HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Reference: Copyright, music and small business

PERTH

Monday, 8 September 1997

OFFICIAL HANSARD REPORT

CANBERRA

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Members

Mr Andrews (Chair)

Mr Andrew	Mr Randall
Mr Barresi	Mr Sinclair
Mrs Elizabeth Grace	Dr Southcott
Mr Hatton	Mr Tony Smith
Mr Kerr	Mr Kelvin Thomson
Mr McClelland	
Mr Melham	

Matter referred to the committee for inquiry into and report on:

1. The Committee is to inquire into and report on the collection of copyright royalties for licensing the playing of music in public by small businesses, in particular:

(a) the information provided to them by the organisations collecting those royalties on the law under which those organisations seek the royalties;

(b) whether the licences offered and the amounts of the royalties sought take sufficient account of the likely limit on the number of employees or customers of the small businesses who are able to enjoy or hear the playing of the music which is the subject of the licence and royalty collection;

(c) the desirability of amending the law to provide for a means to assess the difference in value to the copyright owners, if any, between the direct playing of recorded music in public (e.g. by compact disc or cassette player) and the indirect playing of recorded music in public by radio or TV broadcasts;

(d) whether it is desirable or practical to require that the collection of all royalties for the playing of music in public be done by one organisation on behalf of other organisations, where royalties are payable to more than one organisation representing different copyright owners;

(e) whether the present structure and constitution of the Copyright Tribunal is the most effective avenue for small businesses to seek review of the amount of the royalties being sought;

(f) the likely future technological or other developments in

(i) the playing of music in public; and

(ii) the methods to be employed by organisations collecting royalties for licensing such playing.

(2) In undertaking the inquiry and framing its recommendations, the Committee shall have regard to:

(a) Australia's membership of international treaties and agreements, including, in particular, its obligations under:

(i) the Berne Convention for the Protection of Literary and Artistic Works;

(ii) the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations;

(iii) the World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights;

(b) the possibility that Australia will accede to the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty concluded in Geneva in 1996;

(c) the reference to the Copyright Law Review Committee so far on simplification of the Copyright Act;

(d) the purpose of the Copyright Act and Australia's membership of international treaties in fostering the creation and performance of musical works and the enrichment of Australia's cultural heritage;

(e) the fact that some composers and performers of music and producers of musical sound recordings are also operators of small businesses;

(f) the relevant findings and recommendations contained in the *Review of Australian Copyright Collecting Societies* by Shane Simpson; and

(g) any dispute resolution mechanisms established in relation to the licensing of the public performance right.

WITNESSES

CATANIA, Mr Nick, Executive Officer, West Australian Retailers Association and West Australian Retail Council, 485 Fitzgerald Street, North Perth, Western Australia 3

CONNELL, Ms Jenet, Director, Sector Policy Development, Small Business Development Corporation, 553 Hay Street, Perth, Western Australia 3

GERONIMOS, Mr Nickolas Andrew, Director, Pharmacy Guild of Australia, WA Branch, 1322 Hay Street, West Perth, Western Australia 3

HARRY, Mr William Frederick, Panel Member, Deregulation Review Panel, Small Business Development Corporation, 553 Hay Street, Perth, Western Australia 3

MARSHALL, Mr Leslie James, Executive Director, Master Ladies Hairdressers Association, Federal Chairman, Hairdressing and Beauty Council for Australia, Office Level 11-26, St Georges Terrace, Perth, Western Australia 6000 3

NAGY, Mr James Paul, Executive Director, West Australian Music Industry Association, 58 James Street, Northbridge, Western Australia 6003 26

O'DONNELL, Mr Michael Vincent, Research Officer, Small Business Development Corporation, 553 Hay Street, Perth, Western Australia 3

RIDGE, Mr Gary James, Managing Partner, Sunset Music Australia, PO Box 234, Northbridge, Western Australia 6003 26

THORNTON, Mr John Charles, President, Subiaco Business Association, Representative, Combined Business Associations of WA, General Manager, Regal Theatre, 474 Hay Street, Subiaco, Western Australia 3

WOODWARD, Mr Peter, State Secretary, Musicians Union of Australia, Perth Secretary, Union of Employees, Secretary, Musicians Guild of Western Australia Inc., 224 Stirling Street, Perth, Western Australia 6000 26

HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

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PERTH

Monday, 8 September 1997

Present

Mr Andrews (Chair)

Mr McClelland
Mr Mutch
Mr Randall

The committee met at 1.16 p.m.

Mr Andrews took the chair.

CHAIR—I open this public hearing of the committee's inquiry into the licensing of copyright for the playing of music in public by small businesses. I would like to welcome the witnesses who are here today and any other members of the public who are attending this public hearing of the committee.

This is the first hearing that the committee will conduct on the copyright royalties inquiry. The subject of the inquiry is the law under which royalties can be collected from small businesses for the use made by them of copyright materials consisting of playing music on commercial premises. Members of the committee are well aware that this is a matter that is clearly the subject of widespread concern in the business community at present.

On one hand there have been concerns expressed by small businesses about the actions of the Australian Performing Rights Association and the Phonographic Performance Company of Australia, the main copyright collecting societies, in seeking the payment of royalties for licensing the playing of music, in particular by way of a radio. Some people have described these payments as double dipping because radio and TV broadcasters also pay royalties to broadcast the music. On the other hand, APRA and PPCA have defended their actions in seeking licence fees from small businesses by references to Australia's copyright law. There has also been support from their copyright owning members who rely in part on the royalty income from public performance of their works.

Today the committee looks forward to hearing from a panel of business and industry representatives, many of whose constituents have been asked to pay for licences and who are, indeed, paying licence fees. We will also be hearing from a panel of music industry representatives whose constituents are the beneficiaries of licence fees through the distribution of royalties.

[1.20 p.m.]

HARRY, Mr William Frederick, Panel Member, Deregulation Review Panel, Small Business Development Corporation, 553 Hay Street, Perth, Western Australia

CONNELL, Ms Jenet, Director, Sector Policy Development, Small Business Development Corporation, 553 Hay Street, Perth, Western Australia

O'DONNELL, Mr Michael Vincent, Research Officer, Small Business Development Corporation, 553 Hay Street, Perth, Western Australia

CATANIA, Mr Nick, Executive Officer, West Australian Retailers Association and West Australian Retail Council, 485 Fitzgerald Street, North Perth, Western Australia

GERONIMOS, Mr Nickolas Andrew, Director, Pharmacy Guild of Australia, WA Branch, 1322 Hay Street, West Perth, Western Australia

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THORNTON, Mr John Charles, President, Subiaco Business Association, Representative, Combined Business Associations of WA, General Manager, Regal Theatre, 474 Hay Street, Subiaco, Western Australia

CHAIR—Do you have any comment to make in relation to the capacity in which you appear?

Mr Harry—I also appear here in my own right as a small business person.

CHAIR—Thank you. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament.

Ms Connell, firstly I should say thank you for, I understand, your efforts in bringing this panel together, which will be of assistance, no doubt, to the committee. I understand that you are willing to make some brief opening comments on behalf of all the members present.

Ms Connell—Thank you. The Small Business Development Corporation convened the panel, based on the understanding that we have common concerns with regard to the Copyright Act and APRA. We actually met, about a week ago, to consolidate our views. What I will be doing is briefly running through our common concerns before calling on my colleagues to provide additional supportive evidence. Given that there are so many of us here, we are all going to be quite brief on that.

Firstly, there is no doubt that our members and Western Australian small business in general are very concerned and dissatisfied with the current activities of APRA particularly. The methods being employed by APRA are seen as intrusive and reportedly threatening, intimidating and unreasonable. That is the clear message we are getting from our memberships.

The fact that APRA representatives can enter any work site, uninvited and unannounced, at any time, and demand licence fees causes small businesses considerable distress and it is not doing a lot for the public image of APRA. It is important to state up-front that small business does not appear to have an issue with the rights of composers or musicians to receive their dues for the public use of their works; it is merely a question of who should pay and how it should be collected. I think it is important that we mention that it is not a dissatisfaction with why; it is how and who.

The second point the panel agreed it would like to stress is this apparent double dipping that you alluded to, of licence fees for the broadcast of public music. It is the feeling from the panel that music broadcast by radio and TV stations should attract a copyright fee at the source, not the destination. Businesses should not have to pay the fee to play public radio or TV at their place of business, but the fee should in fact be paid by the radio and TV stations themselves at a single collection point. That is the general feeling. The vast majority of businesses use the radio for purposes other than to benefit their customers and are incurring licence fees, we believe, as an unintended consequence of the current Copyright Act provisions, which support APRA.

The third point the panel wishes to stress is that we believe that businesses playing CDs or tapes should incur a licence fee when, and only when, a true public performance can be ascertained. I am referring to the fee currently being collected by the Phonographic Performance Company of Australia, the PPCA. To facilitate this, clear definitions of what constitutes a public performance and business benefit are what small business needs to clarify the situation.

In premises accessible to the public, where the music is directed at the customers, the panel is of the belief that a licence fee is probably appropriate. But in the common example of a worker playing a cassette or music in the back room or in the back workshop of a premises for the primary purpose of self-entertainment, we do not believe a fee should be applicable.

Finally, before I hand over to individuals to present their own cases on behalf of their members, it is the view of the panel that changes must be made to the Copyright Act to remedy the current situation, and to prevent the possibility of other collection societies adding to the current business burden. Unfortunately, APRA has, by its very actions, created an extremely negative business image which has and will continue to be detrimental, ultimately failing to assist those performers and musicians who are entitled to their commission.

That is, very broadly, the common sentiment of the panel. I will just pass briefly to Mike O'Donnell to provide the SBDC's views.

Mr O'Donnell—The SBDC periodically receives a number of calls from small business operators to do with, principally, the licensing by APRA, but also there is concern when, shortly afterwards, there is a

follow-up response from the PPCA. The two appear to be linked and that causes quite a bit of confusion in small business operators' minds. Most people believe it is a government imposition or a scam, and when the second letter arrives from a different organisation, that reinforces that belief. Most have a fear of doing anything illegal or wrong, and therefore are not sure what they need to do. Some have been prosecuted by APRA for not paying licence fees, so there is a real fear out there in the small business world to do with the licensing and the confusion.

The main cry is, 'Where will it end?' There is an open-ended number of licensing organisations. We are aware of nine at this stage, of which two are active. But the main fear is that it is open-ended. Really, as Jenet said, they are quite happy to pay a fee for a genuine public use of a composer's work, but they are just worried that this could grow into an unlimited number of societies. They do not know who has the copyright on what music. They are looking for it to be clearly defined, with one point that they deal with.

