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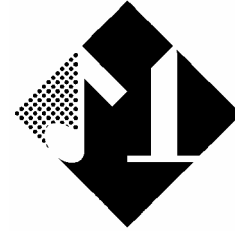
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Australia's representative to the International Music Council



Music Council of Australia

The Music Council of Australia is grateful for the opportunity to make a submission to your inquiry into Fair Use and other copyright exemptions.

The Music Council of Australia is a national peak organisation with 50 members representing a very broad cross-section of the music sector. Its membership comprises nominees of 15 national music organisations, and 35 distinguished individuals elected to positions assigned to various music sub-sectors or activities including the various levels of music education, musical genres, modes of creation and presentation and aspects of infrastructure. It is Australia's representative on the International Music Council, based in UNESCO.

In the context of this submission, the Music Council is in the unusual position of representing the views of a particular interest group, but the interest group contains within it parties comprised of copyright owners on the one hand, and parties more aligned to the concerns of copyright users on the other.

The submission attempts to find common ground among their sometimes conflicting interests. Generally, this is achieved by accepting the more urgent concerns of the main stake-holders insofar as they do not breach the equally urgent concerns of others. For instance, the submission supports the desire of libraries to increase the digitisation of collections for preservation and storage purposes and to support enhanced public access to digital copies by using licence agreements, but would not support any plan for their public dissemination of unlicensed and unremunerated digital copies because that conflicts strongly with the interests of copyright owners.

1. FAIR USE VS FAIR DEALING

1.1. The Music Council of Australia observes advantages in each of these mechanisms, depending upon the issue. However, the Music Council opposes the introduction of a Fair Use system in Australia because it believes that for the most part, its constituency would be disadvantaged.

1.2. In general, the Music Council is concerned about the situation of individuals and small organisations under a system where the courts have increased powers in effect to establish the law. Under a fair dealing system, Parliament, representing the people, establishes the law and the courts apply and sometimes interpret it. Under fair use, Parliament steps back to a degree, providing only an open-ended list of types of use that

may be considered as 'fair' and in effect the courts are left to establish the detail of the law, case by case. Because each case considers a balance of particular circumstances, the outcomes may or may not be directly transferable to subsequent, even similar cases. So while the courts are on the one hand writing the law, it is in a context in which uncertainty is inherent.

1.3. The entities best placed and most likely to take a case to court, and to persist with it through to a conclusion, possibly including one or more appeals, are well-resourced corporations and individuals, including multinational corporations based outside Australia. The great majority in MCA's constituency are not so well enabled financially, and even the largest Australian organisations are minnows alongside the transnational corporations that so dominate the music industry. In many (though of course, not all) cases the parties to a court action may be very unequal in their access to resources to fight a case. It is acknowledged that the courts will act expertly and in good faith to see justice done. Nevertheless, it would be unrealistic to suppose that some advantage does not lie with those who can most afford to pursue these legal means.¹

¹ Life in the USA under the Fair Use system. We quote statements from two US organisations made on June 28, 2005, after the US Supreme Court ruling on MGM vs. Grokster. We cite these statements not in support of their opinions of the decision, but as a demonstration of the expectations of players in the US copyright industry about the operation of the courts under the Fair Use system. These matters of course directly concern the music sector.

The CCIA -- Computer and Communications Industry Association (of the USA):

'Such a ruling sounds reasonable. Unfortunately for America's innovators, while sounding somewhat reasonable, in the real world of modern litigious America, it will be lawyers and the courts that determine just what the Court meant.

'By failing to give clear guidance as to what constitutes "clear expression or other affirmative steps," the Court, which has previously favored innovation over outdated business models, has tipped the balance in favor of litigation and content claimants. Content companies now have the right to question the motivations of high-tech companies anywhere in the United States. Indeed, content companies are now well positioned to engage in legal fishing expeditions in search of internal emails, memos and voice mail logs that might support assertions of intent to infringe.

