



Australian Government
Attorney-General's Department

**Information Law and
Human Rights Division**

07/6265

18 April 2007

FILE No:

DOC:

MARS/PRISM:

Mr Scott Gregson
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Dear Mr Gregson

Phonographic Performance Company of Australia Ltd (PPCA) ref: A91041-A91046

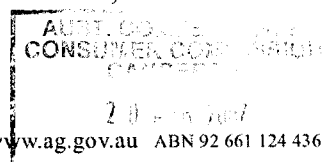
Thank you for your letter of 4 April 2007 inviting this Department's comments on the application by the PPCA for a new authorisation from the ACCC.

With its responsibility for the *Copyright Act* 1968, this Department has an interest in the determination of the PPCA's application. Without prejudice to the ACCC's consideration of the application, the Department supports in principle the collective administration of the licensing of the use of copyright so far as it makes a major contribution to convenient user access to copyright material and also secures an economic return to copyright owners. In short, collective administration helps considerably to make copyright workable in practice. We note that this has also been recognised by the ACCC in its recent authorisation of the Australasian Performing Right Association's licensing arrangements.

The Department is not in a position to endorse or question much of the material and arguments included by the PPCA in its application. However, as an interested party we would like to be kept informed of the progress of the application. The following are some minor comments at this stage for your consideration.

Para 2.4.11 might imply that the Berne Convention imposes obligations on the PPCA towards foreign sound recording copyright owners. We note that sound recordings are not protected by that Convention. We add for avoiding any doubt that both that Convention and the TRIPs Agreement impose obligations on governments of member countries; PPCA's obligations are under the Copyright Act and Copyright Regulations, by which the Australian Government has implemented those treaty obligations.

Para 4.9.21 concludes with the statement that 'Adoption of the [ACCC's] draft guidelines [on copyright licensing] will help overcome the concern previously voiced in some quarters that Copyright Tribunal proceedings took insufficient account of economic principles'. The Department reaffirms the views expressed in its comments to the ACCC on those draft guidelines, in its letter

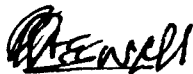


dated 21 March 2007 to the ACCC accessible at –
<http://www.accc.gov.au/content/index.phtml/itemId/780875>.

At the end of para 4.11.2 it is stated that ‘The commercial broadcasters and other major licensees do exercise countervailing market power and many commercial broadcasters negotiate direct licences with *broadcasters* for music videos’ (emphasis added). We question whether that the last reference to ‘broadcasters’ should be a reference to ‘licensors’.

The action officer for this matter is the undersigned.

Yours sincerely



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