



10 November 2023

Attention: Committee Secretary
Legal and Constitutional Affairs Legislation Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Submitted via online portal

SUBMISSION BY ARN MEDIA LIMITED
COPYRIGHT LEGISLATION AMENDMENT (FAIR PAY FOR RADIO PLAY) BILL 2023

ARN welcomes the opportunity to provide feedback on the proposed amendments to the *Copyright Act 1968 (the Act)* proposed by the *Copyright Legislation Amendment (Fair Pay for Radio Play) Bill 2023 (the Bill)*. The Bill would remove provisions that prevent commercial radio broadcasters from paying record labels more than 1% of gross earnings in licence fees for the broadcast of sound recordings.

About ARN

The ARN group is headed by ARN Media Limited, a company listed on the ASX.

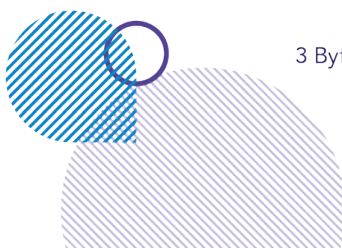
ARN is one of Australia's leading radio broadcast and on-demand audio companies.¹ Formerly known as Australian Radio Network, ARN has ownership of 58 radio stations across 33 markets plus 46 DAB+ stations nationwide in addition to its digital entertainment platform, iHeartRadio. Over 8 million listeners tune in to ARN stations across every state in the country.

The full ARN network is shown as **Appendix A**. The ARN network includes metro stations such as KIIS (including the high-profile team of Kyle Sandilands and Jackie O in Sydney), Pure Gold (including Christian O'Connell in Melbourne) and CADA (the home of Hip Hop and R&B in Australia).

ARN also has 47 regional radio stations across the country, ranging from stations and locations as diverse as 7XS in the small town of Queenstown in western Tasmania, to Hot 100 FM in Darwin, to 2EC in Bega, to River 1467 in Mildura to Star 102.7 in Cairns and many more. Under Australian law, these regional radio stations must play a set quota (in most cases 3 hours) of hyper local daily content (material that has local significance to the licence area) and up to 25% Australian music. As well as providing local news, sport, weather, free community service announcements, and emergency warnings and bulletins, our stations are a vital part of the regional community. Our stations are all enthusiastic promoters and participants in community matters like fundraising drives, community support for the vulnerable, championing local heroes (including local musicians), and giving regional residents a forum to connect and address important issues. In many regions our radio stations are the only free source of local news.

Our stations are proud to be leaders in local. This live and local connection means commercial radio plays a vital role in Australian communities. **Appendix B** provides examples of local regional initiatives.

¹ Further information on ARN is available at www.arn.com.au





Summary

The Private Member's Bill should not be passed.

ARN believes the proposed changes will have significant unintended consequences that will reduce, not increase, support for Australian music, undermining Senator Pocock's stated intention for bringing forward the Bill.

The cap has been in place for more than 30 years and provides the necessary balance between Australian radio stations' legislated obligations to play a minimum amount of Australian music and their obligation to pay licence fees to the Phonographic Performance Company of Australia Limited (**PPCA**) for the rights to that music.

In short, the cap is to protect radio stations against being charged an unfair rate for a product they are forced to buy.

Removal of the cap would remove that protection, putting all of the negotiating power in the hands of the international record labels that own the PPCA – Sony, Universal and Warner.

Giving the record labels the ability to negotiate substantially higher fees risks causing significant financial harm to commercial radio broadcasters. ARN believes this could lead to closures of some regional stations and/or decisions by stations to play less music – outcomes that would diminish a critical platform for the promotion of Australian music.

ARN believes a better approach is a review and reform of the distribution policies of the PPCA. While no details are made available by the PPCA, Commercial Radio & Audio (**CRA**) estimates that less than 10% of the fees collected by the PPCA reach artists, with the rest retained by the record labels or lost in administration expenses.

Reviewing the PPCA's administration costs and redistributing more of the fees to artists could have the same effect as an increase in the cap.

Submission

Commercial radio provides valuable support for Australian music and artists

Radio is a true mass media, reaching 95% of the Australian population every week. The average Australian listens to 16 hours of radio a week, with podcasts, particularly catch-up radio programming, continuing to grow in popularity. ARN's iHeartPodcast network is the nation's number one podcast publisher.

