

FIRST BREAK Competition and Website Terms & Conditions 2013

ELIGIBILITY FOR ENTRY INTO THE FIRST BREAK COMPETITION

The FIRST BREAK Competition is open to unsigned Australian bands or solo artists who have not charted in the top 100 Australian National airplay chart. To be eligible to enter the FIRST BREAK Competition you must meet all of the following eligibility requirements:

- you must be an Australian citizen or resident of Australia. If you are applying as a band the majority of members must be Australian citizens or residents of Australia;
- you must be unsigned and not have charted in the top 100 Australian National airplay chart;
- you must not have a recording services agreement with a third party (eg: record company) or an exclusive license or distribution agreement for the submitted recordings;
- you must not have an independent producer agreement with a third party;
- no third party owns rights in your performances or the recording of such performances; and
- no third party owns rights in the music, lyrics or sound recordings of any songs that you enter in the FIRST BREAK *Competition*.

Commercial Radio Australia reserves the right at all times and in its absolute discretion to disqualify any entrants and/or to request the return of any prizes and/or to withdraw an announcement that a person has won a prize in the FIRST BREAK Competition if he or she is found to be ineligible.

Commercial Radio Australia may reject incomplete, invalid, ineligible or late entries in its sole discretion.

If there is a change in your unsigned status or other eligibility criteria between the time you enter and the announcement of the 2013 FIRST BREAK Finalists or Winner, you must notify Commercial Radio Australia immediately. In such circumstances, Commercial Radio Australia reserves the right to disqualify you from the 2013 FIRST BREAK Competition at its sole discretion.

Directors, management, employees and the immediate families of: Commercial Radio Australia Limited; any commercial radio station in Australia; and Mushroom Group of Companies, and their associated agencies and companies are not eligible to enter.

Commercial Radio Australia may accept late entries at its sole discretion.

FIRST BREAK COMPETITION ENTRIES

These Terms and Conditions govern the rules under which the FIRST BREAK Competition will be conducted. By submitting your entry you will be taken to have unequivocally accepted these Terms and Conditions and will be entering into a binding agreement with Commercial Radio Australia. If you are entering as a band, the submission of the band's entry will be taken to mean that all band members unequivocally accept and are bound by the Terms and Conditions.

Information on how to enter (including the entry forms) forms part of the terms of entry.

You can enter the FIRST BREAK Competition by submitting a fully completed entry form together with:

- two original, properly mastered broadcast quality audio tracks;
- a one minute video stating 'why the judges should choose you';
- solo artist/band members' details form; and
- a full biography of the band/artist and photo of the artist or band.

Entries must be submitted to Commercial Radio Australia online at www.firstbreak.com.au ("the **Website**").

Entry details, videos, tracks and any other materials forming part of your entry become and remain the property of Commercial Radio Australia and will not be returned to you.

You may only submit one entry to the 2013 FIRST BREAK Competition.

The FIRST BREAK Competition commences on 9 August 2013.

All entries are deemed to be received, at the time of receipt into the Commercial Radio Australia's database and not at time of transmission by the solo artist/band.

Commercial Radio Australia does not guarantee that it will publish or communicate any entry on the Website or elsewhere.

Commercial Radio Australia may extend the time for or terminate the FIRST BREAK Competition at any time and for any reason in its sole discretion. In the event of termination, Commercial Radio Australia may elect not to award any prize in respect of the terminated FIRST BREAK Competition.

The FIRST BREAK Competition rules (including these Terms and Conditions) may be varied by Commercial Radio Australia at any time. Commercial Radio Australia accepts no responsibility for and will not be liable because of any reliance placed on the FIRST BREAK Competition rules before they were varied.

MEDIA AND PROMOTIONAL ACTIVITIES

By participating in the FIRST BREAK Competition, you agree to participate in any media or promotional activities selected by Commercial Radio Australia in its absolute discretion (including participating in a sound recording, photograph, video, or film session, and the broadcasting or transmission by any means of any of the foregoing) and in such activities you agree to:

- express a positive view of Commercial Radio Australia, the operations of Commercial Radio Australia, the Mushroom Group of Companies and the FIRST BREAK Competition (including your participation in the FIRST BREAK Competition); and
- refrain from expressing a negative or disparaging view of Commercial Radio Australia, the operations of Commercial Radio Australia, the Mushroom Group of Companies and the FIRST BREAK Competition (including your participation in the FIRST BREAK Competition).

