



*Images courtesy of Les Mills International.*

# Unite and Fight

Planned changes to PPCA licensing fees represent a significant threat to the future of group exercise. **Lauretta Stace** explains how the fitness industry is fighting back

The entire fitness industry; including owner/operators, employees, stakeholders and customers; is facing a major challenge at this time – a challenge that represents a significant threat to the future of group exercise classes. And the challenge is plans by Phonographic Performance Company of Australia Limited (PPCA) to substantially increase its licensing fees for the public performance of music within fitness classes.

Facing up to this challenge, Fitness Australia is facilitating and coordinating an industry-wide response, consulting widely with industry in order to prepare a substantial case that supports and defends the interests of the fitness industry.

In PPCA's view, recorded music is an important aspect of fitness classes. As it

has stated "the creators of recorded music (the artists and record labels) should receive a fair and reasonable return for the use of their creative work when their music is played during a fitness class."

At present, the rate payable by fitness centres under the Fitness Class Tariff is 94.6 cents per fitness class with a maximum annual fee of \$2,570.

In December 2005, PPCA wrote to Fitness Australia to notify the industry of PPCA's intention to review the rate payable under the Fitness Class Tariff. In the letter, it was stated that "PPCA considers that the current Fitness Class Tariff does not reflect or take into account the importance of music in the exercise class context, and does not reflect the value sound recordings bring to fitness centres. In PPCA's view, the current

Fitness Class Tariff is grossly undervalued."

It was at this point that Fitness Australia was informed about a preliminary economic study that had been conducted by PPCA to arrive at a revised tariff rate. The study showed that "the willingness to pay for music in a fitness class was about \$7 per person, which after factoring in costs and dividing the value between PPCA, APRA and the gym, would give a per person rate of \$2.11 for sound recordings. Assuming an average class size of 15 people, the rate suggested by the economic analysis to be a reasonable rate would be \$31.67 per class."

In April 2006, PPCA advised Fitness Australia that the review process would be temporarily put on hold due to their workload with the Night-Clubs Tariff review in the Copyright Tribunal. As a result, the Fitness Class Tariff was increased by CPI only on 1<sup>st</sup> July last year. PPCA resumed contact with Fitness Australia in October 2006 and commenced proceedings on the Fitness Class Tariff in the Copyright Tribunal in December 2006.

In recent correspondence, PPCA have informed Fitness Australia that "it is not relying on the initial pilot study conducted by Frontier Economics" and the Application filed by PPCA in the Copyright Tribunal does not nominate any specific rate that PPCA will be seeking in connection with the Fitness Class Tariff. PPCA is awaiting the results produced by the further study before formulating any revised tariff.

A Directions Hearing was conducted in the Copyright Tribunal on 14th February 2007 with another hearing scheduled for 9th May.

Fitness Australia believes that the suggested Tariff increase is grossly unfair and unreasonable. A tariff rate increase of the order proposed by PPCA would see an average fitness centre, running 30-40 classes per week, paying a tariff of between \$40,000 to \$70,000 per annum! This is clearly unaffordable for many businesses and potentially puts at risk the ability of the industry to provide affordable group exercise classes to music for the benefit of members and customers - our community.

Although we are pleased that the original valuation rate of \$31.67 per class is no longer necessarily being relied on by the PPCA, we are still assuming that any future proposed rate will be substantially higher than the current tariff rate. This assumption is supported by our understanding of how the recent Nightclubs case was run and the proposed increases put forward by PPCA at the Copyright Tribunal in relation to the Nightclub tariff.



Throughout 2006, Fitness Australia representatives held several meetings with PPCA in order to gain a better understanding of the review process and the valuation (economic) model used. In summary, Fitness Australia believes that the survey and valuation model is flawed for a number of reasons including, but not limited to, the following:

- It relies on a survey of attendees at fitness centres, not the fitness centre themselves;
- The study assumed that all fitness centres were much the same;
- It did not cater for the diversity of fitness centres and exercise class types in the industry;
- It ignored the wide diversity of pricing in the industry and affordability of such an increase across the entire industry.

