of Directors of a Collecting Society will be accountable to its Members.
- (b) Each Collecting Society will at all times maintain proper and complete financial records, including in relation to:
 - (i) the collection and distribution of Revenue; and

- (ii) the payment by the Collecting Society of expenses and other amounts described in clause 2.5.
- (c) Each Collecting Society will ensure that its financial records are audited at least annually.
- (d) Consistent with its obligations under the *Privacy Act 1988* and any applicable duty of confidentiality, a Collecting Society will provide a Member, on request, with reasonable information about that Member's entitlement to receive a payment from Revenue.
- (e) Each Collecting Society will include in its Annual Report information about:
 - (i) total Revenue during the reporting period;
 - (ii) the total sum and general nature of expenses and other amounts described in clause 2.5; and
 - (iii) the allocation and distribution of payments to Members in accordance with the Distribution Policy.

2.7 Staff Training

Each Collecting Society will take reasonable steps to ensure that its employees and agents are aware of, and at all times comply with, this Code. In particular, a Collecting Society will take reasonable steps to ensure that its employees and agents are aware of the procedures for handling complaints and resolving disputes set out in clause 3, and are able to explain those procedures to Members, Licensees and the general public.

2.8 Education and Awareness

- (a) Each Collecting Society will engage in appropriate activities to promote awareness among Members, Licensees and the general public about the following matters:
 - (i) the importance of copyright;
 - (ii) the role and functions of Collecting Societies in administering copyright generally; and

(iii) the role and functions of that Collecting Society in particular;

and will make information about these matters available, on reasonable request, to Members, Licensees and the general public.

(b) In deciding what activities are appropriate for the purposes of paragraph (a), a Collecting Society will take into account the following factors:

(i) its size;

(ii) the number of Members it has;

(iii) the number of Licensees it has;

(iv) the amount of Revenue it collects annually; and

(v) the possibility of undertaking activities jointly with another Collecting Society.

(c) Without limiting paragraph (a) or any other obligation in this Code, each Collecting Society will produce and make available appropriate information about the following:

(i) the eligibility criteria for membership of the Collecting Society;

(ii) the benefits of membership of the Collecting Society;

(iii) the responsibilities of Members under the Constitution of the Collecting Society and any Membership Agreement;

(iv) any policies and procedures of the Collecting Society that affect Members;

(v) the benefits to Licensees of obtaining a licence from the Collecting Society;

(vi) the responsibilities of Licensees under a licence granted by the Collecting Society, and under the *Copyright Act 1968* and other applicable laws; and

- (vii) any policies and procedures of the Collecting Society that affect Licensees.

3. COMPLAINTS AND DISPUTES

- (a) Each Collecting Society will develop and publicise procedures for:
 - (i) dealing with complaints from Members and Licensees; and
 - (ii) resolving disputes between the Collecting Society and:
 - A. its Members; and/or
 - B. its Licensees.
- (b) The procedures developed under paragraph (a) will apply to any complaint about a matter covered by the Code which adequately identifies the nature of the complaint and the identity of the person complaining.
- (c) The procedures developed under paragraph (a) will comply with the requirements of Australian Standard 4269-1995 *Complaints Handling*. In developing its procedures, a Collecting Society will have particular regard to the following principles:
 - (i) The procedures should define the categories of complaints and disputes they cover and explain the way in which each will be dealt with.
 - (ii) Information on how to make complaints should be readily accessible to Members and Licensees.
 - (iii) Each Collecting Society should provide reasonable assistance to a Member or Licensee in the formulation and lodgement of a complaint.
 - (iv) The procedures should recognise the need to be fair to both the person complaining and the Collecting Society to which the complaint relates.
 - (v) The procedures should specify by position who in the first instance will handle complaints on behalf of the Collecting Society.

- (vi) The procedures should indicate time frames for the handling of complaints and disputes.
 - (vii) Each Collecting Society should provide a written response to a complaint that is made in writing.
 - (viii) Each Collecting Society should establish appropriate alternative dispute resolution procedures.
 - (ix) Each Collecting Society will ensure that adequate resources are made available for the purpose of responding to complaints and resolving disputes.
- (d) Each Collecting Society will regularly review its complaint handling and dispute resolution procedures to ensure that they continue to comply with the requirements of this Code.

4. PUBLICITY AND REPORTING

- (a) Each Collecting Society will:
- (i) take appropriate steps to publicise this Code and the fact that it has agreed to be bound by it; and
 - (ii) make copies of the Code available to Members, Licensees and the general public on request.
- (b) Each Collecting Society will include in its Annual Report a statement about its compliance with this Code.

5. MONITORING, REVIEW AND AMENDMENTS

5.1 Code Reviewer

- (a) The Collecting Societies that have agreed to be bound by this Code will appoint a Code Reviewer with specialist expertise in administrative law, copyright law and/or licensing practices to perform the functions conferred by paragraph (c).
- (b) The Code Reviewer will be appointed for a minimum period of three years.

- (c) The functions of the Code Reviewer are to:
 - (i) monitor, and prepare annual reports on, the level of compliance by Collecting Societies with the obligations imposed on them by this Code; and
 - (ii) conduct a review of the Code in accordance with clause 5.3.
- (d) Each Collecting Society will contribute to the costs and expenses of the Code Reviewer as agreed from time to time.

5.2 Annual Compliance Monitoring and Reporting

- (a) For the purposes of performing his or her functions under clause 5.1(c)(i), the Code Reviewer may undertake such consultations as he or she considers appropriate. Without limiting his or her discretion, the Code Reviewer may:
 - (i) call for submissions from Members, Licensees and the general public, and from groups representing them, on the level of compliance by Collecting Societies with the obligations under this Code;
 - (ii) convene meetings with such individuals or groups as he or she considers appropriate; and
 - (iii) consult with the Commonwealth Department(s) responsible for the administration of the *Copyright Act 1968* and such other Commonwealth, State or Territory Government agency as he or she considers appropriate.
- (b) In addition to the consultations undertaken in accordance with paragraph (a), each Collecting Society will report annually to the Code Reviewer on that Collecting Society's compliance with this Code, including:
 - (i) its training of employees and agents in accordance with clause 2.7;
 - (ii) the activities it has undertaken under clause 2.8(a); and
 - (iii) the number of complaints it has received and how those complaints have been resolved.

To assist Collecting Societies in complying with this paragraph, the Code Reviewer will develop templates and/or guidelines for the preparation of reports.

- (c) Following his or her consultations, and consideration of the Collecting Societies' reports, the Code Reviewer will prepare annually a report on compliance generally by Collecting Societies with this Code. The Code Reviewer will make a copy of the report available to:
 - (i) each Collecting Society;
 - (ii) the Commonwealth Department(s) responsible for the administration of the *Copyright Act 1968*; and
 - (iii) each individual or group that made a submission to the Code Reviewer; and
 - (iv) members of the public.

5.3 Review and Amendment of the Code

- (a) This Code will be reviewed:
 - (i) within two years of the Code coming into effect; and
 - (ii) at least once within each subsequent three year period.
- (b) For the purposes of a Review of the Code, the Code Reviewer will:
 - (i) invite written submissions on the operation of the Code and on any amendments that are necessary or desirable to improve the operation of the Code;
 - (ii) convene and publicise widely, during the period in which submissions may be made, one or more meetings that Members, Licensees and the general public may attend to make oral submissions to the Review; and
 - (iii) undertake such other consultations as he or she considers appropriate, including consultations of the kind set out in clause 5.2(a).

- (c) Each Collecting Society will inform its Members and Licensees in an appropriate manner that the Review is being conducted and that they may make submissions to the Code Reviewer.
- (d) The Code Reviewer will allow a period of at least two months for the making of submissions.
- (e) At the completion of the period for the making of submissions, the Code Reviewer will prepare a report of the Review, and will make such recommendations as he or she considers appropriate in relation to the operation of the Code, including recommendations for amendments of the Code.
- (f) The Code Reviewer will make a copy of the report of the Review available to:
 - (i) each Collecting Society;
 - (ii) the Commonwealth Department(s) responsible for the administration of the *Copyright Act 1968*; and
 - (iii) each individual or group that made a submission to the Code Reviewer; and
 - (iv) members of the public.

6. DEFINITIONS AND INTERPRETATION

6.1 Definitions

In this Code:

Constitution means the documents that establish and govern the operations of a Collecting Society. In the case of a Collecting Society that is incorporated, this would include the Memorandum and Articles of Association of the Collecting Society.

Licensee means:

- (a) a person granted permission by a Collecting Society to use copyright material;

- (b) a person entitled to use copyright material under a statutory licence in the *Copyright Act 1968*; and
- (c) a person who requires a licence from a Collecting Society to use copyright material.

Member means a person who creates copyright material, or who owns or controls copyright material, and who is entitled to be a member of a Collecting Society under its Constitution. This includes creators of copyright material, such as authors, publishers, playwrights, musicians, composers, artists, computer programmers, producers or broadcasters, as well as people or organisations to whom the rights in copyright material have been assigned.

6.2 Interpretation

- (a) Where there is any doubt about the intent or scope of this Code, it should be interpreted in the light of the objectives set out in clause 1.3.
- (b) Where this Code requires a Collecting Society to make information or documents available on request, such request is generally satisfied by making the information or documents available on a website. Where a person requiring the information or documents advises that they cannot access the Internet, the Collecting Society should take reasonable steps to satisfy their request in another way.

Attachment 7



Complaints Handling and Dispute Resolution Policy

What is PPCA and what is this Policy about?

Phonographic Performance Company of Australia Limited (**PPCA**) is a non-profit organisation established in 1969 by Australian record companies to issue licences for the broadcasting and public performance of copyright protected sound recordings. We are also authorised by the copyright owners' to issue licences for the public exhibition of music videos protected by copyright.

In January 2002, PPCA and six other major Australian collecting societies issued, and agreed to be bound by, the *Code of Conduct for Collecting Societies* (the **Code**). PPCA has decided to release this guide to our Complaints Handling and Dispute Resolution Policy to explain to copyright owners and licensees our procedures for handling complaints and resolving disputes. In developing and refining those procedures, we have always had regard to the overriding principle that any complaints process should be accessible, fair, efficient, quick and low cost for all involved. We have recently updated the Policy to reflect the new requirements of the Code and to ensure that it meets the standards set out in Australian Standard 4269-1995 *Complaints Handling*.

What complaints and disputes are covered by this Policy?

PPCA actively encourages feedback on our performance across all areas of our business, and we welcome comments from copyright owners, registered artists, licensees and members of the public about our service. Please contact us by one of the methods set out below if you wish to discuss any aspect of your dealings with PPCA or its staff.

The formal procedures set out in this Policy apply to complaints about matters covered by the Code from:

- Licensees;
- Copyright owners that have authorised PPCA to issue on their behalf licences for the use of sound recordings and/or music videos; and
- Artists who have registered with PPCA under the Artist Direct Distribution Scheme.

For example, you can make a complaint under this Policy if you think we haven't complied with one of our obligations under the Code, or if the service you have received from PPCA doesn't meet one of the standards set out in the Code.

In the majority of cases, the **copyright owner** will be a record company that produces sound recordings, or another company that is a licensee or distributor for such a record company. In some cases, however, the copyright owner may be an individual who produces and self-distributes sound recordings.

We aim to resolve all complaints to the satisfaction of the affected person or company. However, we recognise that some issues won't be resolved in this way, or won't be appropriate to be handled as complaints at all. For this reason, PPCA has formal dispute resolution mechanisms available for copyright owners and licensees:

- For disputes involving copyright owners, mediation is available. This process is explained below, and more information is available on request.
- For disputes involving licensees, every PPCA licence grants a right to refer a matter to a Board of Review established in accordance with the terms of the licence. This process is also explained below, and you can contact us for more information.

How can you make a complaint?

We aim to make it as easy as possible for you to bring complaints to our attention. For this reason, we offer a range of methods by which you can make a complaint to us:

- **By telephone (during business hours):**
02 8569 1100 – ask for the Complaints Officer
- **By fax:**
02 8569 1183 – mark the fax to the attention of the Complaints Officer
- **By email:**
complaints.mail@ppca.com.au
- **By post:**
The Complaints Officer
PPCA
PO Box Q20
QVB POST OFFICE NSW 1230

To ensure that we can examine and respond to your complaint quickly, please make sure you:

- provide appropriate identification so we can verify that you are a copyright owner that has authorised PPCA to issue licences on your behalf, a registered artist or a licensee;
- tell us your licence number, artist registration number or other PPCA identification number;
- provide contact details so we can discuss your complaint with you; and
- give us as much detail as possible about the nature of your complaint, and attach any relevant documents and other information that support your complaint.

If you need assistance in describing or making a complaint, or if you just want to discuss your concerns informally before deciding whether to make a complaint, please feel free to contact us.

How will we handle your complaint?

Our Complaints Officer will oversee the complaints process on behalf of PPCA. That person is responsible for liaising with you and with other staff members in PPCA to ensure that the issues you have raised are fully examined, and that your complaint is handled in accordance with this Policy.

The process, and all the details of your complaint, will be treated by us in strict confidence, and we generally won't disclose any information about your complaint to anyone outside PPCA. However, where we need to discuss with someone else any issues arising from your complaint, we will first obtain your consent.

We will always try to give you a fair opportunity to explain your case. You should make your initial complaint as clear as possible, and provide all the supporting material you can. However, sometimes we may want to have a meeting with you in person to discuss your concerns and try to find a satisfactory solution.

Where you have made a written complaint, we will provide you with a written response explaining our decision.

If we think the issues you have raised are not appropriate to be dealt with under this Policy, we may decide to treat your complaint as a dispute, and refer it to a more formal dispute resolution mechanism (see below).

How long will it take?

The length of time PPCA takes to resolve your complaint will depend on the nature and complexity of the issues you have raised, and the extent of the inquiries we have to make in deciding how to address those issues. As a guide, we have set the following time standards that we will aim to achieve in most cases.

- For complaints of a simple kind that we receive by telephone or email, we will try to deal with your complaint and respond to you **within 5 business days** of receiving the complaint. If we can't deal with the complaint in that time, for example because it is not as simple as it initially appeared, we will let you know.
- We will acknowledge written complaints **within 3 business days** of receiving them, and we will try to give you an estimate of how long it might take us to deal with the complaint.
- We will provide our response to your complaint **within 20 business days** of receiving the complaint. If you are not satisfied with this response, you should let us know, and provide us with any further material in support of your complaint. If you indicate to us that you are satisfied with our response, or if we don't hear from you within 30 business days of that response, we will consider the matter closed at this point.
- If you indicate that you are not satisfied with our response, we will reconsider it if you provide additional material to us, and we will then provide a further response **within 20 business days** of receiving the additional material from you. If you are still not satisfied with our response, you have the option at this point to escalate the matter to a dispute (see below).

We will do our best to keep you informed of progress as we examine your complaint and decide how to respond to it, especially if it looks like we won't meet any of the time standards set out above.

What action will we take in response to your complaint?

If we decide that your complaint is justified, we will then decide what action we should take in response. We will always try to match our response to the nature of your complaint and the effect it has had on you, and we will try to discuss our response with you before making any final decisions. Some of the things we might do include:

- Taking steps to rectify our mistake.

- Providing you with additional information or documents so you can understand what happened or how we have dealt with it.
- Taking steps to change our policies, procedures or systems if your complaint exposes a systemic or recurring problem in the way we do things.

What if you're still unhappy?

Sometimes it won't be possible to resolve a complaint to everyone's satisfaction, and you might want to escalate the matter to a more formal, independent dispute resolution mechanism. As a copyright owner or licensee, and a party to a contractual relationship with PPCA, there are a range of options available to you to resolve disputes about that relationship, including court proceedings. You have the right to pursue these options at any time.

However, as many of these options are very expensive and time consuming for all parties involved, PPCA offers an independent, low-cost and efficient dispute resolution mechanism to deal with disputes involving copyright owners and licensees. A brief outline of each is set out below, but you should feel free to contact us for further information.

Mediation (Copyright Owners)

Where a dispute arises between PPCA and a copyright owner, we will refer it to mediation. Mediation is a form of structured, assisted negotiation in which the parties find their own solution to a dispute with the help of an independent facilitator (the mediator). The mediation will be administered by the Australian Commercial Disputes Centre, in accordance with the Centre's *Guidelines for Commercial Mediation*. The copyright owner and PPCA will share the costs of the mediation, including the Centre's fees.

Board of Review (Licensees)

Under all PPCA public performance licences, the licensee can refer the terms and conditions of the licence (including the licence fee) to a Board of Review if they think those terms and conditions are unreasonable. The Board of Review will comprise three members:

- A Chair appointed by the Australian Institute of Arbitrators;
- A member appointed by PPCA; and
- A member appointed by the trade association most closely associated with the licensee's business or industry.

The Board of Review can vary any terms or conditions of the licence (including the licence fee), and the Board's decision is binding on both PPCA and the licensee. The costs of the Board of Review are shared equally between PPCA and the licensee.

Licensees also have the power, under certain circumstances, to seek a determination from the Copyright Tribunal in relation to the licence fee and other terms and conditions applying to their licence. If you require further information about Tribunal proceedings, you should obtain independent legal advice.

How will we monitor our performance?

PPCA is committed to continually monitoring its performance in handling complaints and disputes under the Code. For this reason, we will maintain statistics (without identifying any individual) about the numbers and types of complaints received and how they were dealt with.

We also have reporting obligations under the Code, which are designed to ensure that our activities are transparent and accountable:

- We are required to include a statement in our Annual Report on our compliance with the Code.
- We have to make a report each year to the independent Code Reviewer, who is appointed to evaluate the collecting societies' performance against the standards set out in the Code.

We will also review and update this Policy as necessary. Please contact us at any time if you have any comments or suggestions in relation to the Policy.

Attachment 8

OVERSEAS MANDATE

PUBLIC PERFORMANCE AND TRANSMISSION INPUT AGREEMENT

PARTY DETAILS

Licensor	PPCA
[insert name]	Phonographic Performance Company of Australia (ACN 000 680 704)
[insert address]	Suite 3, Level 4, 19 Harris Street Pyrmont NSW 2009
Telephone: [insert number]	Telephone: 02 8569 1100
Fax: [insert number]	Fax: 02 8569 1183

AGREEMENT DETAILS

Item 1 Rights in Controlled Sound Recordings (see clause 2.1 and the Definitions in Attachment A)	<p>(a) Sound Recording Transmission Rights – Rights to communicate the Controlled Sound Recordings to the public by means of:</p> <ul style="list-style-type: none">(i) a Broadcast;(ii) an Internet Simulcast;(iii) a Webcasting Service;(iv) an On-Demand Streaming Service;(v) a Datacasting Service; and/or(vi) a Music On Hold Service. <p>(b) Sound Recording Public Performance Rights – Rights to cause the Controlled Sound Recordings to be heard in public.</p>
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<p>Item 2</p> <p>Rights in Controlled Music Videos</p> <p>(see clause 2.1 and the Definitions in Attachment A)</p>	<p>(a) Music Video Transmission Rights – Rights to communicate the Controlled Music Videos to the public by means of:</p> <ul style="list-style-type: none">(i) a Broadcast;(ii) an Internet Simulcast;(iii) a Webcasting Service;(iv) an On-Demand Streaming Service;(v) a Datacasting Service; and/or(vi) a Music On Hold Service. <p>(b) Music Video Public Performance Rights – Rights to cause the Controlled Music Videos to be seen and/or heard in public.</p>
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<p>Item 3</p> <p>Labels</p> <p>(see clause 2.4 and Schedule 1)</p>	<p>The labels under which the Licensor releases catalogues of Controlled Sound Recordings, being the labels identified in Schedule 1 as amended from time to time in accordance with clause 2.4.</p>
<p>Item 4</p> <p>Information to be supplied to PPCA in relation to Controlled Sound Recordings</p> <p>(see clause 2.3)</p>	<ul style="list-style-type: none"> (a) Name of the artist and title for each track (b) Label under which the recording is released by the Licensor (c) Catalogue number of the recording (d) Country in which each track on the recording was originally made (e) Year in which each track on the recording was originally released (f) Label under which each track on the recording was originally released (g) Country of citizenship, residence or incorporation of the original maker of each track on the recording (h) In respect of each track, details of countries in which rights are owned or controlled by the Licensor.
<p>Item 5</p> <p>Information to be supplied to PPCA in relation to Controlled Music Videos</p> <p>(see clause 2.3)</p>	<ul style="list-style-type: none"> (a) Name of the artist and title of the music video (b) Label under which the music video is released by the Licensor (c) Catalogue number of the music video (d) Country in which the music video is made (e) Year in which the music video is made (f) Country of citizenship, residence or incorporation of the maker of the music video (g) Country in which the sound recording embodied in the music video was originally made (h) Label under which the sound recording embodied in the music video was originally released (i) In respect of each title, details of countries in which rights are owned or controlled by the Licensor.
<p>Item 6</p> <p>Licence</p> <p>(see clause 2.1)</p>	<p>A non-exclusive licence to exercise the Rights described in Item 1 and/or Item 2, or any of them, in the Territories for the Term.</p>
<p>Item 7</p> <p>Term</p> <p>(see clause 9.1)</p>	<p>An initial period of one (1) year commencing on the Effective Date, and any additional periods during which this Agreement is continued in accordance with clause 9.1.</p>
<p>Item 8</p> <p>Effective Date</p> <p>(see clause 12.1)</p>	<p>[TBA]</p>

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BACKGROUND

- A.** PPCA is a company established for the purpose of, and having among its objects, the licensing of the Rights in Sound Recordings and Music Videos.
- B.** The Licensor owns or controls the Rights and is entitled to grant a licence of those Rights to PPCA.
- C.** The Licensor is prepared to grant, and PPCA is willing to accept, a licence of the Rights on the terms and conditions set out in this Agreement.