Together, metropolitan, regional and rural commercial radio stations contribute an estimated \$1 billion a year to the Australian economy, supporting 6,600 full-time equivalent jobs and providing significant support for local businesses and communities.²

Commercial radio is also an important part of the Australian creative ecosystem, providing a platform for musical artists and other creative professionals. Networks broadcast local, Australian music, which supports the development of the music industry and artists' careers.

According to a recent report by Deloitte, commercial radio and audio networks broadcast 690,000 hours of Australian entertainment content in 2022, including 160,000 hours of Australian music, equivalent to more than 2.5 million songs.

² *Connecting Communities: The economic and social contribution of commercial radio and audio in Australia*, Deloitte Access Economics, August 2023



Radio stations make a concerted effort to contribute to Australian artists, directly through royalty payments and indirectly by supporting new and established artists by playing their music, promoting gigs and upcoming tours and interviewing them on air.

For example, ARN's Hit network frequently showcases local unsigned artists and was the first network to feature Coodjinburra artist Budjerah's debut single on commercial radio, while K-Sera, the presenter of *K-Sera and the Dirty Dozen* on ARN's CADA, has unearthed and promoted countless Australian R&B and Hip Hop artists.

Radio is more valuable than ever for new Australian music given the rise of streaming, which tends to preference overseas artists and older music

Any reforms that weaken the financial health of the commercial radio industry would undermine its considerable value to the Australian music scene.

Removal of the cap would have a significant impact on commercial radio

The radio industry is strongly regulated, including regulations regarding the minimum Australian music content that must be played, and minimum levels of local news and weather. The 1% cap on music royalties was put in place in recognition that radio is heavily regulated, particularly in relation to the Australia music quota. Without the cap, the record industry would have dominant pricing power over the radio industry who is required by regulation to play Australian music. In other words, the regulation on the 1% price cap is a fair counterbalance to the regulation on Australian music minimums.

The 1% price cap was originally put in place in recognition that Australian regional stations operate on low profit margins and without a cap, there is risk their operations would be commercially unviable. The mischief being cured was to protect regional stations becoming unviable such that local communities would lose access to the local news, sport, weather and emergency information provided. This historic basis for the cap is more acute today, as the heavily regulated radio industry competes for advertising dollars with far less regulated players such as Spotify and Apple.

The Australian commercial radio industry pays an estimated \$37 million in royalty and licensing fees every year. A proportion of these fees – approximately \$4.5 million in 2022 – go to the PPCA for the right to broadcast the international record labels' music.

The PPCA has made it clear that it wants the existing 1% cap in the Act removed so it can renegotiate a rate many multiples higher, with PPCA Chief Executive Annabelle Herd suggesting it should be "somewhere between 2.5% and 5%".³

Combined with other royalties and fees paid to APRA AMCOS and to PPCA for simulcast rights, this would total up to 9% of gross industry revenue.

ARN believes any meaningful increase in fees – let alone at the scale demanded by the record labels – would have a corresponding impact all commercial radio operators and, for some, could lead to station closures, particularly in regional areas.

Another option, which has already been taken up by some network operators, is changing formats to reduce costs by reducing the music content that must be paid for. Stations could reduce the music being played, but in turn, this would reduce the royalties and exposure for Australian musicians – again an unintended effect.

For the past 30 years, the cap has provided commercial radio broadcasters with certainty regarding the costs of music, allowing them to make long-term investment decisions.

³ *Fears that push for radio royalties lift could fall on deaf ears*, James Madden, *The Australian*, 4 June 2023



The cap balances the legislated obligation to play Australian music

As discussed earlier, the cap in the Act balances the legislated music quotas, under which up to one in four songs played on Australian radio must be by Australian artists.

Unlike US music, which is not covered by reciprocal licensing arrangements, songs from Australia and countries such as the UK attract licensing and royalty payments – to the artists through APRA AMCOS and to the international record labels through the PPCA.

Without the quotas, stations could opt to play more US music, reducing their costs. With the quotas, stations are obliged to play music they are equally obliged to pay for.

