HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Reference: Copyright, music and small business

SYDNEY

Friday, 31 October 1997

OFFICIAL HANSARD REPORT

CANBERRA

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Members

Mr Andrews (Chair)

Mr Barresi	Mr Price
Mrs Elizabeth Grace	Mr Randall
Mr Hatton	Mr Sinclair
Mr Kerr	Dr Southcott
Mr McClelland	Mr Tony Smith
Mr Melham	Mrs Vale
Mr Mutch	

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

BAULCH, Ms Elizabeth Mary, Executive Officer and Principal Legal Officer, Australian Copyright Council, 3/245 Chalmers Street, Redfern, New South Wales 2016 352

CANDI, Mr Emmanuel, Executive Director, Phonographic Performance Company of Australia, Level 9, 263 Clarence Street, Sydney, New South Wales 2000 287

CHARLES, Mr John Joseph, Treasurer, Australian Guild of Screen Composers, PO Box 42, Potts Point, New South Wales 2011 262

COOPER, Mr Arthur, Director of General Performance Licensing, Australasian Performing Right Association (APRA), 6-12 Atchison Street, St Leonards, New South Wales 306

COTTLE, Mr Brett, Chief Executive Officer, Australasian Performing Right Association (APRA), 6-12 Atchison Street, St Leonards, New South Wales 306

FABINYI, Mr Jeremy, Chief Executive Officer, Australian Music Publishers Association Ltd and Australasian Mechanical Copyright Owners' Society, 6-12 Atchison Street, St Leonards, New South Wales 277

GOCK, Mr Leslie, Member, Australian Guild of Screen Composers, PO Box 42, Potts Point, New South Wales 2011 262

McADAM, Ms Marcella Maria, Manager, Artist and Customer Relations, Phonographic Performance Company of Australia, Level 9, 263 Clarence Street, Sydney, New South Wales 2000 287

McCUSKER, Mr Eric, Writer Director and Board Member, Australasian Performing Right Association (APRA), 6-12 Atchison Street, St Leonards, New South Wales 306

MORRIS, Ms Jenny, Writer Director and Board Member, Australasian Performing Right Association (APRA), 6-12 Atchison Street, St Leonards, New South Wales 306

PARTOS, Mr Antony Michael, Committee Member, Australian Guild of Screen Composers, PO Box 42, Potts Point, New South Wales 2011 262

PERJANIK, Mr Mike, Chairman, Australasian Performing Right Association (APRA), 6-12 Atchison Street, St Leonards, New South Wales 306

PRIMROSE, Mr Edward, Committee Member, Australian Guild of Screen Composers, PO Box 42, Potts Point, New South Wales 2011 262

SIMPSON, Mr Shane, Principal, Simpsons Solicitors, 56 Kellett Street, Potts Point, New South Wales 334

SMITH, Ms Jo, Executive Officer, Australian Guild of Screen Composers, PO Box 42, Potts Point, New South Wales 2011 262

THORPE, Mr Jeremy, 43A Wells Street, Newtown, New South Wales 2042 344

WADE, Mr Larry David, Managing Director, Christian Copyright Licensing Inc., PO Box 6644, Baulkham Hills Business Centre, Baulkham Hills, New South Wales 2153 359

WHITE, Mr Jim, Manager, Phonographic Performance Company of Australia, Level 9, 263 Clarence Street, Sydney, New South Wales 2000 . 287

HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Copyright, music and small business

SYDNEY

Friday, 31 October 1997

Present

Mr Andrews (Chair)

Mrs Elizabeth Grace

Mr Tony Smith

Mr McClelland

The committee met at 9.05 a.m.

Mr Andrews took the chair.

CHARLES, Mr John Joseph, Treasurer, Australian Guild of Screen Composers, PO Box 42, Potts Point, New South Wales 2011

GOCK, Mr Leslie, Member, Australian Guild of Screen Composers, PO Box 42, Potts Point, New South Wales 2011

PARTOS, Mr Antony Michael, Committee Member, Australian Guild of Screen Composers, PO Box 42, Potts Point, New South Wales 2011

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SMITH, Ms Jo, Executive Officer, Australian Guild of Screen Composers, PO Box 42, Potts Point, New South Wales 2011

CHAIR—I declare 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 welcome witnesses and any members of the public and others who might be attending this hearing of the committee. The subject of this 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 of music on commercial premises. This meeting in Sydney follows several earlier public hearings in Perth, Hobart, Townsville, Cairns and Canberra. There are further meetings scheduled for Darwin, Melbourne and again in Canberra. We have received some 170 written submissions to the inquiry.

I welcome the representatives of the Australian Guild of Screen Composers. 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.

We have received your submission of 18 September to the inquiry. Would you care to make some brief opening remarks?

Mr Gock—Thank you for giving us the opportunity to speak today. The Australian Guild of Screen Composers was begun in 1985 and represents the interests of composers mainly in the television, film and multi-media industries. These composers have contributed such works to Australian culture as *Babe*; *Priscilla, Queen of the Desert*; *Shine*; and some television series such as *Water Rats*, *Murder Calls* and *Blue Heelers*.

We as composers are ourselves small businesses—in fact very, very small businesses. Most of us are sole traders. So I think we have a lot of empathy with other small businesses and the costs of running a business. Our costs are particularly high. The way we work is that we have a lot of investment in equipment and resources to produce

our works and we need to, like any other small business, get a return on that investment. Our returns are quite risky because they are involved with earning royalties from the work that we produce. The product that we produce is essentially entertainment for the world.

The way we are remunerated is that we essentially create some intellectual property, copyright, and this copyright is protected by the law. We produce licenses that, in turn, earn us royalties. As I said before, this helps us pay for the costs of the production of those works.

I understand that a lot of other small businesses earn their living in a quite different way. That receiving royalties is a legitimate way to earn a living is something that is not understood by a lot of other small businesses. The cost to small business that we are talking about today is in fact one of those royalties.

The music that we make can make people feel happy, sad, energetic or relaxed, and that is why small businesses use music in their stores. The music creates the right mood or environment for their customers. For instance, if you are shopping in Woolworths, you will hear music throughout the store which puts you in a certain kind of happy mood that hopefully makes it more conducive to buy their products. If you are in an aromatherapy clinic, there is relaxing music that puts you in the right mood for that. It would be very rare not to have music playing to help the environment.

Other businesses use music to attract customers. A jeans store, for instance, may have the music blaring to show how up to date they are. That helps to create the right sort of mood and environment for them. It would be very rare for a gymnasium not to have music playing, because it helps their customers feel that they are in the right place and creates the right mood and the right environment. This helps to create income for those businesses and improves their business. There is a real value to this.

The cost that we are talking about today is, as I understand it, in the order of half a bridge toll per week per CD player. We are talking something in the order of $1 per CD player—not per CD, not per song, but per CD player: $54 a year. If anything, there would be a very strong argument to say that perhaps this is very much undervaluing the role of music for small business. Nevertheless, what is an incredibly small amount for business is very valuable for composers.

The money that goes back to composers via this performance royalty helps to keep composers, especially in Australia, going and writing this kind of music that is now being broadcast around the world. If anything, our laws should be protected so that those composers can continue to do the sensational work that they have been doing. Australia is rich with talent and, rather than take away from that, we need to help encourage it. I feel that the kind of money we are talking about that is an impost, supposedly, to small business—as I say, we, being in small business, would understand that—is so small that this would be a storm in a teacup today.

Just to summarise: we are small businesses, too, and we understand the problems. But this is one of the methods we have in terms of earning income. It is slightly different from a lot of other businesses, but it is totally legitimate. The small businesses that use music in the fashion that we are talking about today have a real benefit in a tangible way and they do produce income with this music. So it is quite legitimate that there is a fee associated with it. I believe the cost is extremely affordable. In light of the fact that we want to keep our composers in Australia doing the best they can, it would be a mistake to change the laws and change the collection of this money for performance royalties.

CHAIR—Thank you, Mr Gock. Approximately how many members of the guild are there?

Ms Smith—We have regular contact with around 300 members. We are having our awards. Entries have just come in and we are having an enormous number there. So I would say that we would be capturing an additional 50 people from that.

CHAIR—In relation to the sorts of works which your members compose music for generally—you gave us references of some reasonably well-known recent films—is the music composed by members of your guild played much on the radio?

Mr Gock—Yes, it can be. Certainly, the sound tracks to these albums end up being very popular.

CHAIR—So things like *Shine* have been played often on the radio.

Mr Gock—*Priscilla, Queen of the Desert*.

CHAIR—What proportion of the music is composed and would be film versus music composed for television?

Mr Gock—The compositions that people on this panel and the members of the Guild of Screen Composers make are not strictly just for film or television or records or whatever. We all participate in composing for multiple things. The guild is one of the guilds that we belong to—there are a few organisations that we do belong to. For instance, my background is that I have been a composer for 25 years. I started off composing for a band in the 1970s and then moved into record production and writing music for records, film, television, commercials and so forth. So we all have this kind of multi-task function. Strictly speaking, a lot of film work, if it is only for film, would not see anything else but most film soundtracks are made into CDs because they are popular and those CDs are certainly used to play in the store.

CHAIR—This is an anecdotal observation, I suppose—tell me if I am wrong—but I presume that music which is composed for television is less likely to be played, for example, on radio or to find its way onto CD collections.

Mr Gock—Although it is less likely, it is certainly becoming more popular. For instance, the *Brides of Christ* television series composer was Mario Millo and that has been put out on CD; it is a very popular CD. The popularity of television shows will sometimes contest the popularity of films and it is an exercise in trying to maximise the use of that music.

Ms Smith—We find that a lot of our members compose for film and television and they will also be in a band. It seems to be a traditional path to be in a rock band and then go into screen music as you get older. So a lot of them come in. Last year I was reading the American top 10 and of the top 10 most popular CDs of that week something like six of them were soundtracks from films. So it is becoming a big market.

CHAIR—What you are saying in relation to the composition of music is that you cannot categorise it or pigeonhole it or box it into what you write for screen versus television versus some other form of composition for some other purpose. That makes sense. I will treat that as the case. What is put to us by small business particularly relates to the playing of radios. There are obviously a number of issues before this inquiry but if one had to take the area of the greatest concern being expressed by small business people and their organisations, it seems to relate to the question of the use of radios on business premises. In fact, the director of COSBOA said to us last week or the week before that 98 per cent of the problem was really around this issue of radios.

What is put is that often they are just played for the private enjoyment or information of the proprietor. Let me give you another anecdotal example just because I happened to come across it. Last weekend I was in Western Australia. I was speaking in Albany. I stayed with someone and thought I had better go and buy them a bunch of flowers. So I found the nearest florist shop in a little shopping centre somewhere in Albany. I happened to notice as I was walking through the door an APRA sticker on the door. I walked in and the shop was sort of divided. There were all the flowers out the front that you would expect, then a counter and then an area back behind that which was obviously an area of preparation with the fridge, scissors and all the rest of it. There happened to be a radio there which the sole proprietor, it looked like, was listening to. It was a Saturday morning. I do not know what station it was, but it was obviously playing some music, information and that. I thought, 'This is an opportunity just to ask a question about the radio.' She said that she uses the radio; it keeps her up with the news and things like that. Then I went on to ask her about APRA, licence fees and that.

As I said, that is anecdotal and it is simply one instance. But I think what it illustrates is that a lot of people in those sorts of situations are saying, 'Why should we be paying a licence fee when basically we are using the radio for private enjoyment? It's not there for the purposes of creating ambience in this case or it is not there for the purposes of public entertainment. It is really there for me. Isn't this a system which involves, in a sense, double-dipping, in that licence fees are already paid by the radio station for whatever music is played? Why should it be charged again?' That, in a nutshell, is the

case that is being put to us. There are various ways in which it is put, but I think that is the nub of it. What is your response?

Mr Gock—If it is legitimate that a fee should be charged, if a business is using music to help the environment, then essentially that is what we are talking about. It is the legitimacy of charging if someone is playing a piece of music that will help their business. Looking at the anecdotal evidence that you had: if, for instance, the proprietor's personal preference was simply for news gathering and they had no music, then it would be academic.

CHAIR—Except it has been said to us by others that there is no such thing as a no music station. Even the ABC plays its little jingles and things like that which one of your members may well have composed.

Ms Smith—Even the races.

CHAIR—Yes, that is right.

Mr Gock—One would assume that, if the provider's personal preference was for loud, thumping heavy metal music that was completely inappropriate for a florist shop, she would have a fairly good argument that it is for her personal use and it has nothing whatsoever to do with helping the environment of the store. If, however, I were a florist, there is a lot of music that I would play or turn a station to that would be relaxing and invite people into the store. Radio stations work in such a way that they are very narrow targeted in terms of their music style. They have to be because that is the way they attract advertising dollars. So you can appeal primarily, for instance, to 18- to 24-year-old females and to 25- to 39-year old males, according to the station and the music that you listen to. The beauty of music is that you can finetune your audience.

A lot of proprietors would certainly turn to a station, have the music coming through for free—because they do not have to buy the Cds—and make it conducive to their customers. Certainly most people would think very carefully about putting on music that was inappropriate. I was doing some work for a fashion firm that asked us to design music specifically for their stores because some of their managers in some of the stores were turning on the radio with inappropriate music. They knew that was turning away customers. In the same way music can turn away customers, it can also attract customers.

Ms Smith—Again being completely anecdotal, I was in a clothing store yesterday trying on clothing. I realised in the change room that I was bopping away to the music that was playing and it made it a lot more pleasant experience. As a consumer, I appreciated that music and it was a much more pleasant experience for me.

CHAIR—It has been suggested that maybe there is a three-part categorisation that can be made. Firstly, there is music which is played for private enjoyment only—although

it might not be in a strictly private setting, not in the lounge room at home. Secondly, there is music which is played to create ambience in a restaurant, a jeans store et cetera. Thirdly, there is music which is quite obviously integral to the commercial activity of the business. An obvious example of that is probably an aerobics class in a gymnasium; without the music, you cannot quite imagine how it would work.

Mr Gock—You cannot dance in time.