'Experience teaches that content companies will go after high-tech less because they fear infringement, and more because the emergence of new competitors means an end to the market power held by a handful of entrenched conglomerates. The Betamax standard has greatly benefited innovation and consumers. The protection it provided is now in question.

'''Today's ruling is worrisome," CCIA President and CEO Ed Black said. "The Court has set the stage for less innovation, not more. If Hollywood and other content companies follow past pattern of behavior, they may soon be dictating the terms of digital distribution...'''

Gary Shapiro, CEO of the Consumer Electronics Association stated"

'The immediate impact of today's ruling is twofold: massive uncertainty and the likelihood of massive legal bills. The Court has done little to provide a clear path for legitimate innovators and manufacturers to avoid lawsuits related to copyright infringement over legitimate products and services.

'With this ruling the Supreme Court has handed a powerful new tool to litigious content creators to stop innovation. Innovators must now consider new murky legal rules and potentially overwhelming legal costs before bringing their product to market - or even moving forward with an innovative idea. It is essentially a 'full employment act' for plaintiff's attorneys and a guarantee for further lawsuits.

'While the Court appears to have sought to narrowly tailor this decision to protect technological development and provide some guidance to promote innovation, the intent test established under this ruling stands as a heavy burden. Content creators may potentially find any act as an 'infringement to induce' and shut down a new product or service with the threat of a lawsuit. Who knows how many innovative products and services now face a premature death as the result of this ruling?...'

1.4. To the extent that the courts are used to decide Fair Use issues, there could accumulate a body of case law somewhat biased to the interests of, for instance, large corporations. We would hope that this would not be the case were Parliament to continue to decide the law as is the case under a Fair Dealing regime.

1.5. As noted, in the Fair Use system, a measure of uncertainty is inherent. The A-G Issues Paper notes that under the open-ended US system it can be very difficult to understand one's position under copyright law. It notes a case where a decision of a lower court was reversed on appeal to a higher court, and then reversed again on re-appeal to a still higher court. Such a situation is again to the disadvantage of the lesser resourced party who may, for instance, be unable to proceed to appeal. This uncertainty is especially disadvantageous to the ordinary person or small organisation that can be charged with a breach made inadvertently.

1.6. A large corporation may have taken liberties with copyright materials owned by a less wealthy party. But the latter takes considerable risk in mounting a legal challenge, however well justified. True, if there is no challenge there is no new case law – but then industry practice may be altered by custom without any consideration of the merits.

1.7. Obversely, a less wealthy party may have taken liberties with copyright material owned by a more wealthy party, and be taken to court for that. If the less wealthy party has knowingly breached copyright, he may simply be made to pay for a deliberate transgression. But as noted, under Fair Use, it can be very difficult to know whether or not one is within the law and a breach may have been inadvertent. The less wealthy party could even be used as the fall guy in a legal experiment by the more wealthy party in order to consolidate some aspect of copyright ownership.

1.8. Experience in the USA suggests that under a Fair Use regime, there can be 'overclaiming' by copyright owners and 'overcaution' on the part of copyright users. Copyright owners may be inclined to advise users that a use will not be covered by an exception, when this is in fact not the case. And because of the uncertainty about the limits of the exceptions, copyright users may be overcautious in taking advantage of them.

1.9. The Issues Paper reports that some parties see the introduction of Fair Use as a counterbalance on behalf of copyright consumers to other reinforcements of copyright such as the 20-year extension to the copyright term. However, it is possible to rectify any imbalance through Fair Dealing amendments that grant additional exceptions or limitations. A remedy is achievable not only through a fair use system.

1.10. The CLRC has recommended a change to institute an open-ended approach to Fair Dealing, which would mean that some of the Fair Use flexibility would be introduced but would apply only to more carefully defined exceptions as decided by Parliament and embodied in legislation. There may be some advantage to the music sector in some circumstances, but we would wish to see the specific proposals before offering support.

