

Gavin Jones - Director
Adjudication Branch
Australian Competition & Consumer Commission
GPO Box 520 Melbourne VIC 3000

FILE No:
DOC:
MARS/PRISM:

5th December 2008

Dear Gavin

RE: AIR Notification of Collective Bargaining

As per previous correspondence between the ACCC and AIR through our appointed consultant, Brent Fisse, please find attached Notifications on Collective Bargaining for the following targets:

- Telstra
- Optus
- Foxtel
- Austar
- MTV
- XYZ
- Fuel TV
- BIGPOND

In addition, I have also included a copy of the application fee funds as per the direction from your office. It is our understanding that the fee covers the first application and that each subsequent application carries a zero dollar application fee on the proviso that it is received by your office within 14 business days.

Should you have any queries regarding the application, please don't hesitate to call or email (stu@air.org.au) directly.

Sincerely

Stuart Watters
Chief Executive Officer
Australian Independent Record Labels Association (Ltd)

Form GA

Commonwealth of Australia

Trade Practices Act 1974 — subsection 93AB (1)

NOTIFICATION OF COLLECTIVE BARGAINING

This form is to be completed by applicants proposing to engage in collective bargaining arrangements.

In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

Protection provided by the notification extends only to the collective bargaining arrangements described in the form.

To the Australian Competition and Consumer Commission:

Notification is hereby given under subsection 93AB (1) of the *Trade Practices Act 1974*:

- to make, or propose to make, a contract containing a provision of the kind referred to in paragraph 45 (2)(a) of the *Trade Practices Act 1974*; or
- to give effect to a provision of a contract where the provision is of the kind referred to in paragraph 45 (2)(b) of the *Trade Practices Act 1974*.
(Strike out if not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

Section A — general information

1. Applicant

- (a) Name of the applicant:
(refer to Direction 1)

C800059 AUSTRALIAN INDEPENDENT RECORD LABELS ASSOCIATION LTD (AIR) AND PARTICIPATING MEMBERS OF AIR

- (b) Description of business carried on by the applicants:
(refer to Direction 2)

AIR IS A NATIONAL INDUSTRY ASSOCIATION, PROACTIVELY SERVING AND REPRESENTING THE INTERESTS AND DEVELOPMENT OF AUSTRALIAN INDEPENDENT RECORDING LABELS ACROSS AUSTRALIA AND THE WORLD.

SEE FURTHER ATTACHMENT 1.

THE PARTICIPATING MEMBERS LISTED IN ATTACHMENT 2 ARE INDEPENDENT RECORDING LABELS.

- (c) Is the representative of the applicant lodging the notice a trade union, an officer of a trade union or a person acting on the direction of a trade union?
(refer to Direction 3)

NO

- (d) Address in Australia for service of documents on the applicants:

437 SPENCER ST

WEST MELBOURNE

VICTORIA 3003

2. Lodged on behalf of

- (a) Provide names and addresses of all persons on whose behalf the notification is lodged and who propose to participate in the collective bargaining arrangements:
(refer to Direction 4)

DETAILS FOR AIR ARE SET OUT IN 1. ABOVE. SEE ATTACHMENT 2 FOR DETAILS OF THE OTHER APPLICANTS.

- (b) Provide proof of the consent of each of the persons listed at 2 (a) above agreeing to the lodgement of the notification on their behalf:
(refer to Direction 5)

SEE ATTACHMENT 3. THIS REFERS TO THE LETTER THAT WAS SENT TO EACH MEMBER (I.E. THOSE PARTICIPANTS REFERRED TO IN ATTACHMENT 2) AND PROMPTED THEM TO PROVIDE THEIR DIGITAL SIGNATURE AS PARTIES TO COLLECTIVE BARGAINING ARRANGEMENTS. THE TECHNOLOGY USED TO OBTAIN THE DIGITAL SIGNATURES ENSURED THAT EACH DIGITAL SIGNATURE PROCESSED WAS SPECIFIC TO THE COMPANY TO WHICH IT WAS SENT.

- (c) Provide the following information relating to a notification:

- (i) Does this notification relate to a notification previously lodged with the Australian Competition and Consumer Commission and for which a concessional fee is claimed?

NO

- (ii) details of the first-mentioned notification, including but not limited to:
(A) the name of the applicant; and

- (B) the date the notification was said to be lodged; and
- (C) if known or applicable — the registration number allocated to that collective bargaining notification.

N/A

Section B – collective bargaining arrangements

3. Proposed collective bargaining arrangements

- (a) Provide: the name and address of the target; the name, position and telephone contact details of an appropriate contact at the target; and a description of the business carried on by the target:
(refer to direction 6)

TELSTRA
TELSTRA MULTIMEDIA PTY LIMITED
069 279 072
LEVEL 41, 242-282 EXHIBITION STREET
MELBOURNE
VIC 3000

- (b) Provide a description of the goods or services which the participants of the collective bargaining arrangements (listed at 2 (a) above) propose to supply to or acquire from the target:

THE PARTICIPANTS IN THE COLLECTIVE BARGAINING ARRANGEMENTS PROPOSE TO SUPPLY MASTER RECORDING COPYRIGHTS INCLUSIVE OF AUDIO AND VISUAL RIGHTS UNDER LICENSE TO LICENSEES ACROSS A RANGE OF TRANSMISSION MEDIUMS.

- (c) Do the participants of the proposed collective bargaining arrangements (see 2 (a) above) reasonably expect to make one or more contracts with the target about the supply to or acquisition from the target of one or more of the goods or services (listed at 3 (b) above)?
(refer to direction 7)

YES. ONE CONTRACT FOR EACH TARGET IS PROPOSED. ALL APPLICANTS WILL BE PARTIES TO THE CONTRACT. UNDER THE CONTRACT EACH PARTICIPATING MEMBER OF AIR WILL AGREE TO LICENSE THEIR RELEVANT RESPECTIVE RIGHTS TO THE TARGET.

- (d) In relation to (c) above, provide details of the basis upon which that expectation is held including details of past contracts with the target:

A JOINT LICENSING ARRANGEMENT IS PROPOSED UNDER WHICH EACH PARTICIPATING MEMBER OF AIR WILL LICENSE THEIR RELEVANT RIGHTS TO EACH PARTICULAR TARGET. THIS MODEL DIFFERS FROM THE PPCA COLLECTIVE LICENSING MODEL –NO COLLECTIVE LICENCE WILL BE ISSUED BY AIR AND ACCORDINGLY THERE WILL NOT BE ANY INPUT LICENCE BETWEEN THE PARTICIPATING MEMBERS AND AIR.

A JOINT LICENCE HAS NOT PREVIOUSLY BEEN OFFERED BY THE PARTICIPATING MEMBERS OR ANY OTHER MEMBERS OF AIR.

AIR HAS NOT PREVIOUSLY OFFERED A COLLECTIVE LICENSE.

SOME AIR MEMBERS HAVE PREVIOUSLY ENTERED INTO DIRECT LICENSING ARRANGEMENTS. HOWEVER, SUCH ARRANGEMENTS ARE EXCEPTIONAL GIVEN THE TRANSACTION COSTS OF ENTERING INTO NUMEROUS SEPARATE LICENSING ARRANGEMENTS. THE JOINT LICENCE PROPOSED IS INTENDED TO REDUCE THE TRANSACTION COSTS CONSIDERABLY.

- (e) Do the participants of the collective bargaining arrangements (listed at 2 (a) above) reasonably expect that contractual payments between the target and each participant will not exceed \$3 million (or any other amount prescribed by regulation) in any 12 month period, and on what basis?
(refer to direction 8)

YES

- (f) In relation to (e) above provide an estimation of the contractual payments expected between the target and each participant in relation to the goods and services (listed at 2 (a) above):

GIVEN THE SIZE, NATURE AND FRAGMENTATION OF THE INDEPENDENT RECORDING SECTOR IN AUSTRALIA, IT IS DIFFICULT TO ESTIMATE THE AMOUNT OF THE CONTRACTUAL PAYMENTS FOR A JOINT LICENCE. THE AMOUNT NEGOTIATED FOR A JOINT LICENCE WILL BE DISTRIBUTED TO PARTICIPATING MEMBERS AFTER DEDUCTING A SMALL AMOUNT FOR ADMINISTRATION COSTS. THE DISTRIBUTION SCHEME WILL BE COMPARABLE TO THAT USED BY PPCA IN PPCA'S COLLECTIVE LICENSING ARRANGEMENTS.

- (g) Provide a description of the collective bargaining arrangements proposed including, but not limited to:
- (i) the process by which participants propose to undertake collective bargaining with the target; and

AIR WILL NEGOTIATE THE PROPOSED JOINT LICENSING AGREEMENT ON BEHALF OF THE PARTICIPATING MEMBERS.

- (ii) the type of terms and conditions expected to be negotiated in collective bargaining arrangements (for example: price; non-price conditions of supply such as contract periods etc); and

PARTICIPATING MEMBERS WILL EACH GRANT TO EACH TARGET A NON-EXCLUSIVE LICENSE TO EXERCISE ANY OR ALL OF THEIR RIGHTS. THE LICENSED RIGHTS WILL BE PUBLIC PERFORMANCE AND TRANSMISSION RIGHTS FOR MUSIC VIDEOS.

THE RIGHTS GRANTED WILL BE TECHNOLOGY NEUTRAL, THUS ALLOWING FOR THE NEGOTIATION OF A SUITE OF RIGHTS (BROADCAST; COMMUNICATION; DOWNLOAD; BLANKET USES..

THIS IS BECOMING AN INDUSTRY NORM SO AS TO MINIMISE THE NEED FOR MULTIPLE LICENSING AGREEMENTS.

LICENSE FEES WILL BE PAYABLE QUARTERLY BASED ON USAGE AND REVENUE REPORTS.

CONTRACT PERIODS ARE LIKELY TO BE FOR A MINIMUM OF 6 MONTHS UP TO A MAXIMUM OF 3 YEARS WITH SPECIFIED REVIEW PERIODS.

PRICING WILL BE DETERMINED ON THE BASIS OF USAGE OF COPYRIGHTS BALANCED AGAINST THE OVERALL QUANTITY OF SUBSCRIBERS THAT THE BROADCASTER TARGET HAS OVER THE RELEVANT PERIOD OF THE AGREEMENT.

FOR A SUMMARY OUTLINE OF PROPOSED KEY TERMS, SEE ATTACHMENT 4.

- (iii) details of any dispute resolution procedure (if any) proposed between participants throughout the collective bargaining process; and

EACH PARTICIPATING MEMBER WILL HAVE THE RIGHT AT THEIR OWN EXPENSE TO APPOINT AN INDEPENDENT AUDITOR TO EXAMINE THE BOOKS AND ACCOUNTS OF AIR. AIR WILL OFFER MEDIATION, CONCILIATION AND NEUTRAL EVALUATION IN RELATION TO ANY DISPUTE THAT MAY ARISE BETWEEN A PARTICIPATING MEMBER AND AIR IN CONNECTION WITH THE JOINT LICENSING AGREEMENT OR THE NEGOTIATION THEREOF.

- (iv) details of any dispute resolution procedure (if any) proposed between participants and the target throughout the collective bargaining process; and

NO DISPUTE RESOLUTION PROCEDURE IS ENVISAGED AT THE STAGE OF NEGOTIATION. THE TERMS OF THE JOINT LICENCE PROPOSED WILL BE STRAIGHT FORWARD. IF A DISPUTE CANNOT BE RESOLVED AS PART OF THE PROCESS OF NEGOTIATION THEN NO JOINT LICENCE AGREEMENT WILL RESULT. THERE IS NO NEED FOR DISPUTE RESOLUTION PROCEDURES DURING THE STAGE OF NEGOTIATION AND ANY SUCH PROCESSES COULD EASILY DELAY NEGOTIATION.

- (v) details of any dispute resolution procedure (if any) proposed to deal with disputes throughout the term of contracts entered into with the target; and

THE JOINT LICENCE AGREEMENT WILL PROVIDE FOR MEDIATION, CONCILIATION AND NEUTRAL EVALUATION IN RELATION TO ANY DISPUTE THAT MAY ARISE BETWEEN AIR OR A PARTICIPATING MEMBER AND THE TARGET.

- (vi) details of proposed commencement and duration of contracts to be negotiated with the target:
(refer to direction 9)

THE COMMENCEMENT DATE IS LIKELY TO BE IN THE SECOND QUARTER OF THE FINANCIAL YEAR. THE COLLECTIVE

LICENCE WILL RUN FOR A MINIMUM OF 6 MONTHS UP TO 3 YEARS WITH SPECIFIED REVIEW PERIODS.

- (h) Identify any parts of the proposed collective arrangements described in 3 (g) which relate to possible price agreements:

THERE WILL BE A JOINT LICENSING FEE.

- (i) Identify any parts of the proposed collective arrangements described in 3 (g) which relate to a possible or proposed exclusionary provision(s), including but not limited to:
- (i) the nature of the proposed or possible exclusionary provision(s) (for example an agreement to withhold supply of the relevant goods or services to the target); and

NO EXCLUSIONARY PROVISION IS ENVISAGED. IN THE EVENT THAT THE TARGET DECLINES TO ENTER INTO A JOINT LICENSE, IT WOULD BE ENTIRELY UP TO EACH MEMBER OF AIR TO DECIDE FOR ITSELF AND INDEPENDENTLY OF EACH OTHER THE FUTURE NATURE OF ITS RELATIONSHIP WITH THE TARGET.

- (ii) the circumstances in which the collective bargaining participants would engage in the exclusionary provision(s), including but not limited to:
- (A) details of the events that would trigger any such activity; and
- (B) details of the process that would be followed in undertaking any such activity; and
- (C) details of any proposed period of notice to be given to the target prior to the commencement of such activity; and
- (D) details of any dispute resolution procedure to be applied or offered to the target prior to the commencement of such activity:
- (refer to direction 10)*

NO EXCLUSIONARY PROVISION IS ENVISAGED. SEE (i) ABOVE

Section C – public detriments

4. Market definition

Provide a description of the market(s) in which the goods or services described at 3 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

(refer to direction 11)

THE RELEVANT MARKET IS THE AUSTRALIAN MARKET FOR THE ACQUISITION AND SUPPLY OF LICENCES FOR PUBLIC PERFORMANCE RIGHTS AND TRANSMISSION RIGHTS FOR SOUND RECORDINGS AND MUSIC VIDEOS IN AUSTRALIA.

THE MAIN SUPPLIERS OF LICENCES FOR PUBLIC PERFORMANCE RIGHTS AND TRANSMISSION RIGHTS FOR SOUND RECORDINGS AND MUSIC VIDEOS IN AUSTRALIA ARE:

- RECORD LABELS

- ARTISTS
- ARTIST MANAGERS
- MANAGERS

THE MAIN ACQUIRERS OF LICENCES FOR PUBLIC PERFORMANCE RIGHTS AND TRANSMISSION RIGHTS FOR SOUND RECORDINGS AND MUSIC VIDEOS IN AUSTRALIA ARE:

- TELEVISION BROADCASTERS
- MUSIC CHANNELS
- ONLINE BROADCASTERS
- TERRESTRIAL AND DIGITAL RADIO

THERE ARE MANY DIFFERENT GENRES OF MUSIC. THE REPERTOIRE TO BE COVERED BY THE JOINT LICENCE PROPOSED WILL COVER A RANGE OF GENRES (EG. ROCK, CLASSICAL). THE APPLICANTS DO NOT BELIEVE THAT THERE ARE GENRE-BASED MARKETS – THE ORTHODOX DEFINITION OF THE PRODUCT MARKET IS THAT IT INCLUDES ALL GENRES.

THE ONLY RELEVANT GEOGRAPHIC OR LEGAL RESTRICTION ON THE SUPPLY OR ACQUISITION OF THE RELEVANT SERVICES IS THAT A LICENCE FOR PUBLIC PERFORMANCE RIGHTS AND TRANSMISSION RIGHTS FOR SOUND RECORDINGS AND MUSIC VIDEOS IN AUSTRALIA IS LIMITED TO AUSTRALIA AND EACH LICENSOR MUST BE ENTITLED TO LICENSE THOSE RIGHTS IN AUSTRALIA. SUBJECT TO THOSE RESTRICTIONS, COPYRIGHT IS AN UNLIMITED RESOURCE.

5. Public detriments

- (a) What will be the likely effect of the notified conduct on the prices of the goods or services described at 3 (b) above and the prices of goods or services in other affected markets? In answering this question please provide facts and information to support the claims made:

IN THE APPLICANTS' VIEW, THERE ARE NO LIKELY PUBLIC DETRIMENTS.

THE JOINT LICENCE PROPOSED IS NON-EXCLUSIVE. THE TARGET CAN DEAL WITH ANY OF THE FOLLOWING PARTIES:

- THE LICENSORS, OR A SELECT NUMBER OF LICENSORS (eg MAJOR RECORD LABELS WHO ARE NOT MEMBERS OF AIR)
- PPCA (see comment below);
- AIR AND PARTICIPATING MEMBERS; OR
- MEMBERS OF AIR WHO WISH TO ENTER INTO A SEPARATE LICENSING AGREEMENT.

THE BROADCASTERS HAVE A LICENCE WITH PPCA FOR THE USE OF SOUND RECORDINGS BUT NOT FOR THE VIDEO RIGHTS. THE BROADCASTERS HAVE TRADITIONALLY PASSED THIS RESPONSIBILITY TO THE CHANNELS, WHO HAVE ENTERED INTO DIRECT LICENSING ARRANGEMENTS.

THE FEE FOR A THE JOINT LICENCE PROPOSED WILL BE NEGOTIATED ON REASONABLE COMMERCIAL TERMS. IN THE PAST THE TARGET HAS NOT PAID ANY FEE IN RELATION TO THE PUBLIC PERFORMCANCE AND TRANSMISSION OF MUSIC VIDEOS FOR WHICH THE COPYRIGHT IS HELD BY AN INDEPENDENT RECORDING LABEL. ADOPTION OF A COMMERCIALY NEGOTIATED REASONABLE FEE INSTEAD OF A FREE-RIDING FEE OF \$0 IS NOT A PUBLIC DETRIMENT.

THE JOINT LICENCE PROPOSED DOES NOT INVOLVE PRICE FIXING AS DEFINED UNDER SECTION 45A(1) OF THE TPA: THE JOINT LICENCE TO BE OFFERED IS A JOINT PRODUCT THAT COULD NOT BE OFFERED BY AIR OR BY ANY OF THE PARTIPATING MEMBERS ALONE. ACCORDINGLY, AIR AND THE PARTICIPATING MEMBERS ARE NOT COMPETITORS OR LIKELY COMPETITORS.

THE JOINT PRODUCT TO BE SUPPLIED UNDER THE PROPOSED JOINT LICENCE IS INTENDED TO AND WILL REDUCE TRANSACTION COSTS. THE JOINT PRODUCT IS PRO-COMPETITIVE. THE JOINT LICENCE PROPOSED IS NON_EXCLUSIVE – IT DOES NOT FORECLOSE SEPERATE LICENSING DIRECTLY WITH COPYRIGHT HOLDERS.

(b) What other detriments may result from the notified conduct? In answering this question please provide facts and information to support the claims made:

NONE

Section D – public benefits

6. Public benefit claims

- (a) Provide details of the public benefits resulting or likely to result from the proposed arrangement. In answering this question please provide facts and information to support the claims made:

THE JOINT LICENCE PROPOSED WILL HELP TO SUPPORT THE INDEPENDENT SECTOR BY CREATING AN AVENUE FOR THE COLLECTION OF COPYRIGHT FEES TO WHICH COPYRIGHT HOLDERS ARE ENTITLED BUT WHICH HAVE NOT BEEN PAID IN THE PAST. THE MAIN POTENTIAL SOURCE OF COPYRIGHT FEES ARE BROADCASTERS, INCLUDING THE TARGET. THE BROADCASTERS HAVE DIRECT LICENSING ARRANGEMENTS WITH THE FOUR MAJOR RECORD COMPANIES BUT NO SUCH ARRANGMENTS ARE IN PLACE WITH THE INDEPENDENTS.

AS REVENUES FROM CD SALES DECLINE, IT IS INCREASINGLY IMPORTANT FOR RECORD COMPANIES TO BE ABLE TO DRAW RESIDUAL REVENUES FROM A DIVERSE RANGE OF SOURCES, NAMELY: VIDEO; SYNCHRONISATION; MOBILE; AND ONLINE. ALL OF THESE REVENUE STREAMS ARE IMPORTANT IN THE LICENSING OF COPYRIGHT CONTENT FROM THE MAJOR LABEL SECTOR. THEY HAVE THE SAME POTENTIAL IMPORTANCE FOR THE INDEPENDENT SECTOR.

THE IMPORTANCE OF THE INDEPENDENT MUSIC SECTOR TO THE ECONOMY, TO CREATIVE ARTISTS AND TO THE PUBLIC GENERALLY IS AS INDICATED IN ATTACHMENT 1.

Section E - authority

7. Contact details

- (a) Name, contact telephone number and address of person authorised by the notifying parties to provide additional information in relation to this application:

STUART WATTERS
CHIEF EXECUTIVE OFFICER - AIR
437 SPENCER ST
WEST MELBOURNE VICTORIC 3003
PH: 03 8554 4330
MOB: 0438 758 847
(refer to direction 12)

Dated 5/12/08

Signed by/on behalf of the applicants


.....
(Signature)

Stuart Watters
.....
(Full Name)

Australian Independent Record Labels Assoc
.....
(Organisation)

CEO
.....
(Position in Organisation)



DIRECTIONS

1. Where the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
2. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which notification is given.
3. A collective bargaining notification can not be lodged by a trade union or a trade union representative.
4. Where the applicant will be a participant in the collective bargaining arrangements (rather than a representative of participants) the name of the applicant must also be included. Where those persons are corporations, list the corporation's name and address.
5. The applicant, in lodging a notification on behalf of others, must obtain their consent to do so and provide proof of that consent.
6. Where the target is a corporation, provide the corporate name.
7. The collective bargaining notification process is only available to parties that reasonably expect to make one or more contracts with the target about the supply or acquisition of goods or services the subject of the notification.
8. The value of the contract to be collectively negotiated between the target and each participant is not to exceed \$3 million (or such other amount as is prescribed by the regulations) per participant in any twelve month period.
9. To the extent that the collective bargaining arrangements have been reduced to writing, provide a true copy of the arrangement. To the extent that the collective bargaining arrangements have not been reduced to writing, provide a full and correct description of the key terms that have not been reduced to writing.
10. In simple terms an exclusionary provision exists where the proposed contract, arrangement or understanding is made by businesses (at least two of whom are competitors) for the purpose of preventing, restricting or limiting the supply of services to particular persons or classes of persons by all or any of the parties to the contract, arrangement or understanding.

In the context of collective bargaining, an exclusionary provision(s) may include contracts, arrangements or understandings (whether currently in existence or to be made or arrived at during the term of the notification) between collective bargaining participants to limit or restrict their dealings with the target including contracts arrangements or understandings to:

- (a) withhold the supply of goods or services from the target; or
- (b) refuse or decline to acquire the goods or services of the target;

whether such conduct was absolute, limited or subject to certain terms or conditions. This is sometimes referred to as a collective boycott.

11. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
12. The notification must be signed by a person authorised by the applicant to do so.

ATTACHMENT 1

BACKGROUND ON THE AUSTRALIAN INDEPENDENT RECORD LABELS ASSOCIATION AND THE INDEPENDENT RECORD SECTOR

The Australian Independent Record Labels Association Ltd (AIR) is the peak body for Australian owned record labels. AIR pro-actively serves and represents the interests and development of Australian independent recording labels across Australia and internationally. There is no other membership organisation in Australia that represents the interests of independent recording labels, which represents around 85% of all Australian recorded music.

AIR's primary purpose is to foster an ever increasing marketplace for Australian independent music and assist in the long-term development, growth and success of Australia's independent recording industry both in Australia and overseas.

The formal objectives stated in AIR's constitution are:

- To assist in the exploitation of copyrights created and owned by Australian independent record labels
- To promote a commercially viable industry environment which is conducive to growth of the Australian independent sector and to the development of the artists that it represents
- To encourage and facilitate cultural expression through Australian music at local, national and international levels
- To advocate the values and interests of the Company and the Australian independent sector in accordance with these Objects
- To do all things as are necessary, incidental and conducive to the attainment of the above objects and to the development of the Australian music industry at large.

The Australian independent music industry makes up about 85% of the entire Australian recording industry. Members of this industry are Australian owned and not owned by multinational record companies (which make up the other 15% of the industry). Unlike these multinationals, industry members do not have an international company network through which to distribute their product and rely on establishing international licensing relationships on a business to business basis.

Independent recording labels produce the vast majority of work by Australian artists in all genres, but particularly in niche genres such as Australian jazz, electronica and dance music. This specialisation in niche genres also sets Independents apart from the multinationals.

Independent recording labels range from small niche-market labels to large organisations with a turn over of \$50 million per year. Artists represented by the Australian independent recording industry include well known names such as Savage Garden, John Butler Trio, Killing Heidi, Vanessa Amorosi, Missy Higgins, James Morrison and AC/DC.

The International Federation of the Phonographic Industry (IFPI) represents the recording industry worldwide through its membership of over 1,450 members spanning 70 countries. It was noted in a recent report on sales figures for the first half of 2004 that Australia has the 7th largest music industry market in the world and that Australia's maintenance of sales is primarily buoyed by a "strong local repertoire".

The principal property traded by the independent recording sector is the copyright in a recording. These copyrights are principally traded through CD sales, but also through use of recordings in films and other multimedia. However, as the industry adapts to recent changes and external pressures, sound recording files are now able to be traded through a variety of additional means from digital downloading sites, to synchronisation on mobile phone carrier services. AIR is at the forefront of enabling its members to maximise their capacity to exploit these new mediums to their (and Australia's) advantage.

Within the larger music industry it is the independent record labels that fulfil the role of supporting new artists and developing new markets. In contrast, the major recording companies tend to sign up product once it has had market recognition and represents a substantial profitable return.

Independent record labels have a strong track record in promoting Australian music overseas and have been responsible for most well known Australian music export examples, except in the cases of silverchair and Mental as Anything.

The independent record industry represents at least 85% of the total Australian music industry. The other 15% is represented by multinationals which are not Australian owned. It is difficult to determine the exact market share figure that this represents as there are inadequate statistical collection services present in the Australian recording industry, but anecdotal evidence would suggest that the independent sector represents anywhere between 25 and 30% of the market share in economic terms.

ATTACHMENT 2
PARTICIPATING MEMBERS

Company	Contact	Email	Address
Shogun Distribution	Adam Kane	adam@shogundist.com	PO Box 1513, Eagle Fam, QLD 4009
Inertia Music	Collin Daniels	colin@inertia-music.com	PO Box 84, SURRY HILLS, NSW 2010
Rubber Records	David Vodicka	david@rubberrecords.com.au	441 Spencer St, West Melbourne 3003
Bone Finger Records	Stewart Riddle	stew@bonefingerrecords.com	PO Box 5094, Brassall, QLD 4305
Boomtowntown Records	Jaddan Comerford	jaddan@boomtownrecords.com.au	Po box 4145, Eaglemont, VIC 3084
Risky Records	Tamara Pillar	info@riskyrecords.com.au	57-59 Renwick Street, Leichardt, NSW 2040
Obese Records	Ben Rynderman	operations@obeserecords.com	4a Izett st, Prahra, VIC 3181
Ivy League	Chris Maund	Chris@ivyleague.com.au	PO Box 545, Newtown, NSW 2042
BNM Records	Emma Wiking	emma@bnmrecords.com	Suite 3/171 Greville St, Prahra, VIC 3181
Maju	Judy Campbell	judy.cam@maju.com	16a Ivey Street, Lindfield NSW, 2070
Basin Records	Emma Wiking	emmaw@basinrecords.com	Suite 3/171 Greville St, Prahra, VIC 3181
Boundary Sounds		martin@boundarysounds.com	PO Box 2424, Strawberry Hills NSW 2012
The Spooky Men's Chorale	Graham Mann	spookymen@gmail.com	P.O. Box 56 Lawson, NSW, 2783
Bluehouse		Bluehouse3@mac.com	PO Box 2132 Fitzroy MDC, VIC, 3065
CCR Australia	Angie Cooper	coopscreswzrecords@hotmail.com	6 Johnstone Crescent Colac, Vic, 3250
Oak Records	Maggie Britton	info@maggiebritton.com	65/12 Commodore Drive, Paradise Waters, QLD 4217
Dallas Cosmos	Dallas Cosmos	dallascosmas@dallascosmas.com	44 kerferd Rd Albert park, VIC, 3206
Go Set Music	Lorda Ommesiah	lorda@optusnet.com.au	GPO Box 813 Greenacre, NSW, 2190
Lavender Music	Al Craig	Blackinc@presto.net.au	47 Woodbine St N Balgowlah, NSW, 2093
Future Classic	Nathan McLay	nathan@futureclassic.com.au	PO Box 1535 Strawberry Hills, NSW 2012
Creative Vibes	Heidi Pasqual	info@cvibes.com	Unit 6, 7-9 Kent Rd Mascot, NSW, 2020
Tumnus Records	Fergie Marshall	fergiemarshall@hotmail.com	6706/177 Mitchell Rd Erskineville, NSW, 2043
Levity Label	Andrew Valder	meln@rodriguezandcompany.com	
Hammered Silver Records	Tim Weatherhall	tim@hammeredsilver.com	Po Box 376 Petrie, QLD, 4502
Sonic Boy Records	Tony Hunt	tony@sonicboyrecords.com	1 Stodart St Camberwell, VIC, 3124
Red Disc Records	Clive Hines	reddiscrecords@hotmail.com	PO Box 1016 Seymour, VIC, 3660
Wild cat records	Amanda Easton	amanda@amandaeaston.com	PO Box 907 Leichardt, NSW, 2040
Phoenix movement records	Bird Jensen	8ball@8ballaitken.com	GPO Box 1933 Brisbane, QLD, 4001
Jazz head	Andrew Walker	andrew@headrecords.com	PO Box 2197 St Kilda, VIC, 3182
soundcolour		doug@soundcolour.com	PO Box 264 Clunes, NSW, 2480
Tone Freak Records	Bill Palmer	contact@tonefreakrecords.com	PO Box 3644 Helensvale Town Centre, QLD 4212
Mummy's Boy Records	Erin Jameson	erin@vkymanagement.com	PO Box 6068 South Yarra, Vic, 3141
Xelon Entertainment	Ashley Gay	ashley@xelonentertainment.com	PO Box 188 PO Box 188, VIC, 3135

Small House Records	Mark Tulk	mark@smallhouserecords.com.au	PO Box 510 Box Hill BC, VIC, 3128
Echobase Records	Andrew Schraa	aschraa1@mac.com	81 Byron st Elwood, Vic, 3184
Shock Records	Marcus Seal	marcus.seal@shock.com.au	200 Beavers Road NORTHCOTE, VIC 3070
Room 40	Lawrence English	lawrence@room40.org	PO Box 771 Hamilton Central, QLD, 4007
Chapter Music	Guy Blackman	guy@chaptermusic.com.au	PO Box 247 Northcote, VIC, 3070
Bahool Records	Keith Macnamara	bahoolrecords@yahoo.com.au	752 McCallums Creek Rd Majorca, Vic 3465
Extended Family	Alexandra Kay	highroad@bigpond.com	P.O Box 257 Haberfield, NSW, 2045
Formations Band	Tim McGrath	megraatt@telstra.com	17 evelyn st lammermoor beach yeppoon, QLD, 4703
Dorothy Records	Terese Jermyn	terese@masqueagency.com.au	4/8 King George Street McMahon's Point, NSW, 2060
House Of Wow	Dino Jag La	dino@houseofwow.com	21 Wildwood Drive Salisbury Park, SA, 5109
Weapon Head	Boris Billing	borisbilling@bigpond.com.au	10 Frideswide Street Goondiwindi, QLD, 4390
Endgame Records	Tegan Northwood	info@endgame.com.au	PO Box 3040 Marrickville, NSW, 2204
Doza Records	Damian Delahunty	journey@netconnect.com.au	8 Scullin Road Burnside, VIC, 3023
Krow Pie	Matt Ellis	info@krowpie.com	PO Box 1186 Darlinghurst, NSW, 2010
Kingdon Wise Records	Ben Louise	kingdomwise@hotmail.com	Po Box 1061 Croydon, VIC, 3136
Stomp	Tom Pandzic	tom@stomp.com.au	5 Harper St Abbottsford, VIC, 3067
Winterun	nick Dunstan	kittarn@yahoo.com.au	11 acacia st camberwell, VIC, 3124
Starving Kids	Brett Bartlett	brett@starvingkids.com.au	PO Box 314 Browns Plains, QLD, 4118
Hypersonic Records	Adrian Lloyd	info@hypersonicrecords.com.au	317-319 Pier Street Perth, WA, 6000
Phil MC	Phil McKernan	phil_mc@tpg.com.au	P.O.Box 2290 Kew, Vic, 3101
Caravan records	Simeon Gilmou	rebecca@caravanrecords.com.au	10 Ormond st North Gosford, NSW, 2250
Jazz WA	Alan Corbet	alan@jazzwa.com	PO BOX 295 North Beach, WA, 6920
Lee Adam Wilshier	Lee Adam Wilshier	lee.wilshier@bigpond.com	29A Braidhill Rd Macleod, VIC, 3085
The Boat People	Rick Chazan	ideasm@bigpond.net.au	po box 1576 Towong, QLD, 4066
MGM	Sebastian Chase	Sebastian@thegroovemerchants.com	PO Box A1437 South Sydney, NSW, 1235
Bunza Music	Sue	sue@bunza.com.au	PO Box 4989 North Rocks, NSW, 2151
Pink.dot	Amin Javanmard	music@pinkdot.org	PO Box 718 Runaway Bay, QLD, 4216
MPM Records	Mathew Packer	mathew@mpmrecords.com.au	15 Freeman Street New Lambton, NSW, 2305

ATTACHMENT 3
CONSENT OF PARTICIPATING MEMBERS

From: AIR [air@mail-hub.net]
Sent: Monday, 15 December 2008 2:37 PM
To: stu@air.org.au
Subject: Proposed Collective Bargaining Negotiations



Dear Members

We are writing this notice to the membership to inform you of recent action being taken by AIR on behalf of its members.

AIR is filing a Collective Bargaining Notification to the Australian Consumer Competition Commission (ACCC) under the Trade Practices Act. The end goal of this is to get an immunity from liability from price fixing and other provisions of the Trade Practices Act so that AIR can act on behalf of its members and negotiate collective licensing arrangements for the sector. Any license arrangement with AIR will be non-exclusive and our members are free to negotiate their own licenses where they want to do so. Further, if you have an existing license in place with a potential licensing target for AIR, that existing licence will not be affected by the new AIR collective licensing arrangements.

There are currently a number of end users of recorded music and music video in Australia who currently may not have licenses in place to pay the independent sector. By contrast, the multinational subsidiaries are paid for use of content in a variety of formats.

The current proposed targets of collective negotiation by AIR are:

Foxtel
Austar
Optus
Telstra

Their music content channels / outlets include:

MTV
XYZ
Fuel TV.
Bigpond

If you would like to be covered by the proposed collective bargaining negotiations with licensees, please indicate by following the link provided and clicking the yes option [link](#). You will need to do this by Friday August 15th.

If you do not agree to participate you will not be able to share in the licensing fees payable under the licences to be collectively negotiated. AIR therefore believes that it is strongly in the interest of all members to opt in.

If you have any questions please don't hesitate to forward them to info@air.org.au and we will seek to clarify them for you in a timely manner.

Sincerely

Stuart Watters

CEO

AIR

You have received this email because you are an AIR member or have requested information from us. If you have received this email by mistake, you can remove your details [here](#).

To update your details click [here](#)

If you are new to AIR, you can subscribe to our mailouts by clicking [here](#).

ATTACHMENT 4

SUMMARY OUTLINE OF PROPOSED KEY TERMS

Item	Term	Summary
1	Licence scope	<p>A non-exclusive licence to broadcast music videos, but only:</p> <ul style="list-style-type: none"> • on specified Music Video Channels; and • in accordance with all of the conditions applicable to the broadcaster's licence issued under the Broadcasting Services Act. <p>"Music Video Channels" are television channels where music videos comprise at least 25% of the total programming content by duration (calculated over a calendar week, and excluding advertisements, sponsorship announcements and other promotional content).</p>
2	Licensed repertoire	All music videos in which the copyright is owned or controlled in Australia by Participating Members.
3	Term	An initial period of [] months, with automatic renewals for further [] month periods unless either party terminates by notice in writing.
4	Reporting	<p>Licensees will provide quarterly video usage reports, setting out (in the form of a "broadcast log") the details of all music videos broadcast on each Music Video Channel, including the details of any directly licensed music videos.</p> <p>Licensees will also provide quarterly reports detailing the number of domestic and commercial subscribers with access to the Music Video Channels.</p>
5	Licence fees (GST Exclusive)	<p>Licence fees are payable quarterly. The fees are calculated monthly on the basis of the subscriber numbers reported by the licensee.</p> <p>[Categories & formulas to be negotiated].</p>
6	Invoicing and payment	<p>Following receipt of the quarterly video usage and revenue reports (see Item 4 above), a tax invoice will be issued for the amount of the licence fees.</p> <p>All invoices are payable within 14 days of receipt.</p>

Form GA

Commonwealth of Australia

Trade Practices Act 1974 — subsection 93AB (1)

NOTIFICATION OF COLLECTIVE BARGAINING

This form is to be completed by applicants proposing to engage in collective bargaining arrangements.