CHAIR—That is right. Accepting for the moment that categorisation—it is an arbitrary one but it may be helpful in the way that we look at this—the question is: where do you draw the line between those three categories? Obviously, different witnesses have put the line in different places. I would be interested in where you think the line should be drawn, if anywhere, along that spectrum.

Mr Primrose—There is a principle at stake which is that people are using music for commercial purposes. There is a whole can of worms in deciding who should pay for what. The playing of radio appears to me to be exactly the same thing. Although it is incurring twice the fee, it is being re-used for a commercial purpose.

CHAIR—Can I just stop you there? You say ‘commercial purpose’ but I understand, without going into the great detail of the Copyright Act, the crucial definition is ‘public performance.’

Mr Gock—It is a public performance in the store—certainly.

CHAIR—There is a question of what ‘public performance’ means. That has not been clearly defined.

Mr Gock—The question is whether someone argues by saying, ‘Look, this is for my own personal use. It just so happens that the music filters out and other people are listening to it. It is really for my own entertainment.’ One would think this has to be assessed on a case by case basis. It is whether someone is simply trying to avoid an obligation.

CHAIR—I am not questioning that people might seek to abuse whatever system you have. I do not cavil with the proposition that some people will abuse the system. From what you are saying, Mr Gock, do I take it that the line you are positing is between private enjoyment even if it happens to be on a commercial premises and for ambience? Once you reach the point of using music for ambience, has it become sufficiently integral to the commercial activities of the business that there should be no question that a royalty is paid?

Mr Gock—I think so because it is about performance. It is a performance royalty. The composer has a composer’s audience. That audience might be one person and clearly

there is no public performance, but beyond that the audience could be millions via radio, television or whatever. One would think it would be very clear in a situation where a store is using the music loud enough so that it is not for personal use—it pervades through the store and it helps the environment that they are working in. If they have a quiet radio in a back room somewhere, that is not pervading through the rest of the store.

CHAIR—If you get within 50 metres of the jeans store and you are already at 95 decibels!

Mr Gock—That is right. If it is for private usage, people have a serious hearing problem.

CHAIR—Can I put one more matter to you before my colleagues may want to ask you some questions. One suggestion that is made—this is in relation to radio, not CDs and tapes, simply radio—is that a system that would be much easier to operate and administer and would not cause the degree of angst that seems to have been caused over the last couple of years for small business would simply be that, so far as playing a radio in small business is concerned, there would be no royalty fees charged or that the royalty fees would be adjusted in relation to the radio stations themselves.

Mr Gock—There are two performances that happen. With radio stations, there is a performance to the general public. If stores uses it to attract business to themselves, it would be unfair to re-impose that back on the radio stations because our argument is that they are generating business for themselves and, again putting it in context, we are talking about a dollar a week for those stores.

CHAIR—But the proposition is not necessarily to deny what you are saying is a matter of legal principle but simply to say that as a matter of practicality wouldn't it be easier to increase the royalty fees paid by the radio stations and forget about chasing around small businesses all over the country with the resultant confusion, as I said, and angst that that seems to have caused.

Mr Gock—Without speaking on behalf of APRA—they are much better at this than I would be—I would suggest that the effort that they would have to go to to collect these monies from shopkeepers and so forth is very great. But it is worth it from a point of principle. It is really their responsibility to try to collect these kinds of monies, because it is a legitimate impost and it is not a lot of money. If it is not collected at these points, then the law is not being used properly and it may lead to other abuses in future.

Mrs ELIZABETH GRACE—You say your performance royalties are a significant part of your income. Without going into dollars and cents, how are you paid? Are you paid at the point of a composition being handed over? Are you paid on a continual basis through a record company? Are you contracted to a record company? Are you paid according to the number of times each radio station or whoever plays that composition?

Just where does that income for you people come from? I must admit, I am not a very good advocate for music. I do not play records a lot or anything like that. I have heard of none of you. I would not know the composer of anything past Bach and Mozart. So your name is not what sells you. Can you see what I am trying to say—your compositions are what sell you? How do you get your royalties?

Mr Gock—Firstly, going backwards, that is the beauty of music—that you do get very niche marketing. Each one of us has had our 15 minutes of fame in sort of niche areas. For some of us, our names do sell but not necessarily to the broad market. The way we earn our money from performance royalties is through APRA. APRA collects those monies for us, and we assign our performance rights to them. They, as a non-profit organisation, are able to collect those monies for us.

Mrs ELIZABETH GRACE—So you are dependent on the public purchasing your item and then APRA keeping an eye on how these sales are going to pass the money onto you; is that how it works?

Mr Gock—Not specifically. There are a number of copyrights that come into force. Even if you did a doodle or you sang a few notes, you automatically own the copyright for it in whatever you do. But there is not one copyright. There are a number of copyrights, one of which is performance.

Other copyrights come into play. If you are making a record, then you would have some publishing rights and you would have some mechanical rights. There are a number of different rights that the record company would help you collect. A publishing company would help you collect in another manner. As I say, specifically with performance royalties, APRA is the organisation that collects those performance royalties for us whenever our music is played anywhere in the world.

Mrs ELIZABETH GRACE—What I am leading to is that, unless somebody plays your music, you do not get paid.

Mr Gock—Exactly.

Mrs ELIZABETH GRACE—So playing radio is exposing your music to the public to make ignorant people like me aware of the fact that a certain piece of music has been written. I might not know who wrote it but I may like it and so go out to buy it.

Mr Gock—Yes.

Mrs ELIZABETH GRACE—So isn't being on radio a form of promotion for you people? Isn't it using the radio as a form of promotion?

Mr Gock—There are multiple copyrights, including one that is due to me as the

songwriter—you are quite right—if someone buys a CD, if I have written those songs. Then, if that is reused for public performance, it is quite right that we receive a fee for that, because it is used, whether it be by the radio station, the television station or whatever, to produce income for themselves. Certainly, for radio, it is very clear that that is the case, because they get advertisers because you listen to your preferred stations and the advertisers can target you. It would be the same instance with stores. If they are using it to help produce income for themselves, if they believe that this music is helping them, then there is a licence that needs to be satisfied there.

Mrs ELIZABETH GRACE—What I am getting to is that playing your music on radio, which is the main source—you don't play a lot of music on television, unless it is a background type of thing—is a form of exposure for you people and a way of you presenting your work to the public.

Mr Gock—It is mainly a form of income. It is not an income from people buying our records. There is a lot of music that you listen to that you enjoy that you do not go out and purchase, but it does produce income for those people who are broadcasting.

Ms Smith—At the same time, with the playing of music on radio, often they do not announce the name of the composer. You say you would not be aware of our composers' music. You would actually be very aware of a lot of our composers' music. You would hear it constantly on television. One of the people you have got speaking today is Mike Perjanik, who has done a lot of music; I think it was *Home and Away* he has done the music for. You can say that radio advertises composers' music. At the same time, when I go and buy something from a shop, I take the bag that will have the shop's name emblazoned on the side of it, but they would not say that you can have our product for free or you can have this T-shirt for free with the name of the company on it; that is free advertising.

Mrs ELIZABETH GRACE—But that does not necessarily follow either, because you might buy something from that shop and you may be carrying that shop name around but what is inside the bag could have been manufactured by somebody else. So that does not necessarily follow. Composers are just people who do not get advertising. It is like everything else. The performers get the advertising; the composers and the arrangers do not get the advertising.

Ms Smith—No, but you know their works.

Mrs ELIZABETH GRACE—And that is what it boils down to. That is just a reality of life. I am not denigrating it or anything like that. I am just asking whether exposing the music that you have composed—it does not matter who plays it or how it is played—is not one way of getting not necessarily your name out there but getting your music out there so that you derive income. If everybody turns off their radio, who is going to know that you have written *Priscilla, Queen of the Desert* if they have not been to the

movie? I have not been to the movie, so I have no idea. To me, it is a form of commercialisation for you people. It is a form of advertising for you, being the composers, the arrangers and the performers and whoever else gets involved along the line—the record companies and the whole bit.

Mr Primrose—That way, everything we do is also self-promotion of our work.

Mrs ELIZABETH GRACE—Yes.

Mr Primrose—Everything we are credited for. Are you suggesting that none of this should be remunerated?

Mrs ELIZABETH GRACE—No. I am just saying that—

Mr Gock—Is it double-dipping?

Mrs ELIZABETH GRACE—In a way it is, because the copyright has already been paid by the radio to play that music to expose you and your works to the general public so that the general public is then encouraged to go and buy—which is what that is all about—that music or that record or that tape or whatever the case may be.

Mr Gock—The radio stations' primary interest is to attract advertisers. Whether they buy our records or not is of little interest to them—

Mrs ELIZABETH GRACE—Just let me interrupt there. We people on this side of the table would not know that that music was available unless it is played on the radio. I really am ignorant, because I do not listen to a lot of radio and that sort of thing, but my understanding is that, if you produce something, a new record or a new composition or whatever, you go on a massive promotion drive through radio stations trying to get people out there to listen to your music so they will rush out to the shops and buy it. I am just trying to point out that there is another side to your exposure and the fact that you are getting exposure by using the radio that you would not get if we all shut our radios down or we only turned them on on the hour to listen to the news.

Mr Gock—Two things. Firstly, what we produce is a piece of property, and that property has a number of rights to it. What we are talking about is simply that we obviously need to be remunerated for the use of that property. Whether there is an argument to say there is free advertising—if that is an argument—does not therefore mean that we should not be paid for the use of the property. That is not an argument against that.

Basically, from our point of view, we do not pay the radio stations and we do not use it for publicity. The radio stations choose the best music that they think is right for them and, if it happens to be material that we have written, that is fantastic because that

creates a performance royalty for us. That is what we are busy in our studios trying to do—create music that is popular enough to be played, which generates these incomes for us. If we do not get the incomes, our work is not good enough and we will, like any other small business, starve. We need those incomes to come in or we have to adjust our music.

Mrs ELIZABETH GRACE—But isn't that the same with all business? People have to generate their income by creating and targeting their audience, be it somebody who buys clothes or somebody who is an accountant. They have to target their audience the right way to create that business, and yours just happens to be music. My argument—back to the beginning—is that the radio station has already paid APRA a huge amount of money, not just a few dollars, for the right to play that record. The expectation is that, because I happen to turn the radio on, I am expected to pay to listen to that record, even though I have not chosen to do that.

Mr Gock—Only if you are using it for your business. At home—

Mrs ELIZABETH GRACE—That is what I mean. That is another thing that I find very hard to distinguish between—if you are at home listening to a radio and if you are an accountant and you work from home and you play the radio, nobody is going to come near you.

Mr Gock—There is no public performance.

Mrs ELIZABETH GRACE—Exactly. So what is the difference? It is getting down to splitting—

Mr Gock—It has to do with public performance.

Mrs ELIZABETH GRACE—It is getting back to what is a public performance.

Mr Gock—If you are an accountant working from your bedroom at home, the music is not going to generate any more income for you.

Mrs ELIZABETH GRACE—It is when one of your clients comes in, though.

Mr Gock—If you are an accountant and you have the radio going and you can hear over the top of it—

CHAIR—If a counsellor working for some agency has soft, soothing music playing in the waiting room, you would argue on the ambience test that that is public performance. If you are a counsellor who works from home, as many do, and you have a CD player on with the same soft, soothing music, presumably if it is a public performance at the agency it is also a public performance at home, as in those circumstances it is creating the ambience for the client concerned.

Mrs ELIZABETH GRACE—These are some of the challenges we are just trying to work our way through.

Mr TONY SMITH—Do you not accept that in this particular argument—we have heard all the arguments about property interests and all of those sorts of things, and I do not have a problem with it—it is really a question of balancing interests when it comes down to details. What about, for example, the struggling small businesses in very working class areas in my electorate—not the fancy coffee shops up the road here but small businesses in Kensington Village in Bray Park in my electorate which live on the knife edge—who have the radio going and the proprietor says, 'This is for my benefit. Whether or not my customers hear it is irrelevant to me. What is relevant to me is that I have something for me while I am preparing coffee and so forth'?

What I am saying is that you balance the aggravation and difficulty that that is causing the struggling small businesses in my electorate against the rights of people like yourselves. You arguably come to this conclusion, do you not, that the benefit to you in terms of collecting fees in those circumstances is minimal in relation to the detriment to that small business owner. There is a benefit to you from people hearing some of those records. They come into those places, they hear those records and they think, 'Okay, that sounds good. I might go and buy that.'

So there is a benefit that is derived to you which offsets the detriment that you loose by not getting the few cents out of the playing of that radio in that shop and it is balancing out the cost to the small business owner. Can you see the balancing exercise that I feel is my job here? It is to balance all of those things out and at the end of the day what I get—and I found this in Cairns, too—is this is mind-set that, 'Well, we've got to be paid.' Whereas if you looked at all of those things you would say that it is just not worth the aggravation in that infinitesimal set of circumstances, as opposed to the big picture where I might get 10,000 extra records because somebody heard it there and he said, 'That is a fantastic record and I have told so and so,' and away you go.

Ms Smith—Composers are a small business themselves.

Mr TONY SMITH—I know what you are saying.

Ms Smith—But you have lots of different forms of income. A lot of composers do works where they do not earn money from up front and it is only through the royalties that it pays off. So if we want to keep a music and cultural industry in Australia with music, we need to have this income and support to continue to come in.

Mr Charles—I was going to make the same sort of point that composers themselves are often very struggling small businesses. Film and some music pays quite well. A lot of it does not. There are a lot of gaps in between jobs. Many of us work in other fields. Many of us work as teachers, as musicians and some drive cabs. I think we

do know what struggling small business is and anything that helps is welcome.

Mr Primrose—I would suggest that it probably brings into question the possibility of putting a fee on the basis of one's ability to pay and also the commercial profit that one derives from the use of this music.

Mr TONY SMITH—In the particular circumstances I am speaking of though, I am not talking about speakers. I am talking about somebody in a hairdresser, a mechanic's shop, a chemist shop or a tiny little sad coffee shop. Those people are have the radio there. They listen to the cricket sometimes and a song comes on.

