

**WA NIGHTCLUB ASSOCIATION INC
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7 September 2007

The General Manager
Adjudication Branch
Australian Competition & Consumer Commission
GPO Box 313
Canberra ACT 2601

Dear Sir,

RE: Phonographic Performance Company of Australia application for revocation and substitution A91041 & A91042

We refer to your letter dated 29 August 2007.

We have carefully considered the suggested alteration to the condition regarding protected recordings. Our comments are set out below:-

1. As we set out in our submission of 10 August the PPCA is singularly in a position to know whether a recording for which a licence fee is claimed is protected or not. This is so because they act for the record companies and demand the necessary information from them as part of the respective input licence agreements with those companies.
2. Whilst the PPCA argue that the information requested in their input licence agreements is for the purpose of determining distribution revenue in our submission it is inconceivable that PPCA would not seek that information upfront for the very purpose of establishing its right to claim copyright licence fees on behalf of the input licensee.
3. Whilst the compromise proposal suggested has at least some merit it is not likely to be of assistance to the majority of nightclubs. Most nightclubs exist in a market that is highly competitive. They cater in the main to a younger demographic (18 to 28-30) who apart from the social experience seek the very latest music. Accordingly nightclubs seek out music that is at the "cutting edge" most of which is not yet released in Australia.

4. The practice of playing such cutting edge music has been driven by the major record companies themselves. Those companies supply to DJ's and venues sample copies of new releases long before they are released to the public. By playing that music in our venues demand for the particular recording is generated such that upon release the recording goes straight to the top of the charts. The relationship between nightclubs and record companies has been far more symbiotic than most people realise for quite a while.
5. That relationship has broken down only recently and has more to do with the effect of internet sales and downloading than anything else although many smaller labels (and some larger labels) do still carry on the practice. Our members are often supplied with advance or sample copies of the latest recordings and asked to play them to our customers both to gauge the reaction and to promote sales.
6. The PPCA has not yet realised the enormous damage it has caused, and will in the future cause, the Australian music industry by pursuing the path they have to date. The vast increase in licence fees will have the inevitable consequence that many venues around Australia that supported and championed Australian music will be forced to find alternative unprotected music. It is a simple case of economic necessity.
7. What we seek is quite simple. Tell us what music is protected so that we can elect to either play it and pay a licence fee or seek out and play unprotected recordings. If the PPCA demands of our members a licence fee then why can't they tell us what music they protect? We do not believe, in the vast majority of cases, it is hard to determine whether a recording is protected or not.
8. We support any limitation on PPCA's enforcement of copyright as suggested. Some measure needs to be put in place to ameliorate the invidious position our members find themselves in at the moment when deciding whether to elect to play non protected music. This position is made all the worse by the aggressive enforcement stance of the PPCA as reflected in their published statements and annual report.

Yours Sincerely

DAVID WALLACE
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