In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

Protection provided by the notification extends only to the collective bargaining arrangements described in the form.

To the Australian Competition and Consumer Commission:

Notification is hereby given under subsection 93AB (1) of the *Trade Practices Act 1974*:

- to make, or propose to make, a contract containing a provision of the kind referred to in paragraph 45 (2)(a) of the *Trade Practices Act 1974*; or
- to give effect to a provision of a contract where the provision is of the kind referred to in paragraph 45 (2)(b) of the *Trade Practices Act 1974*.
(Strike out if not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

Section A – general information

1. Applicant

- (a) Name of the applicant:
(refer to Direction 1)

CB00060 AUSTRALIAN INDEPENDENT RECORD LABELS ASSOCIATION LTD (AIR) AND PARTICIPATING MEMBERS OF AIR

- (b) Description of business carried on by the applicants:
(refer to Direction 2)

AIR IS A NATIONAL INDUSTRY ASSOCIATION, PROACTIVELY SERVING AND REPRESENTING THE INTERESTS AND DEVELOPMENT OF AUSTRALIAN INDEPENDENT RECORDING LABELS ACROSS AUSTRALIA AND THE WORLD.

SEE FURTHER ATTACHMENT 1.

THE PARTICIPATING MEMBERS LISTED IN ATTACHMENT 2 ARE INDEPENDENT RECORDING LABELS.

- (c) Is the representative of the applicant lodging the notice a trade union, an officer of a trade union or a person acting on the direction of a trade union?
(refer to Direction 3)

NO

- (d) Address in Australia for service of documents on the applicants:

437 SPENCER ST

WEST MELBOURNE

VICTORIA 3003

2. Lodged on behalf of

- (a) Provide names and addresses of all persons on whose behalf the notification is lodged and who propose to participate in the collective bargaining arrangements:
(refer to Direction 4)

DETAILS FOR AIR ARE SET OUT IN 1. ABOVE. SEE ATTACHMENT 2 FOR DETAILS OF THE OTHER APPLICANTS.

- (b) Provide proof of the consent of each of the persons listed at 2 (a) above agreeing to the lodgement of the notification on their behalf:
(refer to Direction 5)

SEE ATTACHMENT 3. THIS REFERS TO THE LETTER THAT WAS SENT TO EACH MEMBER (I.E. THOSE PARTICIPANTS REFERRED TO IN ATTACHMENT 2) AND PROMPTED THEM TO PROVIDE THEIR DIGITAL SIGNATURE AS PARTIES TO COLLECTIVE BARGAINING ARRANGEMENTS. THE TECHNOLOGY USED TO OBTAIN THE DIGITAL SIGNATURES ENSURED THAT EACH DIGITAL SIGNATURE PROCESSED WAS SPECIFIC TO THE COMPANY TO WHICH IT WAS SENT.

- (c) Provide the following information relating to a notification:

- (i) Does this notification relate to a notification previously lodged with the Australian Competition and Consumer Commission and for which a concessional fee is claimed?

NO

- (ii) details of the first-mentioned notification, including but not limited to:
(A) the name of the applicant; and

- (B) the date the notification was said to be lodged; and
- (C) if known or applicable — the registration number allocated to that collective bargaining notification.

N/A

Section B – collective bargaining arrangements

3. Proposed collective bargaining arrangements

- (a) Provide: the name and address of the target; the name, position and telephone contact details of an appropriate contact at the target; and a description of the business carried on by the target:
(refer to direction 6)

OPTUS
OPTUS VISION PTY LIMITED
066 518 821
1 LYONPARK ROAD
MACQUARIE PARK,
NSW 2113

- (b) Provide a description of the goods or services which the participants of the collective bargaining arrangements (listed at 2 (a) above) propose to supply to or acquire from the target:

THE PARTICIPANTS IN THE COLLECTIVE BARGAINING ARRANGEMENTS PROPOSE TO SUPPLY MASTER RECORDING COPYRIGHTS INCLUSIVE OF AUDIO AND VISUAL RIGHTS UNDER LICENSE TO LICENSEES ACROSS A RANGE OF TRANSMISSION MEDIUMS.

- (c) Do the participants of the proposed collective bargaining arrangements (see 2 (a) above) reasonably expect to make one or more contracts with the target about the supply to or acquisition from the target of one or more of the goods or services (listed at 3 (b) above)?
(refer to direction 7)

YES. ONE CONTRACT FOR EACH TARGET IS PROPOSED. ALL APPLICANTS WILL BE PARTIES TO THE CONTRACT. UNDER THE CONTRACT EACH PARTICIPATING MEMBER OF AIR WILL AGREE TO LICENSE THEIR RELEVANT RESPECTIVE RIGHTS TO THE TARGET.

- (d) In relation to (c) above, provide details of the basis upon which that expectation is held including details of past contracts with the target:

A JOINT LICENSING ARRANGEMENT IS PROPOSED UNDER WHICH EACH PARTICIPATING MEMBER OF AIR WILL LICENSE THEIR RELEVANT RIGHTS TO EACH PARTICULAR TARGET. THIS MODEL DIFFERS FROM THE PPCA COLLECTIVE LICENSING MODEL –NO COLLECTIVE LICENCE WILL BE ISSUED BY AIR AND ACCORDINGLY THERE WILL NOT BE ANY INPUT LICENCE BETWEEN THE PARTICIPATING MEMBERS AND AIR.

A JOINT LICENCE HAS NOT PREVIOUSLY BEEN OFFERED BY THE PARTICIPATING MEMBERS OR ANY OTHER MEMBERS OF AIR.

AIR HAS NOT PREVIOUSLY OFFERED A COLLECTIVE LICENSE.

SOME AIR MEMBERS HAVE PREVIOUSLY ENTERED INTO DIRECT LICENSING ARRANGEMENTS. HOWEVER, SUCH ARRANGEMENTS ARE EXCEPTIONAL GIVEN THE TRANSACTION COSTS OF ENTERING INTO NUMEROUS SEPARATE LICENSING ARRANGEMENTS. THE JOINT LICENCE PROPOSED IS INTENDED TO REDUCE THE TRANSACTION COSTS CONSIDERABLY.

- (e) Do the participants of the collective bargaining arrangements (listed at 2 (a) above) reasonably expect that contractual payments between the target and each participant will not exceed \$3 million (or any other amount prescribed by regulation) in any 12 month period, and on what basis?
(refer to direction 8)

YES

- (f) In relation to (e) above provide an estimation of the contractual payments expected between the target and each participant in relation to the goods and services (listed at 2 (a) above):

GIVEN THE SIZE, NATURE AND FRAGMENTATION OF THE INDEPENDENT RECORDING SECTOR IN AUSTRALIA, IT IS DIFFICULT TO ESTIMATE THE AMOUNT OF THE CONTRACTUAL PAYMENTS FOR A JOINT LICENCE. THE AMOUNT NEGOTIATED FOR A JOINT LICENCE WILL BE DISTRIBUTED TO PARTICIPATING MEMBERS AFTER DEDUCTING A SMALL AMOUNT FOR ADMINISTRATION COSTS. THE DISTRIBUTION SCHEME WILL BE COMPARABLE TO THAT USED BY PPCA IN PPCA'S COLLECTIVE LICENSING ARRANGEMENTS.

- (g) Provide a description of the collective bargaining arrangements proposed including, but not limited to:

- (i) the process by which participants propose to undertake collective bargaining with the target; and

AIR WILL NEGOTIATE THE PROPOSED JOINT LICENSING AGREEMENT ON BEHALF OF THE PARTICIPATING MEMBERS.

- (ii) the type of terms and conditions expected to be negotiated in collective bargaining arrangements (for example: price; non-price conditions of supply such as contract periods etc); and

PARTICIPATING MEMBERS WILL EACH GRANT TO EACH TARGET A NON-EXCLUSIVE LICENSE TO EXERCISE ANY OR ALL OF THEIR RIGHTS. THE LICENSED RIGHTS WILL BE PUBLIC PERFORMANCE AND TRANSMISSION RIGHTS FOR MUSIC VIDEOS.

THE RIGHTS GRANTED WILL BE TECHNOLOGY NEUTRAL, THUS ALLOWING FOR THE NEGOTIATION OF A SUITE OF RIGHTS (BROADCAST; COMMUNICATION; DOWNLOAD; BLANKET USES..

THIS IS BECOMING AN INDUSTRY NORM SO AS TO MINIMISE THE NEED FOR MULTIPLE LICENSING AGREEMENTS.

LICENSE FEES WILL BE PAYABLE QUARTERLY BASED ON USAGE AND REVENUE REPORTS.

CONTRACT PERIODS ARE LIKELY TO BE FOR A MINIMUM OF 6 MONTHS UP TO A MAXIMUM OF 3 YEARS WITH SPECIFIED REVIEW PERIODS.

PRICING WILL BE DETERMINED ON THE BASIS OF USAGE OF COPYRIGHTS BALANCED AGAINST THE OVERALL QUANTITY OF SUBSCRIBERS THAT THE BROADCASTER TARGET HAS OVER THE RELEVANT PERIOD OF THE AGREEMENT.

FOR A SUMMARY OUTLINE OF PROPOSED KEY TERMS, SEE ATTACHMENT 4.

- (iii) details of any dispute resolution procedure (if any) proposed between participants throughout the collective bargaining process; and

EACH PARTICIPATING MEMBER WILL HAVE THE RIGHT AT THEIR OWN EXPENSE TO APPOINT AN INDEPENDENT AUDITOR TO EXAMINE THE BOOKS AND ACCOUNTS OF AIR. AIR WILL OFFER MEDIATION, CONCILIATION AND NEUTRAL EVALUATION IN RELATION TO ANY DISPUTE THAT MAY ARISE BETWEEN A PARTICIPATING MEMBER AND AIR IN CONNECTION WITH THE JOINT LICENSING AGREEMENT OR THE NEGOTIATION THEREOF.

- (iv) details of any dispute resolution procedure (if any) proposed between participants and the target throughout the collective bargaining process; and

NO DISPUTE RESOLUTION PROCEDURE IS ENVISAGED AT THE STAGE OF NEGOTIATION. THE TERMS OF THE JOINT LICENCE PROPOSED WILL BE STRAIGHT FORWARD. IF A DISPUTE CANNOT BE RESOLVED AS PART OF THE PROCESS OF NEGOTIATION THEN NO JOINT LICENCE AGREEMENT WILL RESULT. THERE IS NO NEED FOR DISPUTE RESOLUTION PROCEDURES DURING THE STAGE OF NEGOTIATION AND ANY SUCH PROCESSES COULD EASILY DELAY NEGOTIATION.

- (v) details of any dispute resolution procedure (if any) proposed to deal with disputes throughout the term of contracts entered into with the target; and

THE JOINT LICENCE AGREEMENT WILL PROVIDE FOR MEDIATION, CONCILIATION AND NEUTRAL EVALUATION IN RELATION TO ANY DISPUTE THAT MAY ARISE BETWEEN AIR OR A PARTICIPATING MEMBER AND THE TARGET.

- (vi) details of proposed commencement and duration of contracts to be negotiated with the target:
(refer to direction 9)

THE COMMENCEMENT DATE IS LIKELY TO BE IN THE SECOND QUARTER OF THE FINANCIAL YEAR. THE COLLECTIVE

LICENCE WILL RUN FOR A MINIMUM OF 6 MONTHS UP TO 3 YEARS WITH SPECIFIED REVIEW PERIODS.

- (h) Identify any parts of the proposed collective arrangements described in 3 (g) which relate to possible price agreements:

THERE WILL BE A JOINT LICENSING FEE.

- (i) Identify any parts of the proposed collective arrangements described in 3 (g) which relate to a possible or proposed exclusionary provision(s), including but not limited to:

- (i) the nature of the proposed or possible exclusionary provision(s) (for example an agreement to withhold supply of the relevant goods or services to the target); and

NO EXCLUSIONARY PROVISION IS ENVISAGED. IN THE EVENT THAT THE TARGET DECLINES TO ENTER INTO A JOINT LICENSE, IT WOULD BE ENTIRELY UP TO EACH MEMBER OF AIR TO DECIDE FOR ITSELF AND INDEPENDENTLY OF EACH OTHER THE FUTURE NATURE OF ITS RELATIONSHIP WITH THE TARGET.

- (ii) the circumstances in which the collective bargaining participants would engage in the exclusionary provision(s), including but not limited to:
 - (A) details of the events that would trigger any such activity; and
 - (B) details of the process that would be followed in undertaking any such activity; and
 - (C) details of any proposed period of notice to be given to the target prior to the commencement of such activity; and
 - (D) details of any dispute resolution procedure to be applied or offered to the target prior to the commencement of such activity:

(refer to direction 10)

NO EXCLUSIONARY PROVISION IS ENVISAGED. SEE (i) ABOVE

Section C – public detriments

4. Market definition

Provide a description of the market(s) in which the goods or services described at 3 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):
(refer to direction 11)

THE RELEVANT MARKET IS THE AUSTRALIAN MARKET FOR THE ACQUISITION AND SUPPLY OF LICENCES FOR PUBLIC PERFORMANCE RIGHTS AND TRANSMISSION RIGHTS FOR SOUND RECORDINGS AND MUSIC VIDEOS IN AUSTRALIA.

THE MAIN SUPPLIERS OF LICENCES FOR PUBLIC PERFORMANCE RIGHTS AND TRANSMISSION RIGHTS FOR SOUND RECORDINGS AND MUSIC VIDEOS IN AUSTRALIA ARE:

- RECORD LABELS

- ARTISTS
- ARTIST MANAGERS
- MANAGERS

THE MAIN ACQUIRERS OF LICENCES FOR PUBLIC PERFORMANCE RIGHTS AND TRANSMISSION RIGHTS FOR SOUND RECORDINGS AND MUSIC VIDEOS IN AUSTRALIA ARE:

- TELEVISION BROADCASTERS
- MUSIC CHANNELS
- ONLINE BROADCASTERS
- TERRESTRIAL AND DIGITAL RADIO

THERE ARE MANY DIFFERENT GENRES OF MUSIC. THE REPERTOIRE TO BE COVERED BY THE JOINT LICENCE PROPOSED WILL COVER A RANGE OF GENRES (EG. ROCK, CLASSICAL). THE APPLICANTS DO NOT BELIEVE THAT THERE ARE GENRE-BASED MARKETS – THE ORTHODOX DEFINITION OF THE PRODUCT MARKET IS THAT IT INCLUDES ALL GENRES.

THE ONLY RELEVANT GEOGRAPHIC OR LEGAL RESTRICTION ON THE SUPPLY OR ACQUISITION OF THE RELEVANT SERVICES IS THAT A LICENCE FOR PUBLIC PERFORMANCE RIGHTS AND TRANSMISSION RIGHTS FOR SOUND RECORDINGS AND MUSIC VIDEOS IN AUSTRALIA IS LIMITED TO AUSTRALIA AND EACH LICENSOR MUST BE ENTITLED TO LICENSE THOSE RIGHTS IN AUSTRALIA. SUBJECT TO THOSE RESTRICTIONS, COPYRIGHT IS AN UNLIMITED RESOURCE.

5. Public detriments

- (a) What will be the likely effect of the notified conduct on the prices of the goods or services described at 3 (b) above and the prices of goods or services in other affected markets? In answering this question please provide facts and information to support the claims made:

IN THE APPLICANTS' VIEW, THERE ARE NO LIKELY PUBLIC DETRIMENTS.

THE JOINT LICENCE PROPOSED IS NON-EXCLUSIVE. THE TARGET CAN DEAL WITH ANY OF THE FOLLOWING PARTIES:

- THE LICENSORS, OR A SELECT NUMBER OF LICENSORS (eg MAJOR RECORD LABELS WHO ARE NOT MEMBERS OF AIR)
- PPCA (see comment below);
- AIR AND PARTICIPATING MEMBERS; OR
- MEMBERS OF AIR WHO WISH TO ENTER INTO A SEPARATE LICENSING AGREEMENT.

THE BROADCASTERS HAVE A LICENCE WITH PPCA FOR THE USE OF SOUND RECORDINGS BUT NOT FOR THE VIDEO RIGHTS. THE BROADCASTERS HAVE TRADITIONALLY PASSED THIS RESPONSIBILITY TO THE CHANNELS, WHO HAVE ENTERED INTO DIRECT LICENSING ARRANGEMENTS.

THE FEE FOR A THE JOINT LICENCE PROPOSED WILL BE NEGOTIATED ON REASONABLE COMMERCIAL TERMS. IN THE PAST THE TARGET HAS NOT PAID ANY FEE IN RELATION TO THE PUBLIC PERFORMCANCE AND TRANSMISSION OF MUSIC VIDEOS FOR WHICH THE COPYRIGHT IS HELD BY AN INDEPENDENT RECORDING LABEL. ADOPTION OF A COMMERCIALLY NEGOTIATED REASONABLE FEE INSTEAD OF A FREE-RIDING FEE OF \$0 IS NOT A PUBLIC DETRIMENT.

THE JOINT LICENCE PROPOSED DOES NOT INVOLVE PRICE FIXING AS DEFINED UNDER SECTION 45A(1) OF THE TPA: THE JOINT LICENCE TO BE OFFERED IS A JOINT PRODUCT THAT COULD NOT BE OFFERED BY AIR OR BY ANY OF THE PARTIPATING MEMBERS ALONE. ACCORDINGLY, AIR AND THE PARTICIPATING MEMBERS ARE NOT COMPETITORS OR LIKELY COMPETITORS.

THE JOINT PRODUCT TO BE SUPPLIED UNDER THE PROPOSED JOINT LICENCE IS INTENDED TO AND WILL REDUCE TRANSACTION COSTS. THE JOINT PRODUCT IS PRO-COMPETITIVE. THE JOINT LICENCE PROPOSED IS NON_EXCLUSIVE – IT DOES NOT FORECLOSE SEPERATE LICENSING DIRECTLY WITH COPYRIGHT HOLDERS.

(b) What other detriments may result from the notified conduct? In answering this question please provide facts and information to support the claims made:

NONE

Section D – public benefits

6. Public benefit claims

- (a) Provide details of the public benefits resulting or likely to result from the proposed arrangement. In answering this question please provide facts and information to support the claims made:

THE JOINT LICENCE PROPOSED WILL HELP TO SUPPORT THE INDEPENDENT SECTOR BY CREATING AN AVENUE FOR THE COLLECTION OF COPYRIGHT FEES TO WHICH COPYRIGHT HOLDERS ARE ENTITLED BUT WHICH HAVE NOT BEEN PAID IN THE PAST. THE MAIN POTENTIAL SOURCE OF COPYRIGHT FEES ARE BROADCASTERS, INCLUDING THE TARGET. THE BROADCASTERS HAVE DIRECT LICENSING ARRANGEMENTS WITH THE FOUR MAJOR RECORD COMPANIES BUT NO SUCH ARRANGMENTS ARE IN PLACE WITH THE INDEPENDENTS.

AS REVENUES FROM CD SALES DECLINE, IT IS INCREASINGLY IMPORTANT FOR RECORD COMPANIES TO BE ABLE TO DRAW RESIDUAL REVENUES FROM A DIVERSE RANGE OF SOURCES, NAMELY: VIDEO; SYNCHRONISATION; MOBILE; AND ONLINE. ALL OF THESE REVENUE STREAMS ARE IMPORTANT IN THE LICENSING OF COPYRIGHT CONTENT FROM THE MAJOR LABEL SECTOR. THEY HAVE THE SAME POTENTIAL IMPORTANCE FOR THE INDEPENDENT SECTOR.

THE IMPORTANCE OF THE INDEPENDENT MUSIC SECTOR TO THE ECONOMY, TO CREATIVE ARTISTS AND TO THE PUBLIC GENERALLY IS AS INDICATED IN ATTACHMENT 1.

Section E - authority

7. Contact details

- (a) Name, contact telephone number and address of person authorised by the notifying parties to provide additional information in relation to this application:

STUART WATTERS
CHIEF EXECUTIVE OFFICER - AIR
437 SPENCER ST
WEST MELBOURNE VICTORIA 3003
PH: 03 8554 4330
MOB: 0438 758 847
(refer to direction 12)

Dated 5/12/08

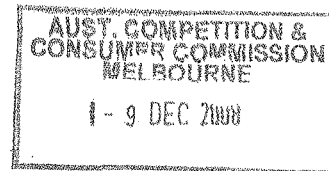
Signed by/on behalf of the applicants


(Signature)

Stuart Watters
(Full Name)

Australian Independent Record Labels Assoc
(Organisation)

CEO
(Position in Organisation)



DIRECTIONS

1. Where the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
2. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which notification is given.
3. A collective bargaining notification can not be lodged by a trade union or a trade union representative.
4. Where the applicant will be a participant in the collective bargaining arrangements (rather than a representative of participants) the name of the applicant must also be included. Where those persons are corporations, list the corporation's name and address.
5. The applicant, in lodging a notification on behalf of others, must obtain their consent to do so and provide proof of that consent.
6. Where the target is a corporation, provide the corporate name.
7. The collective bargaining notification process is only available to parties that reasonably expect to make one or more contracts with the target about the supply or acquisition of goods or services the subject of the notification.
8. The value of the contract to be collectively negotiated between the target and each participant is not to exceed \$3 million (or such other amount as is prescribed by the regulations) per participant in any twelve month period.
9. To the extent that the collective bargaining arrangements have been reduced to writing, provide a true copy of the arrangement. To the extent that the collective bargaining arrangements have not been reduced to writing, provide a full and correct description of the key terms that have not been reduced to writing.
10. In simple terms an exclusionary provision exists where the proposed contract, arrangement or understanding is made by businesses (at least two of whom are competitors) for the purpose of preventing, restricting or limiting the supply of services to particular persons or classes of persons by all or any of the parties to the contract, arrangement or understanding.

In the context of collective bargaining, an exclusionary provision(s) may include contracts, arrangements or understandings (whether currently in existence or to be made or arrived at during the term of the notification) between collective bargaining participants to limit or restrict their dealings with the target including contracts arrangements or understandings to:

- (a) withhold the supply of goods or services from the target; or
- (b) refuse or decline to acquire the goods or services of the target;

whether such conduct was absolute, limited or subject to certain terms or conditions. This is sometimes referred to as a collective boycott.

11. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
12. The notification must be signed by a person authorised by the applicant to do so.

ATTACHMENT 1

BACKGROUND ON THE AUSTRALIAN INDEPENDENT RECORD LABELS ASSOCIATION AND THE INDEPENDENT RECORD SECTOR

The Australian Independent Record Labels Association Ltd (AIR) is the peak body for Australian owned record labels. AIR pro-actively serves and represents the interests and development of Australian independent recording labels across Australia and internationally. There is no other membership organisation in Australia that represents the interests of independent recording labels, which represents around 85% of all Australian recorded music.

AIR's primary purpose is to foster an ever increasing marketplace for Australian independent music and assist in the long-term development, growth and success of Australia's independent recording industry both in Australia and overseas.

The formal objectives stated in AIR's constitution are:

- To assist in the exploitation of copyrights created and owned by Australian independent record labels
- To promote a commercially viable industry environment which is conducive to growth of the Australian independent sector and to the development of the artists that it represents
- To encourage and facilitate cultural expression through Australian music at local, national and international levels
- To advocate the values and interests of the Company and the Australian independent sector in accordance with these Objects
- To do all things as are necessary, incidental and conducive to the attainment of the above objects and to the development of the Australian music industry at large.

The Australian independent music industry makes up about 85% of the entire Australian recording industry. Members of this industry are Australian owned and not owned by multinational record companies (which make up the other 15% of the industry). Unlike these multinationals, industry members do not have an international company network through which to distribute their product and rely on establishing international licensing relationships on a business to business basis.

Independent recording labels produce the vast majority of work by Australian artists in all genres, but particularly in niche genres such as Australian jazz, electronica and dance music. This specialisation in niche genres also sets Independents apart from the multinationals.

Independent recording labels range from small niche-market labels to large organisations with a turn over of \$50 million per year. Artists represented by the Australian independent recording industry include well known names such as Savage Garden, John Butler Trio, Killing Heidi, Vanessa Amorosi, Missy Higgins, James Morrison and AC/DC.

The International Federation of the Phonographic Industry (IFPI) represents the recording industry worldwide through its membership of over 1,450 members spanning 70 countries. It was noted in a recent report on sales figures for the first half of 2004 that Australia has the 7th largest music industry market in the world and that Australia's maintenance of sales is primarily buoyed by a "strong local repertoire".

The principal property traded by the independent recording sector is the copyright in a recording. These copyrights are principally traded through CD sales, but also through use of recordings in films and other multimedia. However, as the industry adapts to recent changes and external pressures, sound recording files are now able to be traded through a variety of additional means from digital downloading sites, to synchronisation on mobile phone carrier services. AIR is at the forefront of enabling its members to maximise their capacity to exploit these new mediums to their (and Australia's) advantage.

Within the larger music industry it is the independent record labels that fulfil the role of supporting new artists and developing new markets. In contrast, the major recording companies tend to sign up product once it has had market recognition and represents a substantial profitable return.

Independent record labels have a strong track record in promoting Australian music overseas and have been responsible for most well known Australian music export examples, except in the cases of silverchair and Mental as Anything.

The independent record industry represents at least 85% of the total Australian music industry. The other 15% is represented by multinationals which are not Australian owned. It is difficult to determine the exact market share figure that this represents as there are inadequate statistical collection services present in the Australian recording industry, but anecdotal evidence would suggest that the independent sector represents anywhere between 25 and 30% of the market share in economic terms.

ATTACHMENT 2
PARTICIPATING MEMBERS

Company	Contact	Email	Address
Shogun Distribution	Adam Kane	adam@shogundist.com	PO Box 1513, Eagle Fam, QLD 4009
Inertia Music	Collin Daniels	colin@inertia-music.com	PO Box 84, SURRY HILLS, NSW 2010
Rubber Records	David Vodicka	david@rubberrecords.com.au	441 Spencer St, West Melbourne 3003
Bone Finger Records	Stewart Riddle	stew@bonefingerrecords.com	PO Box 5094, Brassall, QLD 4305
Boombtown Records	Jaddan Comerford	jaddan@boombtownrecords.com.au	Po box 4145, Eaglemont, VIC 3084
Risky Records	Tamara Piller	info@riskyrecords.com.au	57-59 Renwick Street, Leichardt, NSW 2040
Obese Records	Ben Rynderman	operations@obeserecords.com	4a Izett st, Prahran, VIC 3181
Ivy League	Chris Maund	Chris@ivyleague.com.au	PO Box 545, Newtown, NSW 2042
BNM Records	Emma Wiking	emma@bnmrecords.com	Suite 3/171 Greville St, Prahran, VIC 3181
Maju	Judy Campbell	judycam@maju.com	16a Ivey Street, Lindfield NSW, 2070
Basin Records	Emma Wiking	emmaw@basinrecords.com	Suite 3/171 Greville St, Prahran, VIC 3181
Boundary Sounds		martin@boundarysounds.com	PO Box 2424, Strawberry Hills NSW 2012
The Spooky Men's Chorale	Graham Mann	spookymen@gmail.com	P.O. Box 56 Lawson, NSW, 2783
Bluehouse		Bluehouse3@mac.com	PO Box 2132 Fitzroy MDC, VIC, 3065
CCR Australia	Angie Cooper	coopercrowzasrecords@hotmail.com	6 Johnstone Crescent Colac, Vic, 3250
Oak Records	Maggie Britton	info@maggiebritton.com	65/12 Commodore Drive, Paradise Waters, QLD 4217
Dallas Cosmos	Dallas Cosmos	dallascosmas@dallascosmas.com	44 kerferd Rd Albert park, VIC, 3206
Go Set Music	Lorda Ommesiah	lorda@optusnet.com.au	GPO Box 813 Greenacre, NSW, 2190
Lavender Music	Al Craig	Blackinc@presto.net.au	47 Woodbine St N Balgowlah, NSW, 2093
Future Classic	Nathan McLay	nathan@futureclassic.com.au	PO Box 1535 Strawberry Hills, NSW 2012
Creative Vibes	Heidi Pasqual	info@cvibes.com	Unit 6, 7-9 Kent Rd Mascot, NSW, 2020
Turnnus Records	Fergie Marshall	fergiemarshall@hotmail.com	6706/177 Mitchell Rd Erskineville, NSW, 2043
Levity Label	Andrew Valder	meln@rodriguezzandcompany.com	
Hammered Silver Records	Tim Weatherhall	tim@hammeredsilver.com	Po Box 376 Petrie, QLD, 4502
Sonic Boy Records	Tony Hunt	tony@sonicboyrecords.com	1 Stodart St Camberwell, VIC, 3124
Red Disc Records	Clive Hines	reddiscrecords@hotmail.com	PO Box 1016 Seymour, VIC, 3660
Wild cat records	Amanda Easton	amanda@amandaeaston.com	PO Box 907 Leichhardt, NSW, 2040
Phoenix movement records	Bird Jensen	8ball@8ballaitken.com	GPO Box 1933 Brisbane, QLD, 4001
Jazz head	Andrew Walker	andrew@headrecords.com	PO Box 2197 St Kilda, VIC, 3182
soundcolour		doug@soundcolour.com	PO Box 264 Clunes, NSW, 2480
Tone Freak Records	Bill Palmer	contact@tonefreakrecords.com	PO Box 3644 Helensvale Town Centre, QLD 4212
Mummy's Boy Records	Erin Jameson	erin@vkymmanagement.com	PO Box 6068 South Yarra, Vic, 3141
Xelon Entertainment	Ashley Gay	ashley@xelonentertainment.com	PO Box 188 PO Box 188, VIC, 3135

Small House Records	Mark Tulk	mark@smallhouserecords.com.au	PO Box 510 Box Hill BC, VIC, 3128
Echobase Records	Andrew Schraa	aschraa1@mac.com	81 Byron st Elwood, Vic, 3184
Shock Records	Marcus Seal	marcus.seal@shock.com.au	200 Beavers Road NORTHCOTE, VIC 3070
Room 40	Lawrence English	lawrence@room40.org	PO Box 771 Hamilton Central, QLD, 4007
Chapter Music	Guy Blackman	guy@chaptermusic.com.au	PO Box 247 Northcote, VIC, 3070
Bahool Records	Keith Macnamara	bahoolrecords@yahoo.com.au	752 McCallums Creek Rd Majorca, Vic 3465
Extended Family	Alexandra Kay	highroad@bigpond.com	P.O Box 257 Haberfield, NSW, 2045
Formations Band	Tim Mcgrath	megraatt@telstra.com	17 evelyn st lammermoor beach yeppoon, QLD, 4703
Dorothy Records	Terese Jermyn	terese@masqueagency.com.au	4/8 King George Street McMahon's Point, NSW, 2060
House Of Wow	Dino Jag La	dino@houseofwow.com	21 Wildwood Drive Salisbury Park, SA, 5109
Weapon Head	Boris Billing	borisbilling@bigpond.com.au	10 Frideswide Street Goondiwindi, QLD, 4390
Endgame Records	Tegan Northwood	info@endgame.com.au	PO Box 3040 Marrickville, NSW, 2204
Doza Records	Damian Delahunty	journey@netconnect.com.au	8 Scullin Road Burnside, VIC, 3023
Krow Pie	Matt Ellis	info@krowpie.com	PO Box 1186 Darlinghurst, NSW, 2010
Kingdon Wise Records	Ben Louise	kingdomwise@hotmail.com	Po Box 1061 Croydon, VIC, 3136
Stomp	Tom Pandzic	tom@stomp.com.au	5 Harper St Abbottsford, VIC, 3087
Winterun	nick Dunstan	kiktarn@yahoo.com.au	11 acacia st camberwell, VIC, 3124
Starving Kids	Brett Bartlett	brett@starvingkids.com.au	PO Box 314 Browns Plains, QLD, 4118
Hypersonic Records	Adrian Lloyd	info@hypersonicrecords.com.au	317-319 Pier Street Perth, WA, 6000
Phil MC	Phil McKernan	phil_mc@tpg.com.au	P.O.Box 2290 Kew, Vic, 3101
Caravan records	Simeon Gilmou	rebecca@caravanrecords.com.au	10 Ormond st North Gosford, NSW, 2250
Jazz WA	Alan Corbet	alan@jazzwa.com	PO BOX 295 North Beach, WA, 6920
Lee Adam Wilshier	Lee Adam Wilshier	lee.wilshier@bigpond.com	29A Braidhill Rd Macleod, VIC, 3085
The Boat People	Rick Chazan	ideasm@bigpond.net.au	po box 1576 Towong, QLD, 4066
MGM	Sebastian Chase	Sebastian@thegroovemERCHANTS.com	PO Box A1437 South Sydney, NSW, 1235
Bunza Music	Sue	sue@bunza.com.au	PO Box 4989 North Rocks, NSW, 2151
Pink.dot	Amin Javanmard	music@pinkdot.org	PO Box 718 Runaway Bay, QLD, 4216
MPM Records	Mathew Packer	mathew@mpmrecords.com.au	15 Freeman Street New Lambton, NSW, 2305

ATTACHMENT 3
CONSENT OF PARTICIPATING MEMBERS

From: AIR [air@mail-hub.net]
Sent: Monday, 15 December 2008 2:37 PM
To: stu@air.org.au
Subject: Proposed Collective Bargaining Negotiations



AUSTRALIAN
INDEPENDENT
RECORD LABELS
ASSOCIATION

Dear Members

We are writing this notice to the membership to inform you of recent action being taken by AIR on behalf of its members.

AIR is filing a Collective Bargaining Notification to the Australian Consumer Competition Commission (ACCC) under the Trade Practices Act. The end goal of this is to get an immunity from liability from price fixing and other provisions of the Trade Practices Act so that AIR can act on behalf of its members and negotiate collective licensing arrangements for the sector. Any license arrangement with AIR will be non-exclusive and our members are free to negotiate their own licenses where they want to do so. Further, if you have an existing license in place with a potential licensing target for AIR, that existing licence will not be affected by the new AIR collective licensing arrangements.

There are currently a number of end users of recorded music and music video in Australia who currently may not have licenses in place to pay the independent sector. By contrast, the multinational subsidiaries are paid for use of content in a variety of formats.

The current proposed targets of collective negotiation by AIR are:

Foxtel
Austar
Optus
Telstra

Their music content channels / outlets include:

MTV
XYZ
Fuel TV.
Bigpond

If you would like to be covered by the proposed collective bargaining negotiations with licensees, please indicate by following the link provided and clicking the yes option [link](#). You will need to do this by Friday August 15th.

If you do not agree to participate you will not be able to share in the licensing fees payable under the licences to be collectively negotiated. AIR therefore believes that it is strongly in the interest of all members to opt in.

If you have any questions please don't hesitate to forward them to info@air.org.au and we will seek to clarify them for you in a timely manner.

Sincerely

Stuart Watters

CEO

AIR

You have received this email because you are an AIR member or have requested information from us. If you have received this email by mistake, you can remove your details [here](#).

To update your details click [here](#)

If you are new to AIR, you can subscribe to our mailouts by clicking [here](#).

ATTACHMENT 4

SUMMARY OUTLINE OF PROPOSED KEY TERMS

Item	Term	Summary
1	Licence scope	<p>A non-exclusive licence to broadcast music videos, but only:</p> <ul style="list-style-type: none"> • on specified Music Video Channels; and • in accordance with all of the conditions applicable to the broadcaster's licence issued under the Broadcasting Services Act. <p>"Music Video Channels" are television channels where music videos comprise at least 25% of the total programming content by duration (calculated over a calendar week, and excluding advertisements, sponsorship announcements and other promotional content).</p>
2	Licensed repertoire	All music videos in which the copyright is owned or controlled in Australia by Participating Members.
3	Term	An initial period of [] months, with automatic renewals for further [] month periods unless either party terminates by notice in writing.
4	Reporting	<p>Licensees will provide quarterly video usage reports, setting out (in the form of a "broadcast log") the details of all music videos broadcast on each Music Video Channel, including the details of any directly licensed music videos.</p> <p>Licensees will also provide quarterly reports detailing the number of domestic and commercial subscribers with access to the Music Video Channels.</p>
5	Licence fees (GST Exclusive)	<p>Licence fees are payable quarterly. The fees are calculated monthly on the basis of the subscriber numbers reported by the licensee.</p> <p>[Categories & formulas to be negotiated].</p>
6	Invoicing and payment	<p>Following receipt of the quarterly video usage and revenue reports (see Item 4 above), a tax invoice will be issued for the amount of the licence fees.</p> <p>All invoices are payable within 14 days of receipt.</p>

Form GA

Commonwealth of Australia

Trade Practices Act 1974 — subsection 93AB (1)

NOTIFICATION OF COLLECTIVE BARGAINING

This form is to be completed by applicants proposing to engage in collective bargaining arrangements.