The cap creates a level playing field between Australian radio and the international record labels by removing the power imbalance. Without it, the labels, who each have annual revenues many multiples of the entire Australian radio industry, would be open to negotiate much higher fees for music the radio stations are obliged to play.

If the Australian music quotas and their obligation on radio broadcasters are retained, it is only fair that if the cap and its obligation on the record labels is retained.

The PPCA should distribute more of its fees to artists

ARN agrees that Australian artists – songwriters, composers and performers – deserve to be rewarded for their talent and hard work. Ensuring they are fairly paid is even more critical at this time given the cost-of-living crisis facing many Australians.

Proponents of the removal of the cap talk about a power imbalance between artists and the radio stations that play their music. This is a false argument for a number of reasons.

1. As detailed above, radio provides a substantial direct (through royalty and licensing fees) and indirect (through airplay and promotion) support to Australian music.
2. The artists are not required to negotiate directly with radio stations for fees. Radio pays fees directly through APRA AMCOS, which negotiates on artists' behalf, and pays fees directly to the PCCA, which purports to negotiate on the artists' behalf.
3. The real power imbalance is between the artists and the PPCA (record labels), which has not been passing on a significant proportion of the fees it raises.

Senator Pocock has indicated that approximately 50% of the PPCA fees are distributed to artists. The reality is that there is no transparency regarding how much of the money is distributed. We know that none goes to session musicians, unlike similar schemes overseas.

In terms of effectiveness of the Bill, query how much of any increased royalty would find its way to the musicians? Analysis by the CRA suggests the distribution to artists could be as low as 10% or less, with PPCA's annual report showing that more than 16% consumed by administration costs.

To illustrate by way of example, if total royalties increased from say \$4m to \$12m, then of that \$8m increase, only around \$800k would find its way to the musicians, while radio has an additional \$8m in costs. In other words, the \$8m could cause risk of financial unviability and loss of regional stations, risk of less forums for Australian music to be discovered, while putting \$7.2m in the hands of multinational record labels and only \$800k in the hands of artists.

Improving the distribution of PPCA fees would represent an easier, fairer and faster solution for artists than removing the legislated cap.



Conclusion

ARN believes this Bill should not be passed. Far from improving outcomes for Australian artists, as Senator Pocock hopes and the PPCA has promised, the biggest beneficiaries will be the multinational record labels.

The labels have provided no evidence regarding the proportion of fees ultimately distributed to artists, and the Australian parliament should not take on trust that any extra collected following the removal of the cap will find its way to our songwriters, composers and performers.

ARN, along with the wider Australian radio industry, makes a substantial direct and indirect contribution to Australian music and looks forward to doing so for generations of artists to come. Weakening the industry and its bargaining power against the record industry giants – as this Bill will do – threatens to undermine this objective.

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If you require any clarity on this submission or any further information, please contact us as per the details submitted online.

Best regards,

Ciaran Davis
CEO & MD
ARN Media Limited

Appendix A ARN Network of Stations across Australia

Station	Location
Australian Capital Territory	
Mix 106.3	Canberra
New South Wales	
Power FM	Bega, Batemans Bay & Far South Coast
2EC	Bega, Batemans Bay & Far South Coast
CADA	Blue Mountains & Penrith
2NM	Muswellbrook & Hunter Valley
Power FM	Muswellbrook & Hunter Valley
2ST	Nowra & Southern Highlands
Power FM	Nowra & Southern Highlands
KIIS 106.5	Sydney
WSFM 101.7	Western Sydney
96.5 Wave FM	Wollongong
Northern Territory	
Hot 100 FM	Darwin
Mix 104.9 FM	Darwin
Queensland	
KIIS 97.3 FM	Brisbane
4BU	Bundaberg
Hitz 93.9	Bundaberg
4CA	Cairns
Star 102.7	Cairns
4CC	Gladstone
Hot Tomato 102.9	Gold Coast
Zinc 96.1	Gympie & Sunshine Coast
River 949	Ipswich
4MK	Mackay
Star 101.9	Mackay
Hot 91.1	Maroochydore & Sunshine Coast
4RO 990AM	Rockhampton
POWER100	Townsville
Star 106.3	Townsville
Cruise 1323	Adelaide
Mix 102.3	Adelaide



