

COMMONWEALTH OF AUSTRALIA

Copyright Act 1968

**IN THE COPYRIGHT TRIBUNAL OF AUSTRALIA
FILE NO. CT 2 OF 2022**

FREE TV AUSTRALIA LIMITED (ACN 101 842 184)

Applicant

**PHONOGRAPHIC PERFORMANCE COMPANY OF
AUSTRALIA LIMITED (ACN 000 680 704)**

Respondent

ORDER

TRIBUNAL: PERRAM J (President)

DATE: 15 SEPTEMBER 2023

WHERE MADE: SYDNEY



BY CONSENT, THE TRIBUNAL ORDERS THAT:

PPCA Summons to MinterEllison

- 1 A summons in the form annexed to these orders issue to MinterEllison.
- 2 It will be sufficient answer to the summons for the documents required thereunder to be provided, on or before 4:00pm on 9 October 2023, by a secure electronic means, and subject to Orders 3 and 4 below, to the Respondent's external solicitors, Gilbert + Tobin, and the Applicant's external solicitors, Clayton Utz.
- 3 Subject to Order 4 below, the documents produced pursuant to the summons referred to in Orders 1 and 2 be treated as 'Restricted Access' and may only be made available to, and copied for use by, individuals who are entitled to access such documents pursuant to the Orders of the Tribunal dated 28 March 2023.
- 4 If a party wishes to contest or amend the confidentiality classification of any document produced pursuant to the summons referred to in Orders 1 and 2:

- (a) That party must first notify APRA AMCOS and the other party to this proceeding, and seek to agree on the amendment by negotiation.
 - (b) If agreement cannot be reached, that party must provide a short written submission to the Tribunal relating to a variation of the classification, and serve that written submission on APRA AMCOS and the other party to this proceeding.
 - (c) Any party opposing that variation of the classification, including APRA AMCOS or another third party maintaining that its confidential material is affected, will then have the opportunity to provide a short written submission in answer, which must be provided to the Tribunal and served on both parties to the proceedings within 10 days of receipt of the submission referred to in (b) above.
 - (d) The matter will be determined by the Tribunal on the papers unless the Tribunal considers an oral hearing appropriate or any party or third party requests the opportunity to provide short oral submissions.
- 5 Any reasonable costs reasonably incurred in complying with the summons pursuant to Orders 1 and 2 are to be shared equally by the Applicant and the Respondent, subject to any future application being made by either party to vary this order.
- 6 In the event that the Applicant and/or Respondent contest the amount sought by MinterEllison in complying with the summons, the Registrar of the Tribunal or another person specified by the Tribunal, may hear and determine the reasonable costs payable pursuant to Order 5.

Other Summonses

- 7 The question of whether to issue summonses or require production of documents sought by: (a) the Applicant from APRA AMCOS; (b) the Applicant from the Respondent; (c) the Respondent from the Applicant; and (d) the Respondent from television networks, be stood over until the next directions hearing.
- 8 In relation to the disputed categories of documents sought by the Respondent from both the Applicant and television networks, Counsel for the parties are to confer at premises to be determined at 10:00am on 21 September 2023, and seek to reach agreement on those categories.

Miscellaneous

9 The matter be listed for directions at 9:30 am on 29 September 2023.

Date that entry is stamped: 28 September 2023

A handwritten signature in blue ink, appearing to read 'Nye Perram', is written above a horizontal dotted line.

The Hon Justice Nye Perram, President

COMMONWEALTH OF AUSTRALIA

COPYRIGHT ACT 1968

**IN THE COPYRIGHT TRIBUNAL OF AUSTRALIA
FILE NO. CT2 OF 2022**

REFERENCE BY: Free TV Australia Limited (ACN 101 842 184)

Applicant

Phonographic Performance Company of Australia Limited (ACN 000 680 704)

Respondent

under section 154 of the *Copyright Act 1968*

Summons to produce documents

(pursuant to section 167(3) of the *Copyright Act 1968*)

To: Attn: John Fairbairn
The Proper Officer
MinterEllison (ABN 91 556 716 819)
Level 40, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000

- 1 You are summoned to produce to the Copyright Tribunal of Australia the documents annexed to this summons and marked 'A'.
- 2 You are required to produce the documents by 9 October 2023 to the Copyright Tribunal of Australia at Level 17, Law Courts Building, 184 Phillip St, Queens Square, Sydney NSW 2000 or at copyright.tribunal@fedcourt.gov.au and in electronic form to the solicitor for the Applicant at twebb@claytonutz.com and the Solicitor for the Respondent at kharrison@gtlaw.com.au.

Date that entry is stamped:

.....
The Hon Justice Nye Perram, President

Annexure 'A'

List of documents for production

A. Categories of documents required to be produced

1 The following Documents from, or in connection with, the Arbitration:

- (a) all submissions and evidence (including exhibits) read or tendered by Free TV, APRA (or any other person) to the Arbitration;
- (b) all transcripts of hearings in the Arbitration;
- (c) any decisions and reasons for decisions by the Arbitrator in the course of the Arbitration; and
- (d) all confidentiality orders made in the Arbitration, except for Procedural Order 2; and
- (e) all signed confidentiality agreements, confidentiality arrangements and confidentiality undertakings entered into for the purposes of the Arbitration.

B. Interpretation

For the purposes of this Summons:

- 1 no category limits the ambit of any other category;
- 2 a word importing the singular includes the plural (and vice versa); and

C. Definitions

In this Summons:

Arbitration means the arbitration between Australasian Performing Right Association Limited (**APRA**) and Free TV Australia Limited, the final award of which was handed down by Dr A Bennett AC SC (**Arbitrator**) on 25 March 2020

Document means any record of information and includes:

- (a) anything on which there is writing; or
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; or
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or
- (d) a map, plan, drawing or photograph; or
- (e) any other material, data or information stored or recorded by mechanical or electronic means.

Free TV means Free TV Australia Limited (ACN 101 842 184), in its own capacity and/or as agent for its members.