Mr Catania—Chairman, I think Ms Connell alluded to what I am going to deal with, and that is the method of collection and double dipping. The method of collection has been the cause of great consternation amongst our members; that is the retailers mainly. I represent the small business retailers of Western Australia, who have stated that even police in our state—and, I am sure, the rest of Australia—whenever they have to actually search an organisation, a home or a business, need a warrant. We have a situation where the people collecting the dues have, if you like, a right to enter a business, in fact be intrusive in their entrance, be intimidatory in their entrance, and show a great deal of arrogance when they demand the fees.

What we are saying is if a licence fee has to be collected, it should be collected in an appropriate manner. It should be collected in a manner where consideration is given to the person to which the request is to be made. There should be appointments made to enter the premises. It is only a common courtesy. Let us take away all the law side of it: it is common courtesy to say, 'Look, I'm going to come into your premises. I want to examine something on the basis of a levy I may have to charge. Can I come in?'

People in small business feel that their businesses are their own, and they need to be asked for entry into that business. It is not happening. It is just a matter of walking in and demanding. The perception of justice is just not there. The perception that 'I own my business' is not there. The manner of collection and the method of collection ought to be revised and a proper process put in place whereby the small businesses of Australia feel a lot more comfortable.

Secondly, and immediately going into that, we have the double dipping. Small businesses feel, as Ms Connell said, that the licence should be paid at source—that is, radio, television and whatever—rather than they having to pay an individual one. Where small business is in a shopping centre and the shopping centre has reticulated music, by virtue of the variable outgoings the landlord can then pass the licence cost on to the small business. So you have small business paying their own fee; they then have the fee that is passed on to them by their landlords. That is the second way they pay a fee, so they are paying it twice.

We feel, as small businesses, we should pay only once. We do not agree with paying at all, but if we have to pay, it should be once. If we are in a shopping centre and the management of that centre passes on the fee to the small business, that should be the end of it. The small business, the retailer, should not have to pay another fee. That is the double dipping. It is an impost. Already small business has a huge amount of

impost through costs, and I think that is one impost that should not be charged twice. Secondly, there is the compliance cost also. Small businesses are, these days, burdened with huge compliance costs, and it is only another compliance cost.

Our objection is on two counts: firstly, on the method of collection; and, secondly, on the fact that in most cases small businesses in regional shopping centres, and shopping centres generally in the metropolitan area, are charged twice, and we object to that double dipping.

Mr Geronimos—Mr Chairman, the retail pharmacy area is a specific case, but the issue can and does translate across many of the retail sectors. Primarily, pharmacists are tied to their dispensaries and their community pharmacies because they cannot operate legally without a pharmacist on the site. Most pharmacies, as you would be aware, fall into the category of micro-businesses. Generally speaking, there is not more than one pharmacist employed on the site. Hence, the only access to the outside world for the pharmacist during the course of their business day is through the radio and through the telephone; basically listening to the news and ringing other pharmacists.

Secondly, the issue of public areas in a business, and the public part of the shop, needs to be defined and should be open for discussion, because the area behind the counter in a community pharmacy is not accessible to the public. It is not accessible because, under the Poisons Act in Western Australia and under the Pharmacy Act, that is where the schedule 2, schedule 3, schedule 4 and schedule 8 medications are stored. You cannot have

narcotics behind a counter in a particular part of a shop and allow public access to that area. The public does not enter that part of the premises.

In most instances, the pharmacist would be playing the radio, as I said earlier, to keep up to date with the news. A similar situation would occur in most small businesses which are owner-operated. Most small business people, whether we like to believe it or not, are basically trapped inside their shops. They cannot leave their shops because they run it themselves, so the same does apply, to a lesser extent, to all small businesses. Again, the radio is used as a conduit to the outside world.

As Mr Catania and others have already indicated, radio stations already pay copyright royalty fees. We believe that that is appropriate for the music that is played. However, the additional impost on the individual retailer, in particular pharmacists in this case, is particularly onerous. Should the proprietor of the business wish to entertain themselves personally with other music—again, in the non-public area of their premises—the guild contends again that amendments should be made to the appropriate legislation to reflect that the playing of such music or radios in those non-public access areas does not attract the additional copyright fee.

We reiterate all of the concerns placed earlier by the SBDC and the WA Council of Retail Associations about the way in which APRA have approached many of our members. They have been particularly threatening, with regard to the members, in the tone of their correspondence and in the entry that they have sought without appointment, as Nick has already indicated. Finally, the Pharmacy Guild of Australia nationally will be putting a submission, before the closing date, to the inquiry, and will be seeking

to make further representations to the committee.

Mr Thornton—I represent small business in the sense of the Subiaco Business Association and the Combined Business Associations in WA and strongly support the statements that have already been made, but would like to specifically deal
with two areas; possibly three, actually.

One is the arguments seem to be very difficult and very vexing about when it amounts to public performance. I think there would be a fairly simple way. We would like to suggest that the simple explanation of this would be that if you have a fully reticulated music system—if there is one installed in the place of work or installed in the premises which is designed to publish or resubmit music for the public's or for the employees' benefit—that would essentially be the criteria, which would mean that it is not someone playing their own personal radio.

It would also get over the very onerous demands that APRA appear to have the power to do at the moment: to just phone you up and if they hear music in the background they can sue you for playing it. In my office alone, I would have access to television and radio information pretty much most of the time. If someone rang me up, they might well hear that and then demand a fee for public broadcast, which it clearly is not. So I think a reticulated system would be a fairly simple way to define that.

The other thing, I believe, is that APRA have not been able to or willing to, in the past, actually indicate what they are able to licence. This has resulted in some disastrous legal and potentially legal arguments, and disastrous financial results. One or two of my clients at the theatre have been almost sent bankrupt because of the operations of APRA, where a show was licensed and subsequently it turned out they did not have the right to license it. Overseas companies got involved, APRA got knocked out, and our people got knocked to pieces. APRA clearly were trying to licence something they did not have the right to do. That is a very serious situation. If you ask APRA what is copyright or what copyright they represent, they will not tell you.

What they will do, however, in no uncertain terms, is threaten you if you do not pay whatever they ask. The interesting thing is that there is no set fee; it is whatever they ask for. There are three problems here: if you do not agree to pay the fee immediately, they will double it or treble it; if you do not pay on the due date, they might refuse to give you a licence and thereby effectively put you out of business; and, the ultimate threat, of course, is that they have got so much money to spend, as they have said to clients of mine, that they will send you bankrupt. In fact, in one case they very nearly did this.

The question of royalty payments needs to be looked at both ways. First of all, they should be prepared to demonstrate what they do represent and perhaps, importantly, what they do not in some cases. They should also be accountable more publicly for payments to their own members because, interestingly, on the other side of the spectrum I have had performers—I could quote details, but they do go back some way—who have been asked to pay APRA fees and refused to do it on the grounds that they have never received money from APRA.

There are some real difficulties in those areas. I welcome this inquiry. I think it is long overdue. There

need to be some set formulas that are clearly understood and promulgated, that everybody understands, so that no organisation—be it APRA, the PPCA or anybody else—can just come along with an ask. It has to be a set thing. Then there should be set penalties prescribed for those people who simply refuse to do the right thing.

Mr Harry—I will endeavour not to go over the same ground, although I must stress that the overbearing and dictatorial manner in which APRA operates—the powers evidently provided to that organisation by the federal parliament—is an issue. I think it would help if government would tell us what powers they have allowed APRA to use. The debate is ranging around a situation where APRA are telling us what their powers are and nobody else is. That can represent very major difficulties for small businesses.

APRA say the playing of music as part of a commercial activity is the issue. Therefore, we have to interpret what the 'part of a commercial activity' is. I want to stress this situation: there are examples of hundreds of thousands of small businesses in Australia where the workers will have their own or their employer's radio playing for their own purposes and not for the purposes of the public. If I could give you some examples of that: the motor mechanic in the workshop of a service station would listen to a radio and a painter, painting a commercial premises or a house, would be playing the radio to relieve the boredom of the type of work they are doing. Yet APRA are claiming that whether it is the employer's radio or the employee's radio this is the case in point where a fee is required.

I do not believe that the federal parliament ever gave anybody a licence to do that. The sooner the federal authorities clear up what APRA is and is not allowed to do would be of great assistance to small businesses. I can give you an example of that, because APRA have sent me the normal letters that have been sent to 600,000 or 700,000 other small businesses. My sons and I operate a production nursery; not a garden shop, a production nursery. Our workers take their radios out into the field and play the radio. We do not object because it helps them pass the time of day.

They are not always listening to music; they could be listening to cricket or football and so on. But because the airwaves go into the part of the premises which is a public open space, APRA say we should pay a fee for that. I can go further and say that if they go to the staffroom and play the radio at lunchtime, it can be heard in the shop area or the area the public goes to. I happen to have a personal residence, and my radio could be heard there. There is a great deal of poetic licence being taken by APRA as to what the government has actually given them. I think it would help no end if APRA themselves were advised by government or government authorities where their tenure in this situation starts and ends.

I have mentioned the worker with his own radio. Are employers supposed to say, under these circumstances, 'No, you cannot play your own radio in our workshop because I'll be up for a fee if you do this'? There are something like 800,000 small businesses in Australia. APRA are drawing the long bow when they say playing music, in some of the illustrations I have given, is part of a commercial activity. I know what a part of a commercial activity is: that is, if a shopping centre plays music for the entertainment of the masses going to a shopping centre clearly they should pay a fee. But there are thousands and thousands of other illustrations you could give where it is not part of the entertainment of the public. It is a part of the entertainment of the proprietors themselves or their staff. Thank you very much.

Mr Marshall—Let me firstly say that I fully support the comments that have been made by my

colleagues here today. To draw a comparison to hairdressing is probably closer to some of the comments that Nick Geronimos made. The average salon has approximately 2.6 to three operators. Quite often through their daily work they do not have clients and they may bring their radio to work, or a cassette, and play it purely for their own entertainment in between the clients that they have to service.

The consideration is that they have already paid a licensing fee in purchasing the record, the tape or the CD, and basically they feel again it is either double or triple dipping to this level. You have a situation where someone can sit on a beach and play a ghetto-blaster. People within a radius of 50 metres can hear that ghetto-blaster. Where do you draw the line? The same could be said of some of the cars that pull up at intersections. In consideration of that, we are wondering exactly what the intent is with the legislation and where you draw the line.