By entering the FIRST BREAK Competition, you agree that Commercial Radio Australia and any party authorised by Commercial Radio Australia may in perpetuity record, broadcast, transmit and publish in any format (including but not limited to written, audio, visual, digital and electronic formats) any aspect of the FIRST BREAK Competition, including:

- your name and personal details;
- your participation in the FIRST BREAK Competition;
- your entry in the FIRST BREAK Competition;
- the process by which you were selected by Commercial Radio Australia as a finalist or winner;
- photographs, video, audio recordings or film footage related to the FIRST BREAK Competition;
- any promotional activities undertaken with respect to the FIRST BREAK Competition; and
- any other activities pursuant to or in connection with the FIRST BREAK Competition.

JUDGING OF THE FIRST BREAK COMPETITION

The judging panel will be selected by Commercial Radio Australia in its sole discretion and will be made up of music and program directors from Australian commercial radio stations, members of the Media and Executives from the Mushroom Group of Companies.

The decisions of the judges at all times will be final and no correspondence will be entered into. In the event that a winning entry becomes ineligible, the judges reserve the right to conduct further judging as necessary to find a Winner.

PRIZES

The judges will in their sole discretion choose a minimum of five overall finalists ("**Finalists**").

Finalists must sign a Finalist's Agreement in the form annexed before proceeding to the next stage of the Competition. If an entrant refuses to sign a Finalist's Agreement, Commercial Radio Australia may disqualify the entrant at its sole discretion and may choose another Finalist.

The Finalists may be required to attend an exclusive FIRST BREAK performance in Sydney.

The judges will in their sole discretion choose an overall winner ("**Winner**"). The Winner will be chosen by the judges at their sole discretion and no correspondence will be entered into.

The Winner must sign a Winner's Agreement in the form annexed. If an entrant refuses to sign the Winner's Agreement, Commercial Radio Australia may disqualify it at its sole discretion and may choose another Winner from the Finalists.

The Winner will be notified in December 2013.

The Winner will receive 6 weeks airplay for each of its first and second singles on the following commercial radio networks - Australian Radio Network, DMG Radio Australia, Southern Cross Austereo, Prime Radio, Grant Broadcasters, ACE Radio Broadcasters and Super Network ("**Participating Networks**") – valued at approximately \$2 million. This is 12 weeks of airplay in total at times and on days selected in the discretion of the Participating Networks.

The Winner will receive commercial support, valued at approximately \$250,000 in total, across 12 months from the Participating Networks, including commercial support for its first and second singles, touring and album release.

The Winner will receive a digital distribution deal with Liberation Music Pty Ltd (a Mushroom Group company) which includes:

- digital release of two of the winner/s singles via iTunes, Nokia, Big Pond, Spotify, JB HiFi Online, Rdio, GetMusic, Bandit, Guvera and the Telcos via MIA; and
- submission of the winning single to ARIA & AIR for inclusion in the singles chart survey.

The Winner will also receive:

- artwork for two single covers;
 - music video production for two singles;
 - marketing, promotion and publicity; and
 - tour support (production & accommodation)
- (with such budgets to be determined by Commercial Radio Australia and Liberation Music Pty Ltd)

If, in the course of the FIRST BREAK Competition, Commercial Radio Australia is repeatedly unable to contact you, it may disqualify you from the FIRST BREAK Competition and (if a prize has been awarded) may award the prize to another entrant.

It is a condition of the FIRST BREAK Competition that the person claiming the prize:

- is eligible to enter the FIRST BREAK Competition;
- is announced by Commercial Radio Australia as the Winner of that prize by radio broadcast, advertisement, website or through any other means; and
- has complied with these Terms and Conditions and with any request made by Commercial Radio Australia under the FIRST BREAK Competition rules.

If requested to do so by Commercial Radio Australia, you must, before receiving any prize;

- sign a copy of these Terms and Conditions (although these Terms and Conditions are binding whether or not Commercial Radio Australia asks you to sign them);
- obtain and provide to Commercial Radio Australia all the necessary legal clearances to enable it to;
 - upload and stream or in any other way reproduce and communicate to the public the audio tracks supplied by you;
 - make an audiovisual recording of your performances at the 2013 FIRST BREAK Showcase and Australian Commercial Radio Awards;
- execute a Finalist and/or Winner's Agreement in the form prescribed by Commercial Radio Australia; and
- if requested to do so, execute a release and indemnity in the form prescribed by Commercial Radio Australia releasing and indemnifying Commercial Radio Australia in respect of any liability of Commercial Radio Australia in connection with the FIRST BREAK Competition under which you have won the prize and any liability in connection with the acceptance, use and enjoyment of the prize.

If the Finalist and/or Winner of a prize is a minor (ie under the age of 18 years) on the date he or she wishes to collect the prize, that person must be accompanied by a parent or guardian. Eligible entrants under the age of 18 years old must have parental/guardian approval to enter and further, the parent/guardian of the eligible entrant must read and consent to these Terms and Conditions. Parents/guardians may be required by the Commercial Radio Australia to enter into further agreements as set out above on behalf of the minor.