THE PARTIES AGREE

1. DICTIONARY

The Dictionary in Attachment A:

- (a) defines some of the terms used in this Agreement; and
- (b) sets out the rules of interpretation that apply to this Agreement.

2. LICENCE AND APPOINTMENT

2.1 Subject to the terms and conditions of this Agreement, the Licensor grants to PPCA for the Term a Licence and authorises PPCA to act as agent for the Foreign Rights Management of the Controlled Sound Recordings and the Controlled Music Videos for the Territories during the Term.

2.2 Without limiting the generality of clause 2.1, the Licensor grants to PPCA the following rights:

- (a) to collect and distribute to the Licensor any monies it receives from foreign collecting societies pursuant to its appointment under this Agreement, its arrangements and agreements with those foreign collecting societies and in accordance with the PPCA's Distribution Policy for Overseas Income, as the same may be varied from time to time ;

- (b) to do and perform each and every act and thing necessary or appropriate as PPCA deems necessary and/or reasonable to give effect to the foregoing and the purposes and intent of this Agreement;
- (c) to institute and conduct such legal proceedings as PPCA in its discretion considers necessary or desirable to:
 - (i) collect or recover any Overseas Income due and payable by any person in respect of the exercise in the Territories of any of the Rights; or
 - (ii) prevent the unauthorised exercise or exploitation in the Territories by any person of any of the Rights;

and, for this purpose, the Licensor appoints PPCA its attorney and authorises it to institute and conduct any such proceedings in the name of the Licensor. In exercising its discretion, PPCA will give consideration to the associated costs and individual circumstances of each situation. The Licensor agrees with PPCA that the Licensor will do all such further acts, deeds and things and execute all such further documents and instruments as may from time to time be necessary to give full effect to this Agreement.

2.3 The Licensor must supply to PPCA:

- (a) the information specified in Item 4 of the Agreement Details in relation to the Controlled Sound Recordings that the Licensor owns or controls as at the Effective Date and the Controlled Sound Recordings that the Licensor produces or acquires during the Term; and
- (b) the information specified in Item 5 of the Agreement Details in relation to the Controlled Music Videos that the Licensor owns or controls as at the Effective Date, and the Controlled Music Videos that the Licensor produces or acquires during the Term.

- 2.4** The Licensor may, from time to time during the Term, by written notice to PPCA, amend Schedules 1 or 2, by deleting or adding the name of any Label and /or country in the Territories, and that amendment has effect immediately upon written notification to PPCA by the Licensor. The parties acknowledge and agree that:
- (a) upon the deletion of the name of a Label (and/or country in the Territory) from Schedules 1 or 2, the Licence granted in respect of the Controlled Sound Recordings (or Controlled Music Videos) released on that Label is deemed to have been withdrawn; and
 - (b) upon the addition of the name of a Label (and/or country in the Territory) to Schedules 1 or 2, the Licence granted by clause 2.1 is deemed to extend to the Controlled Sound Recordings (or Controlled Music Videos) released on that Label.
- 2.5** If, during the currency of this Agreement, a Label (and/or country in the Territory) not already listed in Schedules 1 or 2 comes under the control of the Licensor and the Licensor wishes to grant PPCA a licence of Rights in relation to the sound recordings covered by that Label, the Licensor undertakes to add that Label (and/or country in the Territory) to Schedules 1 or 2 by giving notice to PPCA in accordance with clause 2.4.
- 2.6** Subject to clause 8.2, PPCA's appointment hereunder will be in respect of all the Controlled Sound Recordings and all the Controlled Music Videos for the Term throughout all the Territories unless the Licensor provides written notice to PPCA specifying any Sound Recordings or Music Videos to be excluded for any particular Financial Year during the Term and for any particular country or countries in the Territories. Such notice for a Financial Year will be effective provided it is given no later than 31st March in that Financial Year.
- 2.7** This Agreement is personal to PPCA and must not be assigned except with the written consent of the Licensor, which consent must not be unreasonably withheld.
- 2.8** Nothing in this Agreement shall create an obligation on PPCA to authorise the use of the Rights or to collect any monies owing to the Licensor arising from PPCA's appointment in respect of the Foreign Rights Management if PPCA in its sole discretion shall view such authorisation or collection to be uneconomical or impractical.
- 2.9** The Licensor irrevocably agrees to promptly provide PPCA in writing full details of any changes that may affect PPCA's appointment hereunder. For the avoidance of doubt this shall include any changes in ownership or control of any Controlled Sound Recording or

Controlled Music Video and if the Licensor joins a foreign collecting society in any country that is included in the Territories.

2.10 The Licensor irrevocably agrees and confirms that the receipt by it of any monies hereunder shall be in full and final satisfaction of any remuneration that the Licensor is entitled to in respect of the exploitation of the Rights to which that remuneration relates.

3. WARRANTY AND INDEMNITY

3.1 The Licensor warrants to PPCA that:

- (a) as at the Effective Date, the Licensor owns or controls the Rights in all Sound Recordings and Music Videos released on the Labels, and has full power and authority to grant a Licence to PPCA in accordance with this Agreement;
- (b) in granting a Licence to PPCA in accordance with this Agreement, and in performing its obligations and exercising its rights under this Agreement, the Licensor will not infringe the rights of any third parties;
- (c) PPCA will not, in exercising its rights hereunder, infringe the rights of any third parties;
- (d) It is not a member of any collecting society administering the Rights in any country that is included in the Territories;
- (e) It has not granted the Rights to any other party in the Territories; and
- (f) All information provided to PPCA hereunder is true and accurate.

3.2 The Licensor must at all times indemnify and hold PPCA harmless against all claims, demands, damages, costs, charges and expenses that may be made against, or suffered or incurred by, PPCA arising out of any breach of this Agreement, including without limitation any breach of the warranties in clause 3.1, or any defect in the title of the Licensor or of any third party in respect of any of the Rights licensed to PPCA by the Licensor pursuant to this Agreement, provided that:

- (a) such claim or demand does not arise out of the exercise of any Rights in respect of which, at the time or times of such exercise, the Licence had been withdrawn pursuant to clause 2.4 or terminated pursuant to clause 8; and

- (b) PPCA makes no admission of liability and takes no action that might prejudice the position of the Licensor without the prior written consent of the Licensor.

3.3 The Licensor must at all times indemnify and hold a foreign collecting society harmless against all claims, demands, damages, costs, charges and expenses that may be made against, or suffered or incurred by, a foreign collecting society arising out of any defect in the title of the Licensor or of any third party in respect of any of the Rights provided that:

- (a) such claim or demand does not arise out of the exercise of any Rights in respect of which, at the time or times of such exercise, the Licence had been withdrawn pursuant to clause 2.4 of this Agreement;
- (b) the Licensee notifies PPCA within seven (7) days of becoming aware of any such claim or demand being made or threatened; and
- (c) the Licensee makes no admission of liability and takes no action that might prejudice the position of PPCA or the Licensor without the prior written consent of PPCA or the Licensor.

3.4 The Licensor may conduct at its own cost and expense all negotiations in respect of any claim or demand referred to in clause 3.2 or 3.3, and any proceedings that may arise from it, and to contest, settle or otherwise deal with any such claim, demand or proceeding in such manner as the Licensor may in its absolute discretion determine.

3.5 PPCA will, and will use its best endeavours to procure foreign collecting society to

provide to the Licensor such evidence relating to any matter arising out of any claim, demand or proceeding referred to in clause 3.4 as PPCA or the foreign collecting society may have at their disposal.

4. FEES AND EXPENDITURE

4.1 PPCA may consolidate all Overseas Income received, collected or recovered by it with other moneys received, collected or recovered by PPCA from foreign collecting societies.

4.2 Out of the consolidated moneys referred to in clause 4.1, PPCA may expend or appropriate amounts for any of the following purposes:

- (a) all reasonable administration, management, promotional and other expenses (including legal expenses) of PPCA;
- (b) any amounts necessary to satisfy any liability of PPCA to pay any Tax, including without limitation any GST payable in respect of the Overseas Income payable hereunder to the Licensor;
- (c) such fees to the directors of PPCA as are fixed by the members of PPCA in general meeting;
- (d) such payments, subscriptions, donations or other disbursements to or for the benefit of:
 - (i) the owners of copyright in Music Videos or Sound Recordings, musical or literary works, artists or musicians, or any person or body representing them or any of them; or
 - (ii) trade exhibitions, research establishments or other organisations;as the Board of PPCA considers necessary or desirable;
- (e) any amounts that the Board of PPCA considers are necessary to constitute reserves for:
 - (i) the purchase of such furniture, fixtures, fittings, office equipment or machinery and other items as are required for the proper administration and management of PPCA during the balance of the then current Financial Year or during the following Financial Year; and
 - (ii) any future or contingent liability of PPCA (including any liability which will arise for salaries, wages, rental and other outgoings of a regular nature) which in the opinion of the Board of PPCA will be incurred or in respect of which the contingency may occur during the balance of the then current Financial Year or during the following Financial Year; and

- (f) any amounts that the Board of PPCA considers are necessary to provide for the maintenance, repair or replacement of any property of PPCA or other outgoing or future liability of PPCA during the balance of the then current Financial Year.

4.3 For the purposes of clause 4.2, PPCA may invest Overseas Income in such investments as the Board of PPCA considers appropriate, and any income arising from those investments will be consolidated with other moneys received by PPCA in accordance with clause 4.1.

5. ALLOCATION AND DISTRIBUTION

5.1 PPCA must keep or cause to be kept full and detailed books of account and records of all transactions of PPCA relating to the receipt of Overseas Income and the payment by the foreign collecting societies.

5.2 PPCA must, as at 30 June in each Financial Year, prepare or cause to be prepared accounts that show in respect of that Financial Year, in such detail as is required for a proper understanding of the accounts:

- (a) the gross amount of all Overseas Income received, collected or recovered by PPCA from foreign collecting societies in the Territories in respect of the exploitation of the Rights during that Financial Year (**Gross Receipts**);
- (b) the amounts deducted from the Gross Receipts in accordance with clause 4.2; and
- (c) the balance available for allocation in accordance with clause 5.4 as at the date to which the account is made up (the **Distributable Sum**).

5.3 PPCA must cause its books of account and records and the accounts prepared in accordance with clause 5.2 (**Accounts and Records**) to be audited and must, as soon as practicable after the completion of that audit, send to the Licensor a copy of the Accounts and Records together with a copy of the auditor's report.

5.4 PPCA must, in accordance with the Distribution Policy for Overseas Income, allocate to the Licensor a percentage of the Distributable Sum:

- (a) that represents the extent of the use made during the Financial Year of those Rights that are owned or controlled by the Licensor; or

- (b) where the extent of such use cannot be reasonably ascertained – on the basis of a process set out in the Distribution Policy for Overseas Income (**Allocation Process for Overseas Income**).

5.5 For the purposes of clause 5.4, in determining an Allocation Process for Overseas Income the Board of PPCA:

- (a) must take into account such information as PPCA receives from the relevant foreign collecting society about the extent of the use made of the Rights in the Territories during the Term;
- (b) must take into account such information as PPCA receives from foreign collecting societies about the extent of the use made of the Rights owned or controlled by the Grantors, including any radio logs, television logs or other broad basis sample logs as detailed by the relevant foreign collecting society in the Territories during the Term;
- (c) must take into account the costs of obtaining and processing any additional information about the extent of the use actually made of the Rights owned or controlled by the Grantors, including alternative source data in the Territories during the Term; and
- (d) must, so far as is reasonably possible in all the circumstances, seek to treat all Grantors equitably.

5.6 PPCA must, at least once in each calendar year, pay to the Licensor in accordance with the Distribution Policy for Overseas Income the amounts allocated to the Licensor under clause 5.4 in respect of the immediately preceding Financial Year (**Overseas Income Distribution**).

5.7 If, after paying an Overseas Income Distribution to a Licensor, PPCA notifies the Licensor that:

- (a) because of an Administrative Error, the Licensor was not entitled to receive some or all of the payment made to the Licensor; and
- (b) PPCA requires the Licensor to repay that part of the payment made to the Licensor as a result of the Administrative Error (**Notified Amount**);

the Licensor must repay the Notified Amount to PPCA within 28 days of being so notified, and if the Licensor fails to do so, PPCA may set off the Notified Amount against any future Distributions to the Licensor.

5.8 The Licensor may at its own expense appoint an independent auditor, who must be a chartered accountant, to examine the books of account and records of PPCA to check that the amounts allocated or paid from time to time to the Licensor have been properly calculated in accordance with the provisions of this Agreement and the Overseas Income Distribution Policy. If PPCA receives at least 28 days' prior notice, PPCA must admit such auditor to its premises and must submit to that auditor all relevant books of account and records, provided that such auditor gives to PPCA an undertaking that he or she will report to the Licensor only in relation to the correctness or otherwise of the amounts allocated or paid to the Licensor, and that he or she will not refer to, or disclose any information about, any amounts allocated or paid to any other Grantor.

5.9 The Licensor acknowledges that:

- (a) given the extent and variation of uses by Licensees of Controlled Sound Recordings and Controlled Music Videos, and the absence of detailed logging of most public performances of such Sound Recordings and Music Videos, no individual Overseas Income Distribution to the Licensor can precisely reflect every use during the period to which the Overseas Income Distribution relates of the Rights owned or controlled by the Licensor; and
- (b) notwithstanding paragraph (a), PPCA will use its best efforts, on the basis of the information and logs that are available to PPCA, to allocate and distribute the Distributable Sum to the Grantors in accordance with the Distribution Policy for Overseas Income and this Agreement.

6. DISTRIBUTION POLICY

6.1 The Licensor acknowledges and agrees that:

- (a) it has received, on or before the Effective Date, a copy of the Distribution Policy for Overseas Income as in force on the Effective Date; and
- (b) the Distribution Policy for Overseas Income as in force on the Effective Date, and any amendments of the Distribution Policy for Overseas income made in

accordance with clause 6.2 during the Term, are incorporated into and form part of this Agreement.

6.2 The Board of PPCA may from time to time by resolution amend the Distribution Policy for Overseas Income, but if in the reasonable opinion of the Board any such amendment (**Proposed Amendment**) might have a material adverse effect on any Grantor, the following paragraphs apply:

- (a) PPCA must prepare a draft of the Distribution Policy for Overseas Income incorporating the Proposed Amendment, along with a statement explaining the effect of the Proposed Amendment and the reasons for it (**Consultation Documents**).
- (b) PPCA must send a copy of the Consultation Documents to each of the Grantors and invite them to provide comments on the Proposed Amendments.
- (c) The Board of PPCA must not make a resolution adopting the Proposed Amendment, or any other amendment of the Distribution Policy for Overseas Income in substitution for the Proposed Amendment, until at least 30 days after the date on which the Consultation Documents were sent to the Grantors under paragraph (b).
- (d) In making a resolution adopting the Proposed Amendment, or any other amendment of the Distribution Policy for Overseas Income in substitution for the Proposed Amendment, the Board of PPCA must have regard to any comments received from Grantors under paragraph (b).

6.3 PPCA must send to the Licensor as soon as practicable after it has been amended in accordance with clause 6.2 a copy of the Distribution Policy for Overseas Income as so amended.

7. GST, RECIPIENT CREATED TAX INVOICES, ABN WITHHOLDING AND FOREIGN WITHHOLDING TAX

7.1 Payments exclusive of GST

Unless stated otherwise, any consideration or payment obligation in this Agreement is exclusive of any GST that may be payable in respect of the grant by the Licensor of a Licence to PPCA.

7.2 Payment of GST

If the Licensor is required to pay GST on any Overseas Income Distribution paid to the Licensor by PPCA, PPCA must pay to the Licensor, in addition to, and at the same time and in the same manner as, the Overseas Income Distribution, an amount calculated by multiplying the prevailing GST rate by the amount of the Distribution.

7.3 Recipient Created Tax Invoices

(a) If, at the time of a Distribution:

- (i) both PPCA and the Licensor are GST Registered; and
- (ii) the grant by the Licensor of a Licence to PPCA is a Taxable Supply;

PPCA will, as at the date of the Overseas Income Distribution, issue a Recipient Created Tax Invoice in respect of the grant of such Licence.

- (b) At the time PPCA issues a Recipient Created Tax Invoice pursuant to paragraph (a), or as soon as practicable thereafter, it must provide to the Licensor a copy of that Recipient Created Tax Invoice.
- (c) The Licensor must not issue a Tax Invoice in respect of the grant of a Licence to PPCA at any time when PPCA is entitled pursuant to paragraph (a) to issue a Recipient Created Tax Invoice in respect of the grant of that Licence.

7.4 GST Registration

- (a) If the Licensor is GST Registered on the Effective Date, the Licensor must notify PPCA within 14 days of the day on which it ceases for any reason to be GST Registered.
- (b) Where the Licensor is not GST Registered on the Effective Date, the Licensor must notify PPCA within 14 days of the day on which it becomes GST Registered.
- (c) PPCA warrants that it is GST Registered on the Effective Date. PPCA must notify the Licensor within 14 days of the day on which it ceases for any reason to be GST Registered.

7.5 Withholding of Payments (ABN AND Foreign)

- (a) Where a Distribution is payable to the Licensor in accordance with this Agreement, monies may be withheld such proportion of the Overseas Income Distribution as is required by any applicable legislation in force from time to time, including without limitation any legislation that imposes or levies a Tax.
- (b) Without limiting the generality of paragraph (a), if the Licensor has not provided its ABN to PPCA, and the amount of the Overseas Income Distribution payable to the Licensor exceeds \$50.00 (exclusive of GST), or such other sum as is specified from time to time in applicable legislation, PPCA may withhold such proportion of the Distribution as is required by such legislation.
- (c) Where PPCA withholds any amount in accordance with this clause, PPCA must:
 - (i) remit such amount to the relevant Government Agency in accordance with the applicable legislation; and
 - (ii) provide to the Licensor a certificate or other written notification stating the amount withheld, and including such other information as may be required by the applicable legislation.

