IFPI submission to the Government of New Zealand's consultation on Convergence in the TIME sectors

16 October 2015

IFPI - representing the recording industry worldwide - thanks the Government of New Zealand for the opportunity to submit comments to the Government's consultation on Convergence in the TIME sectors. We commend the Government for committing to ensuring that the legal framework in New Zealand is fit for purpose in an increasingly digital economy.

IFPI represents some 1,300 record companies in 63 countries and affiliated industry associations in another 57 countries, including in New Zealand (Recorded Music New Zealand Limited).

Creating a fair and safe online market place is essential for the recording industry

The recording industry is at the cutting edge of digital content markets, and is leading the transition to digital content consumption. Globally, over 50 per cent of our members' sales revenues already come from digital services. That number will increase as our members working with technology and retail partners find new ways of distributing their sound recordings digitally. For that reason alone, our members have a substantial interest in ensuring the digital online marketplace evolves into a fair and safe trading environment.

- Record companies have **licensed around 43 million tracks** and more than **400 digital music services** in some **200 countries** worldwide. Record companies have licensed 22 digital music services in New Zealand alone[1].
- Music drives innovation. It is the rocket fuel that has driven the growth of many online services.
- Fair and balanced copyright systems support the creation of new and innovative ways of giving consumers access to music, driving economic growth.

The record companies' investment in artists supports the wider music sector and digital economy

While the industry is undergoing a fundamental transition into a truly digital industry, record companies continue to be the largest investors in artists' careers. **In 2013, the worldwide recording industry invested US$4.3bn in Artists & Repertoire (A&R) and marketing. Between 2009 and 2013 the amount invested in A&R and marketing was in excess of US$20bn.**

These substantial investments are made without any guarantees of returns, other than the common interest of artists and producers in making the recordings popular and commercially successful. Global statistics show that on average between 7 and 8 out of every 10 newly signed artists do not

[1] http://www.pro-music.org/legal-music-services-australasia.php

break even, meaning that the money invested in them is lost in whole or in part. Record companies use revenue generated by the successful recordings to invest in new artists and recordings, to the benefit of all stakeholders in the music industry value chain --artists, composers, digital music services, and consumers.

Sustainable and balanced growth requires the levelling of the playing field between content creators and digital services

The digital music market offers tremendous potential for further economic growth and increasing cultural diversity. Yet, even though music is used and enjoyed more than ever, music right holders have not benefitted fairly and proportionately from this increased consumption. This is threatening the future development of the music sector, and the substantial investments in artists and music. **There is a market distortion internationally, because some major digital services are not paying a fair market value for the music they distribute**. The distortion is the result of uncertainties about legal responsibility, resulting in an uneven playing field between those exploiting creative content and those investing in creating it.

- The market distortion is caused by laws that are not fit for purpose - specifically by the misapplication of “safe harbour” rules that were designed to provide liability exemptions for passive and technical online intermediaries only.
- These legislative flaws enable some digital services, including user upload platforms, to build multi-billion dollar businesses based on the content of music rights owners without paying fairly or at all for using that music.
- Although user upload content (UUC) services enable users to upload and share their own content, the reality is that the success of these services is dependent upon providing access to professionally-produced content, particularly music.
- Online platforms, such as some UUC services, which host, curate and monetise music, are not passive intermediaries. They should not be exempted from the obligation to negotiate licences on fair market terms as other digital services do.
- In addition, it is essential to ensure that all participants in the digital content value chain – including also enablers such as Internet access providers, advertisers, or payment providers – do their part to prevent illegal services from operating freely and eroding consumer trust in the digital economy.

Sustainable growth in digital markets requires a legal framework that ensures a level playing field between those investing in and creating the content that underpins digital growth, and those services using content to grow their businesses. IFPI stands ready to contribute to the efforts by the Government of New Zealand to achieve that aim.

For further information, please contact:

Lauri Rechardt
Director of Licensing and Legal Policy
Tel: +44 (0)20 7878 7916 lauri.rechardt@ifpi.org

Patrick Charnley
Senior Legal Policy Adviser
Tel: +44 (0)20 7878 7913 patrick.charnley@ifpi.org