South Australia	
5RM	Berri & Riverland
Magic 931	Berri & Riverland
5MU	Murray Bridge
Power FM	Murray Bridge
Magic 105.9	Port Augusta & Spencer Gulf
5AU	Port Augusta & Spencer Gulf
5CC	Port Lincoln
Magic 89.9	Port Lincoln
Tasmania	
7BU	Burnie
Sea FM Burnie	Burnie
7AD	Devonport
Sea FM Devonport	Devonport
7HOFM	Hobart
chilli 90.1fm	Launceston
LAFM	Launceston
7XS	Queenstown & West Coast
Kix Country	Queenstown & West Coast
7SD	Scottsdale
chilli 99.7fm	Scottsdale
Victoria	
3BA	Ballarat
Power FM	Ballarat
Gold Central Victoria	Bendigo
Gold 104.3	Melbourne
KIIS 101.1	Melbourne
River 1467	Mildura
Western Australia	
96 FM	Perth

Appendix B

Examples of regional radio community initiatives

Example 1: Ballarat

Since 1980, the 3BA Christmas Appeal has raised funds and collected goods to provide food hampers and toys to several thousand local families each year, allowing them a Christmas many others would take for granted. For over 40 years, this single activity brought the community together as a joint effort, a whole of community appeal, to raise and distribute millions to tens of thousands of local families.

3BA see themselves as the heart and soul of their community. We are the voice and the arms that wrap around when needed. We lead and drive the needs and stimulate the local economy. We are all that's left as other media have deserted. We do this because we can, because our people are part of the local community. Any impact on our ability to invest in our people diminishes our ability to always be there for our community.

"It's hard to understand when you don't live in Regional & Rural areas to fully understand the intangible nature of who we are and what we do. We are not just another media outlet, we are the community! Streaming services, social media, internet companies nor Australian owned newspaper & Television networks reach out and connect like we do. We are the first call and the last call when our community needs us"

Example 2: Tasmania

In Tasmania, local musicians like Casey Barnes and The Wolfe Brothers rely on regional radio for regular interviews and air-play of their songs. Remembering that this is where they started their careers, not having regional radio stations would hinder the development and rise of local musicians. Local musicians rely on regional radio, just as much as we rely on them for local content. We feature local artists regularly in Devonport and Burnie in our 'Friday Live' segments.

Regional radio stations are the gateway to developing announcers and on-air talent to become the next 'stars' in radio. The 'future of radio' relies heavily on regional radio stations for the development of all staff and talent.

In markets like Queenstown, Scottsdale, Burnie and Devonport – remaining profitable has become a challenge given rising costs for local businesses causing them to cut back on local advertising, while at the same time the radio stations have seen increases in costs.

We have continued to invest in local news and local programming, being important part of enhanced regional services, but which does incur additional costs.

Example 3: Northern Territory

ARN operates Mix 104.9FM and Hot100FM out of its Darwin studios, with 23 full time staff.

At a time when local media is under pressure from international social media companies, we have managed to maintain our local services and local staff numbers. We have managed to achieve this despite the significant re-allocation of local marketing budgets to the social media giants.

One of major strategies has been providing significant support for local charities, community groups, NFP organisations, sporting clubs and more. The list below sets out some of the organisations we have supported across the NT either by free airtime or very generous sponsorships:



Starlight Foundation	Asthma Foundation NT
Camp Quality	Dolly's Dream
NT Variety	Darwin Community Legal Services
Max's Cast for a cure	PHN Health Professional of the Year
The Aviation Museum	Walking off the War Within
It's a Bloke Thing	St Mary's Football Club
NT Police Legacy Ball	Cruise for a Cause
Men's Health Week	Youthworx
Run with Dad Prostrate Cancer	Australian Volunteer Coastguard NT
Basketball NT	Foodbank NT
Darwin Fringe Festival	Barugna Festival
NT Variety Car Club Bash	Carols by Candlelight
Nightcliff Football Club	Darwin Bridge Club
Paws	Greyhound Rehoming Association
NT Irish Association	GTNT Training Awards
Indian Street Food Festival	October Business Month
St Vincents de Paul	Classic Holden Club
Darwin Festival	Tourism NT Brolga Awards
Camp Quality (Radio Auction Day)	

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