2. TIME-SHIFTING TELEVISION AND RADIO BROADCASTS, INCLUDING UNDERLYING WORKS, FILMS, SOUND RECORDING AND LIVE PERFORMANCES

2.1 Current Australian law allows for such copying but does not include the right to copy any underlying copyright works, the content that people would be most interested in copying. On the other hand, it allows for the copy to be kept indefinitely, which is not the intention of time-shifting. The individual in effect builds a private digital library of time-shifted broadcasts.

2.2 Given that the Australian exception already exists in the form described, and given some acceptance of the principle internationally, the Music Council supports an amendment to legitimise copying of the underlying works for the purposes of listening or viewing once only at a time convenient to the listener or viewer.

2.3 The *works* provided by broadcast may be identical in every way to those obtainable commercially and legitimately in digital form by other means – e.g. from CD, DVD or by paid download. Time-shifting is justifiable when it replicates the experience of the broadcast – i.e. by providing a single exposure to the copyright work; presumably all copyright owners will have been remunerated for the broadcast, and the benefit to the user is unchanged except for the time shift.

2.4 However, if the copy made for time-shifting is experienced a second or multiple times, there is potentially a deleterious effect on the market for the underlying copyright works and on remuneration for their copyright owners.

2.5 The exception for time-shifting therefore should allow only a single replay and should prohibit archiving of the content for multiple replays.

2.6 It is acknowledged that the policing of such a provision would be extremely difficult. In effect, the provision may be enforceable only through a technological protection measure. There should be no legal obstacle placed in the way of a TPM designed for this purpose.

2.7 Some argue that a solution can be found in a blank media levy under which multiple viewings of time-shifted material would be legitimised. The Music Council believes that it may not be possible to introduce such a levy at this time, whatever the merits, and therefore suggests that the arguments for a time-shifting exception must be assessed on other grounds.

2.8 With the development of on-demand provision by broadcasters, the need for time-shifting diminishes or disappears.² Copying from such a service for the purpose of time-shifting may not be justified and should be excluded from the exception.

Format-shifting

2.9 Record companies have entered into commercial arrangements with online providers of music on demand to supply them with music tracks for sale. Customers pay on a per-track or subscription basis, and payments are made to copyright owners from these funds.

2.10 Online providers are using TPMs that allow the initial download plus a specified number of copies to various listening devices owned by the purchaser. The record companies therefore at least implicitly support this practice.

2.11 Record companies have built TPMs into some physical CDs in order to prevent copying, with some problematic results that no doubt are solvable. There is no reason to expect that TPMs similar to those used by the online providers could not also be incorporated into physical CDs and we might anticipate that the record companies will do so, given their acceptance of the practice of the online providers.

² For instance, see www.radiotime.com. From the website:

‘The **RadioTime Guide** makes it simple to **find** great radio you care about.

- Choose live programs and see program schedules.
- See topics scheduled for your favorite programs.
- 35,000 stations in 140 countries. 100,000 sports games per year.
- Find and listen to stations from your hometown or around the world. ‘

In addition to this extraordinary choice, the service assists time-shifting.

2.12 The Record Industry Association of America (RIAA) has accepted the principle of format shifting.³ While ARIA, the Australian Record Industry Association, appears still to be against it,⁴ we may conjecture that its members, at least some of whom are involved in the arrangements described in 2.10 above, will in due course bring about a alteration in ARIA's official stance to one resembling that of the RIAA.

2.13 *A key distinction to be made in this situation is the format-shifting of content legally acquired and with royalties paid, vs content illegally acquired.*

2.14 The Music Council supports an exception for format-shifting

- of copyright content legally acquired with appropriate remuneration to copyright owners
- if the content is for personal use
- for copying to devices owned and used by the purchaser of the content
- with the possibility to transfer in the future from obsolete to current formats
- but with a suitable limit set on the number of copies that can be made.

2.15 It is not within the intention of this exception that the digital content purchased by the original party should be copied to another party under the procedures permitted by format-shifting. This should not be permitted. However, it has long been the case that people have copied favourite recordings (to cassette tape, for instance) to give to friends. Again, it would be effectively impossible to ensure compliance other than by technological means.