The question the hairdressing industry would like to ask is: what does constitute public performance? That needs to be clearly defined. Staffing levels would certainly assist: is it there to penalise small business as purely another excessive fee that they have to find? The confusion between the two bodies, whether it be APRA or PPCA, has created a lot of confusion within the hairdressing industry. I receive a number of calls, usually when those fees go out, saying, 'I've already paid this one. Do I have to pay this one? What am I paying it for?' If it is a fee that they have to pay, then some way or another it has to be structured in such a way that it is fair and equitable. I do not think I can cover any more. Everyone here has had similar things to say, but, in saying that, it really is an impost on small business.

CHAIR—Thank you very much. Can I just begin some questions. I will direct them through you, Ms Connell, but others may want to join in. We have got about half an hour. We will try to be brief and if you try not to repeat what others have said, we will make the most use of it.

As a matter of historical background, if I can put it that way, I am just curious when the problems you alluded to began.

Ms Connell—I have been with the corporation for nine years and it seems to go in cycles. The latest wave seems to relate directly to the fact that APRA have actually lifted the ante and, by their own admission, are aiming at the smaller operators now. They have improved their administrative procedures. We have met with APRA a number of times to try to get some sort of clarity to assist small business to understand the rights and the role of APRA, and they have told us they are particularly targeting the smaller outlets. In the last six months we have had a sudden increase in the number of complaints coming from small business people.

Usually, as Mike said, the first thing they ask is, 'Who are APRA? What government agency are they attached to?' We have to explain to them that it is a private organisation, which only infuriates them further. It is going back to what Fred Harry said about the need to clarify the role and the rights and who is directing APRA. In the last six months there has been an increase, due directly to the increased activity of APRA itself.

CHAIR—I was going to ask you about whether you had met with APRA. What has been the outcome of those discussions?

Ms Connell—We approached APRA with a view to trying to get them to perhaps alleviate the burden that we were hearing from small business. APRA are very good at justifying their position. They are very well organised. It is an extremely efficient and organised activity that they run. It certainly calmed us when we spoke to them about their rights and who they are working for. We were happy then to pass on to small business the fact that APRA are collecting money on behalf of ostensibly other small businesses. We tried to get APRA to realise that the barriers for what constitutes public performance were being pushed too far. We were asking for some sort of halfway point or some sort of acknowledgment of the small workplace.

We did not get very far with that. We did speak to them about such things as going perhaps through a business association and getting a blanket licence to cover all their members, but of course that just transferred the administrative burden from APRA to the business associations. We talked to them about perhaps introducing a tiered licensing system, so that if they must collect for radios and the number of speakers per outlet they could actually have a smaller rate, depending on the size of the workplace. But that has been to no effect as yet.

CHAIR—If I could take a hypothetical example, to understand the extent to which the matter is being pushed with small business: if a sole person hairdresser has a radio playing on his or her premises, which is on the ABC—which is mostly talkback but it also includes the odd piece of music—in those circumstances has a licence fee been demanded?

Ms Connell—Absolutely. Les could probably back that up.

Mr Marshall—Most certainly, Mr Chairman.

CHAIR—Let me take another example: if it is a food premises, a cafe sort of arrangement, with what I would call a public area where the tables or the counter is, with a private food preparation area at the back somewhere, and a radio is playing at the back and can be faintly overheard at the front, is that a similar situation?

Ms Connell—Yes, it will be, and any speakers that might be set up as well. It depends, though. If they are playing the radio, they will incur an APRA fee; if they are playing CDs or tapes, they will invoke a PPCA fee for public performance of material—often it is both, depending on whether you use both.

CHAIR—In your awareness are there any commercial, retail, professional premises where APRA have said, 'This is private rather than public'?

Ms Connell—No, not outside the home. The definition of public is anything outside the home. I think they have made allowances for taxicabs. But once you step outside the private home, it becomes a public arena. That is our understanding of the definition of a public place.

Mr Harry—I can help you there, Mr Chairman. Their pamphlet says:

The playing of music outside the private, domestic or family circle is likely to be regarded as a performance in public.

CHAIR—And what I hear you all saying is that, apart from the words 'likely to be regarded', in practice they treat it that way?

Mr Catania—It is regarded. There is no distinction between where the preparation room, as in the example you gave, in a coffee lounge, is at the back and the service is at the front, if you like, to the public. There is no distinction between that. There is a fee charged and a fee demanded.

CHAIR—One of you said something about there being no scale of fees and, if a small business operator baulks at paying the licence fee, he or she is told that it will double or the copyright will be withdrawn.

Mr Thornton—Yes.

CHAIR—Can you elucidate?

Mr Thornton—I can only repeat that that threat has been issued to me, because in the theatre industry we have everything specially and separately licensed. Every show we put on has its own licence. Where APRA have come into it—

CHAIR—Can I just stop you for a moment. When you say 'in the theatre industry', I am not quite sure exactly what you mean.

Mr Thornton—If you put a show on in a theatre—

CHAIR—This is live theatre?

Mr Thornton—A live performance in a public place. You have to have a licence, and we get specific licences for the shows that we put on. APRA demand another general licence in case something of theirs happens to be broadcast which might not otherwise be covered, and PPCA similarly. But we have in fact been threatened. When we have said to them, 'Look, we've paid all the licence fees. It's been done with one of the big agencies in London' or 'New York,' or something like that, they have come in on top of that, and then said, 'Well, if you're wrong, we might refuse to license you'—in other words, defranchise you, which is what they did to one of my colleagues—'or alternatively we'll just demand an outrageous fee.' They just say, 'If you don't agree immediately to this,' which on the face of it perhaps is not terribly unreasonable, other than in principle, 'then we'll just make it anything we like. You have to pay whatever we say.'

CHAIR—Are there cases where small business operators have been taken to court in Western Australia?

Mr Thornton—Yes, there are. I have heard that there are. I am not specifically aware of any, but I could find out.

Mr RANDALL—Has anyone got any detail?

Mr O'Donnell—I know of one instance where a lady was taken to court without her knowledge. She thought she had a licence from APRA.

CHAIR—What sort of business was this?

Mr O'Donnell—That was a hairdresser's shop. She thought she had paid the fee. APRA sent a threatening letter, which she ignored because she thought she had paid the fee. The next thing she knew she had correspondence saying that in the Local Court at Parramatta she had been found guilty, basically, and was due to pay costs. So a fee that was $38 roughly became $123. So it does happen.

Mr McCLELLAND—I am just trying to get a feel for the issues. As I understand it, APRA seeks to impose their licence fee or whoever's licence fee it is on radio broadcasts—radio or television?

Ms Connell—That is right.

Mr McCLELLAND—And PPCA is in respect to the broadcasts from CDs, compact discs, for instance?

Ms Connell—Or tapes, yes.

Mr McCLELLAND—Or tapes.

Ms Connell—Productions, yes.

Mr Geronimos—Just on that point, the APRA licence form actually has a separate category for CD or record-player, a separate one for tape-player, background music system, radio set—and I would like to table the document.

Mr McCLELLAND—So they seek to impose it also on CDs, do they?

Mr Geronimos—Yes.

Mr O'Donnell—That is correct.

Mr McCLELLAND—APRA, as I understand it, are intended to have royalties for the songwriters or the creators of the music, and the PPCA, if I am correct, are seeking to obtain royalties on behalf of the actual performers, the singers and musicians.

Mr O'Donnell—The sound recording.

Mr Thornton—The mechanical recording.

Mr McCLELLAND—It is difficult to generalise, but in areas where there is intended to be a public broadcast, such as a gymnasium or a discotheque, I suppose it is more likely that they would in those

circumstances use a compact disc or tape?

Mr Thornton—Yes.

Mr McCLELLAND—But, nonetheless, from your evidence APRA would still seek to extract a licence fee, as well as the PPCA?

Mr Thornton—That is correct.

Ms Connell—On behalf of the writers and composers.

Mr McCLELLAND—Has anyone had difficulty with the collection techniques of the PPCA? I do not know how they go about collecting their licence fees.

Ms Connell—The only query we have had at the SBDC is that it comes right after APRA. Even though APRA and the PPCA are separate organisations, it seems that, once you get caught by APRA, very soon afterwards you will have a request from or an investigation with the PPCA. So it was the link between the two rather than the activities of the second that we have been made aware of.

Mr Thornton—One of the problems we have had again in the theatre side is that where we have special licensing, which is very rigidly controlled and covered and understood internationally, PPCA in particular have argued that their licence is quite separate from all of that and we have to have that anyway. We have so far successfully argued that they are wrong, but they nonetheless have attempted to continue to demand and are currently continuing to demand a fee in case something is played that is not covered.

We have also a contract with the party who are putting on the show, the producer. The producer in that contract has to cover all appropriate licences and licence fees, and PPCA still refuse to acknowledge that as a proper control document. In other words, the licensing is paid by the producer, but they also want it to be paid by the theatre. So again it is that double dipping.

Mr McCLELLAND—Is a fair assessment of the evidence that people would not begrudge the collection of licences in a situation such as a discotheque or a gymnasium where there are speakers and that itself is central to the operation of the business?

Ms Connell—That is right.

Mr McCLELLAND—But it is this question as to where the private use as against public use—

Mr Thornton—The boundaries, where they really lie, yes.

Mr McCLELLAND—The boundaries, yes.

Ms Connell—The panel spoke about that in terms of getting our own minds straight about how we could help with the definition. It was really where there was a deliberate attempt for business benefit—

Mr McCLELLAND—Through a PA system.

Ms Connell—Directed at the client, either to attract them, amuse them, entertain them, whatever. But it is directed at the client, not at the individual workers or self-entertainment.

Mr Catania—The other thing that is very important is that a lot of small businesses, particularly retailers—and I will reiterate this—pay twice because costs are passed on. If you are in a shopping centre, costs are passed on by the shopping centre owners on to the small businesses, on to the retailers, and then in turn they are asked to pay another licence. So they find that a double burden. It is a double dipping for APRA, but it is a burden on them. Small businesses are finding it very difficult these days. I do not think they have experienced the difficulties in the last 30 years that they are now, and to have a double impost is certainly something that they are—

CHAIR—Can I just clarify that. I understand that, if you have retail premises, for example, in a shopping mall and, as is common in a lot of shopping malls, there is what I would call piped music—that probably shows my age—being played throughout the complex, in those circumstances APRA or PPCA might claim a licence fee from the owners or operators.

Mr Catania—From the landlord.

CHAIR—The landlord of the mall. Are you saying that if a particular retailer in that mall does not beyond that play any radio or cassette, nonetheless that person, the retailer, is being pursued for a licence fee?

Mr Catania—No. In the case of double dipping, it is when they actually are pursued. They may have music in their own establishment, in their own little retail outlet, that they are asked to pay a fee for. The landlord is able to pass that cost on to the retailer through variable outgoings. So the little retailer will pay the landlord's fees, because the landlord does not pay; he just passes them on. The retailer will pay the landlord's fees and also his own particular fee.

