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10<sup>th</sup> December 1999**FAXED**

H Silver  
 First Assistant Commissioner  
 Productivity Commission  
 Broadcast Inquiry  
 Locked Bag 2  
 Collins Street East Post Office  
 Melbourne VIC 8003



Dear Sir/Madam,

On the publication of the Commission's Draft Report into the Broadcasting Sector, the Commission sought further comment on the Draft Report.

This submission deals with issues which arise from the Draft Report and highlights other relevant issues which it is believed the Commission should examine before providing a final report to the Government.

In the Draft Report comment on Australian Music quotas for commercial radio, the Commission indicates that the Broadcasting Services Act liberalised Australian music content regulation in commercial radio. This observation is accurate. The other aspect of the Broadcasting Services Act was that it was structured to liberalise the radio broadcasting sector both in terms of services available to the public and the amount of new services that would be introduced. It is submitted to the Commission that an examination of the history of new commercial radio services since the introduction of the Broadcasting Services Act would show that it has fallen well short of the mark in providing a new and vibrant marketplace for new radio services. The recent decisions by the Australian Broadcasting Authority to restrict the number of new FM licences in the major market of Sydney is an example of how the Act is not delivering on its stated policy intention. For a comprehensive examination of the issues before the Commission it is submitted that this issue needs to be examined and reported on.

The existing situation in terms of the ownership of radio services in Australia does not deliver more diversity. In accordance with world-wide trends the reality of ownership of many radio services is under a network system. Whilst this is to some extent a reflection

of commercial reality it is believed that such concentration if it is allowed to continue will affect the services that are available to the public and the diversity of services that would enable greater development of economic and public benefit opportunities to those involved in delivering services to the radio sector and to the general public. This is an issue that should be examined by the Commission before providing its final report.

An issue of fundamental concern to the Australian recorded music industry. Since 1969, when an amendment was made to the Copyright Act, there has been an artificial cap on the fees payable by broadcasters/transmitters for the use of sound recorded music. This is a result of Section 152(8) and (11) of the Copyright Act which provide that Commercial broadcasters can not be ordered by the independent Copyright Tribunal to pay more than 1% of their turnover for their use of recorded music. Effectively, this means that the record industry and its artists subsidise commercial radio. It is in our view a policy that never had any justification and should never have been imposed. Additionally, with the developments in the industry since 1969, with the emergence of transmission online and Australian governments competition policies, it is no longer a commercially sustainable proposition for record companies and artists to have this artificial limitation imposed on the return to be derived from their products in a tolerable policy under competition policy requirements.

As an adjunct to these provisions, the ABC is also the beneficiary of this approach because there is a cap that provides that the ABC pays no more than one half of one cent per head of population for similar use of the product. This has applied since 1969 as well.

This aspect of the way the Broadcasting industry interacts with the record industry is inequitable and runs contrary to all economic principles. The age has long past when such subsidies should be provided by this type of mechanism. If it were viewed that a subsidy is still required for commercial broadcasters, this should be provided in some other form and an important industry sector should not be held back. This is a matter which is fundamental to a critical relationship for commercial broadcasters and is a matter that warrants further attention by the Commission.

It is noted that the Commission has quite properly drawn attention to the issue of indigenous broadcasting. While this is appropriate for attention by the Commission it does raise the issue of whether the Commission is prepared to examine the nature of other forms of music genres that do not receive sufficient promotion and attention within the context of the broadcasting regime. There is no argument for specific content regulation in this context but it is submitted that the decreasing availability of choice across music genres is a product of the existing regulatory scheme and is an area which does require further attention by the Commission. It may be that the Commission would come to a view that the restrictions imposed on new services being available and the basis on which the networking systems is operating in Australia is bringing about a decrease in the level of choice that is available for consumers and the number of outlets that are available for new product to come into the market.

In the same way that the Commission has expressed concerns about the full utilisation of new technology, particularly in relation to digital and its implementation for television broadcasting, the Commission should also be concerned at the lack of progress in the implementation of digital radio services and should be prepared to examine and make recommendations in respect to an improved implementation of such services so that they become more readily available to consumers in Australia.

The removal of foreign ownership provisions in relation to the radio industry has not had a dramatic effect on the increase of new services or the diversity of such services. The Commission should consider whether the structural arrangements presently in place which appear on the surface to provide a more liberal ownership structure and a far more open system for gaining new licences have in fact been successful against a consideration of the existing structure in the Australian industry. It is believed that the Commission has not paid sufficient attention to an examination of these issues.

Earlier in this submission it was noted that the Commission made some comment in regard to the self-regulatory system for Australian music quotas. It is not suggested that such a system would be appropriate for Australian content on television as the dynamics of the industry and the cost structures are necessarily different. However, the self-regulatory system has proved effective and should be supported by the Commission in its final recommendations to Government.

Overall, it is submitted that the Commission should give further consideration to the present structural arrangements that apply in relation to commercial broadcasters in Australia and the effect of the concentration of particular ownership arrangements is having on the development of the capacity of that sector to provide the diversity of services that are available to the benefit of the music industry and to the general public. The issues which have been touched on in this submission clearly indicate that there are artificial barriers in place including the capping of fees payable by broadcasters for the use of music sound recordings which are unjustifiable and provide an economic restraint on the further development of the music industry in Australia. This is an appropriate matter for the Commission to examine and report on in its final report to Government.

Yours Sincerely,



Emmanuel Candi  
Executive Director