In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

Protection provided by the notification extends only to the collective bargaining arrangements described in the form.

To the Australian Competition and Consumer Commission:

Notification is hereby given under subsection 93AB (1) of the *Trade Practices Act 1974*:

- to make, or propose to make, a contract containing a provision of the kind referred to in paragraph 45 (2)(a) of the *Trade Practices Act 1974*; or
- to give effect to a provision of a contract where the provision is of the kind referred to in paragraph 45 (2)(b) of the *Trade Practices Act 1974*.
(Strike out if not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

Section A – general information

1. Applicant

- (a) Name of the applicant:
(refer to Direction 1)

CB00061 AUSTRALIAN INDEPENDENT RECORD LABELS ASSOCIATION LTD (AIR) AND PARTICIPATING MEMBERS OF AIR

- (b) Description of business carried on by the applicants:
(refer to Direction 2)

AIR IS A NATIONAL INDUSTRY ASSOCIATION, PROACTIVELY SERVING AND REPRESENTING THE INTERESTS AND DEVELOPMENT OF AUSTRALIAN INDEPENDENT RECORDING LABELS ACROSS AUSTRALIA AND THE WORLD.

SEE FURTHER ATTACHMENT 1.

THE PARTICIPATING MEMBERS LISTED IN ATTACHMENT 2 ARE INDEPENDENT RECORDING LABELS.

- (c) Is the representative of the applicant lodging the notice a trade union, an officer of a trade union or a person acting on the direction of a trade union?
(refer to Direction 3)

NO

- (d) Address in Australia for service of documents on the applicants:

437 SPENCER ST

WEST MELBOURNE

VICTORIA 3003

2. Lodged on behalf of

- (a) Provide names and addresses of all persons on whose behalf the notification is lodged and who propose to participate in the collective bargaining arrangements:
(refer to Direction 4)

DETAILS FOR AIR ARE SET OUT IN 1. ABOVE. SEE ATTACHMENT 2 FOR DETAILS OF THE OTHER APPLICANTS.

- (b) Provide proof of the consent of each of the persons listed at 2 (a) above agreeing to the lodgement of the notification on their behalf:
(refer to Direction 5)

SEE ATTACHMENT 3. THIS REFERS TO THE LETTER THAT WAS SENT TO EACH MEMBER (I.E. THOSE PARTICIPANTS REFERRED TO IN ATTACHMENT 2) AND PROMPTED THEM TO PROVIDE THEIR DIGITAL SIGNATURE AS PARTIES TO COLLECTIVE BARGAINING ARRANGEMENTS. THE TECHNOLOGY USED TO OBTAIN THE DIGITAL SIGNATURES ENSURED THAT EACH DIGITAL SIGNATURE PROCESSED WAS SPECIFIC TO THE COMPANY TO WHICH IT WAS SENT.

- (c) Provide the following information relating to a notification:

- (i) Does this notification relate to a notification previously lodged with the Australian Competition and Consumer Commission and for which a concessional fee is claimed?

NO

- (ii) details of the first-mentioned notification, including but not limited to:
(A) the name of the applicant; and

- (B) the date the notification was said to be lodged; and
- (C) if known or applicable — the registration number allocated to that collective bargaining notification.

N/A

Section B – collective bargaining arrangements

3. Proposed collective bargaining arrangements

- (a) Provide: the name and address of the target; the name, position and telephone contact details of an appropriate contact at the target; and a description of the business carried on by the target:
(refer to direction 6)

FOXTEL
FOXTEL MANAGEMENT PTY LIMITED
068 671 938
5 THOMAS HOLT DRIVE
NORTH RYDE
NSW 2113

- (b) Provide a description of the goods or services which the participants of the collective bargaining arrangements (listed at 2 (a) above) propose to supply to or acquire from the target:

THE PARTICIPANTS IN THE COLLECTIVE BARGAINING ARRANGEMENTS PROPOSE TO SUPPLY MASTER RECORDING COPYRIGHTS INCLUSIVE OF AUDIO AND VISUAL RIGHTS UNDER LICENSE TO LICENSEES ACROSS A RANGE OF TRANSMISSION MEDIUMS.

- (c) Do the participants of the proposed collective bargaining arrangements (see 2 (a) above) reasonably expect to make one or more contracts with the target about the supply to or acquisition from the target of one or more of the goods or services (listed at 3 (b) above)?
(refer to direction 7)

YES. ONE CONTRACT FOR EACH TARGET IS PROPOSED. ALL APPLICANTS WILL BE PARTIES TO THE CONTRACT. UNDER THE CONTRACT EACH PARTICIPATING MEMBER OF AIR WILL AGREE TO LICENSE THEIR RELEVANT RESPECTIVE RIGHTS TO THE TARGET.

- (d) In relation to (c) above, provide details of the basis upon which that expectation is held including details of past contracts with the target:

A JOINT LICENSING ARRANGEMENT IS PROPOSED UNDER WHICH EACH PARTICIPATING MEMBER OF AIR WILL LICENSE THEIR RELEVANT RIGHTS TO EACH PARTICULAR TARGET. THIS MODEL DIFFERS FROM THE PPCA COLLECTIVE LICENSING MODEL –NO COLLECTIVE LICENCE WILL BE ISSUED BY AIR AND ACCORDINGLY THERE WILL NOT BE ANY INPUT LICENCE BETWEEN THE PARTICIPATING MEMBERS AND AIR.

A JOINT LICENCE HAS NOT PREVIOUSLY BEEN OFFERED BY THE PARTICIPATING MEMBERS OR ANY OTHER MEMBERS OF AIR.

AIR HAS NOT PREVIOUSLY OFFERED A COLLECTIVE LICENSE.

SOME AIR MEMBERS HAVE PREVIOUSLY ENTERED INTO DIRECT LICENSING ARRANGEMENTS. HOWEVER, SUCH ARRANGEMENTS ARE EXCEPTIONAL GIVEN THE TRANSACTION COSTS OF ENTERING INTO NUMEROUS SEPARATE LICENSING ARRANGEMENTS. THE JOINT LICENCE PROPOSED IS INTENDED TO REDUCE THE TRANSACTION COSTS CONSIDERABLY.

- (e) Do the participants of the collective bargaining arrangements (listed at 2 (a) above) reasonably expect that contractual payments between the target and each participant will not exceed \$3 million (or any other amount prescribed by regulation) in any 12 month period, and on what basis?
(refer to direction 8)

YES

- (f) In relation to (e) above provide an estimation of the contractual payments expected between the target and each participant in relation to the goods and services (listed at 2 (a) above):

GIVEN THE SIZE, NATURE AND FRAGMENTATION OF THE INDEPENDENT RECORDING SECTOR IN AUSTRALIA, IT IS DIFFICULT TO ESTIMATE THE AMOUNT OF THE CONTRACTUAL PAYMENTS FOR A JOINT LICENCE. THE AMOUNT NEGOTIATED FOR A JOINT LICENCE WILL BE DISTRIBUTED TO PARTICIPATING MEMBERS AFTER DEDUCTING A SMALL AMOUNT FOR ADMINISTRATION COSTS. THE DISTRIBUTION SCHEME WILL BE COMPARABLE TO THAT USED BY PPCA IN PPCA'S COLLECTIVE LICENSING ARRANGEMENTS.

- (g) Provide a description of the collective bargaining arrangements proposed including, but not limited to:

- (i) the process by which participants propose to undertake collective bargaining with the target; and

AIR WILL NEGOTIATE THE PROPOSED JOINT LICENSING AGREEMENT ON BEHALF OF THE PARTICIPATING MEMBERS.

- (ii) the type of terms and conditions expected to be negotiated in collective bargaining arrangements (for example: price; non-price conditions of supply such as contract periods etc); and

PARTICIPATING MEMBERS WILL EACH GRANT TO EACH TARGET A NON-EXCLUSIVE LICENSE TO EXERCISE ANY OR ALL OF THEIR RIGHTS. THE LICENSED RIGHTS WILL BE PUBLIC PERFORMANCE AND TRANSMISSION RIGHTS FOR MUSIC VIDEOS.

THE RIGHTS GRANTED WILL BE TECHNOLOGY NEUTRAL, THUS ALLOWING FOR THE NEGOTIATION OF A SUITE OF RIGHTS (BROADCAST; COMMUNICATION; DOWNLOAD; BLANKET USES.. THIS IS BECOMING AN INDUSTRY NORM SO AS TO MINIMISE THE NEED FOR MULTIPLE LICENSING AGREEMENTS.

LICENSE FEES WILL BE PAYABLE QUARTERLY BASED ON USAGE AND REVENUE REPORTS.

CONTRACT PERIODS ARE LIKELY TO BE FOR A MINIMUM OF 6 MONTHS UP TO A MAXIMUM OF 3 YEARS WITH SPECIFIED REVIEW PERIODS.

PRICING WILL BE DETERMINED ON THE BASIS OF USAGE OF COPYRIGHTS BALANCED AGAINST THE OVERALL QUANTITY OF SUBSCRIBERS THAT THE BROADCASTER TARGET HAS OVER THE RELEVANT PERIOD OF THE AGREEMENT.

FOR A SUMMARY OUTLINE OF PROPOSED KEY TERMS, SEE ATTACHMENT 4.

- (iii) details of any dispute resolution procedure (if any) proposed between participants throughout the collective bargaining process; and

EACH PARTICIPATING MEMBER WILL HAVE THE RIGHT AT THEIR OWN EXPENSE TO APPOINT AN INDEPENDENT AUDITOR TO EXAMINE THE BOOKS AND ACCOUNTS OF AIR. AIR WILL OFFER MEDIATION, CONCILIATION AND NEUTRAL EVALUATION IN RELATION TO ANY DISPUTE THAT MAY ARISE BETWEEN A PARTICIPATING MEMBER AND AIR IN CONNECTION WITH THE JOINT LICENSING AGREEMENT OR THE NEGOTIATION THEREOF.

- (iv) details of any dispute resolution procedure (if any) proposed between participants and the target throughout the collective bargaining process; and

NO DISPUTE RESOLUTION PROCEDURE IS ENVISAGED AT THE STAGE OF NEGOTIATION. THE TERMS OF THE JOINT LICENCE PROPOSED WILL BE STRAIGHT FORWARD. IF A DISPUTE CANNOT BE RESOLVED AS PART OF THE PROCESS OF NEGOTIATION THEN NO JOINT LICENCE AGREEMENT WILL RESULT. THERE IS NO NEED FOR DISPUTE RESOLUTION PROCEDURES DURING THE STAGE OF NEGOTIATION AND ANY SUCH PROCESSES COULD EASILY DELAY NEGOTIATION.

- (v) details of any dispute resolution procedure (if any) proposed to deal with disputes throughout the term of contracts entered into with the target; and

THE JOINT LICENCE AGREEMENT WILL PROVIDE FOR MEDIATION, CONCILIATION AND NEUTRAL EVALUATION IN RELATION TO ANY DISPUTE THAT MAY ARISE BETWEEN AIR OR A PARTICIPATING MEMBER AND THE TARGET.

- (vi) details of proposed commencement and duration of contracts to be negotiated with the target;

(refer to direction 9)

THE COMMENCEMENT DATE IS LIKELY TO BE IN THE SECOND QUARTER OF THE FINANCIAL YEAR. THE COLLECTIVE LICENCE WILL RUN FOR A MINIMUM OF 6 MONTHS UP TO 3 YEARS WITH SPECIFIED REVIEW PERIODS.

- (h) Identify any parts of the proposed collective arrangements described in 3 (g) which relate to possible price agreements:

THERE WILL BE A JOINT LICENSING FEE.

- (i) Identify any parts of the proposed collective arrangements described in 3 (g) which relate to a possible or proposed exclusionary provision(s), including but not limited to:

- (i) the nature of the proposed or possible exclusionary provision(s) (for example an agreement to withhold supply of the relevant goods or services to the target); and

NO EXCLUSIONARY PROVISION IS ENVISAGED. IN THE EVENT THAT THE TARGET DECLINES TO ENTER INTO A JOINT LICENSE, IT WOULD BE ENTIRELY UP TO EACH MEMBER OF AIR TO DECIDE FOR ITSELF AND INDEPENDENTLY OF EACH OTHER THE FUTURE NATURE OF ITS RELATIONSHIP WITH THE TARGET.

- (ii) the circumstances in which the collective bargaining participants would engage in the exclusionary provision(s), including but not limited to:
- (A) details of the events that would trigger any such activity; and
 - (B) details of the process that would be followed in undertaking any such activity; and
 - (C) details of any proposed period of notice to be given to the target prior to the commencement of such activity; and
 - (D) details of any dispute resolution procedure to be applied or offered to the target prior to the commencement of such activity:
- (refer to direction 10)*

NO EXCLUSIONARY PROVISION IS ENVISAGED. SEE (i) ABOVE

Section C – public detriments

4. Market definition

Provide a description of the market(s) in which the goods or services described at 3 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

(refer to direction 11)

THE RELEVANT MARKET IS THE AUSTRALIAN MARKET FOR THE ACQUISITION AND SUPPLY OF LICENCES FOR PUBLIC PERFORMANCE RIGHTS AND TRANSMISSION RIGHTS FOR SOUND RECORDINGS AND MUSIC VIDEOS IN AUSTRALIA.

THE MAIN SUPPLIERS OF LICENCES FOR PUBLIC PERFORMANCE RIGHTS AND TRANSMISSION RIGHTS FOR SOUND RECORDINGS AND MUSIC VIDEOS IN AUSTRALIA ARE:

- RECORD LABELS
- ARTISTS
- ARTIST MANAGERS
- MANAGERS

THE MAIN ACQUIRERS OF LICENCES FOR PUBLIC PERFORMANCE RIGHTS AND TRANSMISSION RIGHTS FOR SOUND RECORDINGS AND MUSIC VIDEOS IN AUSTRALIA ARE:

- TELEVISION BROADCASTERS
- MUSIC CHANNELS
- ONLINE BROADCASTERS
- TERRESTRIAL AND DIGITAL RADIO

THERE ARE MANY DIFFERENT GENRES OF MUSIC. THE REPERTOIRE TO BE COVERED BY THE JOINT LICENCE PROPOSED WILL COVER A RANGE OF GENRES (EG. ROCK, CLASSICAL). THE APPLICANTS DO NOT BELIEVE THAT THERE ARE GENRE-BASED MARKETS – THE ORTHODOX DEFINITION OF THE PRODUCT MARKET IS THAT IT INCLUDES ALL GENRES.

THE ONLY RELEVANT GEOGRAPHIC OR LEGAL RESTRICTION ON THE SUPPLY OR ACQUISITION OF THE RELEVANT SERVICES IS THAT A LICENCE FOR PUBLIC PERFORMANCE RIGHTS AND TRANSMISSION RIGHTS FOR SOUND RECORDINGS AND MUSIC VIDEOS IN AUSTRALIA IS LIMITED TO AUSTRALIA AND EACH LICENSOR MUST BE ENTITLED TO LICENSE THOSE RIGHTS IN AUSTRALIA. SUBJECT TO THOSE RESTRICTIONS, COPYRIGHT IS AN UNLIMITED RESOURCE.

5. Public detriments

- (a) What will be the likely effect of the notified conduct on the prices of the goods or services described at 3 (b) above and the prices of goods or services in other affected markets? In answering this question please provide facts and information to support the claims made:

IN THE APPLICANTS' VIEW, THERE ARE NO LIKELY PUBLIC DETRIMENTS.

THE JOINT LICENCE PROPOSED IS NON-EXCLUSIVE. THE TARGET CAN DEAL WITH ANY OF THE FOLLOWING PARTIES:

- THE LICENSORS, OR A SELECT NUMBER OF LICENSORS (eg MAJOR RECORD LABELS WHO ARE NOT MEMBERS OF AIR)

- PPCA (see comment below);
- AIR AND PARTICIPATING MEMBERS; OR
- MEMBERS OF AIR WHO WISH TO ENTER INTO A SEPARATE LICENSING AGREEMENT.

THE BROADCASTERS HAVE A LICENCE WITH PPCA FOR THE USE OF SOUND RECORDINGS BUT NOT FOR THE VIDEO RIGHTS. THE BROADCASTERS HAVE TRADITIONALLY PASSED THIS RESPONSIBILITY TO THE CHANNELS, WHO HAVE ENTERED INTO DIRECT LICENSING ARRANGEMENTS.

THE FEE FOR A THE JOINT LICENCE PROPOSED WILL BE NEGOTIATED ON REASONABLE COMMERCIAL TERMS. IN THE PAST THE TARGET HAS NOT PAID ANY FEE IN RELATION TO THE PUBLIC PERFORMCANCE AND TRANSMISSION OF MUSIC VIDEOS FOR WHICH THE COPYRIGHT IS HELD BY AN INDEPENDENT RECORDING LABEL. ADOPTION OF A COMMERCIALY NEGOTIATED REASONABLE FEE INSTEAD OF A FREE-RIDING FEE OF \$0 IS NOT A PUBLIC DETRIMENT.

THE JOINT LICENCE PROPOSED DOES NOT INVOLVE PRICE FIXING AS DEFINED UNDER SECTION 45A(1) OF THE TPA: THE JOINT LICENCE TO BE OFFERED IS A JOINT PRODUCT THAT COULD NOT BE OFFERED BY AIR OR BY ANY OF THE PARTIPATING MEMBERS ALONE. ACCORDINGLY, AIR AND THE PARTICIPATING MEMBERS ARE NOT COMPETITORS OR LIKELY COMPETITORS.

THE JOINT PRODUCT TO BE SUPPLIED UNDER THE PROPOSED JOINT LICENCE IS INTENDED TO AND WILL REDUCE TRANSACTION COSTS. THE JOINT PRODUCT IS PRO-COMPETITIVE. THE JOINT LICENCE PROPOSED IS NON_EXCLUSIVE – IT DOES NOT FORECLOSE SEPERATE LICENSING DIRECTLY WITH COPYRIGHT HOLDERS.

(b) What other detriments may result from the notified conduct? In answering this question please provide facts and information to support the claims made:

NONE

Section D – public benefits

6. Public benefit claims

- (a) Provide details of the public benefits resulting or likely to result from the proposed arrangement. In answering this question please provide facts and information to support the claims made:

THE JOINT LICENCE PROPOSED WILL HELP TO SUPPORT THE INDEPENDENT SECTOR BY CREATING AN AVENUE FOR THE COLLECTION OF COPYRIGHT FEES TO WHICH COPYRIGHT HOLDERS ARE ENTITLED BUT WHICH HAVE NOT BEEN PAID IN

THE PAST. THE MAIN POTENTIAL SOURCE OF COPYRIGHT FEES ARE BROADCASTERS, INCLUDING THE TARGET. THE BROADCASTERS HAVE DIRECT LICENSING ARRANGEMENTS WITH THE FOUR MAJOR RECORD COMPANIES BUT NO SUCH ARRANGMENTS ARE IN PLACE WITH THE INDEPENDENTS.

AS REVENUES FROM CD SALES DECLINE, IT IS INCREASINGLY IMPORTANT FOR RECORD COMPANIES TO BE ABLE TO DRAW RESIDUAL REVENUES FROM A DIVERSE RANGE OF SOURCES, NAMELY: VIDEO; SYNCHRONISATION; MOBILE; AND ONLINE. ALL OF THESE REVENUE STREAMS ARE IMPORTANT IN THE LICENSING OF COPYRIGHT CONTENT FROM THE MAJOR LABEL SECTOR. THEY HAVE THE SAME POTENTIAL IMPORTANCE FOR THE INDEPENDENT SECTOR.

THE IMPORTANCE OF THE INDEPENDENT MUSIC SECTOR TO THE ECONOMY, TO CREATIVE ARTISTS AND TO THE PUBLIC GENERALLY IS AS INDICATED IN ATTACHMENT 1.

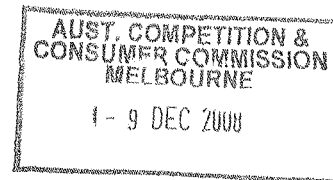
Section E - authority

7. Contact details

- (a) Name, contact telephone number and address of person authorised by the notifying parties to provide additional information in relation to this application:

STUART WATTERS
CHIEF EXECUTIVE OFFICER - AIR
437 SPENCER ST
WEST MELBOURNE VICTORIA 3003
PH: 03 8554 4330

MOB: 0438 758 847
(refer to direction 12)



Dated.....5/12/08.....

Signed by/on behalf of the applicants

(Signature)

Stuart Watters

(Full Name)

Australian Independent Record Labels Association

(Organisation)

CEO

(Position in Organisation)

DIRECTIONS

1. Where the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
2. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which notification is given.
3. A collective bargaining notification can not be lodged by a trade union or a trade union representative.
4. Where the applicant will be a participant in the collective bargaining arrangements (rather than a representative of participants) the name of the applicant must also be included. Where those persons are corporations, list the corporation's name and address.
5. The applicant, in lodging a notification on behalf of others, must obtain their consent to do so and provide proof of that consent.
6. Where the target is a corporation, provide the corporate name.
7. The collective bargaining notification process is only available to parties that reasonably expect to make one or more contracts with the target about the supply or acquisition of goods or services the subject of the notification.
8. The value of the contract to be collectively negotiated between the target and each participant is not to exceed \$3 million (or such other amount as is prescribed by the regulations) per participant in any twelve month period.
9. To the extent that the collective bargaining arrangements have been reduced to writing, provide a true copy of the arrangement. To the extent that the collective bargaining arrangements have not been reduced to writing, provide a full and correct description of the key terms that have not been reduced to writing.
10. In simple terms an exclusionary provision exists where the proposed contract, arrangement or understanding is made by businesses (at least two of whom are competitors) for the purpose of preventing, restricting or limiting the supply of services to particular persons or classes of persons by all or any of the parties to the contract, arrangement or understanding.

In the context of collective bargaining, an exclusionary provision(s) may include contracts, arrangements or understandings (whether currently in existence or to be made or arrived at during the term of the notification) between collective bargaining participants to limit or restrict their dealings with the target including contracts arrangements or understandings to:

- (a) withhold the supply of goods or services from the target; or
- (b) refuse or decline to acquire the goods or services of the target;

whether such conduct was absolute, limited or subject to certain terms or conditions. This is sometimes referred to as a collective boycott.

11. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
12. The notification must be signed by a person authorised by the applicant to do so.

ATTACHMENT 1
BACKGROUND ON THE AUSTRALIAN INDEPENDENT RECORD LABELS
ASSOCIATION AND THE INDEPENDENT RECORD SECTOR

The Australian Independent Record Labels Association Ltd (AIR) is the peak body for Australian owned record labels. AIR pro-actively serves and represents the interests and development of Australian independent recording labels across Australia and internationally. There is no other membership organisation in Australia that represents the interests of independent recording labels, which represents around 85% of all Australian recorded music.

AIR's primary purpose is to foster an ever increasing marketplace for Australian independent music and assist in the long-term development, growth and success of Australia's independent recording industry both in Australia and overseas.

The formal objectives stated in AIR's constitution are:

- To assist in the exploitation of copyrights created and owned by Australian independent record labels
- To promote a commercially viable industry environment which is conducive to growth of the Australian independent sector and to the development of the artists that it represents
- To encourage and facilitate cultural expression through Australian music at local, national and international levels
- To advocate the values and interests of the Company and the Australian independent sector in accordance with these Objects
- To do all things as are necessary, incidental and conducive to the attainment of the above objects and to the development of the Australian music industry at large.

The Australian independent music industry makes up about 85% of the entire Australian recording industry. Members of this industry are Australian owned and not owned by multinational record companies (which make up the other 15% of the industry). Unlike these multinationals, industry members do not have an international company network through which to distribute their product and rely on establishing international licensing relationships on a business to business basis.

Independent recording labels produce the vast majority of work by Australian artists in all genres, but particularly in niche genres such as Australian jazz, electronica and dance music. This specialisation in niche genres also sets Independents apart from the multinationals.

Independent recording labels range from small niche-market labels to large organisations with a turn over of \$50 million per year. Artists represented by the Australian independent recording industry include well known names such as Savage Garden, John Butler Trio, Killing Heidi, Vanessa Amorosi, Missy Higgins, James Morrison and AC/DC.

The International Federation of the Phonographic Industry (IFPI) represents the recording industry worldwide through its membership of over 1,450 members spanning 70 countries. It was noted in a recent report on sales figures for the first half of 2004 that Australia has the 7th largest music industry market in the world and that Australia's maintenance of sales is primarily buoyed by a "strong local repertoire".

The principal property traded by the independent recording sector is the copyright in a recording. These copyrights are principally traded through CD sales, but also through use of recordings in films and other multimedia. However, as the industry adapts to recent changes and external pressures, sound recording files are now able to be traded through a variety of additional means from digital downloading sites, to synchronisation on mobile phone carrier services. AIR is at the forefront of enabling its members to maximise their capacity to exploit these new mediums to their (and Australia's) advantage.

Within the larger music industry it is the independent record labels that fulfil the role of supporting new artists and developing new markets. In contrast, the major recording companies tend to sign up product once it has had market recognition and represents a substantial profitable return.

Independent record labels have a strong track record in promoting Australian music overseas and have been responsible for most well known Australian music export examples, except in the cases of silverchair and Mental as Anything.

The independent record industry represents at least 85% of the total Australian music industry. The other 15% is represented by multinationals which are not Australian owned. It is difficult to determine the exact market share figure that this represents as there are inadequate statistical collection services present in the Australian recording industry, but anecdotal evidence would suggest that the independent sector represents anywhere between 25 and 30% of the market share in economic terms.

ATTACHMENT 2
PARTICIPATING MEMBERS

Company	Contact	Email	Address
Shogun Distribution	Adam Kane	adam@shogundist.com	PO Box 1513, Eagle Fam, QLD 4009
Inertia Music	Collin Daniels	collin@inertia-music.com	PO Box 84, SURRY HILLS, NSW 2010
Rubber Records	David Vodicka	david@rubberrecords.com.au	441 Spencer St, West Melbourne 3003
Bone Finger Records	Stewart Riddle	stew@bonefingerrecords.com	PO Box 5094, Brassall, QLD 4305
Boontown Records	Jaddan Comerford	jaddan@boontownrecords.com.au	Po box 4145, Eaglemont, VIC 3084
Risky Records	Tamara Piller	info@riskyrecords.com.au	57-59 Renwick Street, Leichardt, NSW 2040
Obese Records	Ben Rynderman	operations@obeserecords.com	4a izett st, Prahran, VIC 3181
Ivy League	Chris Maund	Chris@ivyleague.com.au	PO Box 545, Newtown, NSW 2042
BNM Records	Emma Wiking	emma@bnmrecords.com	Suite 3/171 Greville St, Prahran, VIC 3181
Maju	Judy Campbell	judycam@maju.com	16a Ivey Street, Lindfield NSW, 2070
Basin Records	Emma Wiking	emmaw@basinrecords.com	Suite 3/171 Greville St, Prahran, VIC 3181
Boundary Sounds		martin@boundarysounds.com	PO Box 2424, Strawberry Hills NSW 2012
The Spooky Men's Chorale	Graham Mann	spookymen@gmail.com	P.O. Box 56 Lawson, NSW, 2783
Bluehouse		Bluehouse3@mac.com	PO Box 2132 Fitzroy MDC, VIC, 3065
CCR Australia	Angie Cooper	cooperscrewzasrecords@hotmail.com	6 Johnstone Crescent Colac, Vic, 3250
Oak Records	Maggie Britton	info@maggiebritton.com	65/12 Commodore Drive, Paradise Waters, QLD 4217
Dallas Cosmos	Dallas Cosmos	dallascosmas@dallascosmas.com	44 kerferd Rd Albert park, VIC, 3206
Go Set Music	Lorda Ommesiah	lorda@optusnet.com.au	GPO Box 813 Greenacre, NSW, 2190
Lavender Music	Al Craig	Blackinc@presto.net.au	47 Woodbine St N Balgowlah, NSW, 2093
Future Classic	Nathan McLay	nathan@futureclassic.com.au	PO Box 1535 Strawberry Hills, NSW 2012
Creative Vibes	Heidi Pasqual	info@cvibes.com	Unit 6, 7-9 Kent Rd Mascot, NSW, 2020
Turnus Records	Fergie Marshall	fergiemarshall@hotmail.com	6706/177 Mitchell Rd Erskineville, NSW, 2043
Levity Label	Andrew Valder	melin@rodriguezandcompany.com	
Hammered Silver Records	Tim Weatherhall	tim@hammeredsilver.com	Po Box 376 Petrie, QLD, 4502
Sonic Boy Records	Tony Hunt	tony@sonicboyrecords.com	1 Stodart St Camberwell, VIC, 3124
Red Disc Records	Clive Hines	reddiscrecords@hotmail.com	PO Box 1016 Seymour, VIC, 3660
Wild cat records	Amanda Easton	amanda@amandaeaston.com	PO Box 907 Leichardt, NSW, 2040
Phoenix movement records	Bird Jensen	8ball@8ballaitken.com	GPO Box 1933 Brisbane, QLD, 4001
Jazz head	Andrew Walker	andrew@headrecords.com	PO Box 2197 St Kilda, VIC, 3182
soundcolour		dougitt@soundcolour.com	PO Box 264 Clunes, NSW, 2480
Tone Freak Records	Bill Palmer	contact@tonefreakrecords.com	PO Box 3644 Helensvale Town Centre, QLD 4212
Mummy's Boy Records	Erin Jameson	erin@ykymanagement.com	PO Box 6068 South Yarra, Vic, 3141
Xelon Entertainment	Ashley Gay	ashley@xelonentertainment.com	PO Box 188 PO Box 188, VIC, 3135

Small House Records	Mark Tulk	mark@smallhousererecords.com.au	PO Box 510 Box Hill BC, VIC, 3128
Echobase Records	Andrew Schraa	aschraa1@mac.com	81 Byron st Elwood, Vic, 3184
Shock Records	Marcus Seal	marcus.seal@shock.com.au	200 Beavers Road NORTHCOTE, VIC 3070
Room 40	Lawrence English	lawrence@room40.org	PO Box 771 Hamilton Central, QLD, 4007
Chapter Music	Guy Blackman	guy@chaptermusic.com.au	PO Box 247 Northcote, VIC, 3070
Bahool Records	Keith Macnamara	bahoolrecords@yahoo.com.au	752 McCallums Creek Rd Majorca, Vic 3465
Extended Family	Alexandra Kay	highroad@bigpond.com	P.O Box 257 Haberfield, NSW, 2045
Formations Band	Tim McGrath	megraatt@telstra.com	17 evelyn st lammermoor beach yeppoon, QLD, 4703
Dorothy Records	Terese Jermyn	terese@masqueagency.com.au	4/8 King George Street McMahon's Point, NSW, 2060
House Of Wow	Dino Jag La	dino@houseofwow.com	21 Wildwood Drive Salisbury Park, SA, 5109
Weapon Head	Boris Billing	borisbilling@bigpond.com.au	10 Frideswide Street Goondiwindi, QLD, 4390
Endgame Records	Tegan Northwood	info@endgame.com.au	PO Box 3040 Marrickville, NSW, 2204
Doza Records	Damian Delahunty	journey@netconnect.com.au	8 Scullin Road Burnside, VIC, 3023
Krow Pie	Matt Ellis	info@krowpie.com	PO Box 1186 Darlinghurst, NSW, 2010
Kingdon Wise Records	Ben Louise	kingdomwise@hotmail.com	Po Box 1061 Croydon, VIC, 3136
Stomp	Tom Pandzic	tom@stomp.com.au	5 Harper St Abbottsford, VIC, 3067
Winterun	nick Dunstan	kiktarn@yahoo.com.au	11 acacia st camberwell, VIC, 3124
Starving Kids	Brett Bartlett	brett@starvingkids.com.au	PO Box 314 Browns Plains, QLD, 4118
Hypersonic Records	Adrian Lloyd	info@hypersonicrecords.com.au	317-319 Pier Street Perth, WA, 6000
Phil MC	Phil McKernan	phil_mc@tpg.com.au	P.O Box 2290 Kew, Vic, 3101
Caravan records	Simeon Gilmou	rebecca@caravanrecords.com.au	10 Ormond st North Gosford, NSW, 2250
Jazz WA	Alan Corbet	alan@jazzwa.com	PO BOX 295 North Beach, WA, 6920
Lee Adam Wilshier	Lee Adam Wilshier	lee.wilshier@bigpond.com	29A Braidhill Rd Macleod, VIC, 3085
The Boat People	Rick Chazan	ideasm@bigpond.net.au	po box 1576 Towong, QLD, 4066
MGM	Sebastian Chase	Sebastian@thegroovemERCHANTS.com	PO Box A1437 South Sydney, NSW, 1235
Bunza Music	Sue	sue@bunza.com.au	PO Box 4989 North Rocks, NSW, 2151
Pink.dot	Amin Javanmard	music@pinkdot.org	PO Box 718 Runaway Bay, QLD, 4216
MPM Records	Mathew Packer	mathew@mpmrecords.com.au	15 Freeman Street New Lambton, NSW, 2305

ATTACHMENT 3
CONSENT OF PARTICIPATING MEMBERS

From: AIR [air@mail-hub.net]
Sent: Monday, 15 December 2008 2:37 PM
To: stu@air.org.au
Subject: Proposed Collective Bargaining Negotiations



AUSTRALIAN
INDEPENDENT
RECORD LABELS
ASSOCIATION

Dear Members

We are writing this notice to the membership to inform you of recent action being taken by AIR on behalf of its members.

AIR is filing a Collective Bargaining Notification to the Australian Consumer Competition Commission (ACCC) under the Trade Practices Act. The end goal of this is to get an immunity from liability from price fixing and other provisions of the Trade Practices Act so that AIR can act on behalf of its members and negotiate collective licensing arrangements for the sector. Any license arrangement with AIR will be non-exclusive and our members are free to negotiate their own licenses where they want to do so. Further, if you have an existing license in place with a potential licensing target for AIR, that existing licence will not be affected by the new AIR collective licensing arrangements.

There are currently a number of end users of recorded music and music video in Australia who currently may not have licenses in place to pay the independent sector. By contrast, the multinational subsidiaries are paid for use of content in a variety of formats.

The current proposed targets of collective negotiation by AIR are:

Foxtel
Austar
Optus
Telstra

Their music content channels / outlets include:

MTV
XYZ
Fuel TV.
Bigpond

If you would like to be covered by the proposed collective bargaining negotiations with licensees, please indicate by following the link provided and clicking the yes option [link](#). You will need to do this by Friday August 15th.

If you do not agree to participate you will not be able to share in the licensing fees payable under the licences to be collectively negotiated. AIR therefore believes that it is strongly in the interest of all members to opt in.

If you have any questions please don't hesitate to forward them to info@air.org.au and we will seek to clarify them for you in a timely manner.

Sincerely

Stuart Watters

CEO

AIR

You have received this email because you are an AIR member or have requested information from us. If you have received this email by mistake, you can remove your details [here](#).

To update your details click [here](#)

If you are new to AIR, you can subscribe to our mailouts by clicking [here](#).

ATTACHMENT 4

SUMMARY OUTLINE OF PROPOSED KEY TERMS

Item	Term	Summary
1	Licence scope	<p>A non-exclusive licence to broadcast music videos, but only:</p> <ul style="list-style-type: none"> • on specified Music Video Channels; and • in accordance with all of the conditions applicable to the broadcaster's licence issued under the Broadcasting Services Act. <p>"Music Video Channels" are television channels where music videos comprise at least 25% of the total programming content by duration (calculated over a calendar week, and excluding advertisements, sponsorship announcements and other promotional content).</p>
2	Licensed repertoire	All music videos in which the copyright is owned or controlled in Australia by Participating Members.
3	Term	An initial period of [] months, with automatic renewals for further [] month periods unless either party terminates by notice in writing.
4	Reporting	<p>Licensees will provide quarterly video usage reports, setting out (in the form of a "broadcast log") the details of all music videos broadcast on each Music Video Channel, including the details of any directly licensed music videos.</p> <p>Licensees will also provide quarterly reports detailing the number of domestic and commercial subscribers with access to the Music Video Channels.</p>
5	Licence fees (GST Exclusive)	<p>Licence fees are payable quarterly. The fees are calculated monthly on the basis of the subscriber numbers reported by the licensee.</p> <p>[Categories & formulas to be negotiated].</p>
6	Invoicing and payment	<p>Following receipt of the quarterly video usage and revenue reports (see Item 4 above), a tax invoice will be issued for the amount of the licence fees.</p> <p>All invoices are payable within 14 days of receipt.</p>

Form GA

Commonwealth of Australia

Trade Practices Act 1974 — subsection 93AB (1)

NOTIFICATION OF COLLECTIVE BARGAINING

This form is to be completed by applicants proposing to engage in collective bargaining arrangements.