CHAIR—But would not the argument there be that that is in relation to two different lots of music? That is, there is music in the mall, the public area outside the retail premises, which may float into the shop or may not, but additional music being played by the retailer for which a second licence fee is being sought.

Mr Catania—You could make that argument. Let me say this: there are not too many businesses where receiving the same benefit and paying two licence fees or two imposts, as they call them, is acceptable. I think we have got to distinguish between a licence fee—

CHAIR—If it is the same benefit, why would you play another radio in the shop, if it is the same music?

Mr Catania—The shopping centre attracts patrons. Then you have got to attract from the shopping centre into your own establishment. You could say that is two lots. However, you are paying two lots of licence fee to the same organisation. As I say, if retailers pay one fee, either through variable outgoings by paying the landlord or their own fee if the landlord does not pay—I think one fee is quite enough.

Mr Geronimos—As it stands at the moment, the mall music licence fee is part of the variable outgoings, but if you have a radio in the dispensary of your pharmacy you would have to pay another fee for that radio.

CHAIR—Yes, I understand that.

Mr Geronimos—So again that is another circumstance where—

CHAIR—You have not convinced me, though, that that is double dipping.

Mr Geronimos—You have already paid for a fee for the mall music.

CHAIR—For different music.

Mr Geronimos—Yes.

CHAIR—I have not made up my mind finally, can I assure you. I am just trying to discuss it and to understand it. I thought when you were referring to double dipping it was more the concept that, in relation to music played on the radio, the radio station had paid a licence fee and why should another licence fee be paid on top of that where the primary purpose of the use of the radio is for the enjoyment of the proprietor of the store.

Mr Catania—That is three times.

Ms Connell—That is the main concern with the SBDC—the double dipping where it is paid by the radio station but then the recipient is paying again. That creates concern. The concerns in the retail shopping centre are quite real. That may be an issue for the landlord and tenant to sort out, but certainly to small business it appears that they are paying twice for things. But the double dipping that the SBDC is most concerned with is that our small business clients cannot relate to the logic of copyright having been paid at the radio station and again when they are playing it through their own radios.

CHAIR—It may be useful if we separate out the issues, because I suspect there are different considerations applying. You may be right, Mr Catania, but for the purpose of us understanding, it may be better if we separate the issues.

Mr Marshall—Mr Chairman, music is a very personal taste. If I have to take an example, I would use a hairdressing salon in an arcade where they are actually paying, under their outgoings, a fee to APRA or PPCA for the right to play music. The clients in the salon may not necessarily like the music that is being played. In the main, it is played for the owner of the salon, for their own personal entertainment, to relieve the boredom when they have not got clients there. So it means they are paying a fee for the right to play music in their outgoings to the arcade or the establishment; they are paying exactly the same fee to play the same music in their own salon, just because they do not like what is being played in the main venue and they prefer to play something different; and if they happen to have a radio in their CD player and that can be turned on, they then have to pay to APRA. It is triple dipping.

CHAIR—Can I just pick you up on that. Are you saying that, if you walk into a hairdresser and there is a combination radio/cassette-player or radio/CD-player/cassette-player, then both APRA and PPCA will claim a licence fee, even if you are not using one of them when they happen to walk in?

Mr Marshall—It is usually taken, by the fact that you have it on the premises, that you will be playing it at some stage; and if your staff happen to get into work early and be cleaning up in the morning and put the radio on to get the news, they should be paying the licence fee, according to APRA.

Mr McCLELLAND—Although I understand the PPCA do not seek a licence in respect to radios, do they? They only seek it in respect to Cds and tapes.

Mr Marshall—To the recording of tapes, Cds, videos or cassettes. But again the person has already paid a fee on those when they purchased them, if it has been paid and

played for their own private entertainment. As I said, where do you draw the line? Someone sitting at a set of lights playing a loud radio?

Mr McCLELLAND—They would say, though, from the other side of the coin, that at a discotheque playing a CD or a tape saves the proprietor of the discotheque substantial money in not having to pay for a live band to come and play the music. Their argument will be that the person playing the music in that sort of situation is doing so as an alternative to paying the musicians themselves.

Ms Connell—There is no argument with that. That is really a public performance. There is no argument there at all. If it is a small business that does not intend it for public performance—

Mr McCLELLAND—Yes, but that is a step further than Mr Marshall's point that people have already paid the licence fee on the CD, which everyone does when they buy it. That is where I am trying to get the feel—if you go that next step and play it in a public performance.

Ms Connell—You have just defined the private to the public.

Mr RANDALL—You would need to be aware that this is the first day of our hearings on the copyright royalties, so we are being educated on the run as well. Just returning to the point about reticulated music very briefly, what you are saying is that that is something that needs to be worked out. For example, in a large shopping complex if they did not like the reticulated music and they wanted to play something on a different channel—I suppose a shopping centre could have half a dozen different channels—you could tune into that, and that is an arrangement you would make with the proprietor?

Mr Catania—If you were on the end of their reticulation, you may not be. It may only be in the mall, if you like, in the centre.

Mr O'Donnell—I think the whole idea is that the APRA licence allows the person to use anything in APRA's repertoire. I think what Nick was trying to get at is that once the premises is licensed, be it a shopping centre, there is a right by the people within the shopping centre that are paying for that licence in their outgoings to use any of the repertoire of APRA's composers, and to have to pay again a second licence for that same variety of music is double dipping.

Mr RANDALL—Can we move on to a couple of more substantial matters. You have said, Ms Connell, that you had spoken to APRA and they did not seem very conducive to discuss or negotiate.

Ms Connell—No, that is not quite right. They were happy to talk about it. They just did not seem to think they had a lot of room to move.

Mr RANDALL—You had not fixed it up by the time you left?

Ms Connell—No. They were happy to talk to us further, but we had no real satisfaction in terms of what we could agree to, what small business needed and what APRA were able to do on behalf of their members. Obviously they have their members' interests at heart.

Mr RANDALL—As a result, have you used at all the Copyright Tribunal? Have you been to seek their help?

Ms Connell—Not formally, no, we have not.

Mr RANDALL—Because it does exist and it is supposed to be there for dispute resolution, et cetera.

Ms Connell—We were just presenting the case of small business to APRA to see if we could find some common ground. We were talking to them about the potential for triennial licensing to reduce the cost on small business. Rather than having to renew every year, a lot of licences in WA are moving to triennial licensing, which is reducing compliance and the costs for small business. They took that away with a view to looking at it, so I do not think we are in the situation where we are having a dispute resolution type of arrangement with APRA. We are merely trying to find some common ground to alleviate the concerns we were hearing from small business.

Mr RANDALL—But on an individual basis, for some of your members, do you know of the use or otherwise of the Copyright Tribunal to sort out individual cases?

Mr Catania—Our members have not got time, finance or money to go through these tribunals, may I say. We are looking at micro, very small, one- and two-people operations. They have not got the time. They do not know that the tribunal exists. They do not want to go there. They have not got the time availability and the funds to go there. You are looking at very small businesses that are very concerned about paying two and three fees. That is basically what it is. Let us not look at technicalities. If they have to pay the damn licence fee, they will pay it once. That is all they want to do.

They do not mind paying it once, but if they have to pay it two and three times, they object, and so would any one of us. If my house was to be licensed, I do not want to pay a licence for each room. That is what is happening in a shopping centre. So getting away from technicalities, if small business has to pay a licence, all well and good, for public consumption, but they only want to pay it once.

Mr RANDALL—Mr Catania, I understand that, but part of this inquiry and the terms of reference goes to dispute resolution mechanisms, so that is why I need to address that question.

Mr Catania—I applaud the dispute resolution mechanism, but most of the membership, Mr Randall, have not got time and funds and—

Mr RANDALL—That is the sort of feedback we need, and that is what we are here for.

Mr Catania—I applaud it. I think you are right.

Mr Thornton—Mr Randall, some of our clients have felt that the threats from APRA for not paying up forthwith are so violent that they are not prepared to take any risk or invest any further time in it. The tribunal process takes too long, because a decision has to be made within a time frame in which the tribunal cannot function, so the threat of complete failure is always hanging over you if you try to do that. I have one client who has tried to do it and it failed completely because of the time frame.

Mr Harry—I think, Mr Randall, it is worth noting that in APRA's own licence, which I would like to refer to as well, there is no mention of such a tribunal. If that was a government licence, there obviously would be a mention of a tribunal. I guess one of the terms of reference of your committee is to look at the way APRA does this and their licence. I have not applied for a licence, I refused, and so I am still awaiting the penalty that APRA might impose, but to sign that licence as a small business is very foolish, because the fee that they charge is an annual rate, to be reviewed each year—just automatically to be reviewed each year. But there is a condition in this licence: 'APRA or its accredited representatives shall have unrestricted right of entry'—which has been mentioned.

But what worried me about this—and referring to Mr Catania's small business factor—is that, if they demand it, you have to provide them a list of all the music performed at the premises, with the name of the author, the composer, the arranger and publisher of each such composition, and the number of times performed during the period nominated by notice from APRA. How the hell can a small businessman provide that?

Mr RANDALL—I think you have pointed out what a messy process you are involved in, and hopefully this inquiry will go to sorting some of that out. Can I just finish, Mr Chairman, on two brief questions. Right of entry: you have got to be fair across the board. I would imagine DOHSW in Western Australia has the same unlimited rights of entry as do some of the union movement who wish to enter premises to see books, et cetera.

Mr Harry—They have never sought to enter our premises. We would not deny them the right to enter our premises. They do this by telephone and letter.

Mr Geronimos—The right of entry situation with regard to industrial awards in Western Australia, both federal and state, can only operate by notice to the employer first-up, and a specific time to be established for the union to enter the premises. With regard to occupational health and safety, I think it would be in the interests of the employer to ensure that the premises are safe under the state Occupational Health and Safety Act.

Mr RANDALL—I am just saying you have got to be uniform, though, in your approach.

Mr Geronimos—APRA are totally out of right field on this one.

Mr MUTCH—You do not get any warning?

Mr Geronimos—There is no warning. They walk in and they slap it on you. If I could just go back to your query with regard to the Copyright Tribunal: from the terms of reference that were circulated, the Copyright Tribunal, from what we perceive, does not provide a mechanism for the review of general copyright complaints. We understand it precludes that tribunal from being involved in the dispute resolution process. The second part, 5.18 in the document that was circulated, says:

The tribunal can review licence schemes proposed by a copyright collection society where the society refers the scheme to the tribunal for review.

I am not sure if there is any scope for us as individuals to refer matters to the tribunal.