2.16 At this time, the 'copy control technology' (CCT) that is incorporated into some physical CDs prevents any copying at all. The Music Council does not believe that it should be incumbent on record companies to remove TPMs that prevent copying for the purpose of format-shifting. Other legislation proscribes circumvention of such TPMs. The Music Council simply advocates the legalisation of copying for the purpose of format-shifting where that is enabled by the copyright owners.

2.17 The Music Council opposes legitimisation of any form of dealing with illegally acquired content.

Back-up copying

2.18 This is the creation of a permanent copy of a legitimately purchased original, in the same format as the original (as distinct from format-shifting), in case it is lost or damaged. Current Australian law allows back-up copies to be made of computer programs but not of other copyright material. The issues paper asks whether this exception should be extended to other material such as music.

2.19 Computer programs seem to be a special case. They are used to carry a lot of information added by and of importance to the user and they are vulnerable to damage e.g.

³ From the RIAA website, www.riaa.com:

'If you choose to take your own CDs and make copies for yourself on your computer or portable music player, that's great. It's your music and we want you to enjoy it at home, at work, in the car and on the jogging trail.' (Cited by Kimberlee Weatherall: *A Comment on the Copyright Exceptions Review and Private Copying*, page 12, available at www.ipria.org)

⁴ From the ARIA website, www.aria.com.au:

'As a consumer, the purchase of a CD only gives you the right to own the physical disc, to play it privately, and to pass on the same physical disc to another person. You have not bought the right to make or distribute copies, whether on CD-R or over the internet. This means that copying the music on the CD, without the permission of all relevant copyright owners, is an infringement of copyright.' (Ibid.)

by viruses. By contrast, a CD, for instance, is a completed, final object and if damaged usually can be replaced in exactly that form with relative ease.

2.20 The Music Council does not support an exception allowing unremunerated back-up copies of music recordings.

2.21 The Music Council acknowledges the specific needs of public libraries to have back-up copies. These could be purchased commercially – e.g. two copies could be acquired of non-infringing content in the currently available format such as a CD, one for the active collection and one as back-up.

2.22 The library needs to be able to retain this content into the indefinite future, and through changes in which one format becomes obsolete and is supplanted by another. If format shifting is legalised for the population at large, that problem is resolved. If it is not, then a special exception should be made for libraries to format-shift to ensure that copyright content is not lost to its collection.

3. BLANK MEDIA LEVY

3.1 In the Australian music industry, there is disagreement between two classes of music copyright owners affected by home copying of illegally acquired copyright music content. APRA, representing authors of copyright works, advocates a blank media or home copying levy. It argues that illegal home copying has so permeated the society that effectively the horse has bolted and the law, unable to constrain this, is seen to be an ass. The remedy is to accept that the situation is irreversible, and impose a levy on the blank media that receives the illegal copies, in exchange for a general licence to all purchasers of such media to use them to copy copyright material, with the funds to be used to reimburse copyright owners for loss of royalty income.

3.2 Opponents – notably the Australian Record Industry Association, ARIA – claim that this device would subvert the principles of their ownership of copyright, that in due course technology will put the horse back in the barn, and provided that they haven't given away rights as proposed by APRA, they will be able to reassert them.

3.3 APRA's argument draws support from the fact that some 40 countries have licences and levies similar to those it proposes. ARIA's arguments go more to the fundamentals of copyright law. For instance, it seeks to demonstrate that the proposed exception does not pass the '3-step test' accepted in international copyright law.

3.4 APRA's argument depends above all on accepting the *fait accompli* of illegal copying.

3.5 There is another *fait accompli*, however. That is that the record companies are introducing technological protection measures (CCTs, as noted above) to prevent unauthorised copying. There have been performance difficulties around these but current measures do seem to be effective; time will tell whether this can be sustained. But it would be very difficult to forbid the record companies to take this path, not least because the US government policy is so strongly aligned with TPMs and since the ratification of the Australia/US FTA, Australia is propelled along the same course. Furthermore, we have to remember that 70% or so of recordings used in Australia come from overseas and so Australia would be denying foreign companies, including American companies, the right to present their copyright material in the form that they wish to present it. The legalities of that situation may be complex!