In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

Protection provided by the notification extends only to the collective bargaining arrangements described in the form.

To the Australian Competition and Consumer Commission:

Notification is hereby given under subsection 93AB (1) of the *Trade Practices Act 1974*:

- to make, or propose to make, a contract containing a provision of the kind referred to in paragraph 45 (2)(a) of the *Trade Practices Act 1974*; or
- to give effect to a provision of a contract where the provision is of the kind referred to in paragraph 45 (2)(b) of the *Trade Practices Act 1974*.
(Strike out if not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

Section A — general information

1. Applicant

- (a) Name of the applicant:
(refer to Direction 1)

CB00062 AUSTRALIAN INDEPENDENT RECORD LABELS ASSOCIATION LTD (AIR) AND PARTICIPATING MEMBERS OF AIR

- (b) Description of business carried on by the applicants:
(refer to Direction 2)

AIR IS A NATIONAL INDUSTRY ASSOCIATION, PROACTIVELY SERVING AND REPRESENTING THE INTERESTS AND DEVELOPMENT OF AUSTRALIAN INDEPENDENT RECORDING LABELS ACROSS AUSTRALIA AND THE WORLD.

SEE FURTHER ATTACHMENT 1.

THE PARTICIPATING MEMBERS LISTED IN ATTACHMENT 2 ARE INDEPENDENT RECORDING LABELS.

- (c) Is the representative of the applicant lodging the notice a trade union, an officer of a trade union or a person acting on the direction of a trade union?
(refer to Direction 3)

NO

- (d) Address in Australia for service of documents on the applicants:

437 SPENCER ST

WEST MELBOURNE

VICTORIA 3003

2. Lodged on behalf of

- (a) Provide names and addresses of all persons on whose behalf the notification is lodged and who propose to participate in the collective bargaining arrangements:
(refer to Direction 4)

DETAILS FOR AIR ARE SET OUT IN 1. ABOVE. SEE ATTACHMENT 2 FOR DETAILS OF THE OTHER APPLICANTS.

- (b) Provide proof of the consent of each of the persons listed at 2 (a) above agreeing to the lodgement of the notification on their behalf:
(refer to Direction 5)

SEE ATTACHMENT 3. THIS REFERS TO THE LETTER THAT WAS SENT TO EACH MEMBER (I.E. THOSE PARTICIPANTS REFERRED TO IN ATTACHMENT 2) AND PROMPTED THEM TO PROVIDE THEIR DIGITAL SIGNATURE AS PARTIES TO COLLECTIVE BARGAINING ARRANGEMENTS. THE TECHNOLOGY USED TO OBTAIN THE DIGITAL SIGNATURES ENSURED THAT EACH DIGITAL SIGNATURE PROCESSED WAS SPECIFIC TO THE COMPANY TO WHICH IT WAS SENT.

- (c) Provide the following information relating to a notification:

- (i) Does this notification relate to a notification previously lodged with the Australian Competition and Consumer Commission and for which a concessional fee is claimed?

NO

- (ii) details of the first-mentioned notification, including but not limited to:
(A) the name of the applicant; and

- (B) the date the notification was said to be lodged; and
- (C) if known or applicable — the registration number allocated to that collective bargaining notification.

N/A

Section B – collective bargaining arrangements

3. Proposed collective bargaining arrangements

- (a) Provide: the name and address of the target; the name, position and telephone contact details of an appropriate contact at the target; and a description of the business carried on by the target:
(refer to direction 6)

AUSTAR
AUSTAR UNITED COMMUNICATIONS LIMITED
087 695 707
LEVEL 1, 46-52 MOUNTAIN STREET
ULTIMO
NSW 2007

- (b) Provide a description of the goods or services which the participants of the collective bargaining arrangements (listed at 2 (a) above) propose to supply to or acquire from the target:

THE PARTICIPANTS IN THE COLLECTIVE BARGAINING ARRANGEMENTS PROPOSE TO SUPPLY MASTER RECORDING COPYRIGHTS INCLUSIVE OF AUDIO AND VISUAL RIGHTS UNDER LICENSE TO LICENSEES ACROSS A RANGE OF TRANSMISSION MEDIUMS.

- (c) Do the participants of the proposed collective bargaining arrangements (see 2 (a) above) reasonably expect to make one or more contracts with the target about the supply to or acquisition from the target of one or more of the goods or services (listed at 3 (b) above)?
(refer to direction 7)

YES. ONE CONTRACT FOR EACH TARGET IS PROPOSED. ALL APPLICANTS WILL BE PARTIES TO THE CONTRACT. UNDER THE CONTRACT EACH PARTICIPATING MEMBER OF AIR WILL AGREE TO LICENSE THEIR RELEVANT RESPECTIVE RIGHTS TO THE TARGET.

- (d) In relation to (c) above, provide details of the basis upon which that expectation is held including details of past contracts with the target:

A JOINT LICENSING ARRANGEMENT IS PROPOSED UNDER WHICH EACH PARTICIPATING MEMBER OF AIR WILL LICENSE THEIR RELEVANT RIGHTS TO EACH PARTICULAR TARGET. THIS MODEL DIFFERS FROM THE PPCA COLLECTIVE LICENSING MODEL –NO COLLECTIVE LICENCE WILL BE ISSUED BY AIR AND ACCORDINGLY THERE WILL NOT BE ANY INPUT LICENCE BETWEEN THE PARTICIPATING MEMBERS AND AIR.

A JOINT LICENCE HAS NOT PREVIOUSLY BEEN OFFERED BY THE PARTICIPATING MEMBERS OR ANY OTHER MEMBERS OF AIR.

AIR HAS NOT PREVIOUSLY OFFERED A COLLECTIVE LICENSE.

SOME AIR MEMBERS HAVE PREVIOUSLY ENTERED INTO DIRECT LICENSING ARRANGEMENTS. HOWEVER, SUCH ARRANGEMENTS ARE EXCEPTIONAL GIVEN THE TRANSACTION COSTS OF ENTERING INTO NUMEROUS SEPARATE LICENSING ARRANGMENTS. THE JOINT LICENCE PROPOSED IS INTENDED TO REDUCE THE TRANSACTION COSTS CONSIDERABLY.

- (e) Do the participants of the collective bargaining arrangements (listed at 2 (a) above) reasonably expect that contractual payments between the target and each participant will not exceed \$3 million (or any other amount prescribed by regulation) in any 12 month period, and on what basis?
(refer to direction 8)

YES

- (f) In relation to (e) above provide an estimation of the contractual payments expected between the target and each participant in relation to the goods and services (listed at 2 (a) above):

GIVEN THE SIZE, NATURE AND FRAGMENTATION OF THE INDEPENDENT RECORDING SECTOR IN AUSTRALIA, IT IS DIFFICULT TO ESTIMATE THE AMOUNT OF THE CONTRACTUAL PAYMENTS FOR A JOINT LICENCE. THE AMOUNT NEGOTIATED FOR A JOINT LICENCE WILL BE DISTRIBUTED TO PARTICIPATING MEMBERS AFTER DEDUCTING A SMALL AMOUNT FOR ADMINISTRATION COSTS. THE DISTRIBUTION SCHEME WILL BE COMPARABLE TO THAT USED BY PPCA IN PPCA'S COLLECTIVE LICENSING ARRANGEMENTS.

- (g) Provide a description of the collective bargaining arrangements proposed including, but not limited to:
- (i) the process by which participants propose to undertake collective bargaining with the target; and

AIR WILL NEGOTIATE THE PROPOSED JOINT LICENSING AGREEMENT ON BEHALF OF THE PARTICIPATING MEMBERS.

- (ii) the type of terms and conditions expected to be negotiated in collective bargaining arrangements (for example: price; non-price conditions of supply such as contract periods etc); and

PARTICIPATING MEMBERS WILL EACH GRANT TO EACH TARGET A NON-EXCLUSIVE LICENSE TO EXERCISE ANY OR ALL OF THEIR RIGHTS. THE LICENSED RIGHTS WILL BE PUBLIC PERFORMANCE AND TRANSMISSION RIGHTS FOR MUSIC VIDEOS.

THE RIGHTS GRANTED WILL BE TECHNOLOGY NEUTRAL, THUS ALLOWING FOR THE NEGOTIATION OF A SUITE OF RIGHTS (BROADCAST; COMMUNICATION; DOWNLOAD; BLANKET USES..

THIS IS BECOMING AN INDUSTRY NORM SO AS TO MINIMISE THE NEED FOR MULTIPLE LICENSING AGREEMENTS.

LICENSE FEES WILL BE PAYABLE QUARTERLY BASED ON USAGE AND REVENUE REPORTS.

CONTRACT PERIODS ARE LIKELY TO BE FOR A MINIMUM OF 6 MONTHS UP TO A MAXIMUM OF 3 YEARS WITH SPECIFIED REVIEW PERIODS.

PRICING WILL BE DETERMINED ON THE BASIS OF USAGE OF COPYRIGHTS BALANCED AGAINST THE OVERALL QUANTITY OF SUBSCRIBERS THAT THE BROADCASTER TARGET HAS OVER THE RELEVANT PERIOD OF THE AGREEMENT.

FOR A SUMMARY OUTLINE OF PROPOSED KEY TERMS, SEE ATTACHMENT 4.

- (iii) details of any dispute resolution procedure (if any) proposed between participants throughout the collective bargaining process; and

EACH PARTICIPATING MEMBER WILL HAVE THE RIGHT AT THEIR OWN EXPENSE TO APPOINT AN INDEPENDENT AUDITOR TO EXAMINE THE BOOKS AND ACCOUNTS OF AIR. AIR WILL OFFER MEDIATION, CONCILIATION AND NEUTRAL EVALUATION IN RELATION TO ANY DISPUTE THAT MAY ARISE BETWEEN A PARTICIPATING MEMBER AND AIR IN CONNECTION WITH THE JOINT LICENSING AGREEMENT OR THE NEGOTIATION THEREOF.

- (iv) details of any dispute resolution procedure (if any) proposed between participants and the target throughout the collective bargaining process; and

NO DISPUTE RESOLUTION PROCEDURE IS ENVISAGED AT THE STAGE OF NEGOTIATION. THE TERMS OF THE JOINT LICENCE PROPOSED WILL BE STRAIGHT FORWARD. IF A DISPUTE CANNOT BE RESOLVED AS PART OF THE PROCESS OF NEGOTIATION THEN NO JOINT LICENCE AGREEMENT WILL RESULT. THERE IS NO NEED FOR DISPUTE RESOLUTION PROCEDURES DURING THE STAGE OF NEGOTIATION AND ANY SUCH PROCESSES COULD EASILY DELAY NEGOTIATION.

- (v) details of any dispute resolution procedure (if any) proposed to deal with disputes throughout the term of contracts entered into with the target; and

THE JOINT LICENCE AGREEMENT WILL PROVIDE FOR MEDIATION, CONCILIATION AND NEUTRAL EVALUATION IN RELATION TO ANY DISPUTE THAT MAY ARISE BETWEEN AIR OR A PARTICIPATING MEMBER AND THE TARGET.

- (vi) details of proposed commencement and duration of contracts to be negotiated with the target:
(refer to direction 9)

THE COMMENCEMENT DATE IS LIKELY TO BE IN THE SECOND QUARTER OF THE FINANCIAL YEAR. THE COLLECTIVE

LICENCE WILL RUN FOR A MINIMUM OF 6 MONTHS UP TO 3 YEARS WITH SPECIFIED REVIEW PERIODS.

- (h) Identify any parts of the proposed collective arrangements described in 3 (g) which relate to possible price agreements:

THERE WILL BE A JOINT LICENSING FEE.

- (i) Identify any parts of the proposed collective arrangements described in 3 (g) which relate to a possible or proposed exclusionary provision(s), including but not limited to:

- (i) the nature of the proposed or possible exclusionary provision(s) (for example an agreement to withhold supply of the relevant goods or services to the target); and

NO EXCLUSIONARY PROVISION IS ENVISAGED. IN THE EVENT THAT THE TARGET DECLINES TO ENTER INTO A JOINT LICENSE, IT WOULD BE ENTIRELY UP TO EACH MEMBER OF AIR TO DECIDE FOR ITSELF AND INDEPENDENTLY OF EACH OTHER THE FUTURE NATURE OF ITS RELATIONSHIP WITH THE TARGET.

- (ii) the circumstances in which the collective bargaining participants would engage in the exclusionary provision(s), including but not limited to:

- (A) details of the events that would trigger any such activity; and
 - (B) details of the process that would be followed in undertaking any such activity; and
 - (C) details of any proposed period of notice to be given to the target prior to the commencement of such activity; and
 - (D) details of any dispute resolution procedure to be applied or offered to the target prior to the commencement of such activity;

(refer to direction 10)

NO EXCLUSIONARY PROVISION IS ENVISAGED. SEE (i) ABOVE

Section C – public detriments

4. Market definition

Provide a description of the market(s) in which the goods or services described at 3 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):
(refer to direction 11)

THE RELEVANT MARKET IS THE AUSTRALIAN MARKET FOR THE ACQUISITION AND SUPPLY OF LICENCES FOR PUBLIC PERFORMANCE RIGHTS AND TRANSMISSION RIGHTS FOR SOUND RECORDINGS AND MUSIC VIDEOS IN AUSTRALIA.

THE MAIN SUPPLIERS OF LICENCES FOR PUBLIC PERFORMANCE RIGHTS AND TRANSMISSION RIGHTS FOR SOUND RECORDINGS AND MUSIC VIDEOS IN AUSTRALIA ARE:

- RECORD LABELS

- ARTISTS
- ARTIST MANAGERS
- MANAGERS

THE MAIN ACQUIRERS OF LICENCES FOR PUBLIC PERFORMANCE RIGHTS AND TRANSMISSION RIGHTS FOR SOUND RECORDINGS AND MUSIC VIDEOS IN AUSTRALIA ARE:

- TELEVISION BROADCASTERS
- MUSIC CHANNELS
- ONLINE BROADCASTERS
- TERRESTRIAL AND DIGITAL RADIO

THERE ARE MANY DIFFERENT GENRES OF MUSIC. THE REPERTOIRE TO BE COVERED BY THE JOINT LICENCE PROPOSED WILL COVER A RANGE OF GENRES (EG. ROCK, CLASSICAL). THE APPLICANTS DO NOT BELIEVE THAT THERE ARE GENRE-BASED MARKETS – THE ORTHODOX DEFINITION OF THE PRODUCT MARKET IS THAT IT INCLUDES ALL GENRES.

THE ONLY RELEVANT GEOGRAPHIC OR LEGAL RESTRICTION ON THE SUPPLY OR ACQUISITION OF THE RELEVANT SERVICES IS THAT A LICENCE FOR PUBLIC PERFORMANCE RIGHTS AND TRANSMISSION RIGHTS FOR SOUND RECORDINGS AND MUSIC VIDEOS IN AUSTRALIA IS LIMITED TO AUSTRALIA AND EACH LICENSOR MUST BE ENTITLED TO LICENSE THOSE RIGHTS IN AUSTRALIA. SUBJECT TO THOSE RESTRICTIONS, COPYRIGHT IS AN UNLIMITED RESOURCE.

5. Public detriments

- (a) What will be the likely effect of the notified conduct on the prices of the goods or services described at 3 (b) above and the prices of goods or services in other affected markets? In answering this question please provide facts and information to support the claims made:

IN THE APPLICANTS' VIEW, THERE ARE NO LIKELY PUBLIC DETRIMENTS.

THE JOINT LICENCE PROPOSED IS NON-EXCLUSIVE. THE TARGET CAN DEAL WITH ANY OF THE FOLLOWING PARTIES:

- THE LICENSORS, OR A SELECT NUMBER OF LICENSORS (eg MAJOR RECORD LABELS WHO ARE NOT MEMBERS OF AIR)
- PPCA (see comment below);
- AIR AND PARTICIPATING MEMBERS; OR
- MEMBERS OF AIR WHO WISH TO ENTER INTO A SEPARATE LICENSING AGREEMENT.

THE BROADCASTERS HAVE A LICENCE WITH PPCA FOR THE USE OF SOUND RECORDINGS BUT NOT FOR THE VIDEO RIGHTS. THE BROADCASTERS HAVE TRADITIONALLY PASSED THIS RESPONSIBILITY TO THE CHANNELS, WHO HAVE ENTERED INTO DIRECT LICENSING ARRANGEMENTS.

THE FEE FOR A THE JOINT LICENCE PROPOSED WILL BE NEGOTIATED ON REASONABLE COMMERCIAL TERMS. IN THE PAST THE TARGET HAS NOT PAID ANY FEE IN RELATION TO THE PUBLIC PERFORMANCE AND TRANSMISSION OF MUSIC VIDEOS FOR WHICH THE COPYRIGHT IS HELD BY AN INDEPENDENT RECORDING LABEL. ADOPTION OF A COMMERCIALY NEGOTIATED REASONABLE FEE INSTEAD OF A FREE-RIDING FEE OF \$0 IS NOT A PUBLIC DETRIMENT.

THE JOINT LICENCE PROPOSED DOES NOT INVOLVE PRICE FIXING AS DEFINED UNDER SECTION 45A(1) OF THE TPA: THE JOINT LICENCE TO BE OFFERED IS A JOINT PRODUCT THAT COULD NOT BE OFFERED BY AIR OR BY ANY OF THE PARTICIPATING MEMBERS ALONE. ACCORDINGLY, AIR AND THE PARTICIPATING MEMBERS ARE NOT COMPETITORS OR LIKELY COMPETITORS.

THE JOINT PRODUCT TO BE SUPPLIED UNDER THE PROPOSED JOINT LICENCE IS INTENDED TO AND WILL REDUCE TRANSACTION COSTS. THE JOINT PRODUCT IS PRO-COMPETITIVE. THE JOINT LICENCE PROPOSED IS NON_EXCLUSIVE – IT DOES NOT FORECLOSE SEPERATE LICENSING DIRECTLY WITH COPYRIGHT HOLDERS.

(b) What other detriments may result from the notified conduct? In answering this question please provide facts and information to support the claims made:

NONE

Section D – public benefits

6. Public benefit claims

- (a) Provide details of the public benefits resulting or likely to result from the proposed arrangement. In answering this question please provide facts and information to support the claims made:

THE JOINT LICENCE PROPOSED WILL HELP TO SUPPORT THE INDEPENDENT SECTOR BY CREATING AN AVENUE FOR THE COLLECTION OF COPYRIGHT FEES TO WHICH COPYRIGHT HOLDERS ARE ENTITLED BUT WHICH HAVE NOT BEEN PAID IN THE PAST. THE MAIN POTENTIAL SOURCE OF COPYRIGHT FEES ARE BROADCASTERS, INCLUDING THE TARGET. THE BROADCASTERS HAVE DIRECT LICENSING ARRANGEMENTS WITH THE FOUR MAJOR RECORD COMPANIES BUT NO SUCH ARRANGMENTS ARE IN PLACE WITH THE INDEPENDENTS.

AS REVENUES FROM CD SALES DECLINE, IT IS INCREASINGLY IMPORTANT FOR RECORD COMPANIES TO BE ABLE TO DRAW RESIDUAL REVENUES FROM A DIVERSE RANGE OF SOURCES, NAMELY: VIDEO; SYNCHRONISATION; MOBILE; AND ONLINE. ALL OF THESE REVENUE STREAMS ARE IMPORTANT IN THE LICENSING OF COPYRIGHT CONTENT FROM THE MAJOR LABEL SECTOR. THEY HAVE THE SAME POTENTIAL IMPORTANCE FOR THE INDEPENDENT SECTOR.

THE IMPORTANCE OF THE INDEPENDENT MUSIC SECTOR TO THE ECONOMY, TO CREATIVE ARTISTS AND TO THE PUBLIC GENERALLY IS AS INDICATED IN ATTACHMENT 1.

Section E - authority

7. Contact details

- (a) Name, contact telephone number and address of person authorised by the notifying parties to provide additional information in relation to this application:

STUART WATTERS
CHIEF EXECUTIVE OFFICER - AIR
437 SPENCER ST
WEST MELBOURNE VICTORIC 3003
PH: 03 8554 4330
MOB: 0438 758 847
(refer to direction 12)

Dated 5/12/08

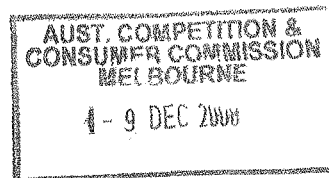
Signed by/on behalf of the applicants


.....
(Signature)

Stuart Watters
.....
(Full Name)

Australian Independent Record Labels Assoc
.....
(Organisation)

CEO
.....
(Position in Organisation)



DIRECTIONS

1. Where the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
2. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which notification is given.
3. A collective bargaining notification can not be lodged by a trade union or a trade union representative.
4. Where the applicant will be a participant in the collective bargaining arrangements (rather than a representative of participants) the name of the applicant must also be included. Where those persons are corporations, list the corporation's name and address.
5. The applicant, in lodging a notification on behalf of others, must obtain their consent to do so and provide proof of that consent.
6. Where the target is a corporation, provide the corporate name.
7. The collective bargaining notification process is only available to parties that reasonably expect to make one or more contracts with the target about the supply or acquisition of goods or services the subject of the notification.
8. The value of the contract to be collectively negotiated between the target and each participant is not to exceed \$3 million (or such other amount as is prescribed by the regulations) per participant in any twelve month period.
9. To the extent that the collective bargaining arrangements have been reduced to writing, provide a true copy of the arrangement. To the extent that the collective bargaining arrangements have not been reduced to writing, provide a full and correct description of the key terms that have not been reduced to writing.
10. In simple terms an exclusionary provision exists where the proposed contract, arrangement or understanding is made by businesses (at least two of whom are competitors) for the purpose of preventing, restricting or limiting the supply of services to particular persons or classes of persons by all or any of the parties to the contract, arrangement or understanding.

In the context of collective bargaining, an exclusionary provision(s) may include contracts, arrangements or understandings (whether currently in existence or to be made or arrived at during the term of the notification) between collective bargaining participants to limit or restrict their dealings with the target including contracts arrangements or understandings to:

 - (a) withhold the supply of goods or services from the target; or
 - (b) refuse or decline to acquire the goods or services of the target;

whether such conduct was absolute, limited or subject to certain terms or conditions. This is sometimes referred to as a collective boycott.
11. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
12. The notification must be signed by a person authorised by the applicant to do so.

ATTACHMENT 1

BACKGROUND ON THE AUSTRALIAN INDEPENDENT RECORD LABELS ASSOCIATION AND THE INDEPENDENT RECORD SECTOR

The Australian Independent Record Labels Association Ltd (AIR) is the peak body for Australian owned record labels. AIR pro-actively serves and represents the interests and development of Australian independent recording labels across Australia and internationally. There is no other membership organisation in Australia that represents the interests of independent recording labels, which represents around 85% of all Australian recorded music.

AIR's primary purpose is to foster an ever increasing marketplace for Australian independent music and assist in the long-term development, growth and success of Australia's independent recording industry both in Australia and overseas.

The formal objectives stated in AIR's constitution are:

- To assist in the exploitation of copyrights created and owned by Australian independent record labels
- To promote a commercially viable industry environment which is conducive to growth of the Australian independent sector and to the development of the artists that it represents
- To encourage and facilitate cultural expression through Australian music at local, national and international levels
- To advocate the values and interests of the Company and the Australian independent sector in accordance with these Objects
- To do all things as are necessary, incidental and conducive to the attainment of the above objects and to the development of the Australian music industry at large.

The Australian independent music industry makes up about 85% of the entire Australian recording industry. Members of this industry are Australian owned and not owned by multinational record companies (which make up the other 15% of the industry). Unlike these multinationals, industry members do not have an international company network through which to distribute their product and rely on establishing international licensing relationships on a business to business basis.

Independent recording labels produce the vast majority of work by Australian artists in all genres, but particularly in niche genres such as Australian jazz, electronica and dance music. This specialisation in niche genres also sets Independents apart from the multinationals.

Independent recording labels range from small niche-market labels to large organisations with a turn over of \$50 million per year. Artists represented by the Australian independent recording industry include well known names such as Savage Garden, John Butler Trio, Killing Heidi, Vanessa Amorosi, Missy Higgins, James Morrison and AC/DC.

The International Federation of the Phonographic Industry (IFPI) represents the recording industry worldwide through its membership of over 1,450 members spanning 70 countries. It was noted in a recent report on sales figures for the first half of 2004 that Australia has the 7th largest music industry market in the world and that Australia's maintenance of sales is primarily buoyed by a "strong local repertoire".

The principal property traded by the independent recording sector is the copyright in a recording. These copyrights are principally traded through CD sales, but also through use of recordings in films and other multimedia. However, as the industry adapts to recent changes and external pressures, sound recording files are now able to be traded through a variety of additional means from digital downloading sites, to synchronisation on mobile phone carrier services. AIR is at the forefront of enabling its members to maximise their capacity to exploit these new mediums to their (and Australia's) advantage.

Within the larger music industry it is the independent record labels that fulfil the role of supporting new artists and developing new markets. In contrast, the major recording companies tend to sign up product once it has had market recognition and represents a substantial profitable return.

Independent record labels have a strong track record in promoting Australian music overseas and have been responsible for most well known Australian music export examples, except in the cases of silverchair and Mental as Anything.

The independent record industry represents at least 85% of the total Australian music industry. The other 15% is represented by multinationals which are not Australian owned. It is difficult to determine the exact market share figure that this represents as there are inadequate statistical collection services present in the Australian recording industry, but anecdotal evidence would suggest that the independent sector represents anywhere between 25 and 30% of the market share in economic terms.

ATTACHMENT 2
PARTICIPATING MEMBERS

Company	Contact	Email	Address
Shogun Distribution	Adam Kane	adam@shogundist.com	PO Box 1513, Eagle Fam, QLD 4009
Inertia Music	Collin Daniels	colin@inertia-music.com	PO Box 84, SURRY HILLS, NSW 2010
Rubber Records	David Vodicka	david@rubberrecords.com.au	441 Spencer St, West Melbourne 3003
Bone Finger Records	Stewart Riddle	stew@bonefingerrecords.com	PO Box 5094, Brassall, QLD 4305
Boomtown Records	Jaddan Comerford	jaddan@boomtownrecords.com.au	PO box 4145, Eaglemont, VIC 3084
Risky Records	Tamara Piller	info@riskyrecords.com.au	57-59 Renwick Street, Leichardt, NSW 2040
Obese Records	Ben Rynderman	operations@obeserecords.com	4a Izett st, Prahran, VIC 3181
Ivy League	Chris Maund	Chris@ivyleague.com.au	PO Box 545, Newtown, NSW 2042
BNM Records	Emma Wiking	emma@bnmrecords.com	Suite 3/171 Greville St, Prahran, VIC 3181
Maju	Judy Campbell	judycam@maju.com	16a Ivey Street, Lindfield NSW, 2070
Basin Records	Emma Wiking	emmaw@basinrecords.com	Suite 3/171 Greville St, Prahran, VIC 3181
Boundary Sounds		martin@boundarysounds.com	PO Box 2424, Strawberry Hills NSW 2012
The Spooky Men's Chorale	Graham Mann	spookymen@gmail.com	P.O. Box 56 Lawson, NSW, 2783
Bluehouse		Bluehouse3@mac.com	PO Box 2132 Fitzroy MDC, VIC, 3065
CCR Australia	Angie Cooper	coopercscrewzasrecords@hotmail.com	6 Johnstone Crescent Colac, Vic, 3250
Oak Records	Maggie Britton	info@maggiebritton.com	65/12 Commodore Drive, Paradise Waters, QLD 4217
Dallas Cosmos	Dallas Cosmos	dallascosmas@dallascosmas.com	44 kerferd Rd Albert park, VIC, 3206
Go Set Music	Lorda Ommesiah	lorda@optusnet.com.au	GPO Box 813 Greenacre, NSW, 2190
Lavender Music	Al Craig	Blackinc@presto.net.au	47 Woodbine St N Balgowlah, NSW, 2093
Future Classic	Nathan McLay	nathan@futureclassic.com.au	PO Box 1535 Strawberry Hills, NSW 2012
Creative Vibes	Heidi Pasqual	info@cvibes.com	Unit 6, 7-9 Kent Rd Mascot, NSW, 2020
Turnnus Records	Fergie Marshall	fergiemarshall@hotmail.com	6706/177 Mitchell Rd Erskineville, NSW, 2043
Levity Label	Andrew Valder	meln@rodriguezhazandcompany.com	
Hammered Silver Records	Tim Weatherhall	tim@hammeredsilver.com	Po Box 376 Petrie, QLD, 4502
Sonic Boy Records	Tony Hunt	tony@sonicboyrecords.com	1 Stodart St Camberwell, VIC, 3124
Red Disc Records	Clive Hines	reddiscrecords@hotmail.com	PO Box 1016 Seymour, VIC, 3660
Wild cat records	Amanda Easton	amanda@amandaeaston.com	PO Box 907 Leichhardt, NSW, 2040
Phoenix movement records	Bird Jensen	8ball@8ballaitken.com	GPO Box 1933 Brisbane, QLD, 4001
Jazz head	Andrew Walker	andrew@headrecords.com	PO Box 2197 St Kilda, VIC, 3182
soundcolour		dougitt@soundcolour.com	PO Box 264 Clunes, NSW, 2480
Tone Freak Records	Bill Palmer	contact@tonefreakrecords.com	PO Box 3644 Helensvale Town Centre, QLD 4212
Mummy's Boy Records	Erin Jameson	erin@vkvmanagement.com	PO Box 6068 South Yarra, Vic, 3141
Xelon Entertainment	Ashley Gay	ashley@xelonentertainment.com	PO Box 188 PO Box 188, VIC, 3135

Small House Records	Mark Tuik	mark@smallhouserecords.com.au	PO Box 510 Box Hill BC, VIC, 3128
Echobase Records	Andrew Schraa	aschraa1@mac.com	81 Byron st Elwood, Vic, 3184
Shock Records	Marcus Seal	marcus.seal@shock.com.au	200 Beavers Road NORTHCOTE, VIC 3070
Room 40	Lawrence English	lawrence@room40.org	PO Box 771 Hamilton Central, QLD, 4007
Chapter Music	Guy Blackman	guy@chaptermusic.com.au	PO Box 247 Northcote, VIC, 3070
Bahool Records	Keith Macnamara	bahoolrecords@yahoo.com.au	752 McCallums Creek Rd Majorca, Vic 3465
Extended Family	Alexandra Kay	highroad@bigpond.com	P.O Box 257 Haberfield, NSW, 2045
Formations Band	Tim Mcgrath	megraatt@telstra.com	17 evelyn st lammermoor beach yeppoon, QLD, 4703
Dorothy Records	Terese Jermyn	terese@masqueagency.com.au	4/8 King George Street McMahon's Point, NSW, 2060
House Of Wow	Dino Jag La	dino@houseofwow.com	21 Wildwood Drive Salisburys Park, SA, 5109
Weapon Head	Boris Billing	borisbilling@bigpond.com.au	10 Frideswide Street Goondiwindi, QLD, 4390
Endgame Records	Tegan Northwood	info@endgame.com.au	PO Box 3040 Marrickville, NSW, 2204
Doza Records	Damian Delahunty	journey@netconnect.com.au	8 Scullin Road Burnside, VIC, 3023
Krow Pie	Matt Ellis	info@krowpie.com	PO Box 1186 Darlinghurst, NSW, 2010
Kingdon Wise Records	Ben Louise	kingdomwise@hotmail.com	Po Box 1061 Croydon, VIC, 3136
Stomp	Tom Pandzic	tom@stomp.com.au	5 Harper St Abbottsford, VIC, 3067
Winterun	nick Dunstan	kitktarn@yahoo.com.au	11 acacia st camberwell, VIC, 3124
Starving Kids	Brett Bartlett	brett@starvingkids.com.au	PO Box 314 Browns Plains, QLD, 4118
Hypersonic Records	Adrian Lloyd	info@hypersonicrecords.com.au	317-319 Pier Street Perth, WA, 6000
Phil MC	Phil McKernan	phil_mc@tpg.com.au	P.O.Box 2290 Kew, Vic, 3101
Caravan records	Simeon Gilmou	rebecca@caravanrecords.com.au	10 Ormond st North Gosford, NSW, 2250
Jazz WA	Alan Corbet	alan@jazzwa.com	PO BOX 295 North Beach, WA, 6920
Lee Adam Wilshier	Lee Adam Wilshier	lee.wilshier@bigpond.com	29A Braidhill Rd Macleod, VIC, 3085
The Boat People	Rick Chazan	ideasm@bigpond.net.au	po box 1576 Towong, QLD, 4066
MGM	Sebastian Chase	Sebastian@thegroovemerchants.com	PO Box A1437 South Sydney, NSW, 1235
Bunza Music	Sue	sue@bunza.com.au	PO Box 4989 North Rocks, NSW, 2151
Pink.dot	Amin Javanmard	music@pinkdot.org	PO Box 718 Runaway Bay, QLD, 4216
MPM Records	Mathew Packer	mathew@mpmrecords.com.au	15 Freeman Street New Lambton, NSW, 2305

ATTACHMENT 3
CONSENT OF PARTICIPATING MEMBERS

From: AIR [air@mail-hub.net]
Sent: Monday, 15 December 2008 2:37 PM
To: stu@air.org.au
Subject: Proposed Collective Bargaining Negotiations



AUSTRALIAN
INDEPENDENT
RECORD LABELS
ASSOCIATION

Dear Members

We are writing this notice to the membership to inform you of recent action being taken by AIR on behalf of its members.

AIR is filing a Collective Bargaining Notification to the Australian Consumer Competition Commission (ACCC) under the Trade Practices Act. The end goal of this is to get an immunity from liability from price fixing and other provisions of the Trade Practices Act so that AIR can act on behalf of its members and negotiate collective licensing arrangements for the sector. Any license arrangement with AIR will be non-exclusive and our members are free to negotiate their own licenses where they want to do so. Further, if you have an existing license in place with a potential licensing target for AIR, that existing licence will not be affected by the new AIR collective licensing arrangements.

There are currently a number of end users of recorded music and music video in Australia who currently may not have licenses in place to pay the independent sector. By contrast, the multinational subsidiaries are paid for use of content in a variety of formats.

The current proposed targets of collective negotiation by AIR are:

Foxtel
Austar
Optus
Telstra

Their music content channels / outlets include:

MTV
XYZ
Fuel TV.
Bigpond

If you would like to be covered by the proposed collective bargaining negotiations with licensees, please indicate by following the link provided and clicking the yes option [link](#). You will need to do this by Friday August 15th.

If you do not agree to participate you will not be able to share in the licensing fees payable under the licences to be collectively negotiated. AIR therefore believes that it is strongly in the interest of all members to opt in.

If you have any questions please don't hesitate to forward them to info@air.org.au and we will seek to clarify them for you in a timely manner.

Sincerely

Stuart Watters

CEO

AIR

You have received this email because you are an AIR member or have requested information from us. If you have received this email by mistake, you can remove your details [here](#).

To update your details click [here](#)

If you are new to AIR, you can subscribe to our mailouts by clicking [here](#).

ATTACHMENT 4

SUMMARY OUTLINE OF PROPOSED KEY TERMS

Item	Term	Summary
1	Licence scope	<p>A non-exclusive licence to broadcast music videos, but only:</p> <ul style="list-style-type: none"> • on specified Music Video Channels; and • in accordance with all of the conditions applicable to the broadcaster's licence issued under the Broadcasting Services Act. <p>"Music Video Channels" are television channels where music videos comprise at least 25% of the total programming content by duration (calculated over a calendar week, and excluding advertisements, sponsorship announcements and other promotional content).</p>
2	Licensed repertoire	All music videos in which the copyright is owned or controlled in Australia by Participating Members.
3	Term	An initial period of [] months, with automatic renewals for further [] month periods unless either party terminates by notice in writing.
4	Reporting	<p>Licensees will provide quarterly video usage reports, setting out (in the form of a "broadcast log") the details of all music videos broadcast on each Music Video Channel, including the details of any directly licensed music videos.</p> <p>Licensees will also provide quarterly reports detailing the number of domestic and commercial subscribers with access to the Music Video Channels.</p>
5	Licence fees (GST Exclusive)	<p>Licence fees are payable quarterly. The fees are calculated monthly on the basis of the subscriber numbers reported by the licensee.</p> <p>[Categories & formulas to be negotiated].</p>
6	Invoicing and payment	<p>Following receipt of the quarterly video usage and revenue reports (see Item 4 above), a tax invoice will be issued for the amount of the licence fees.</p> <p>All invoices are payable within 14 days of receipt.</p>

Form GA

Commonwealth of Australia

Trade Practices Act 1974 — subsection 93AB (1)

NOTIFICATION OF COLLECTIVE BARGAINING

This form is to be completed by applicants proposing to engage in collective bargaining arrangements.