8. TERM AND TERMINATION

- 8.1** This Agreement is for the initial period specified in Item 7 of the Agreement Details, commencing on the Effective Date and ending on the last day of that initial period (**Initial Termination Date**). This Agreement automatically continues on the same terms and conditions for a further period of 12 months from each anniversary of the Initial Termination Date (**Anniversary Date**), unless terminated in accordance with clause 8.2.
- 8.2** This Agreement may be terminated by either party giving the other written notice at least 90 days' prior to the Initial Termination Date or an Anniversary Date, whichever is applicable, and that termination will take effect as at such Initial Termination Date or Anniversary Date.
- 8.3** Notwithstanding anything to the contrary in this Agreement, this Agreement terminates automatically and without notice immediately on the occurrence of an Event of Insolvency in relation to the Licensor.

8.4 If the Licensor provides notice to terminate pursuant to this Agreement, then it does so at its own risk in relation to the impact that this may have on its entitlement to any distributions of money from any collecting society in the Territories. PPCA will use its reasonable commercial endeavours to secure the Licensor's entitlement to any distributions, however, PPCA has no control over the systems used by foreign collecting societies to distribute monies.

8.5 In the event of the termination of this Agreement, however caused:

- (a) PPCA must not, after the date of termination:
 - (i) collect any monies from any foreign collecting society in the Territories relating to a period subsequent to the date of termination;
 - (ii) commence any legal proceedings in respect of the exercise or exploitation of any of the Rights, provided that PPCA may commence legal proceedings for the recovery of any monies due and payable by any foreign collecting society for the exercise of the Rights:
 - A. prior to the date of termination of this Agreement; or
 - B. during the continuance, after the date of termination of this Agreement, of any existing Rights granted to that foreign collecting society;
- (b) all agreements entered into by PPCA pursuant to this Agreement continue to bind the Licensor until terminated in accordance with their terms and conditions, notwithstanding the earlier termination of this Agreement. If the term of any agreement automatically continues unless one party notifies the other of an intention to terminate, PPCA must, if directed by the Licensor, give such notice of termination to the foreign collecting society;
- (c) PPCA must, after the date of termination of this Agreement, continue to account to the Licensor for any share of the Distributable Sum to which the Licensor is entitled under clause 5.4 or 5.6.

9. DISPUTE RESOLUTION FOR LICENSORS

9.1 If any dispute or difference arises between PPCA and the Licensor with respect to the construction, effect or operation of this Agreement, or with respect to any matter connected with or arising out of this Agreement (**Dispute**), the parties must take the following steps to attempt to resolve the Dispute:

- (a) Either party may serve a written notice on the other party stating the nature of the Dispute and invoking the dispute resolution processes set out in this clause (**Dispute Notice**).
- (b) The parties must meet within 10 days of the date of the Dispute Notice and negotiate in good faith to resolve the Dispute.
- (c) If the Dispute is not resolved within 10 days of the date on which the parties meet in accordance with paragraph (a), or if the parties fail to meet, either party may refer the Dispute to the Australian Commercial Disputes Centre (the **Centre**) for mediation in accordance with the Centre's *Guidelines for Commercial Mediation*.

9.2 Each party must bear its own costs arising out of or in connection with a Dispute, provided that the parties must share equally any fees or charges of the Centre.

9.3 Neither party may commence or maintain any proceedings in any court with respect to a Dispute unless and until that party has followed the procedures in this clause 9.

9.4 Notwithstanding the existence of a Dispute, each party must continue to perform its obligations under this Agreement.

9.5 Subject to clause 3.4 above, the Licensor acknowledges and agrees that where a dispute with a third party (relating to the Rights granted hereunder or in respect of a Controlled Sound Recording or Controlled Music Video), arises and settlement is not possible by negotiation with the foreign collecting society or third party, then PPCA may agree to mediation of such dispute in the relevant country of the Territories.

10. PRIVACY

10.1 PPCA takes all reasonable steps to ensure that when it collects, uses, discloses or transfers Personal Information (as defined in the *Privacy Act 1988 (Cth)*) in the course of the

allocation and distribution processes hereunder it complies with all applicable laws, rules and regulations in Australia, including without limitation the *Privacy Act 1988 (Cth)*, and the National Privacy Principles contained in Schedule 3 to that Act.

11. MISCELLANEOUS

11.1 This Agreement is not effective until executed by both PPCA and the Licensor.

11.2 Any notice or other communication to or by a party to this Agreement must be in writing addressed to the other party at the address set out in the headings of this Agreement, or such other address as may be notified to that other party from time to time, and is deemed to be received by or served upon the recipient:

- (a) if by delivery in person – when delivered to the recipient;
- (b) if by post – five (5) days from and including the date of postage; or
- (c) if by facsimile transmission – when despatched to the recipient;

but if the delivery or receipt is after 4:00pm (recipient's time) it is deemed to have been received on the next succeeding business day.

11.3 This Agreement is made in the State of New South Wales and must be construed, and has effect, in accordance with the laws of that State. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of that State.

11.4 This Agreement represents the entire agreement between the parties and no variation of it is effective unless in writing and signed on behalf of all parties.

11.5 The failure of any party at any time to:

- (a) enforce or insist upon the strict observance of any provision or of any right in respect of or the remedying of any breach or non-performance of this Agreement;
or

(b) exercise any election or discretion under this Agreement;

does not operate as a waiver of the same or of any of the rights of such party under this Agreement.

11.6 If any provision of this Agreement is held to be invalid, unenforceable or illegal for any reason, that provision is severed from this Agreement and this Agreement shall otherwise remain in full force and effect.

SCHEDULE 1

LABELS

(Item 3 of the Agreement Details; Clauses 2.4 and 2.5)

SCHEDULE 2

TERRITORIES

LICENSOR NAME:

PPCA MEMBERSHIP NUMBER:

LIST OF COUNTRIES:

United Kingdom (including Northern Ireland and the Channel Islands) []

Ireland []

Holland []

[Please indicate which country by inserting "Yes" or "No" in the box provided]

[etc]

SIGNED as an agreement.

SIGNED for and on behalf of the
**PHONOGRAPHIC PERFORMANCE COMPANY
OF AUSTRALIA LTD** in the presence of:

Signature of witness

Signature of **Lynne Small**

Name of witness (print)

SIGNED for and on behalf of **[LICENSOR]** in
the presence of:

Signature of witness

Signature of **#insert name of signatory#**

Name of witness (print)

ATTACHMENT A

DICTIONARY

1. DEFINITIONS

In this Agreement:

ABN means Australian Business Number as defined in *A New Tax System (Australian Business Number) Act 1999*.

Act means the *Copyright Act 1968*.

Administrative Error means:

- (a) the incorrect attribution to a Grantor of ownership in a Controlled Sound Recording, Controlled Music Video or Label;
- (b) the incorrect allocation to a Grantor of any part of the Distributable Sum;
- (c) the incorrect application of an Allocation Formula; or
- (d) any other error that results in the receipt by a Licensor of a payment to which the Licensor is not entitled.

Agreement Details means the agreement details to which these terms and conditions are attached.

Allocation Process has the meaning given to it by clause 5.4.

Australian Music Video means a Music Video that embodies an Australian Recording.

Australian Recording means a Sound Recording made by:

- (a) an Australian citizen, an Australian protected person or a person (other than a body corporate) resident in Australia; or
- (b) a body corporate incorporated under a law of the Commonwealth or of a State;

that features recordings of performances by a person who is, or a majority of persons who are, Australian citizens, Australian protected persons or persons resident in Australia.

Broadcast means a broadcast within the meaning of section 10(1) of the Act.

Controlled Music Video means a Music Video, the Rights in which are owned or controlled by the Licensor, or which become owned or controlled by the Licensor during the term of this Agreement.

Controlled Sound Recording means a Sound Recording, the Rights in which are owned or controlled by the Licensor, or which become owned or controlled by the Licensor during the term of this Agreement, and which are released on any Label.

Datacasting Service means a service that is licensed as a datacasting service or a similar service under the *Broadcasting Services Act 1992* or any equivalent or successor legislation.

Distributable Sum has the meaning given to it by clause 5.2(c).

Distribution Policy for Overseas Income means the policy, as approved and varied from time to time by the Board of PPCA, for the calculation, allocation and distribution to Grantors of the Distributable Sum.

Effective Date means the date specified in Item 8 of the Agreement Details, being the date on which this Agreement is executed in accordance with clause 11.1.

Event of Insolvency means the occurrence of any one or more of the following events in relation to the Licensor:

- (a) an application is made to a court for an order that it be wound up or declared bankrupt, or that a provisional liquidator, receiver or receiver and manager be appointed, and the application is not withdrawn, struck out or dismissed within 60 days of it being made;
- (b) a liquidator or provisional liquidator is appointed and the appointment is not terminated within 14 days of it being made;

- (c) an administrator or a controller is appointed to any of its assets and the appointment is not terminated within 14 days of it being made;
- (d) it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors;
- (e) it proposes a winding-up or dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (f) it is insolvent as disclosed in its accounts, or otherwise states that it is insolvent, or it is presumed to be insolvent under an applicable law;
- (g) a writ of execution is levied against it or a material part of its property;
- (h) it ceases to carry on business or threatens to do so; or
- (i) anything occurs under the law of any jurisdiction that has a substantially similar effect to any of the above paragraphs of this definition.

Financial Year means the period of 12 calendar months ending on 30 June in each year.

Foreign Rights Management means the collection, negotiation, settlement and compromise of the Licensor's claims for payment from the foreign collecting societies in the Territories in respect of the exploitation of the Rights in the Territories and the authorisation of the exploitation of the Rights in the Territories.

Government Agency means a governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether foreign, federal, state, territorial or local.

Grantors means the totality of the persons, including the Licensor, who own or control the Rights in Music Videos and Sound Recordings and who grant a licence of such rights to PPCA.

GST means a goods and services tax imposed under the GST Law.

GST Law has the meaning given to it by the *A New Tax System (Goods and Services Tax) Act 1999*, as amended from time to time.

GST Registered means "registered" within the meaning of the GST Law.

Internet means the global connection of computers and computer networks that provides for the transmission and retrieval of information in electronic form (including text, images and sounds, and any combination thereof).

Internet Simulcast means a transmission of a Broadcast over the Internet, where the Internet transmission and the Broadcast occur simultaneously (even if the technical means by which the Internet transmission occurs is different from the technical means by which the Broadcast is made), and where the content of the Broadcast is unaltered.

Label means a label described in Item 3 of the Agreement Details.

Licence means a licence described in Item 6 of the Agreement Details.

Music On Hold Service means a service or device, whether analogue or digital, for the transmission of Sound Recordings to telephone callers on hold, including without limitation a radio, compact disc player, cassette player, computer hard drive or other audio device, used in connection with a telecommunications system.

Music Video means a cinematograph film that embodies:

- (a) a Sound Recording; or
- (b) a sound track which, if made separately from the cinematograph film, would be a Sound Recording;

and includes a copy of such cinematograph film in digital or other electronic machine-readable form.

On-Demand Streaming Service means a service for the transmission over the Internet of Sound Recordings or Music Videos, including without limitation Sound Recordings or Music Videos embodied in a cinematograph film, where the recipient of the transmission can request and initiate the transmission to the recipient, at a time chosen by the recipient, of a particular Sound Recording or Music Video (whether or not as part of a program containing other material) or a particular program that includes Sound Recordings or Music Videos, and where the means by which, or the form in which, the transmission is delivered do not allow the recipient of the transmission:

- (a) to store, copy, record, keep or otherwise manipulate any Sound Recording or Music Video; or
- (b) to communicate or otherwise distribute any Sound Recording or Music Video.

Overseas Income means all monies received by PPCA in respect of the exploitation of the Rights in the Territories during the Term from the foreign collecting society(ies) pursuant to the Licensor's appointment hereunder and its arrangements with those foreign collecting societies. Such Overseas Income will be received by PPCA in the relevant foreign currency (or as otherwise agreed with the relevant foreign collecting society) as one lump sum for all Grantors in aggregate, and shall be net of the foreign collecting society's administration costs and less such withholding tax as the foreign collecting society is required to withhold as a matter of law.

Overseas Income Distribution has the meaning given to it by clause 5.6

PPCA Trust means the PPCA Performers' Trust Foundation.

Public Performance Right means:

- (a) in relation to a Sound Recording – the right to cause the Sound Recording to be heard in public; and
- (b) in relation to a Music Video – the right to cause the Music Video, in so far as it consists of visual images, to be seen in public, and, in so far as it consists of sounds, to be heard in public.

Recipient Created Tax Invoice has the meaning given to it by the GST Law.

Rights means:

- (a) such of the Transmission Rights and the Public Performance Rights in relation to Controlled Sound Recordings as are specified in Item 1 of the Agreement Details; and
- (b) such of the Transmission Rights and the Public Performance Rights in relation to Controlled Music Videos as are specified in Item 2 of the Agreement Details.

Schedule means a schedule to this Agreement.

Sound Recording means a sound recording as defined in section 10(1) of the Act, and includes a copy of such a sound recording in digital or other electronic machine-readable form.

Tax means any present or future tax, levy, impost, deduction, charge, duty or withholding tax (together with any related interest, penalty, fine and expense in connection with any of them) levied or imposed by any Government Agency.

Tax Invoice has the meaning given to it by the GST Law.

Taxable Supply has the meaning given to it by the GST Law.

Term means the period described in Item 7 of the Agreement Details.

Territories means all countries in Schedule 2 hereto that the Licensor has confirmed that are covered by this Agreement as amended from time to time by the Licensor pursuant to clause 2.4.

Transmission Right, in relation to a Sound Recording or Music Video, means the right to communicate the Sound Recording or Music Video to the public by means of:

- (a) a Broadcast;
- (b) an Internet Simulcast;
- (c) a Webcasting Service;
- (d) an On-Demand Streaming Service;
- (e) a Datacasting Service; and

- (f) a Music On Hold Service;

and includes the right to take all essential technical steps, including format conversion, for the sole purpose of enabling the Sound Recording or Music Video to be communicated to the public by such means.

Webcasting Service means a service for the transmission over the Internet to multiple recipients of Sound Recordings or Music Videos, including without limitation Sound Recordings or Music Videos embodied in a cinematograph film, where the time at which particular Sound Recordings or Music Videos are transmitted is chosen by the person making the transmission, and where the means by which, or the form in which, the transmission is delivered do not allow the recipient of the transmission:

- (a) to request or initiate the transmission to the recipient of a particular Sound Recording or Music Video or a particular program that includes Sound Recordings or Music Videos;
- (b) to store, copy, record, keep or otherwise manipulate any Sound Recording or Music Video; or
- (c) to communicate or otherwise distribute any Sound Recording or Music Video;

and for the avoidance of doubt does not include an On-Demand Streaming Service.

2. INTERPRETATION

2.1 In this Agreement, unless the context otherwise requires, a reference to:

- (a) this Agreement or another instrument includes any variation or replacement of either of them;
- (b) the word “person” includes a firm, a body corporate, an unincorporated association or an authority;
- (c) the singular imports a reference to the plural and vice versa;
- (d) a statute, ordinance, code or other law includes regulations and other instruments under it, and consolidations, amendments, re-enactments or replacement of any of them; and

(e) any term defined in the Act has, unless the context does not permit, the same meaning in this Agreement.

2.2 The Agreement Details, and the terms and conditions attached to the Agreement Details, together constitute this Agreement. If there is any inconsistency between the Agreement Details and the terms and conditions, the terms and conditions will prevail to the extent of that inconsistency.

2.3 Headings are inserted for convenience and do not affect the interpretation of this Agreement.

2.4 A Licensor is taken to control a Sound Recording, Label or Music Video if:

(a) the Licensor is the owner or exclusive licensee of the Rights in the Sound Recording, or of all Sound Recordings released on that Label, or the Music Video, as appropriate; or

(b) the Licensor, pursuant to the terms of any agreement with the owner or exclusive licensee of copyright, is empowered to authorise PPCA to grant a Licence in respect of that Sound Recording, or in respect of all Sound Recordings released on that Label, or that Music Video, as appropriate.

Attachment 9

**EXCLUDED FROM
PUBLIC REGISTER**

Attachment 10

TARIFF NUMBERS ANALYSIS AS AT 31 OCTOBER 2006
(PUBLIC USE - AUDIO RECORDINGS AND MUSIC VIDEO CLIPS)

TARIFF CLASS	DESCRIPTION	NUMBER OF TARIFFS
A	General Licences	1852
B	Tape Wholesalers	7256
C	Theatres	788
D	Dance Studios	1610
DD	Live Performance Groups	282
E	Nightclubs / Discos	1252
F	Mobile DJ	500
FW	Mobile Video DJ	14
G	Festivals	205
H	Halls	1156
HM	Music On Hold	3286
I	Factories	38
J	Jukeboxes	1643
JO	Jukebox Operator	1080
K	Pools, Squash Courts	307
M	Commercial Premises	18899
MW	Electrical & Hi-Fi Stores	242
N	Shopping Centres	348
O	Venues	
P	Public Vehicles	229
R	Restaurants / Cafes	9730
S	Sports Arenas / Showgrounds	238
SS	Community Recreation Area	47
U	Skating Rinks	55
V	Gyms / Fitness Centres	1889
W	Music Video Clips	1740
X	Concert Venues	881
Y	Conference Rooms	678
	TOTAL	56,245

Attachment 11

If you do, you may need a copyright licence. Some people are surprised to learn that they need a licence to play copyright protected music in their business. Most don't understand that simply buying a CD, for example, doesn't usually give them the right to play it in a commercial environment.

Generally speaking, any business that wants to play copyright protected music or music videos has to first obtain the requisite licences.

Research has shown that recorded music and music videos can help create an image, influence the experience and decisions of customers, motivate staff and positively impact sales. Most importantly, it helps your business stand out from its competitors!

Put simply, if the music played in your establishment is enjoyed by a customer, then it is likely that this positive response will be associated with your product, environment or experience – which is what every successful business needs.

*PPCA CAN SIMPLIFY
MUSIC LICENSING
FOR YOUR BUSINESS*



*Do You
PLAY Music
IN YOUR
BUSINESS?*



WHY DO I NEED A LICENCE?

Recorded music and music videos are the intellectual property of their creators and they are protected in Australia by the Copyright Act.

The Copyright Act specifies the rights granted to copyright owners. These include the right to allow their recordings to be heard in public (ie. played in a public place such as a retail store, restaurant, fitness centre, etc.). This is known as the 'public performance right' in recordings.

To avoid infringing copyright, any business that wants to:

- play protected sound recordings, other than by radio or television broadcast (eg. CDs, tapes) in a public place;
- exhibit music videos; or
- use sound recordings as music on hold;

should obtain a licence to do so from all of the copyright owners for each protected recording or video they play. To better understand which recordings are "protected" and in respect of which you will need a licence, please see the section opposite headed "Are there any recordings for which I don't need a licence?".

WHAT LICENCES DO I NEED?

It's important to understand that there are at least two copyrights in each sound recording or music video.

- First, there's the copyright in the composition (that's the notes and lyrics) which is called the 'musical work'; and
- Secondly, there's the copyright in each recorded version of the composition, which is called the 'sound recording' and is usually produced by an artist and their record company.

To play a protected recording in your business, you will typically need two licences - one from the copyright owners in the 'musical work' and one from the copyright owners in the 'sound recording'. If you choose to play music videos in your business, the copyright in the music video itself will also need to be licensed.

To obtain a licence for the 'musical work' copyright, you should contact APRA, the Australasian Performing Right Association. PPCA is not connected to APRA.

HOW DO I OBTAIN A SOUND RECORDING LICENCE?

You could go and get individual sound recording licences from each of the record companies whose protected recordings you want to play. However, since there are now hundreds of labels releasing records in Australia, getting licences from all of them to allow you to play any CD you want may be costly and time consuming!