3.6 As noted already, the record companies are involved in support to some technologically controlled copying of content legitimately acquired online, for the purpose of format shifting. This may support the feasibility of the TPMs envisaged by the industry.

3.7 It is argued that it is inappropriate to place a levy on home copying if record company TPMs actually prevent it. Consumers would be paying for a right that they could not then exercise.

3.8 So in order to introduce a blank media levy, it would be necessary to persuade record companies to abandon any TPM that obstructed the consumers' ability to make copies of copyright material that they had not purchased legally. Since that is precisely the point of the TPMs and since the record companies in Australia in any case oppose the levy, we might expect extremely strong resistance from the record companies..

3.9 So we have the public's *fait accompli* as identified by APRA, and ARIA's *fait accompli*.

3.10 The government could accept a position that legislative intervention is needed to ensure appropriate royalty payments to authors, that this should not be frustrated by another part of the industry, and seek to impose a general exception to the law against illegal copying with compensatory reimbursement to copyright owners – including record companies and performers as well as composers – financed with the proceeds from a levy on blank media. But to do so it would have to ensure that purchasers could take advantage of the exception and their levy payments, by denying the record companies the right to prevent copying, even of illegally acquired content. Presumably, the government would walk into the most vigorous opposition not only from the recording industry and some others in the copyright sector, but also the USA. The merits aside, is this likely to happen?

3.11 The Music Council acknowledges the view that the current situation, with very widespread breaching of the law through unauthorised copying of copyright content, can bring the law into disrepute. From this vantage point, the law either must be enforced or changed.

3.12 It acknowledges also the virtues of both the APRA and ARIA positions. At this time, it will not support one over the other.

3.13 However, it notes that the ARIA position depends upon the assumption that the problem is susceptible to a technological solution in the not too distant future. Therefore the Music Council proposes that the situation is reviewed no later than three years from now. If TPMs have resolved the problem there will be no need for a blank media levy. If they have not, then its introduction should be reconsidered.

3.14 Such consideration should include attention to a distribution to performers as well as other copyright owners and possibly to others in the value chain. There are many other issues to resolve – including the method of collecting funds and the appropriate split of funds between the beneficiaries. The Music Council would wish to offer some observations or recommendations whenever such a review proceeds.

4. THE ACTIVITIES OF LIBRARIES AND LIKE INSTITUTIONS

4.1 For the most part, the proponents for exceptions are these institutions that hold and provide public access to copyright materials. While the Music Council is very much concerned with the copyright owners in its constituency – composers, publishers, performers, record companies – its membership also includes educators, the library sector, researchers and indeed creators who, while eventually becoming owners of copyright, depend upon access to others' copyright works to instruct, inspire and generally support their creative activities. They also have need of the services of these cultural collectors.

4.2 It is the Music Council's understanding that digitisation and digital archiving provide these institutions with many opportunities to do their jobs more effectively or more efficiently, but some of the opportunities are blocked by laws that have not kept pace with the technology.

4.3 Generally, the Music Council would distinguish between those activities that seek to preserve, store and manage the collections, including the digital collections, and those that provide access to objects in the collections, or disseminate them.

4.4 The Council's main concern would be the institutions' desire to be able to provide copyright materials in digital form. Since digital copying makes perfect replicas of digital originals, and these can be used to make further perfect copies, it has the potential to undermine the market for those materials.

Preservation

4.5 We are informed that original manuscripts or works can be copied for purposes of preservation against loss or deterioration; published works can be copied if damaged, lost, stolen, deteriorated, provided they are not otherwise commercially available.

4.6 The law does not permit institutions to make unremunerated multiple digital copies of analogue material such as films, recordings or print material. Editions/versions (e.g. Director's cut) of original materials are not regarded as originals and therefore cannot be copied under the above definitions. The restored version of the film *The Sentimental Bloke* can't be copied even though the original has been lost.

