

# **INFORMATION SHEET**

**Music Copyright & Tribunal Decision**

**June 2010**



## INFORMATION SHEET

### Music Copyright & Tribunal Decision

---

This Information Sheet has been developed to provide up to date information to fitness centres and group exercise instructors following the decision by the Australian Copyright Tribunal to substantially increase copyright fees for the use of music in fitness classes.

This decision by the Tribunal will have a significant impact on all operators and this paper has been developed to explain that decision and to provide information on resources that will enable operators to choose to use music that is outside the PPCA repertoire.

#### Copyright Tribunal decision | 17 May 2010

- This decision relates to the licence issued by the Phonographic Performance Company of Australia (PPCA) to play protected sound recordings in fitness classes (Tariff V).
- The Tariff rate has been increased to \$15 per class or \$1 per attendee per class. The current rate is 96.8c per fitness class with a capped annual maximum of \$2,654. This represents an increase of over 1,500% for the cost of this licence to businesses in the fitness industry.
- Tariff V is composed of two parts. The first is a 'general licence' which covers the use of protected sound recordings for background music in a fitness centre or gym. This general licence has **not** been altered by this decision.
- The second part of Tariff V is for the use of protected sound recordings to accompany fitness classes. It is this part of Tariff V that is the subject of this decision.

#### When will the new tariff become effective?

- The effective date is yet to be determined by the Copyright Tribunal however, PPCA has proposed that the revised Licence Scheme takes effect from 1 November 2010.

#### About PPCA repertoire

- The PPCA is a copyright collecting society that issues a 'blanket' licence that covers nearly all sound recordings commercially released in Australia.
- However, not ALL sound recordings are part of the PPCA repertoire. Sound recordings are readily available whereby the owner of copyright in the sound recording is not a member of PPCA and has therefore not assigned the sound recording copyright to the PPCA. These particular music providers grant a licence to the purchaser of the music for it to be played in public.
- These sound recordings are specially produced for the fitness industry and are **not available** through regular commercial outlets such as music stores, retail shops, music catalogues or via internet download sites such as *i-tunes*.
- When these PPCA Copyright-free sound recordings are used 100% of the time in a fitness centre and/or by a fitness instructor in a fitness class, the fitness business does **not** need to hold a PPCA Licence and so, can avoid this costly aspect of Tariff V.

- The Tariff V licence is paid annually in advance. If your business has held a Tariff V license and PPCA Copyright-free sound recordings are now being used 100% of the time in fitness classes, then the business is entitled to request a refund from the PPCA for the balance of the annual tariff. Such a request for refund has already been lodged by Fitness First.

### Use of PPCA Copyright-free music

- Fitness Australia supports the use of PPCA Copyright-free music in fitness classes but warns that businesses that choose to operate without a PPCA licence must be diligent in ensuring that **NO** commercial or original sound recordings, that are likely to be part of the PPCA repertoire, are played in fitness classes.
- The PPCA has a national enforcement program in place which is utilised in circumstances where business owners refuse to take out or try to avoid the necessary licences for the public performance of protected sound recordings on their premises, see <http://www.pcca.com.au/PPCAs-National-Enforcement-Program.html>.
- Businesses that choose to operate without a PPCA licence AND continue to play protected sound recordings in fitness classes, risk severe penalties for breach of copyright.
- Suppliers of pre-choreographed group exercise programs and PPCA Copyright-free music will clearly state which of their music products are PPCA Copyright-free. It is recommended that this music only be purchased from recognised and trusted sources operating **within the Australian market** in support of the fitness industry.
- Group exercise instructors will require support, advice and guidance on the use of music in fitness classes within businesses that choose not to hold a PPCA licence. It is recommended that management ensures that every Instructor is aware of this matter and is fully compliant with the relevant organisational policy on the use of music in fitness classes.
- Fitness Australia has produced guidelines and a template Policy and Procedures document that can be adapted by industry businesses for the purpose of informing Instructors and having them acknowledge policy changes in relation to the use of music in fitness classes. These documents are available on request from Fitness Australia (E. [info@fitness.org.au](mailto:info@fitness.org.au))
- It is recommended that fitness businesses provide a readily accessible library of PPCA Copyright-free music CD's for use by group exercise instructors as the existing libraries held by instructors are likely to contain commercial sound recordings that are part of the PPCA repertoire.