There is an easier way to make sure you have the licences you need. PPCA represents the interests of Australian recording artists and record companies. It offers a comprehensive 'blanket' licence which covers the playing in public of CDs released by over 550 PPCA licensor record companies, including the majors. A PPCA licence covers all recordings from the catalogues of over 5,000 record labels controlled by our licensors.

In practical terms, this means that a PPCA licence will cover just about every sound recording you are likely to play in your business.

Essentially, a PPCA blanket licence is an easy, cost effective way for you to satisfy your sound recording licensing obligations.

Sometimes business owners think that all they need to play recordings in their business is an APRA licence - that is often incorrect. APRA represents the interests of songwriters and publishers and issues licences in respect of the 'musical work' copyright, not the 'sound recording' copyright. For most businesses, it's easier to obtain both an APRA licence and a PPCA licence to cover their sound recording copyright obligations.

PPCA (the Phonographic Performance Company of Australia) is a national, non government, non-profit organisation that represents the interests of Australian recording artists and record companies.

PPCA is authorised by its licensors to issue blanket licences for the broadcast, communication and public performance of recorded music, music videos and music on hold.

We currently license over 42,000 venues Australia-wide, including clubs, hotels, bars, restaurants, fitness centres, cafes, shops, halls and dance studios, as well as radio and television stations.

Our licence fees are assessed under a standard set of tariffs, all of which are very moderate. Depending on the nature of your business and your use of recorded music and music videos, PPCA licence fees can start from as little as \$1 a week.

A full schedule of all tariffs and how they are calculated can be obtained from the PPCA website www.pcca.com.au or you can telephone our licensing team to discuss the tariffs that apply to your business. Your right to play music in your business is also protected. Businesses in Australia have a statutory right under the Copyright Act to play sound recordings in their premises, provided they pay the agreed licence fees or give the copyright owners an undertaking that they will pay such fees as are set by the Copyright Tribunal. Where parties cannot agree on fees, either party can bring a case before the Copyright Tribunal, asking it to set the fee which should be paid by someone playing a sound recording in business premises.

PPCA is a non-profit organisation. After deducting our administrative expenses, net licence fees are distributed directly to:

- (i.) the sound recording copyright holders (usually record labels);
- (ii.) registered Australian recording artists; and
- (iii.) the PPCA Performers Trust Foundation, which distributes grants for the encouragement of music and performing arts.

Licences are required wherever the playing of recordings in a business is protected by the Copyright Act. These are often referred to as 'protected recordings'. There are some recordings released in Australia that are not protected recordings, and for which you do not need a licence. However, working out whether or not a recording can be played in public without a licence requires the application of complex provisions of the Copyright Act, which involve considering:

- (i.) the country where the recording was made;
- (ii.) the nationality and residence of everyone performing on the recording (including all session musicians);
- (iii.) the country where the recording was first released;
- (iv.) the date and place of first release of the recording; and
- (v.) the age of the recording.

As a general statement, recordings made in countries such as Australia, New Zealand, the UK, all European countries and Canada are usually protected under the Copyright Act and a public performance licence will be required if you want to play them in your business. Recordings made in the US may also require a licence, depending on the details of the recording and the application of the international copyright laws. All music videos are protected and, when they are used as music on hold, all sound recordings are protected.

The benefit of a PPCA blanket licence is that it allows your business to play all of its recorded music regardless of whether or not you can determine if it is protected. A PPCA licence eliminates the risk of copyright infringement in relation to the vast catalogues of recordings covered by such a licence.

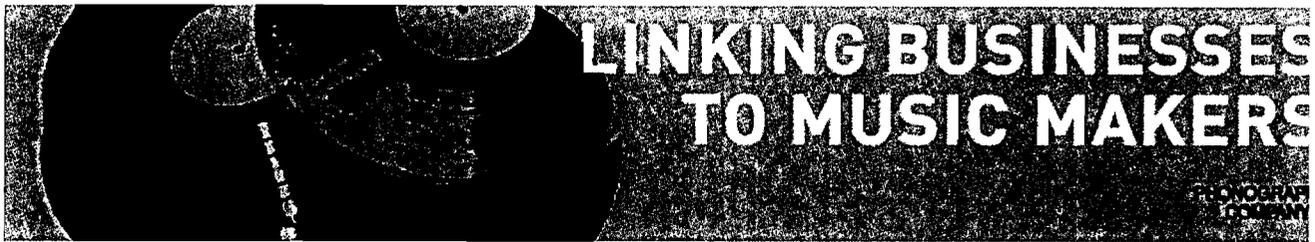
Simply contact our licensing department by phone, fax or email. Alternatively, you can download a licence application form from our website www.pcca.com.au and post it to us.

For more information about PPCA, music licensing and copyright, visit the PPCA website at www.pcca.com.au or contact our licensing team on 02 8569 1111.

If you are a member of an industry association or representative group, like the Australian Hotels Association, Restaurant and Catering Association or Clubs groups, you may wish to contact them as PPCA regularly provides them with up to date information. Independent information on PPCA and the Copyright Act is available from the Australian Copyright Council website, www.copyright.org.au or by telephoning 02 9318 1788, and if you want legal advice about playing sound recordings in your business, you should consult your lawyer.

PPCA and a number of Australian collecting societies comply with a voluntary Code of Conduct. This Code aims to promote awareness of copyright and collecting societies, set service standards and to ensure that accessible and fair procedures are available for the handling of complaints and the resolution of disputes. Each year PPCA's compliance with the Code is assessed by an independent reviewer. For more information or to obtain a copy of the Code, go to the PPCA website or contact our licensing team.

Attachment 12



[HOME](#) | [ABOUT US](#) | [LICENSORS](#) | [ARTISTS](#) | [LICENSING](#) | [FORMS](#) | [COMMUNICATIONS](#) | [LINKS](#) | [CONTACT](#)

LICENSING

Do you need a licence?

If you're using recorded music or music videos to enhance your business in any way, then you'll usually need a licence – permission from the copyright holder – to do so.

Examples of such uses include:

- Playing protected recorded music in public
- screening music videos in public
- playing protected recorded music and/or radio to your phone customers on hold
- broadcasting recorded music over the radio or TV
- broadcasting music videos on TV

Are there any recordings for which I don't need a licence?

Licences are required wherever the playing of recordings in a business is protected by the Copyright Act. These are often referred to as 'protected recordings'. There are some recordings released in Australia that are not protected, and for which you do not need a licence. However, working out whether or not a recording can be played in public without a licence requires the application of complex provisions of the Copyright Act, which involve considering:

- i. the country where the recording was made;
- ii. the nationality and residence of everyone performing on the recording (including all session musicians);
- iii. the country where the recording was first released;
- iv. the date and place of first release of the recording; and
- v. the age of the recording.

As a general statement, recordings made in countries such as Australia, New Zealand, the UK, all European countries and Canada are usually protected under the Copyright Act and a public performance licence will be required if you want to play them in your business. Recordings made in the US may also require a licence, depending on the details of the recording and the application of the international copyright laws. All music videos are protected and, when they are used as music on hold, all sound recordings are protected.

The benefit of a PPCA blanket licence is that it allows your business to play all of its recorded music regardless of whether or not you can determine if it is protected. A PPCA licence eliminates the risk of copyright infringement in relation to the vast catalogues of recordings covered by such a licence.

For more information on whether or not a recording is a protected recording for which a licence will be needed, see the more detailed information under "Are There Any Recordings For Which I Don't Need a Licence?"

What we do

We grant licences for the broadcast, communication or public playing of recorded music (e.g. CDs, tapes, records) or music videos. We then distribute the **licence fees** we collect to the **copyright holders** (licensors) and Australian **recording artists** registered with us, under our Distribution Policy.

It's important to remember that if you need a licence of the type available from us, you'll probably **need a licence from APRA** (Australasian Performing Right Association Ltd) as well. That's because **there are at least two copyrights** in most recordings and music videos:

1. the copyright in the song (lyrics, composition etc.) – licences available from APRA ;
2. the copyright in the recording and/or music video of the song (a particular recorded performance) – blanket licences available from us, or individual licenses from each of the relevant copyright holders.

By collecting licence fees and passing them on to the people who provide the music in our lives, we're not only **protecting their rights**, we're making sure that they can continue to make music for us all to enjoy.

And don't forget, licence fees are usually tax deductible

(you'll need to talk to your tax adviser).

Do I have to get my sound recording licence from PPCA, or are licences available from anyone else?



PPCA is not the only organisation from which you can obtain the required licences. If you prefer, you can approach each copyright holder (usually the record company) individually to get a licence for the recordings and music videos that they control. However, **we're the only organisation** in Australia that can offer you a **'blanket' licence** that covers just about all recordings commercially released in Australia .

If you're from a **TV or radio station** , go to Broadcast Licensing .

If you're **playing recordings** or **music videos** in public, or playing music to **phone customers** on hold, go to Business Licensing .

* Click here for important information about our licences.

Read more about our latest Tariff categories .

For more information:

- Policies
- Licensing FAQ

Attachment 13

COMMONWEALTH OF AUSTRALIA

COPYRIGHT ACT 1968



IN THE COPYRIGHT TRIBUNAL

FILE NO. CT 2 OF 2004

REFERENCE UNDER SECTION 154(1) OF THE COPYRIGHT ACT 1968

Reference by: Phonographic Performance Company of Australia Limited (ACN 000 680 704) under section 154(1) of the *Copyright Act 1968*

AFFIDAVIT OF STEPHEN PHILIP PEACH

On 15 February 2006, I, STEPHEN PHILIP PEACH, of Level 4, 19 Harris Street, Pyrmont, New South Wales, Chief Executive Officer, say on oath:

EXHIBITS

1. There are a number of exhibits to this affidavit, including a series of exhibits containing either entire documents or bundles of documents, which are exhibited as "Exhibit SPP-1" to "Exhibit SPP-12". In the paginated bundles of documents in the various exhibits are documents to which I refer by page number in this affidavit. These include two exhibits marked "Confidential Exhibit SPP-9" and "Confidential Exhibit SPP-11". PPCA objects to any disclosure of the documents or information contained in "Confidential Exhibit SPP-9" and "Confidential Exhibit SPP-11" to any persons or organisations other than the external legal advisers of the parties in these proceedings. I believe that those documents and the information contained within them are confidential in that such information is unpublished and commercially sensitive. I respectfully request that the Tribunal order that access to "Confidential Exhibit SPP-9" and "Confidential Exhibit SPP-11" be restricted to the external legal advisers for each party.

Filed on behalf of the Applicant by:

GILBERT + TOBIN

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Sydney NSW 2000

Tel (02) 9263 4000
Fax (02) 9263 4111
DX 10348 SSE
Ref KMH:SMG:231232

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Page 1

Two handwritten signatures in black ink. The first signature appears to be "D. Harrison" and the second is a stylized signature, possibly "J. H. H. H."

BACKGROUND AND EXPERIENCE

2. I am the Chief Executive Officer of the Phonographic Performance Company of Australia Limited (PPCA) and I have held that position since January 2002. I am authorised to swear this affidavit on behalf of PPCA. Since January 2002, I have also held the position of Chief Executive Officer of the Australian Recording Industry Association Limited (ARIA).
3. As Chief Executive Officer of PPCA, I am responsible for the overall management of PPCA. This entails administering and overseeing the functions of PPCA described further below.
4. Prior to holding my current position as Chief Executive Officer of PPCA and ARIA, from 1989 to the end of January 2000 I worked at Gilbert + Tobin, the firm that is representing PPCA in the current proceeding. Between 1992 and 2000 I was a partner of the firm and the primary partner advising PPCA (and ARIA). I regularly advised these companies on various legal issues, including, in the case of PPCA, issues concerning the public performance rights in recorded music.
5. Unless otherwise stated, the contents of this affidavit are based upon my knowledge, acquired from my experience and from my examination of the documentation and records of PPCA to which I have full access, and which I am aware are made and kept in the normal course and for the purposes of the business of PPCA.

OVERVIEW OF PPCA'S OPERATIONS

6. PPCA is a copyright collecting society which was established in 1969. PPCA was formed for two principal purposes:
 - (a) to manage the overall process by which owners of copyright in sound recordings could grant public performance and broadcasting licences, protect and enforce their rights, and receive royalties for the use of their recordings; and
 - (b) to provide a central licensing body so persons wishing to use sound recordings for broadcast or public performance purposes could obtain a single comprehensive 'blanket' licence covering repertoire from multiple record companies and recording artists.
7. A true copy of PPCA's Constitution is exhibited as Exhibit SPP-1.



8. PPCA's Board of Directors is comprised of representatives from each of PPCA's four record company shareholders. I discuss PPCA's shareholder arrangements in the following paragraph. There are also three recording artist representative directors on PPCA's Board, and following PPCA's recent adoption of a new Constitution, a director representing PPCA's non-shareholder Licensors (as that term is defined in paragraph 10 below) will also sit on the Board. Two of the artist representative directors are elected by artists registered with PPCA under its artist distribution scheme while the other is a nominee of the Music Managers' Forum.
9. The shareholders of PPCA are currently four of Australia's major record companies, namely SONY BMG Music Entertainment (Australia) Limited (SONY BMG), EMI Music (Australia) Pty Limited (EMI), Universal Music Australia Limited (Universal) and Warner Music Australia Pty Limited (Warner). A shareholding in PPCA does not give the shareholder a right to receive any PPCA income or revenue. All PPCA's income is derived from PPCA's licensing arrangements. PPCA's net income is distributed in accordance with PPCA's distribution policy, which I discuss further below.
10. As a collecting society, PPCA represents the interests of its copyright owner licensors, typically record companies and recording artists (each a Licensor). The Licensors are the owners or exclusive licensees of the copyright in sound recordings and associated cinematograph films (colloquially known as music videos), within the meaning of sections 89 and 90 of the *Copyright Act 1968* (the Act). Each Licensor grants to PPCA a non-exclusive licence (Input Licence) of the right to broadcast and play in public sound recordings and music videos and authorizes PPCA to grant a licence of those rights to others (Licence). In some cases, Licensors have also granted to PPCA a non-exclusive licence of, amongst other things, some elements of the right to communicate sound recordings (such as for music on hold) and have authorized PPCA to grant a licence of this right to others. I discuss PPCA's arrangements with its Licensors in further detail below.
11. PPCA offers standard-form public performance (or public use) Licences to a wide range of businesses and organizations (each a Licensee) for, among other things, the non-exclusive right to publicly perform sound recordings. The Licence covers all sound recordings owned or controlled by all of PPCA's Licensors from time to time. A true copy of PPCA's standard terms and conditions for a Licence to use protected sound recordings in any specific category appears at pages 1 to 3 of Exhibit SPP-2.
12. In this affidavit, I use the term Protected Sound Recordings to refer to those sound recordings in respect of which there is copyright, including the right to perform that recording in public (in accordance with the terms of the Act and associated regulations). Commercial users who want to play Protected Sound Recordings in public as part of their

A. Harrison

J. L. H.

businesses require a licence from the owner or the owners of the copyright. As mentioned in paragraph 10 PPCA is empowered to grant such a Licence. If they do not want to obtain a Licence from PPCA, users of Protected Sound Recordings have an alternative option of approaching individual copyright owners for licences to, among other things, play in public the Protected Sound Recordings owned by that copyright owner. This is because PPCA is only granted a non-exclusive licence by its Licensors under the Input Licences and the Licensors can also grant licences of the same rights to all users of sound recordings. However, only PPCA offers a 'blanket' licence covering repertoire from multiple copyright owners (record companies and recording artists), with nearly all Protected Sound Recordings commercially released in Australia being covered by a single Licence. When I refer in this affidavit to the licensing of sound recordings by PPCA, I am referring to the licensing of recordings that are Protected Sound Recordings in Australia.

13. In respect of the public performance Licence, PPCA grants Licences in 28 different tariff categories which correspond to different uses of sound recordings and music videos as determined by PPCA. A true copy of a list of PPCA's 28 tariff categories appears at page 4 of Exhibit SPP-2. PPCA's Licences cover a wide range of commercial uses of sound recordings and have been developed over PPCA's 36 years of operation. Examples of organizations which typically hold a Licence include cinemas, restaurants, nightclubs, fitness centres, cafés, shopping centres, bars and dance parties. All free-to-air television, subscription television, and radio broadcasters also hold PPCA licences, in these cases for broadcasting rights.
14. Some businesses may use sound recordings in a variety of different ways at the same venue. Venues using sound recordings for more than one purpose will only hold the one Licence, however different tariffs will apply to each different sound recording use. For example, a nightclub playing sound recordings for the purpose of dancing in one room and using recorded music for telephone music on hold will be licensed under PPCA's Tariffs "E" and "HM" for these respective sound recording uses.
15. Each tariff has a specific fee or range of fees applicable to the circumstances of use of the recordings covered by that tariff (Licence Fees). Generally speaking, the Licence Fee payable for the use of sound recordings is related to the extent to which sound recordings are used or likely to be used by the Licensee or the size or potential size of the Licensee's audience. PPCA collects Licence Fees paid annually in advance by Licensees and generally adjusts its Licence Fees for all tariffs on an annual basis to take account of CPI movements.
16. At the end of each financial year, PPCA calculates the amount of its annual Licence Fee revenue (from both public performance and broadcasting rights) to be distributed.

Adrian

[Signature]

PPCA's financial accounts are independently audited prior to the commencement of PPCA's distribution process. In December of each year, PPCA distributes payments to:

- (a) Licensors;
- (b) Australian recording artists (registered under PPCA's artist direct distribution scheme); and
- (c) the PPCA Performers' Trust Foundation (a trust fund that administers grants for the encouragements of the performing arts).

PPCA distributes payments to these groups in accordance with its distribution policy.

- 17. Australian recording artists registered under PPCA's artist direct distribution scheme are entitled to be paid directly by PPCA if PPCA receives income relating to the recording on which that artist features. Currently, fifty per cent of the net receipts available from Australian recordings are available for payment to featured Australian artists if registered with PPCA under its artist direct distribution scheme. PPCA also contributes 2.5 per cent of the distributable income in respect of Australian recordings to the PPCA Performers' Trust Foundation for charitable purposes.
- 18. To participate in the artist direct distribution scheme, recording artists registered with PPCA must continue to notify PPCA of each of their recordings as they are released and, in the case of a member of a band, the percentage amount claimed for each recording. Recording artists are eligible to participate in the scheme if they are an Australian citizen or resident, and a featured performer (but not a session or contract musician) on an Australian sound recording. If an artist chooses not to register, all income that that artist would have received under the scheme will go directly to the Licensor and any distribution to the artist will then be dictated by the terms of the contract between the artist and the Licensor.

PPCA AND ITS LICENSORS

Licensor Base

- 19. As at 13 February 2006, PPCA has 553 Licensors, which includes SONY BMG, EMI, Universal and Warner, who collectively control about 80 to 90 per cent of the sound recordings commercially released in Australia. Virtually the entire balance of the recordings commercially released in Australia would be controlled by the other PPCA Licensors. A true copy of a list of PPCA's Licensors (current as at February 2006) is exhibited as Exhibit SPP-3. PPCA regularly updates its list of Licensors and publishes



this information on its website at <http://www.pcca.com.au>. PPCA also sends a list of its current Licensors to potential licensees.

