

5<sup>th</sup> October 2018

Committee Secretary  
House Standing Committee on Communications and the Arts  
PO Box 6021  
Parliament House  
Canberra ACT 2600

**RE: Parliamentary Inquiry into the Australian Music Industry**

Dear Committee Secretary,

UNIFIED Music Group is a leading Australian owned and operated music company. UNIFIED works across many areas of the music industry including artist management, recorded music, publishing, festivals, online music retail and touring. Established originally as a record label in 2002 it grew and expanded its operation gradually over the last 16 years to now operate offices in Melbourne, Sydney, Los Angeles and London.

In addressing the Parliamentary Inquiry, we are speaking on behalf of the more than 100 artists that our company represents. This submission will aim to focus on one particular issue that has its most significant impact on those individuals at the core of our industry, the artists. The issue at hand is that of the failure in the *Copyright Act 1968* (Cwth) to recognise the right of a performer on a recording to equitable remuneration.

Many of the submissions presented to the inquiry will address issues that relate to the operation of the industry around the artists, but few will address issues that are critical solely to them.

If you, or any of the Committee would like further information on any points presented in this submission, please do not hesitate to contact me.

Kind regards,

**Matthew Rogers**  
**Chief Operating Officer**  
**UNIFIED Music Group**

## LEGISLATIVE BACKGROUND – PERFORMERS RIGHTS

### International Conventions Relating to Performers Rights

While a number of international treaties determine how protection for sound recordings and performers operates, arguably the core rights originate from the WIPO Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations 1961 (the 'Rome Convention').<sup>1</sup>

This treaty establishes certain rights for producers (record companies) and performers (musicians whose performances are recorded on sound recordings). These rights include a right of remuneration when the producers' sound recordings, and the performers' performances included on them, are communicated to the public through a variety of means, including broadcast and 'public performance', ie the act of using recorded music in public, usually commercial, contexts.

The rights in the treaty are activated through WIPO member states signing the treaty. The treaty contains a set of conditions which, depending on the extent to which they are met, creates a system of reciprocity between signatory states, which in turn creates a network of states within which the various rights are enjoyed by producers and performers based in other signatory states.

This system of reciprocity is limited by a set of provisions which allow signatory states to limit the extent to which protection operates in their country, and overseas. These provisions have effectively created a situation where the extent of protection for a producer or performer around the world (if it exists at all) is defined by the extent to which each state has applied the qualification criteria.

With regard to Australia, reservations to the nature of protection were made by Australia when it signed the Rome Convention in 1992. These reservations have had ramifications for Australian performers ever since, namely that performers were not granted a right of remuneration locally in Australia. This has meant that Australian performers have relied on a local *ex gratia* principle to establish a form of equitable remuneration for Australian artists, whereby they receive a share of revenues from producers through a locally agreed contractual mechanism. While this is of benefit to these performers locally, the fact that this sits outside of the Rome Convention regime means that in instances where countries assess overseas protection as a reciprocal factor defining their local protection, Australian performers have no rights, and therefore receive no revenues, when recordings featuring their performances are broadcast or played in public in certain overseas markets, as discussed below.

ArtsLaw Australia provides a succinct explanation of the legislative position for performers in Australia;

*The Copyright Act 1968 (Cth) (Copyright Act) establishes the copyright in works and other material (such as sound recordings and cinematographic film) and also describes three categories of rights or protections that may be available to any person who qualifies as a 'performer'. The rights or protections that flow from status as a performer are:*

- 1. a share of the copyright in sound recording of a live performance that is granted to performers by virtue of s22 and s97 of the Copyright Act;*

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<sup>1</sup> Text of the treaty is here: [http://www.wipo.int/wipolex/en/treaties/text.jsp?file\\_id=289757#P85\\_5169](http://www.wipo.int/wipolex/en/treaties/text.jsp?file_id=289757#P85_5169)

2. *the moral rights of a performer described in Part IX of the Copyright Act; and*
3. *the performer's protections in Part XIA of the Copyright Act related to authorising the recording, reproduction and communication of a performance.*

*These performer's rights are important as they create an interest in the copyright (under s22). They provide a right of action for the breach of the performer's moral rights or for when there is an unauthorised exploitation of the sound recording or film/video recording of a performance.*

*From 1 January 2005, in some circumstances, a performer contributing to the sounds of a live performance were granted a share in the copyright in the sound recording. From 1 January 2005, ownership of copyright in a non-commissioned sound recording is shared between:*

1. *the person or entity who, at the time of the recording, owns the recording medium on which the recording is made (e.g. the person who owns the tape or disc – usually the record label or producer); and*
2. *the performer or performers who contributed sounds to the performance fixed in the sound recording.*

*When a performer is a co-owner of copyright in a sound recording, the performer now has an equal share in exclusive rights:*

1. *to make a copy of the sound recording;*
2. *to cause the recording to be heard in public;*
3. *to communicate the recording to the public; and*
4. *to enter into a commercial rental arrangement in respect of the recording.*

## **WHAT IS THE ISSUE FOR AUSTRALIAN PERFORMERS**

The Australian legislation is out of step with the rights granted to performers in many major territories of the world. In those territories, the legislation took the steps contemplated in the Rome Convention to provide performers with the right to equitable remuneration with the person or entity who owns the recording.

In Australia, the Phonographic Performance Company of Australia who are charged with administering a number of blanket licences on behalf of the copyright owner and the performer took the noble step of making an *ex gratia* equitable remuneration payment to Australian performers. Unfortunately, they are not legally required to make such payment to foreign performers and the monies for such foreign performers are paid to the local copyright owner, if they are paid at all.

## **WHAT IS THE IMPACT OF OUR LEGISLATIVE POSITION?**

When licencing, collecting and distributing revenues relating to recordings created by Australian performers, jurisdictions such as the United Kingdom, Belgium and France will only recognize the legislative rights granted to their nationals under Australian law. Therefore, as a direct result of the Australian legislative position, Australian performers are not able to directly access revenues in those

countries that are otherwise being paid to local or qualifying performers. The monies that should be paid to Australian performers are paid to the owner of the sound recording and it is then subject to the performer's agreement with such owner as to whether the monies flow back to the performer in Australia.

Within our own organization this legislative position has had a very significant financial impact on a number of our artists including Vance Joy and Amy Shark. Within the last five years major Australian artists such as Gotye, Temper Trap, Shephard and Courtney Barnett have had payments in the millions made to the copyright owner instead of directly to the performer. Legacy Australian artists that formerly received these monies direct now no longer receive those monies that are so crucial to their livelihood (NOTE: the UK position on payment to Australian performers changed in 2013).

If paid direct these monies will be flowing directly back in to Australian businesses and helping to build the careers of Australian artists. At this stage they are simply flowing through foreign entities and taking a substantial period to make their way to the Australian artists, if ever.

## **CONCLUSION**

UNIFIED Music Group aims to build long term careers for our artists and issues such as this are crucial for our artists. The legislative change providing for equitable remuneration for performers will ensure we are one step further to securing those long term careers and bringing increased revenue back in to Australia to support the next crop of artists that wish to tour the world and tell Australian stories.

We urge the Australian government to review its signatory status of all international treaties governing the creation and protection of rights for producers and recording artists, such that all rights are enjoyed by all parties, in a manner which ensures reciprocal protection in all overseas markets.