4.7 The Music Council believes that it is copyright owners' interests that public collecting institutions should be able to make digital copies of musical works for the purposes of preservation. This includes culturally valuable editions or altered versions of works such as those cited. The Music Council would not support creation of unlimited multiple digital copies of analogue materials but would support creation of the smallest number of copies sufficient to ensure safe preservation.

Storage and Collection Management

4.8 In general, the Music Council supports exceptions to the legislation to permit the collecting institutions to digitise their collections for purposes of preservation and storage, subject to acceptable limitations on their rights to disseminate these materials.

4.9 Digitisation and digital archiving allow major efficiencies in storage of a collection and should be permitted for that purpose.

4.10 The institutions observe that digitisation and digital archiving allow 'migration' of content from obsolete formats to current formats -- a sort of format-shifting. This seems desirable as an aspect of storage and collection management.

4.11 Current collection management law requires destruction of electronic copies made for research and study purposes. Then, if needed again, another copy must be made of the original. The institutions observe that this is needlessly costly and causes deterioration of the original.

4.12 In the music Council's view, the copying and storage of the copies is a problem only if it leads to misuse through access or dissemination.

4.13 An argument comes from the institutions that digitisation and digital archiving should be permitted to create 'back-up' copies or 'access copies'. This issue was addressed in paras. 2.17 to 2.21.

4.14 The issue of access copies introduces the area of potential difficulty for the Music Council, since it is through access or dissemination that digital copies may escape the institution and become available for copying in the general community.

Access and Dissemination

4.15 A spokesperson for the institutions suggests a solution to the access problem: institutions should be permitted to digitise their collections without copyright clearance, provided that access is limited to online access 1) within their premises 2) in low resolution 3) on a 'dumb terminal' from which further transmissions cannot be made.

4.16 The copyright industry's concern about digitisation and digital archiving is, as noted already, that unlike previous technologies, digital copying presents a perfect copy of the original. Therefore, illegal copies can substitute for and supplant legal copies in the commercial market and so cause financial loss to the copyright owners.

4.17 If the institutions do not allow access to digitised items excepting if they are presented in a quality of resolution that would *not* suffice to supplant the versions offered commercially, then the industry's concern would be allayed.

4.18 The provisions prevent libraries from making copies for third parties, even though the third party will be using the material for a permitted purpose. This seems counter-productive. Is it better to have a library make copies and not exceed the legal limits or risk having an untutored individual with no great responsibility make them and break the limits? The Music Council would support disbandment of this limitation.

Another Perspective on Dissemination

4.19 The view put forward in a paper laying out the institutions' case seems to come from the vantage point that they must be the actual holder of the copyright materials. What it does not acknowledge is that commercial organisations are developing with enormous digitised holdings of sound recordings, available very inexpensively for purchase on demand -- no more expensively than the institution itself might charge were it able to offer digital copies. Income is distributed to copyright holders.

4.20 Perhaps there is a role for the institutions as intermediaries to these collections, enabling the downloading of materials somehow through their public terminals on payment of a fee. This could serve e.g. people with an MP3 player but no internet access, or simply those who find advantage in working in the institutions' facilities with easy access to other materials such as print scores.

4.21 What would remain then would be the copyright recordings *not* available through these commercial collections, because they never were added, or because they were removed. Perhaps the institutions, possibly working through a common representative, could make arrangements to add to their collections the tracks being removed from the commercial collections. Some sort of other arrangements, more like those now operating, would be needed to acquire recordings that have not been a part of the collections.

4.22 This does not necessarily require specific legislation but might relieve the institutions of other perceived problems.

5. ORPHAN WORKS

5.1 If for whatever reason there is no-one exercising a material interest in a copyright work, and we can assume in that case that there is no apparent substantial financial benefit in doing so or that there is no-one to exercise the benefit, MCA could support a case for keeping access to the work available through libraries or educational institutions with some minimisation of red tape.