20. The number of PPCA Licensors has grown steadily over the past 8 years. I have caused to be prepared the following table which shows the increase in the number of Licensors since 1998:

YEAR	TOTAL LICENSORS
1998	66
1999	66
2000	92
2001	129
2002	207
2003	277
2004	407
2005	472

21. The table shows that there has been a substantial increase in the total number of Licensors since 1998, with there now being almost 500 PPCA Licensors. This figure is over 7 times the number of Licensors in 1998. PPCA experienced the greatest period of growth in the number of its Licensors in 2004 with over 100 additional Licensors granting Input Licences to PPCA in that year as compared with the previous year.
22. In my view, the growth in Licensors can be attributed to a number of factors. PPCA works closely with the Music Managers Forum and regularly participates in various seminars, including seminars organized by such organisations as the Community Broadcasting Association of Australia and the Association of Independent Record Labels, to inform the wider recording industry of its role and explain various aspects of its operations, such as the artist distribution scheme. I believe that activities of this nature have led to an increased awareness among owners of copyright in Protected Sound Recordings of PPCA's role and the benefit in having a central licensing body to oversee the various rights comprised in Protected Sound Recordings.
23. As I previously mentioned, in addition to my role as Chief Executive Officer of PPCA, I am also the Chief Executive Officer of ARIA. I am aware from working in this capacity that upon joining ARIA, new members (which would include record companies and recording artists) are also informed of PPCA and its role as a copyright collecting society. As such, these new ARIA members typically also become new PPCA Licensors.



24. Over the past 8 years, there has also been a significant increase in the number of recording artists who have become Licensors. In my view, this may be due (at least in part) to a greater number of artists and smaller labels creating recordings themselves in light of the proliferation of more accessible digital recording facilities.

New Licensors

25. As I have mentioned, each Licensor grants to PPCA an Input Licence covering their entire repertoire which empowers PPCA to grant Licences to Licensees and collect and distribute Licence Fees to Licensors. These rights are granted to PPCA pursuant to an Input Agreement, which is entered into by PPCA and each Licensor. A true copy of PPCA's standard Input Agreement is exhibited as Exhibit SPP-4. PPCA's standard Input Agreement is also publicly available on PPCA's website.
26. Prior to obtaining an Input Licence, PPCA sends an initial letter to a prospective Licensor requesting details of its record labels. This list of labels is then annexed as a schedule to the Input Agreement which is entered into between PPCA and that Licensor. A true copy of PPCA's pro forma initial letter to prospective Licensors appears at pages 5 to 6 of Exhibit SPP-2. PPCA also encloses an artist registration pack with its initial letter to prospective Licensors which provides information on PPCA's artist distribution scheme (with accompanying registration forms). Exhibited to me and marked Exhibit SPP-5 is a true copy of PPCA's artist registration pack.

Record Labels and Distributions

27. On the basis of the record label information provided to PPCA by each of its Licensors, PPCA compiles a schedule of every record label covered by its Licence (Licensor Labels). A true copy of the schedule of Licensor Labels (current as at February 2006) is exhibited as Exhibit SPP-6. PPCA regularly updates its schedule of Licensor Labels and publishes this information on its website. PPCA also refers potential licensees to the specific PPCA website address at which the schedule of Licensor Labels can be accessed. Under the terms of the Licence all recordings released by a Licensor on its Licensor Labels are covered by the terms of that Licence.
28. PPCA today has the rights to licence repertoire released on over 5,000 different labels. Because it obtains a blanket right from each of its Licensors to license their entire repertoire, PPCA does not need to obtain, and does not require or keep a complete list of the individual sound recordings contained within each Licensor's catalogue. Accordingly, PPCA has no master list of the sound recordings it has the right to licence.

Adrian Wilson

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29. PPCA does have access to a database maintained by ARIA for the purposes of allocating net income to Licensors, which is used by PPCA only in connection with the distribution of revenues to Licensors, not in connection with licensing to Licensees. The ARIA database is not a comprehensive list of all available tracks, but for some tracks which are included in the database it does give a country of origin for the artist. This designation is used as a proxy to determine whether the track should be included in the revenue distributions for Protected Sound Recordings, because it is so difficult to identify when any particular track on any particular album might be protected, and PPCA's Licensors do not routinely provide information as to whether material is copyright protected.
30. Because of the difficulty of determining when a track is protected or unprotected, judgment calls as to the likelihood of a track being protected need to be made for the purposes of the distribution process, and distributions are made accordingly. The current approach to distribution is agreed with the PPCA Licensors, and is described in the PPCA Distribution Policy, a copy of which is available at <http://www.pcca.com.au/policies.htm>. Under the terms of its current distribution policy, PPCA currently distributes the revenues generated from nightclubs and dance parties (Dance Venue Revenues) to its Licensors based on sampling information obtained from commercial radio logs.
31. As with many collecting societies, because of the lack of precise playlist information the approach to distribution of the Dance Venue Revenues is based on an approximation. I am aware that the range and the specific recordings which are in fact played in nightclubs and dance parties may not be (and probably are not) well reflected in the commercial radio logs, because commercial radio stations generally play a different type of music to that played in many nightclubs. Although PPCA could obtain access to the information provided by DJs to ARIA to enable the calculation of the ARIA Club Chart (as described in the affidavit of Lynne Small sworn on 15 February and filed in these proceedings), that information would not in my view provide a sufficiently broad, systematic or reliable basis for allocating revenues. The DJ returns depend on individual DJs to complete them, and while those returns do provide a ranking, the information in them does not include how many times a particular track was played. Further, that data is more reflective of the tracks played in cutting edge nightclubs and is not necessarily reflective of the music that is heard in more mainstream nightclubs.
32. In the absence of any actual sampling or track list from nightclubs or dance parties, the commercial radio logs provide at least some clear and definite basis on which to allocate the Dance Venue Revenues amongst the Licensors. Importantly, the costs of obtaining the logs are spread across distribution of revenues from various forms of use.
33. If PPCA is successful in obtaining a more reasonable market rate for the playing of sound recordings in nightclubs and at dance parties, then in my view it would be appropriate to

A. Harrison

J. H. H.

change the way in which the Dance Venue Revenues are distributed, and I would recommend to the PPCA Board that a new distribution scheme should be introduced to ensure that the distributions more fairly and closely reflect the sound recordings that are actually played in nightclubs and dance parties.

34. Such a scheme might involve the introduction of some kind of inspection and sampling process, or nightclub and dance party licensees might be asked to provide regular playlist returns to PPCA. The allocation of the distribution of the Dance Venue Revenues could then be based on what was actually played at the clubs and parties.
35. While I do not have an accurate costing, I estimate that the cost to PPCA of introducing any sound recording reporting scheme which would capture sufficient information about the material played in clubs and at parties would be very substantial. PPCA would need to engage external experts to construct a sampling scheme and carry out the process of sampling, either by collecting information or by visiting multiple venues, in sufficient numbers and of sufficient diversity, to provide a reliable sample. I would expect that the amount available for distribution, which is currently between \$700,000 and \$800,000 after the deduction of PPCA's administrative expenses, would be significantly further reduced if a scheme for logging or sampling the use of sound recordings in nightclubs was introduced. I consider that the expense involved in setting up and administering such a scheme would be out of proportion to the amounts in issue, and the introduction of such a scheme is not warranted today when the level of Dance Venue Revenue is currently only about \$1 million gross per annum (excluding PPCA's administrative costs). Such a scheme would be warranted and appropriate if the rate was significantly increased. In my view the costs of introducing and maintaining any such reporting scheme should factor into the tariff.

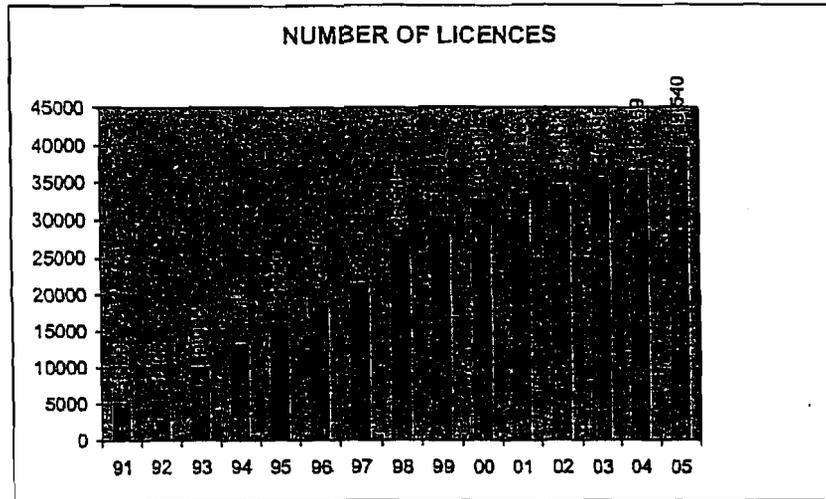
PPCA AND ITS LICENSEES

Licensee Base

36. As at 31 January 2006, PPCA had 41,288 public performance Licences granted to its Licensees (Public Performance Licences), not including Licences granted for the right to broadcast sound recordings. This represents a considerable increase over the past 15 years, in comparison with only 5,000 Public Performance Licences granted by PPCA at the end of 1991.
37. I have caused to be prepared the following graph which shows the increase in the total number of Public Performance Licences granted by PPCA since 1991.

A Harrison

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[Signature]

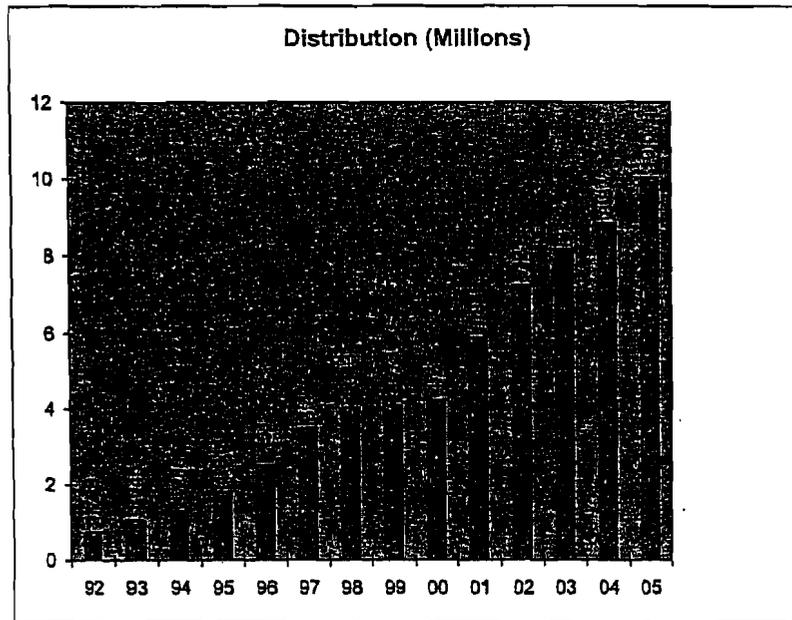
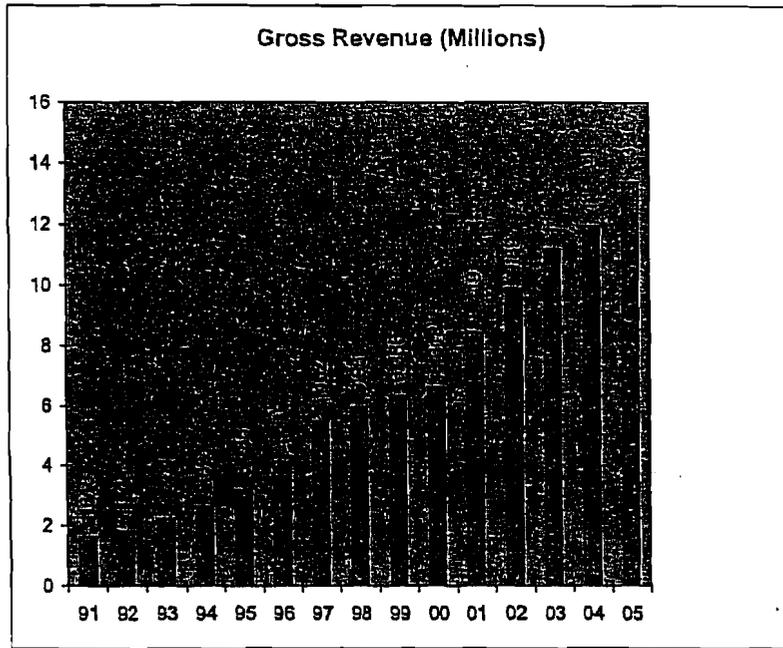


As the graph shows, the total number of Public Performance Licences granted by PPCA has increased almost eight-fold since 1991.

38. The development of PPCA's licensing function is also demonstrated by continued yearly growth in PPCA's Licence Fee revenue and the amounts distributed to copyright owners and artists (Distributable Amounts). I have caused to be prepared the following two graphs which show the annual increase in Licence Fee Gross Revenue and PPCA's Distributable Amounts, respectively, since 1991.

A Harris

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New Licensees

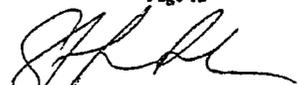
39. To my knowledge and belief, the increase in the number of Public Performance Licences granted by PPCA over the past 15 years is generally a result of PPCA's increased efforts

A. Harris

J. H. H.

to sign up new Licensees in addition to a greater awareness among users of sound recordings of PPCA's role and the need for a licence to use Protected Sound Recordings.

40. There are a number of different ways in which users of Protected Sound Recordings become Licensees. Firstly, prospective Licensees may directly approach PPCA with a view to obtaining a Licence. Some users of sound recordings may have previously been involved in a business that held a Licence. Other businesses requiring a Licence may have become aware of PPCA through bodies such as the Australian Copyright Council or the Business Licensing Information System (BLIS). BLIS is made available by the relevant government authority in each of the Australian states and territories and provides information on various licensing requirements for new businesses. For example, BLIS publishes an information sheet which explains the licensing requirements for a business wanting to play recorded music at their venue, and the role of PPCA in issuing licences in this regard. A true copy of this information sheet which I have caused to be printed from the BLIS website at https://transactions.business.gov.au/BLIS/Blis_playmusic.pdf appears at pages 7 to 8 of Exhibit SPP-2.
41. Another way in which users of sound recordings become Licensees is where there has been a change of ownership of a venue that has previously held a Licence. PPCA is occasionally notified by the previous Licensors when this occurs, and PPCA contacts the new venue owner to arrange a new Licence. Occasionally information on changes of ownership is available from the liquor licensing bodies, but this varies from state to state.
42. Thirdly, PPCA regularly reviews a number of sources to determine whether the businesses listed within these sources are existing Licensees. PPCA makes this determination by comparing these business listings with its Licensee database. The main sources of information used by PPCA include:
 - (a) various State and Territory liquor licence databases;
 - (b) street music press advertisements;
 - (c) Yellow Pages listings;
 - (d) White Pages listings;
 - (e) newspaper editorials and entertainment listings;
 - (f) websites listing or referring to dance events and venues, including websites for individual nightclubs; and



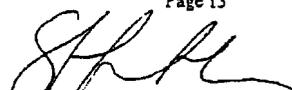
(g) entertainment guides and publications, such as the *Good Food Guide*.

43. Users of sound recordings may also become aware of PPCA as a result of information contained in an industry association handbook. PPCA maintains connections with organisations that represent businesses which use recorded music. For example, details about PPCA and its licensing function are included in information booklets and other promotional material which is issued by representative bodies such as the Australian Hotels Association and Clubs Australia to their new members.
44. Irrespective of the manner in which users of Protected Sound Recordings become Licensees, PPCA sends all of its prospective Licensees an information pack which includes a letter and an information leaflet explaining the role of PPCA and the nature of the Licence granted by PPCA, a Licence application form, a list of current Licensors, and the tariffs that PPCA believes may be relevant to their business. Exhibited to me and marked Exhibit SPP-7 is a true and correct copy of PPCA's information pack for its prospective Licensees.

LICENSING OF NIGHTCLUBS

Current licensing for nightclubs – Tariff “E”

45. The use of Protected Sound Recordings in a nightclub venue is currently licensed in a sub-category under PPCA's Tariff “E” (Nightclub Licence). A true copy of PPCA's current Tariff “E” appears at page 9 of Exhibit SPP-2. The Nightclub Licence authorizes the public performance of sound recordings by nightclubs, fixed discotheques and discotheque promoters where recordings are used as a predominant or “foreground” means of entertaining patrons in those venues, including breaks in live performances. Tariff “E” also includes a separate sub-category covering the use of Protected Sound Recordings as foreground music in bars, which is offered at a lower rate than the rate applicable to nightclubs. The current Nightclub Licence does not provide any specific definition of a ‘nightclub’.
46. The Licence Fees applicable under the current Nightclub Licence are calculated at 7.48 cents per person per night of operation, based on the licensed capacity of the venue where Protected Sound Recordings are used. There is a minimum annual fee payable by a nightclub under Tariff “E”, which is currently \$128.59.
47. The licensed capacity of a venue is the number of patrons licensed by Local Government, a liquor licensing body or fire department, as applicable to the venue. The tariff under the Nightclub Licence for a particular venue in which sound recordings are played for the purpose of dancing is assessed by applying the current rate of 7.48 cents to the total

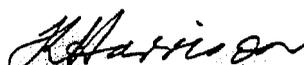


number of people the venue is licensed to hold, for the number of nights a year that that venue operates as a nightclub. A separate Licence Fee is payable for each area where sound recordings are played so that if a particular nightclub venue has more than one room, level or area where sound recordings are played, then each room, level or area playing sound recordings would need to be licensed.

48. Accordingly, the current Licence Fee for nightclubs is not based on a 'box office' measure, in that it is not based on the number of people attending the nightclub venue on a specific night. The current Licence Fee for nightclubs also does not vary by reference to whether or not a cover charge is paid by patrons attending the venue, or by the amount paid by patrons if there is a cover charge, nor does it vary with the venue's opening hours or on the basis of the geographical location of the venue.
49. In my view, a Licence Fee which is based on the licensed capacity of a nightclub venue does not account for the possibility that people may attend more than one nightclub venue during the course of a night. A Licence Fee calculated on this basis also ignores the fact that a venue may have more people in attendance than its maximum licensed capacity at any point in time during a particular night of operation. Also, as people come and go during the night, the total number of people entering the venue over the course of the night can be much higher than the licensed capacity of the venue at any one time.

History of nightclub licensing

50. I have caused to be conducted a search of PPCA's records and I have made inquiries of PPCA staff, and I have not been able to ascertain precisely when a specific Licence for nightclubs was introduced by PPCA.
51. I have located two undated versions of Tariff "E" which cover the use of sound recordings by nightclubs, fixed discotheques and discotheque promoters, and which appear to have been published and applied. The Licence Fee applying under one of those tariffs was stated to be \$0.50 per 100 persons, with a minimum annual fee of \$15.00. The other tariff states a Licence Fee of \$0.85 per 100 persons (or part thereof) but there is no minimum annual fee applied under that tariff. My best estimate is that these tariffs were in force at some stage in the 1980s, but I am unable to ascertain the dates at which either of these tariffs applied.
52. PPCA's records do indicate that there was a Tariff "E" in effect from 1 June 1987, which applied a Licence Fee of \$0.90 per 100 persons (or part thereof). I am aware from a review of PPCA's records that no minimum annual fee was applied under Tariff "E" for a period of some years up to 1997, but it is not apparent from PPCA's records why this was the case.