Prizes will be awarded at the sole discretion of Commercial Radio Australia.

Any prizes won in the FIRST BREAK Competition are not transferable and are not redeemable for cash. In applicable cases, the prize must be used on the dates specified and in the manner directed by Commercial Radio Australia.

All prizes are accepted entirely at your own risk, and Commercial Radio Australia excludes all warranties in connection with any prize (including representations as to merchantability and fitness for purposes) to the extent permitted by law.

If a specified prize becomes unavailable, Commercial Radio Australia may substitute a replacement prize in its absolute discretion.

Prizes only include the provision of items expressly listed as being included in the prize. You will be responsible for meeting all costs and expenses, including all travel and accommodation expenses, incurred as a result of a prize being awarded or received or in any other way related to the FIRST BREAK Competition.

If you win a prize in a FIRST BREAK Competition, you are responsible for any and all taxes payable as a result of a prize being awarded or received.

You acknowledge that the provision of the prizes is the responsibility of third parties and not Commercial Radio Australia. You agree that Commercial Radio Australia accepts no responsibility or liability for any delay or failure by a third party to deliver a prize or meet any of its obligations in these Terms and Conditions or otherwise.

RIGHTS YOU ARE GIVING TO COMMERCIAL RADIO AUSTRALIA

Commercial Radio Australia may choose (in its sole discretion) to communicate FIRST BREAK entries to members of the public through any means, which may include (though are not limited to) publication on its website www.firstbreak.com.au, [does it include the Website of any of the Participating Networks?], performance in public for purposes connected to the FIRST BREAK Competition (including at the 2013 FIRST BREAK showcase), and the making of an audio-visual recording.

By submitting your entry in the FIRST BREAK Competition, (entry content including but not limited to music, lyrics, logos and photographs), you grant Commercial Radio Australia a perpetual, royalty-free and non-exclusive license to:

- communicate or otherwise make your entry available to the public from the Website or from any other source related to this or future FIRST BREAK competitions;
- otherwise reproduce, publish, communicate, perform or use your entry for purposes related to this or future FIRST BREAK competitions; and
- make an audiovisual recording embodying your entry and to make copies of that recording and to distribute those copies to members of the public for purposes related to this or future FIRST BREAK competitions.

By submitting audio tracks as part of your entry to the FIRST BREAK Competition you will be giving Commercial Radio Australia a perpetual, non-exclusive, royalty-free licence to communicate, publish, broadcast or otherwise make those tracks available to the public from the Website or from any other source.

This licence from you includes the right for Commercial Radio Australia to reproduce your audio tracks as may be necessary to perform the rights you have licensed to us. Commercial Radio Australia will not pay you for the reproduction, broadcast, communication or publication of these tracks.

YOUR PROMISES TO COMMERCIAL RADIO AUSTRALIA

In addition to submitting your entry into the FIRST BREAK Competition, you make the following legally binding promises to Commercial Radio Australia:

- that you have all the necessary rights to submit your entry into the FIRST BREAK Competition and to grant us the right to publish, communicate or perform your entry as set out in these Terms and Conditions;
- that if you are applying as a band, all members have consented to the entry and have read and agreed to the Terms and Conditions;
- that our use of your entry for the purposes of the FIRST BREAK Competition and related purposes, including making your entry available for public access from the Website will not infringe any third party's intellectual property rights or any other proprietary rights;
- that your entry does not contain any content that is defamatory or that contravenes any applicable Australian law including but not limited to the Copyright Act 1968, the Competition and Consumer Act 2010 or similar fair trading laws, the provisions in the *Broadcasting Services Act 1992* in relation to 'prohibited content' or 'potential prohibited content' on the Internet, laws relating to consumer protection, unfair competition, criminal law or anti-discrimination laws;
- that any information you submit as part of or related to your entry is current and accurate and not in any way fraudulent, false or misleading; and
- that any information that you submit via the Website does not contain any viruses or other malicious computer programs that may damage, modify or delete any of the information on the Website or affect the proper operation of the Website.

YOUR INDEMNITY AND RELEASE

You agree to release, indemnify and hold harmless Commercial Radio Australia, our officers, directors, employees, agents, prize supplier and contractors from and against all direct and indirect losses, damages, costs, expenses and claims (whether foreseeable or not) which may be suffered or incurred by you as a result of or in connection with your use of the Website, your entry in the FIRST BREAK Competition, your acceptance of any prizes awarded in the FIRST BREAK Competition and/or your use of Commercial Radio Australia's services.