Fitness Australia has now appointed Minter Ellison as legal counsel to advise and represent Fitness Australia, and its Members, in negotiations with PPCA and in relation to Copyright Tribunal Proceedings. Minter Ellison have an appropriate level of expertise and experience in dealing with these matters having recently represented the clubs industry in the Nightclubs tariff review case, the outcome of which is currently being decided by the Copyright Tribunal.

In January 2007, an Industry Leader's Workshop, hosted by Fitness Australia, was held in Sydney to ensure that the wider industry, and in particular, those with significant market presence, gained a better understanding of this important issue and began the process of developing a cohesive set of industry-wide strategies to address it in a united fashion.

The Workshop was attended by representatives from all the major fitness industry organisations, Les Mills Asia Pacific, Australian Fitness Network, representatives from independent operators, State/Territory Associations of Fitness Australia and appointed expert advisors.

As a result of the Workshop, an Industry Taskforce (for the full membership see 'Members of Fitness Australia's Music Licensing Taskforce', right) has been established to coordinate the fitness industry response to the PPCA review; further communicate and consult with industry; lobby internal and external stakeholders to engender support for the fitness industry case; and raise financial support to defend the industry against the PPCA claim.

Fitness Australia has also engaged the services of a specialist consultant to provide advice on the availability of alternative music that may not be subject to public performance licence fees.

In the coming weeks, and under the direction of the Industry Taskforce and expert advisors, Fitness Australia will be developing a series of detailed strategies to address this important issue. The potential cost of addressing this issue is high and we will need to raise funds to present the industry case and continue to fight to protect the industry's position.

However, the cost of doing nothing is far worse. PPCA have the potential to extract an unreasonable tariff increase from the industry and the industry will pay over and over again into the future. Now is the time to address this issue, Unite and Fight emerging as a new catch-phrase for the fitness industry!

Fitness Australia will continue to communicate with all sectors of the industry in relation to this important issue. We look forward to receiving your feedback and support as we progress.

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## Who are PPCA?

Established in 1969, the Phonographic Performance Company of Australia Limited (PPCA) is a national, non-government, non-profit organisation representing the interests of record labels (licensors) and Australian recording artists. PPCA grant licences for the broadcast, communication or public playing of recorded music (e.g. CDs, tapes, records) or music videos. They then distribute the licence fees collected to the record labels and Australian recording artists registered with them.

PPCA provide businesses with a 'blanket' licence that covers nearly all recordings commercially released in Australia. PPCA currently license over 43,000 venues Australia-wide, including clubs, hotels, bars, restaurants, fitness centres, shops, halls and dance studios, and also grant licences to radio and TV stations.

Users of protected sound recordings, such as fitness centres, have the alternative option of approaching an individual copyright holder to obtain a licence to play recordings owned or controlled by that holder of copyright. PPCA's blanket licence covers the repertoire from multiple recording companies and covers most commercially released recordings in Australia. A licence to play protected sound recordings is required irrespective of whether CDs and tapes are provided by fitness instructors themselves or whether fitness centre owners provide the music.

What is the difference between PPCA and APRA?

If you need a licence of the type offered by PPCA, you will also need a licence from APRA (Australasian Performing Right Association Ltd) as well. That's because there are at least two copyrights in most recordings and music videos:

1. The copyright in the song (lyrics, composition etc.) - licences available from APRA;
2. The copyright in the recording and /or music video of the song (a particular recorded performance) - 'blanket' licences available from PPCA, or individual licences available from the copyright holders.

## Members of Fitness Australia's Music Licensing Taskforce

Nigel Champion, Australian Fitness Network  
 Peter Elliott, Legal Counsel, Fitness First  
 Mark Forrest, Fitness First  
 Tony Griffiths, Beach House Group  
 Simon Hall, Next Generation  
 Stephan Herzog, Fernwood Women's Health Clubs  
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 Susan Kingsmill, Independent business owner  
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