Ms Smith—The Australia Council did a survey last year which found that composers earned on the average $35,000 a year. I would suggest that there would not be many of those small businesses that earn as little as $35,000 a year.

Mr TONY SMITH—You would be surprised.

Ms Smith—And that is made up through working as taxi drivers as well.

Mr TONY SMITH—I do not think you are grasping my point. I have no problem with that. I am just saying that, with the balancing of interests involved, there is a bigger picture for you people to consider. That is what I am saying and you cannot seem to grasp it, with respect.

Mr Gock—With respect to that, and now we are going over old ground, that is why as small businesses we understand what struggling small businesses are all about. There are two issues. Firstly, is it domestic use? Is it personal use or is it used to create income? That is a test that needs to be done on the ground. Secondly, we are talking about $1 a week. Even our most struggling of composers can afford $1 a week if it is going to help improve their lot. It is a small price to pay for what is fantastic value.

Mr TONY SMITH—When you are talking about $1 a week, that is on top of the environment levy and the health levy.

Mr Gock—Yes. As small businesses we understand all of that, but if it was not creating any business for you, if it was making no difference to your shop, your hairdresser, your coffee shop or whatever, you would not turn the radio on. You would not use music in that situation, because you would save the $1 a week.

Mrs ELIZABETH GRACE—That is simply what they have done. They have turned their radios off so you are not even being exposed.

Mr Gock—Absolutely. If it is of no commercial value to your business, you would turn it off.

Mrs ELIZABETH GRACE—But then your music is not being heard by them or by anybody else.

Mr Gock—That is not an issue.

Mr TONY SMITH—But it should be.

Mrs ELIZABETH GRACE—If you are going to derive your income from that.

Mr Gock—We do not want people to beat us up as small businesses either. If we are using somebody else's property to help increase our income, we would expect to pay some sort of a levy or some sort of a whatever. It is the same as paying tax: you are paying so that the roads get fixed or the hospitals get fixed. In this particular case, if you are not using it to improve your store, your environment or to increase your customers, obviously turn it off because we do not want to make money out of somebody listening for their own personal use.

Mr TONY SMITH—Just focusing on that and to go into those sorts of arguments and tests, one can see a case going to the High Court on the point that you have just mentioned—the $37.90 or whatever it is.

Mr Gock—The practicalities of it are that it would never happen.

Mr TONY SMITH—What I am saying is that it really is not arguable, given what I have said, that there should be an exemption in the case of small business playing a little radio in the sort of situation that I am saying.

Mr Gock—In the situation that you are saying, which is for personal use, I think that is outside the act. The act is for public performance.

Mr TONY SMITH—Yet my constituents have been bombarded with these fees.

Mrs ELIZABETH GRACE—It is closer to public performance.

Mr Gock—One would assume that, if they are legitimately using it for personal use, there is no fee involved. If they are using it in such a way that they are improving their income through improving their environment there should be a fee involved.

CHAIR—Upon whom should the onus of proof lie? Is it sufficient for the small business owner to say, 'I am using this for personal use,' and that should be accepted unless it can be proved otherwise? Or, if you are playing a radio on a business premises, should the presumption be that it is being used for some form of public performance unless you can prove otherwise?

Mr Gock—With respect, I think that is a question for a lawyer.

CHAIR—That is why I am asking you. It is also one that has to be answered. It is a chance to have a view on it, Mr Gock, otherwise we will make up our mind regardless.

Mr Gock—One would suspect that the onus of proof is the same as with any other infringement of any other act. For instance, with speeding, where does the onus lie?

CHAIR—In that case, the onus here lies on you to prove a breach of copyright.

Mr Gock—If that is the legal outcome, presumably that is it. That is for greater legal minds than mine to argue.

CHAIR—Thank you very much for your submission and also for coming along and discussing it with us this morning.

[9.55 a.m.]

FABINYI, Mr Jeremy, Chief Executive Officer, Australian Music Publishers Association Ltd and Australasian Mechanical Copyright Owners' Society, 6-12 Atchison Street, St Leonards, New South Wales

CHAIR—Welcome. Although the committee does not require you to give evidence under oath, I should advise you that the hearing is a legal proceeding of the parliament and warrants 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. We are in receipt of the submission of 15 September of this year. Would you care to make some brief opening remarks?

Mr Fabinyi—Thank you very much, and thanks for the opportunity to speak here. I will start by confessing that I am not a copyright lawyer, so any tricky copyright lawyers, and I am sure there are plenty more lined up this afternoon, you can save those questions for them. I have been in the music industry for more than 20 years, both in the creative side as a film and video maker for bands and as a manager of successful groups such Mental as Anything, the Cockroaches and the Wiggles, amongst others. I have acted as a small publisher and now as a representative of all the publishers. Music publishers have got a very vital interest in the outcome of today's hearings.

The first owner of copyright in a work, as I am sure you are well aware, is the composer. Normal industry practice is that the composer will license or assign the rights to administer those copyrights to a music publisher. In return, the music publisher takes on certain obligations and participates in the income. The source of income to writers can be broadly categorised as reproduction rights and performance based rights.

As regards the performance based rights, which we are discussing today, the writers are normally members of APRA and would assign to APRA the rights to collect their performance and broadcast rights. The rules of APRA stipulate that, notwithstanding any publishing agreements which may exist between a writer and a publisher, the writer will receive no less than 50 per cent of the performance based income paid directly to them and not via their publisher representative, so the publisher is unable to recoup any advances which they may have put forward from that 50 per cent share of the performance based income.

Publishers play a very crucial role in the music industry. They are pretty much the forgotten side of the industry, very much behind the scenes. Whereas you may not know the names of the composers, you certainly will not know the names of the publishers. But it is often the publisher that is first discovering and developing creative talent. I refer, for example, to Savage Garden, one of Australia's greatest success stories. It is a band that was nurtured and developed in its early stages by a music publisher who provided funding for it.

Many composers and artists are discovered and nurtured by publishers long before they become recording artists or they have success as performing artists. One of the main areas that publishers contribute in is directly in financial aid, providing advances and other forms of financial incentive. Of course, once the act or the composer is signed and the record is released, it is the publisher that is involved in promoting, exploiting in whatever way it is possible, the music that has been created. The publishers also deal with the various burdens involved in maintaining copyright in the songs and in instigating litigation on behalf of the copyright owners if that is required. Publishers are usually involved with an international network of affiliates and contacts and they play a very important role in providing an entree into the world market for the composers that they represent.

Just as you have heard that the composers receive their money from the use of their music, they do not receive salaries, people are not paid to make music as such, in a similar way the publishers get their returns on their investment. It is a very speculative business. It is a competitive business. When the time has come, you put up money to gain rights and you receive your return on that investment from the exploitation and the usage of the music that you have invested in. There can be spectacular success and there can be spectacular failure. So it is a risky business.

Publishers take that risk on the basis of internationally known and accepted standards of rights protection. We would submit that to reduce the level of protection would unfairly and unreasonably interfere with the business interests of music publishers and in fact may prejudice foreign investment in Australian writers and music. There is no question that any reduction in protection will be met overseas by dismay at the diminishing of intellectual property rights. It will further damage Australia's reputation in this area and in fact could lead to retaliatory action from other societies not providing similar rights to Australian composers in those territories.

In that context, I must refer to the other matter which is currently before the parliament, which is to do with the repeal of composers' protection against parallel imports. This is a recipe for the decimation of the Australian music industry. Certainly, the international community views this as such and views with complete dismay the idea that at this particular time Australia is heading in the opposite direction to the rest of the world. Senator Alston's rather harebrained ideas I do not think are really the subject to go into any further at this committee meeting but, if you wish to question me about it, I will happily discuss that at great length. But I do make the point that Australia's reputation in the region, where there is a lot of effort being put on increasing copyright protection, and Australia's role in the region could well be under threat by any moves to reduce copyright protection.

One of the popular theories that has been going around is that Australia is a net importer of copyright material and therefore money which is earned is going outside the country. I know that is a theory that has been put forward. One approach would be to say, 'Let's come up with some ways to diddle foreign copyright owners out of money for the

use of their works.' We would suggest that a more appropriate way is to work with the government to find ways to successfully build the Australian music industry into a successful export business. In fact, the business on its own has been incredibly successful in developing itself as a worthwhile industry. We get no government support whatsoever, but currently a band such as Savage Garden, such as Peter Andre, such as Crowded House, are having phenomenal international success. The export income is that earned by Australia from these acts would be enormous. The potential, if we work together with the government to develop the industry, is for further income.

The sort of support that other areas that the arts get is never applied to the music industry. I think that there is a general feeling that popular music is not a viable or worthwhile cultural art form. We would submit that it is important in defining who we are as a nation and it is important for members of the society. I would just point out that even the Prime Minister is talking about the importance of the new information age. This, I believe, should be our focus. We should be moving forward rather than moving back. As I said, Australia is slipping further and further behind. Blank tape royalty was promised 10 years ago. It has not arrived. There is no transmission right for sound recordings. We should be looking to the future. In many cases what we are doing here is looking very much at the past.

This committee has a very valuable role. Some of the things which have been brought up today and which have been brought up in the various submissions indicate that this particular area of copyright law that we are looking at is very much misunderstood and is causing a great deal of confusion within the community. This committee has an excellent opportunity to now clarify the issues for the community, reaffirm the general principles and move forward from here.

CHAIR—Excuse my ignorance, but I understand what a songwriter does, I understand what a composer does, I understand what the record company does, I understand what the radio station does—can you just outline in a bit more detail what the publisher does? I understand what a publisher does if it is in terms of producing a piece of sheet music, but obviously that is not the entire role—

Mr Fabinyi—The role of the publisher, as I have indicated, is in the first instance to attract the composer to their company by way of providing advances and support, nurturing the composers. They also look after the entire administrative burden of collecting royalties.

In the case of the performance income, that is a relatively straight forward exercise because APRA performs that function and provides consolidated statements to the publishers and the writers. In various other areas of usage, such as mechanical usage, such as usages in films, licensing and advertisements—

CHAIR—Stop there for a moment. When you say 'mechanical usage,' what do

you mean?

Mr Fabinyi—Forgive me. 'Mechanical usage' is industry jargon. In the original days, when you manufactured a record it was a mechanical process and there was a royalty payable every time the work was mechanically reproduced. Of course, currently in the electronic age there may not be any mechanical involvement at all, but the term is 'mechanicals' which relate to reproduction-based income in the production of CDs and such.

CHAIR—So every time a record company—they are still called record companies, I suppose—produces a CD, there is a royalty paid and the publisher is the person or entity which looks after that?

Mr Fabinyi—That is right—collects it, accounts for it, distributes it to the composers and so forth.

CHAIR—Let us draw an analogy: the publisher is something like an agent for the composers and the performers. Is that so?

Mr Fabinyi—That is right. The publisher's role is financial advice, administrative support, promotion, maximising of the exploitation of the works, international connections and those sorts of things—a critical, hidden and largely unknown but vital role.

CHAIR—Right, I understand that. You refer in your submission to downloading from Internet sites. One of our terms of reference is about what future developments might occur and what we ought to be looking at. Can you elaborate just briefly on how that downloading occurs? What is the infringement of copyright involved? How does it come about? Do you see other areas developing in the future that we ought to be aware of?

Mr Fabinyi—This is exactly my point. This is where the focus of our attention should be. In the new digital age there are many challenges ahead for copyright industries worldwide and this is something which we should be focusing on. To focus on your question of the Internet, if, for example, somebody reproduces a musical work on to a computer server situated in Australia, for argument's sake, that is a reproduction. That is a licensable activity which should be licensed but may not be licensed.

Every time somebody accesses that site and downloads, makes a reproduction of that copyright material, that is a reproduction—it may also be a performance, a broadcast or a transmission; these are the matters which need to be sorted out and regularised—which takes place and which should be a licensed activity.

The point that I tried to make in my submission is that the current state of thinking on the Internet is that everything should be free. Everything should be free—music should be freely available—and the point I was making there is that, when we tried to point out

somebody who is blatantly infringing copyright, they started a campaign to have us spanned with messages, saying, 'How dare you! The Internet should be free. We should have free access to this.'

It is a common misconception that music is free and that intellectual property is free. Unfortunately, I would see one of this committee's roles as being to establish the principle established in international treaty and Australian law that copyright is not free; it is licensable. The question of how you license it is a separate issue. Those are the principles which we are dealing with today.

CHAIR—Could I just look at the detail of that a bit more? Say someone establishes—there might be variations of this but I want to try and look at what there are—a web site on the Internet and, in addition to the visual and printed information that is the basis of most web sites, they have a piece of background music so that, when you open the web site, a little jingle—'God save the Queen,' 'Jingle Bells' or whatever—plays. From what you are saying, in relation to that, is that a use of music in a public sense for which a royalty ought to be paid to the composer, the publisher et cetera just the same as if you walked into a shop and there was music playing?

Mr Fabinyi—No, not necessarily. There is a whole set of rights which relate to musical works: the right to reproduce, the right to publish, the right to publicly perform, and the right to broadcast. Which rights are being infringed by somebody who performs that action without permission is a matter to sit down and look at, but it may not necessarily be the public performance right that is the subject of this discussion.

For a start, it has been reproduced onto the server; a copy has been made. That is a licenseable activity in the first instance. It may be that the terms of the licence that the copyright owner gives says, 'I will give you a licence to reproduce it, to publicly perform it and to download it,' or whatever. It may be that APRA will be licensing the public performance and the transmission of it. As I said, these are the more critical issues which are facing the industry.

CHAIR—I am not so interested in which right or rights are involved or being infringed. I am interested in the principle, and that is the principle that when somebody—

Mr Fabinyi—It is a licenseable activity.

CHAIR—It is a licenseable activity. So in that case.

Mr Fabinyi—Absolutely. I am sure you would agree with that.