You agree to indemnify Commercial Radio Australia and prize suppliers, including but not limited to Liberation Music Pty Ltd, for all direct and indirect losses, damages, costs, expenses and claims (whether foreseeable or not) which may be suffered or incurred by Commercial Radio Australia or its prize supplier as a result of or in connection with your entry in the FIRST BREAK Competition (including, but not limited to, third party claims for infringement of intellectual property rights).

Any costs associated with entering the FIRST BREAK Competition or claiming prizes are the responsibility of the entrant.

GENERAL

Nothing in these Terms and Conditions is intended to or will be construed as creating a relationship of employer and employee, principal and agent, joint venture or partnership between you and Commercial Radio Australia.

To the extent permitted by law, Commercial Radio Australia will not be liable to you in any circumstances for any loss or damage (whether direct, indirect or consequential) suffered by you or any other person due to your use of the Website, your entry in the FIRST BREAK Competition, your acceptance of any prizes, or your use of our services, regardless of whether such loss or damage arises from any act or omission (including negligence) of Commercial Radio Australia, its directors, employees, agents or contractors.

If any part of these Terms and Conditions is held to be invalid or unenforceable, that part only shall be amended or severed to the extent of any invalidity without affecting the validity of the remaining provisions.

The Website is operated from New South Wales, Australia. These Terms and Conditions are governed by the laws of New South Wales and by using the Website you irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales.

Commercial Radio Australia is not responsible for lost, interrupted communications or unavailable network server or other connections, failed telephone, mid-delivery or computer transmissions or other errors of any kind, whether human, mechanical or electronic. Commercial Radio Australia assumes no responsibility for any error, defect, delay, theft or unauthorised access to or alteration of entries.

Subject to any written directions given under the applicable law, if, for any reason, the competition is not capable of operating as planned, including infection by computer viruses, tampering, unauthorised intervention, fraud or any other causes beyond the control of Commercial Radio Australia which corrupts or affects the administration, security, fairness, or proper conduct of the competition, then Commercial Radio Australia reserves the right, at its sole discretion, to cancel, terminate, modify or suspend this competition.

Commercial Radio Australia collects personal information from entrants in order to conduct the Competition and may, for this purpose, disclose such information to third parties, including but not limited to agents, contractors, service providers, prize suppliers and, as required, to Australian regulatory authorities.

By entering this Competition you agree to Commercial Radio Australia's use of your personal information as described in Commercial Radio Australia's Privacy Policy (www.commercialradio.com.au). All entries become the property of Commercial Radio Australia and your name may be included on a database.

USE OF www.firstbreak.com.au ("the Website")

All rights relating to Website materials that are not expressly granted under these Terms and Conditions are reserved by Commercial Radio Australia.

You may view, print, listen to and download any material on the Website provided that all of the following conditions are met:

- you require the material solely for personal and non-commercial purposes;
- your use of the material is for lawful purposes;
- you do not modify the material from the way it appears on the Website;
- no copyright or other notice regarding the rights or property of third parties is removed from the material; and
- you do not assert any copyright or other intellectual property, ownership or other interest or right in respect of the material

All material on the Website is protected by Australian and international copyright and other intellectual property laws. These rights belong to Commercial Radio Australia or to third parties that have licensed Commercial Radio Australia to publish their material on the Website.

In using the Website, you must not do anything that either interferes with or breaches these laws or the rights of Commercial Radio Australia or any third party in the material on the Website.

You agree to not transmit to or via the Website any pornographic, obscene, offensive, defamatory or otherwise unlawful content.

You use the Website at your own risk and you acknowledge that Commercial Radio Australia has no control over any data communications that take place over the Internet.

To the maximum extent permitted by law, Commercial Radio Australia expressly excludes all warranties or conditions (whether express or implied) in relation to your use of the Website or related services including:

- the accuracy, completeness or currency of any information or content;
- that your use of the Website will not result in infringement of third party rights (including intellectual property rights);
- that the services provided by us, including the Website, will be timely, secure or error free; and
- that you will have continuous, uninterrupted access to the Website and related services.

LINKED WEBSITES

To the extent that hyperlinks to other websites exist on this site, Commercial Radio Australia does not assume any liability as to their content and functioning reliability.

Links to other websites are provided by Commercial Radio Australia only as a convenience and do not imply any endorsement by Commercial Radio Australia of the linked site.

If you choose to open or make use of linked websites, you do so at your own risk.

ACCESSING THE WEBSITE FROM OUTSIDE AUSTRALIA

The Website is operated from Australia and we do not warrant that any of the content on the Website complies with the laws of any country outside Australia. If you access the Website from outside Australia you do so at your own risk and you accept sole responsibility for any consequences that result from you accessing and using the content on the Website.