In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

Protection provided by the notification extends only to the collective bargaining arrangements described in the form.

To the Australian Competition and Consumer Commission:

Notification is hereby given under subsection 93AB (1) of the *Trade Practices Act 1974*:

- to make, or propose to make, a contract containing a provision of the kind referred to in paragraph 45 (2)(a) of the *Trade Practices Act 1974*; or
- to give effect to a provision of a contract where the provision is of the kind referred to in paragraph 45 (2)(b) of the *Trade Practices Act 1974*.
(Strike out if not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

Section A – general information

1. Applicant

- (a) Name of the applicant:
(refer to Direction 1)

CB000063 AUSTRALIAN INDEPENDENT RECORD LABELS ASSOCIATION LTD (AIR) AND PARTICIPATING MEMBERS OF AIR

- (b) Description of business carried on by the applicants:
(refer to Direction 2)

AIR IS A NATIONAL INDUSTRY ASSOCIATION, PROACTIVELY SERVING AND REPRESENTING THE INTERESTS AND DEVELOPMENT OF AUSTRALIAN INDEPENDENT RECORDING LABELS ACROSS AUSTRALIA AND THE WORLD.

SEE FURTHER ATTACHMENT 1

THE PARTICIPATING MEMBERS LISTED IN ATTACHMENT 2 ARE INDEPENDENT RECORDING LABELS.

- (c) Is the representative of the applicant lodging the notice a trade union, an officer of a trade union or a person acting on the direction of a trade union?
(refer to Direction 3)

NO

- (d) Address in Australia for service of documents on the applicants:

437 SPENCER ST

WEST MELBOURNE

VICTORIA 3003

2. Lodged on behalf of

- (a) Provide names and addresses of all persons on whose behalf the notification is lodged and who propose to participate in the collective bargaining arrangements:
(refer to Direction 4)

DETAILS FOR AIR ARE SET OUT IN 1. ABOVE. SEE ATTACHMENT 2 FOR DETAILS OF THE OTHER APPLICANTS.

- (b) Provide proof of the consent of each of the persons listed at 2 (a) above agreeing to the lodgement of the notification on their behalf:
(refer to Direction 5)

SEE ATTACHMENT 3. THIS REFERS TO THE LETTER THAT WAS SENT TO EACH MEMBER (I.E. THOSE PARTICIPANTS REFERRED TO IN ATTACHMENT 2) AND PROMPTED THEM TO PROVIDE THEIR DIGITAL SIGNATURE AS PARTIES TO COLLECTIVE BARGAINING ARRANGEMENTS. THE TECHNOLOGY USED TO OBTAIN THE DIGITAL SIGNATURES ENSURED THAT EACH DIGITAL SIGNATURE PROCESSED WAS SPECIFIC TO THE COMPANY TO WHICH IT WAS SENT.

- (c) Provide the following information relating to a notification:

- (i) Does this notification relate to a notification previously lodged with the Australian Competition and Consumer Commission and for which a concessional fee is claimed?

NO

- (ii) details of the first-mentioned notification, including but not limited to:
(A) the name of the applicant; and

- (B) the date the notification was said to be lodged; and
- (C) if known or applicable — the registration number allocated to that collective bargaining notification.

N/A

Section B – collective bargaining arrangements

3. Proposed collective bargaining arrangements

- (a) Provide: the name and address of the target; the name, position and telephone contact details of an appropriate contact at the target; and a description of the business carried on by the target:
(refer to direction 6)

MTV
MTV NETWORKS AUSTRALIA PTY LIMITED
107 601 418
4-16 YURONG STREET
EAST SYDNEY (DARLINGHURST)
NSW 2010

- (b) Provide a description of the goods or services which the participants of the collective bargaining arrangements (listed at 2 (a) above) propose to supply to or acquire from the target:

THE PARTICIPANTS IN THE COLLECTIVE BARGAINING ARRANGEMENTS PROPOSE TO SUPPLY MASTER RECORDING COPYRIGHTS INCLUSIVE OF AUDIO AND VISUAL RIGHTS UNDER LICENSE TO LICENSEES ACROSS A RANGE OF TRANSMISSION MEDIUMS.

- (c) Do the participants of the proposed collective bargaining arrangements (see 2 (a) above) reasonably expect to make one or more contracts with the target about the supply to or acquisition from the target of one or more of the goods or services (listed at 3 (b) above)?
(refer to direction 7)

YES. ONE CONTRACT FOR EACH TARGET IS PROPOSED. ALL APPLICANTS WILL BE PARTIES TO THE CONTRACT. UNDER THE CONTRACT EACH PARTICIPATING MEMBER OF AIR WILL AGREE TO LICENSE THEIR RELEVANT RESPECTIVE RIGHTS TO THE TARGET.

- (d) In relation to (c) above, provide details of the basis upon which that expectation is held including details of past contracts with the target:

A JOINT LICENSING ARRANGEMENT IS PROPOSED UNDER WHICH EACH PARTICIPATING MEMBER OF AIR WILL LICENSE THEIR RELEVANT RIGHTS TO EACH PARTICULAR TARGET. THIS MODEL DIFFERS FROM THE PPCA COLLECTIVE LICENSING MODEL –NO COLLECTIVE LICENCE WILL BE ISSUED BY AIR AND ACCORDINGLY THERE WILL NOT BE ANY INPUT LICENCE BETWEEN THE PARTICIPATING MEMBERS AND AIR.

A JOINT LICENCE HAS NOT PREVIOUSLY BEEN OFFERED BY THE PARTICIPATING MEMBERS OR ANY OTHER MEMBERS OF AIR.

AIR HAS NOT PREVIOUSLY OFFERED A COLLECTIVE LICENSE.

SOME AIR MEMBERS HAVE PREVIOUSLY ENTERED INTO DIRECT LICENSING ARRANGEMENTS. HOWEVER, SUCH ARRANGEMENTS ARE EXCEPTIONAL GIVEN THE TRANSACTION COSTS OF ENTERING INTO NUMEROUS SEPARATE LICENSING ARRANGEMENTS. THE JOINT LICENCE PROPOSED IS INTENDED TO REDUCE THE TRANSACTION COSTS CONSIDERABLY.

- (e) Do the participants of the collective bargaining arrangements (listed at 2 (a) above) reasonably expect that contractual payments between the target and each participant will not exceed \$3 million (or any other amount prescribed by regulation) in any 12 month period, and on what basis?
(refer to direction 8)

YES

- (f) In relation to (e) above provide an estimation of the contractual payments expected between the target and each participant in relation to the goods and services (listed at 2 (a) above):

GIVEN THE SIZE, NATURE AND FRAGMENTATION OF THE INDEPENDENT RECORDING SECTOR IN AUSTRALIA, IT IS DIFFICULT TO ESTIMATE THE AMOUNT OF THE CONTRACTUAL PAYMENTS FOR A JOINT LICENCE. THE AMOUNT NEGOTIATED FOR A JOINT LICENCE WILL BE DISTRIBUTED TO PARTICIPATING MEMBERS AFTER DEDUCTING A SMALL AMOUNT FOR ADMINISTRATION COSTS. THE DISTRIBUTION SCHEME WILL BE COMPARABLE TO THAT USED BY PPCA IN PPCA'S COLLECTIVE LICENSING ARRANGEMENTS.

- (g) Provide a description of the collective bargaining arrangements proposed including, but not limited to:
- (i) the process by which participants propose to undertake collective bargaining with the target; and

AIR WILL NEGOTIATE THE PROPOSED JOINT LICENSING AGREEMENT ON BEHALF OF THE PARTICIPATING MEMBERS.

- (ii) the type of terms and conditions expected to be negotiated in collective bargaining arrangements (for example: price; non-price conditions of supply such as contract periods etc); and

PARTICIPATING MEMBERS WILL EACH GRANT TO EACH TARGET A NON-EXCLUSIVE LICENSE TO EXERCISE ANY OR ALL OF THEIR RIGHTS. THE LICENSED RIGHTS WILL BE PUBLIC PERFORMANCE AND TRANSMISSION RIGHTS FOR MUSIC VIDEOS.

THE RIGHTS GRANTED WILL BE TECHNOLOGY NEUTRAL, THUS ALLOWING FOR THE NEGOTIATION OF A SUITE OF RIGHTS (BROADCAST; COMMUNICATION; DOWNLOAD; BLANKET USES..

THIS IS BECOMING AN INDUSTRY NORM SO AS TO MINIMISE THE NEED FOR MULTIPLE LICENSING AGREEMENTS.

LICENSE FEES WILL BE PAYABLE QUARTERLY BASED ON USAGE AND REVENUE REPORTS.

CONTRACT PERIODS ARE LIKELY TO BE FOR A MINIMUM OF 6 MONTHS UP TO A MAXIMUM OF 3 YEARS WITH SPECIFIED REVIEW PERIODS.

PRICING WILL BE DETERMINED ON THE BASIS OF USAGE OF COPYRIGHTS BALANCED AGAINST THE OVERALL QUANTITY OF SUBSCRIBERS THAT THE BROADCASTER TARGET HAS OVER THE RELEVANT PERIOD OF THE AGREEMENT.

FOR A SUMMARY OUTLINE OF PROPOSED KEY TERMS, SEE ATTACHMENT 4.

- (iii) details of any dispute resolution procedure (if any) proposed between participants throughout the collective bargaining process; and

EACH PARTICIPATING MEMBER WILL HAVE THE RIGHT AT THEIR OWN EXPENSE TO APPOINT AN INDEPENDENT AUDITOR TO EXAMINE THE BOOKS AND ACCOUNTS OF AIR. AIR WILL OFFER MEDIATION, CONCILIATION AND NEUTRAL EVALUATION IN RELATION TO ANY DISPUTE THAT MAY ARISE BETWEEN A PARTICIPATING MEMBER AND AIR IN CONNECTION WITH THE JOINT LICENSING AGREEMENT OR THE NEGOTIATION THEREOF.

- (iv) details of any dispute resolution procedure (if any) proposed between participants and the target throughout the collective bargaining process; and

NO DISPUTE RESOLUTION PROCEDURE IS ENVISAGED AT THE STAGE OF NEGOTIATION. THE TERMS OF THE JOINT LICENCE PROPOSED WILL BE STRAIGHT FORWARD. IF A DISPUTE CANNOT BE RESOLVED AS PART OF THE PROCESS OF NEGOTIATION THEN NO JOINT LICENCE AGREEMENT WILL RESULT. THERE IS NO NEED FOR DISPUTE RESOLUTION PROCEDURES DURING THE STAGE OF NEGOTIATION AND ANY SUCH PROCESSES COULD EASILY DELAY NEGOTIATION.

- (v) details of any dispute resolution procedure (if any) proposed to deal with disputes throughout the term of contracts entered into with the target; and

THE JOINT LICENCE AGREEMENT WILL PROVIDE FOR MEDIATION, CONCILIATION AND NEUTRAL EVALUATION IN RELATION TO ANY DISPUTE THAT MAY ARISE BETWEEN AIR OR A PARTICIPATING MEMBER AND THE TARGET.

- (vi) details of proposed commencement and duration of contracts to be negotiated with the target:
(refer to direction 9)

THE COMMENCEMENT DATE IS LIKELY TO BE IN THE SECOND QUARTER OF THE FINANCIAL YEAR. THE COLLECTIVE

LICENCE WILL RUN FOR A MINIMUM OF 6 MONTHS UP TO 3 YEARS WITH SPECIFIED REVIEW PERIODS.

- (h) Identify any parts of the proposed collective arrangements described in 3 (g) which relate to possible price agreements:

THERE WILL BE A JOINT LICENSING FEE.

- (i) Identify any parts of the proposed collective arrangements described in 3 (g) which relate to a possible or proposed exclusionary provision(s), including but not limited to:

- (i) the nature of the proposed or possible exclusionary provision(s) (for example an agreement to withhold supply of the relevant goods or services to the target); and

NO EXCLUSIONARY PROVISION IS ENVISAGED. IN THE EVENT THAT THE TARGET DECLINES TO ENTER INTO A JOINT LICENSE, IT WOULD BE ENTIRELY UP TO EACH MEMBER OF AIR TO DECIDE FOR ITSELF AND INDEPENDENTLY OF EACH OTHER THE FUTURE NATURE OF ITS RELATIONSHIP WITH THE TARGET.

- (ii) the circumstances in which the collective bargaining participants would engage in the exclusionary provision(s), including but not limited to:
 - (A) details of the events that would trigger any such activity; and
 - (B) details of the process that would be followed in undertaking any such activity; and
 - (C) details of any proposed period of notice to be given to the target prior to the commencement of such activity; and
 - (D) details of any dispute resolution procedure to be applied or offered to the target prior to the commencement of such activity:

(refer to direction 10)

NO EXCLUSIONARY PROVISION IS ENVISAGED. SEE (i) ABOVE

Section C – public detriments

4. Market definition

Provide a description of the market(s) in which the goods or services described at 3 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):
(refer to direction 11)

THE RELEVANT MARKET IS THE AUSTRALIAN MARKET FOR THE ACQUISITION AND SUPPLY OF LICENCES FOR PUBLIC PERFORMANCE RIGHTS AND TRANSMISSION RIGHTS FOR SOUND RECORDINGS AND MUSIC VIDEOS IN AUSTRALIA.

THE MAIN SUPPLIERS OF LICENCES FOR PUBLIC PERFORMANCE RIGHTS AND TRANSMISSION RIGHTS FOR SOUND RECORDINGS AND MUSIC VIDEOS IN AUSTRALIA ARE:

- RECORD LABELS

- ARTISTS
- ARTIST MANAGERS
- MANAGERS

THE MAIN ACQUIRERS OF LICENCES FOR PUBLIC PERFORMANCE RIGHTS AND TRANSMISSION RIGHTS FOR SOUND RECORDINGS AND MUSIC VIDEOS IN AUSTRALIA ARE:

- TELEVISION BROADCASTERS
- MUSIC CHANNELS
- ONLINE BROADCASTERS
- TERRESTRIAL AND DIGITAL RADIO

THERE ARE MANY DIFFERENT GENRES OF MUSIC. THE REPERTOIRE TO BE COVERED BY THE JOINT LICENCE PROPOSED WILL COVER A RANGE OF GENRES (EG. ROCK, CLASSICAL). THE APPLICANTS DO NOT BELIEVE THAT THERE ARE GENRE-BASED MARKETS – THE ORTHODOX DEFINITION OF THE PRODUCT MARKET IS THAT IT INCLUDES ALL GENRES.

THE ONLY RELEVANT GEOGRAPHIC OR LEGAL RESTRICTION ON THE SUPPLY OR ACQUISITION OF THE RELEVANT SERVICES IS THAT A LICENCE FOR PUBLIC PERFORMANCE RIGHTS AND TRANSMISSION RIGHTS FOR SOUND RECORDINGS AND MUSIC VIDEOS IN AUSTRALIA IS LIMITED TO AUSTRALIA AND EACH LICENSOR MUST BE ENTITLED TO LICENSE THOSE RIGHTS IN AUSTRALIA. SUBJECT TO THOSE RESTRICTIONS, COPYRIGHT IS AN UNLIMITED RESOURCE.

5. Public detriments

- (a) What will be the likely effect of the notified conduct on the prices of the goods or services described at 3 (b) above and the prices of goods or services in other affected markets? In answering this question please provide facts and information to support the claims made:

IN THE APPLICANTS' VIEW, THERE ARE NO LIKELY PUBLIC DETRIMENTS.

THE JOINT LICENCE PROPOSED IS NON-EXCLUSIVE. THE TARGET CAN DEAL WITH ANY OF THE FOLLOWING PARTIES:

- THE LICENSORS, OR A SELECT NUMBER OF LICENSORS (eg MAJOR RECORD LABELS WHO ARE NOT MEMBERS OF AIR)
- PPCA (see comment below);
- AIR AND PARTICIPATING MEMBERS; OR
- MEMBERS OF AIR WHO WISH TO ENTER INTO A SEPARATE LICENSING AGREEMENT.

THE BROADCASTERS HAVE A LICENCE WITH PPCA FOR THE USE OF SOUND RECORDINGS BUT NOT FOR THE VIDEO RIGHTS. THE BROADCASTERS HAVE TRADITIONALLY PASSED THIS RESPONSIBILITY TO THE CHANNELS, WHO HAVE ENTERED INTO DIRECT LICENSING ARRANGEMENTS.

THE FEE FOR A THE JOINT LICENCE PROPOSED WILL BE NEGOTIATED ON REASONABLE COMMERCIAL TERMS. IN THE PAST THE TARGET HAS NOT PAID ANY FEE IN RELATION TO THE PUBLIC PERFORMCANCE AND TRANSMISSION OF MUSIC VIDEOS FOR WHICH THE COPYRIGHT IS HELD BY AN INDEPENDENT RECORDING LABEL. ADOPTION OF A COMMERCIALY NEGOTIATED REASONABLE FEE INSTEAD OF A FREE-RIDING FEE OF \$0 IS NOT A PUBLIC DETRIMENT.

THE JOINT LICENCE PROPOSED DOES NOT INVOLVE PRICE FIXING AS DEFINED UNDER SECTION 45A(1) OF THE TPA: THE JOINT LICENCE TO BE OFFERED IS A JOINT PRODUCT THAT COULD NOT BE OFFERED BY AIR OR BY ANY OF THE PARTIPATING MEMBERS ALONE. ACCORDINGLY, AIR AND THE PARTICIPATING MEMBERS ARE NOT COMPETITORS OR LIKELY COMPETITORS.

THE JOINT PRODUCT TO BE SUPPLIED UNDER THE PROPOSED JOINT LICENCE IS INTENDED TO AND WILL REDUCE TRANSACTION COSTS. THE JOINT PRODUCT IS PRO-COMPETITIVE. THE JOINT LICENCE PROPOSED IS NON_EXCLUSIVE – IT DOES NOT FORECLOSE SEPERATE LICENSING DIRECTLY WITH COPYRIGHT HOLDERS.

(b) What other detriments may result from the notified conduct? In answering this question please provide facts and information to support the claims made:

NONE

Section D – public benefits

6. Public benefit claims

- (a) Provide details of the public benefits resulting or likely to result from the proposed arrangement. In answering this question please provide facts and information to support the claims made:

THE JOINT LICENCE PROPOSED WILL HELP TO SUPPORT THE INDEPENDENT SECTOR BY CREATING AN AVENUE FOR THE COLLECTION OF COPYRIGHT FEES TO WHICH COPYRIGHT HOLDERS ARE ENTITLED BUT WHICH HAVE NOT BEEN PAID IN THE PAST. THE MAIN POTENTIAL SOURCE OF COPYRIGHT FEES ARE BROADCASTERS, INCLUDING THE TARGET. THE BROADCASTERS HAVE DIRECT LICENSING ARRANGEMENTS WITH THE FOUR MAJOR RECORD COMPANIES BUT NO SUCH ARRANGMENTS ARE IN PLACE WITH THE INDEPENDENTS.

AS REVENUES FROM CD SALES DECLINE, IT IS INCREASINGLY IMPORTANT FOR RECORD COMPANIES TO BE ABLE TO DRAW RESIDUAL REVENUES FROM A DIVERSE RANGE OF SOURCES, NAMELY: VIDEO; SYNCHRONISATION; MOBILE; AND ONLINE. ALL OF THESE REVENUE STREAMS ARE IMPORTANT IN THE LICENSING OF COPYRIGHT CONTENT FROM THE MAJOR LABEL SECTOR. THEY HAVE THE SAME POTENTIAL IMPORTANCE FOR THE INDEPENDENT SECTOR.

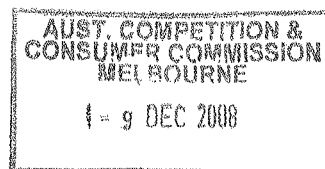
THE IMPORTANCE OF THE INDEPENDENT MUSIC SECTOR TO THE ECONOMY, TO CREATIVE ARTISTS AND TO THE PUBLIC GENERALLY IS AS INDICATED IN ATTACHMENT 1.

Section E - authority

7. Contact details


- (a) Name, contact telephone number and address of person authorised by the notifying parties to provide additional information in relation to this application:

STUART WATTERS
CHIEF EXECUTIVE OFFICER - AIR
437 SPENCER ST
WEST MELBOURNE VICTORIC 3003
PH: 03 8554 4330
MOB: 0438 758 847
(refer to direction 12)



Dated 5/12/08

Signed by/on behalf of the applicants


.....
(Signature)

Stuart Watters
.....
(Full Name)

Australian Independent Record Labels Assoc
.....
(Organisation)

CEO
.....
(Position in Organisation)

DIRECTIONS

1. Where the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
2. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which notification is given.
3. A collective bargaining notification can not be lodged by a trade union or a trade union representative.
4. Where the applicant will be a participant in the collective bargaining arrangements (rather than a representative of participants) the name of the applicant must also be included. Where those persons are corporations, list the corporation's name and address.
5. The applicant, in lodging a notification on behalf of others, must obtain their consent to do so and provide proof of that consent.
6. Where the target is a corporation, provide the corporate name.
7. The collective bargaining notification process is only available to parties that reasonably expect to make one or more contracts with the target about the supply or acquisition of goods or services the subject of the notification.
8. The value of the contract to be collectively negotiated between the target and each participant is not to exceed \$3 million (or such other amount as is prescribed by the regulations) per participant in any twelve month period.
9. To the extent that the collective bargaining arrangements have been reduced to writing, provide a true copy of the arrangement. To the extent that the collective bargaining arrangements have not been reduced to writing, provide a full and correct description of the key terms that have not been reduced to writing.
10. In simple terms an exclusionary provision exists where the proposed contract, arrangement or understanding is made by businesses (at least two of whom are competitors) for the purpose of preventing, restricting or limiting the supply of services to particular persons or classes of persons by all or any of the parties to the contract, arrangement or understanding.

In the context of collective bargaining, an exclusionary provision(s) may include contracts, arrangements or understandings (whether currently in existence or to be made or arrived at during the term of the notification) between collective bargaining participants to limit or restrict their dealings with the target including contracts arrangements or understandings to:

- (a) withhold the supply of goods or services from the target; or
- (b) refuse or decline to acquire the goods or services of the target;

whether such conduct was absolute, limited or subject to certain terms or conditions. This is sometimes referred to as a collective boycott.

11. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
12. The notification must be signed by a person authorised by the applicant to do so.

ATTACHMENT 1

BACKGROUND ON THE AUSTRALIAN INDEPENDENT RECORD LABELS ASSOCIATION AND THE INDEPENDENT RECORD SECTOR

The Australian Independent Record Labels Association Ltd (AIR) is the peak body for Australian owned record labels. AIR pro-actively serves and represents the interests and development of Australian independent recording labels across Australia and internationally. There is no other membership organisation in Australia that represents the interests of independent recording labels, which represents around 85% of all Australian recorded music.

AIR's primary purpose is to foster an ever increasing marketplace for Australian independent music and assist in the long-term development, growth and success of Australia's independent recording industry both in Australia and overseas.

The formal objectives stated in AIR's constitution are:

- To assist in the exploitation of copyrights created and owned by Australian independent record labels
- To promote a commercially viable industry environment which is conducive to growth of the Australian independent sector and to the development of the artists that it represents
- To encourage and facilitate cultural expression through Australian music at local, national and international levels
- To advocate the values and interests of the Company and the Australian independent sector in accordance with these Objects
- To do all things as are necessary, incidental and conducive to the attainment of the above objects and to the development of the Australian music industry at large.

The Australian independent music industry makes up about 85% of the entire Australian recording industry. Members of this industry are Australian owned and not owned by multinational record companies (which make up the other 15% of the industry). Unlike these multinationals, industry members do not have an international company network through which to distribute their product and rely on establishing international licensing relationships on a business to business basis.

Independent recording labels produce the vast majority of work by Australian artists in all genres, but particularly in niche genres such as Australian jazz, electronica and dance music. This specialisation in niche genres also sets Independents apart from the multinationals.

Independent recording labels range from small niche-market labels to large organisations with a turn over of \$50 million per year. Artists represented by the Australian independent recording industry include well known names such as Savage Garden, John Butler Trio, Killing Heidi, Vanessa Amorosi, Missy Higgins, James Morrison and AC/DC.

The International Federation of the Phonographic Industry (IFPI) represents the recording industry worldwide through its membership of over 1,450 members spanning 70 countries. It was noted in a recent report on sales figures for the first half of 2004 that Australia has the 7th largest music industry market in the world and that Australia's maintenance of sales is primarily buoyed by a "strong local repertoire".

The principal property traded by the independent recording sector is the copyright in a recording. These copyrights are principally traded through CD sales, but also through use of recordings in films and other multimedia. However, as the industry adapts to recent changes and external pressures, sound recording files are now able to be traded through a variety of additional means from digital downloading sites, to synchronisation on mobile phone carrier services. AIR is at the forefront of enabling its members to maximise their capacity to exploit these new mediums to their (and Australia's) advantage.

Within the larger music industry it is the independent record labels that fulfil the role of supporting new artists and developing new markets. In contrast, the major recording companies tend to sign up product once it has had market recognition and represents a substantial profitable return.

Independent record labels have a strong track record in promoting Australian music overseas and have been responsible for most well known Australian music export examples, except in the cases of Silverchair and Mental as Anything.

The independent record industry represents at least 85% of the total Australian music industry. The other 15% is represented by multinationals which are not Australian owned. It is difficult to determine the exact market share figure that this represents as there are inadequate statistical collection services present in the Australian recording industry, but anecdotal evidence would suggest that the independent sector represents anywhere between 25 and 30% of the market share in economic terms.

ATTACHMENT 2
PARTICIPATING MEMBERS

Company	Contact	Email	Address
Shogun Distribution	Adam Kane	adam@shogundist.com	PO Box 1513, Eagle Fam, QLD 4009
Inertia Music	Collin Daniels	colin@inertia-music.com	PO Box 84, SURRY HILLS, NSW 2010
Rubber Records	David Vodicka	david@rubberrecords.com.au	441 Spencer St, West Melbourne 3003
Bone Finger Records	Stewart Riddle	stew@bonefingerrecords.com	PO Box 5094, Brassall, QLD 4305
Boomtowntown Records	Jaddan Comerford	jaddan@boomtownrecords.com.au	Po box 4145, Eaglemont, VIC 3084
Risky Records	Tamara Pillar	info@riskyrecords.com.au	57-59 Renwick Street, Leichardt, NSW 2040
Obese Records	Ben Rynderman	operations@obeserecords.com	4a Izett st, Prahran, VIC 3181
Ivy League	Chris Maund	Chris@ivyleague.com.au	PO Box 545, Newtown, NSW 2042
BNM Records	Emma Wiking	emma@bnmrecords.com	Suite 3/171 Greville St, Prahran, VIC 3181
Maju	Judy Campbell	judycam@maju.com	16a Ivey Street, Lindfield NSW, 2070
Basin Records	Emma Wiking	emmaw@basinrecords.com	Suite 3/171 Greville St, Prahran, VIC 3181
Boundary Sounds		martin@boundarysounds.com	PO Box 2424, Strawberry Hills NSW 2012
The Spooky Men's Chorale	Graham Mann	spookymen@gmail.com	P.O. Box 56 Lawson, NSW, 2783
Bluehouse		Bluehouse3@mac.com	PO Box 2132 Fitzroy MDC, VIC, 3065
CCR Australia	Angie Cooper	coopscrawzasrecords@hotmail.com	6 Johnstone Crescent Colac, Vic, 3250
Oak Records	Maggie Britton	info@maggiebritton.com	65/12 Commodore Drive, Paradise Waters, QLD 4217
Dallas Cosmos	Dallas Cosmos	dallascosmas@dallascosmas.com	44 kerferd Rd Albert park, VIC, 3206
Go Set Music	Lorda Omimesiah	lorda@optusnet.com.au	GPO Box 813 Greenacre, NSW, 2190
Lavender Music	Al Craig	Blackinc@presto.net.au	47 Woodbine St N Balgowlah, NSW, 2093
Future Classic	Nathan McLay	nathan@futureclassic.com.au	PO Box 1535 Strawberry Hills, NSW 2012
Creative Vibes	Heidi Pasqual	info@cvibes.com	Unit 6, 7-9 Kent Rd Mascot, NSW, 2020
Tumnus Records	Fergie Marshall	fergiemarshall@hotmail.com	6706/177 Mitchell Rd Erskineville, NSW, 2043
Levity Label	Andrew Valder	mein@rodriguezandcompany.com	
Hammered Silver Records	Tim Weatherhall	tim@hammeredsilver.com	Po Box 376 Petrie, QLD, 4502
Sonic Boy Records	Tony Hunt	tony@sonicboyrecords.com	1 Stodart St Camberwell, VIC, 3124
Red Disc Records	Clive Hines	reddiscrecords@hotmail.com	PO Box 1016 Seymour, VIC, 3660
Wild cat records	Amanda Easton	amanda@amandaeaston.com	PO Box 907 Leichhardt, NSW, 2040
Phoenix movement records	Bird Jensen	8ball@8ballatken.com	GPO Box 1933 Brisbane, QLD, 4001
Jazz head	Andrew Walker	andrew@headrecords.com	PO Box 2197 St Kilda, VIC, 3182
soundcolour		doug@soundcolour.com	PO Box 264 Clunes, NSW, 2480
Tone Freak Records	Bill Palmer	contact@tonefreakrecords.com	PO Box 3644 Helensvale Town Centre, QLD 4212
Mummy's Boy Records	Erin Jameson	erin@ykymmanagement.com	PO Box 6068 South Yarra, Vic, 3141
Xelon Entertainment	Ashley Gay	ashley@xelonentertainment.com	PO Box 188 PO Box 188, VIC, 3135

Small House Records	Mark Tulk	mark@smallhouserrecords.com.au	PO Box 510 Box Hill BC, VIC, 3128
Echobase Records	Andrew Schraa	aschraa1@mac.com	81 Byron st Elwood, Vic, 3184
Shock Records	Marcus Seal	marcus.seal@shock.com.au	200 Beavers Road NORTHCOTE, VIC 3070
Room 40	Lawrence English	lawrence@room40.org	PO Box 771 Hamilton Central, QLD, 4007
Chapter Music	Guy Blackman	guy@chaptermusic.com.au	PO Box 247 Northcote, VIC, 3070
Bahool Records	Keith Macnamara	bahoolrecords@yahoo.com.au	752 McCallums Creek Rd Majorca, Vic 3465
Extended Family	Alexandra Kay	highroad@bigpond.com	P.O Box 257 Haberfield, NSW, 2045
Formations Band	Tim McGrath	megraatt@telstra.com	17 evelyn st lammermoor beach yeppoon, QLD, 4703
Dorothy Records	Terese Jermyn	terese@masqueagency.com.au	4/8 King George Street McMahon's Point, NSW, 2060
House Of Wow	Dino Jag La	dino@houseofwow.com	21 Wildwood Drive Salisbury Park, SA, 5109
Weapon Head	Boris Billing	borisbilling@bigpond.com.au	10 Frideswide Street Goondiwindi, QLD, 4390
Endgame Records	Tegan Northwood	info@endgame.com.au	PO Box 3040 Marrickville, NSW, 2204
Doza Records	Damian Delahunty	journey@netconnect.com.au	8 Scullin Road Burnside, VIC, 3023
Krow Pie	Matt Ellis	info@krowpie.com	PO Box 1186 Darlinghurst, NSW, 2010
Kingdon Wise Records	Ben Louise	kingdomwise@hotmail.com	Po Box 1061 Croydon, VIC, 3136
Stomp	Tom Pandzic	tom@stomp.com.au	5 Harper St Abbottsford, VIC, 3067
Winterun	nick Dunstan	kitktarn@yahoo.com.au	11 acacia st camberwell, VIC, 3124
Starving Kids	Brett Bartlett	brett@starvingkids.com.au	PO Box 314 Browns Plains, QLD, 4118
Hypersonic Records	Adrian Lloyd	info@hypersonicrecords.com.au	317-319 Pier Street Perth, WA, 6000
Phil MC	Phil McKernan	phil_mc@tpg.com.au	P.O.Box 2290 Kew, Vic, 3101
Caravan records	Simeon Gilmou	rebecca@caravanrecords.com.au	10 Ormond st North Gosford, NSW, 2250
Jazz WA	Alan Corbet	alan@jazzwa.com	PO BOX 295 North Beach, WA, 6920
Lee Adam Wilshier	Lee Adam Wilshier	lee.wilshier@bigpond.com	29A Braidhill Rd Macleod, VIC, 3085
The Boat People	Rick Chazan	ideasm@bigpond.net.au	po box 1576 Towong, QLD, 4066
MGM	Sebastian Chase	Sebastian@thegroovemERCHANTS.com	PO Box A1437 South Sydney, NSW, 1235
Bunza Music	Sue	sue@bunza.com.au	PO Box 4989 North Rocks, NSW, 2151
Pink.dot	Amin Javanmard	music@pinkdot.org	PO Box 718 Runaway Bay, QLD, 4216
MPM Records	Mathew Packer	mathew@mpmrecords.com.au	15 Freeman Street New Lambton, NSW, 2305

ATTACHMENT 3
CONSENT OF PARTICIPATING MEMBERS

From: AIR [air@mail-hub.net]
Sent: Monday, 15 December 2008 2:37 PM
To: stu@air.org.au
Subject: Proposed Collective Bargaining Negotiations



AUSTRALIAN
INDEPENDENT
RECORD LABELS
ASSOCIATION

Dear Members

We are writing this notice to the membership to inform you of recent action being taken by AIR on behalf of its members.

AIR is filing a Collective Bargaining Notification to the Australian Consumer Competition Commission (ACCC) under the Trade Practices Act. The end goal of this is to get an immunity from liability from price fixing and other provisions of the Trade Practices Act so that AIR can act on behalf of its members and negotiate collective licensing arrangements for the sector. Any license arrangement with AIR will be non-exclusive and our members are free to negotiate their own licenses where they want to do so. Further, if you have an existing license in place with a potential licensing target for AIR, that existing licence will not be affected by the new AIR collective licensing arrangements.

There are currently a number of end users of recorded music and music video in Australia who currently may not have licenses in place to pay the independent sector. By contrast, the multinational subsidiaries are paid for use of content in a variety of formats.

The current proposed targets of collective negotiation by AIR are:

Foxtel
Austar
Optus
Telstra

Their music content channels / outlets include:

MTV
XYZ
Fuel TV.
Bigpond

If you would like to be covered by the proposed collective bargaining negotiations with licensees, please indicate by following the link provided and clicking the yes option [link](#). You will need to do this by Friday August 15th.

If you do not agree to participate you will not be able to share in the licensing fees payable under the licences to be collectively negotiated. AIR therefore believes that it is strongly in the interest of all members to opt in.

If you have any questions please don't hesitate to forward them to info@air.org.au and we will seek to clarify them for you in a timely manner.

Sincerely

Stuart Watters

CEO

AIR

You have received this email because you are an AIR member or have requested information from us. If you have received this email by mistake, you can remove your details [here](#).

To update your details click [here](#)

If you are new to AIR, you can subscribe to our mailouts by clicking [here](#).

ATTACHMENT 4

SUMMARY OUTLINE OF PROPOSED KEY TERMS

Item	Term	Summary
1	Licence scope	<p>A non-exclusive licence to broadcast music videos, but only:</p> <ul style="list-style-type: none"> • on specified Music Video Channels; and • in accordance with all of the conditions applicable to the broadcaster's licence issued under the Broadcasting Services Act. <p>"Music Video Channels" are television channels where music videos comprise at least 25% of the total programming content by duration (calculated over a calendar week, and excluding advertisements, sponsorship announcements and other promotional content).</p>
2	Licensed repertoire	All music videos in which the copyright is owned or controlled in Australia by Participating Members.
3	Term	An initial period of [] months, with automatic renewals for further [] month periods unless either party terminates by notice in writing.
4	Reporting	<p>Licensees will provide quarterly video usage reports, setting out (in the form of a "broadcast log") the details of all music videos broadcast on each Music Video Channel, including the details of any directly licensed music videos.</p> <p>Licensees will also provide quarterly reports detailing the number of domestic and commercial subscribers with access to the Music Video Channels.</p>
5	Licence fees (GST Exclusive)	<p>Licence fees are payable quarterly. The fees are calculated monthly on the basis of the subscriber numbers reported by the licensee.</p> <p>[Categories & formulas to be negotiated].</p>
6	Invoicing and payment	<p>Following receipt of the quarterly video usage and revenue reports (see Item 4 above), a tax invoice will be issued for the amount of the licence fees.</p> <p>All invoices are payable within 14 days of receipt.</p>

Form GA

Commonwealth of Australia

Trade Practices Act 1974 — subsection 93AB (1)

NOTIFICATION OF COLLECTIVE BARGAINING

This form is to be completed by applicants proposing to engage in collective bargaining arrangements.