53. I am aware from my review of PPCA's records that until December 1995 the changes to Tariff "E" appear to have reflected annual CPI increases only. The one substantial increase that PPCA has made to the base Licence Fee for the use of Protected Sound Recordings by nightclubs occurred in December 1995. PPCA then increased the Licence Fee applicable to nightclubs from 1.33 cents per person per night (based on venue capacity) to 5 cents per person per night (also based on venue capacity). The minimum annual fee was also increased from \$46.73 to \$93.46.
54. I am aware from having worked on this matter in the context of my previous role at Gilbert + Tobin, that five nightclubs contested this increase in the Licence Fee and initiated a 'Board of Review' action. PPCA provides its Licensees with a Board of Review as an external dispute resolution mechanism in accordance with clause 4.1 of PPCA's standard terms and conditions for a Licence. This allows a holder of a Licence to seek independent review of the terms and conditions (including the Licence Fees) of that Licence, having regard to the individual circumstances of that Licence.
55. Following its review requested by the five nightclubs contesting the 1995 rate increase, the Board of Review approved an increase for those nightclubs (introduced in stages) to 4.25 cents per person per night with the minimum annual fee set at \$65.00. For other venues holding a Nightclub Licence, the rates stayed unchanged. The Board of Review also recommended a separate rate for non dance-floor areas in those nightclubs, and PPCA accordingly introduced such a separate rate on 1 December 1999. This is now reflected in the separate Tariff "E" sub-category covering the use of Protected Sound Recordings as foreground music in bars. To the best of my knowledge the licensees that initiated the Board of Review action are no longer operating. No nightclub entity today receives any discount rate.
56. The changes to Tariff "E" which have occurred since the December 1999 increase reflect annual CPI increases only. On 1 March 2002, PPCA also changed the application of Tariff "E" from a Licence Fee based on 100 persons to a per person basis.
57. The various Licence Fees payable by nightclub operators playing Protected Sound Recordings are set out in the table below:

DATE	LICENCE FEE BASED ON 100 PERSONS OR PART THEREOF	EQUIVALENT PERSON FEE	MINIMUM ANNUAL FEE
Undated	\$0.50	\$0.005	\$15.00
Undated	\$0.85	\$0.0085	N/A
1 June 1987	\$0.90	\$0.009	N/A
1 January 1989	\$1.04	\$0.0104	N/A

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DATE	LICENCE FEE (BASED ON 10 PERSONS OR PART THEREOF)	EQUIVALENT PER PERSON FEE	MINIMUM ANNUAL FEE
1 December 1989	\$1.11	\$0.0111	N/A
1 December 1990	\$1.21	\$0.0121	N/A
1 December 1991	\$1.27	\$0.0127	\$44.77
1 December 1992	\$1.29	\$0.0129	\$45.53
1 December 1993	\$1.31	\$0.0131	\$46.08
1 December 1994	\$1.33	\$0.0133	\$46.73
1 December 1995	\$5.00	\$0.05	\$93.46
1 December 1996	\$5.18	\$0.0518	\$96.92
1 December 1997	\$5.25	\$0.0525	\$98.18
1 December 1998	\$5.27	\$0.0527	\$98.58
1 December 1999	\$5.33	\$0.0533	\$99.64
GST introduced (GST Inclusive fees)			
1 July 2000	\$5.863	\$0.05863	\$109.80
1 December 2000	\$6.05	\$0.0605	\$113.08
Per person fee introduced			
1 March 2002	N/A	\$0.0682	\$117.59
1 June 2003	N/A	\$0.0704	\$122.54
1 July 2004	N/A	\$0.0726	\$125.40
1 July 2005	N/A	\$0.0748	\$128.59

True copies of each of the above tariffs for the Nightclub Licence are exhibited as Exhibit SPP-8, other than the current rate, which is exhibited at page 9 of Exhibit SPP-2.

58. As at 14 February 2006, PPCA has 534 Licensees holding Nightclub Licences. I have caused to be prepared the following table which shows the annual changes to the number of PPCA Licensees holding a Nightclub Licence since 2000:

YEAR	TOTAL LICENSEES
2000	541
2001	508
2002	570
2003	552
2004	583
2005	603

59. In January 2005, a schedule of Licensees then holding Nightclub Licences was produced by PPCA and provided to Gilbert + Tobin for provision to Quantum Research, so that

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Quantum Research could conduct a survey of nightclubs for the purposes of providing assistance in the review of PPCA tariffs, and construct a sample of nightclubs to visit, based on the PPCA Licensee schedule. A true copy of that schedule is exhibited hereto in an Excel spreadsheet titled "ENC12012005" on a CD marked Confidential Exhibit SPP-9. This schedule shows the names and address details of Licensees, the size of the Licensee's venues, the tariffs applicable, and amounts payable to PPCA.

60. I have also caused to be produced a schedule showing the names and addresses of PPCA Nightclub Licensees as at February 2006 (the February 2006 Nightclub Licensee List). A true copy of the February 2006 Nightclub Licensee List is exhibited hereto and marked accordingly on the CD exhibited as Confidential Exhibit SPP-9.
61. I have also caused to be prepared the following table which shows the changes in the annual amounts billed to Nightclub Licensees since 2001 (as at the end of each calendar year):

YEAR	TOTAL LICENSEES
2001	\$935,651
2002	\$1,039,875
2003	\$977,824
2004	\$993,607
2005	\$1,057,194

LICENSING OF DANCE PARTIES

Current licensing for dance parties – Tariff "B"

62. Operators of dances or dance parties that play Protected Sound Recordings are currently licensed under PPCA's Tariff "B" (Dance Party Licence). Tariff "B" covers the use of sound recordings at events and festivals generally, and has a separate sub-category for the use of Protected Sound Recordings as featured musical entertainment and/or as an accompaniment to dance. This sub-category includes all or most dance parties. The Licence Fee currently payable by dance and dance party organizers under this sub-category is 19.8 cents per person per event. This fee is based on estimated attendance at the dance or dance party, either by considering past attendance or the capacity of the venue. There is also a minimum fee of \$48.07 per event.

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History of dance party licensing

63. The Dance Party Licence was introduced on 1 April 1998. The Licence Fee at the time of introduction of the Dance Party Licence was 15 cents per person per event, with a minimum fee of \$36.77 per event.
64. The only change made since the introduction of the Dance Party Licence to the base Licence Fee reflects the introduction of GST on 1 July 2000. The change to the Dance Party Licence which occurred on 1 July 2005 represents an adjustment for CPI purposes, and includes CPI increases for the previous five years. The Licence Fees payable by dance party operators playing Protected Sound Recordings are set out in the table below:

DATE	LICENCE FEE	MINIMUM ANNUAL FEE
1 April 1998	\$0.15 per person	\$36.77
1 December 1998	\$0.15 per person	\$36.92
1 December 1999	\$0.15 per person	\$37.32
GST introduced (GST inclusive fees)		
1 July 2000	\$0.165 per person	\$41.05
1 December 2000	\$0.165 per person	\$42.35
1 March 2002	\$0.165 per person	\$44.00
1 June 2003	\$0.165 per person	\$45.87
1 July 2004	\$0.165 per person	\$46.86
1 July 2005	\$0.198 per person	\$48.07

True copies of each of the above tariffs for the Dance Party Licence are exhibited as Exhibit SPP-10.

65. As at 29 January 2006, PPCA had approximately 66 Licensees holding Dance Party Licences. As I previously mentioned, dance parties are currently licensed under a sub-category of Tariff "B" which covers the use of Protected Sound Recordings as featured musical entertainment and/or as an accompaniment to dance. To my knowledge, this sub-category would also cover events other than dance parties, such as parades, carnivals, and opening and closing ceremonies for special events such as the Olympics or the Commonwealth Games. As such, it is difficult to accurately determine the exact number of Licensees holding a Dance Party Licence under this sub-category of Tariff "B". I am aware that staff members within PPCA's licensing department have carefully reviewed the list of Licensees holding a Licence under this sub-category and have determined, by reference to the name of the business holding that Licence and having regard to their awareness of the various dance party events held in Australia, that approximately 66 Licensees would be covered under the proposed new scheme.

Harrison

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J.H.H.

Special arrangements with New Mardi Gras

66. The rates charged by PPCA for Public Performance Licences do not ordinarily distinguish between not-for-profit entities and commercial operators. Such a distinction would be administratively difficult to verify or enforce, and as the same costs are incurred by both types of operations for the other inputs they require to put on an event, such as venue hire, staff hire, equipment hire, and so on, it is not appropriate, in my view, to draw such a distinction.
67. I am aware of one occasion where a discounted rate was charged to a not-for-profit entity. The records indicate that a discounted rate was agreed between PPCA and the Sydney Gay and Lesbian Mardi Gras Limited in 1994, in recognition of its charitable status and the community basis of the event. Based on the PPCA records I have seen it appears that originally, in 1994, the discount applied to all the Mardi Gras events, but in 1998 and 2001, the discount only applied to the rate payable for the use of music in the Mardi Gras Parade, which was a free event, but not for the dance party events, which would be the type of use covered under the proposed new scheme.
68. The provision of a discounted rate was subsequently extended to New Mardi Gras Limited (New Mardi Gras) when it took over the organisation of the events.
69. The rates agreed with the Mardi Gras organisations are set out in the table below:

DATE	AGREED LICENCE FEE	FOUNDAZIONE PER PERSON FEE	ORDINARY PER PERSON FEE
1994 to 1996 (agreed 27/09/94)	\$8,500	\$0.10	\$0.15
1997 (agreed 25/02/1997)	\$8,500	\$0.10	\$0.15
1998 to 2000 (agreed 13/02/1998)	\$10,650	\$0.10 (unpaid events) 0.15 (paid events)	\$0.15 \$0.165 (2000 increase to include GST)
2001 (confirmed 4/03/2002)	\$10,650	\$0.10 (unpaid events) 0.15 (paid events)	0.165
2002 to 2004 (agreed 10/12/2001)	\$13,200 (inc GST)	Not clear from records	0.165
2003 to 2005 (agreed 20/02/2003)	\$11,268 (inc GST)	Not clear from records	0.165 - 0.198

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70. Based on the PPCA records I have seen, the rates for the years 1994 to 1997 were agreed between PPCA and Sydney Gay and Lesbian Mardi Gras Limited on the basis that 65,000 people were expected to attend the various Mardi Gras events (40,000 Parade attendees, 15,000 Party attendees and 10,000 Sleaze Ball attendees). That rate was increased to \$10,650 for the period 1998 to 2001, to reflect the standard tariff for dance parties of \$0.15 per person, but PPCA continued to allow a discount for attendees at the Parade for which no charge was passed on to the public. The estimated attendance in that period was 40,000 Parade attendees (at \$0.10 per person), 15,000 Party attendees (at \$0.15 per person) and 10,000 Sleaze Ball attendees (at \$0.15 per person). True copies of the agreements between PPCA and the Mardi Gras organisers are exhibited at Confidential Exhibit SPP-11.
71. A further increase was negotiated in late 2001 for the years 2002 to 2004 for an overall amount of \$13,200. Following the dissolution of the Sydney Gay and Lesbian Mardi Gras Limited, a new rate was agreed with New Mardi Gras Limited in 2003 for \$11,268. That rate did not cover the Sleaze Ball component of the Mardi Gras activities which had been previously included. Under the proposed new scheme, the party and the parade would be treated separately, so that the party would be licensed under the new scheme and the public parade would still remain under Tariff "B".
72. Although the Mardi Gras organisation has been allowed a rate discount for some activities in the past based upon the nature of their activities, there is no basis on which they are entitled to a discount in the rates. I am aware, for example, that the New Mardi Gras have sold various sponsorships for the series of events in 2006, one of which is reported to be worth \$1.5 million. A true copy of the press release featured on the New Mardi Gras website announcing its sponsorship arrangement with QSoft Consulting appears at pages 10 to 11 of Exhibit SPP-2. Each Licence to the Mardi Gras organisations agreeing to a discounted rate has been negotiated individually and there can be no legitimate expectation that a reduced tariff will continue to apply.

PPCA'S REVIEW OF TARIFF "E"

Initial steps in the tariff review process

73. After taking up the position of CEO at PPCA in January 2002, I reviewed the various Licenses and tariffs which PPCA offered to Licensees.

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74. In or about July 2003, I decided that PPCA should undertake a comprehensive, ongoing review of its tariffs, one by one, reviewing their scope and application as well as the amounts of the respective Licence Fees. In my role as Chief Executive Officer, I was primarily responsible for initiating this tariff review process.

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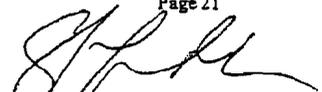
75. In commencing the review of PPCA's tariffs, it was necessary for PPCA to decide which tariff to review first. I considered that an appropriate starting point was the tariffs for both Nightclub Licences and Dance Party Licences given that recorded music is clearly an integral and central component of any nightclub or dance party business.

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76.

REDACTED

77. Between about July 2003 and May 2004, PPCA undertook a number of preliminary steps were in the context of its review of the tariffs for the Nightclub Licence and the Dance Party Licence. These initial steps included:



- (a) reviewing the current tariff structures and rates charged by other relevant copyright collecting societies around the world for the right to play recorded music at nightclubs and dance parties;
- (b) looking at aspects of various State and Territory liquor licensing regimes applicable to nightclubs;
- (c) considering the operational aspects of the nightclub industry, including nightclub and hotel finances, operations and charges; and
- (d) obtaining preliminary advice from PricewaterhouseCoopers with respect to the financial operations of Nightclub Licensees.

78.

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79. I was also aware of the APRA tariff for the right to play music at dance parties.

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The current rate set by APRA is the higher of 1.859% of the gross sums paid for admission or 11.979 cents per person admitted to the area where Featured Recorded Music performances are audible (inclusive of GST). A true copy of APRA's Licence Application appears at pages 12 to 13 of Exhibit SPP-2

Consultation with Nightclub and Dance Party Licensees

- 80. Following PPCA's analysis of the information gathered at the preliminary stage of its Tariff "E" review, PPCA commenced a formal consultation process with its Nightclub Licensees and Dance Party Licensees, in addition to associations and representative organizations for those Licensees.
- 81. On 24 May 2004, PPCA wrote to all of its Nightclub Licensees and Dance Party Licensees, and to the associations and representative organizations for those Licensees which are listed at page 14 of Exhibit SPP-2, and advised them that PPCA was conducting a re-structure and review of Tariff "E" and invited consultation on this matter. A true copy of PPCA's letter appears at pages 15 to 20 of Exhibit SPP-2. PPCA wrote to all of its Nightclub Licensees and Dance Party Licensees on the basis that there appears to be no



single body or organization which represents the interests of all nightclub or dance party operators.

82. In the consultation with Nightclub Licensees and Dance Party Licensees PPCA suggested that the current Licence Fees for these uses were unreasonably low. In its May 2004 letter, PPCA expressed the view, based on the information available at that time, that at least in the case of nightclubs, the fee should be at least \$1.00 per person per night of operation (based on licensed capacity). PPCA invited consultation and feedback from Nightclub Licensees and Dance Party Licensees (and from their representative associations) as to their views on what a fair and reasonable fee would be. Although PPCA expressed the view that the Licence Fee for nightclubs should be at least \$1.00 per person per night of operation, PPCA did indicate in its letter that this was a preliminary view and that any decision regarding the rate would depend on feedback received from its Nightclub Licensees and Dance Party Licensees (and their representative bodies) during the consultation process. PPCA did, however, want to indicate to Licensees that in PPCA's view the current fees are substantially below any fair market rate.
83. As part of the consultation process, PPCA sent over 800 letters to organizations and Nightclub Licensees and Dance Party Licensees, but received only 36 written responses. True copies of all of the responses received by PPCA from Nightclub Licensees, Dance Party Licensees and representative organizations for those Licensees are exhibited as Exhibit SPP-12.
84. Of the various comments received, while there was a general rejection of the proposal that there should be a significant increase in the rates payable by Nightclub Licensees and Dance Party Licensees for the public performance right in sound recordings, no financial data or economic analysis was provided and no consistent approach was presented to what would constitute a fair and reasonable rate for the right to use licensed sound recordings in nightclubs and at dance parties.
85. During the consultation process, PPCA also met with representatives of the Australian Hotels Association, Clubs Australia and Clubs ACT. A subsequent meeting with PPCA was jointly held including the Registered Clubs Association of Australia and Clubs Australia.
86. Given the very few responses received during the consultation process, it was clear to me that PPCA did not have adequate feedback which sufficiently reflected the views and the position of the nightclub and dance party sectors. In light of the outcome of the consultation process, it was my view that the most appropriate and fairest way to progress the Tariff "E" review was to institute proceedings in the Copyright Tribunal. A second letter was sent by PPCA to Licensees at the conclusion of the consultation process. A

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true copy of PPCA's letter dated 30 September 2004 is exhibited at pages 21 to 27 of Exhibit SPP-2. On 8 October 2004, I caused Gilbert + Tobin to file a Reference with the Tribunal. I understand that the Reference has since been modified on two occasions and a Further Amended Reference has been filed in the Tribunal.

87. The decision to review PPCA's tariffs for both Nightclub Licences and Dance Party Licences and to approach the Copyright Tribunal in this regard was made by PPCA management, and was subsequently endorsed by PPCA's Board of Directors. Although the Board approved the Tariff "E" review process, as far as I am aware the Board has never put forward a view as to what the level or structure of the nightclub or dance party tariffs should be. PPCA's Board does not make decisions as to the level at which tariffs should be set, and those decisions are made by PPCA staff, including myself as CEO.

Scope of the Tariff "E" review

88. In its review of Tariff "E", PPCA is proposing a revised tariff which incorporates three significant points of difference to the previous tariff. The key changes to the tariff are:
- (a) re-structuring the Tariff "E" category so as to include dance parties and bars and similar licensed premises in Tariff "E";
 - (b) including definitions of a 'nightclub' and a 'dance party'; and
 - (c) increasing the rates payable by both nightclubs and dance parties.
89. These changes are reflected in PPCA's Further Amended Dance Use Licence Scheme which has been filed in the Copyright Tribunal as part of PPCA's Further Amended Reference.

Re-structuring of Tariff "E"

90. As I mentioned previously, PPCA's current Tariff "E" covers the use of Protected Sound Recordings by nightclubs, fixed discotheques and discotheque promoters and in bars as foreground music. PPCA's proposed Tariff "E" re-structures the tariff in a way that more appropriately categorizes the use of sound recordings in bars, nightclubs, dances and dance parties.
91. In my view, the re-structured Tariff "E" will bring together similar types of licensed venues, and will better reflect the nature of sound recording use at these venues. Tariff "E" will be re-structured into the following four sub-categories, with separate rates applying to each tariff sub-category:

A. Harris

[Signature]

TARIFF CATEGORY	SOUND RECORDING USE	FORMER TARIFF CATEGORY
E 1	Nightclubs	E
E 2	Dances and dance parties	B
E 3A	Bars and licensed premises using sound recordings as foreground music	E
E 3B	Bars and licensed premises using sound recordings other than as foreground music	M

92. The above table shows that PPCA's Tariff "E" re-structure encompasses the following changes:

- (a) including bars and similar licensed premises in Tariff "E"; and
- (b) including dances and dance parties in Tariff "E".

93. Under PPCA's current licensing arrangements, bars using sound recordings as foreground music fall within Tariff "E", while bars using sound recordings as background music fall within Tariff "M" which also covers commercial and professional premises, such as retail stores and art galleries. In my view, bars using sound recordings as background music should fall within Tariff "E", as use of recordings for this purpose is more sensibly grouped with foreground use in bars and use in similar licensed premises, than it is with use of recordings in commercial, retail or professional premises. This change, although significant to PPCA and its Licensees from an administrative perspective, is not one which is reflected in PPCA's Further Amended Dance Use Licence Scheme as it does not impact nightclubs or dance parties. The Further Amended Dance Use Licence Scheme only relates to the tariffs for both Nightclub Licences and Dance Party Licences, which constitute PPCA's proposed tariff categories "E1" and "E2", as set out in the table at paragraph 88.

94. PPCA is also proposing that dance parties, which currently fall within Tariff "B" with other events and festivals, should be included within Tariff "E". Given that sound recordings are used in the licensed venues of dance parties in a very similar manner to their use in nightclubs, I consider that dance parties would be more appropriately located in Tariff "E", than with other events and festivals of a very different nature.

Clarifying the meaning of a 'nightclub' and a 'dance party'

95. PPCA's Tariff "E" review also involves clarifying the meanings of a 'nightclub' and a 'dance' or 'dance party' in the Further Amended Dance Use Licence Scheme.