Mr RANDALL—There is a suggestion in 5.20.1—I understand your point about the tribunal—of an ombudsman. Would the panel have any comment on whether that would be a more effective process than going off, as Mr Catania said, to a legalistic tribunal?

Mr Marshall—Mr Chairman, I do not think there would be any need for the process if the lines were more clearly defined. The problem is that the whole small business community is totally confused about this issue, and if there were a far clearer definition and a single licence fee, if we have to pay it, I do not think we would be sitting here today. We would not have a problem.

Ms Connell—There is not a dispute that performers and writers are entitled to a copyright. The dispute is in the definition of what constitutes a public performance; and once that is defined clearly, then there will not be a need, as Les mentioned, for any dispute mechanisms, as far as we see.

Mr McCLELLAND—Although there would be in terms of the method of collection or imposition. There would still be that to sort out.

Ms Connell—There would have to be a clear way of assessing what constitutes a public performance.

CHAIR—And what is your suggestion for the definition of a public performance?

Ms Connell—A public performance is where the music is clearly directed at the client in a place of business, where it is designed for business benefit—its principal purpose.

Mr Thornton—I did suggest music reticulation.

Ms Connell—And whether it is reticulated.

CHAIR—Can I say that, having in my previous life been a barrister, I could make a few dollars out of that definition.

Ms Connell—It might be a little better than the definition at the moment, which is all and sundry.

Mr Catania—Mr Chairman, that is a point of dispute. You have got to come up with a definition. I am glad to see you are a barrister. You might be able to come up with one. That is number one. Secondly, what we have got to get is a set process of demand or request for a licence; thirdly, we need a set licence fee; and fourthly, it should be paid only once. I think they are the four main points certainly that the small business retailers want to see. Not that they do not want to pay a licence—obviously no-one wants to pay any licence, no-one wants to pay any impost. But a set licence fee once, paid up-front on a yearly basis—it is like a car licence fee, if you like. People will not like it, but they will accept it in the end.

Mr Geronimos—Just a point of clarification there. When Nick says 'paid only once', with the radio, for example, we would suggest that that would be at the source, where the radio station would pay the licence fee.

Mr MUTCH—Maybe this might not be quite the forum for this, I am not sure, but I am very confused about the amounts you have to pay as well. The hairdressing example interests me in the sense that you have a hairdressing shop, you have a radio cassette out the front—mainly for the benefit of the hairdressers as far as I am concerned, being a customer—and then you have another one out the back where someone is doing a shampoo, and then you have the mall that is playing it outside, and there is music by muzak in the lift up to the hairdresser's shop. I am just wondering how much the actual hairdresser has to end up paying for all of this. If it is played in the mall, is it based on the number of people that might pass through the mall or is there a set fee?

Ms Connell—No, there is a schedule of fees that APRA produces.

Mr Marshall—It goes on the number of speakers.

Mr MUTCH—The number of speakers?

Mr Marshall—That forms part of the equation, but again this is part of the confusion.

Mr MUTCH—What sort of money are you talking about? If you are the hairdresser, how much would you have to pay for a licence?

Mr Thornton—I would like to say at this stage that one of our great concerns is that it is whatever APRA and PPCA ask for. There is no set amount. They can ask for anything they want. There are examples where they have asked for one fee initially. Once they have got you in and you have signed, they then come in and they increase it. They can increase it, in an arbitrary manner, by any amount they like. There is no control over them whatsoever.

Mr MUTCH—What would your average member be paying, though?

Mr Marshall—To APRA approximately $60, Mr Chairman, and then to PPCA another fee.

Mr MUTCH—So about $90 for each hairdressing salon?

Mr Marshall—Over $90. The PPCA fee is about $120.

Mr MUTCH—Depending on how many speakers and things they have.

Mr Marshall—Yes.

Mr Harry—I have to say that I disagree somewhat with Mr Catania. All the small business people I have spoken to do not want to pay a fee at all. They believe it is double dipping.

Mr Catania—There is no dispute there.

Mr Harry—The government may decide, say, that we will pay the fee. APRA's declaration that the playing of music is part of a public or commercial activity is their interpretation. It is entirely their interpretation, and I think it can be defended on the basis of many of these activities, such as those I have given you, including that of a mechanic in a workshop playing the radio. I had a haircut this morning an hour before I came here. I walked in and the proprietor and two members were sitting there listening to the radio. Knowing I was coming here—it was at the Innaloo shopping centre—I said to them, 'Is that the shopping centre's music?' They said, 'No, we're listening to the radio.' They were listening to their radio. I was incidental to the fact that it was a customer coming in there.

Mr MUTCH—What if you are just listening to John Laws?

Mr Geronimos—It is music to some people.

Ms Connell—All the little jingles, and even the little piece before the news, are all copyright. It must have been written by somebody.

CHAIR—So this applies to talkback radio?

Ms Connell—Yes. The only music that is exempt is your own and, I think, anything 60 years old or where the composer has passed away.

CHAIR—You would still be caught, though, by PPCA if it has been recorded recently. If you had a Dame Nellie Melba 78 record from whenever she was around, and you were playing that, you would be okay. But as I understand it, if it is Pavarotti singing Nessun Dorma or something and it has been recorded in the last five years, you would still be up for your PPCA licence fee, would you not?

Mr O'Donnell—It would be both.

Ms Connell—If it is in a public place.

CHAIR—Sorry, yes. I was trying to draw a distinction, but I understand, yes.

Mr O'Donnell—If the artist has been dead for 50 years or it is 50 years since it was first played, it is then out of copyright, as I understand it.

CHAIR—Yes.

Mr RANDALL—So Mozart is safe.

CHAIR—No.

Mr O'Donnell—But the recording of it—

CHAIR—Because nobody has got a recording of Mozart playing Mozart.

Mr Catania—Mr Chairman, just to make it clear, our membership—that is the Retailers Association of Western Australia council—have given instruction that they object to these fees completely. Let me put it on record. There is an objection to paying, at all, any fee. I am just saying that, if there is going to be a fee paid, I would like the four points mentioned to be considered. Let me put it on record quite clearly. There is no agreement by the Retailers Association of Western Australia and the Retail Council of Australia to pay a fee at all. If, by statute, you have to pay a fee, they would like the four steps to be followed.

CHAIR—Perhaps I should say, Mr Catania, that I would not like—and I think I can speak for, without having consulted them, the other members of the committee here—to leave you with the expectation that a fee is likely or possibly not to be paid in the future because, unless this committee is to take the unusual step in the circumstances of suggesting that the government completely rewrites the Copyright Act and disregards our international obligations under the Berne and other treaties, then whatever we recommend, you will still probably be paying a fee. So it is the other issues that we are more interested in.

Ms Connell, and gentlemen, we have run out of the time we had available. I am sure we could discuss this for a lot longer. I understand from the secretariat that your various organisations have yet to make a written submission to the committee, so we look forward to your written submissions. The discussion we have had may be useful in terms of helping you to frame those submissions and we will look forward to receiving them. Again, I thank you for coming along this afternoon and discussing these matters with the committee.

[2.33 p.m.]

WOODWARD, Mr Peter, State Secretary, Musicians Union of Australia, Perth Secretary, Union of Employees, Secretary, Musicians Guild of Western Australia Inc., 224 Stirling Street, Perth, Western Australia 6000

NAGY, Mr James Paul, Executive Director, West Australian Music Industry Association, 58 James Street, Northbridge, Western Australia 6003

RIDGE, Mr Gary James, Managing Partner, Sunset Music Australia, PO Box 234, Northbridge, Western Australia 6003

CHAIR—Welcome. Do you have any comment to make on the capacities in which you appear?

Mr Woodward—I am the State Secretary of the Musicians Union of Australia, Perth Secretary, Union of Employees, being a trade union registered under a state act. I am also the Secretary of the Musicians Guild of Western Australia Inc., which is an organisation associated with the union and registered under the provisions of the Associations Incorporations Act 1987.

Mr Nagy—I am the Executive Director of the Western Australian Music Industry Association. We are a non-profit, membership-based incorporated association.

Mr Ridge—Sunset Music Australia is an Australian-based manufacturing and recording company that licenses its product internationally to the major territories, being the United States, Japan and Europe. Under those categories, I produce music of what I consider a long shelf life, being that of indigenous music, and also classical music.

CHAIR—Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. Would one or all of you like to make some brief opening comments?

Mr Woodward—The Musicians Union and the Musicians Guild in Western Australia both have in the region of 650 to 700 members. Of those members, 82 are also members of APRA and thereby are original creators of music. An increasing number of members of the union are also involved in the self-funded release of recordings for sale on the market or broadcast on the market, which means that, in addition, those persons are the owners of the property rights in the sound recording as opposed to the rights in the works which reside in the sound recordings. We have no reason to doubt that the same kind of percentage of involvement proceeds into the non-unionised sector of the music industry of Western Australia.

The union's view of copyright is that copyright is the bundle of rights arising as a consequence of the existence of copyright, and is thereby the mechanism by which the economic return of creators and the owners of sound recordings can be guaranteed. We say that copyright is not a natural right. It is a right rendered by parliament, and constitutes in that way a right in relation to private property which is owned by

creative artists, namely—for the materially relevant aspects of this inquiry—the right to publicly perform, and the right to mechanically reproduce original recordings. They are the owners of the rights for the materially relevant purposes of sound recordings; namely, the right not to reproduce those sound recordings, and the right not to publicly perform those sound recordings.

In the event that Australia does properly enact legislation to give effect to the Berne convention, there may very well arise a third species of rights in Australia, and that is a copyright in the performances rendered by artists of the works which reside on the sound recordings. There may at some indeterminate stage in the future come into existence a third species of copyright for which licences may or may not have to be granted, depending on whether parliament legislates for those things.

Our view about copyright and the fact that they are private property rights granted by parliament is merely a restatement of what resides essentially in the Copyright Act, and we support those principles, and our membership supports them. We say also that we have reached a stage in technology where those rights have been overtaken by technology. It is a very simple matter in the modern technological age to publicly perform sound recordings, to mechanically reproduce sound recordings, to publicly perform performances, and to duplicate performances in a way which was not at all possible in the same way when the Copyright Act came into existence soon after Federation. In those times, if one wanted to hear a performer, there had to be performers live and in person.

We say that the right which parliament has granted to people should not be confused with the easy availability of technology to allow the exploitation of those rights and that the private property rights which persons have should be respected and the economic return to the persons who own those private property rights ought to be respected. It should not be detracted from merely on account of one group in the community not wishing to pay for the exercise of those property rights, any more than the technology which is available now allows the easy reproduction of software in which private property rights reside—and nobody is suggesting for one moment that the technology available to reproduce software in a piracy way should detract from the rights which the owners of that software have.