CHAIR—I am asking the questions; I am not answering them at this stage, Mr Fabinyi. So that is that case. I take it from what you made reference to in your submission that that was something different. Correct me if I am wrong, but what I understood you to

be suggesting was that these activities included, for example, my putting a CD in the CD ROM player of my computer linked to the Internet at home and then attaching that to something I put onto the Internet. It is then on the Internet and anybody can just pick it up off the Internet. Effectively, that is what is happening and people are downloading it onto a blank CD or something like that or recording it in some way. Is that the nature of the activity that you were referring to?

Mr Fabinyi—The actual case in point was MIDI files. I am not quite sure whether you are aware of what a MIDI file is. It is a musical instrument digital interface file. To explain what a MIDI file is I will use the concept of a piano roll. A piano roll is put into an old pianola and then it plays the music. A MIDI file is the instructions to a computer to reproduce the music. In this particular case, it was not an audio file of a song, a CD audio file; it was a MIDI file, which is a reproduction recording. Under the definition of a record in the copyright act, it is a record. It was being uploaded onto the Internet and it was being offered freely for people to download. I think any reasonable person would agree that that was an infringement of copyright in the musical work.

CHAIR—So those are two examples of how you would say there are rights which can be reproduced, transmitted, publicly performed or whatever, maybe a combination of all of those, via the Internet. Are there other examples that we ought to be aware of?

Mr Fabinyi—The future of the new technologies are going to be direct to home delivery of music via the Internet. It is going to be digital radio and the various other broadband services. As I say, these open up a whole host of questions. There is the government paper on copyright reform in the digital area—I am confused about the terminology—which raises a lot of these issues.

I could not possibly purport to propose the solutions to all of those problems. It requires a lot of attention, a lot of focus and a lot of thinking. But, to address some of the questions which the previous panel were asked, it seems that a lot of those questions were focused solely in the context of how things operate at the moment—what radio is at the moment, what a radio broadcast is at the moment. Alan Jones will always be on air, but in the future, with all these various new technologies which are coming along, the whole landscape can change quite radically. So the idea needs to be looked at I think in a slightly broader context.

CHAIR—There was another question I had flowing from that but it has escaped me now, so I will let one of my colleagues ask some questions.

Mr TONY SMITH—In your submission you state:

> Composers and music publishers depend on the royalties that flow from the use of their copyright material as their sole form of remuneration . . .

First of all, in that sentence you use music publishers and composers interchangeably in terms of royalties. Is it correct to say that?

Mr Fabinyi—Absolutely correct. The music publisher gets a share of the income to the extent that they are, to use the analogy that was used of an agency, getting a commission or a percentage of the pie for the work which they do and for the risk and financial investment they make. That is where they get the money from. We are together with the composer.

Mr TONY SMITH—You then say that royalties from broadcast and public performance constitute a significant proportion of composers' and publishers' incomes, after saying the sole form of remuneration earlier. What sort of remuneration do composers and music publishers receive from the copyright collecting societies? What percentage comes from public performance licences paid by small business?

Mr Fabinyi—I do not have those exact figures. The figures I provided in the statement were that the National Music Publishers Association in America published some figures which I think were roughly that 50 per cent was reproduction based income and 50 per cent was from the public performance and broadcast based income.

Mr TONY SMITH—That is an overseas figure.

Mr Fabinyi—I think it would be a similar figure here. I think that would be appropriate—fifty-fifty.

Mr TONY SMITH—We would have to know that rather than just speculate on it, but it is probably not fair to ask you about that. In relation to the comment you make about fairness, small business and so forth—you probably heard the exchange that preceded your appearance—are you adverse to the idea of giving small businesses an exemption for having a radio playing in the background?

Mr Fabinyi—I think the whole question of exemption opens a can of worms. Everybody is sympathetic to the proposition which you put forward. The proposition you put forward was a struggling coffee shop in your electorate; that was one of the examples you used. That is a very different thing, I would submit, from somebody listening to it while they are cutting up food in the backroom. So, how you define these things, how you come up with a series of exemptions could in fact do the opposite of what this committee is trying to do, which is to say, 'This is a complicated, administratively difficult situation that has occurred.' I suggest that creating a more complicated system of exemptions would in fact cause a lot more aggravation.

It has been pointed out that the sort of money that is being spoken about is very small. I submit the real problem is that there is a great deal of confusion and misunderstanding in the community about the rights and the validity of the requests which

are being made for money. If this committee were to come out and clearly state that APRA is a legitimate organisation—I think nobody really is arguing that that is the case—and that they have a legitimate right here, that would solve a lot of the problems.

Mr TONY SMITH—But you are not necessarily cavilling the proposition that, in the circumstances I have posited, particularly the radio playing situation, there is an argument for saying there is an onus of proof on APRA to show that that is a public performance, that the radio the small business owner is playing is a public performance. You would not cavil with that, would you?

Mr Fabinyi—I think really there has to be some context in this argument. As far as I am aware, APRA have never sued a small business for playing music in the backroom. As I understand it, notwithstanding the fact that I and they would argue about the value of the definition of public performance and what it would actually mean, they do not go around licensing the person sitting in the backroom chopping up the potatoes. If that is the case, they exercise discretion and they do not issue licences. They have never sued anyone for that particular purpose. In terms of the context—

Mr TONY SMITH—They do chase them. Take it from me: they chase them. People basically think, 'Okay, we've got to pay $37' or whatever it is. It is a very raw issue in that area. I think you would surely acknowledge that, if there was a way of resolving that issue to both your and their benefit, it would be in the public interest to do so.

Mr Fabinyi—You have no argument from me there. Obviously creative solutions are required. But I was a little bit daunted by some of the submissions, which basically take the view, 'Just do away with the right and that will solve the problem.' I am not sure that is really a creative solution to the problem. Certainly, I think everybody would agree that anything that can increase administrative efficiency, anything that can smooth the way, anything that can clearly explain to people a very complicated issue and the equity and the fairness involved can contribute to the debate.

CHAIR—Mr Fabinyi, in passing, I suppose, you made something of our international obligations and the suggestion that we were going the opposite way to the rest of the world. Can I refer you to the Canadian Copyright Act, which, as I understand it, does exempt small businesses from paying licence fees for radio broadcasts. Why is that not a best practice internationally?

Mr Fabinyi—I do not purport to be an expert on international copyright law. However, my understanding is that the Canadian act has a different twist in the sense that the broadcasters are paying for that right. When there is a right, payment is required for the right and it is the broadcasters who are paying for the right rather than the small business. It is a different way of achieving the same end, but my point about international perception particularly in regard to the parallel importation debate is that Canada has

strong parallel importation laws, despite what one may have read in the media and what is purported to have been said, as has the United States and the European Union and I think the US Trade Office, the European Union and the British Trade Office have summed it up and expressed absolute dismay at the Australian government's moves to effectively decimate the Australian music industry. In effect, if that goes through, this entire argument will be—

CHAIR—I fully understand you have views about that but, fortunately or unfortunately, depending on what your view is, it is outside our terms of reference.

Mr Fabinyi—But my comment about international press was particularly focused on that and other—

CHAIR—I take it from what you say about Canada that it is not that the income to be earned from the intellectual property is ignored in Canada; it is collected in another way—namely, from the radio station paying some additional copyright in relation to that.

Mr Fabinyi—That is right.

CHAIR—I take it from that that you would not necessarily be opposed to our doing it that way provided the income to be earned by the copyright owner is protected in some way.

Mr Fabinyi—I think that is the basic premise that I am putting forward—that it must be protected. I am not in a position to deal with that proposition directly off the top of my head, but I would think that you would have fairly vigorous arguments from the Federation of Australian Radio Broadcasters about their view of that particular issue. Certainly that is a different way to skin the cat, so to speak. Some may argue that users who are not using the music for business purposes will be making some indirect contribution and they will be paying for somebody else's rights. It is a different debate to be had, but it is certainly one to be investigated.

Mr McCLELLAND—Your association deals with, as I understand it, the licence fee payable when a CD or cassette is made. It does not interface with small business to collect licence fees. Is that right?

Mr Fabinyi—Yes, but if I can just clarify. I represent two organisations. One is the licensing activity, which, as you described, is to do with the reproduction based income, and the other is the Music Publishers Association, which deals with the broad interest of music publishers and composers.

Mr McCLELLAND—Right, but it is not as if small businesses are having a third agency approaching them. That is not where you obtain your organisation's licence fees from?

Mr Fabinyi—We licence small businesses if they are in the process of reproducing music. I must say that that maybe illustrates the point that, if people understand what we do, it is much more understandable to people in a general sense—that is, you are making a copy and it needs to be paid for. In the Simpson report there were no complaints about AMCOS's activities. They understand why they need a licence; they get the licence; people understand it. As I said before, I think that is the problem—people do not understand in this area and anything that will clarify the situation is to—

CHAIR—Sorry; just so I am clear about this and to follow up what Mr McClelland was asking you, when you interface with small business it is generally with those people involved in the music business. You are not dealing with the coffee shop owner, the jeans store, the aerobics class or whatever. You are dealing with people—

Mr Fabinyi—Aerobics sometimes but, in general, no.

CHAIR—In general, no. That is fine. Yes, I understand that. There being no further questions, I thank you for the submission and also for coming along and discussing it with us this morning. Thank you.

[10.27 a.m.]

CANDI, Mr Emmanuel, Executive Director, Phonographic Performance Company of Australia, Level 9, 263 Clarence Street, Sydney, New South Wales 2000

McADAM, Ms Marcella Maria, Manager, Artist and Customer Relations, Phonographic Performance Company of Australia, Level 9, 263 Clarence Street, Sydney, New South Wales 2000

WHITE, Mr Jim, Manager, Phonographic Performance Company of Australia, Level 9, 263 Clarence Street, Sydney, New South Wales 2000

CHAIR—I welcome representatives of the Phonographic Performance Company of Australia. 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. We are in receipt of your submission of 16 September. Would you care to make some brief opening remarks?

Mr Candi—Thank you for the opportunity to speak to you today in Sydney, our home town, so I have been able to bring some of my colleagues with me. As you said, our submission was lodged previously. We would like to point out some further observations and maybe reiterate some.

Firstly, PPCA represents sound recording makers, record labels, and its registered recording artists. There are 1,300 labels and close to 2,000 registered Australian artists with PPCA. The sound recording, perhaps to state a fairly obvious thing, is a collection of different creative and technical inputs. It is brought together by the record label in collaboration with the artist, and the record label then takes its investment and markets that recording, hopefully over a very long period, for everyone's benefit.

The inputs into a sound recording include obviously musical works, arrangements, producers, sometimes conductors, engineers and of course performing artists. The record company then takes that to market and hopefully for the people involved it is the one out of 10 recordings that actually make a profit, and royalties will be paid as the recording experiences success. Copyright in the recording is based on success and reward from success.

The copyright that is vested in the recording includes a bundle of rights and each is separate. They are of course property right. The essence of copyright is that basically it deems a physical characteristic to what otherwise is a non-physical item. It does this to ensure that as it is used, or if it is one of those successful recordings, reward can follow the popularity of the use.

This inquiry is concerned with the public performance right that vests in musical works and, in our case, sound recordings. It also, to a lesser degree and perhaps to even more of a degree in our case, is very much concerned with the broadcast right. Both public performance and broadcast rights are important rights and will become increasingly more important as new uses or new disseminations in the superhighway age of sound recordings and musical works emerge. In many ways, public performance use of sound recordings will be increasingly accessed through transmissions rather than using the CD or cassette in the premises.

PPCA's job is to administer the public performance right and the broadcast right on a non-exclusive basis, and it has done this since 1969. The public performance right and the broadcast right that exist in the sound recordings are regrettably subject to fairly severe limitations that cause damage to the record labels and the recording artists. Any further exemptions will cause aggravated damages.

One of the main limitations relates to the main topic of this inquiry: the access of music through the radio or TV in a public performance venue. The access of a sound recording in a public performance manner through the radio or the TV is exempt from our public performance right, under section 199(2) of the act. This was done in 1969, there was no real logical or commonsense reason given, but that is the way it went. So, if you are playing the radio or the TV in your shop or cafe in a public performance manner, you do not need a licence to perform the sound recording, because section 199(2) has knocked out our ability to license that.

This exemption applies not only to small businesses but to all businesses, whether small, medium or large. It is costing the sound recording owners about $1.6 million in gross revenue a year. If you were to adjust backwards for inflation, it has been doing that for 25 years.

Moreover, one of the most important points we want to make is that that damage is grossly aggravated by our limitation on the fees payable by broadcasters to broadcast the sound recording in the first place, both in the radio broadcast area and in the TV broadcast area. On Monday, we will be in the High Court. The TV stations have taken the view that we do not even have a broadcast right for most of the time when it comes to TV broadcast; they are seeking to avoid just about any payment for their extensive use of sound recordings in their broadcasts. We will see what the High Court does on Monday.

The limitation simply is this: there was a one per cent capping put on what we can charge broadcasters for using our recordings, and that has been there since 1969. It was originally intended to be there for five years. That did not happen. We have been stuck with it for 26 years now. Also, in the case of the ABC, it was set at half a cent per head of population, and it has been half a cent per head of population since 1969. In that time the ABC, of course, have added on ABC FM, Triple J, extensive music users of sound recordings; and, apart from the population growing a bit, the half a cent has become

increasingly more meaningless as inflation has grown.

What I am saying to you is not only do members of the sound recording community lose out at the public performance end when it comes to radio or TV access of our recordings but the sound recording writers are precluded from receiving a proper fee from the broadcasting use of their products. It is a double whammy. It is losing and costing the sound recording community around $15 million to $20 million a year and, if you want to adjust backwards for CPI, it has done so for 25 or 26 years.

In regard to part C of the terms of reference, it will immediately be obvious to all that we do not really have a lot to do with that section. It is of great significance to us, and it does represent a significant exemption for businesses who are publicly performing sound recordings via that indirect means.

In regard to part B, we have 23 tariff categories; they are split into 63 subcategories. I think it is pretty clear from that that we have tried as hard as we can over the years to come up with as many splits as are practicable, if you like, to fit the businesses and the users of our recordings.

I would draw your attention to Tariff I. This was specifically created for businesses using music for their employees only rather than customers, or whatever. It is a special rate and, as far as we can work out, we have had it for well over a decade or so.

