

## Active 09 Sport and Recreation Industry Conference

**Ben Ritchie**  
Director, Fitness Australia  
26-27 November 2009



*Working for a fitter, healthier Australia*

## PRESENTATION SUMMARY

- ✓ Brief overview of Fitness Australia's vision, direction and positioning
- ✓ Protecting the fitness industry and the future of group exercise – an update on the music copyright battle



*Working for a fitter, healthier Australia*

## Where have we come from?



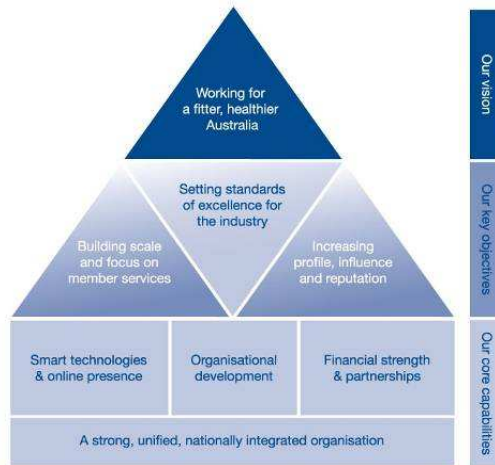
*Working for a fitter, healthier Australia*

## Working for a Fitter, Healthier Australia



*Working for a fitter, healthier Australia*

## Reflecting the Industry We Represent

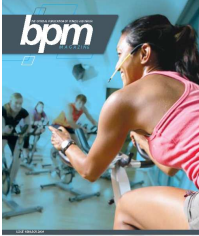


## The Brand Plan



**Fitness Australia**<sup>®</sup>



- Promote our position and brand
- Promote best industry standards and practice
- Promote benefits to members and exercise professionals



**bpm**

At 20th Street

- Study the fitness industry profile and its benchmarking tool
- Planning and managing your 21st century
- The business of leading the fitness industry

**EXERCISE.  
YOUR LIFE  
NEEDS IT!**



**Fitness Australia**<sup>®</sup>  
THE HEALTH & FITNESS INDUSTRY ASSOCIATION

**MEMBER / 2009**



Amanda Hall  
Relationship Manager  
Ground Floor 180 Albert Rd  
South Melbourne VIC 3206  
T: 1300 211 311 D: 03 9626 5102  
M: 0421 254 022  
E: amanda@fitness.org.au  
W: fitness.org.au

exercising talk to a registered exercise professional at a Fitness Australia registered gym, fitness centre or business.

To find a registered gym visit [www.fitness.org.au](http://www.fitness.org.au) or call 1800 88 55 60

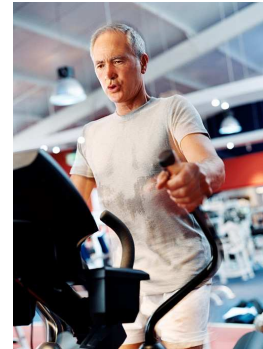




**OUR RESEARCH PROGRAM** – HELPING TO INFORM THE INDUSTRY, GOVERNMENT AND THE COMMUNITY

**ACCESS ECONOMICS REPORT**  
**The Economic contribution of fitness centres in Australia**

- ✓ The industry represents avoided health care costs of up to \$108 million per annum.
- ✓ Increased utilisation of fitness centre services **by just 3%** of the adult population has the potential to deliver **additional health care savings** in the order of **\$204.8 million p.a** and lead to 2,609 extra FTE's in the workforce.
- ✓ **Recent research reports:**
  - ✓ Fitness centre membership is associated with increased health responsibility and broader health promoting behaviours;
  - ✓ Fitness centre members constitute a large part of the population who are sufficiently active to achieve optimal health.



*Working for a fitter, healthier Australia*



## Inclusive of all sectors & models

Fitness Australia is inclusive of all sectors and business models that provide quality fitness and exercise services to the public:

**Sectoral involvement**

- Registered clubs sector
- Private / commercial sector
- Local government sector
  - NFP sector
- University sector

**Business Model Involvement**

- Large, medium, small full service facilities
- Sports, recreation, leisure and aquatic centres
  - PT Studios & Circuits
  - Outdoor only
- Sole traders, chains, franchises, independent etc.