96. As I have previously mentioned, the current tariff does not provide a definition of a 'nightclub'. The description of the tariff says that it covers the use of Protected Sound Recordings as musical foreground entertainment, including in breaks in live performances. However, during the preliminary stages of PPCA's review of Tariff "E", it became apparent that the concept of a 'nightclub' should be made more explicit to ensure that the tariff applies equally to nightclub venues of all types and sizes.

97. Accordingly, PPCA has included the following definition of a 'nightclub' in its Further Amended Dance Use Licence Scheme:

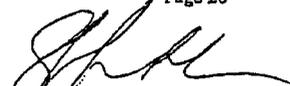
"any licensed premises that plays protected sound recordings for the purpose of dancing (including in breaks in live performances), and which either has a dance floor, or charges an entry fee (or cover charge)."

98. In my view, this is a sensible definition because it encompasses the wide range of nightclub venues that I am aware exist in the Australian nightclub sector. To my knowledge, the key feature of any nightclub is the prominent use of recorded music which is played as a source of entertainment, including for the purpose of dancing. I am also aware from my review of information gathered by PPCA for the purpose of this proceeding that most nightclubs tend to have a dance floor and/or require patrons to pay a cover charge.

99. Dances and dance parties are also not currently defined within Tariff "B", although the tariff description does state that the tariff covers the use of Protected Sound Recordings as featured musical entertainment and/or accompaniment to dance at these venues. As part of PPCA's Tariff "E" review, dances and dance parties will be defined in the Further Amended Dance Use Licence Scheme to mean:

"any one-off or occasional event charging an entry fee and playing protected sound recordings for the purpose of dancing, excluding events held at premises regularly used as a nightclub."

100. I believe that this is an accurate description of dances or dance parties given that a key characteristic of these types of events includes the featured use of recorded music for dancing. On the basis of information gathered by PPCA as part of this proceeding, it appears to me that dance parties tend to be one-off or annual events that charge a significant entry fee.



Increasing the rates payable by nightclubs and dance parties

101. PPCA's review of Tariff "E" also involves an increase in the rate payable by nightclub and dance party operators for the right to play sound recordings at those venues.
102. As I explained earlier, the current rate in Tariff "E" applicable to Nightclub Licensees is only 7.48 cents per person per night (based on licensed capacity) and the rate for Dance Party Licensees under Tariff "B" is 19.8 cents per person, based on estimated attendance. The two rates clearly differ significantly, although both rates relate to very similar uses of sound recordings.
- 103.

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104. At the end of the consultation period with its Nightclub Licensees and Dance Party Licensees (and representative organizations for those Licensees), I instructed Gilbert + Tobin to find and engage a consultant economist to assist PPCA with its review of Tariff "E". PPCA wanted to engage a consultant to value the right to play sound recordings at nightclubs and dance parties on the basis of sound economic methodologies.
105. On 11 August 2004, Gilbert + Tobin asked a number of economic consultants to submit tenders to carry out an economic valuation of the rate that should be paid by nightclub and dance party operators for the public performance of sound recordings at those venues. Tenderers were asked to detail their proposed economic methodology in their tenders. Four economic consultants submitted tenders, and following meetings with a number of the tenderers, Gilbert + Tobin engaged The Allen Consulting Group to value the right to play sound recordings for PPCA. The retainer of The Allen Consulting Group as economic consultant for the Tariff "E" review was also approved by PPCA's Board.
106. PPCA's Further Amended Dance Use Licence Scheme includes PPCA's proposed new rates for the use of sound recordings in nightclubs and at dance parties. These rates have been developed following the detailed economic analysis undertaken by The Allen Consulting Group to determine the value derived from the use of recorded music by nightclub and dance party operators. I understand that information about the work undertaken by The Allen Consulting Group in respect of PPCA's nightclub and dance party tariffs is set out in a separate affidavit of Jeremy Thorpe filed in this proceeding.



107. PPCA's Further Amended Dance Use Licence Scheme (including the proposed nightclub and dance party rates) is set out in the following table. It is my understanding that the results of the economic analysis undertaken by The Allen Consulting Group indicated that the economic value of the right to play recorded music in a nightclub venue was \$6.97, and of that, on the basis of a 3-way split between musical works' rights owners, sound recordings' rights owners and nightclub owners, the amount of \$2.32 should be attributed to the owners of the rights in sound recordings.
108. Although the economic analysis would have supported the immediate application of the proposed nightclub rate, it was my view that the rate for nightclubs should be phased-in incrementally over a period of five years to allow Licensees time to adjust to paying the full market rate, commencing with a rate of \$1.12 in the first year. No phase-in period is proposed for dance parties as these are normally one-off events for which the increase can be budgeted, rather than ongoing businesses with overhead costs. As with all PPCA tariffs, the proposed nightclub and dance party rates would be adjusted to take account of annual CPI increases.

DANCE USE		RATE				
E 1	Nightclubs	Year 1	Year 2	Year 3	Year 4	Year 5
		\$1.12	\$1.42	\$1.72	\$2.02	\$2.32
		The Proposed Rates are per person per night of operation, calculated on the basis of the Venue Capacity. The Proposed Rates would also increase annually by CPI.				
E 2	Dances and Dance Parties	\$5.10				
		The Proposed Rate is per person per event based on number of attendees. The Proposed Rate would increase annually by CPI.				

109.

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J. Harris

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SWORN by the Deponent)
before me:)



STEPHEN PHILIP PEACH



Solicitor: KATE HARRISON
Name: GILBERT J TOMM
Address: 2 PARK ST
SYDNEY

Attachment 14

COMMONWEALTH OF AUSTRALIA
COPYRIGHT ACT 1968



IN THE COPYRIGHT TRIBUNAL
FILE NO. CT) OF 2006

Reference by: **PHONOGRAPHIC PERFORMANCE COMPANY OF AUSTRALIA LIMITED** (ACN 000 680 704) under section 154(1) of the *Copyright Act* 1968

REFERENCE

1. The Applicant (**PPCA**) is a company duly incorporated.
2. Each of the entities listed in Annexure A (**PPCA Licensor**) is:
 - (i) the owner or exclusive licensee of copyright in sound recordings which copyright includes the exclusive right to cause recordings to be heard in public under the *Copyright Act* 1968 (the **Act**) and the *Copyright (International Protection) Regulations* 1969 to the extent that such recordings include that right (**Sound Recordings**); and
 - (ii) a licensor to PPCA of such copyright in Sound Recordings.
3. Each PPCA Licensor has non-exclusively licensed PPCA with respect to its rights in all Sound Recordings controlled by it, whether as owner of the copyright or as exclusive licensee, authorising PPCA as its agent to grant non-exclusive licences to persons in Australia to, among other things, cause those sound recordings to be heard in public in Australia (**Sound Recording Licences**).
4. Sound Recording Licences are granted by PPCA pursuant to tariffs applicable to certain uses which are set by PPCA (**PPCA Public Performance Tariffs**).

Filed on behalf of the Applicant by:

GILBERT + TOBIN

Lawyers
2 Park Street
Sydney NSW 2000

Tel (02) 9263 4000
Fax (02) 9263 4111
DX 10348 SSE
Ref KMH:SMG:231232

5. PPCA is a licensor within the meaning of s136 of the Act.
6. PPCA proposes to bring into operation a licence scheme (the **Fitness Class Licence Scheme**) in relation to the granting of Sound Recording Licences for the use of Sound Recordings to accompany fitness classes (**Fitness Class Use**) held by providers of fitness classes (**Fitness Class Providers**).
7. A copy of the Fitness Class Licence Scheme is attached as Annexure B.
8. Licences issued under the Fitness Class Licence Scheme will be subject to PPCA's Standard Terms and Conditions for Licences for the Public Use of Protected Sound Recordings in effect from time to time. PPCA's Standard Terms and Conditions as at the date of this Reference are set out in Annexure B.
9. The manner in which PPCA proposes to bring the Fitness Class Licence Scheme into effect is by:
 - (a) replacing the PPCA Public Performance Tariff applicable to Fitness Class Use with the Fitness Class Licence Scheme; and
 - (b) changing the rate payable by Fitness Class Providers for Fitness Class Uses to the rate in the Fitness Class Licence Scheme.
10. Except to the extent necessarily affected by the amendments set out in paragraph 9, in all other respects PPCA's licensing terms, conditions and charges are unchanged in respect of uses other than Fitness Class Uses and are presently intended to remain unchanged.
11. The Applicant requests the Tribunal to make:
 - (a) an order under s154(4) of the Act that the Fitness Class Licence Scheme be confirmed or varied, as the Tribunal considers reasonable in the circumstances; and
 - (b) such further or other orders as to the Tribunal seem fit.

Dated: 8 December 2006



Kate Harrison

Solicitor for the Applicant

Applicant's Address for Service:

C/- GILBERT + TOBIN

2 Park Street

SYDNEY NSW 2000

DX 10348 SYDNEY STOCK EXCHANGE

Tel: (02) 9263 4000

Fax: (02) 9263 4111

Ref: KMH:SMG:251446

Annexure A

**EXCLUDED FROM
PUBLIC REGISTER**

ANNEXURE B
FITNESS CLASS LICENCE SCHEME

PPCA TARIFF "V" – MUSIC TO ACCOMPANY FITNESS CLASSES

**The use of Sound Recordings by a Fitness Class Provider for Fitness Class Use will be
calculated at a rate of \$* per class**

** PPCA has not yet nominated any specific amount by way of a licence fee for the use of Sound Recordings by a Fitness Class Provider for Fitness Class Use. PPCA is asking the Copyright Tribunal to set a rate that is fair and reasonable. PPCA will provide the Copyright Tribunal with its proposed rate in the course of the proceedings, taking into account expert economic analysis and evidence presented during the proceedings.*

NOTES:

1. Tariff V licences will be issued subject to PPCA's Standard Terms and Conditions for Licences for the Public Use of Protected Sound Recordings, in effect from time to time, the current Standard Terms and Conditions being set out below.
2. **Fitness Class Provider** means a person or entity providing fitness classes, including gyms and health clubs.
3. **Fitness Class Use** means the use of Sound Recordings to accompany fitness classes.
4. **Sound Recordings** means sound recordings the copyright in which includes the exclusive right to cause the recordings to be heard in public under the *Copyright Act 1968* and the *Copyright (International Protection) Regulations 1969* to the extent that such recordings include that right.
5. This tariff is applicable from 1 July 2007 and the rate specified is GST inclusive.
6. Fees for all licences issued under this Tariff are payable in full annually in advance.
7. A separate fee is payable in respect of each class offered by a Fitness Class Provider where Sound Recordings are used for Fitness Class Use.
8. This tariff does not cover the public exhibition of music video clips, including DVD, or any other similar medium (Tariffs "W" and /or "W-E" are applicable).

**PPCA STANDARD TERMS AND CONDITIONS FOR LICENCE FOR PUBLIC USE OF PROTECTED
SOUND RECORDINGS**

**TERMS AND CONDITIONS – Licence for
public use of protected sound recordings
and/or music videos**

1. DEFINITIONS

1.1 In this Agreement:

- (a) **Agreement** means these Terms and Conditions, the Licence Details (including any Special Conditions noted thereon), Schedule 1 and Schedule 2, and any and all other schedules, attachments and/or annexures.
- (b) **Annual Renewal Date** means the anniversary of the Commencement Date.
- (c) **Commencement Date** means the date specified as such in the Licence Details.
- (d) **Copyright Act** means the *Copyright Act 1968* (Cth), as amended from time to time.
- (e) **Exhibit** means cause a Licensed Music Video, in so far as it consists of visual images, to be seen in public and, in so far as it consists of sounds, to be heard in public, and **Exhibition** has a corresponding meaning.
- (f) **Licence** means the licence granted to You under clause 2.1 of this Agreement.
- (g) **Licence Details** means:
 - (i) the form that You completed and provided to PPCA at the time at which You applied for the grant of the Licence, in which You described Your uses of sound recordings and/or music videos, as amended by PPCA to include information relevant to the granting of this Licence in the section of the form marked "PPCA Use Only"; or
 - (ii) any similar form that You completed and provided to PPCA on or about an Annual Renewal Date, in which You provided updated details of Your uses of sound recordings and/or music videos; whichever is the most recent.
- (h) **Licensed Music Video** means a cinematograph film that embodies:
 - (i) a sound recording; or
 - (ii) a sound-track that, if made separately from the cinematograph film, would be a sound recording;in which the copyright is owned or controlled by a Licensor listed in Schedule 1, in any form including digital or other electronic machine-readable form.
- (i) **Licensed Rights** means such of the following rights as are specified in the Licence Details as being granted to You in accordance with this Agreement (as further limited under clause 2.2).
 - (i) the Public Performance Right in the Licensed Sound Recordings;
 - (ii) the Music on Hold Right in the Licensed Sound Recordings; and/or
 - (iii) the right to Exhibit the Licensed Music Videos.
- (j) **Licensed Sound Recording** means a Protected Sound Recording in which the copyright is owned or controlled by a Licensor listed in Schedule 1, and which has been released on a label listed in Schedule 2, in any

form including digital or other electronic machine-readable form.

- (k) **Licensor** means a person who owns or controls the copyright in the Territory in a Protected Sound Recording and/or a Licensed Music Video, and who authorises PPCA to grant Licences in accordance with this Agreement.
- (l) **Music on Hold Right** means the right to transmit Licensed Sound Recordings to callers on hold by means of an analogue or digital service or device (whether now in existence or developed in the future), including without limitation a radio, compact disc player, cassette player, computer hard drive or other audio device, used in connection with a telecommunications system.
- (m) **Personal Information** means information or opinion about an individual from which the identity of the individual is apparent or can reasonably be ascertained.
- (n) **PPCA** means Phonographic Performance Company of Australia Limited (ACN 000 680 704).
- (o) **PPCA Tariff Schedule** means the published schedule of tariff classifications and fees (as amended from time to time) under which PPCA grants licences for the public use of Licensed Sound Recordings and Licensed Music Videos. The applicable version of the PPCA Tariff Schedule at any time can be accessed on the Website, or will be made available on request to PPCA.
- (p) **Public Performance Right** means the right to cause Licensed Sound Recordings to be heard in public.
- (q) **Protected Sound Recording** means a sound recording for which the Copyright Act grants a Public Performance Right and/or a Music on Hold Right.
- (r) **Schedule 1** means the list of Licensors published on the Website, as amended from time to time in accordance with clause 2.10.
- (s) **Schedule 2** means the list of labels owned or controlled by the Licensors listed in Schedule 1, as published on the Website, and as amended from time to time in accordance with clause 2.10.
- (t) **Territory** means Australia.
- (u) **Website** means the PPCA website currently located at www.pcca.com.au and any subsequent website which might replace it.
- (v) **You** means the person or entity holding the Licence granted under this Agreement, as specified in the Licence Details, and Your has a corresponding meaning.

1.2 A word or expression which is not defined in this Agreement, but which is defined in the Copyright Act, has the meaning given to it by that Act.

2. LICENCE

Grant of Licence

2.1 Subject to the terms and conditions of this Agreement, PPCA grants You on and from the Commencement Date a non-exclusive licence of the

Licensed Rights in the Territory for an initial period of 12 months (**Initial Period**).

- 2.2 For the purposes of clause 2.1, and subject to clause 2.3, the Licence is, unless we inform You to the contrary, limited to those uses, premises, events, times, numbers of users, facilities, vehicles, venues and/or equipment described in the Licence Details (**Your Approved Uses**).

Variation of Licence

- 2.3 If at any time Your use of Licensed Sound Recordings or Licensed Music Videos materially changes from Your Approved Uses, You must notify PPCA in writing within 28 days of that change. In addition to that obligation, You must also notify PPCA of any such changes from Your Approved Uses by completing the Licence Details sections of any re-assessment form sent to You by PPCA prior to an Annual Renewal Date. PPCA may by written notice to You increase the amount of Your licence fee, in accordance with the then applicable PPCA Tariff Schedule, to reflect any such changes in Your Approved Uses (**Revised Licence Fee**). The notification to You of the Revised Licence Fee will constitute a debt due and owing by You to PPCA.
- 2.4 Once You have paid any such Revised Licence Fee, and unless PPCA notifies You to the contrary, the Licence will be **extended** to include any changes notified to PPCA under clause 2.3 on and from the date that You notified PPCA, and for the purposes of clauses 2.2 and 2.3, Your Approved Uses will be deemed on and from that date to include those changes.

Licence Fee

- 2.5 In consideration of the grant of the Licence for the Initial Period, You must pay PPCA on or before the Commencement Date the licence fee for the Initial Period, as specified in the Licence Details. In consideration of the renewal of the Licence in any subsequent years, You must pay PPCA on or before the Annual Renewal Date the amount of the licence fee for that year, as notified to You by PPCA. PPCA may increase the licence fee payable for any subsequent years in accordance with the PPCA Tariff Schedule that applies on the Annual Renewal Date.
- 2.6 The amount of any licence fee payable under this Agreement is inclusive of GST.

PPCA Warranty

- 2.7 PPCA warrants that
- (a) it will procure that each of the Licensors, as applicable, will at all times keep You harmless and indemnified against all claims, demands, damages, costs, charges and expenses which may be made against You, or which You may suffer or incur at the suit of any third party arising out of any defect in the title of that Licensor in respect of the Licensed Rights, provided that:
- (i) such claim or demand did not arise out of the exercise of any Licensed Rights, in respect of which, at the time or times of such exercise, the Licence had been withdrawn pursuant to clauses 2.10, 2.11 or terminated pursuant to clause 3;
- (ii) You notify PPCA within 7 days of becoming aware of any such claim or demand being made or threatened; and
- (iii) You make no admission of liability and take no action that might prejudice the

position of PPCA, the Licensor which purports to either own or control the Licensed Rights (**the Relevant Licensor**) or of any persons owning or having any interest in the Sound Recording(s) concerned, without the prior written consent of PPCA or the Relevant Licensor;

- (iv) any one or both of PPCA or the Relevant Licensor will be entitled to conduct at their own cost and expense all negotiations in respect of any such claim or demand and any proceedings that may arise from it, and to contest, settle or otherwise deal with any such claim or demand or proceeding as PPCA or the Relevant Licensor may in its absolute discretion determine. You must, if and when so reasonably required by PPCA or the Relevant Licensor, provide PPCA or the Relevant Licensor, as applicable, with such evidence relating to any matter arising out of any such claim or demand or proceeding as You may have at your disposal and attend and give evidence at any court hearing or other inquiry, provided that PPCA or the Relevant Licensor, as applicable, compensates You for all reasonable costs, expenses and labour time incurred; and
- (v) PPCA must, within fourteen (14) days after being notified by You of any claim or demand having been made or threatened as provided in paragraph (a) (ii), inform You in writing of the name and address of the Relevant Licensor. PPCA will in all cases liaise directly with the Relevant Licensor on any such claim or demand and their response.