We checked our computer records yesterday and found that nine businesses, out of the 23,000 licences we have, have actually accessed that special tariff. We checked with the staff—and many of our staff have been there for a decade as well—and no-one can actually remember any licensee or prospective licensee ringing and saying, 'I'm a one-person business,' or 'There's only one person in my business who can actually hear the music.' If we did receive such a request, our staff are instructed to say, 'We'll give you a holdover licence, gratis, and you tell us when your business grows.'

On the licensing front, I have to point out that we absolutely strive, as hard as we can, to get as many licences as we can find in the public performance area. We do that for two reasons: one, that is our job, our responsibility; and, two, with the artificial cappings in place with the broadcast income, the only area of growth in income that we can achieve for the record companies and the artists is through public performance licensing.

In the 1990s, in particular—both Tim White, the general manager, and me started in 1990—we set out a plan to work as hard as we could to increase the licences. We did contemplate in 1992, 1993 and 1994 entering into a bit of a blitz campaign—not a bit of an one, a real big one. We decided that we would reject that approach, and we would go for 20 to 30 per cent growth each year. We did that for a number of reasons: one is to do with cost, and the other is to do with building the relationship with small business as we go.

In addition to the fact that it is our job, I have to tell you that the political reality is that that is the only course of action we can take. In 1992, when the then Broadcasting Act of 1942 was being revised, I put to the department of communications and the government of the day that, while they were fixing up the Broadcasting Act and coming in with all this deregulation, they ought to fix the one per cent artificial capping and the half a cent artificial capping. I was told that it was a secondary issue to them. We were told that PPCA ought to saturate its current licensing base 'as best it can under its present circumstances' and, when it has done that, 'it will not be a secondary issue any more, it will become a first order issue' and we might actually get somewhere with getting those cappings removed.

We did not take that as a reason to go away. I have spent a lot of time with various committees and various ministers in various studies putting forward this argument. It has been accepted that the one per cent limitation and the half a cent limitation ought to be repealed, leaving us with an open broadcast rate. It has been accepted in a number of committees in a number of reports. But I must say that it is still in the government system, and there is no magic wand to make it happen tomorrow.

In this environment we have to concentrate on public performance licensing, and we have to do it in the best commercial circumstances that we can. In doing so, we are very keen to have businesses understand our role, and understand what the public performance right is all about. We have increased our PR and our liaison with the users as much as possible. We have added in the very good talents here of my colleague Marcella Macadam. So there is a ground level understanding, we are running adds which are targeted and written specifically for the user groups, we are seeking to do editorials and articles in their trade magazines and we are sponsoring a number of activities. Indeed, sometimes a public performance user contacts us, and that is pretty good. It does not happen all that often but, when it does, it is pretty good.

Public performance licensing represents 60 per cent of our income. We have 10,000 licences that are under $50 each; and 67 per cent of all our licences are under $100 each. Our licences will increase by CPI next year, and two of our licences are currently subject to arbitration. I raise the arbitration point to take you to another part of the terms of reference relating to the copyright tribunal and other mechanisms.

We have a board of review mechanism. It was part of our Trade Practices Commission authorisation. We cannot activate the board of review, only the user can. The user can activate it really whether they have got a good argument or a bad argument. It is very quick, it is very cheap and, in our view, it is probably something that all collecting societies should have in their licensing schemes. To wrap up and throw myself open for questions: I have not had the opportunity to read all of the submissions yet. My colleagues here have been very kind to me and highlighted the juicy bits, the complaint parts. I have read those.

We, in a genuine way, regret the resentment that many people have to paying a licence fee to use music. Clearly the main thing that is coming through to us from those letters and submissions is, 'Okay, a lot of people just do not want to pay; but this is a property right and we intend to pursue it.' The real message to us is that we have to increase our education and PR role so that as many people do understand the value and the reason why the public performance licensing is there. We also have to up our communication to the relevant associations or user group associations to see whether we cannot strike as many cross-user group licensing as possible. We have a number in place where the whole of one sector is done through their trade association, in which case they get a discount as well, and it is very easy. I believe that we will be pursuing that with renewed vigour as we go forward.

I will just say one other thing about the tribunal. We are not frequent users of the Copyright Tribunal. I believe the Copyright Tribunal is a very expert body and it is a very important thing to have there for copyright, both on the user side and on the owner side. We have only ever had two tribunal cases. One nearly went for 20 years. The other one is on now with the TV stations. They are a $2½ billion industry. They are big enough to stand up for themselves in the Copyright Tribunal. In fact that is why we are now in the High Court, because a question has come from the tribunal up to the High Court about the basis of the right in the first place. We may end up in the tribunal again, I do not know; but it is certainly not our preferred way of going about settling disputes. As an old litigation lawyer—maybe not so old—I always prefer to negotiate rather than to litigate. That is our basic philosophy when it comes to those areas. Thank you for the opportunity to make this address.

CHAIR—Thank you, Mr Candi. Can I just go through this so I clearly understand it. You say that the effect of section 199(2) of the act is that you cannot licence members' sound recordings that are broadcast by radio or television into public venues.

Mr Candi—That is right. If I can put it another way: I own a shop, I have Triple M on, I am using the sound recordings, and the sound recordings are playing in the venue for the benefit of employees and the customers. In that instance, section 199(2) says, 'That shop will not need a licence from us.'

CHAIR—But it still needs a licence for other rights that APRA—

Mr Candi—The musical work. The song in the recording.

CHAIR—I am trying to understand what you are saying about this cap of one per cent and half a cent per head of population. That relates to the broadcast right?

Mr Candi—Yes, it relates to the broadcast right in the sound recording vested in section 85. The act says, 'The person who owns a copyright in the sound recording has the exclusive right to broadcast it.' Further on in the act, it says, 'Notwithstanding the

exclusive right to broadcast it, a radio broadcaster can broadcast whatever sound recording they like provided they pay a fee.' Then you go up a few more sections and it says, 'But that fee is to be limited to be no more than one per cent of their gross turnover, in the event that there is a tribunal adjudication.' So, in other words, if the tribunal looks at an argument between us and a radio station and says, 'Well, we think the proper rate is five per cent,' the tribunal cannot order five per cent but only a maximum of one per cent.

CHAIR—Is there some international comparison of what the rate is elsewhere where there is no such cap?

Mr Candi—I think the best comparison is the UK because of the similarities in our culture, our background and, of course, our common law system. In particular, our notions of copyright are cast or interpreted in the same way as they are in the UK.

The most recent UK copyright tribunal decision between the equivalent of PPCA and the radio stations went phenomenally bad for my counterparts. They were awarded between two per cent and five per cent licence fee; in other words, the radio broadcasters, depending on their music use and their turnover, have to pay somewhere between two per cent and five per cent of their turnover to the equivalent of PPCA for the use of sound recordings—and the average is about three per cent.

CHAIR—Getting back to what you claim is the loss, I note that you set out in your submission a loss of gross revenue running in the order of $16 million per annum, and a similar amount in terms of distribution. Of that amount of $16 million, am I right in saying that you calculate the loss by way of directly not being able to licence sound recordings played by radio or television in public venues to be about $1.6 million of that $16 million?

Mr Candi—Yes, we do.

CHAIR—Part of the problem here seems to be that there is a lack of understanding of copyright generally. Let me be frank. This was not an area of law that I practised in; and I am, on this inquiry, still coming to terms with what rights there are, who has them, and all that. As a lawyer I will work through that, and that is fine.

But if you are a shopkeeper out in Parramatta, Liverpool, Bankstown, or wherever, and somebody lobs up and says, Well, these are some rights in relation to the owners, the people who compose the music in the first place, and you have to pay a royalty to that'; if 199(2) is changed and you lob up and say, 'Not only that, but the people who have produced the sound recording also have some rights'; and then there are rights in relation to transmission, broadcast and whatever else, I think, for the ordinary business person, there is a high degree of confusion, leaving aside any question of whether or not they think they ought to be paying it. What do you do to educate people?

Mr Candi—I would respond, firstly, by saying that I agree. As a person who grew up in a corner store and then later was involved in pubs and clubs and other businesses, I can tell you that, if I put myself back in my shoes sitting in dad's shop, the last thing I would ever understand would be the copyright law and why, if I am playing the radio or CDs, there is a fee. Quite frankly, if I had sat down and thought about it or had someone explain it to me, then I think probably I would have understood pretty well. When I was running a pub I also remember that, the first time I got an APRA licence, I threw it in the bin. Then the second one came and I had a think about it. We rang them up and spoke to them about it—and that was in 1978.

So I am able to understand what the small business person feels like when they get hit with this notion of having to pay for, or not being able to access for free, what ostensibly looks free all the time. When I came to PPCA, it was with all those ideas in my head about what we had to do. As soon as we could, we started running notices and trying to do as many talks and things as we could.

But, more than that, we have now added in a specialist section of the company, which Marcella heads up, trying as hard as we can to come up with eye-peeling and targeted ads that we change according to whether it is an aerobics place or a hairdresser or whatever, and then going to the trade magazines that are directly associated with the user group. Again, in the pub game I knew exactly which trade magazines we had, and the same for the grocery shop, et cetera. So we are targeting all of those magazines. Marcella can give you a list. We are also seeking to write articles and do as many talks as we can to get out there.

As I said, in the initial address we are trying to seek out those associations one by one and say, 'Listen, if you can organise all your members—they are all members of your association and they all pay your fees in one way or another—we can do a one-stop deal on both ends here that will earn a discount as well and make everything a lot easier.' So I agree with your premise.

The other part of your question was: if we were to get back our right to charge for radio and TV accessing of our sound recordings, would it cause aggravation and pandemonium? In the present circumstances, I reckon it would. I also place our chances of having section 199(2) reversed as close to nil in the present environment, which makes it all the more imperative, as we move forward into an age when more and more public performances will be by transmissions, that we get rid of those ceilings.

Some of the public performance uses that you hear now when you go into a certain chain of supermarkets are actually a radio broadcast. They are a dedicated encrypted radio broadcast or a narrow cast. We have that licensed and, at that point, the person who is the licensee is in fact the transmitter. We are covering them for all the use, whether it is public performance or transmission, which makes it credibly easy for his 120 customers. And so on it goes. I see that as the way it is going to go more and more. But if we have

this incumbent or artificial right, we continue to lose.

Mr McCLELLAND—Mr Candi, as I understand it, your organisation represents the performers and the recording companies as opposed to the people who wrote the original song or the music. Is that right?

Mr Candi—That is right. We represent the sound recording and the performance of the recording.

Mr McCLELLAND—The musicians and—

Mr Candi—The performing artists. The musical work, and the publisher that the previous speaker spoke about, is the APRA right or the musical work right.

Mr McCLELLAND—If I buy a computer software program, I have to say whether I am using it privately or commercially. If I am using it commercially, I have to say how many computers will be running that program. I pay a licence fee for that software program, according to those different stages. But that does not apply to CDs, is that right?

Mr Candi—That is right.

Mr McCLELLAND—In terms of the benefit of commercial use of the music—the intellectual property in the music—the only means of obtaining recompense for using that intellectual property is through the licence fee for the users of the music.

Mr Candi—Yes. The public performance right, vested in the sound recording in our case, is the mechanism and the licensing system that PPCA puts in place for the industry on that right. It is the mechanism for picking up reward for the use being made.

Mr McCLELLAND—For that commercial or public use?

Mr Candi—Yes.

Mr McCLELLAND—As I understand it, it is payable from small businesses, in your organisation's case, when they actually put in the CD or the tape. It is payable as a result of them putting in a CD or a tape.

Mr Candi—That is correct; for cassettes, CDs, cartridges—if anyone has got any left—or blue amber cylinders or LP records. In other words, it is for a sound recording, whatever the format is or may end up being, but not for live performance and not for radio or TV.

Mr McCLELLAND—One argument from small business proprietors that we have

heard in respect to re-broadcasting radio transmissions, for instance, is that they have objected to paying the APRA licence fee. Some of them have expressed the sentiment that they are actually giving free advertisements to the performers by re-broadcasting the radio music through their stores. But that argument would not seem to be applicable to your organisation because the business proprietor has actually gone and purchased the CD or the cassette or whatever it is. So it is not a question of them giving some free advertising, it is a question of them actually making some commercial use out of the playing of that CD.

Mr Candi—Yes. We get the promotion thing thrown up quite a lot but, ultimately, if that is an argument then that is what the Copyright Tribunal is there to do. Personally, I throw back to the corner store. I take that argument to mean that every product that we have on the shelf we are helping to promote as well, as opposed to the ones we did not have on the shelf—but we paid for those as well.

Mr McCLELLAND—The committee has received complaints, as you have seen, about methods of collection, primarily in respect of APRA and relatively few in respect of your organisation. What would you put the less antagonism down to from your methods of collection?

Mr Candi—I think it is bad luck for APRA actually. They have people on the street, as I understand it. That is what I have picked up from the inquiry so far. We do not. We do not have agents out in the field, if you like. We certainly do not have anyone who would walk into a shop and say, ‘Excuse me, but you are playing music. Do you know you have to have a licence?’ The only people who do that are Jim and me when we are out and about. That is one thing. The second thing is, to be fair to APRA, they have done the right thing by their members. They have gone out and got whatever it is—40,000 licences in 18 months. That is a lot of business and that is a lot of people who have come across them for the first time. It is a set of circumstances that has arisen in the last 18 months.

Mr McCLELLAND—Your targets were more gradual. You have a brochure here; is that one you would send out to—

Mr Candi—Yes.

Mr McCLELLAND—It is explaining rather than threatening.

Mr Candi—I think you are referring to the ad, Mr McClelland. Is it this one here?

Mr McCLELLAND—That is right, that is the ad. We have it at page 17 of our material.

Mr Candi—We have a whole range of materials. These new look and feel type

notices or ads have been very successful. The key document we have is the little brochure, which has the 10 questions or the eight questions. We have honed that down through the years and it really is in plain English. It explains everyone's questions. In our experience, most people, when they read this out there in shopkeeper land or whatever—it is in fact 12 questions, I am sorry—

CHAIR—Mr Candi, I know that some of this material was annexed to your submission but, unfortunately for us, it is still in Canberra. So if you have a copy it might assist Mr McClelland.