We say again to this inquiry that it seems clear to me anyway that there is no generally agreed definition of what constitutes a small business. There are as many definitions as there are purposes to which you wish to apply it. Listening here today, I could only conclude that small business is what those people in it choose to define themselves as being. They may choose to define themselves as small business, and if that be the case so be it. We say there is nothing really relevant about the rights or the obligations of small business as opposed to the obligations of big business.

The obligation to pay a licensing fee comes not from the magnitude of the business but from the use of the private property of other individuals. We say that to disturb the ability of those people to exploit their rights in this environment would be to begin to unravel all the historical antecedents of copyright and to begin to unravel Australia's international obligations in a way which would have very far-seen consequences and that it is not enough to say that these rights ought to be overridden because a sector of the economy does not wish to pay them, any more than they may not wish to pay payroll tax or group tax or do any of the other things which people in a properly civilised society are obliged to do.

It seems from listening here today—and I think it is the view of the union—that there is confusion between the use of radios and the public performance of recordings other than through a radio and the question of what constitutes a public performance. It became clear from your observations, Mr Chairman, that defining in the act what constitutes a public performance would advance the whole cause of this confusion no further than having the courts define it because, rather than the courts defining in a common law approach what constitutes a public performance, it would merely be translated into an argument about what is meant by the plethora of definitions which would have to exist in an act of parliament, which would then have to be interpreted by somebody when there was a dispute as to whether or not a certain class of activity constituted a public performance within the definition of the act. I think that much is clear. I do not think there is any useful approach which can be taken to settling that question.

It seems to me, therefore, that user pays: those that use must pay. The question is whether or not the means by which they are being obliged to pay is harsh, unfair, unreasonable or intimidatory. Our view about that is that, since copyright is a statutory right and not a natural right, the parliament is entitled to ensure that the right is not abused. It does this by having the amounts payable reviewed by the Australian Copyright Tribunal. Nobody can go out and exercise that right in a monopolistic or unreasonable way, lest they incur the wrath of the Australian Copyright Tribunal.

The union does believe that there should be some kind of mechanism where an individual disputant should be able to go—whether that person be a creator or the owner of a sound recording or a person who wishes to make use of it—and have that matter resolved in a non-legalistic, non-highly-expensive way. Perhaps the suggestion of an ombudsman would satisfy that requirement, providing it was set up so that the average Joe Blow and the public or the music industry could go and have something to say about it and get some kind of decision, and that the more legalistic and major areas like setting the statutory licence fees and deciding major questions of law which will affect people in copyright ought to be left.

Undoubtedly, with the new formats coming in like DVD—digital video disc—and things like that, we are going to be in a very complicated, technological environment with a very complicated interface between technology and copyright in the future. I suppose that is a reason for the Copyright Convergence Committee having a look at how the copyrighter can best do this.

If I go to some of the actual terms of reference, we say that some of the observations which appear in the briefing document about whether or not there is some relationship between the number of customers and the size of the fee is implied in the fact that a licence fee is paid for the actual technology, plus for the number of outlets. It seems reasonable to conclude that the larger the business, the greater the number of employees, the more the outlets and that there may be with this, I think it is, 92c a speaker a year plus in the mid-30s or mid-50s for sound recordings and broadcasting some kind of natural rationality about the amount of licences that people would be paying related to the number of employees.

To introduce an administrative situation in Australia where somebody would have to go around and measure each individual business and what they were doing to give effect to the private property rights of copyright owners would be an administrative burden which would eclipse the administrative burden which people are dealing with at the moment. The union's position is that it has to be economically and administratively defensible and cost effective. If it is not, the maximum return is not going to be paid to

copyright owners.

At the moment I cannot see any good reason why there could not be one collecting society which was responsible for dealing with all the species of copyright in existence, providing there was some kind of ground which could assure equitable distribution of the licence fees as between the various owners of the copyright and some kind of mechanism to allow people to dispute the nature of the equitable distribution. At the moment the union's view would be that, on the ground, APRA, as a non-profit association with considerable resources, a very good database and track record, is well placed to be the focus for that kind of activity.

The PPCA, on the other hand, appears on a lot of occasions to be a sort of adjunct to the record industry. It actually seems more a creature of the major record companies, in our view, and I think as an organisational base we would prefer APRA. But we have a totally open mind about the question of having one collecting agency to deal with all the copyrights.

If I understand the Copyright Act, it says the obligation to pay the licence rests on the person who causes or permits the performance to be heard. So you have two things: is there a public performance? And who is causing or permitting the public performance to be heard by the target group, whatever the target group be?

A radio station has a licence to broadcast to the world at large. No small business, or any other business for that matter, in Australia is obliged to pay 1c of income to APRA or PPCA. It is a choice they make by using the property of others in whatever way they see fit, and when they turn the radio on in the premises in which they are working they are causing or permitting a performance to be heard in that place. I think that if they are going to cause or permit that performance to be heard, for whatever reason they elect to have it heard, they are obliged to pay a licence fee.

I think the other thing which is worthy of note is that if you buy a radio broadcast you are buying not only the music but a music program which is determined by a music programmer sitting in Melbourne or Sydney or other places with a play list that is very restricted by comparison to the amount of product which is available on the market at large. When, however, you buy CDs to play in your sound system, you have got discretionary programming. In a hairdressing salon you may want to have dance or techno, or whatever is the in-thing, depending on the sort of premises that you have. In the briefing document there is an observation made that it is not really for public performance but for alleviating the boredom of mundane jobs, I think was the phrase used.

It is the view of the union that, if that is the purpose to which it is being used, it is definitely and clearly related to the economic activity of the business that they would choose to set about alleviating boring or mundane jobs in their place. If they were not able to do that with music, they would probably have to hire in a boredom consultant for $500 an hour to tell them how to alleviate the boredom of their staff. I do not think there is any way that they can evade the question. Once they make that decision to play music, they are doing it for a reason.

The people who represented the small business group, with respect to their opinions, appeared to want

to step away from the question of why they are using it. They do not want to pay for someone else's property right, which seems to me a very strange notion for small business, who are deeply concerned with notions of user pays and the exercise of private property.

I think that we have to maintain this thing until we see what is going to happen with the new technology. Who knows, when digital video discs come in, what we are going to be seeing. We could be seeing people actually performing or giving workshops or talking—we could be seeing any uses in the future—and I do not think we can advance very far by unravelling the copyright.

I think a person who owns a private property is entitled to go and say to other people, 'Look, here are the fees which have been sanctified by the state that we can charge people for the use of this property.' I do not think they are obliged to enter into debate with people about whether or not those people should pay it when debating with these individuals could consume all of their time. They say, 'Here is the right. The rate has been done by the Copyright Tribunal. If you don't want to pay it, challenge it and we'll resolve this thing in a legal way.' That is the mechanism by which matters are advanced in this society.

We customarily see signs saying 'Shoplifters will be prosecuted' and 'We reserve the right to inspect your bags when you come into our business'. I really think that it is trite to say that they are so thin-skinned that they could be upset by somebody charging them a fee for a private property right when they do not expect that their own customers will be too thin-skinned to take offence at similarly abrupt messages being delivered to them. Basically that is all I have got to say from the union position on that matter.

Mr Nagy—I will just give you a bit of a run-down on our organisation and activities to give you an idea of the state of play with original musicians. I will table this document *WAM band database*. Our apologies that it is a bit dog-eared, but it is the last one before our update. We have some 600 original bands registered with us and we have some 200 members of the organisation as well. It is the longest-going association of its kind in the country. We are on to our 10th year, and there are similar organisations throughout Australia.

Basically we look after original bands in the popular contemporary vein. That covers anything from pop, rock, metal, blues, country, folk—you name it. The styles constantly change and new ones come up all the time. It is a very marginal economic activity. On that database we are unaware of one band actually being able to have full-time employment from it. Usually it is either a day job or on unemployment assistance, et cetera.

Also, our scene gets very little federal or state assistance compared with any of the other subsidised arts, be it ballet, opera, symphony orchestras, et cetera. So it is pretty much done by the people themselves. They form the band and they start gigging. Their performance fees at a concert might be anywhere as low as, say, $100 for a three- or four-member band right through to $400 or $500. Very few break out of that, so it is really important for us that our members in bands can maximise their economic opportunities. One of those is what APRA and the other collection agencies do, and that is to collect the various rights and royalties.

It is a bit ironic listening to what was said here earlier, in that if there is a description for our bands it is that they are all small businesses as well. They are not employees usually of the venue; they are basically

subcontractors. It is a real struggling situation to make ends meet for these bands. They are all doing it on their own. Just because this value which resides in their rights is an intangible value, some people seem to be suggesting that it has no value, that their rights can be just thrown out the door. So we are really concerned about that.

We are also really concerned, if this amendment does pass through, with the potential impact on international obligations through the Berne Treaty, et cetera and the effect such an amendment will have if APRA cannot collect fees for overseas artists as well as Australian artists in the mutual obligations from licensing organisations overseas. I suggest it could possibly mean that the whole system completely breaks down.

Also, I believe that the fees that have been set for an annual licence are very reasonable and very low. To abolish such a minimal amount is just adding insult to injury. I will leave it at that.

Mr Ridge—I suppose I am in a position to be able to at least give the committee an idea of what happens on the shop floor in terms of being able to produce this music. My business has identified over a number of years a niche market. That niche market, in particular, involves indigenous music and styles of music that we would suggest are not totally represented in the Australian component of programming at the moment.

When identifying the major markets—Europe, the United States and Japan in particular—we licence our product to a German company, a Japanese company or, indeed, a European company under a pan-European distribution deal. Certainly it would be suggested that our industry at the moment is wholly and solely based upon its potential to export. To be brutally honest with you, I think that the local industry, or indeed the industry, is in such shape at the moment that it needs any assistance it can garner. The big problem that we are having, being producers and in trying to formulate, is to give the business sector in particular an indication that the music industry is indeed more than viable.

The viability of the music industry is solely based on its facility at the moment to export at a fixed price. That fixed price internationally is $US6.50. I will take up a point of Peter's that what I was able to produce in terms of albums five years ago for $A50,000 or indeed $A30,000, through the assistance of technology I produce for $A7,000 now. That has enabled me, in many ways, to be able to broaden my prospectus internationally.

I work with people like Richard Walley, an indigenous Noonga performer, well travelled. I work with the Bardi singers and dancers at One Arm Point. It was interesting, when talking to them about recording their music and documenting their music, that they also recognised that the on-selling of their music and their culture is all-important to them now—the protective measures of their copyright. I am not in a position to, nor do I want to at this particular point, seek government assistance. I prefer to be able to generate my business on the practice that it is financially viable. It is interesting when I sit down with a member of the board of the Macquarie Bank, whose first question to me is, 'Are your copyrights and are your contracts in place?' before they look at my business prospectus. I think that is telling.