## Inclusive of all sectors & models



Great feedback from the fitness centre run by the City of Melbourne!

"Congratulations to the broader Fitness Australia team, I can appreciate the challenges you have faced in the recent past, I can see continuous improvement and growing value in my membership - thank you. I specifically like the email communication, the quality of the bpm magazine and the expansion of content on the website - great stuff!

I just thought I would advise you that since our previous meeting at the business leaders function held in Melbourne, that I have put the following in place going forward in relation to the Melbourne City Baths (MCB) expectations in recruiting Personal Trainers:

Current Health & Fitness Registration with Fitness Australia (is now a) key selection criteria that is required to be met for employment at MCB.

A strong industry body is imperative to the advancement of the Fitness Industry and more broadly in benefiting Australia's health and wellbeing."

## The BIG issue



**SAY NO TO THE TAX ON FITNESS**  
RECORD INDUSTRY FAT CATS TRY TO IMPOSE A \$100M TAX ON FITNESS

In a desperate money grab, record industry bosses want to hike to the fees fitness centres pay for music - in many cases by more than a staggering 400% - to plug a hole left in their pockets by declining CD sales. The proposal will see the fees the fitness industry pays for the use of music rise from \$1.5 million per year to a possible \$180 million per year.

At a time when Australia has been named the fittest nation in the world, people should be encouraged to exercise and get healthy - instead, the record industry is trying to impose a tax on fitness that will almost certainly result in an increase in your membership fees, and put fitness centres out of business.

**REGISTER YOUR PROTEST**

The fitness industry is not taking this lying down and will oppose it when the case goes to the Copyright Tribunal on 10th March. You can find out more at [www.fitness.org.au](http://www.fitness.org.au), but what we really need you to do is show your support by clicking the button below and registering your protest. And spread the word - get your friends involved. Say about it online - anything that will help us tell the record industry bosses that you're not going to accept this unwaranted and unfair cash grab.

**MAKE YOUR VOICE HEARD - CLICK HERE AND SAY NO**



## Overview of the Copyright Claim

- Made by the international record companies, through the collecting society, the Phonographic Performance Company of Australia (PPCA);
- Used complex economic analysis and modeling (consumer choice or “willingness to pay”) to place an economic VALUE on the use of music in group exercise classes (Tariff V);
- PPCA “valued” Tariff V at \$4.54 PER MEMBER PER MONTH and \$0.99 per casual visit;
- Current rate is \$0.968 PER CLASS PER ANNUM, capped at \$2,654 p.a.

## Overview of the Copyright Claim

### FINANCIAL IMPACT ON A FITNESS OR RECREATION CENTRE WITH 1,500 MEMBERS:

Current cost	Proposed cost	Increase
1,500 members running 30 classes per week: 30 x \$0.968 x 52 = <b>\$1,510 per annum</b>	1,500 members x \$4.54 x 12 months =  <b>\$81,720 per annum</b>	<b>\$80,210 per annum</b>  <b>5,312% increase</b>

#### WARNING!

This will double to **\$163,440 p.a** if APRA seeks a similar rate, as there are two forms of copyright in every piece of music.

## Overview of the Copyright Claim

### FINANCIAL IMPACT ON THE AUSTRALIAN FITNESS INDUSTRY:

Current cost	Proposed cost
\$1.5 Million p.a.	\$100 Million p.a.

#### WARNING!

This will double to **\$200 Million p.a** if APRA seeks a similar rate, as there are two forms of copyright in every piece of music.