Mr Candi—It will be a pleasure; I will hand it up. We found this question and answer document to be very successful and the feedback from the public performance users has been very good. That then springboards them into a phone call to our staff. We will spend as much time as we have to talking on the phone and if anyone of our very good staff cannot answer their questions then Jim and I will take the call. If it takes an hour, we will spend an hour. We find that, by the end of the conversations, people have had answered just about every question they ever wanted answered and they are very understanding of what the whole thing is about. So, yes, we have taken that approach.

I said before that we had decided not to do the blitz campaign. We decided not to do it for economic reasons as well for as style reasons. I do not think there is a right or wrong decision, so please do not take me as saying that I think that APRA did the wrong thing. I think APRA did absolutely the right thing. Given our circumstances, the way we wanted to build through and the money resources we had, we chose to try to grow by 20 or 30 per cent per year and increase the PR activities as we went.

Mr McCLELLAND—A number of small business witnesses have complained about an almost threatening style of correspondence that they had received from APRA, but this does not seem to contain the same threat of litigation or enforcement; it is more an informative sort of document. Is that a fair description?

Mr Candi—I have never read the APRA letter so I cannot compare. We have a first letter, a second letter and a third letter. The first letter is one page plus what you have in your hand now plus the licence and the application. Hopefully they may have seen an ad or other material that we have put out first. That is the way we do it. There are some businesses who find the second or the third letter a bit rough but they are in the minority.

Mr McCLELLAND—Is there some sort of statement of the mode of operation of the board of review mechanism, which you have said is cheap and quick, that you could give us?

Mr Candi—Yes. It is a condition of the licence scheme that we set up. It is set out in the licence document itself. I can take you through the clause now, if you like. It is in the licence agreement at the back. It is clause 11 and it has a number of things there.

The first thing says which three people will comprise the arbitration panel—someone that the user nominates, someone that we nominate and someone from the arbitration and conciliators' panels. There is no legal representation. That means that, although I am not taking legal carriage of matters for PPCA, I exclude myself from appearing because I am a lawyer. Informal procedure is mentioned. And there are rules there about how the board of review will come back with an answer. In the 26 years that we have been going we have only ever had two requests to go to the board of review, and that has been in the last year. We have one just about to finish and one just about to start.

CHAIR—I have a question which arises tangentially from what Mr McClelland was asking. Do I take it that the $1.6 million that you have calculated by way of forgone revenue, if I can put it that way, is roughly 40,000 businesses at $40 a licence?

Mr Candi—Yes, that is it.

Mrs ELIZABETH GRACE—In your opening remarks you said that you had a hold over licence. Do you offer that in your literature or is it something that has to be asked for?

Mr Candi—We have never had to give it.

Mrs ELIZABETH GRACE—So it is not something that you make a point of offering in your literature to people—'If you fall into this category, this is available to you.'

Mr Candi—No. The main point of the literature is that we say, 'If you are playing the radio or the TV, tell us and you are exempt.' We get an awful lot of those.

Mrs ELIZABETH GRACE—So they do get followed up on, and that type of thing.

Mr Candi—Absolutely. A large proportion of the correspondence that we get back says, 'We are playing sound recordings by using the radio or TV; you do not need to worry about us.' And that is the end of story. One of the things we do—it was Jim's idea—to make it even easier for people to correspond with us is that we give them an envelop with our address and a stamp on it so that when they get the materials they can slip it in and send it back to us. It costs us a fortune but it has been one of the reasons why our licensing rate has escalated the way it has. So typically they will get the letter, read the materials, write the relevant details on the letter, put it in an envelop and send it back to us.

Mrs ELIZABETH GRACE—They write, 'I am not eligible' or 'I do not need to' or whatever the case may be.

Mr TONY SMITH—I am just hoping that that fax brings through some matters that I was going to ask you about. While I live in hope of that arriving, I will try and think of a couple of other things. The first of the things I was going to mention was the operating costs of your company. I noticed in 1996-97 there was about 30 per cent expenses. I presume that means operating costs, does it?

Mr Candi—Yes.

Mr TONY SMITH—The last financial year it was almost 40 per cent?

Mr Candi—Yes. This year—the one we have just closed off—it is about 32 or 33 per cent.

Mr TONY SMITH—Yes. That does not help me after all that. That seems to me to be extraordinarily high. Is there any explanation for that, as to why there is a such high operating cost?

Mr Candi—Yes, the key explanation is on page 15 of the primary submission that we have put in. It has to do with the artificial limitations on the income that is payable by broadcasters for the use of sound recording. Firstly, we say that, while the limitations on the income that we can derive from broadcasting continue to exist, the target that we should be aiming for is about one-third cost, two-thirds surplus. That is what we try and keep within.

Before when I said we had contemplated doing much larger campaigns, part of the decision was that we would not because we did not want to go too much past the one-third cost ratio. So we have tried our hardest to bring it into one-third. As we budget forward, that is what we are seeking to always achieve.

The second point is—coming back to the limitation on the income we are getting from the broadcast sector—the way it is set up, basically it would not cost us one cent more if we got the proper fee, because we still have to negotiate with these people and we still have to have hundreds of licence agreements in place. If you factor in the money that we are not being paid, the actual administration rate is about nine or 10 per cent of what the real income should be.

It is not going to change next year and it is not going to change the year after unless the law is changed in section 152 to allow us to get a proper revenue stream from broadcasting. In the figures that we have done on page 15, we have added in some extra costs in that scenario where we would be getting a proper income stream. It is literally a couple of hundred thousand dollars of extra costs and close to $20 million of extra revenue.

Mr TONY SMITH—I have some difficulty understanding why that is; why it is

that it is so high. Is it the fact that things are so complex that, if there was less complexity, then you would not have that sort of operating cost? You and Colin are saying that if certain anomalies can be removed, you will be able to pull $20 million. I do not know whether we need to go into anomalies and maybe we do, but why is your operating cost linked to that?

Mr Candi—The operating cost that we have now is the operating cost that we will have tomorrow or the next day, regardless of whether the broadcast or the anomalies are fixed or not fixed, because that is what it costs to run the organisation to do the public performance licensing and the broadcast licensing and now, as we go forward, transmission type licensing. We have basically 16 or 17 full-time equivalent staff, we have the office and all the contingent or resultant expenses that go with being in the licensing business, and also distribution, logs and all the analysis on the other side that goes on the pay-out side.

As to the negotiations, maybe the simplest way I can tell you is this: at the moment we are getting $1.8 million from radio. The way that is negotiated is that Jim and I sit down with the radio industry once every three or five years and we negotiate an industry rate or we go to the tribunal. We can't get more than $1.8 million because of the limitation. If the law, in section 152, was changed, it would still be exactly the same cost. Jim and I would sit down, we would negotiate with the radio industry or we would go to the tribunal. And we say, based on overseas experience, that instead of getting $1.8 million we would be getting somewhere between $10 million and $20 million. It is exactly the same work, exactly the same cost at our side—that is on the payment side—that the income is being affected.

Mr TONY SMITH—That takes two people to do that. I do not see that there is a great deal of cost in two people sitting down and having a chat about it.

Mr White—That is exactly the point, with respect: it is costing not one cent extra to collect $16 million, which other countries around the world or other associations such as APRA are able to collect. They can go and negotiate for something that they own. The government in this case in 1967 or 1968 when they were formulating the act—for reasons that were political and for no other reason at all raised at the time by the broadcasters with the existing government—put the ceiling in there because of the so-called multinational opportunists that would come in and beat up the radio stations and ask for vast amounts of money.

Clearly, everybody else around the world is able to go in and negotiate with the thing that they own. If we were able to go in and negotiate and get a proper fee rather than an artificial fee, it is costing us nothing extra to get the proper amount of money. The difficulty that we have, of course, is that 60 per cent of our licences are $50 or less. When you look at how much it costs to have a $40 licence, by the time you take your rates and overheads, your postage in and out, your staff to service it—

Mr McCLELLAND—It is about $16 for a $50 licence—is that a fair assessment?

Mr Candi—The point Jim wants to make is that in the first year it is a lot more than that, for that $50 licence. It is in the subsequent years that the return happens.

Mr White—We are very much in a phase of growth. If I can just digress for a minute, in 1990, when we started, we had 3,000 licences. PPCA was virtually unknown; it never made a cent. It had just been existing. We have had to build a company and you cannot just build a company without putting a lot of—

Mr McCLELLAND—So that $16 would include advertising, the time explaining your correspondence to the organisation—

Mr White—To get a $40 licence initially would probably cost us $37. We are probably costing ourselves almost the cost of the licence the first time round sending out two of the three notices and talking to people. If it is an hour of my time, hey, it is an hour of my time; we are prepared to spend the time. We have got to build the awareness of the company or we are not going to get anywhere. We have tried to limit our cost to about a third of our revenue. We accept that it looks high because of the artificial situation, but that is the reason.

Mr TONY SMITH—If you looked at that in one sense, you would say, 'This organisation is really not worth the effort because it costs all that money to collect that bit of money.' Isn't there a better way of doing this? Do we need this organisation? Shouldn't there be a fee added at some stage of the process—leaving aside that High Court decision which I am aware of but have not read? If there was a much simpler way of collecting for the people you have to collect for, and therefore picking up that $1.598 million to the artists and not to a bureaucracy, then isn't that really a better way of doing it? It really seems to me to be a grossly inefficient system.

Mr Candi—That is a fair enough question—and, probably sitting where you are, it may look that way. I will mention a couple of things that will help you here. The first one is that, from the literature that we have, the expenses over the collection revenue on the public performance side of any collecting society around the world, whether it is in Europe or wherever, always costs more to administer than on the broadcast side for obvious reasons—you have thousands of licences. Typically, from the literature that has come from the World Intellectual Property Organisation, from memory anything up to 50 per cent is a pretty normally experienced administration rate. The cost of our administration is really showing what it costs to administer the public performance side of licensing.

On the broadcast side of the equation, the expense over revenue is typically under 10 per cent. In our case it would be about one per cent, but we do not get the proper broadcasting income. If you want what we want, which is a cost of administration that is

under 10 per cent, you have to have a proper broadcast right. What you are looking at here is an absolutely efficient public performance licensing vehicle by world standards and by local standards. We are very lean, but the fact is that we have to have an office, we have to have staff, we have to print paper, post envelopes and all those types of things. That is our job.

Mr TONY SMITH—Perhaps I am asking the wrong people, but is it not arguable that there must be another way of doing it that would eliminate this bureaucracy and get the money direct to the artists? Is there another way of doing it? It seems to me that there probably is but that we have never attacked that side of it.

Mr Candi—The record industry and the music industry have organised the whole process of collective licensing to make it as easy and as simple as possible to get a licence to play any one of millions of recordings as a public performance or as a broadcast user. That money goes to a central spot and then out to the thousands of recipients that are on the sound recording and musical works side—and these are private property rights. This side of the industry has organised itself very well and very efficiently. It is quite feasible that there be no collecting society and that each corner store or each hairdresser has to deal with hundreds, probably thousands, of copyright owners. That would be a complete disaster.

Mr McCLELLAND—That is the musicians, who would be the copyright owners.

Mr Candi—Whether they are record labels, composers or whatever. Clearly, that is a nightmare for everyone, and especially a nightmare for the corner shop, the pub or the club. Where I think the work has to be done is at the user end. As I have said, a number of user categories are now coming through their own associations—as, in fact, is the case in the radio industry. They say, 'We will do the equivalent of the one-stop deal on this side for all our members,' and it works very efficiently. That is where the efficiencies going forward can be gained for the users.

Mr TONY SMITH—What was the distribution break-up in 1995-96 to the artists and to the record companies?

Mr Candi—There are three categories of distribution: to the record labels; to the registered artists; and to a trust—which is actually meeting today—which applies some of the funds towards what are really session musicians or orchestral musicians—in other words, musicians who are not in the royalty stream of a record.

In regard to the present break-up—which is about to change, probably to a 50:50 split—registered Australian artists get a superannuation allocation, which we cannot keep up any more because it does not fit the superannuation rules. That will be distributed back to the artists this year. They get a direct distribution of 22½ per cent, and the record company gets the balance. Then the record company, of course, depending on the

contractual arrangements with the artist, has to account in its normal fashion. If you add up the superannuation allocation and the direct allocation, it is, off the top of my head, 42 per cent.

Mr TONY SMITH—We had some complaints at the Cairns hearing about the big contract that was sent out to various people. There was a lot of anger about that. One of the points that was made was, 'Well, I've got to employ a lawyer to go through this dirty great contract.' I do not think that we have that here, but it was a very lengthy contract.

Mr Candi—We will hand one out. I can tell you a bit about the contract. That is interesting feedback and we will take that on board. This contract is both an application form and a contract.

Mr TONY SMITH—Yes. Looking at that, you could understand that sort of feedback.

Mr Candi—I will hand this out to the committee. It is not as big as it looks because it is in duplicate: one copy is for them and one copy is for our place. The actual licence agreement itself is two pages. This licence agreement is the one that we had authorised through the Trade Practices Commission process, and the pamphlet with the 12 questions, which we were talking about before, was also part of that. It is actually looked at as being fairly straightforward but, if in today's environment it is not considered that, we will take it on board and see what we can do about it.

Mr TONY SMITH—We have a copy, have we? I saw a more lengthy one.

Mr Candi—It might not be ours.

CHAIR—It might be APRA.

Mr Candi—I think it might be APRA.

Mr TONY SMITH—No, I think it was PPCA, but if I am wrong I will stand corrected on that. Lastly, I have a complaint from a constituent in relation to your company. He is an aerobics person in a very small business. I note in your report that you specifically mention that you assess on the basis of the number of classes, and he says that that is not a fair assessment. I think he is going to give evidence before us in Brisbane, but I would be interested in hearing your comment and whether you would look at this. He says that it should be assessed on the number of employees that he has because that would be a fairer basis. Without having a full briefing on it, that is all I have on that, but are you prepared to look into that?