Limitations on Licence

- 2.8 This Licence does not authorise or permit You to:
- (a) use any Licensed Sound Recording or Licensed Music Video for the purpose of a broadcast on radio or television, or for any form of transmission or making available over the Internet, or in any circumstances other than Your Approved Uses;
- (b) duplicate, dub, transfer or otherwise copy or reproduce, by any means or in any medium (whether digital or analogue, and whether now in existence or developed in the future), the whole or any part of a Licensed Sound Recording or Licensed Music Video for any purpose whatsoever;
- (c) use any Licensed Sound Recording or Licensed Music Video prior to the date on which it is first published in Australia;
- (d) Exhibit any Licensed Music Video prior to the date on which the sound recording embodied in the Licensed Music Video is first published in Australia; or
- (e) cause to be heard in public, or to be communicated to the public (including without limitation by any form of electronic transmission or making available over the Internet), independently of the Exhibition of a Licensed Music Video in accordance with this Agreement, any Protected Sound Recording embodied in a Licensed Music Video.
- 2.9 Nothing in this Agreement grants You any rights in relation to any musical, literary or artistic works, or any other copyright-protected subject matter,

- embodied or reproduced in a Licensed Sound Recording or Licensed Music Video. You acknowledge that if You wish to exploit any such rights, it is Your responsibility to obtain a licence from the owner of copyright in the relevant works, or from an organisation authorised to grant such licences, such as the Australasian Performing Rights Association (APRA).
- 2.10 PPCA may at any time amend Schedule 1 by deleting or adding the name of a Licensor or Schedule 2 by deleting or adding the name of a label, and any such amendment takes effect as and from the date on which the amendment is incorporated into Schedule 1 or Schedule 2 and posted on the Website. You acknowledge and agree that if the name of a Licensor is deleted from Schedule 1, or the name of a label is deleted from Schedule 2, then the Licence for Licensed Sound Recordings and/or Licensed Music Videos owned or controlled by that Licensor or released on that label (as the case may be) is withdrawn on and from the date of posting on the Website, and if the name of a Licensor is added to Schedule 1, or the name of a label is added to Schedule 2, then the Licence extends to Licensed Sound Recordings and/or Licensed Music Videos owned or controlled by that Licensor or released on that label (as the case may be) on and from the date of posting on the Website.
- 2.11 PPCA may withdraw the Licence for particular Licensed Sound Recordings or Licensed Music Videos and notify You of such withdrawal. Any such withdrawal takes effect on and from the date on which You receive notification from PPCA of that withdrawal.
- 2.12 If the Licence for a Licensed Sound Recording or Licensed Music Video is withdrawn for any reason, You are not authorised under this Agreement to exercise any rights in that Licensed Sound Recording or Licensed Music Video after the date of withdrawal of the Licence.
- 2.13 This Licence is personal to You. It must not be assigned or sub-licensed except with the written consent of PPCA. For the purposes of this Agreement, an assignment will be deemed to have occurred where You, as a corporation, cease to be controlled (within the meaning of the *Corporations Act 2001* (Cth)) by the person or persons who controlled You on the Commencement Date.
- 2.14 Nothing in this Agreement prevents You from seeking or obtaining a licence authorising You to exercise any rights in relation to sound recordings or music videos from any other party holding or retaining such rights (including the rights) and authorised to negotiate and grant such a licence, including the Licensors listed in Schedule 1.
- 2.15 You acknowledge that, notwithstanding this Licence, any person can, subject to certain conditions, avail themselves of the statutory licence under section 108 of the Copyright Act to cause sound recordings to be heard in public if they have paid an agreed amount to the owner of copyright in the recording or have given an undertaking to the copyright owner to pay such amount as is determined by the Copyright Tribunal under section 151 of the Copyright Act. The terms of these provisions of the Copyright Act are set out in full on the Website, or will be made available on request to PPCA.
- 3. TERM AND TERMINATION**
- 3.1 On each Annual Renewal Date, unless this Licence is terminated by PPCA or by You pursuant to clause 3.2, and provided You pay the amount of the licence fee notified to You by PPCA in accordance with clause 2.5, the Licence will be automatically renewed for a further period of 12 months (**Further Period**) on the same terms and conditions (subject to clause 6.5).
- 3.2 Either You or PPCA may terminate this Agreement, at the end of the Initial Period or at the end of any Further Period, by written notice to the other party. A termination notice under this clause must be given to the other party at least two weeks before the relevant Annual Renewal Date and will take effect on and from the Annual Renewal Date.
- 3.3 If You breach any term or condition of this Agreement (including without limitation by failing to pay any amount of money due to PPCA by the relevant due date), PPCA may terminate the Agreement by written notice to You. Any such termination takes effect immediately on notification to You. A termination under this clause does not affect PPCA's right to recover from You any monies due and payable by You under this Agreement, or the right of PPCA or any of the Licensors listed in Schedule 1 to recover any damages they have suffered as a result of the breach.
- 3.4 Notwithstanding any other clause, this Agreement terminates automatically and without notice:
- (a) if You are not a natural person, immediately on the appointment to You of a liquidator or provisional liquidator, receiver or receiver and manager, administrator, or an agent of a mortgagee or immediately on the passing of a resolution or the making of an order for Your winding-up; or
- (b) if You are a natural person, immediately on You committing an act of bankruptcy or being declared bankrupt, or on You making a composition with creditors.
- A termination under this clause does not affect PPCA's right to recover from You any monies due and payable by You under this Agreement.
- 3.5 You must pay to PPCA any expenses, costs, fees, disbursements or other charges reasonably incurred by PPCA in recovering any monies due and payable by You under this Agreement, whether during the term of the Agreement or following the termination of the Agreement, including without limitation any debt collection fees and legal expenses.
- 3.6 If this Agreement is terminated for any reason, You will not be authorised under this Agreement to exercise any rights in any Licensed Sound Recordings or Licensed Music Videos after the date of termination of the Agreement.
- 4. ADDITIONAL RIGHTS**
- 4.1 Subject to clause 4.2, if You consider that any terms or conditions of this Agreement are unreasonable, You may refer those terms or conditions to the PPCA Board of Review for review. You must give PPCA one month's written notice of Your intention to seek a review, specifying the terms or conditions of the Agreement which You wish to have reviewed. However, You may seek a review from the Board of Review immediately on execution of this Agreement by giving PPCA written notice at that time of the terms or conditions which You wish to have reviewed.
- 4.2 If:
- (a) at the time You are seeking a review under clause 4.1, there is in force an order of the Copyright Tribunal which has the effect of confirming the terms or conditions which You wish to have reviewed, including without limitation the licence fees (in this clause 4, the **Disputed Terms or Conditions**); or

- (b) at the time You are seeking a review under clause 4.1, the Copyright Tribunal has before it an application (whether made by You, PPCA or any other person) the determination of which will or may have the effect of confirming or varying the Disputed Terms or Conditions; PPCA may notify You in writing accordingly, and Your right to seek review of the Disputed Terms and Conditions under clause 4.1 will be terminated on and from the date of receipt of such notification.
- 4.3 Until the Board of Review has made its decision, this Agreement continues to govern the rights and obligations of PPCA and You. If You refer to the Board of Review under this clause 4 the amount of any licence fee payable under this Agreement, then You must still pay the licence fee to PPCA in accordance with the terms of this Agreement. In the event that the Board of Review determines that a lower fee is payable, PPCA will refund the balance to You within 14 days of such determination (subject to any right of either party to apply to the Copyright Tribunal or a court).
- 4.4 The Board of Review will be constituted by three members including a Chair appointed by the Australian Institute of Arbitrators, a member appointed by PPCA, and a member appointed by the trade association most closely associated with Your business or industry.
- 4.5 If the Board of Review is satisfied that any of the terms or conditions of this Agreement referred to it for review are unreasonable, it may amend those terms or conditions in such manner as it thinks fit. Those amended terms and conditions bind both You and PPCA.
- 4.6 Nothing in this Agreement is intended to limit or otherwise affect Your or PPCA's right to make an application to the Copyright Tribunal in accordance with the Copyright Act in relation to the exercise of any rights licensed to You under this Agreement. However, if at any time before the Board of Review has made a decision under this clause 4, an application is made to the Copyright Tribunal (whether by You, PPCA or any other person) the determination of which will or may have the effect of confirming or varying the Disputed Terms and Conditions, the Board of Review's consideration of the Disputed Terms and Conditions will be terminated on and from the date of such application.
- 4.7 For the purposes of the Board of Review's consideration of the terms or conditions of this Agreement referred to it for review, the following provisions will apply:
- (a) no legal representatives may appear;
 - (a) any hearing will occur at a place that the Chair considers convenient for all parties;
 - (b) the costs of the proceedings, including without limitation any professional costs incurred by the Chair and members, stenographer's fees and any fees for the hiring of a venue, will be shared equally between You and PPCA;
 - (c) the Board of Review must not require a party to pay the costs of any other party;
 - (d) the proceedings will be conducted in accordance with the procedures (if any) published by PPCA from time to time on the Website. If no such procedures have been published by PPCA, the proceedings will be conducted in accordance with procedures agreed between the parties or, if the parties cannot agree, in accordance with procedures decided by the Chair. At all times during the proceedings, the Chair retains the power to make decisions in relation to specific procedural matters not dealt with in any published, agreed or previously decided procedures, and such decisions are binding on both You and PPCA. In all cases, the proceedings must be conducted in an informal manner and the rules of evidence will not apply;
 - (e) the parties must comply with any directions of the Chair about the conduct of the proceedings; and
 - (f) subject to clause 4.6, the Board of Review must give the parties a written decision on the terms or conditions of this Agreement referred to it for review within three months of receiving final submissions. If the Board of Review has not made a decision within that time, PPCA may immediately terminate this Agreement. Any such termination does not affect PPCA's right to recover from You any monies due and payable by You under this Agreement up to and including the date of such termination.
- 4.8 In reviewing the terms or conditions of this Agreement referred to it, the members of the Board of Review must act as experts and not as arbitrators. *The Commercial Arbitration Act 1984* (NSW), or any similar legislation of any State, Territory or the Commonwealth, has no application to the review or to the Board of Review's decision.
- ## 5. PERSONAL INFORMATION
- 5.1 You acknowledge that PPCA needs to collect Personal Information about You for the purpose of PPCA performing its obligations and exercising its rights under this Agreement (**the Primary Purpose**) and for related purposes. You authorise PPCA to collect, use and disclose Personal Information about You for the Primary Purpose, including without limitation to supply that Personal Information to the Australian Record Industry Association Limited (**ARIA**) for the purpose of ARIA determining whether any person may require a licence for the reproduction of any sound recording or music video.
- 5.2 You acknowledge that this Agreement may require You to disclose to PPCA Personal Information about Individuals from whom You obtain, or to whom You supply, goods or services (**Individual Customers**). It is Your responsibility to ensure that, before disclosing to PPCA any Personal Information about Individual Customers, each such Individual Customer is made aware that:
- (a) You may disclose to PPCA Personal Information about the Individual Customer, including without limitation their name and address, the details of the goods or services You supply to them or obtain from them, and the details of any agreements they have with You;
 - (b) PPCA may collect, use and disclose such Personal Information about the Individual Customer for the Primary Purpose and for related purposes; and
 - (c) PPCA may disclose such Personal Information about the Individual Customer to ARIA for the purpose of ARIA determining whether any person (including the Individual Customer) may require a licence for the reproduction of any sound recording or music video.
- 5.3 You must at all times indemnify and hold PPCA harmless against all claims, demands, damages, costs, charges and expenses (including legal expenses) that may be made against or incurred by PPCA arising out of or in connection with a breach of this clause, including without limitation any amount incurred or paid by PPCA as compensation

for loss or damage suffered by any individual as a result of an interference with the privacy of that individual (within the meaning of the *Privacy Act 1988* (Cth)).

6. MISCELLANEOUS

- 6.1 This Agreement takes effect when both PPCA and You have executed it.
- 6.2 This Agreement is subject to any Special Conditions that appear in the Agreement Details. In the event of any inconsistency between such Special Conditions and this Agreement, the Special Conditions will prevail, but only to the extent of the inconsistency.
- 6.3 Any notice or other communication to or by a party under this Agreement must be in writing addressed to the other party. Any such notice or communication is deemed to have been received by or served on the recipient:
- (a) if by email, on the day the email is sent (as long as the sender has not received a delivery failure message in relation to that email);
 - (b) if by delivery in person, when delivered to the recipient;
 - (c) if by post, five days from and including the date of postage; or
 - (d) if by facsimile transmission, when despatched to the recipient; but if the delivery or receipt is after 4:00 pm (recipient's time), it is deemed to have been received or served on the following day.
- 6.4 All notices to PPCA must be sent to the address specified at the end of this Agreement. All notices to You will be sent to the address specified in the Agreement Details, or to such other address as You notify to PPCA in writing.
- 6.5 You acknowledge and agree that PPCA may amend any or all of the terms and conditions of this Agreement (with the exception of Schedule 1 and Schedule 2, which will only be amended in accordance with clause 2.10) at any time by giving notice to You in accordance with this clause 6 (**Amendment Notice**). If You do not agree with the amended terms and conditions, You may terminate this Agreement by giving notice in writing to PPCA before the date of effect specified in the Amendment Notice. If You continue to exercise any of the Licensed Rights after the date of effect of an Amendment Notice, You will be deemed to have agreed to the amended terms and conditions and You will continue to be bound by this Agreement, as amended.
- 6.6 No waiver by PPCA of a breach of a clause of this Agreement operates as a waiver of any other breach of the same clause or of a breach of any other clause. All rights not expressly granted to You under this Agreement are reserved to PPCA.
- 6.7 This Agreement is deemed to have been made in New South Wales and must be construed, and has effect, according to the laws of that State. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.

Attachment 15

ATTACHMENT 15

DEFINITIONS FOR PURPOSE OF THE AUTHORISATION SOUGHT

Agreement has the same meaning as that of the word “contract” in section 45 of the Trade Practices Act 1974 (Cth).

Arrangement has the same meaning as that of the same word in section 45 of the Trade Practices Act 1974 (Cth) subject to the broader meaning of this term in the context of Collective Licensing Arrangements as here defined.

Authorised Conduct means the Collective Licensing Arrangements.

Board of Review means the board and the review procedure established under Clause 10 of the PPCA Standard Input Licence (see **Attachment 2**).

Collective Licensing Arrangements mean Input Licences, Output Licences, Licence Out Arrangements and Distribution Arrangements.

Distribution Arrangement means a proposed agreement, arrangement or understanding entered into by PPCA with a licensor pursuant to an Input Licence for the distribution of revenue received by PPCA pursuant to an an Output Licence or a License Out Arrangement. A Distribution Arrangement has the following essential features:

- PPCA will grant licences and collect licence fees under the authority granted by an Input Licence; and
- PPCA will apply revenue from the collection of licence fees annually in accordance with (a) the terms and conditions of the Input Licence; and (b) the Distribution Policy.

Distribution Policy means the policy on allocation and distribution of licensing fee revenue published by PPCA on its website and incorporated in Input Licences by reference. A Distribution Policy has the following essential features:

- allocation rules and guidelines for the determination of revenue attributable to each licensor;

- rules for the deduction of expenses and the contribution of a certain proportion of net revenue for charitable purposes, including contribution to the PPCA Performers' Trust Foundation;
- distribution rules for the distribution to licensors for the net amount of revenue payable to them;
- a direct artist distribution scheme;
- obligations of licensors, registered artists and PPCA in relation to the application of the allocation and distribution rules prescribed; and
- mechanisms for complaints and dispute resolution.

Input Licence means a proposed agreement, arrangement or understanding entered into by PPCA with a licensor of a Public Performance Right or a Transmission Right. The essential features are:

1. Public Performance Rights

- (a) Each licensor authorises PPCA to grant licences to cause to be heard in public in Australia sound recordings and associated cinematograph films. The licensor is the owner of copyright, or the licensee of such owner, or is otherwise empowered to grant such a licence.
- (b) The licence to PPCA will require that, in granting licences to a person, PPCA will charge a licence fee established in one of the following ways:
 - (i) by agreement between PPCA and the person; or
 - (ii) as determined by the Copyright Tribunal;
- (c) PPCA shall inform the licensee or prospective licensee of its rights:
 - (i) to avail itself of a statutory licence to cause sound recordings to be heard in public under s 108 of the Act; and
 - (ii) of the right of review by a Board of Review; and

(iii) to make an application to the Copyright Tribunal.

2. Transmission and Related Rights

(a) Each licensor authorises PPCA to grant licences to communicate (including broadcast) in Australia sound recordings and associated cinematograph films, together with reproduction and other rights necessary to facilitate such communication. The licensor is the owner of copyright, or the licensee of such owner, or is otherwise empowered to grant such a licence.

(b) the licence to PPCA will require that, in granting licences to a broadcaster or other party, PPCA will charge a licence fee established in one of the following ways:-

(i) by agreement between PPCA and the person; or

(ii) as determined by the Copyright Tribunal.

(c) PPCA shall inform the licensee or prospective licensee of its rights:

(i) in the case of broadcast, to avail itself of a statutory licence to broadcast sound recordings and associated cinematograph films under s 109 of the Copyright Act 1968; and

(ii) of the right of review by a Board of Review; and

(iii) to make an application to the Copyright Tribunal.

3. PPCA has a non exclusive right

(a) The right granted to PPCA by licensors is not an exclusive right such that the licensors forego expressly or by implication or understanding the right themselves to individually enter into licensing arrangements with any person seeking a licence.

(b) The individual licensors retain the right to negotiate with and enter into agreements with individual licensees as to licence and licensing fees.

4. Notification to licensees of rights

Licenses or prospective licensees may be notified of their rights in accordance with paragraphs 1, 2 and 3 above in writing by PPCA when offering a licence or by publication prominently on PPCA's website.

License Out Arrangement means a proposed agreement, arrangement or understanding entered into by PPCA with a licensor for the sub-licensing overseas of a Public Performance Right or a Transmission Right. A License Out Arrangement has the same essential features as an Input Licence.

Output Licence means a proposed agreement, arrangement or understanding entered into by PPCA with a sub-licensee for the sub-licensing of a Public Performance Right or a Transmission Right pursuant to an Input Licence. An Output Licence has the following essential features:

1. Public Performance Rights

- (a) PPCA will charge a licence fee established in one of the following ways:
 - (i) by agreement between PPCA and the person; or
 - (ii) as determined by the Copyright Tribunal
- (b) PPCA shall inform the licensee or prospective licensee of its rights:
 - (i) to avail itself of a statutory licence to cause sound recordings to be heard in public under s 108 of the Act; and
 - (ii) of the right of review by a Board of Review; and
 - (iii) to make application to the Copyright Tribunal

2. Transmission and Related Rights

- (a) PPCA will charge a licence fee established in one of the following ways:-
 - (i) by agreement between PPCA and the person; or
 - (ii) as determined by the Copyright Tribunal.

- (b) PPCA shall inform the licensee or prospective licensee of its rights:
 - (i) in the case of broadcasting, to avail itself of a statutory licence to broadcast sound recordings and associated cinematograph films;; and
 - (ii) of the right of review by a Board of Review; and
 - (iii) to make application to the Copyright Tribunal.

3. PPCA has a non exclusive right

- (a) The right granted to PPCA by licensors is not an exclusive right such that the licensors forego expressly or by implication or understanding the right themselves to individually enter into licensing arrangements with any person seeking a licence.
- (b) The individual licensors retain the right to negotiate with and enter into agreements with individual licensees as to licence and licensing fees.

4. Notification to licensees of rights

Licensees or prospective licensees may be notified of their rights in accordance with paragraphs 1, 2 and 3 above in writing by PPCA when offering a licence or by publication prominently on PPCA's website.

Party means: (a) a person who enters into or gives effect to a Collective Licensing Arrangement; (b) a person whose relationship to a Collective Licensing Arrangement is that of a secondary party within the meaning of section 76(1) of the Trade Practices Act 1974 (Cth); and (c) a person who is referred to in a Collective Licensing Arrangement as having rights or obligations, whether specific to them or for a class of persons.

PPCA Licensor means a party who has entered into or who enters into an Input Licence.

Public Performance Right means the right to play sound recordings and music videos in public.

Related Right means a reproduction right or other right deemed by PPCA to be necessary for or incidental to the exercise of a Transmission Right under licence.

Relevant Trade Practices Act Prohibitions mean the prohibitions under section 45 of the Trade Practices Act in respect of which the Authorisation confers an exemption from liability, namely the prohibitions against:

- (a) agreements and related conduct that have the purpose, effect or likely effect of substantially lessening competition in a market;
- (b) agreements and related conduct that are price fixing as defined in section 45A of the TPA; and
- (c) agreements and related conduct that fall within the definition of an exclusionary provision in section 4D of the TPA.

Transmission Right means the right to communicate to the public (including broadcast) in Australia sound recordings and associated cinematograph films, and any Related Right.

Understanding has the same meaning as that of the same word in section 45 of the Trade Practices Act 1974 (Cth).