## How Fitness Australia has dealt with the Copyright Claim

### CASE TIMELINE:

- **End 2005** – Claim for \$31 per fitness class made by PPCA for Tariff V;
- **Start 2006** - Meetings held with PPCA; would not negotiate on a commercial basis, only on basis of economic modeling;
- **End 2006** – Fitness Australia seeks legal advice from Minter Ellison; Costs to litigate estimated at \$1.5 million;
- **Start 2007** – Industry taskforce established and first pledge of funds made to fight the claim; Negotiated outcome preferred to save costs;
- **Mid 2007** – Nightclubs and Hotels case result – 1,500% tariff increase awarded to PPCA; same economic methodology used in this case, but not effectively challenged by nightclubs and hotels;
- **End 2007** – PPCA refers matter to Copyright Tribunal without industry consultation;

## How Fitness Australia has dealt with the Copyright Claim

### CASE TIMELINE (Cont.):

- **Start 2008** – Both sides prepare evidence for the case to be determined in the Copyright Tribunal;
- **Feb 2008** – PPCA changes the basis of its claim from PER CLASS to PER MEMBER PER MONTH (\$4.54)
- **March 2008** – FAL engages Professor Hanemann from Berkeley University (USA) - world expert in choice modeling theory;
- **2008** – several industry and 3 other expert witnesses engaged by FAL to respond to PPCA claim; case is developed;
- **May 2008** – ACCC becomes a respondent to the proceedings, independent of both parties;
- **2008** – FAL conducts research on alternative forms of recorded music where copyright is not assigned to PPCA;
- **2008** – major industry fundraising appeal continues as OPERATION MUSIC.

## How Fitness Australia has dealt with the Copyright Claim

### CASE TIMELINE (Cont.):

- **Start 2009** – PPCA and FAL enter into a mediated negotiation to try and resolve the matter before the Tribunal Hearing; PPCA position fixed, the parties fail to agree;
- **March 2009** – FAL facilitates the entry of Yes!Fitness Music to the Australian market for freestyle classes (No recording rights assigned to PPCA).
- **March to April 2009** – Hearing takes place in the Copyright Tribunal, over 5 weeks. 30 witnesses cross examined, 3 Tribunal panel members, 7 barristers and 14 lawyers present.
- **June 2009** – closing submissions heard in the Tribunal for 1 week.
- **END** – Tribunal states that determination is unlikely before end of 2009.

## How Fitness Australia has dealt with the Copyright Claim

### OUTCOMES

- A very successful and powerful case run by Fitness Australia;
- PPCA economic modeling and underlying research found to be **fundamentally flawed**, rendering the result **unreliable**;
- ACCC independent research and modeling agrees with FAL position.
- Per member per month basis looks unlikely.
- Cannot anticipate a result, but it won't be anything like \$4.54 per member per month;
- Our case pointed the Tribunal to the current per class APRA rate and international benchmarks; \$1.00 per rhythmic classes and \$0.50c for yoga/pilates classes.
- Anticipate a determination in early 2010.

## How Fitness Australia has dealt with the Copyright Claim

### OUTCOMES

- **Total costs of preparation, negotiation and litigation is \$2.6 Million;**
- FAL needs to raise another \$900,000 to pay all the bills;
- FAL is putting in \$400K through a levy on exercise professional registrations of \$20 per registration;
- Industry needs to contribute a further \$500,000;
- This includes ALL SECTORS, especially facilities that run group exercise classes.

## Why did we fight?

- To **protect** the industry from unfair copyright fees;
- To **protect** the future of group exercise classes;
- To **challenge** PPCA's claim about the VALUE of music in classes;
- To **challenge** how this value was derived;
- To **protect** against an equivalent claim by APRA in the future;
- To **ensure** that a ridiculous benchmark on the value of music, based on flawed modeling, was not set by the Tribunal which would then potentially flow onto background music and to other industries.

## Operation MUSIC continues

- Thanks to everyone who has made a contribution to Operation MUSIC;
- **There are many who have not and you know who you are....**
- **Don't be irresponsible; a financial contribution from EVERYONE who plays music or offers group exercise is required.**
- Imagine if we didn't fight and calculate how much it would cost you...then consider that a contribution to this important campaign is worth the effort.
- **Stop making excuses.**
- Go to [www.operationmusic.org.au](http://www.operationmusic.org.au) to pledge or contact Fitness Australia on 1300 211 311.



**THANK YOU**

**[www.fitness.org.au](http://www.fitness.org.au)**