Mr Candi—Yes, we are, but that very licence or tariff category that you are talking about is the one that is subject to arbitration at the moment at the request of an

aerobics business from Melbourne. In fact, the fitness industry have done pretty well in telling most of the other fitness people to stop paying until the arbitration is completed which, hopefully, will be within the next two weeks. Those questions and other questions are being considered by the arbitrator as we speak. I was going to comment on his view on employees but we will leave that until after the arbitration.

Mr TONY SMITH—Without giving you a full background to it, it is probably unfair to both him and you.

Mr Candi—The key point is that, right as we speak, that is about to be arbitrated on. I can you hand you the tariff category that applies if you would like to see how that is set out.

Mr TONY SMITH—Sure.

CHAIR—Mr Candi, is this the Peninsula Sports and Leisure—

Mr Candi—Yes, it is.

CHAIR—We have had a submission from them and I just wanted to clarify that.

Mr Candi—That is the chap. That constituent is from Queensland, from memory. The Queensland association for aerobics and fitness was one of the state associations we have been talking about doing a negotiation with on a state-wide basis, but that has gone into limbo while this arbitration is on.

Mr White—Just while the Peninsula thing is on.

Mr TONY SMITH—You are actually saying on a general level that really, as far as you are concerned, you ought to be able to collect in respect of radios and TVs playing in small businesses as well. You are saying that section 199(2) should not be there and you should be able to come in there as well.

Mr Candi—Yes.

CHAIR—If the arbitration outcome is not subject to some confidentiality provisions, would you be willing to provide us with the details of the outcome?

Mr Candi—It would be our pleasure. It is not a problem at all. I will just check.

CHAIR—I presume it will not be.

Mr Candi—It is de facto. It is probably going to have an industry-wide application. I should add that the arbitration proceedings or the board of review process

does not preclude either party then saying, ‘I want to go to the Copyright Tribunal’, but hopefully that does not need to occur. I will check with the other side and if they are happy, we will hand it up.

CHAIR—Can I just go back to a matter which does not relate to you specifically at the moment because of 199(2), but can I nonetheless ask you about it? Mr McClelland gave an example of computer software. If you go to a shop to buy computer software, depending on the use to be made of it and whether it is private or in some commercial sense, you pay a different price. I think for some software if you go in and say it is for private educational purposes, you will pay about a half or a third of what you might pay if the same piece of software is going to be used in a commercial setting, for example, a pagemaker program or something like that.

Assume section 199(2) was repealed, the suggestion has been made that a better way of dealing with this would be something akin to the way in which the computer software prices are determined. Would it not be a better system to actually ignore small business—and as you have pointed out the costs are considerable, particularly initially in collecting the royalties from small business—and have a system something akin to the Canadian one where small business is exempt, but the fee or the value of the intellectual property is collected at the point of the broadcaster rather than at the point of the business owner? I am interested in your comments about that general proposition, leaving aside the legal moratorium at the moment.

Mr Candi—In a practical sense—and that is what we are dealing with, the practical application in this case of a legal right—in relation to the use of the radio or TV that is probably the most practical way you could go. For any copyright owner to pursue that path, the act would have to very clearly set out that the Copyright Tribunal is to take those matters into consideration. In the case—not of us, because we do not have the right—of the people who do have the right, then they are private property rights and they are valuable rights that would have to be compensated or they would have to ensure that it was at least revenue neutral to them. Yes. I can see that happening.

So firstly, the act would have to be very specific, and in our case not only would the act have to be very specific, but you would have to ensure that section 152 artificial limitations on our broadcasting income were out as well. Because it will do us no good for the tribunal to once again say, ‘We think your rights are now worth 10 per cent, but sorry, we can only order a fraction of one per cent. Good on you chaps. See you later.’ We do not want that to happen ever again, but I agree with your premise.

CHAIR—What about the direct analogy of the computer software program? What are your general comments? Are there difficulties, legal or otherwise, with a system, for example, that, when a person or body purchases a CD or a tape, the use of that tape will determine the price? That is, if I go in to buy a tape for my own enjoyment, I will pay X dollars but, if that tape is being purchased for 2UE or for a gymnasium, and it will be

used in that, it has got to be clearly marked as such and they will pay X plus Y dollars.

Mr Candi—That, in fact, has been suggested to us by a number of public performance users. We cannot see how you could ever come up with a workable scheme.

CHAIR—As in you cannot police it?

Mr Candi—Not only that; some albums would end up costing thousands of dollars to the person buying them because you are looking at the use of the recording. The fact is only about one in 10 recordings makes any money anyway, and that is because of use. The whole premise of copyright and reward on copyright is on use. The only way to establish use is to follow the trends through the years, and that is why collecting societies rely and invest so heavily in logs or sampling procedures.

It may well be that for some artists, well after the record has been a hit 20 years down the track, the sales of it might only be 10 copies a year or 100 copies a year but, hopefully, the broadcast or the public performance use of it—whether you are the songwriter, the publisher, the rep. company or the artist—could be experiencing fantastic use. Edith Piaf and the Nescafe ad were great examples of that type of stuff. At that point that is where this right—about public performance being rewarded for the use in that environment—is working for you and you are being rewarded accordingly.

CHAIR—Thank you for your submission and also for coming along and discussing it with us.

Mr Candi—It is a pleasure; thank you for the opportunity.

Short adjournment

[11.47 a.m.]

COOPER, Mr Arthur, Director of General Performance Licensing, Australasian Performing Right Association (APRA), 6-12 Atchison Street, St Leonards, New South Wales

COTTLE, Mr Brett, Chief Executive Officer, Australasian Performing Right Association (APRA), 6-12 Atchison Street, St Leonards, New South Wales

McCUSKER, Mr Eric, Writer Director and Board Member, Australasian Performing Right Association (APRA), 6-12 Atchison Street, St Leonards, New South Wales

MORRIS, Ms Jenny, Writer Director and Board Member, Australasian Performing Right Association (APRA), 6-12 Atchison Street, St Leonards, New South Wales

PERJANIK, Mr Mike, Chairman, Australasian Performing Right Association (APRA), 6-12 Atchison Street, St Leonards, New South Wales

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. We are in receipt of your submission of 22 September and the additional submission of 27 October. Mr Cottle, would you care to make some opening remarks?

Mr Cottle—Yes, thank you, Mr Chairman. Before I do make those opening remarks, I might introduce my colleagues a little more fully. Eric McCusker is a songwriter and a recording artist. For several years he was with the recording group Mondo Rock. He has written more than 60 compositions which have been recorded and released commercially in this country and in many countries around the world. Amongst his more well-known compositions are the songs *Chemistry*, *Come Said the Boy* and *State of the Heart*.

Jenny Morris is also a recording artist and songwriter. She has released, I think, five albums of her own compositions and compositions of other writers. She is also the writer and recording artist of a number of successful works including *Body and Soul* and *Break in the Weather*. Both Jenny and Eric are writer-directors of APRA. They have been elected by the body of writer members of APRA, about which I gave evidence at the hearings in Canberra.

To my far right is Mike Perjanik, who is also a writer director of APRA and in fact, at the moment, is chairman of the board. Mike is one of the pre-eminent writers of music for film and, particularly, TV in this country. Amongst his credits are the shows *Home and Away*, *Bush Christmas*, *A Country Practice*, *Family and Friends*, *Hey Dad*,

Kingswood Country, *My Two Wives*, *Rafferty's Rules* and *The Restless Years*.

To my immediate right is Arthur Cooper. Arthur is the director of our general licensing department and is here today in response to a request by the committee to have a chance to speak to someone who actually deals with licensees in the field, so to speak.

Since our appearance in Canberra several weeks ago, we have provided the committee with two sets of documents. The first set of documents was in response to requests made by members of the committee for further information. That information comprised: firstly, a copy of all of APRA's other standard licence applications and agreements covering the public performance right; secondly, a schedule setting out—with as much information as we were able to glean from overseas—the expense to revenue ratios that apply in countries around the world; thirdly, a copy of APRA's most recent annual report, which has just been published; and, finally, a set—again, as far as we had been able to glean—of the tariffs, or the terms of licence schemes and payments, that apply in most countries of the world.

So far as those documents are concerned, we would make a couple of brief submissions. We certainly say that on the basis of the foreign information we have been able to ascertain two things are clear. The first is that APRA is either near or at world's best practice in terms of expense to revenue ratios. Secondly, to the extent that tariffs or fee payments are concerned, the licence schemes operated by APRA are among the lowest rates in the world in so far as small business usage is concerned.

We have provided a second document to the committee, and that is the document which we intend to focus most closely on today. It is a document which purports to arrive at what we think may be a sensible, pragmatic and commercial solution to the issue which has caused most concern. In furnishing this document, which we have labelled 'a position paper', we have taken into account a number of comments that have been made both by the committee members and by those making submissions on behalf of small business.

In particular, we have had regard to comments which were made at the committee's most recent hearing in Canberra by Mr Bastian of COSBOA. I think Mr Bastian said in his evidence that the council of small business considered that 95 per cent of the issue that had concerned its members related to the public performance of music by the use of radio sets. I think that was a comment echoed by yourself, Mr Chairman, both at the hearing this morning and at other hearings during the process of the inquiry.

We have attempted to find a solution to that issue and to focus our attention on that issue in particular. That does not mean to say that neither I nor my colleagues here today are not prepared to discuss any other issue which has arisen during the course of the inquiry. We are more than happy to do that and in fact I think it would be a useful opportunity for the committee to gain a perspective on the part of writers in relation to this issue.

Before we come to that issue, there are two further brief matters I would like to advert to in my introductory remarks, and these flow from two issues that arose this morning. First, I think there was a comment or a question, perhaps from Mr Smith or from Mr McClelland—I am not sure—concerning why it is that the level of complaint to the committee or to MPs concerning APRA had been so much greater than the level of complaint concerning the operations of PPCA. I think there are two very straightforward answers to that. One is related to the issue of performance by radios and TVs. That is not a right that producers of sound recordings have. It is a right under the law that authors and composers have; hence, it is not an activity that has been the subject of licensing by PPCA. It is an activity that has been the subject of licensing by APRA. That would be the main cause, I would think.

The second cause would have to do with the fact that APRA, as we have discussed over the past two years, has attempted to contact every business in Australia that might conceivably be playing music in public. So we have had contact with more than 180,000 businesses over the past couple of years. I dare say that PPCA has come into contact with many fewer businesses in the course of its activities.

A second issue that I would like to cast some light on is this issue of the rights themselves in relation to the performance of music by the use of radio and television sets. Of course, we note that one of the terms of reference the committee is operating under relates to Australia's position under international convention. Without in any way wishing to undermine or diminish the merits of PPCA's case, or the case of recording artists or producers of sound recordings, to have a right to license performances and recordings by the use of radios and TVs, the fact of the matter is that Australia's convention obligations do not require such a right in the case of producers of sound recordings. The Rome Convention, of which Australia is a member, and which governs internationally the rights of producers of sound recordings, recording artists and broadcasters, simply does not require the recognition of such a right. In other words, the balancing of interests that the international community has come to in that area has been such as not to accord such a right. The position is different in so far as Australia's convention requirements are concerned, in relation to the rights of authors and composers.

Those convention requirements, now enshrined in the GATT, are set out in article 11 bis of the Berne Convention. The Berne Convention states very clearly as follows:

(1) Authors of literary and artistic works—

and that includes in the definitional section authors of musical works—

shall enjoy the exclusive right of authorising, firstly, the broadcasting of their works or the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images; but, secondly, the public communication by a loudspeaker or any other analogous instrument transmitting by signs, sounds or images the broadcast of the work.

So, Mr Chairman, I just wanted to make it perfectly clear that the difference in the treatment of the two rights was not political, it was not an arbitrary decision taken either by the government of the time or by Mr Justice Spicer, which produced the expert committee report for the government. It is a difference in treatment which flows from a difference in treatment under the conventions. We will return to the issue that we have raised in the position paper a little later, if we may.

At this stage I would like to ask my colleagues, being songwriters and composers, and whose rights and livelihoods are really at issue and at stake in this hearing, to make some comments to the committee and to answer the committee's questions. I will firstly call on Eric McCusker to make some comments.

Mr McCusker—I would just like to describe my situation. I wrote songs; my main source of income has been songs that I wrote in context of a band called Mondo Rock during the 1980s. I think I calculated that, of the moneys I have earned over the last 15 years, more than 50 per cent have flowed from three or four songs, even though I have written probably 300 or 400 songs and recorded 50 or 60 songs.

It is a strange circumstance to me; to me, all my songs seem fairly equal and, like my children, I try not to show favouritism with them. But the nature of the game means that the vast majority of the effort and the work I put in ends up over a period of time kind of disappearing in terms of public awareness, and certainly the performance and the generation of the income. At this stage in my life I am involved with various aspects of music. I am involved in education, teaching at TAFE, and involved in the board of studies for music in Melbourne. I am involved in performing live in bands. Performance royalties constitute about a quarter of my income at the moment and mechanical royalties from the sale of records that still tick over probably half that.

I have been in a situation where I have been a member of a band and been the creator of a sound works. I have been in a situation where I have had other artists covering my songs whereby I would get no income at all from the artist's royalty for the sale of a song. Rick Springfield recorded a song of my own, *State of the Heart*, and sold something like a million copies of it, or a million and a half, around the world. He receives the artist royalty from the record company that goes to Rick Springfield. I do not receive any of that. I receive mechanical royalties for the authorship of my song that is on his album and the single version of that. That is a stream that was a considerable amount at a certain time but has pretty well dropped away to a negligible amount. But I still receive royalties for the performance of that work from radio stations around the world, the territories where it was a hit. It was a hit in the US, in Japan and Germany. So I receive a reasonable amount of performance income for that song from those territories.

Mr McCLELLAND—Can you just clarify that? You do not get royalties when the CD is sold?

Mr McCusker—As a songwriter I do. I get the mechanical royalties. The Mondo Rock CDs and the Rick Springfield CDs that were released, say, 10 or 12 years ago do not sell a significant amount anymore. However, my song *Come Said the Boy*, for instance, still gets played a lot on radio, hits and golden oldies and 1970s, 1980s and 1990s.

