



**Professor Jill McKeough  
Commissioner  
Australian Law Reform Commission  
GPO Box 3708  
SYDNEY NSW 2001**

6<sup>th</sup> August 2013

Dear Commissioner.

I write in my capacity as the General Manager of AIR (the Australian Independent Record Labels Association), a non-profit, membership based organisation that represents the interests of 200 member labels as well as the wider independent music sector in Australia.

We welcome the opportunity to respond to the Australian Law Reform Commission's Discussion Paper on *Copyright and the Digital Economy* and also refer to AIR's letter of 4 December 2012 which responded to the Commission's earlier Issues Paper which set out AIR's concerns.

#### **Repeal of section 152 caps**

AIR's membership commends the Commission for asking whether the section 152 caps have a place in the modern Australian digital economy in circumstances where the Australian radio industry is highly profitable and hardly in need of regulatory protection which denies Australian recording artists and independent labels (the vast majority of which are small businesses) the ability to freely negotiate the fees payable for the broadcast of their recordings. No such cap applies in relation to the broadcast of musical works, which the radio industry currently negotiates with APRA without even a statutory licence in place.

We fully support PPCA's submissions in respect of the repeal of sections 152(8), 152(11) and 199(2) of the Copyright Act .

#### **Voluntary licensing**

AIR firmly believes that the wide range of legitimate music services currently available in the Australian market makes it abundantly clear that voluntary licensing practices between rights holders and music services are facilitating the creation and growth of new business models without the need for statutory licences and further copyright exceptions.

#### **Treatment of internet streaming**

We feel that the internet streaming issue recently brought to attention by the separate Senate Inquiry highlights the aggressive way in which the radio industry is seeking to avoid negotiating and paying market rates for the use of sound recordings, even if it means overturning settled copyright and broadcasting law principles. AIR hopes that the Commission follows established copyright law and recommends that internet streaming be treated as a separate right to broadcasting as it is in other jurisdictions and indeed in other content industries such as film, television and sports.

#### **Fair use unnecessary in Australia**

AIR does not think that a case has been made out for the replacement of the present closed list of fair dealing exceptions with a broad open-ended fair use regime. Our members are concerned that such a system would upset existing commercial practices (such as voluntary licensing for sampling uses) and deprive Australian artists and independent record labels of the ability to negotiate terms of use.

As we outlined in our submission to the Issues paper, the music business has always been high risk. In recent years this risk has been exacerbated by the high volume of product accessed illegally via online platforms, and the resulting overall reduction in industry revenues. In order to sustain their businesses and continue to support and participate in the global digital economy our members need certainty and a robust framework of rights protection. Such a framework also encourages continued creative endeavour, and the production of original Australian content.

We hope that our concerns are considered in the preparation of the Commission's Final Report.

Yours faithfully



Nicholas O'Byrne  
**GENERAL MANAGER**  
Australian Independent Record Labels Association