I think it gave me a good indication that the indigenous peoples have their own agenda and they are

grappling to come to terms with what are the protective measures of their copyright, as is the industry. This industry is desperately trying to convince that we are more than viable and that we do have our practices controlled and in place. Certainly that has been brought home to me within the last month. I have sat down with both parties and tried to project the importance from the shop floor of what is the on-selling of copyrights.

I think it is important that the committee realises that the most profitable area of music is not in the on-selling of final product; it is in the on-selling and the control of publishing. I could not put a figure on it for you, but certainly my putting 5,000 of these into record shops pales into insignificance. The control of the publishing and the on-selling of the copyrights to other agencies is where the real money is in this industry. To be able to attract the support internationally is to be able to suggest that our copyrights and our contracts are in place. For me that is very important.

The other thing is that certainly when it comes to indigenous works, what I have had to do, when I am licensing product, is to protect the cultural aspects. That is even in a CD cover, for instance. It is projecting cultural images. Music now has ceased to become just aural. It is an image that is passed in a number of different ways through CD-ROM, and I think it is such a broad base that it does cross a number of areas of copyright.

With the indigenous people, I can give a classic example. A tribe outside of the north of Broome, the Bardi people, were very interested in what copyright protective measures culturally were offering to them. They had heard much about a project called Deep Forest. Deep Forest was a series of projects that was tribal music recorded in Africa, taken back to Paris, laid on a computer and transformed into something quite different to how it initially started. There was no protective measure for the Ininglu tribes of the Kalahari—that is where the music was recorded—and it was portrayed as music from somewhere else. The whole procedure was the product of a company in Paris.

It was interesting that the dugong and turtle fishermen in the north of Broome were very interested, once they had agreed through a number of discussions to allow us to not only document their music for whatever purposes, but to on-sell their music—they recognised the importance of being able to get it out to further territories—in what were the protective measures of their copyright, both in this country and internationally. It was very interesting, being able to sit down with them, because they are acutely aware of it and they are very interested in it.

It is a vexed question that we struggle with, but it is very interesting that they also are very interested in the outcomes of what happens to the protective measures of their copyright, as is big business, in terms of being able to think that it is the only possible way that we are going to seek private investment. This is where the key is. The key is not in any more government assistance into this industry. That is a flawed argument. The flaw is now that we have to seek them—not unlike the film industry—and we have to be able to have the same protective measures that are in place

It was very interesting. I can only reinforce that it was the very first thing these people wanted to know, because they were acutely aware that unless we have got our copyrights and our contracts in place they see very little future in investing into the music industry.

CHAIR—Can I just seek some clarification. If a radio is playing in some small business premises—let us say it is a hairdresser and the hairdresser is open from nine to five, five days or six days a week—and it is tuned into a music station in Perth which basically plays music all day, how does the benefit flow back to the individual artist whose track may have been played once, twice, three times—if it is on top of the charts, 50,000 times that week? How do you measure that? The point was made that under the licence agreement they could actually ask for the details of every piece of music that was being played, but I am curious, because it seems to me, from a theoretical point of view at least, that is the only way you could determine that some of this fee from this business premises went back to this particular artist.

Mr Woodward—Perhaps I can help there. As I understand it, APRA has a highly sophisticated sampling regime which operates on a whole lot of levels, from musicians playing individually, putting what they play in its list—they used to be called, I think, miscellaneous performers returns—from monitoring what is on jukeboxes, to writing it down. I play customarily at folk festivals, for instance, where we are given an APRA sheet and we have got to write down the name of every tune that we have played in that concert, and if we know who the composer was and who the author was. But also—because I have been involved in the matter of Australian content on radio—as I understand it, APRA now has a 100 per cent log return from commercial radio.

CHAIR—So they give them their play lists?

Mr Woodward—Yes. The union has got a thing in Western Australia—admittedly, an oxymoron—called the Radio Watch Committee, which was sceptical about the compliance with the self-regulatory 25 per cent quota on radio, and we were going to monitor the station ourselves, but my conversations with APRA said that they were convinced that the returns they were getting from the radio station were truthful because they get a 100 per cent log of what is played on the radio. So, as I understand it, all this stuff goes into this mix of sampling, and it is decided on that basis. So I think radio is the very easy one to measure because there are logs.

CHAIR—Are there any performers or artists, though, that would fall outside the APRA umbrella?

Mr Woodward—Heaps. All those musicians that are not getting airplay on radio; for instance, my own band. I play in a blues band which does not play any original music. We play cover versions. We have got two self-funded CDs on the market, which are selling very well in Western Australia and, increasingly, nationally.

CHAIR—That was a good plug.

Mr Woodward—Ten Cent Shooters, a blues band. But I have had it relayed to me that that is being played in a post office down south, a shop which functions as a post office. It was also told to me the other day that it was heard in the Midland Markets, which is a sort of shopping market. They were playing it as background music there. I think one of the concerns we have for a lot of independent product is that there is some danger that all the independent artists like the world musicians, the indigenous musicians, the blues artists, the folk musicians, that are not getting mainstream radio play but whose material may be played in some other places, will fall through the interstices of the sample and not be picked up.

But we are reluctant to go down that road. We want to separate the two issues. Firstly, are we getting an equitable share of the royalties that are being collected and does the sampling have to be more sophisticated to pick up our involvement, as opposed to challenging the whole licensing regime? The union could come in and say, 'Look, we're not happy with the distribution from this licensing—the equity of the distribution—but we stand by the product and say maybe the sampling has got to be more sophisticated'—to pick up people like myself and people like Gary's artists. His stuff might be getting played in all sorts of places which will never turn up on a log.

CHAIR—If I go to Hawaii and buy a CD of Hawaiian music made by a local artist in Hawaii and bring it back here and play it on my CD player in my hypothetical hairdressing salon, am I liable under this?

Mr Woodward—I would say you were, because APRA, as I understand it, has its international connections with other collecting societies throughout the world, and the international copyright regime is administered by an interlocking group of collection societies. So the amount that the sample represents belonging to overseas copyright owners would go overseas, and the amount identified by overseas collecting agencies in respect of Australian artists would flow back into Australia. Maybe that is the sort of basis of trips. You are talking about the international flow of capital.

If I can give an example, the first Men At Work album, I believe, cost $60,000 to make, apart from the years and years of grovelling by the musicians that made up the band. That record made $100 million in sales, $36 million, I believe, in mechanical royalties, and $30 million in performance royalties, plus all the ancillary rights and the licence. There is a product that cost $60,000 to record, generating around $200 million of revenue, most of which would have been earned from airplay overseas. I think there are very few areas of human endeavour where that sort of return can be recovered from that kind of investment, and it is very dangerous to undermine the copyright regime that protects it.

Mr Ridge—Just to take up a new point also, it would be of interest to know that the distributor, be it the international licensee or indeed the international distributor, would have paid the mechanical rights at the point of signing a distribution contract internationally. The distributor of the product in Hawaii quite possibly would have paid a mechanical component. The mechanical component is actually at point of manufacture, which acknowledges the mechanical rights to the music. When distributing the music through international auspice, they have a right to actually adhere to the payment of the mechanicals back to the Australian base, so that means there is a payment by, let us say, the United States distributor of that Hawaiian music that has already paid the mechanicals back to the owner or to the collection agency, if you understand what I mean. That is how it works.

So our point is that there are the two differences, where the mechanicals, which are all-important—acknowledging who has the publishing rights of the material and the on-selling of music—are usually acknowledged at the point of manufacture, and then on-flow would start.

Mr Woodward—The Musicians Union only concern—if I can just reiterate it for the record—is not the regime but the equity in the distribution, because there are increasing numbers of self-funded product by artists who are not getting mainstream play.

Mr RANDALL—Peter, you have eloquently put your case, but you say that you are happy for these fees to be returned, et cetera, and the user should pay—and it is nice to hear others supporting the user-pays principle. But how about people like charities and institutions for disabled people that are battling to make their way? Do you ask them to pay as well?

Mr Woodward—I would say that it would be whether parliament had granted them an exemption under the act, and if they are putting on public performances of music, unless parliament grants them an exemption or APRA chooses not to apply it against them. I really cannot answer that more than to say that it is the will of parliament as to whether they should pay, as to whether or not there is a public performance which is due to be licensed under the provisions of the act.

Mr RANDALL—Cutting through that, you are saying that you have got some sympathy with an exemption for something like that, because there are exemptions, I believe—

Mr Woodward—Yes, there is a whole range of exemptions.

Mr RANDALL—Yes, a range of exemptions for prisons.

Mr Woodward—Yes, dwelling houses.

Mr RANDALL—That is right. Motels, et cetera.

Mr Woodward—Yes.

Mr RANDALL—We have had the small business people in before—I think Mr Nagy said that he represents large and small businesses, in any case—and they contend that going to court is an expensive business, even going to the tribunal, and some small businesses are barely surviving, let alone having the time to go off to court. Are you not putting an extra imposition on them by saying, 'Well, if you don't like it, go to court'? And in that context, how about the ombudsman argument?

Mr Woodward—I have already said that I think there should be some lesser legalistic mechanism. I support the existence of such a mechanism in industrial relations. I support the role of the Industrial Commission in providing a simple, expedient mechanism in a lot of cases for resolving disputes. I think the same things still exist here. I do not think that the first port of call of the average Joe Blow in the street, whether they be a musician or otherwise, should be a highly complicated legal mechanism requiring the intervention of barristers and potentially high legal costs. I am quite happy about that.

But on the question of small business, I just happen to have a member whose name is Lee Sappho. She is a blues artist who has released her own CD. She also runs a therapeutic massage business. She was granted an exemption from APRA because a lot of masseurs play music while they are doing massages. She pays it on principle, because she is an artist who has released a copyright, and she stands by the copyright regime in Australia and pays it on a voluntary basis, even though she is not obliged to pay it.

Mr MUTCH—Why was there an exemption?

Mr Woodward—Because I think APRA has made a decision that an individual massage is exempt. I do not know the basis of it.

Mr MUTCH—What is the difference between that and a hairdresser who gives an individual haircut?

Mr Woodward—I do not know the basis of why it is, but since APRA is the owner of the right by assignment from its members, it is able to dispose of the right as it sees fit, it seems to me.

Mr MUTCH—I was interested in the prison example. Why should the music industry be the soul of philanthropy and be expected to give free performances to prisoners when the grocer who supplies them with their fruit and vegetables does not give them to them for free?

Mr Woodward—Because parliament has decided.