In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

Protection provided by the notification extends only to the collective bargaining arrangements described in the form.

To the Australian Competition and Consumer Commission:

Notification is hereby given under subsection 93AB (1) of the *Trade Practices Act 1974*:

- to make, or propose to make, a contract containing a provision of the kind referred to in paragraph 45 (2)(a) of the *Trade Practices Act 1974*; or
- to give effect to a provision of a contract where the provision is of the kind referred to in paragraph 45 (2)(b) of the *Trade Practices Act 1974*.
(Strike out if not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

Section A – general information

1. Applicant

- (a) Name of the applicant:
(refer to Direction 1)

C800064 AUSTRALIAN INDEPENDENT RECORD LABELS ASSOCIATION LTD (AIR) AND PARTICIPATING MEMBERS OF AIR

- (b) Description of business carried on by the applicants:
(refer to Direction 2)

AIR IS A NATIONAL INDUSTRY ASSOCIATION, PROACTIVELY SERVING AND REPRESENTING THE INTERESTS AND DEVELOPMENT OF AUSTRALIAN INDEPENDENT RECORDING LABELS ACROSS AUSTRALIA AND THE WORLD.

SEE FURTHER ATTACHMENT 1.

THE PARTICIPATING MEMBERS LISTED IN ATTACHMENT 2 ARE INDEPENDENT RECORDING LABELS.

- (c) Is the representative of the applicant lodging the notice a trade union, an officer of a trade union or a person acting on the direction of a trade union?
(refer to Direction 3)

NO

- (d) Address in Australia for service of documents on the applicants:

437 SPENCER ST

WEST MELBOURNE

VICTORIA 3003

2. Lodged on behalf of

- (a) Provide names and addresses of all persons on whose behalf the notification is lodged and who propose to participate in the collective bargaining arrangements:
(refer to Direction 4)

DETAILS FOR AIR ARE SET OUT IN 1. ABOVE. SEE ATTACHMENT 2 FOR DETAILS OF THE OTHER APPLICANTS.

- (b) Provide proof of the consent of each of the persons listed at 2 (a) above agreeing to the lodgement of the notification on their behalf:
(refer to Direction 5)

SEE ATTACHMENT 3. THIS REFERS TO THE LETTER THAT WAS SENT TO EACH MEMBER (I.E. THOSE PARTICIPANTS REFERRED TO IN ATTACHMENT 2) AND PROMPTED THEM TO PROVIDE THEIR DIGITAL SIGNATURE AS PARTIES TO COLLECTIVE BARGAINING ARRANGEMENTS. THE TECHNOLOGY USED TO OBTAIN THE DIGITAL SIGNATURES ENSURED THAT EACH DIGITAL SIGNATURE PROCESSED WAS SPECIFIC TO THE COMPANY TO WHICH IT WAS SENT.

- (c) Provide the following information relating to a notification:

- (i) Does this notification relate to a notification previously lodged with the Australian Competition and Consumer Commission and for which a concessional fee is claimed?

NO

- (ii) details of the first-mentioned notification, including but not limited to:
(A) the name of the applicant; and

- (B) the date the notification was said to be lodged; and
- (C) if known or applicable — the registration number allocated to that collective bargaining notification.

N/A

Section B – collective bargaining arrangements

3. Proposed collective bargaining arrangements

- (a) Provide: the name and address of the target; the name, position and telephone contact details of an appropriate contact at the target; and a description of the business carried on by the target:
(refer to direction 6)

XYZ
XYZNETWORKS PTY LIMITED
066 812 119
LEVEL 1, 5 THOMAS HOLT DRIVE
NORTH RYDE
NSW 2113

- (b) Provide a description of the goods or services which the participants of the collective bargaining arrangements (listed at 2 (a) above) propose to supply to or acquire from the target:

THE PARTICIPANTS IN THE COLLECTIVE BARGAINING ARRANGEMENTS PROPOSE TO SUPPLY MASTER RECORDING COPYRIGHTS INCLUSIVE OF AUDIO AND VISUAL RIGHTS UNDER LICENSE TO LICENSEES ACROSS A RANGE OF TRANSMISSION MEDIUMS.

- (c) Do the participants of the proposed collective bargaining arrangements (see 2 (a) above) reasonably expect to make one or more contracts with the target about the supply to or acquisition from the target of one or more of the goods or services (listed at 3 (b) above)?
(refer to direction 7)

YES. ONE CONTRACT FOR EACH TARGET IS PROPOSED. ALL APPLICANTS WILL BE PARTIES TO THE CONTRACT. UNDER THE CONTRACT EACH PARTICIPATING MEMBER OF AIR WILL AGREE TO LICENSE THEIR RELEVANT RESPECTIVE RIGHTS TO THE TARGET.

- (d) In relation to (c) above, provide details of the basis upon which that expectation is held including details of past contracts with the target:

A JOINT LICENSING ARRANGEMENT IS PROPOSED UNDER WHICH EACH PARTICIPATING MEMBER OF AIR WILL LICENSE THEIR RELEVANT RIGHTS TO EACH PARTICULAR TARGET. THIS MODEL DIFFERS FROM THE PPCA COLLECTIVE LICENSING MODEL –NO COLLECTIVE LICENCE WILL BE ISSUED BY AIR AND ACCORDINGLY THERE WILL NOT BE ANY INPUT LICENCE BETWEEN THE PARTICIPATING MEMBERS AND AIR.

A JOINT LICENCE HAS NOT PREVIOUSLY BEEN OFFERED BY THE PARTICIPATING MEMBERS OR ANY OTHER MEMBERS OF AIR.

AIR HAS NOT PREVIOUSLY OFFERED A COLLECTIVE LICENSE.

SOME AIR MEMBERS HAVE PREVIOUSLY ENTERED INTO DIRECT LICENSING ARRANGEMENTS. HOWEVER, SUCH ARRANGEMENTS ARE EXCEPTIONAL GIVEN THE TRANSACTION COSTS OF ENTERING INTO NUMEROUS SEPARATE LICENSING ARRANGMENTS. THE JOINT LICENCE PROPOSED IS INTENDED TO REDUCE THE TRANSACTION COSTS CONSIDERABLY.

- (e) Do the participants of the collective bargaining arrangements (listed at 2 (a) above) reasonably expect that contractual payments between the target and each participant will not exceed \$3 million (or any other amount prescribed by regulation) in any 12 month period, and on what basis?
(refer to direction 8)

YES

- (f) In relation to (e) above provide an estimation of the contractual payments expected between the target and each participant in relation to the goods and services (listed at 2 (a) above):

GIVEN THE SIZE, NATURE AND FRAGMENTATION OF THE INDEPENDENT RECORDING SECTOR IN AUSTRALIA, IT IS DIFFICULT TO ESTIMATE THE AMOUNT OF THE CONTRACTUAL PAYMENTS FOR A JOINT LICENCE. THE AMOUNT NEGOTIATED FOR A JOINT LICENCE WILL BE DISTRIBUTED TO PARTICIPATING MEMBERS AFTER DEDUCTING A SMALL AMOUNT FOR ADMINISTRATION COSTS. THE DISTRIBUTION SCHEME WILL BE COMPARABLE TO THAT USED BY PPCA IN PPCA'S COLLECTIVE LICENSING ARRANGEMENTS.

- (g) Provide a description of the collective bargaining arrangements proposed including, but not limited to:

- (i) the process by which participants propose to undertake collective bargaining with the target; and

AIR WILL NEGOTIATE THE PROPOSED JOINT LICENSING AGREEMENT ON BEHALF OF THE PARTICIPATING MEMBERS.

- (ii) the type of terms and conditions expected to be negotiated in collective bargaining arrangements (for example: price; non-price conditions of supply such as contract periods etc); and

PARTICIPATING MEMBERS WILL EACH GRANT TO EACH TARGET A NON-EXCLUSIVE LICENSE TO EXERCISE ANY OR ALL OF THEIR RIGHTS. THE LICENSED RIGHTS WILL BE PUBLIC PERFORMANCE AND TRANSMISSION RIGHTS FOR MUSIC VIDEOS.

THE RIGHTS GRANTED WILL BE TECHNOLOGY NEUTRAL, THUS ALLOWING FOR THE NEGOTIATION OF A SUITE OF RIGHTS (BROADCAST; COMMUNICATION; DOWNLOAD; BLANKET USES..

THIS IS BECOMING AN INDUSTRY NORM SO AS TO MINIMISE THE NEED FOR MULTIPLE LICENSING AGREEMENTS.

LICENSE FEES WILL BE PAYABLE QUARTERLY BASED ON USAGE AND REVENUE REPORTS.

CONTRACT PERIODS ARE LIKELY TO BE FOR A MINIMUM OF 6 MONTHS UP TO A MAXIMUM OF 3 YEARS WITH SPECIFIED REVIEW PERIODS.

PRICING WILL BE DETERMINED ON THE BASIS OF USAGE OF COPYRIGHTS BALANCED AGAINST THE OVERALL QUANTITY OF SUBSCRIBERS THAT THE BROADCASTER TARGET HAS OVER THE RELEVANT PERIOD OF THE AGREEMENT.

FOR A SUMMARY OUTLINE OF PROPOSED KEY TERMS, SEE ATTACHMENT 4.

- (iii) details of any dispute resolution procedure (if any) proposed between participants throughout the collective bargaining process; and

EACH PARTICIPATING MEMBER WILL HAVE THE RIGHT AT THEIR OWN EXPENSE TO APPOINT AN INDEPENDENT AUDITOR TO EXAMINE THE BOOKS AND ACCOUNTS OF AIR. AIR WILL OFFER MEDIATION, CONCILIATION AND NEUTRAL EVALUATION IN RELATION TO ANY DISPUTE THAT MAY ARISE BETWEEN A PARTICIPATING MEMBER AND AIR IN CONNECTION WITH THE JOINT LICENSING AGREEMENT OR THE NEGOTIATION THEREOF.

- (iv) details of any dispute resolution procedure (if any) proposed between participants and the target throughout the collective bargaining process; and

NO DISPUTE RESOLUTION PROCEDURE IS ENVISAGED AT THE STAGE OF NEGOTIATION. THE TERMS OF THE JOINT LICENCE PROPOSED WILL BE STRAIGHT FORWARD. IF A DISPUTE CANNOT BE RESOLVED AS PART OF THE PROCESS OF NEGOTIATION THEN NO JOINT LICENCE AGREEMENT WILL RESULT. THERE IS NO NEED FOR DISPUTE RESOLUTION PROCEDURES DURING THE STAGE OF NEGOTIATION AND ANY SUCH PROCESSES COULD EASILY DELAY NEGOTIATION.

- (v) details of any dispute resolution procedure (if any) proposed to deal with disputes throughout the term of contracts entered into with the target; and

THE JOINT LICENCE AGREEMENT WILL PROVIDE FOR MEDIATION, CONCILIATION AND NEUTRAL EVALUATION IN RELATION TO ANY DISPUTE THAT MAY ARISE BETWEEN AIR OR A PARTICIPATING MEMBER AND THE TARGET.

- (vi) details of proposed commencement and duration of contracts to be negotiated with the target:
(refer to direction 9)

THE COMMENCEMENT DATE IS LIKELY TO BE IN THE SECOND QUARTER OF THE FINANCIAL YEAR. THE COLLECTIVE

LICENCE WILL RUN FOR A MINIMUM OF 6 MONTHS UP TO 3 YEARS WITH SPECIFIED REVIEW PERIODS.

- (h) Identify any parts of the proposed collective arrangements described in 3 (g) which relate to possible price agreements:

THERE WILL BE A JOINT LICENSING FEE.

- (i) Identify any parts of the proposed collective arrangements described in 3 (g) which relate to a possible or proposed exclusionary provision(s), including but not limited to:
 - (i) the nature of the proposed or possible exclusionary provision(s) (for example an agreement to withhold supply of the relevant goods or services to the target); and

NO EXCLUSIONARY PROVISION IS ENVISAGED. IN THE EVENT THAT THE TARGET DECLINES TO ENTER INTO A JOINT LICENSE, IT WOULD BE ENTIRELY UP TO EACH MEMBER OF AIR TO DECIDE FOR ITSELF AND INDEPENDENTLY OF EACH OTHER THE FUTURE NATURE OF ITS RELATIONSHIP WITH THE TARGET.

- (ii) the circumstances in which the collective bargaining participants would engage in the exclusionary provision(s), including but not limited to:
 - (A) details of the events that would trigger any such activity; and
 - (B) details of the process that would be followed in undertaking any such activity; and
 - (C) details of any proposed period of notice to be given to the target prior to the commencement of such activity; and
 - (D) details of any dispute resolution procedure to be applied or offered to the target prior to the commencement of such activity:

(refer to direction 10)

NO EXCLUSIONARY PROVISION IS ENVISAGED. SEE (i) ABOVE

Section C – public detriments

4. Market definition

Provide a description of the market(s) in which the goods or services described at 3 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):
(refer to direction 11)

THE RELEVANT MARKET IS THE AUSTRALIAN MARKET FOR THE ACQUISITION AND SUPPLY OF LICENCES FOR PUBLIC PERFORMANCE RIGHTS AND TRANSMISSION RIGHTS FOR SOUND RECORDINGS AND MUSIC VIDEOS IN AUSTRALIA.

THE MAIN SUPPLIERS OF LICENCES FOR PUBLIC PERFORMANCE RIGHTS AND TRANSMISSION RIGHTS FOR SOUND RECORDINGS AND MUSIC VIDEOS IN AUSTRALIA ARE:

- RECORD LABELS

- ARTISTS
- ARTIST MANAGERS
- MANAGERS

THE MAIN ACQUIRERS OF LICENCES FOR PUBLIC PERFORMANCE RIGHTS AND TRANSMISSION RIGHTS FOR SOUND RECORDINGS AND MUSIC VIDEOS IN AUSTRALIA ARE:

- TELEVISION BROADCASTERS
- MUSIC CHANNELS
- ONLINE BROADCASTERS
- TERRESTRIAL AND DIGITAL RADIO

THERE ARE MANY DIFFERENT GENRES OF MUSIC. THE REPERTOIRE TO BE COVERED BY THE JOINT LICENCE PROPOSED WILL COVER A RANGE OF GENRES (EG. ROCK, CLASSICAL). THE APPLICANTS DO NOT BELIEVE THAT THERE ARE GENRE-BASED MARKETS – THE ORTHODOX DEFINITION OF THE PRODUCT MARKET IS THAT IT INCLUDES ALL GENRES.

THE ONLY RELEVANT GEOGRAPHIC OR LEGAL RESTRICTION ON THE SUPPLY OR ACQUISITION OF THE RELEVANT SERVICES IS THAT A LICENCE FOR PUBLIC PERFORMANCE RIGHTS AND TRANSMISSION RIGHTS FOR SOUND RECORDINGS AND MUSIC VIDEOS IN AUSTRALIA IS LIMITED TO AUSTRALIA AND EACH LICENSOR MUST BE ENTITLED TO LICENSE THOSE RIGHTS IN AUSTRALIA. SUBJECT TO THOSE RESTRICTIONS, COPYRIGHT IS AN UNLIMITED RESOURCE.

5. Public detriments

- (a) What will be the likely effect of the notified conduct on the prices of the goods or services described at 3 (b) above and the prices of goods or services in other affected markets? In answering this question please provide facts and information to support the claims made:

IN THE APPLICANTS' VIEW, THERE ARE NO LIKELY PUBLIC DETRIMENTS.

THE JOINT LICENCE PROPOSED IS NON-EXCLUSIVE. THE TARGET CAN DEAL WITH ANY OF THE FOLLOWING PARTIES:

- THE LICENSORS, OR A SELECT NUMBER OF LICENSORS (eg MAJOR RECORD LABELS WHO ARE NOT MEMBERS OF AIR)
- PPCA (see comment below);
- AIR AND PARTICIPATING MEMBERS; OR
- MEMBERS OF AIR WHO WISH TO ENTER INTO A SEPARATE LICENSING AGREEMENT.

THE BROADCASTERS HAVE A LICENCE WITH PPCA FOR THE USE OF SOUND RECORDINGS BUT NOT FOR THE VIDEO RIGHTS. THE BROADCASTERS HAVE TRADITIONALLY PASSED THIS RESPONSIBILITY TO THE CHANNELS, WHO HAVE ENTERED INTO DIRECT LICENSING ARRANGEMENTS.

THE FEE FOR A THE JOINT LICENCE PROPOSED WILL BE NEGOTIATED ON REASONABLE COMMERCIAL TERMS. IN THE PAST THE TARGET HAS NOT PAID ANY FEE IN RELATION TO THE PUBLIC PERFORMCANCE AND TRANSMISSION OF MUSIC VIDEOS FOR WHICH THE COPYRIGHT IS HELD BY AN INDEPENDENT RECORDING LABEL. ADOPTION OF A COMMERCIALLY NEGOTIATED REASONABLE FEE INSTEAD OF A FREE-RIDING FEE OF \$0 IS NOT A PUBLIC DETRIMENT.

THE JOINT LICENCE PROPOSED DOES NOT INVOLVE PRICE FIXING AS DEFINED UNDER SECTION 45A(1) OF THE TPA: THE JOINT LICENCE TO BE OFFERED IS A JOINT PRODUCT THAT COULD NOT BE OFFERED BY AIR OR BY ANY OF THE PARTIPATING MEMBERS ALONE. ACCORDINGLY, AIR AND THE PARTICIPATING MEMBERS ARE NOT COMPETITORS OR LIKELY COMPETITORS.

THE JOINT PRODUCT TO BE SUPPLIED UNDER THE PROPOSED JOINT LICENCE IS INTENDED TO AND WILL REDUCE TRANSACTION COSTS. THE JOINT PRODUCT IS PRO-COMPETITIVE. THE JOINT LICENCE PROPOSED IS NON_EXCLUSIVE - IT DOES NOT FORECLOSE SEPERATE LICENSING DIRECTLY WITH COPYRIGHT HOLDERS.

(b) What other detriments may result from the notified conduct? In answering this question please provide facts and information to support the claims made:

NONE

Section D – public benefits

6. Public benefit claims

- (a) Provide details of the public benefits resulting or likely to result from the proposed arrangement. In answering this question please provide facts and information to support the claims made:

THE JOINT LICENCE PROPOSED WILL HELP TO SUPPORT THE INDEPENDENT SECTOR BY CREATING AN AVENUE FOR THE COLLECTION OF COPYRIGHT FEES TO WHICH COPYRIGHT HOLDERS ARE ENTITLED BUT WHICH HAVE NOT BEEN PAID IN THE PAST. THE MAIN POTENTIAL SOURCE OF COPYRIGHT FEES ARE BROADCASTERS, INCLUDING THE TARGET. THE BROADCASTERS HAVE DIRECT LICENSING ARRANGEMENTS WITH THE FOUR MAJOR RECORD COMPANIES BUT NO SUCH ARRANGMENTS ARE IN PLACE WITH THE INDEPENDENTS.

AS REVENUES FROM CD SALES DECLINE, IT IS INCREASINGLY IMPORTANT FOR RECORD COMPANIES TO BE ABLE TO DRAW RESIDUAL REVENUES FROM A DIVERSE RANGE OF SOURCES, NAMELY: VIDEO; SYNCHRONISATION; MOBILE; AND ONLINE. ALL OF THESE REVENUE STREAMS ARE IMPORTANT IN THE LICENSING OF COPYRIGHT CONTENT FROM THE MAJOR LABEL SECTOR. THEY HAVE THE SAME POTENTIAL IMPORTANCE FOR THE INDEPENDENT SECTOR.

THE IMPORTANCE OF THE INDEPENDENT MUSIC SECTOR TO THE ECONOMY, TO CREATIVE ARTISTS AND TO THE PUBLIC GENERALLY IS AS INDICATED IN ATTACHMENT 1.

Section E - authority

7. Contact details


- (a) Name, contact telephone number and address of person authorised by the notifying parties to provide additional information in relation to this application:

STUART WATTERS
CHIEF EXECUTIVE OFFICER - AIR
437 SPENCER ST
WEST MELBOURNE VICTORIA 3003
PH: 03 8554 4330
MOB: 0438 758 847
(refer to direction 12)



Dated 5/12/08

Signed by/on behalf of the applicants


(Signature)

Stuart Watters
(Full Name)

Australian Independent Recording Labels Association
(Organisation)

CEO
(Position in Organisation)

DIRECTIONS

1. Where the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
2. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which notification is given.
3. A collective bargaining notification can not be lodged by a trade union or a trade union representative.
4. Where the applicant will be a participant in the collective bargaining arrangements (rather than a representative of participants) the name of the applicant must also be included. Where those persons are corporations, list the corporation's name and address.
5. The applicant, in lodging a notification on behalf of others, must obtain their consent to do so and provide proof of that consent.
6. Where the target is a corporation, provide the corporate name.
7. The collective bargaining notification process is only available to parties that reasonably expect to make one or more contracts with the target about the supply or acquisition of goods or services the subject of the notification.
8. The value of the contract to be collectively negotiated between the target and each participant is not to exceed \$3 million (or such other amount as is prescribed by the regulations) per participant in any twelve month period.
9. To the extent that the collective bargaining arrangements have been reduced to writing, provide a true copy of the arrangement. To the extent that the collective bargaining arrangements have not been reduced to writing, provide a full and correct description of the key terms that have not been reduced to writing.
10. In simple terms an exclusionary provision exists where the proposed contract, arrangement or understanding is made by businesses (at least two of whom are competitors) for the purpose of preventing, restricting or limiting the supply of services to particular persons or classes of persons by all or any of the parties to the contract, arrangement or understanding.

In the context of collective bargaining, an exclusionary provision(s) may include contracts, arrangements or understandings (whether currently in existence or to be made or arrived at during the term of the notification) between collective bargaining participants to limit or restrict their dealings with the target including contracts arrangements or understandings to:

- (a) withhold the supply of goods or services from the target; or
- (b) refuse or decline to acquire the goods or services of the target;

whether such conduct was absolute, limited or subject to certain terms or conditions. This is sometimes referred to as a collective boycott.

11. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
12. The notification must be signed by a person authorised by the applicant to do so.

ATTACHMENT 1

BACKGROUND ON THE AUSTRALIAN INDEPENDENT RECORD LABELS ASSOCIATION AND THE INDEPENDENT RECORD SECTOR

The Australian Independent Record Labels Association Ltd (AIR) is the peak body for Australian owned record labels. AIR pro-actively serves and represents the interests and development of Australian independent recording labels across Australia and internationally. There is no other membership organisation in Australia that represents the interests of independent recording labels, which represents around 85% of all Australian recorded music.

AIR's primary purpose is to foster an ever increasing marketplace for Australian independent music and assist in the long-term development, growth and success of Australia's independent recording industry both in Australia and overseas.

The formal objectives stated in AIR's constitution are:

- To assist in the exploitation of copyrights created and owned by Australian independent record labels
- To promote a commercially viable industry environment which is conducive to growth of the Australian independent sector and to the development of the artists that it represents
- To encourage and facilitate cultural expression through Australian music at local, national and international levels
- To advocate the values and interests of the Company and the Australian independent sector in accordance with these Objects
- To do all things as are necessary, incidental and conducive to the attainment of the above objects and to the development of the Australian music industry at large.

The Australian independent music industry makes up about 85% of the entire Australian recording industry. Members of this industry are Australian owned and not owned by multinational record companies (which make up the other 15% of the industry). Unlike these multinationals, industry members do not have an international company network through which to distribute their product and rely on establishing international licensing relationships on a business to business basis.

Independent recording labels produce the vast majority of work by Australian artists in all genres, but particularly in niche genres such as Australian jazz, electronica and dance music. This specialisation in niche genres also sets Independents apart from the multinationals.

Independent recording labels range from small niche-market labels to large organisations with a turn over of \$50 million per year. Artists represented by the Australian independent recording industry include well known names such as Savage Garden, John Butler Trio, Killing Heidi, Vanessa Amorosi, Missy Higgins, James Morrison and AC/DC.

The International Federation of the Phonographic Industry (IFPI) represents the recording industry worldwide through its membership of over 1,450 members spanning 70 countries. It was noted in a recent report on sales figures for the first half of 2004 that Australia has the 7th largest music industry market in the world and that Australia's maintenance of sales is primarily buoyed by a "strong local repertoire".

The principal property traded by the independent recording sector is the copyright in a recording. These copyrights are principally traded through CD sales, but also through use of recordings in films and other multimedia. However, as the industry adapts to recent changes and external pressures, sound recording files are now able to be traded through a variety of additional means from digital downloading sites, to synchronisation on mobile phone carrier services. AIR is at the forefront of enabling its members to maximise their capacity to exploit these new mediums to their (and Australia's) advantage.

Within the larger music industry it is the independent record labels that fulfil the role of supporting new artists and developing new markets. In contrast, the major recording companies tend to sign up product once it has had market recognition and represents a substantial profitable return.

Independent record labels have a strong track record in promoting Australian music overseas and have been responsible for most well known Australian music export examples, except in the cases of Silverchair and Mental as Anything.

The independent record industry represents at least 85% of the total Australian music industry. The other 15% is represented by multinationals which are not Australian owned. It is difficult to determine the exact market share figure that this represents as there are inadequate statistical collection services present in the Australian recording industry, but anecdotal evidence would suggest that the independent sector represents anywhere between 25 and 30% of the market share in economic terms.

ATTACHMENT 2
PARTICIPATING MEMBERS

Company	Contact	Email	Address
Shogun Distribution	Adam Kane	adam@shogundist.com	PO Box 1513, Eagle Fam, QLD 4009
Inertia Music	Collin Daniels	colin@inertia-music.com	PO Box 84, SURRY HILLS, NSW 2010
Rubber Records	David Vodicka	david@rubberrecords.com.au	441 Spencer St, West Melbourne 3003
Bone Finger Records	Stewart Riddle	stew@bonefingerrecords.com	PO Box 5094, Brassall, QLD 4305
Boomtowntown Records	Jaddan Comerford	jaddan@boomtownrecords.com.au	PO box 4145, Eaglemont, VIC 3084
Risky Records	Tamara Piller	info@riskyrecords.com.au	57-59 Renwick Street, Leichardt, NSW 2040
Obese Records	Ben Rynderman	operations@obeserecords.com	4a Izett st, Prahran, VIC 3181
Ivy League	Chris Maund	Chris@ivyleague.com.au	PO Box 545, Newtown, NSW 2042
BNM Records	Emma Wiking	emma@bnmrecords.com	Suite 3/171 Greville St, Prahran, VIC 3181
Maju	Judy Campbell	judvcam@mai.u.com	16a Ivey Street, Lindfield NSW, 2070
Basin Records	Emma Wiking	emmaw@basinrecords.com	Suite 3/171 Greville St, Prahran, VIC 3181
Boundary Sounds		martin@boundarysounds.com	PO Box 2424, Strawberry Hills NSW 2012
The Spooky Men's Chorale	Graham Mann	spookymen@gmail.com	P.O. Box 56 Lawson, NSW, 2783
Bluehouse		Bluehouse3@mac.com	PO Box 2132 Fitzroy MDC, VIC, 3065
CCR Australia	Angie Cooper	cooperscrewzasrecords@hotmail.com	6 Johnstone Crescent Colac, Vic, 3250
Oak Records	Maggie Britton	info@maggiebritton.com	65/12 Commodore Drive, Paradise Waters, QLD 4217
Dallas Cosmos	Dallas Cosmos	dallascosmas@dallascosmas.com	44 kerferd Rd Albert park, VIC, 3206
Go Set Music	Lorda Omimesiah	lorda@optusnet.com.au	GPO Box 813 Greenacre, NSW, 2190
Lavender Music	Al Craig	Blackinc@presto.net.au	47 Woodbine St N Balgowlah, NSW, 2093
Future Classic	Nathan McLay	nathan@futureclassic.com.au	PO Box 1535 Strawberry Hills, NSW 2012
Creative Vibes	Heidi Pasqual	info@cvibes.com	Unit 6, 7-9 Kent Rd Mascot, NSW, 2020
Tumnus Records	Fergie Marshall	fergiemarshall@hotmail.com	6706/177 Mitchell Rd Erskineville, NSW, 2043
Levity Label	Andrew Valder	meIn@rodriguezandcompany.com	
Hammered Silver Records	Tim Weatherhall	tim@hammeredsilver.com	Po Box 376 Petrie, QLD, 4502
Sonic Boy Records	Tony Hunt	tony@sonicboyrecords.com	1 Stodart St Camberwell, VIC, 3124
Red Disc Records	Clive Hines	reddiscrecords@hotmail.com	PO Box 1016 Seymour, VIC, 3660
Wild cat records	Amanda Easton	amanda@amandaeaston.com	PO Box 907 Leichhardt, NSW, 2040
Phoenix movement records	Bird Jensen	8ball@8ballaitken.com	GPO Box 1933 Brisbane, QLD, 4001
Jazz head	Andrew Walker	andrew@headrecords.com	PO Box 2197 St Kilda, VIC, 3182
soundcolour		dougitt@soundcolour.com	PO Box 264 Clunes, NSW, 2480
Tone Freak Records	Bill Palmer	contact@tonefreakrecords.com	PO Box 3644 Helensvale Town Centre, QLD 4212
Mummy's Boy Records	Erin Jameson	erin@ykymanagement.com	PO Box 6068 South Yarra, Vic, 3141
Xelon Entertainment	Ashley Gay	ashley@xelonentertainment.com	PO Box 188 PO Box 188, VIC, 3135

Small House Records	Mark Tulk	mark@smallhouserecords.com.au	PO Box 510 Box Hill BC, VIC, 3128
Echobase Records	Andrew Schraa	aschraa1@mac.com	81 Byron st Elwood, Vic, 3184
Shock Records	Marcus Seal	marcus.seal@shock.com.au	200 Beavers Road NORTHCOTE, VIC 3070
Room 40	Lawrence English	lawrence@room40.org	PO Box 771 Hamilton Central, QLD, 4007
Chapter Music	Guy Blackman	guy@chaptermusic.com.au	PO Box 247 Northcote, VIC, 3070
Bahool Records	Keith Macnamara	bahoolrecords@yahoo.com.au	752 McCallums Creek Rd Majorca, Vic 3465
Extended Family	Alexandra Kay	highroad@bigpond.com	P.O Box 257 Haberfield, NSW, 2045
Formations Band	Tim McGrath	megraatt@telstra.com	17 evelyn st lammermoor beach yeppoon, QLD, 4703
Dorothy Records	Terese Jermyn	terese@masqueagency.com.au	4/8 King George Street McMahon's Point, NSW, 2060
House Of Wow	Dino Jag La	dino@houseofwow.com	21 Wildwood Drive Salisbury Park, SA, 5109
Weapon Head	Boris Billing	borisbilling@bigpond.com.au	10 Frideswide Street Goondiwindi, QLD, 4390
Endgame Records	Tegan Northwood	info@endgame.com.au	PO Box 3040 Marrickville, NSW, 2204
Doza Records	Damian Delahunty	journey@netconnect.com.au	8 Scullin Road Burnside, VIC, 3023
Krow Pie	Matt Ellis	info@krowpie.com	PO Box 1186 Darlinghurst, NSW, 2010
Kingdon Wise Records	Ben Louise	kingdomwise@hotmail.com	Po Box 1061 Croydon, VIC, 3136
Stomp	Tom Pandzic	tom@stomp.com.au	5 Harper St Abbottsford, VIC, 3067
Winterun	nick Dunstan	kittarn@yahoo.com.au	11 acacia st camberwell, VIC, 3124
Starving Kids	Brett Bartlett	brett@starvingkids.com.au	PO Box 314 Browns Plains, QLD, 4118
Hypersonic Records	Adrian Lloyd	info@hypersonicrecords.com.au	317-319 Pier Street Perth, WA, 6000
Phil MC	Phil McKernan	phil_mc@tpg.com.au	P.O Box 2290 Kew, Vic, 3101
Caravan records	Simeon Gilmou	rebecca@caravanrecords.com.au	10 Ormond st North Gosford, NSW, 2250
Jazz WA	Alan Corbet	alan@jazzwa.com	PO BOX 295 North Beach, WA, 6920
Lee Adam Wilshier	Lee Adam Wilshier	lee.wilshier@bigpond.com	29A Braidhill Rd Macleod, VIC, 3085
The Boat People	Rick Chazan	ideasm@bigpond.net.au	po box 1576 Towong, QLD, 4066
MGM	Sebastian Chase	Sebastian@thegroovemerchants.com	PO Box A1437 South Sydney, NSW, 1235
Bunza Music	Sue	sue@bunza.com.au	PO Box 4989 North Rocks, NSW, 2151
Pink dot	Amin Javanmard	music@pinkdot.org	PO Box 718 Runaway Bay, QLD, 4216
MPM Records	Mathew Packer	mathew@mpmrecords.com.au	15 Freeman Street New Lambton, NSW, 2305

ATTACHMENT 3
CONSENT OF PARTICIPATING MEMBERS

From: AIR [air@mail-hub.net]
Sent: Monday, 15 December 2008 2:37 PM
To: stu@air.org.au
Subject: Proposed Collective Bargaining Negotiations



AUSTRALIAN
INDEPENDENT
RECORD LABELS
ASSOCIATION

Dear Members

We are writing this notice to the membership to inform you of recent action being taken by AIR on behalf of its members.

AIR is filing a Collective Bargaining Notification to the Australian Consumer Competition Commission (ACCC) under the Trade Practices Act. The end goal of this is to get an immunity from liability from price fixing and other provisions of the Trade Practices Act so that AIR can act on behalf of its members and negotiate collective licensing arrangements for the sector. Any license arrangement with AIR will be non-exclusive and our members are free to negotiate their own licenses where they want to do so. Further, if you have an existing license in place with a potential licensing target for AIR, that existing licence will not be affected by the new AIR collective licensing arrangements.

There are currently a number of end users of recorded music and music video in Australia who currently may not have licenses in place to pay the independent sector. By contrast, the multinational subsidiaries are paid for use of content in a variety of formats.

The current proposed targets of collective negotiation by AIR are:

Foxtel
Austar
Optus
Telstra

Their music content channels / outlets include:

MTV
XYZ
Fuel TV.
Bigpond

If you would like to be covered by the proposed collective bargaining negotiations with licensees, please indicate by following the link provided and clicking the yes option [link](#). You will need to do this by Friday August 15th.

If you do not agree to participate you will not be able to share in the licensing fees payable under the licences to be collectively negotiated. AIR therefore believes that it is strongly in the interest of all members to opt in.

If you have any questions please don't hesitate to forward them to info@air.org.au and we will seek to clarify them for you in a timely manner.

Sincerely

Stuart Watters

CEO

AIR

You have received this email because you are an AIR member or have requested information from us. If you have received this email by mistake, you can remove your details [here](#).

To update your details click [here](#)

If you are new to AIR, you can subscribe to our mailouts by clicking [here](#).

ATTACHMENT 4

SUMMARY OUTLINE OF PROPOSED KEY TERMS

Item	Term	Summary
1	Licence scope	<p>A non-exclusive licence to broadcast music videos, but only:</p> <ul style="list-style-type: none"> • on specified Music Video Channels; and • in accordance with all of the conditions applicable to the broadcaster's licence issued under the Broadcasting Services Act. <p>"Music Video Channels" are television channels where music videos comprise at least 25% of the total programming content by duration (calculated over a calendar week, and excluding advertisements, sponsorship announcements and other promotional content).</p>
2	Licensed repertoire	All music videos in which the copyright is owned or controlled in Australia by Participating Members.
3	Term	An initial period of [] months, with automatic renewals for further [] month periods unless either party terminates by notice in writing.
4	Reporting	<p>Licensees will provide quarterly video usage reports, setting out (in the form of a "broadcast log") the details of all music videos broadcast on each Music Video Channel, including the details of any directly licensed music videos.</p> <p>Licensees will also provide quarterly reports detailing the number of domestic and commercial subscribers with access to the Music Video Channels.</p>
5	Licence fees (GST Exclusive)	<p>Licence fees are payable quarterly. The fees are calculated monthly on the basis of the subscriber numbers reported by the licensee.</p> <p>[Categories & formulas to be negotiated].</p>
6	Invoicing and payment	<p>Following receipt of the quarterly video usage and revenue reports (see Item 4 above), a tax invoice will be issued for the amount of the licence fees.</p> <p>All invoices are payable within 14 days of receipt.</p>

Form GA

Commonwealth of Australia

Trade Practices Act 1974 — subsection 93AB (1)

NOTIFICATION OF COLLECTIVE BARGAINING

This form is to be completed by applicants proposing to engage in collective bargaining arrangements.

