

Submission template: Review of section 36 of the Commerce Act and other matters

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The Submitters

1. This is a joint submission on behalf of Recorded Music New Zealand Limited and Copyright Licensing Limited (CLNZ). Both organisations are major collective management organisations (CMOs) in New Zealand in respect of intellectual property rights in (respectively) sound recordings and published books & journals.
2. Recorded Music New Zealand is a non-profit organisation which acts on behalf of sound recording copyright owners and exclusive licensees (generally record companies, digital aggregators and individual recording artists) to license and collect for certain uses of sound recordings including in public performance.
3. At the time of writing Recorded Music represents approximately 2,125 individual "master rights holders" (copyright owners or exclusive licensees of sound recordings), ranging from the New Zealand branches of the three major record companies, to independent record companies and distributors including DRM Limited and Flying Nun Records; smaller independent companies which are owned by individual recording artists and bands, and over 2,000 other independent master rights holders representing all genres and styles, including current and legacy artists and located throughout New Zealand.
4. CLNZ provides licences to help make copying, scanning and sharing printed works easy and legal. CLNZ is jointly owned by the Publishers Association of New Zealand (PANZ) and the New Zealand Society of Authors (NZSA) and are members of the International Federation of Reproduction Rights Organisations (IFRRO), which makes it part of a global network that represents the interests of publishers and authors from around the world. CLNZ is a not-for-profit organisation, and the net revenue generated from licences is distributed to the creators of the materials copied by our licensees.

Responses to discussion paper questions

Our response is limited to the IPR section of the Discussion Paper. Collective Management Organisations (CMOs) and their function within the copyright system do not appear to have been considered in the preparation of the Discussion Paper and we make this submission to outline the functions of Recorded Music New Zealand and Copyright Licensing New Zealand as CMOs operating in New Zealand, that can be referenced during the next stages of MBIE's review of section 36 of the Commerce Act. We also draw attention to any inter-play between this review and MBIE's Review of the Copyright Act for which an Issues Paper has been published.

1. The importance of CMOs to a well-functioning copyright system has been recognised around the world. In January 2018 WIPO stated that:¹

"CMOs provide appropriate mechanisms for the exercise of copyright and related rights, in cases where the individual exercise by the rightholder would be impossible or impractical. Collective management is an important part of a functioning copyright and related right system, complementing individual licensing of rights, resting on robust substantive rights and corresponding enforcement measures. In this vein, CMOs are a policy bridge between rightholders and users."

2. The practical efficiencies of CMOs have been recognised and CMOs have been described as being "the most realistic way for copyright owners to exercise many of their rights":²

"collecting societies are practically, economically, and legally both viable and essential: practically, because copyright owners cannot be in an indefinite number of places at the same time exercising individual rights, and foreign right owners would be unable to exercise their rights outside their country of origin without extreme expense and difficulty; economically, because it is cheaper to share the financial expenses of negotiation, supervision and collection among the greatest possible number of right owners; and, legally, because it is impossible for users of works to obtain permission from every individual copyright owner, both national and foreign."

3. CMOs provide a particular benefit for smaller right holders who lack the bargaining power to negotiate a licence with large users of music. This has been recognised by the European Parliament:³

"Collective management organizations play ... an important role as promoters of the diversity of cultural expression, both by enabling the smallest and less popular repertoires to access the market and by providing social, cultural and educational services for the benefit of their rightholders in public."

4. In addition to collecting royalties on behalf of their members, CMOs act as advocacy bodies and industry representatives and undertake a variety of industry related and charitable activities.
5. Finally, music CMOs play an important role in educating members and users about copyright. As well as assisting members who may not know about copyright and how to claim their royalties, music CMOs regularly provide information (but not legal advice) on copyright to music users and assist in connecting users with services that suit their needs. This information

¹ World Intellectual Property Organization, 'Working Document – WIPO Good Practice Toolkit for CMOs', January 2018, p6 <https://www.wipo.int/edocs/mdocs/copyright/en/wipo_ccm_ge_18/wipo_ccm_ge_18_toolkit.pdf>.

² Gillian Davies et al, *Copinger and Skone James on Copyright* (17th ed, Sweet & Maxwell Ltd, London: 2016) at 27-02, 27-07.

³ Recital 3, Directive 2014/26/EU on collective rights management and multi-territorial licensing of rights in musical works for online uses (EU Directive 2014/26/EU).

is used regularly as a general resource for those looking to use music in the course of their business or organisation.