Mr Ridge—The way technology is offering at the moment, there will be little difference, I think, between a CD recording and a radio recording inside five years. We certainly know that with the rate of what is happening in terms of both programming and the facility for what we call on-stage gear, which restaurants and so on are housing, it will be very difficult within in five years for the majority of consumers to sit down at a table and to be able to pick the difference between a CD and a radio.

I was contacted by a franchise of coffee houses—their line is franchised throughout Asia and Australia; very well known in Western Australia—to select for them a series of Sunday morning music. They came up with this idea that string quartets and light classical music would further enhance the selling of Sunday breakfasts. It was interesting that when they sat down, they did not have any idea at all about copyright and how to go about this.

When I sat down with them and walked them through it, they did not have a clue, and the obligation became quite obvious to them, if they were going to do this and they wanted to produce their own CDs. That was inevitable; what they were hoping to do was have a series of CDs available on their table. They saw it as a marketing exercise of having a CD of 'something on Sunday'. They had not worked through the ramifications of looking at material that had been copyrighted. They had not looked at licensing other people's work, what publishing was. They had not acknowledged any of it. When I sat down and talked to them, it was a completely different matter to them.

Mr McCLELLAND—Whose fault is that? That is the point, isn't it? I have got a schedule of the fees in front of me and they can hardly be regarded as exorbitant—from a radio set, $37, up to a video jukebox, $153 a year. They seem hardly worth an administrative fight, but it seems from the previous evidence we have heard that there could be problems arising from the methodology of collection, for want of a better term.

When you sit down and explain the significance of royalties to the creators of the music, to the players of the music and, indeed, to Australian culture, in your case, which is being spread overseas, obviously a rationale for copyright is there. But it seems as though that rationale is coming up against a wall of extreme resentment which is significantly greater than these fees demand. So something is going wrong

somewhere in the interaction between the collection process and the receiving of the funding.

With respect, Mr Woodward, you mentioned in almost condescending terms, 'Well, they're seeking the right to look in people's bags to protect their rights. Why can't we protect our rights?' Whether they have a right to look in people's bags or not, I do not know, but it seems to me that it is a little short-sighted to say, 'Give us the money because we're entitled to it,' if that is creating resentment. There seems to be a better way of going about this process to ease that resentment.

Mr Woodward—My feeling is that people, on whatever level, do not like paying to do what they can do easily. People can go to the beach in Australia very easily. I think that even if you charged them 20c to go to the beach, there would be great resentment about paying it. It goes back to the point I made originally—that in the interaction between the ease of technology and the right, that technology is confused—

Mr McCLELLAND—So you do not think it can be done better; you think it can only be done by coercive measures. Is that right?

Mr Woodward—I do not even agree, on the basis of the information that I have seen from APRA, that APRA has taken an unreasonable approach. It is quite clear that if you are the representative of all the copyright owners in Australia and your obligation is to license that, you have got to go out and say to people, 'Look, here's our rights, here's our information package.' APRA's information package is described in some of the documents. The union supports that. As I said earlier in our submission, we believe that the regime should not be undermined by ignorance, but you cannot make a person read the documentation that is given to them. Copyright is a fairly complex business. I think, within the limits of their capability, APRA has explained to people what the rights are that give rise to the payment, but people just do not want to pay it.

CHAIR—Mr Woodward, we had seven representatives of small business sitting at the same table less than an hour ago saying that the experience of their members was that APRA or its representatives had acted in a high-handed, intimidatory, unreasonable fashion towards many of their members. Even if we assume for a moment that they were being advocates for their membership and therefore putting the best possible spin on what they were telling us, nonetheless, it sounded to me like there was some kernel of truth in that. That seemed to me to be what Mr McClelland was saying, that whilst you can stand on your rights and say, 'The Copyright Act gives us these rights to do that,' there seems to be a clash in the methodology of the collection. You were going to say something, Mr Nagy.

Mr Nagy—Yes. From what I heard of the previous panel, it was pretty clear that they actually did not want to pay anything.

Mr McCLELLAND—I think that is unfair. I think they said, for instance, if there is a—

Mr Nagy—That if they had to.

Mr McCLELLAND—No, they said they acknowledged, for instance, that with regard to a gymnasium, a discotheque or for a public broadcast, they have no problems with that. That was one of their arguments. The second stream of their argument related to the methodology. It seems to me on these sorts of fees it is hardly worth a complaint, if they were extracted—I am being a bit too fairyland here—in a more

reasoned, explained sense. It seems a bit of a huff about very small amounts.

Mr Nagy—I think there might be a case for rationalising the collection of these rights. I think half the confusion actually arises from the different collecting agencies. I am not aware of what impediments there are for the agencies to be able to work together like that. That is outside my brief here. It also came down to what constituted a public performance. I believe that having the radio on, whether for your staff or for your clientele, is actually part of increasing your economic activity, and that it definitely does mean that it is a performance.

Mr McCLELLAND—On the figures for a radio, $37 a year is about a cent a day. That is not unreasonable and I cannot imagine anyone getting themselves tied in a knot about that, if the process is explained. It seems to me that the whole system is under threat because of this antagonism between the music industry, on the one hand, and the small business industry, however that is defined, on the other hand. It seems to me that it is certainly in your industry's interests, as much as in the small business interests, to sit down and try to come together and work out a methodology that suits everyone.

Mr Woodward—As a matter of fact, in the union I get quite a lot of telephone calls from people who operate businesses, asking me whether or not they are obliged to pay the copyright fees. They ring up the union as a backstop to see that they are not being hoaxed. This has happened on quite a number of occasions. We say, 'Yes, we support this.' On the other hand, a lot of people ring up who are going to put on events like dances and balls. They ring us up voluntarily to ask what they have to do to get a licence to pay the copyright.

It could be that the antagonism is merely a function of more activity in the marketplace by APRA in going after its rights. It is very hard to know what the answer is. I do think that it would be very difficult for parliament to write a highly prescriptive list of all the circumstances which would be counted as a public performance. I think it would be virtually an impossible task.

CHAIR—Someone has to do that, though, at some stage, haven't they, Mr Woodward?

Mr Woodward—But don't the courts do that?

CHAIR—The Federal Court has adjudicated in a couple of cases in the last few years, in the Commonwealth Bank case and in the Telstra case, in which it found in broad terms that if the performance occurs as an adjunct to commercial activity, the performance is likely to be regarded as public. Presumably, that gives some indication that if you have got a mechanic working in his workshop alone and there was no-one else around, except maybe the person who comes and collects the car at the beginning of the day and the end of the day, that is probably primarily and solely for his personal enjoyment. But when you get to the case of the hairdresser, or the radio playing in the food preparation room of a cafe which may happen to be overheard by one or two tables out the front, that is becoming a grey area.

I understand your point, but somebody has got to define this, and if there is this great antagonism going on because we are waiting for 10 years for the courts to define it in such a way that everybody understands, might it not be better that parliament stepped in and tried to resolve it?

Mr Woodward—I am not privy to how APRA operates internally, but there may be some element in there related to the training of the APRA representatives, as to briefing them properly on what the decisions of these courts actually mean, and in the event that it did go to litigation somewhere, the likely outcome of applying that definition in an unreasonable way themselves.

CHAIR—I take it that APRA has probably had its own legal advice as to what constitutes public performance, and that may inform its decisions about what exemptions it grants.

Mr MUTCH—I suppose it might be better to ask APRA, but I am just wondering what the overseas experience is. If you are a hairdresser in Brussels, do you have to pay the same sort of regime of licence fees or have they got a more centralised collection system over there?

Mr Woodward—In the United States, I think there is SOCAN. In West Germany I think it was called GEMA or something.

Mr MUTCH—So there is some sort of regime?

Mr Woodward—Yes.

Mr MUTCH—They are charging little licence fees for all these little businesses?

Mr Woodward—For instance, in the United States, I understand, there is no equivalent to PPCA. There are no public performance rights, I don't think, in a recording in the United States in the same way that there are here. So I think it depends what country you are looking at. It depends what those countries have done legislatively to enact their obligations under Berne, Rome and TRIPS.

Mr MUTCH—It might be a more centralised and an easier system.

Mr Nagy—South Africa has one collection agency.

Mr MUTCH—That is a good start.

Mr Woodward—Somebody told me that it was the most advanced in the world. I think it might have been somebody from APRA. They may have had a vested interest. But it is said that they have the most advanced sampling regime and the most advanced distribution mechanism of any collecting society.

CHAIR—We are going to have to come to a conclusion, but can I ask one other question, slightly off the issue: with developing technology, it would seem to me that it is possible now to set up a computer PC hooked to the Internet, in business or anywhere these days, and subscribe or dial into a Web site that is playing the latest rock band or indigenous music from the Eskimos, Central Africa or anywhere. That is possibly outside being caught, isn't it?

Mr Ridge—With regard to this argument about the on-selling of music through the Internet, you can only get 20 seconds of rated sample time off there to actually hear what the music is. From the Japanese

experience, it simply does not work. Certainly, it would be wrong to suggest that you could download a complete CD and articulate the mastering of the CD and what the sound is coming from there. It is impossible to do that. To suggest that we will be able to do that within the next decade—it is unlikely.

Mr Woodward—For instance, if you had a technology that allowed you to digitally download a film, I am not so pessimistic about the rate of technological change as Gary is; I think this is extremely exponential. It would be like the case of a hotel. You buy a pay-for-view video from their sound system and it bills your account. The science is there; it is just a question of engineering. It might be that at some stage, with buying in that way, the person who sends you the signal will be able to bill you in some kind of way.

CHAIR—You would no doubt argue, Mr Woodward—and I will have to cut you off with a yes or no, I am afraid—that that would be no different from a person playing what has been transmitted from the radio in their shop. Being transmitted via the Internet to a screen on a PC is really the same principle, and it is just adopting the principle to the technology that might develop.

Mr Woodward—In broad terms, providing you specified the material you wanted, whereas with a broadcast you buy material that somebody else has—

CHAIR—Yes, I understand that.

Mr Ridge—I think you have to understand that the role the Internet is playing at this point is primarily one of marketing and profiling the music. It is certainly not a basis to distribute final product, and won't be for a while yet. I think you have to understand that.

CHAIR—I thank you for coming along this afternoon and for the discussion. I do not think we have had written submissions from you, and we would appreciate that. If you could do that, it would certainly help us in terms of our deliberations.

Resolved (on motion by Mr Randall):

That this committee accepts as an exhibit *WAM band database*, issue for February 1997.

Resolved (on motion by Mr Mutch):

That this committee authorises publication of the evidence given before it at public hearing this day.

Committee adjourned at 3.33 p.m.