In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

Protection provided by the notification extends only to the collective bargaining arrangements described in the form.

To the Australian Competition and Consumer Commission:

Notification is hereby given under subsection 93AB (1) of the *Trade Practices Act 1974*:

- to make, or propose to make, a contract containing a provision of the kind referred to in paragraph 45 (2)(a) of the *Trade Practices Act 1974*; or
- to give effect to a provision of a contract where the provision is of the kind referred to in paragraph 45 (2)(b) of the *Trade Practices Act 1974*.
(Strike out if not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

Section A – general information

1. Applicant

- (a) Name of the applicant:
(refer to Direction 1)

C800065 AUSTRALIAN INDEPENDENT RECORD LABELS ASSOCIATION LTD (AIR) AND PARTICIPATING MEMBERS OF AIR

- (b) Description of business carried on by the applicants:
(refer to Direction 2)

AIR IS A NATIONAL INDUSTRY ASSOCIATION, PROACTIVELY SERVING AND REPRESENTING THE INTERESTS AND DEVELOPMENT OF AUSTRALIAN INDEPENDENT RECORDING LABELS ACROSS AUSTRALIA AND THE WORLD.

SEE FURTHER ATTACHMENT 1.

THE PARTICIPATING MEMBERS LISTED IN ATTACHMENT 2 ARE INDEPENDENT RECORDING LABELS.

- (c) Is the representative of the applicant lodging the notice a trade union, an officer of a trade union or a person acting on the direction of a trade union?
(refer to Direction 3)

NO

- (d) Address in Australia for service of documents on the applicants:

437 SPENCER ST

WEST MELBOURNE

VICTORIA 3003

2. Lodged on behalf of

- (a) Provide names and addresses of all persons on whose behalf the notification is lodged and who propose to participate in the collective bargaining arrangements:
(refer to Direction 4)

DETAILS FOR AIR ARE SET OUT IN 1. ABOVE. SEE ATTACHMENT 2 FOR DETAILS OF THE OTHER APPLICANTS.

- (b) Provide proof of the consent of each of the persons listed at 2 (a) above agreeing to the lodgement of the notification on their behalf:
(refer to Direction 5)

SEE ATTACHMENT 3. THIS REFERS TO THE LETTER THAT WAS SENT TO EACH MEMBER (I.E. THOSE PARTICIPANTS REFERRED TO IN ATTACHMENT 2) AND PROMPTED THEM TO PROVIDE THEIR DIGITAL SIGNATURE AS PARTIES TO COLLECTIVE BARGAINING ARRANGEMENTS. THE TECHNOLOGY USED TO OBTAIN THE DIGITAL SIGNATURES ENSURED THAT EACH DIGITAL SIGNATURE PROCESSED WAS SPECIFIC TO THE COMPANY TO WHICH IT WAS SENT.

- (c) Provide the following information relating to a notification:

- (i) Does this notification relate to a notification previously lodged with the Australian Competition and Consumer Commission and for which a concessional fee is claimed?

NO

- (ii) details of the first-mentioned notification, including but not limited to:
(A) the name of the applicant; and

- (B) the date the notification was said to be lodged; and
- (C) if known or applicable — the registration number allocated to that collective bargaining notification.

N/A

Section B – collective bargaining arrangements

3. Proposed collective bargaining arrangements

- (a) Provide: the name and address of the target; the name, position and telephone contact details of an appropriate contact at the target; and a description of the business carried on by the target:
(refer to direction 6)

FUEL TV
PREMIER MEDIA GROUP PTY LIMITED
065 445 418
LEVEL 5, 2 HOLT STREET
SURRY HILLS
NSW 2010

- (b) Provide a description of the goods or services which the participants of the collective bargaining arrangements (listed at 2 (a) above) propose to supply to or acquire from the target:

THE PARTICIPANTS IN THE COLLECTIVE BARGAINING ARRANGEMENTS PROPOSE TO SUPPLY MASTER RECORDING COPYRIGHTS INCLUSIVE OF AUDIO AND VISUAL RIGHTS UNDER LICENSE TO LICENSEES ACROSS A RANGE OF TRANSMISSION MEDIUMS.

- (c) Do the participants of the proposed collective bargaining arrangements (see 2 (a) above) reasonably expect to make one or more contracts with the target about the supply to or acquisition from the target of one or more of the goods or services (listed at 3 (b) above)?
(refer to direction 7)

YES. ONE CONTRACT FOR EACH TARGET IS PROPOSED. ALL APPLICANTS WILL BE PARTIES TO THE CONTRACT. UNDER THE CONTRACT EACH PARTICIPATING MEMBER OF AIR WILL AGREE TO LICENSE THEIR RELEVANT RESPECTIVE RIGHTS TO THE TARGET.

- (d) In relation to (c) above, provide details of the basis upon which that expectation is held including details of past contracts with the target:

A JOINT LICENSING ARRANGEMENT IS PROPOSED UNDER WHICH EACH PARTICIPATING MEMBER OF AIR WILL LICENSE THEIR RELEVANT RIGHTS TO EACH PARTICULAR TARGET. THIS MODEL DIFFERS FROM THE PPCA COLLECTIVE LICENSING MODEL –NO COLLECTIVE LICENCE WILL BE ISSUED BY AIR AND ACCORDINGLY THERE WILL NOT BE ANY INPUT LICENCE BETWEEN THE PARTICIPATING MEMBERS AND AIR.

A JOINT LICENCE HAS NOT PREVIOUSLY BEEN OFFERED BY THE PARTICIPATING MEMBERS OR ANY OTHER MEMBERS OF AIR.

AIR HAS NOT PREVIOUSLY OFFERED A COLLECTIVE LICENSE.

SOME AIR MEMBERS HAVE PREVIOUSLY ENTERED INTO DIRECT LICENSING ARRANGEMENTS. HOWEVER, SUCH ARRANGEMENTS ARE EXCEPTIONAL GIVEN THE TRANSACTION COSTS OF ENTERING INTO NUMEROUS SEPARATE LICENSING ARRANGEMENTS. THE JOINT LICENCE PROPOSED IS INTENDED TO REDUCE THE TRANSACTION COSTS CONSIDERABLY.

- (e) Do the participants of the collective bargaining arrangements (listed at 2 (a) above) reasonably expect that contractual payments between the target and each participant will not exceed \$3 million (or any other amount prescribed by regulation) in any 12 month period, and on what basis?
(refer to direction 8)

YES

- (f) In relation to (e) above provide an estimation of the contractual payments expected between the target and each participant in relation to the goods and services (listed at 2 (a) above):

GIVEN THE SIZE, NATURE AND FRAGMENTATION OF THE INDEPENDENT RECORDING SECTOR IN AUSTRALIA, IT IS DIFFICULT TO ESTIMATE THE AMOUNT OF THE CONTRACTUAL PAYMENTS FOR A JOINT LICENCE. THE AMOUNT NEGOTIATED FOR A JOINT LICENCE WILL BE DISTRIBUTED TO PARTICIPATING MEMBERS AFTER DEDUCTING A SMALL AMOUNT FOR ADMINISTRATION COSTS. THE DISTRIBUTION SCHEME WILL BE COMPARABLE TO THAT USED BY PPCA IN PPCA'S COLLECTIVE LICENSING ARRANGEMENTS.

- (g) Provide a description of the collective bargaining arrangements proposed including, but not limited to:

- (i) the process by which participants propose to undertake collective bargaining with the target; and

AIR WILL NEGOTIATE THE PROPOSED JOINT LICENSING AGREEMENT ON BEHALF OF THE PARTICIPATING MEMBERS.

- (ii) the type of terms and conditions expected to be negotiated in collective bargaining arrangements (for example: price; non-price conditions of supply such as contract periods etc); and

PARTICIPATING MEMBERS WILL EACH GRANT TO EACH TARGET A NON-EXCLUSIVE LICENSE TO EXERCISE ANY OR ALL OF THEIR RIGHTS. THE LICENSED RIGHTS WILL BE PUBLIC PERFORMANCE AND TRANSMISSION RIGHTS FOR MUSIC VIDEOS.

THE RIGHTS GRANTED WILL BE TECHNOLOGY NEUTRAL, THUS ALLOWING FOR THE NEGOTIATION OF A SUITE OF RIGHTS (BROADCAST; COMMUNICATION; DOWNLOAD; BLANKET USES..

THIS IS BECOMING AN INDUSTRY NORM SO AS TO MINIMISE THE NEED FOR MULTIPLE LICENSING AGREEMENTS.

LICENSE FEES WILL BE PAYABLE QUARTERLY BASED ON USAGE AND REVENUE REPORTS.

CONTRACT PERIODS ARE LIKELY TO BE FOR A MINIMUM OF 6 MONTHS UP TO A MAXIMUM OF 3 YEARS WITH SPECIFIED REVIEW PERIODS.

PRICING WILL BE DETERMINED ON THE BASIS OF USAGE OF COPYRIGHTS BALANCED AGAINST THE OVERALL QUANTITY OF SUBSCRIBERS THAT THE BROADCASTER TARGET HAS OVER THE RELEVANT PERIOD OF THE AGREEMENT.

FOR A SUMMARY OUTLINE OF PROPOSED KEY TERMS, SEE ATTACHMENT 4.

- (iii) details of any dispute resolution procedure (if any) proposed between participants throughout the collective bargaining process; and

EACH PARTICIPATING MEMBER WILL HAVE THE RIGHT AT THEIR OWN EXPENSE TO APPOINT AN INDEPENDENT AUDITOR TO EXAMINE THE BOOKS AND ACCOUNTS OF AIR. AIR WILL OFFER MEDIATION, CONCILIATION AND NEUTRAL EVALUATION IN RELATION TO ANY DISPUTE THAT MAY ARISE BETWEEN A PARTICIPATING MEMBER AND AIR IN CONNECTION WITH THE JOINT LICENSING AGREEMENT OR THE NEGOTIATION THEREOF.

- (iv) details of any dispute resolution procedure (if any) proposed between participants and the target throughout the collective bargaining process; and

NO DISPUTE RESOLUTION PROCEDURE IS ENVISAGED AT THE STAGE OF NEGOTIATION. THE TERMS OF THE JOINT LICENCE PROPOSED WILL BE STRAIGHT FORWARD. IF A DISPUTE CANNOT BE RESOLVED AS PART OF THE PROCESS OF NEGOTIATION THEN NO JOINT LICENCE AGREEMENT WILL RESULT. THERE IS NO NEED FOR DISPUTE RESOLUTION PROCEDURES DURING THE STAGE OF NEGOTIATION AND ANY SUCH PROCESSES COULD EASILY DELAY NEGOTIATION.

- (v) details of any dispute resolution procedure (if any) proposed to deal with disputes throughout the term of contracts entered into with the target; and

THE JOINT LICENCE AGREEMENT WILL PROVIDE FOR MEDIATION, CONCILIATION AND NEUTRAL EVALUATION IN RELATION TO ANY DISPUTE THAT MAY ARISE BETWEEN AIR OR A PARTICIPATING MEMBER AND THE TARGET.

- (vi) details of proposed commencement and duration of contracts to be negotiated with the target:
(refer to direction 9)

THE COMMENCEMENT DATE IS LIKELY TO BE IN THE SECOND QUARTER OF THE FINANCIAL YEAR. THE COLLECTIVE

LICENCE WILL RUN FOR A MINIMUM OF 6 MONTHS UP TO 3 YEARS WITH SPECIFIED REVIEW PERIODS.

- (h) Identify any parts of the proposed collective arrangements described in 3 (g) which relate to possible price agreements:

THERE WILL BE A JOINT LICENSING FEE.

- (i) Identify any parts of the proposed collective arrangements described in 3 (g) which relate to a possible or proposed exclusionary provision(s), including but not limited to:
 - (i) the nature of the proposed or possible exclusionary provision(s) (for example an agreement to withhold supply of the relevant goods or services to the target); and

NO EXCLUSIONARY PROVISION IS ENVISAGED. IN THE EVENT THAT THE TARGET DECLINES TO ENTER INTO A JOINT LICENSE, IT WOULD BE ENTIRELY UP TO EACH MEMBER OF AIR TO DECIDE FOR ITSELF AND INDEPENDENTLY OF EACH OTHER THE FUTURE NATURE OF ITS RELATIONSHIP WITH THE TARGET.

- (ii) the circumstances in which the collective bargaining participants would engage in the exclusionary provision(s), including but not limited to:
 - (A) details of the events that would trigger any such activity; and
 - (B) details of the process that would be followed in undertaking any such activity; and
 - (C) details of any proposed period of notice to be given to the target prior to the commencement of such activity; and
 - (D) details of any dispute resolution procedure to be applied or offered to the target prior to the commencement of such activity:
(refer to direction 10)

NO EXCLUSIONARY PROVISION IS ENVISAGED. SEE (i) ABOVE

Section C – public detriments

4. Market definition

Provide a description of the market(s) in which the goods or services described at 3 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):
(refer to direction 11)

THE RELEVANT MARKET IS THE AUSTRALIAN MARKET FOR THE ACQUISITION AND SUPPLY OF LICENCES FOR PUBLIC PERFORMANCE RIGHTS AND TRANSMISSION RIGHTS FOR SOUND RECORDINGS AND MUSIC VIDEOS IN AUSTRALIA.

THE MAIN SUPPLIERS OF LICENCES FOR PUBLIC PERFORMANCE RIGHTS AND TRANSMISSION RIGHTS FOR SOUND RECORDINGS AND MUSIC VIDEOS IN AUSTRALIA ARE:

- RECORD LABELS

- ARTISTS
- ARTIST MANAGERS
- MANAGERS

THE MAIN ACQUIRERS OF LICENCES FOR PUBLIC PERFORMANCE RIGHTS AND TRANSMISSION RIGHTS FOR SOUND RECORDINGS AND MUSIC VIDEOS IN AUSTRALIA ARE:

- TELEVISION BROADCASTERS
- MUSIC CHANNELS
- ONLINE BROADCASTERS
- TERRESTRIAL AND DIGITAL RADIO

THERE ARE MANY DIFFERENT GENRES OF MUSIC. THE REPERTOIRE TO BE COVERED BY THE JOINT LICENCE PROPOSED WILL COVER A RANGE OF GENRES (EG. ROCK, CLASSICAL). THE APPLICANTS DO NOT BELIEVE THAT THERE ARE GENRE-BASED MARKETS – THE ORTHODOX DEFINITION OF THE PRODUCT MARKET IS THAT IT INCLUDES ALL GENRES.

THE ONLY RELEVANT GEOGRAPHIC OR LEGAL RESTRICTION ON THE SUPPLY OR ACQUISITION OF THE RELEVANT SERVICES IS THAT A LICENCE FOR PUBLIC PERFORMANCE RIGHTS AND TRANSMISSION RIGHTS FOR SOUND RECORDINGS AND MUSIC VIDEOS IN AUSTRALIA IS LIMITED TO AUSTRALIA AND EACH LICENSOR MUST BE ENTITLED TO LICENSE THOSE RIGHTS IN AUSTRALIA. SUBJECT TO THOSE RESTRICTIONS, COPYRIGHT IS AN UNLIMITED RESOURCE.

5. Public detriments

- (a) What will be the likely effect of the notified conduct on the prices of the goods or services described at 3 (b) above and the prices of goods or services in other affected markets? In answering this question please provide facts and information to support the claims made:

IN THE APPLICANTS' VIEW, THERE ARE NO LIKELY PUBLIC DETRIMENTS.

THE JOINT LICENCE PROPOSED IS NON-EXCLUSIVE. THE TARGET CAN DEAL WITH ANY OF THE FOLLOWING PARTIES:

- THE LICENSORS, OR A SELECT NUMBER OF LICENSORS (eg MAJOR RECORD LABELS WHO ARE NOT MEMBERS OF AIR)
- PPCA (see comment below);
- AIR AND PARTICIPATING MEMBERS; OR
- MEMBERS OF AIR WHO WISH TO ENTER INTO A SEPARATE LICENSING AGREEMENT.

THE BROADCASTERS HAVE A LICENCE WITH PPCA FOR THE USE OF SOUND RECORDINGS BUT NOT FOR THE VIDEO RIGHTS. THE BROADCASTERS HAVE TRADITIONALLY PASSED THIS RESPONSIBILITY TO THE CHANNELS, WHO HAVE ENTERED INTO DIRECT LICENSING ARRANGEMENTS.

THE FEE FOR A THE JOINT LICENCE PROPOSED WILL BE NEGOTIATED ON REASONABLE COMMERCIAL TERMS. IN THE PAST THE TARGET HAS NOT PAID ANY FEE IN RELATION TO THE PUBLIC PERFORMCANCE AND TRANSMISSION OF MUSIC VIDEOS FOR WHICH THE COPYRIGHT IS HELD BY AN INDEPENDENT RECORDING LABEL. ADOPTION OF A COMMERCIALLY NEGOTIATED REASONABLE FEE INSTEAD OF A FREE-RIDING FEE OF \$0 IS NOT A PUBLIC DETRIMENT.

THE JOINT LICENCE PROPOSED DOES NOT INVOLVE PRICE FIXING AS DEFINED UNDER SECTION 45A(1) OF THE TPA: THE JOINT LICENCE TO BE OFFERED IS A JOINT PRODUCT THAT COULD NOT BE OFFERED BY AIR OR BY ANY OF THE PARTIPATING MEMBERS ALONE. ACCORDINGLY, AIR AND THE PARTICIPATING MEMBERS ARE NOT COMPETITORS OR LIKELY COMPETITORS.

THE JOINT PRODUCT TO BE SUPPLIED UNDER THE PROPOSED JOINT LICENCE IS INTENDED TO AND WILL REDUCE TRANSACTION COSTS. THE JOINT PRODUCT IS PRO-COMPETITIVE. THE JOINT LICENCE PROPOSED IS NON_EXCLUSIVE – IT DOES NOT FORECLOSE SEPERATE LICENSING DIRECTLY WITH COPYRIGHT HOLDERS.

(b) What other detriments may result from the notified conduct? In answering this question please provide facts and information to support the claims made:

NONE

Section D – public benefits

6. Public benefit claims

- (a) Provide details of the public benefits resulting or likely to result from the proposed arrangement. In answering this question please provide facts and information to support the claims made:

THE JOINT LICENCE PROPOSED WILL HELP TO SUPPORT THE INDEPENDENT SECTOR BY CREATING AN AVENUE FOR THE COLLECTION OF COPYRIGHT FEES TO WHICH COPYRIGHT HOLDERS ARE ENTITLED BUT WHICH HAVE NOT BEEN PAID IN THE PAST. THE MAIN POTENTIAL SOURCE OF COPYRIGHT FEES ARE BROADCASTERS, INCLUDING THE TARGET. THE BROADCASTERS HAVE DIRECT LICENSING ARRANGEMENTS WITH THE FOUR MAJOR RECORD COMPANIES BUT NO SUCH ARRANGMENTS ARE IN PLACE WITH THE INDEPENDENTS.

AS REVENUES FROM CD SALES DECLINE, IT IS INCREASINGLY IMPORTANT FOR RECORD COMPANIES TO BE ABLE TO DRAW RESIDUAL REVENUES FROM A DIVERSE RANGE OF SOURCES, NAMELY: VIDEO; SYNCHRONISATION; MOBILE; AND ONLINE. ALL OF THESE REVENUE STREAMS ARE IMPORTANT IN THE LICENSING OF COPYRIGHT CONTENT FROM THE MAJOR LABEL SECTOR. THEY HAVE THE SAME POTENTIAL IMPORTANCE FOR THE INDEPENDENT SECTOR.

THE IMPORTANCE OF THE INDEPENDENT MUSIC SECTOR TO THE ECONOMY, TO CREATIVE ARTISTS AND TO THE PUBLIC GENERALLY IS AS INDICATED IN ATTACHMENT 1.

Section E - authority

7. Contact details

- (a) Name, contact telephone number and address of person authorised by the notifying parties to provide additional information in relation to this application:

STUART WATTERS

CHIEF EXECUTIVE OFFICER - AIR

437 SPENCER ST

WEST MELBOURNE VICTORIA 3003


PH: 03 8554 4330

MOB: 0438 758 847

(refer to direction 12)

Dated 5/12/08

Signed by/on behalf of the applicants


.....
(Signature)

Stuart Watters
.....
(Full Name)

Australian Independent Record Labels Association
.....
(Organisation)

CEO
.....
(Position in Organisation)



DIRECTIONS

1. Where the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
2. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which notification is given.
3. A collective bargaining notification can not be lodged by a trade union or a trade union representative.
4. Where the applicant will be a participant in the collective bargaining arrangements (rather than a representative of participants) the name of the applicant must also be included. Where those persons are corporations, list the corporation's name and address.
5. The applicant, in lodging a notification on behalf of others, must obtain their consent to do so and provide proof of that consent.
6. Where the target is a corporation, provide the corporate name.
7. The collective bargaining notification process is only available to parties that reasonably expect to make one or more contracts with the target about the supply or acquisition of goods or services the subject of the notification.
8. The value of the contract to be collectively negotiated between the target and each participant is not to exceed \$3 million (or such other amount as is prescribed by the regulations) per participant in any twelve month period.
9. To the extent that the collective bargaining arrangements have been reduced to writing, provide a true copy of the arrangement. To the extent that the collective bargaining arrangements have not been reduced to writing, provide a full and correct description of the key terms that have not been reduced to writing.
10. In simple terms an exclusionary provision exists where the proposed contract, arrangement or understanding is made by businesses (at least two of whom are competitors) for the purpose of preventing, restricting or limiting the supply of services to particular persons or classes of persons by all or any of the parties to the contract, arrangement or understanding.

In the context of collective bargaining, an exclusionary provision(s) may include contracts, arrangements or understandings (whether currently in existence or to be made or arrived at during the term of the notification) between collective bargaining participants to limit or restrict their dealings with the target including contracts arrangements or understandings to:

- (a) withhold the supply of goods or services from the target; or
- (b) refuse or decline to acquire the goods or services of the target;

whether such conduct was absolute, limited or subject to certain terms or conditions. This is sometimes referred to as a collective boycott.

11. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
12. The notification must be signed by a person authorised by the applicant to do so.

ATTACHMENT 1

BACKGROUND ON THE AUSTRALIAN INDEPENDENT RECORD LABELS ASSOCIATION AND THE INDEPENDENT RECORD SECTOR

The Australian Independent Record Labels Association Ltd (AIR) is the peak body for Australian owned record labels. AIR pro-actively serves and represents the interests and development of Australian independent recording labels across Australia and internationally. There is no other membership organisation in Australia that represents the interests of independent recording labels, which represents around 85% of all Australian recorded music.

AIR's primary purpose is to foster an ever increasing marketplace for Australian independent music and assist in the long-term development, growth and success of Australia's independent recording industry both in Australia and overseas.

The formal objectives stated in AIR's constitution are:

- To assist in the exploitation of copyrights created and owned by Australian independent record labels
- To promote a commercially viable industry environment which is conducive to growth of the Australian independent sector and to the development of the artists that it represents
- To encourage and facilitate cultural expression through Australian music at local, national and international levels
- To advocate the values and interests of the Company and the Australian independent sector in accordance with these Objects
- To do all things as are necessary, incidental and conducive to the attainment of the above objects and to the development of the Australian music industry at large.

The Australian independent music industry makes up about 85% of the entire Australian recording industry. Members of this industry are Australian owned and not owned by multinational record companies (which make up the other 15% of the industry). Unlike these multinationals, industry members do not have an international company network through which to distribute their product and rely on establishing international licensing relationships on a business to business basis.

Independent recording labels produce the vast majority of work by Australian artists in all genres, but particularly in niche genres such as Australian jazz, electronica and dance music. This specialisation in niche genres also sets Independents apart from the multinationals.

Independent recording labels range from small niche-market labels to large organisations with a turn over of \$50 million per year. Artists represented by the Australian independent recording industry include well known names such as Savage Garden, John Butler Trio, Killing Heidi, Vanessa Amorosi, Missy Higgins, James Morrison and AC/DC.

The International Federation of the Phonographic Industry (IFPI) represents the recording industry worldwide through its membership of over 1,450 members spanning 70 countries. It was noted in a recent report on sales figures for the first half of 2004 that Australia has the 7th largest music industry market in the world and that Australia's maintenance of sales is primarily buoyed by a "strong local repertoire".

The principal property traded by the independent recording sector is the copyright in a recording. These copyrights are principally traded through CD sales, but also through use of recordings in films and other multimedia. However, as the industry adapts to recent changes and external pressures, sound recording files are now able to be traded through a variety of additional means from digital downloading sites, to synchronisation on mobile phone carrier services. AIR is at the forefront of enabling its members to maximise their capacity to exploit these new mediums to their (and Australia's) advantage.

Within the larger music industry it is the independent record labels that fulfil the role of supporting new artists and developing new markets. In contrast, the major recording companies tend to sign up product once it has had market recognition and represents a substantial profitable return.

Independent record labels have a strong track record in promoting Australian music overseas and have been responsible for most well known Australian music export examples, except in the cases of silverchair and Mental as Anything.

The independent record industry represents at least 85% of the total Australian music industry. The other 15% is represented by multinationals which are not Australian owned. It is difficult to determine the exact market share figure that this represents as there are inadequate statistical collection services present in the Australian recording industry, but anecdotal evidence would suggest that the independent sector represents anywhere between 25 and 30% of the market share in economic terms.

ATTACHMENT 2
PARTICIPATING MEMBERS

Company	Contact	Email	Address
Shogun Distribution	Adam Kane	adam@shogundist.com	PO Box 1513, Eagle Fam, QLD 4009
Inertia Music	Collin Daniels	collin@inertia-music.com	PO Box 84, SURRY HILLS, NSW 2010
Rubber Records	David Vodicka	david@rubberrecords.com.au	441 Spencer St, West Melbourne 3003
Bone Finger Records	Stewart Riddle	stew@bonefingerrecords.com	PO Box 5094, Brassall, QLD 4305
Boomtown Records	Jaddan Comerford	jaddan@boomtownrecords.com.au	Po box 4145, Eaglemont, VIC 3084
Risky Records	Tamara Piller	info@riskyrecords.com.au	57-59 Renwick Street, Leichardt, NSW 2040
Obese Records	Ben Rynderman	operations@obeserecords.com	4a Izzett st, Pahrnan, VIC 3181
Ivy League	Chris Maund	Chris@ivyleague.com.au	PO Box 545, Newtown, NSW 2042
BNIM Records	Emma Wiking	emma@bnimrecords.com	Suite 3/171 Greville St, Pahrnan, VIC 3181
Maju	Judy Campbell	judycam@maju.com	16a Ivey Street, Lindfield NSW, 2070
Basin Records	Emma Wiking	emmaw@basinrecords.com	Suite 3/171 Greville St, Pahrnan, VIC 3181
Boundary Sounds		martin@boundarysounds.com	PO Box 2424, Strawberry Hills NSW 2012
The Spooky Men's Chorale	Graham Mann	spookymen@gmail.com	P.O. Box 56 Lawson, NSW, 2783
Bluehouse		Bluehouse3@mac.com	PO Box 2132 Fitzroy MDC, VIC, 3065
CCR Australia	Angie Cooper	cooperscrewzasrecords@hotmail.com	6 Johnstone Crescent Colac, Vic, 3250
Oak Records	Maggie Britton	info@maggiebritton.com	65/12 Commodore Drive, Paradise Waters, QLD 4217
Dallas Cosmos	Dallas Cosmos	dallascosmas@dallascosmas.com	44 kerferd Rd Albert park, VIC, 3206
Go Set Music	Lorda Omimesiah	lorda@optusnet.com.au	GPO Box 813 Greenacre, NSW, 2190
Lavender Music	Al Craig	Blackinc@presto.net.au	47 Woodbine St N Balgowlah, NSW, 2093
Future Classic	Nathan McLay	nathan@futureclassic.com.au	PO Box 1535 Strawberry Hills, NSW 2012
Creative Vibes	Heidi Pasqual	info@cvibes.com	Unit 6, 7-9 Kent Rd Mascot, NSW, 2020
Tumnus Records	Fergie Marshall	fergiemarshall@hotmail.com	6706/177 Mitchell Rd Erskineville, NSW, 2043
Levity Label	Andrew Valder	mein@rodriguezezandcompany.com	
Hammered Silver Records	Tim Weatherhall	tim@hammeredsilver.com	Po Box 376 Petrie, QLD, 4502
Sonic Boy Records	Tony Hunt	tony@sonicboyrecords.com	1 Stodart St Camberwell, VIC, 3124
Red Disc Records	Clive Hines	reddiscrecords@hotmail.com	PO Box 1016 Seymour, VIC, 3660
Wild cat records	Amanda Easton	amanda@amandaeaston.com	PO Box 907 Leichardt, NSW, 2040
Phoenix movement records	Bird Jensen	8ball@8ballaitken.com	GPO Box 1933 Brisbane, QLD, 4001
Jazz head	Andrew Walker	andrew@headrecords.com	PO Box 2197 St Kilda, VIC, 3182
soundcolour		dougitt@soundcolour.com	PO Box 264 Clunes, NSW, 2480
Tone Freak Records	Bill Palmer	contact@tonefreakrecords.com	PO Box 3644 Helensvale Town Centre, QLD 4212
Mummy's Boy Records	Erin Jameson	erin@ykymanagement.com	PO Box 6068 South Yarra, Vic, 3141
Xelon Entertainment	Ashley Gay	ashley@xelonentertainment.com	PO Box 188 PO Box 188, VIC, 3135

Small House Records	Mark Tuik	mark@smallhouserecords.com.au	PO Box 510 Box Hill BC, VIC, 3128
Echobase Records	Andrew Schraa	aschraa1@mac.com	81 Byron st Elwood, Vic, 3184
Shock Records	Marcus Seal	marcus.seal@shock.com.au	200 Beavers Road NORTHCOTE, VIC 3070
Room 40	Lawrence English	lawrence@room40.org	PO Box 771 Hamilton Central, QLD, 4007
Chapter Music	Guy Blackman	guy@chaptermusic.com.au	PO Box 247 Northcote, VIC, 3070
Bahool Records	Keith Macnamara	bahoolrecords@yahoo.com.au	752 McCallums Creek Rd Majorca, Vic 3485
Extended Family	Alexandra Kay	highroad@bigpond.com	P.O Box 257 Haberfield, NSW, 2045
Formations Band	Tim McGrath	megraatt@telstra.com	17 evelyn st lammermoor beach yeppoon, QLD, 4703
Dorothy Records	Terese Jermyn	terese@masqueagency.com.au	4/8 King George Street McMahon's Point, NSW, 2060
House Of Wow	Dino Jag La	dino@houseofwow.com	21 Wildwood Drive Salisbury Park, SA, 5109
Weapon Head	Boris Billing	borisbilling@bigpond.com.au	10 Frideswide Street Goondiwindi, QLD, 4390
Endgame Records	Tegan Northwood	info@endgame.com.au	PO Box 3040 Marrickville, NSW, 2204
Doza Records	Damian Delahunty	journey@netconnect.com.au	8 Scullin Road Burnside, VIC, 3023
Krow Pie	Matt Ellis	info@krowpie.com	PO Box 1186 Darlinghurst, NSW, 2010
Kingdon Wise Records	Ben Louise	kingdomwise@hotmail.com	Po Box 1061 Croydon, VIC, 3136
Stomp	Tom Pandzic	tom@stomp.com.au	5 Harper St Abbottsford, VIC, 3067
Winterun	nick Dunstan	kiiktam@yahoo.com.au	11 acacia st camberwell, VIC, 3124
Starving Kids	Brett Bartlett	brett@starvingkids.com.au	PO Box 314 Browns Plains, QLD, 4118
Hypersonic Records	Adrian Lloyd	info@hypersonicrecords.com.au	317-319 Pier Street Perth, WA, 6000
Phil MC	Phil McKernan	phil_mc@tpg.com.au	P.O.Box 2290 Kew, Vic, 3101
Caravan records	Simeon Gilmou	rebecca@caravanrecords.com.au	10 Ormond st North Gosford, NSW, 2250
Jazz WA	Alan Corbet	alan@jazzwa.com	PO BOX 295 North Beach, WA, 6920
Lee Adam Wilshier	Lee Adam Wilshier	lee.wilshier@bigpond.com	29A Braidhill Rd Macleod, VIC, 3085
The Boat People	Rick Chazan	ideasm@bigpond.net.au	po box 1576 Towong, QLD, 4066
MGM	Sebastian Chase	Sebastian@thegroovemERCHANTS.com	PO Box A1437 South Sydney, NSW, 1235
Bunza Music	Sue	sue@bunza.com.au	PO Box 4989 North Rocks, NSW, 2151
Pink dot	Amin Javanmard	music@pinkdot.org	PO Box 718 Runaway Bay, QLD, 4216
MPM Records	Mathew Packer	mathew@mpmrecords.com.au	15 Freeman Street New Lambton, NSW, 2305

ATTACHMENT 3
CONSENT OF PARTICIPATING MEMBERS

From: AIR [air@mail-hub.net]
Sent: Monday, 15 December 2008 2:37 PM
To: stu@air.org.au
Subject: Proposed Collective Bargaining Negotiations



AUSTRALIAN
INDEPENDENT
RECORD LABELS
ASSOCIATION

Dear Members

We are writing this notice to the membership to inform you of recent action being taken by AIR on behalf of its members.

AIR is filing a Collective Bargaining Notification to the Australian Consumer Competition Commission (ACCC) under the Trade Practices Act. The end goal of this is to get an immunity from liability from price fixing and other provisions of the Trade Practices Act so that AIR can act on behalf of its members and negotiate collective licensing arrangements for the sector. Any license arrangement with AIR will be non-exclusive and our members are free to negotiate their own licenses where they want to do so. Further, if you have an existing license in place with a potential licensing target for AIR, that existing licence will not be affected by the new AIR collective licensing arrangements.

There are currently a number of end users of recorded music and music video in Australia who currently may not have licenses in place to pay the independent sector. By contrast, the multinational subsidiaries are paid for use of content in a variety of formats.

The current proposed targets of collective negotiation by AIR are:

Foxtel
Austar
Optus
Telstra

Their music content channels / outlets include:

MTV
XYZ
Fuel TV.
Bigpond

If you would like to be covered by the proposed collective bargaining negotiations with licensees, please indicate by following the link provided and clicking the yes option [link](#). You will need to do this by Friday August 15th.

If you do not agree to participate you will not be able to share in the licensing fees payable under the licences to be collectively negotiated. AIR therefore believes that it is strongly in the interest of all members to opt in.

If you have any questions please don't hesitate to forward them to info@air.org.au and we will seek to clarify them for you in a timely manner.

Sincerely

Stuart Watters

CEO

AIR

You have received this email because you are an AIR member or have requested information from us. If you have received this email by mistake, you can remove your details [here](#).

To update your details click [here](#)

If you are new to AIR, you can subscribe to our mailouts by clicking [here](#).

ATTACHMENT 4

SUMMARY OUTLINE OF PROPOSED KEY TERMS

Item	Term	Summary
1	Licence scope	<p>A non-exclusive licence to broadcast music videos, but only:</p> <ul style="list-style-type: none"> • on specified Music Video Channels; and • in accordance with all of the conditions applicable to the broadcaster's licence issued under the Broadcasting Services Act. <p>"Music Video Channels" are television channels where music videos comprise at least 25% of the total programming content by duration (calculated over a calendar week, and excluding advertisements, sponsorship announcements and other promotional content).</p>
2	Licensed repertoire	All music videos in which the copyright is owned or controlled in Australia by Participating Members.
3	Term	An initial period of [] months, with automatic renewals for further [] month periods unless either party terminates by notice in writing.
4	Reporting	<p>Licensees will provide quarterly video usage reports, setting out (in the form of a "broadcast log") the details of all music videos broadcast on each Music Video Channel, including the details of any directly licensed music videos.</p> <p>Licensees will also provide quarterly reports detailing the number of domestic and commercial subscribers with access to the Music Video Channels.</p>
5	Licence fees (GST Exclusive)	<p>Licence fees are payable quarterly. The fees are calculated monthly on the basis of the subscriber numbers reported by the licensee.</p> <p>[Categories & formulas to be negotiated].</p>
6	Invoicing and payment	<p>Following receipt of the quarterly video usage and revenue reports (see Item 4 above), a tax invoice will be issued for the amount of the licence fees.</p> <p>All invoices are payable within 14 days of receipt.</p>

Form GA

Commonwealth of Australia

Trade Practices Act 1974 — subsection 93AB (1)

NOTIFICATION OF COLLECTIVE BARGAINING

This form is to be completed by applicants proposing to engage in collective bargaining arrangements.

