



23 December 2008

The General Manager
Adjudication Branch
ACCC
GPO Box 3131
CANBERRA ACT 2601

Attn: Gavin Jones, Director, Adjudication Branch
Email: gavin.jones@accc.gov.au

FILE No:

DOC:

MARS/PRISM:

Dear Gavin,

RE: Collective Bargaining Notifications – CB00059 – CB00066 by Australian Independent Record Labels Association ("AIR")

Submission as part of the Australian Competition and Consumer Commission's (ACCC) consultation with interested parties.

Thank you for the opportunity to make a submission to the ACCC on the above applications for authorisation.

SBS

The Special Broadcasting Service Corporation is established under the *Special Broadcasting Service Act 1991 (SBS Act)*.

SBS is a national multicultural and multilingual broadcaster unique in the world. SBS' principal function, contained in section 6 of the *SBS Act*, is to provide multilingual and multicultural radio and television services that inform, educate and entertain all Australians, and, in doing so, reflect Australia's multicultural society.

In fulfilling its Charter, SBS provides a national multicultural television network and multilingual radio to all State and Territory capital cities and some regional centres, enhanced by complementary online and digital services.

Support of AIR's application

We note the very brief period of a mere 5 days in which this application has been open for comment, so we request you to keep SBS informed of the progress of this application at the draft stage.

SBS supports in principle AIR's authorisation for its Collective Bargaining on the basis that it could be a precedent for further collective licensing of sound recordings that may be of interest to SBS, as well as for the general reasons set out below:

- All broadcasters and telcos require communications licences to use sound recordings for communication purposes, including online and multi-platform uses. Therefore, the capacity for AIR to bargain on behalf of its 61 members' in respect of their public performance and the transmission rights for music videos with Pay TV operators and telcos is supported by SBS. We believe that collective bargaining and the prospective

joint licensing arrangement will provide a 'one-stop shop' for users that is convenient provided that the relevant licensors are transparent and efficient.

Further questions

In the light of AIR's application to the ACCC to collectively bargain on behalf of its members' so that they can jointly license the public performance and transmission rights for music videos with some broadcasters, specifically Pay TV stations and telcos, SBS has the following questions:

- How would AIR and its members address the requirements of public broadcasters, such as SBS to license AIR's members' works for communication purposes, including the communication of music videos which we might wish to do in future?
- SBS requires clarification that AIR's proposal to bargain on behalf of its members with nominated media industry users about '*audio and visual rights*' for certain properties '*in respect of public performance and transmission of music videos*' comprehends the right to 'communicate' as defined in the Copyright Act 1968?

Standard requirements

SBS suggests that it should be a condition of the ACCC's authorisation of AIR to negotiate the proposed licensing agreement on behalf of its participating members that the relevant licensor is not permitted to contract out of the exceptions in the *Copyright Act* (1968) in its licences.

The Copyright Act provides for a number of exceptions which cover various situations where the permission of the copyright owner is not required in order to use copyright material for specified purposes. These exceptions have been included in the legislation on policy grounds, and they are fundamental to maintaining the balance of interests between copyright owners and users. If copyright owners exclude the application of these exceptions by incorporating restrictive terms into contracts with users, then the policy basis of the legislation will be defeated. This is significant risk for copyright users such as SBS.

In addition, SBS recommends that the ACCC's authorisation of AIR's application does not preclude direct licensing between its member rightsholders and all other parties, including SBS.

Thank you once again for the opportunity to contribute to this assessment. We would welcome your invitation to participate in any public consultative process prior to its finalisation.

Please do not hesitate to contact me or Anna Ward, Lawyer, Content and Rights (anna.ward@sbs.com.au) if you require any further information.

Yours sincerely



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