### Alternative Music Resources

- Fitness Australia has produced Guidelines on the use of music in fitness centres and studios including a list of suppliers that provide PPCA Copyright-free music for fitness classes. The list of major music suppliers is found at the end of this document and the full guidelines are available at [www.operationmusic.org.au](http://www.operationmusic.org.au).

### **Broader Definition of a Fitness Class now Operating**

- Within the revised PPCA Licence Scheme, a Fitness Class means a structured form of exercise conducted in a class environment in or by a Fitness Centre or other organisation conducting fitness classes on a commercial basis as a business or by a Freelance Fitness Instructor:
  - Accompanied by sound recordings;
  - Which is directed (whether by a fitness instructor or otherwise); and includes, without limitation, the following types of classes:
    - Aerobics
    - Circuit
    - Dance
    - Cycle/spin
    - Strength/resistance
    - Hybrid
    - Boxing/combat
    - Flexibility/stretching/abdominal, including yoga and pilates
    - Specialty
    - Aqua, and
    - Age/lifestage

### **Information Links**

- The full judgment by the Copyright Tribunal is available at [www.operationmusic.org.au](http://www.operationmusic.org.au).
- For more information on Music Copyright and licence schemes, go to the copyright collecting society websites:
  - Phonographic Performance Company of Australia (PPCA) [www.pcca.com.au](http://www.pcca.com.au)
  - Australasian Performing Right Association (APRA) [www.apra.com.au](http://www.apra.com.au)



### \*Suppliers of Fitness Music for exercise classes in Australia

The following companies have stated that they are able to provide the fitness industry with Non-PPCA Recordings for group exercise classes. Before making the decision as to whether or not your business will renew its PPCA Licence for Tariff V you should seek an assurance from the supplier that they are in fact providing you with Non-PPCA Recordings.

Music Supplier	Contact Details			
	Postal Address	Phone	Website	Email
<b>Suppliers of pre-choreographed group exercise programs</b>				
Les Mills Asia Pacific	PO Box 3998 Manuka ACT 2603	(02) 6282 8192	<a href="http://www.lesmills.com.au">www.lesmills.com.au</a>	<a href="mailto:ask@lesmills.com.au">ask@lesmills.com.au</a>
Radical Fitness (Oceania)	PO Box 105 Westgate Sydney NSW 2048	(02) 9713 6822	<a href="http://www.radicalfitness.net">www.radicalfitness.net</a>	<a href="mailto:rfoceania@radicalfitness.net">rfoceania@radicalfitness.net</a>
Body Training Solutions	P.O.Box 7122 Canberra BC ACT 2610	(02) 6281 7520	<a href="http://www.bodytrainingsolutions.com.au">www.bodytrainingsolutions.com.au</a>	<a href="mailto:enquiries@bodytrainingsolutions.com.au">enquiries@bodytrainingsolutions.com.au</a>
<b>Suppliers of general music for exercise classes</b>				
Kelmix	68-70 Madden Avenue Mildura VIC 3502	(03) 5021 0977	<a href="http://www.kelmix.com.au">www.kelmix.com.au</a>	<a href="mailto:info@kelmix.com.au">info@kelmix.com.au</a>
Radical Music	PO Box 105 Westgate Sydney NSW 2048	(02) 9713 6822	<a href="http://www.radicalfitness.net">www.radicalfitness.net</a>	<a href="mailto:rfoceania@radicalfitness.net">rfoceania@radicalfitness.net</a>
Rhythm Express Music	Suite 203, 86 Murray Street, Hobart TAS 7000	(03) 6224 9622	<a href="http://www.rhythmexpress.com.au">www.rhythmexpress.com.au</a>	<a href="mailto:mark@instructor.com.au">mark@instructor.com.au</a>
Trax Music	47 Hume Street Crows Nest NSW 1585	(02) 8424 7200	<a href="http://www.traxmusic.com.au">www.traxmusic.com.au</a>	<a href="mailto:info@fitnessnetwork.com.au">info@fitnessnetwork.com.au</a>
The Music and Motion Studio	279 Burwood Hwy Burwood East, VIC 3151	(03) 9886 6288	<a href="http://www.musicandmotion.com.au">www.musicandmotion.com.au</a>	<a href="mailto:karen@musicandmotion.com.au">karen@musicandmotion.com.au</a>
Yes! Fitness Music	PO Box 711 Balgowlah NSW 2093	(02) 9948 2343	<a href="http://www.yesfitnessmusic.com.au">www.yesfitnessmusic.com.au</a>	<a href="mailto:info@yesfitnessmusic.com.au">info@yesfitnessmusic.com.au</a>