In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

Protection provided by the notification extends only to the collective bargaining arrangements described in the form.

To the Australian Competition and Consumer Commission:

Notification is hereby given under subsection 93AB (1) of the *Trade Practices Act 1974*:

- to make, or propose to make, a contract containing a provision of the kind referred to in paragraph 45 (2)(a) of the *Trade Practices Act 1974*; or
- to give effect to a provision of a contract where the provision is of the kind referred to in paragraph 45 (2)(b) of the *Trade Practices Act 1974*.
(Strike out if not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

Section A – general information

1. Applicant

- (a) Name of the applicant:
(refer to Direction 1)

C800066 AUSTRALIAN INDEPENDENT RECORD LABELS ASSOCIATION LTD (AIR) AND PARTICIPATING MEMBERS OF AIR

- (b) Description of business carried on by the applicants:
(refer to Direction 2)

AIR IS A NATIONAL INDUSTRY ASSOCIATION, PROACTIVELY SERVING AND REPRESENTING THE INTERESTS AND DEVELOPMENT OF AUSTRALIAN INDEPENDENT RECORDING LABELS ACROSS AUSTRALIA AND THE WORLD.

SEE FURTHER ATTACHMENT 1.

THE PARTICIPATING MEMBERS LISTED IN ATTACHMENT 2 ARE INDEPENDENT RECORDING LABELS.

- (c) Is the representative of the applicant lodging the notice a trade union, an officer of a trade union or a person acting on the direction of a trade union?
(refer to Direction 3)

NO

- (d) Address in Australia for service of documents on the applicants:

437 SPENCER ST

WEST MELBOURNE

VICTORIA 3003

2. Lodged on behalf of

- (a) Provide names and addresses of all persons on whose behalf the notification is lodged and who propose to participate in the collective bargaining arrangements:
(refer to Direction 4)

DETAILS FOR AIR ARE SET OUT IN 1. ABOVE. SEE ATTACHMENT 2 FOR DETAILS OF THE OTHER APPLICANTS.

- (b) Provide proof of the consent of each of the persons listed at 2 (a) above agreeing to the lodgement of the notification on their behalf:
(refer to Direction 5)

SEE ATTACHMENT 3. THIS REFERS TO THE LETTER THAT WAS SENT TO EACH MEMBER (I.E. THOSE PARTICIPANTS REFERRED TO IN ATTACHMENT 2) AND PROMPTED THEM TO PROVIDE THEIR DIGITAL SIGNATURE AS PARTIES TO COLLECTIVE BARGAINING ARRANGEMENTS. THE TECHNOLOGY USED TO OBTAIN THE DIGITAL SIGNATURES ENSURED THAT EACH DIGITAL SIGNATURE PROCESSED WAS SPECIFIC TO THE COMPANY TO WHICH IT WAS SENT.

- (c) Provide the following information relating to a notification:

- (i) Does this notification relate to a notification previously lodged with the Australian Competition and Consumer Commission and for which a concessional fee is claimed?

NO

- (ii) details of the first-mentioned notification, including but not limited to:
(A) the name of the applicant; and

- (B) the date the notification was said to be lodged; and
- (C) if known or applicable — the registration number allocated to that collective bargaining notification.

N/A

Section B – collective bargaining arrangements

3. Proposed collective bargaining arrangements

- (a) Provide: the name and address of the target; the name, position and telephone contact details of an appropriate contact at the target; and a description of the business carried on by the target:
(refer to direction 6)

BIGPOND MUSIC
TELSTRA CORPORATION LIMITED
051 775 556
LEVEL 41, 242-282 EXHIBITION STREET
MELBOURNE
VIC 3000

- (b) Provide a description of the goods or services which the participants of the collective bargaining arrangements (listed at 2 (a) above) propose to supply to or acquire from the target:

THE PARTICIPANTS IN THE COLLECTIVE BARGAINING ARRANGEMENTS PROPOSE TO SUPPLY MASTER RECORDING COPYRIGHTS INCLUSIVE OF AUDIO AND VISUAL RIGHTS UNDER LICENSE TO LICENSEES ACROSS A RANGE OF TRANSMISSION MEDIUMS.

- (c) Do the participants of the proposed collective bargaining arrangements (see 2 (a) above) reasonably expect to make one or more contracts with the target about the supply to or acquisition from the target of one or more of the goods or services (listed at 3 (b) above)?
(refer to direction 7)

YES. ONE CONTRACT FOR EACH TARGET IS PROPOSED. ALL APPLICANTS WILL BE PARTIES TO THE CONTRACT. UNDER THE CONTRACT EACH PARTICIPATING MEMBER OF AIR WILL AGREE TO LICENSE THEIR RELEVANT RESPECTIVE RIGHTS TO THE TARGET.

- (d) In relation to (c) above, provide details of the basis upon which that expectation is held including details of past contracts with the target:

A JOINT LICENSING ARRANGEMENT IS PROPOSED UNDER WHICH EACH PARTICIPATING MEMBER OF AIR WILL LICENSE THEIR RELEVANT RIGHTS TO EACH PARTICULAR TARGET. THIS MODEL DIFFERS FROM THE PPCA COLLECTIVE LICENSING MODEL –NO COLLECTIVE LICENCE WILL BE ISSUED BY AIR AND ACCORDINGLY THERE WILL NOT BE ANY INPUT LICENCE BETWEEN THE PARTICIPATING MEMBERS AND AIR.

A JOINT LICENCE HAS NOT PREVIOUSLY BEEN OFFERED BY THE PARTICIPATING MEMBERS OR ANY OTHER MEMBERS OF AIR.

AIR HAS NOT PREVIOUSLY OFFERED A COLLECTIVE LICENSE.

SOME AIR MEMBERS HAVE PREVIOUSLY ENTERED INTO DIRECT LICENSING ARRANGEMENTS. HOWEVER, SUCH ARRANGEMENTS ARE EXCEPTIONAL GIVEN THE TRANSACTION COSTS OF ENTERING INTO NUMEROUS SEPARATE LICENSING ARRANGMENTS. THE JOINT LICENCE PROPOSED IS INTENDED TO REDUCE THE TRANSACTION COSTS CONSIDERABLY.

- (e) Do the participants of the collective bargaining arrangements (listed at 2 (a) above) reasonably expect that contractual payments between the target and each participant will not exceed \$3 million (or any other amount prescribed by regulation) in any 12 month period, and on what basis?
(refer to direction 8)

YES

- (f) In relation to (e) above provide an estimation of the contractual payments expected between the target and each participant in relation to the goods and services (listed at 2 (a) above):

GIVEN THE SIZE, NATURE AND FRAGMENTATION OF THE INDEPENDENT RECORDING SECTOR IN AUSTRALIA, IT IS DIFFICULT TO ESTIMATE THE AMOUNT OF THE CONTRACTUAL PAYMENTS FOR A JOINT LICENCE. THE AMOUNT NEGOTIATED FOR A JOINT LICENCE WILL BE DISTRIBUTED TO PARTICIPATING MEMBERS AFTER DEDUCTING A SMALL AMOUNT FOR ADMINISTRATION COSTS. THE DISTRIBUTION SCHEME WILL BE COMPARABLE TO THAT USED BY PPCA IN PPCA'S COLLECTIVE LICENSING ARRANGEMENTS.

- (g) Provide a description of the collective bargaining arrangements proposed including, but not limited to:

- (i) the process by which participants propose to undertake collective bargaining with the target; and

AIR WILL NEGOTIATE THE PROPOSED JOINT LICENSING AGREEMENT ON BEHALF OF THE PARTICIPATING MEMBERS.

- (ii) the type of terms and conditions expected to be negotiated in collective bargaining arrangements (for example: price; non-price conditions of supply such as contract periods etc); and

PARTICIPATING MEMBERS WILL EACH GRANT TO EACH TARGET A NON-EXCLUSIVE LICENSE TO EXERCISE ANY OR ALL OF THEIR RIGHTS. THE LICENSED RIGHTS WILL BE PUBLIC PERFORMANCE AND TRANSMISSION RIGHTS FOR MUSIC VIDEOS.

THE RIGHTS GRANTED WILL BE TECHNOLOGY NEUTRAL, THUS ALLOWING FOR THE NEGOTIATION OF A SUITE OF RIGHTS (BROADCAST; COMMUNICATION; DOWNLOAD; BLANKET USES..

THIS IS BECOMING AN INDUSTRY NORM SO AS TO MINIMISE THE NEED FOR MULTIPLE LICENSING AGREEMENTS.

LICENSE FEES WILL BE PAYABLE QUARTERLY BASED ON USAGE AND REVENUE REPORTS.

CONTRACT PERIODS ARE LIKELY TO BE FOR A MINIMUM OF 6 MONTHS UP TO A MAXIMUM OF 3 YEARS WITH SPECIFIED REVIEW PERIODS.

PRICING WILL BE DETERMINED ON THE BASIS OF USAGE OF COPYRIGHTS BALANCED AGAINST THE OVERALL QUANTITY OF SUBSCRIBERS THAT THE BROADCASTER TARGET HAS OVER THE RELEVANT PERIOD OF THE AGREEMENT.

FOR A SUMMARY OUTLINE OF PROPOSED KEY TERMS, SEE ATTACHMENT 4.

- (iii) details of any dispute resolution procedure (if any) proposed between participants throughout the collective bargaining process; and

EACH PARTICIPATING MEMBER WILL HAVE THE RIGHT AT THEIR OWN EXPENSE TO APPOINT AN INDEPENDENT AUDITOR TO EXAMINE THE BOOKS AND ACCOUNTS OF AIR. AIR WILL OFFER MEDIATION, CONCILIATION AND NEUTRAL EVALUATION IN RELATION TO ANY DISPUTE THAT MAY ARISE BETWEEN A PARTICIPATING MEMBER AND AIR IN CONNECTION WITH THE JOINT LICENSING AGREEMENT OR THE NEGOTIATION THEREOF.

- (iv) details of any dispute resolution procedure (if any) proposed between participants and the target throughout the collective bargaining process; and

NO DISPUTE RESOLUTION PROCEDURE IS ENVISAGED AT THE STAGE OF NEGOTIATION. THE TERMS OF THE JOINT LICENCE PROPOSED WILL BE STRAIGHT FORWARD. IF A DISPUTE CANNOT BE RESOLVED AS PART OF THE PROCESS OF NEGOTIATION THEN NO JOINT LICENCE AGREEMENT WILL RESULT. THERE IS NO NEED FOR DISPUTE RESOLUTION PROCEDURES DURING THE STAGE OF NEGOTIATION AND ANY SUCH PROCESSES COULD EASILY DELAY NEGOTIATION.

- (v) details of any dispute resolution procedure (if any) proposed to deal with disputes throughout the term of contracts entered into with the target; and

THE JOINT LICENCE AGREEMENT WILL PROVIDE FOR MEDIATION, CONCILIATION AND NEUTRAL EVALUATION IN RELATION TO ANY DISPUTE THAT MAY ARISE BETWEEN AIR OR A PARTICIPATING MEMBER AND THE TARGET.

- (vi) details of proposed commencement and duration of contracts to be negotiated with the target:
(refer to direction 9)

THE COMMENCEMENT DATE IS LIKELY TO BE IN THE SECOND QUARTER OF THE FINANCIAL YEAR. THE COLLECTIVE

LICENCE WILL RUN FOR A MINIMUM OF 6 MONTHS UP TO 3 YEARS WITH SPECIFIED REVIEW PERIODS.

- (h) Identify any parts of the proposed collective arrangements described in 3 (g) which relate to possible price agreements:

THERE WILL BE A JOINT LICENSING FEE.

- (i) Identify any parts of the proposed collective arrangements described in 3 (g) which relate to a possible or proposed exclusionary provision(s), including but not limited to:

- (i) the nature of the proposed or possible exclusionary provision(s) (for example an agreement to withhold supply of the relevant goods or services to the target); and

NO EXCLUSIONARY PROVISION IS ENVISAGED. IN THE EVENT THAT THE TARGET DECLINES TO ENTER INTO A JOINT LICENSE, IT WOULD BE ENTIRELY UP TO EACH MEMBER OF AIR TO DECIDE FOR ITSELF AND INDEPENDENTLY OF EACH OTHER THE FUTURE NATURE OF ITS RELATIONSHIP WITH THE TARGET.

- (ii) the circumstances in which the collective bargaining participants would engage in the exclusionary provision(s), including but not limited to:

- (A) details of the events that would trigger any such activity; and
(B) details of the process that would be followed in undertaking any such activity; and
(C) details of any proposed period of notice to be given to the target prior to the commencement of such activity; and
(D) details of any dispute resolution procedure to be applied or offered to the target prior to the commencement of such activity:

(refer to direction 10)

NO EXCLUSIONARY PROVISION IS ENVISAGED. SEE (i) ABOVE

Section C – public detriments

4. Market definition

Provide a description of the market(s) in which the goods or services described at 3 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):
(refer to direction 11)

THE RELEVANT MARKET IS THE AUSTRALIAN MARKET FOR THE ACQUISITION AND SUPPLY OF LICENCES FOR PUBLIC PERFORMANCE RIGHTS AND TRANSMISSION RIGHTS FOR SOUND RECORDINGS AND MUSIC VIDEOS IN AUSTRALIA.

THE MAIN SUPPLIERS OF LICENCES FOR PUBLIC PERFORMANCE RIGHTS AND TRANSMISSION RIGHTS FOR SOUND RECORDINGS AND MUSIC VIDEOS IN AUSTRALIA ARE:

- RECORD LABELS

- ARTISTS
- ARTIST MANAGERS
- MANAGERS

THE MAIN ACQUIRERS OF LICENCES FOR PUBLIC PERFORMANCE RIGHTS AND TRANSMISSION RIGHTS FOR SOUND RECORDINGS AND MUSIC VIDEOS IN AUSTRALIA ARE:

- TELEVISION BROADCASTERS
- MUSIC CHANNELS
- ONLINE BROADCASTERS
- TERRESTRIAL AND DIGITAL RADIO

THERE ARE MANY DIFFERENT GENRES OF MUSIC. THE REPERTOIRE TO BE COVERED BY THE JOINT LICENCE PROPOSED WILL COVER A RANGE OF GENRES (EG. ROCK, CLASSICAL). THE APPLICANTS DO NOT BELIEVE THAT THERE ARE GENRE-BASED MARKETS – THE ORTHODOX DEFINITION OF THE PRODUCT MARKET IS THAT IT INCLUDES ALL GENRES.

THE ONLY RELEVANT GEOGRAPHIC OR LEGAL RESTRICTION ON THE SUPPLY OR ACQUISITION OF THE RELEVANT SERVICES IS THAT A LICENCE FOR PUBLIC PERFORMANCE RIGHTS AND TRANSMISSION RIGHTS FOR SOUND RECORDINGS AND MUSIC VIDEOS IN AUSTRALIA IS LIMITED TO AUSTRALIA AND EACH LICENSOR MUST BE ENTITLED TO LICENSE THOSE RIGHTS IN AUSTRALIA. SUBJECT TO THOSE RESTRICTIONS, COPYRIGHT IS AN UNLIMITED RESOURCE.

5. Public detriments

- (a) What will be the likely effect of the notified conduct on the prices of the goods or services described at 3 (b) above and the prices of goods or services in other affected markets? In answering this question please provide facts and information to support the claims made:

IN THE APPLICANTS' VIEW, THERE ARE NO LIKELY PUBLIC DETRIMENTS.

THE JOINT LICENCE PROPOSED IS NON-EXCLUSIVE. THE TARGET CAN DEAL WITH ANY OF THE FOLLOWING PARTIES:

- THE LICENSORS, OR A SELECT NUMBER OF LICENSORS (eg MAJOR RECORD LABELS WHO ARE NOT MEMBERS OF AIR)
- PPCA (see comment below);
- AIR AND PARTICIPATING MEMBERS; OR
- MEMBERS OF AIR WHO WISH TO ENTER INTO A SEPARATE LICENSING AGREEMENT.

THE BROADCASTERS HAVE A LICENCE WITH PPCA FOR THE USE OF SOUND RECORDINGS BUT NOT FOR THE VIDEO RIGHTS. THE BROADCASTERS HAVE TRADITIONALLY PASSED THIS RESPONSIBILITY TO THE CHANNELS, WHO HAVE ENTERED INTO DIRECT LICENSING ARRANGEMENTS.

THE FEE FOR A THE JOINT LICENCE PROPOSED WILL BE NEGOTIATED ON REASONABLE COMMERCIAL TERMS. IN THE PAST THE TARGET HAS NOT PAID ANY FEE IN RELATION TO THE PUBLIC PERFORMCANCE AND TRANSMISSION OF MUSIC VIDEOS FOR WHICH THE COPYRIGHT IS HELD BY AN INDEPENDENT RECORDING LABEL. ADOPTION OF A COMMERCIALLY NEGOTIATED REASONABLE FEE INSTEAD OF A FREE-RIDING FEE OF \$0 IS NOT A PUBLIC DETRIMENT.

THE JOINT LICENCE PROPOSED DOES NOT INVOLVE PRICE FIXING AS DEFINED UNDER SECTION 45A(1) OF THE TPA: THE JOINT LICENCE TO BE OFFERED IS A JOINT PRODUCT THAT COULD NOT BE OFFERED BY AIR OR BY ANY OF THE PARTIPATING MEMBERS ALONE. ACCORDINGLY, AIR AND THE PARTICIPATING MEMBERS ARE NOT COMPETITORS OR LIKELY COMPETITORS.

THE JOINT PRODUCT TO BE SUPPLIED UNDER THE PROPOSED JOINT LICENCE IS INTENDED TO AND WILL REDUCE TRANSACTION COSTS. THE JOINT PRODUCT IS PRO-COMPETITIVE. THE JOINT LICENCE PROPOSED IS NON_EXCLUSIVE – IT DOES NOT FORECLOSE SEPERATE LICENSING DIRECTLY WITH COPYRIGHT HOLDERS.

(b) What other detriments may result from the notified conduct? In answering this question please provide facts and information to support the claims made:

NONE

Section D – public benefits

6. Public benefit claims

- (a) Provide details of the public benefits resulting or likely to result from the proposed arrangement. In answering this question please provide facts and information to support the claims made:

THE JOINT LICENCE PROPOSED WILL HELP TO SUPPORT THE INDEPENDENT SECTOR BY CREATING AN AVENUE FOR THE COLLECTION OF COPYRIGHT FEES TO WHICH COPYRIGHT HOLDERS ARE ENTITLED BUT WHICH HAVE NOT BEEN PAID IN THE PAST. THE MAIN POTENTIAL SOURCE OF COPYRIGHT FEES ARE BROADCASTERS, INCLUDING THE TARGET. THE BROADCASTERS HAVE DIRECT LICENSING ARRANGEMENTS WITH THE FOUR MAJOR RECORD COMPANIES BUT NO SUCH ARRANGMENTS ARE IN PLACE WITH THE INDEPENDENTS.

AS REVENUES FROM CD SALES DECLINE, IT IS INCREASINGLY IMPORTANT FOR RECORD COMPANIES TO BE ABLE TO DRAW RESIDUAL REVENUES FROM A DIVERSE RANGE OF SOURCES, NAMELY: VIDEO; SYNCHRONISATION; MOBILE; AND ONLINE. ALL OF THESE REVENUE STREAMS ARE IMPORTANT IN THE LICENSING OF COPYRIGHT CONTENT FROM THE MAJOR LABEL SECTOR. THEY HAVE THE SAME POTENTIAL IMPORTANCE FOR THE INDEPENDENT SECTOR.

THE IMPORTANCE OF THE INDEPENDENT MUSIC SECTOR TO THE ECONOMY, TO CREATIVE ARTISTS AND TO THE PUBLIC GENERALLY IS AS INDICATED IN ATTACHMENT 1.

Section E - authority

7. Contact details

- (a) Name, contact telephone number and address of person authorised by the notifying parties to provide additional information in relation to this application:

STUART WATTERS
CHIEF EXECUTIVE OFFICER - AIR
437 SPENCER ST
WEST MELBOURNE VICTORIA 3003
PH: 03 8554 4330
MOB: 0438 758 847
(refer to direction 12)



Dated 5/12/08

Signed by/on behalf of the applicants


.....
(Signature)

Stuart Watters
.....
(Full Name)

Australia Independent Record Labels Association
.....
(Organisation)

CEO
.....
(Position in Organisation)

DIRECTIONS

1. Where the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
2. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which notification is given.
3. A collective bargaining notification can not be lodged by a trade union or a trade union representative.
4. Where the applicant will be a participant in the collective bargaining arrangements (rather than a representative of participants) the name of the applicant must also be included. Where those persons are corporations, list the corporation's name and address.
5. The applicant, in lodging a notification on behalf of others, must obtain their consent to do so and provide proof of that consent.
6. Where the target is a corporation, provide the corporate name.
7. The collective bargaining notification process is only available to parties that reasonably expect to make one or more contracts with the target about the supply or acquisition of goods or services the subject of the notification.
8. The value of the contract to be collectively negotiated between the target and each participant is not to exceed \$3 million (or such other amount as is prescribed by the regulations) per participant in any twelve month period.
9. To the extent that the collective bargaining arrangements have been reduced to writing, provide a true copy of the arrangement. To the extent that the collective bargaining arrangements have not been reduced to writing, provide a full and correct description of the key terms that have not been reduced to writing.
10. In simple terms an exclusionary provision exists where the proposed contract, arrangement or understanding is made by businesses (at least two of whom are competitors) for the purpose of preventing, restricting or limiting the supply of services to particular persons or classes of persons by all or any of the parties to the contract, arrangement or understanding.

In the context of collective bargaining, an exclusionary provision(s) may include contracts, arrangements or understandings (whether currently in existence or to be made or arrived at during the term of the notification) between collective bargaining participants to limit or restrict their dealings with the target including contracts arrangements or understandings to:

- (a) withhold the supply of goods or services from the target; or
- (b) refuse or decline to acquire the goods or services of the target;

whether such conduct was absolute, limited or subject to certain terms or conditions. This is sometimes referred to as a collective boycott.

11. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
12. The notification must be signed by a person authorised by the applicant to do so.

ATTACHMENT 1
BACKGROUND ON THE AUSTRALIAN INDEPENDENT RECORD LABELS
ASSOCIATION AND THE INDEPENDENT RECORD SECTOR

The Australian Independent Record Labels Association Ltd (AIR) is the peak body for Australian owned record labels. AIR pro-actively serves and represents the interests and development of Australian independent recording labels across Australia and internationally. There is no other membership organisation in Australia that represents the interests of independent recording labels, which represents around 85% of all Australian recorded music.

AIR's primary purpose is to foster an ever increasing marketplace for Australian independent music and assist in the long-term development, growth and success of Australia's independent recording industry both in Australia and overseas.

The formal objectives stated in AIR's constitution are:

- To assist in the exploitation of copyrights created and owned by Australian independent record labels
- To promote a commercially viable industry environment which is conducive to growth of the Australian independent sector and to the development of the artists that it represents
- To encourage and facilitate cultural expression through Australian music at local, national and international levels
- To advocate the values and interests of the Company and the Australian independent sector in accordance with these Objects
- To do all things as are necessary, incidental and conducive to the attainment of the above objects and to the development of the Australian music industry at large.

The Australian independent music industry makes up about 85% of the entire Australian recording industry. Members of this industry are Australian owned and not owned by multinational record companies (which make up the other 15% of the industry). Unlike these multinationals, industry members do not have an international company network through which to distribute their product and rely on establishing international licensing relationships on a business to business basis.

Independent recording labels produce the vast majority of work by Australian artists in all genres, but particularly in niche genres such as Australian jazz, electronica and dance music. This specialisation in niche genres also sets Independents apart from the multinationals.

Independent recording labels range from small niche-market labels to large organisations with a turn over of \$50 million per year. Artists represented by the Australian independent recording industry include well known names such as Savage Garden, John Butler Trio, Killing Heidi, Vanessa Amorosi, Missy Higgins, James Morrison and AC/DC.

The International Federation of the Phonographic Industry (IFPI) represents the recording industry worldwide through its membership of over 1,450 members spanning 70 countries. It was noted in a recent report on sales figures for the first half of 2004 that Australia has the 7th largest music industry market in the world and that Australia's maintenance of sales is primarily buoyed by a "strong local repertoire".

The principal property traded by the independent recording sector is the copyright in a recording. These copyrights are principally traded through CD sales, but also through use of recordings in films and other multimedia. However, as the industry adapts to recent changes and external pressures, sound recording files are now able to be traded through a variety of additional means from digital downloading sites, to synchronisation on mobile phone carrier services. AIR is at the forefront of enabling its members to maximise their capacity to exploit these new mediums to their (and Australia's) advantage.

Within the larger music industry it is the independent record labels that fulfil the role of supporting new artists and developing new markets. In contrast, the major recording companies tend to sign up product once it has had market recognition and represents a substantial profitable return.

Independent record labels have a strong track record in promoting Australian music overseas and have been responsible for most well known Australian music export examples, except in the cases of Silverchair and Mental as Anything.

The independent record industry represents at least 85% of the total Australian music industry. The other 15% is represented by multinationals which are not Australian owned. It is difficult to determine the exact market share figure that this represents as there are inadequate statistical collection services present in the Australian recording industry, but anecdotal evidence would suggest that the independent sector represents anywhere between 25 and 30% of the market share in economic terms.

ATTACHMENT 2
PARTICIPATING MEMBERS

Company	Contact	Email	Address
Shogun Distribution	Adam Kane	adam@shogundist.com	PO Box 1513, Eagle Fam, QLD 4009
Inertia Music	Collin Daniels	colin@inertia-music.com	PO Box 84, SURRY HILLS, NSW 2010
Rubber Records	David Vodicka	david@rubberrecords.com.au	441 Spencer St, West Melbourne 3003
Bone Finger Records	Stewart Riddle	stew@bonefingerrecords.com	PO Box 5094, Brassall, QLD 4305
Boombtown Records	Jaddan Comerford	jaddan@boombtownrecords.com.au	Po box 4145, Eaglemont, VIC 3084
Risky Records	Tamara Pillar	info@riskyrecords.com.au	57-59 Renwick Street, Leichhardt, NSW 2040
Obese Records	Ben Rynderman	operations@obeserecords.com	4a Izett st, Prahran, VIC 3181
Ivy League	Chris Maund	Chris@ivyleague.com.au	PO Box 545, Newtown, NSW 2042
BNM Records	Emma Wiking	emma@bnmrecords.com	Suite 3/171 Greville St, Prahran, VIC 3181
Maju	Judy Campbell	judycam@maju.com	16a Ivey Street, Lindfield NSW, 2070
Basin Records	Emma Wiking	emmaw@basinrecords.com	Suite 3/171 Greville St, Prahran, VIC 3181
Boundary Sounds		marlin@boundarysounds.com	PO Box 2424, Strawberry Hills NSW 2012
The Spooky Men's Chorale	Graham Mann	spookymen@gmail.com	P.O. Box 56 Lawson, NSW, 2783
Bluehouse		Bluehouse3@mac.com	PO Box 2132 Fitzroy MDC, VIC, 3065
CCR Australia	Angie Cooper	coopscrowzastrecords@hotmail.com	6 Johnstone Crescent Colac, Vic, 3250
Oak Records	Maggie Britton	info@maggiebritton.com	65/12 Commodore Drive, Paradise Waters, QLD 4217
Dallas Cosmos	Dallas Cosmos	dallascosmas@dallascosmas.com	44 kerferd Rd Albert park, VIC, 3206
Go Set Music	Lorda Ommesiah	lorda@optusnet.com.au	GPO Box 813 Greenacre, NSW, 2190
Lavender Music	Al Craig	Blackinc@presto.net.au	47 Woodbine St N Balgowlah, NSW, 2093
Future Classic	Nathan McLay	nathan@futureclassic.com.au	PO Box 1535 Strawberry Hills, NSW 2012
Creative Vibes	Heidi Pasqual	info@cvibes.com	Unit 6, 7-9 Kent Rd Mascot, NSW, 2020
Tumnus Records	Fergie Marshall	fergiemarshall@hotmail.com	6706/177 Mitchell Rd Erskineville, NSW, 2043
Levity Label	Andrew Valder	meln@rodriguezandcompany.com	
Hammered Silver Records	Tim Weatherhall	tim@hammeredsilver.com	Po Box 376 Petrie, QLD, 4502
Sonic Boy Records	Tony Hunt	tonyv@sonicboyrecords.com	1 Stodart St Camberwell, VIC, 3124
Red Disc Records	Clive Hines	reddiscrecords@hotmail.com	PO Box 1016 Seymour, VIC, 3660
Wild cat records	Amanda Easton	amanda@amandaeaston.com	PO Box 907 Leichhardt, NSW, 2040
Phoenix movement records	Bird Jensen	8ball@8ballaitken.com	GPO Box 1933 Brisbane, QLD, 4001
Jazz head	Andrew Walker	andrew@headrecords.com	PO Box 2197 St Kilda, VIC, 3182
soundcolour		dougitt@soundcolour.com	PO Box 264 Clunes, NSW, 2480
Tone Freak Records	Bill Palmer	contact@tonefreakrecords.com	PO Box 3644 Helensvale Town Centre, QLD 4212
Mummy's Boy Records	Erin Jameson	erin@vykymanagement.com	PO Box 6068 South Yarra, Vic, 3141
Xelon Entertainment	Ashley Gay	ashley@xelonentertainment.com	PO Box 188 PO Box 188, VIC, 3135

Small House Records	Mark Tulk	mark@smallhousererecords.com.au	PO Box 510 Box Hill BC, VIC, 3128
Echobase Records	Andrew Schraa	aschraa1@mac.com	81 Byron st Elwood, Vic, 3184
Shock Records	Marcus Seal	marcus.seal@shock.com.au	200 Beavers Road NORTHCOTE, VIC 3070
Room 40	Lawrence English	lawrence@room40.org	PO Box 771 Hamilton Central, QLD, 4007
Chapter Music	Guy Blackman	guy@chaptermusic.com.au	PO Box 247 Northcote, VIC, 3070
Bahool Records	Keith Macnamara	bahoolrecords@yahoo.com.au	752 McCallums Creek Rd Majorca, Vic 3465
Extended Family	Alexandra Kay	highroad@bigpond.com	P.O Box 257 Haberfield, NSW, 2045
Formations Band	Tim Mcgrath	megraatt@telstra.com	17 evelyn st lammermoor beach yeppoon, QLD, 4703
Dorothy Records	Terese Jermyn	terese@masqueagency.com.au	4/8 King George Street McMahon's Point, NSW, 2060
House Of Wow	Dino Jag La	dino@houseofwow.com	21 Wildwood Drive Salisbury Park, SA, 5109
Weapon Head	Boris Billing	borisbilling@bigpond.com.au	10 Frideswide Street Goondiwindi, QLD, 4390
Endgame Records	Tegan Northwood	info@endgame.com.au	PO Box 3040 Marrickville, NSW, 2204
Doza Records	Damian Delahunty	journey@netconnect.com.au	8 Scullin Road Burnside, VIC, 3023
Krow Pie	Matt Ellis	info@krowpie.com	PO Box 1186 Darlinghurst, NSW, 2010
Kingdon Wise Records	Ben Louise	kingdomwise@hotmail.com	Po Box 1061 Croydon, VIC, 3136
Stomp	Tom Pandzic	tom@stomp.com.au	5 Harper St Abbottsford, VIC, 3067
Winterun	nick Dunstan	kitkarn@yahoo.com.au	11 acacia st camberwell, VIC, 3124
Starving Kids	Brett Bartlett	brett@starvingkids.com.au	PO Box 314 Browns Plains, QLD, 4118
Hypersonic Records	Adrian Lloyd	info@hypersonicrecords.com.au	317-319 Pier Street Perth, WA, 6000
Phil MC	Phil McKernan	phil_mc@tpg.com.au	P.O.Box 2290 Kew, Vic, 3101
Caravan records	Simeon Gilmou	rebecca@caravanrecords.com.au	10 Ormond st North Gosford, NSW, 2250
Jazz WA	Alan Corbet	alan@jazzwa.com	PO BOX 295 North Beach, WA, 6920
Lee Adam Wilshier	Lee Adam Wilshier	lee.wilshier@bigpond.com	29A Braidhill Rd Macleod, VIC, 3085
The Boat People	Rick Chazan	ideasm@bigpond.net.au	po box 1576 Towong, QLD, 4066
MGM	Sebastian Chase	Sebastian@thegroovemerchants.com	PO Box A1437 South Sydney, NSW, 1235
Bunza Music	Sue	sue@bunza.com.au	PO Box 4989 North Rocks, NSW, 2151
Pink.dot	Amin Javanmard	music@pinkdot.org	PO Box 718 Runaway Bay, QLD, 4216
MPM Records	Mathew Packer	mathew@mpmrecords.com.au	15 Freeman Street New Lambton, NSW, 2305

ATTACHMENT 3
CONSENT OF PARTICIPATING MEMBERS

From: AIR [air@mail-hub.net]
Sent: Monday, 15 December 2008 2:37 PM
To: stu@air.org.au
Subject: Proposed Collective Bargaining Negotiations



AUSTRALIAN
INDEPENDENT
RECORD LABELS
ASSOCIATION

Dear Members

We are writing this notice to the membership to inform you of recent action being taken by AIR on behalf of its members.

AIR is filing a Collective Bargaining Notification to the Australian Consumer Competition Commission (ACCC) under the Trade Practices Act. The end goal of this is to get an immunity from liability from price fixing and other provisions of the Trade Practices Act so that AIR can act on behalf of its members and negotiate collective licensing arrangements for the sector. Any license arrangement with AIR will be non-exclusive and our members are free to negotiate their own licenses where they want to do so. Further, if you have an existing license in place with a potential licensing target for AIR, that existing licence will not be affected by the new AIR collective licensing arrangements.

There are currently a number of end users of recorded music and music video in Australia who currently may not have licenses in place to pay the independent sector. By contrast, the multinational subsidiaries are paid for use of content in a variety of formats.

The current proposed targets of collective negotiation by AIR are:

Foxtel
Austar
Optus
Telstra

Their music content channels / outlets include:

MTV
XYZ
Fuel TV.
Bigpond

If you would like to be covered by the proposed collective bargaining negotiations with licensees, please indicate by following the link provided and clicking the yes option [link](#). You will need to do this by Friday August 15th.

If you do not agree to participate you will not be able to share in the licensing fees payable under the licences to be collectively negotiated. AIR therefore believes that it is strongly in the interest of all members to opt in.

If you have any questions please don't hesitate to forward them to info@air.org.au and we will seek to clarify them for you in a timely manner.

Sincerely

Stuart Watters

CEO

AIR

You have received this email because you are an AIR member or have requested information from us. If you have received this email by mistake, you can remove your details [here](#).

To update your details click [here](#)

If you are new to AIR, you can subscribe to our mailouts by clicking [here](#).

ATTACHMENT 4

SUMMARY OUTLINE OF PROPOSED KEY TERMS

Item	Term	Summary
1	Licence scope	<p>A non-exclusive licence to broadcast music videos, but only:</p> <ul style="list-style-type: none"> • on specified internet Music Video Channels; • on mobile channels; and • in accordance with all of the conditions applicable to the broadcaster's licence issued under the Broadcasting Services Act. <p>Additional non-exclusive licenses will cover digital retail sales.</p>
2	Licensed repertoire	All music videos in which the copyright is owned or controlled in Australia by Participating Members.
3	Term	An initial period of [] months, with automatic renewals for further [] month periods unless either party terminates by notice in writing.
4	Reporting	<p>Licensees will provide quarterly video usage reports, setting out (in the form of a "broadcast log") the details of all music videos broadcast online and on mobile.</p> <p>Licensees will provide quarterly sales reports from the retail division</p>
5	Licence fees (GST Exclusive)	<p>Licence fees are payable quarterly. The fees are calculated monthly on the basis of the subscriber numbers reported by the licensee.</p> <p>[Categories & formulas to be negotiated].</p>
6	Invoicing and payment	<p>Following receipt of the quarterly video usage and revenue reports (see Item 4 above), a tax invoice will be issued for the amount of the licence fees.</p> <p>All invoices are payable within 14 days of receipt.</p>

TARGET COMPANIES

CB No.	Company
CB00059	Telstra Multimedia Pty Limited
CB00060	Optus Vision Pty Ltd
CB00061	Foxtel Management Pty Limited
CB00062	Austar United Communications Limited
CB00063	MTV Networks Australia Pty Limited
CB00064	XYZnetworks Pty Limited
CB00065	Premier Media Group Pty Limited (Fuel TV)
CB00066	Telstra Corporation Limited (BigPond Music)