5.2 It should be noted that Australian composers of art music are customarily not commercially published and consequently their works may be regarded as orphan works where in actual fact, the problem is simply that the copyright owner is alive but difficult to locate. An MCA member who is an art music composer notes that an exception that takes into account 'whether the work can be obtained commercially in a reasonable time is a nonsense for those hundreds of Australian composers whose work can *never* be obtained commercially. The defendant will only have to show that my work has no "potential market" to win a case. In the end it is our very obscurity that protects our work, more than those wobbly laws.'

5.3 He also notes that ‘Many black South African composers were seriously ripped-off by US artists and record companies who used their material for years without payment, claiming that it was “impossible” to trace the copyright owners.’

5.4 The Music Council therefore supports one of the possible remedies advanced: viz. that a trust fund should be created to accept normal royalties for use of orphan works. A work would be accepted as an orphan work only after reasonable efforts to discover the copyright owner/s had been made and documented. The fund would be used to reimburse persons or organisations who emerge within a prescribed period after use of the copyright work and can establish ownership. There could be an appropriate and prudent periodic distribution of unclaimed funds, for uses such as support to the creation of more opportunities for Australian composers, musicians or record companies.

5.5 It is noted that such a scheme exists in Canada and might be examined as a possible model for Australia.

6. IN SUMMARY

The Music Council of Australia, considering the varying interests and needs of parties across the music sector, has reached the following conclusions:

6.1 It recommends against the introduction of a Fair Use system in Australia and favours retention of the Fair Dealing system, but...

6.2 Understands that in carefully defined circumstances there may be some advantage in an open-ended approach to Fair Dealing; it would ask for the opportunity to comment should any such proposals be considered by the government

6.3 Supports the introduction of an exception for time-shifting of streaming television or radio programs other than those already modified to provide on-demand content, subject to conditions that the time-shifted copies may be replayed only once and may not be archived, and that no restriction should be placed on any technological protection measure intended to restrict the number of replays or to destroy the time-shifted copy after replay

6.4 Supports the introduction of an exception for format-shifting of legally acquired royalties-paid content for personal use, onto personally owned devices, with the number of copies appropriately limited, with a prohibition on the transfer of this content to devices owned by a second party, and with no requirement on copyright owners to facilitate exercise of the exception

6.5 Opposes an exception allowing unremunerated back-up copies of music recordings, other than an exception in the case of libraries if no commercially available back-up recording exists

6.6 Recommends that a moratorium should be placed on consideration of a blank media levy for a period of no more than three years, and that the situation should be reviewed at that time in the light of the success of technological protection measures in aligning current law and public practice; should such a review be instigated, the Music Council requests the opportunity for consultation

6.7 Supports in general increased opportunities for public libraries and archives to utilise digitisation and digital archiving for more efficient and effective preservation, storage and management of their collections

6.8 Opposes in general the provision by public libraries of increased access and increased dissemination of high resolution digital content

6.9 More specifically, supports the additional right for public libraries and archives to make digital copies of cultural valuable variants on original works, such as original editions, and to make more than one copy, but the smallest number of copies considered prudent, to ensure safe preservation of such works

- 6.10 Supports the right of public libraries and archives to 'migrate' digital content from obsolete to current formats
- 6.11 Supports an exception allowing public libraries and archives to retain, rather than destroy after one use, electronic copies made for research and study purposes
- 6.12 Supports provision by public libraries and archives of public access to digital content provided that the access is only within their premises, to files of sufficiently low resolution to remove the possibility that copies might have commercial value, on dumb terminals from which no further transmission can be made
- 6.13 Supports the right of libraries and archives to make copies of materials for a third party if that party has the right to make the copies him or herself
- 6.14 Proposes that libraries and archives consider the possibilities of serving as intermediaries to commercial online collections of recordings that are made available to the public on payment of a fee from which copyright owners are reimbursed, and to add to their collections recordings discontinued from or never present in the commercial collections
- 6.15 Recommends the creation of a trust fund to license, and reimburse for, use of orphan copies for which acceptable efforts have been made to locate the copyright owners.

Thank you once again for the opportunity to make this submission. Should any questions arise from the submission, we would be pleased to respond.

Yours sincerely

Dr Richard Letts AM

Executive Director