Mr McCLELLAND—You made the example of Rick Springfield. He sold two million—

Mr McCusker—Something like that; a million and half, I think.

Mr McCLELLAND—And he got the royalties from that, but you said you didn't?

Mr McCusker—He received the artist royalties, which flow to the person whose name it is. This is a Rick Springfield record. He receives all that; the songwriter does not receive any of that. The songwriter does receive a mechanical royalty for a certain amount, statutory and recording.

Mr McCLELLAND—But based on that volume of sales?

Mr McCusker—Yes, based on that volume of sales.

CHAIR—Just to clarify that, you get the royalty for each CD which is produced? That is the mechanical royalty, isn't it?

Mr McCusker—Yes. If there were 10 songs—

CHAIR—You would get a percentage.

Mr McCusker—As the author of one-tenth of the total mechanical royalty.

CHAIR—Of each CD unit which is sold?

Mr McCusker—The mechanical rate is statutory and different from territory to territory. Yes, I receive that. A record has a typical sales life of maybe two or three years while it is a hit, while it is uppermost in people's minds.

CHAIR—Unless you die flying an experimental plane.

Mr McCusker—Yes, that is going up again, that is right.

Mr TONY SMITH—Just in relation to that one point, so that I understand it, you would have had to have given him permission to record that song, would you not?

Mr McCusker—My publisher had to give him permission. They actually did ask me, and it was complicated further, but I will not go into why.

Mr TONY SMITH—What I am saying is that you had a potential equitable interest in anything that he sold. You must have said to yourself, 'Well, all right, if I give him permission I might make a few dollars out of this.'

Mr McCusker—I was quite happy for him to do it, yes, absolutely. It is a way that a songwriter can—

Mr TONY SMITH—You could have prevented him from doing so. If you said no, would that have been it?

Mr McCusker—I think if my publishing company—

Mr Cottle—If I may just interrupt there, under both Australian law and American law there is a device under the act called the statutory mechanical licence. The effect of that licence is that, once a composer permits his or her composition to be released on record for sale to the public, the composer cannot object to any other record company releasing that song on record, by any artist in any kind of version, provided the version does not diminish the moral right value of the composition, subject to the payment of a statutory royalty. In the case of that release by Rick Springfield of Eric's song, Eric could not have objected to the release of that composition under US law, or indeed under Australian law.

Mr McCusker—That is correct, except that in that particular case he rewrote a section of the song and, because he had changed it, he did have to get permission. If he just does the song as written and as long as he pays the royalties, he can use it, yes.

Mr TONY SMITH—What if he remixes it?

Mr McCusker—He can remix it, but what he did was actually write a new chunk in the middle of it. We had to negotiate it and, because he had changed it, he did have to get permission—from the publisher, not from me. That is complicated.

CHAIR—We have taken you off on a bit of a tangent.

Mr McCusker—It is a reflection of how complicated the whole system is, and it is complicated. I have to explain it to my students and I have great difficulty. I go over and over again the different bundle of rights, and the stream of income that comes from the different rights is quite complicated. As I said, in a way most of my songs from that period have disappeared from view but several of them have attained a sort of Australian classic status. *Come Said the Boy* is still played by radio stations every day around the country and still generates income for me which is very valuable.

The argument that people put forward—'We are promoting your record'—is interesting to me. At this moment the Mondo Rock version of *Come Said the Boy* is not commercially available because we are out of a contract with the record company. As a promotional vehicle, their playing of my songs is absolutely no good because no-one can actually go out and buy the record at the moment, and that is not an uncommon situation. So the promotional value is of no use to me at all.

Songwriters generally love APRA for various reasons. Firstly, the money tends to come direct to you. At least 50 per cent comes direct to you so it does not go via any other parties; it is not recouped against expenses. There is the classic situation where young bands may come up and sign record deals or publishing deals when they are young and naive and often in a way suffer the consequences of that for years afterwards. People that I am close to have signed publishing deals with publishers who they probably should not have signed deals with and who have retained the rights for life of copyright whereas the standard these days is for a much more limited period.

The APRA money tends not to get tampered with. It does not go through managers or publishers. You get that. As for a lot of people who have been in bands in the past, that is the only real money they see anymore from the use of their songs by radio broadcasters in shops and that kind of thing. Sometimes it seems to be the only thing that you actually end up getting and people rely on it heavily. I am a member of the APRA board. With songwriters that makes you a popular person because everybody loves those who are involved in APRA from that end.I could talk about many other things, but there are lots of other people on the panel, too.

Ms Morris—I am going to get a bit ideological and leave the nuts, bolts and facts behind for a minute. There is a fundamental issue here for me. It is not just that songwriters are craftspeople who have specific skills that the vast majority of others in society do not have and nor is it just that they are involved in a pursuit which is extremely time consuming, tense and in some respects highly stressful and difficult. It is not just that these things are particularly noteworthy because a lot of these points can be applied to a great many occupations.

I would add that it is not just about whether or not I should receive remuneration from a hairdresser or a doctor for my services. For me it is about the way that we, as a society, value the creative endeavours of songwriters, authors, sculptors, painters or dancers—in other words, the people who help carve out who we are—and the type of society we leave to our children; in other words, people who carve out our cultural identity and, God knows, in this country we need that to happen a bit more.

We seem to take great pride in the recognition from the rest of the world received by creative members of our community—people like Robert Hughes, Peter Carey, INXS, Sydney Dance Company, Nicole Kidman and the Bee Gees, and I could go on and on. We spend huge amounts of money on opera houses and art galleries and, to a much lesser

extent, modern music venues, but it seems there is a yawning gap between this sort of acknowledgment of our creativity and the acknowledgment of the need to financially support us while we are creating.

The collection of licence fees from businesses where music is integral to creating a certain ambience seems a small price to pay for maintaining such a valuable commodity, a commodity that in some other countries generates billions of dollars. Personally I would like to donate all my songs to society. I get great pleasure from creating music and I get great pleasure from the effect that it has on the people who hear it and use it, but a girl has got to make a living and a girl has got to eat and a girl has got to feed her family, so it is not practical.

I seems such a small amount of money to pay when it is of such great benefit. A lot of the problems, and the reasons we are here today, have been caused by inaccurate reporting and a lack of knowledge about exactly what the licensing fees are and how much they are. I have spoken to people in the street because I have done a bit of publicity about this and I get asked, 'How can you expect small businesses to stay afloat?' I say, 'Do you realise how much they have to pay a year?' and they are quite flabbergasted. It shuts them up quick smart when I say, 'It's either a $55 fee per annum—a dollar a week—or $37.' It is not that much to pay. That is all I have to say. Thank you.

Mr Perjanik—Let us go back to the little shopkeeper. I have a lot of friends in small business so let me assure the committee that I really understand how they feel. When someone walks in the door and says, 'You have a radio on; you have to pay a licence fee,' it is not greeted with wild enthusiasm. We understand that. The problem we have is probably one of communication. That is our underlying problem. When I sit down with the people I know in small business—a couple of them call me the "music police" and beat me up when they see me—and ask them, 'What do you pay a year?' they say, '54 bucks.' I say, 'What do you get for that?' They say, 'I don't know; a licence, a bit of paper.' I say, 'No, you don't. What you buy for a year is the right to play the best music in the world by the best artists in your environment.' Explaining this to people and working on that eventually wins them around. It is not very difficult at all to convince them to our view point.

People always say, 'We are just playing the radio.' I say, 'If you just switch your radio on it is not going to say anything; it is going to hiss. You are not playing the radiol; you are playing music.' We have a problem out there with the public. Music bombards them from television, radio, aircraft—everywhere—and they forget that people actually write it. That is our underlying problem. The education of users out there is our number one problem. We have tried to do this at APRA as we contact businesses that have been using our music. It is difficult. They get the thing in the mail, rip it up, put it in the trash can and do not read it. We have to follow it up and they think we are being aggressive. Then they ring up their local MP and complain bitterly about it. And that is why we are all sitting here today. So we have that problem to address. That is the underlying problem.

The government of Australia should not even be going down the road of thinking of circumventing the intellectual property rights that composers have. We should be strengthening our intellectual property rights, not weakening them. The backlash you have had is just human nature at work. People do not like the Medibank surcharge or the superannuation levy. They do not like any of it. They certainly are not going to like paying for what they think is a radio playing in the corner. That is the underlying problem. We need to solve that and give small business an idea of where the money goes. They think that there is this funny organisation called APRA that pockets the money and runs off with it. That is another problem. They do not know who APRA is. No-one has ever heard of it before. That is another real problem that we have. So those are the problems—not changing the Copyright Act or weakening it in any way.

CHAIR—After listening to your evidence it strikes me that, given that your members are some of the most creative people in the nation, you seem to have failed abysmally in creating a communication with the licensees so that they understand what it is about. I do not know if you regard that as an unfair observation but, given the degree of angst, that seems to be what has come through to us.

Mr Cottle—That is a little unfair. As I mentioned before, we have tried, over many years, many different kinds of forms of communication and wording. I think it is a characteristic of many people—and maybe a characteristic of those who are in small, busy businesses—that it is very difficult to be confronted with a volume of written information about background, about international convention, about position of authors and about how royalty distributions are made. I suspect that people, at the end of the day, simply do not read that material. Rather, they are confronted with the bare fact of having to pay a licence fee.

One of the inherent problems we face is that the Copyright Act itself refers to the permission granted by a copyright owner to a user as a 'licence'. The term 'licence' does connote a kind of bureaucratic, regulatory or government imposition. I think that is a fundamental problem for us as well. That is all I would say in response at this stage.

CHAIR—I was not actually aiming to pursue that at any great length. It was really just an observation, having listened to what you were saying.

Mr Cottle—Mr Chairman, I would add one other point, and this is something that came to light for us for the first time last week when the ACCC gave its evidence to the committee. We were staggered at the evidence given, in the sense that the ACCC has disclosed for the first time that it has received a grand total of 25 complaints in relation to the material submitted by APRA to, as I have mentioned before, 180,000 businesses throughout Australia, many of whom were confronting the issue for the first time.

We readily understand that MPs have received many more complaints, many more questions and, indeed, petitions about the issue, but it did seem to us that the level of

complaint to the ACCC was extremely small in the overall context of the situation. I just wanted to place that on record.

CHAIR—I want to take up the suggestion you made in the latest submission which is, in effect, to pick up section 69(2) of the Canadian Copyright Act and to amend sections 25 and 27 of the Copyright Act in the way you have set out there. My recollection is that Mr Bastian said in the hearings in Canberra on behalf of the COSBOA that 95 per cent of the difficulties arose from radio broadcasts, and it seems to me that would remove that.

My question that flows from that is: have you had any discussions with, or do you contemplate any difficulties from, the broadcasters should that change be made? I can see it solves some problems for small business, it retains your position of still being able to collect a licence fee, and therefore the value of the intellectual property is maintained, if I can put it that way. But there is another party involved and I am just interested in whether there has been any talk with them.

Mr Cottle—We have had no discussions at all with the broadcasters. One would expect the broadcasters to oppose this kind of solution. In its favour, however, we would say that it not only takes account of the practical issues that have concerned small business and, on the other hand, takes account of concerns that authors have about obtaining reward for the value of their property. It also has this advantage: it does not assume that the value of those performances would necessarily be the same as the fees that are currently paid.

We are proposing that the value of those performances be determined by an independent body—by the Copyright Tribunal. Both parties would be able to provide evidence to the Copyright Tribunal. No doubt the radio broadcasters would seek to minimise the value, and we would seek to show that the value is significant. At the end of the day, it does enable an independent umpire to decide on what the value is. We have certainly had no discussions with FARB or the ABC or community broadcasters. We have only just made the submission to the committee and, in that regard, it seemed to us that the fact that Mr Bastion from COSBOA was prepared to adopt a highly reasonable and pragmatic approach to the issue was one that deserved some support from us.

Mr McCLELLAND—You would be looking at quite a substantial amount of money. I see in paragraph 5.7 of your submission that it looks like about $13,656,000 that you are obtaining from the small business licensing arrangements.

Mr Cottle—No. The aggregate of licence fees received by APRA from the playing of radio and television sets throughout Australia is a shade over $2 million. Of that $2 million, a fraction over $1 million derives from the playing of radio sets. We are talking about approximately $1 million in lost licence fees for composers through APRA, and we would certainly be arguing before the tribunal that that $1 million should be factored into

the royalties paid by the broadcasters.

Mr McCLELLAND—So it would be something in the vicinity of $3 million?

Mr Cottle—We might argue before the tribunal that, if the total value of all radio performances was to be taken into account, the value of premises that are not currently licensed and are currently playing radios without a licence should be factored in. But the opportunity cost to us of changing the law is currently approximately $1 million per year. If that were added onto the licence fees paid by commercial radio stations, the ABC and community broadcasters, it would increase their liability to APRA by around seven to eight per cent. I have not made the precise calculations.

CHAIR—Just to clarify that, in rough figures, of the $2 million collected from small business, $1 million relates to the playing of radio sets and $1 million to CDs, tapes and the like?

Mr Cottle—Approximately 55 per cent of that figure derives from radio and 45 per cent derives from TV.

CHAIR—Under this proposition, if it was enacted, you would still seek licence fees in relation to the playing of CDs, tapes and the like by small businesses? This is to deal simply with the playing of musical performances via the radio in small businesses?

Mr Cottle—That would be our position. In that regard, there is obviously an inherent risk for us in taking this stance because it may be that many small businesses which currently play tapes or CDs might decide, in order to avoid their liability, to begin playing the radio. We would argue that that in turn confers a benefit on the radio broadcaster which then would flow back to us through the royalties that they would pay us. But we do recognise that there is that risk inherent for us.

Mr TONY SMITH—Can you break down that $1 million even further by virtue of the size of business involved? I am very interested to know, when you say ‘small business’, ‘radio sets’, and ‘$1 million’, whether you are able to break that down even further because small business can mean up to 100 employees. It seems to me that you are capable of doing that. I am not saying that you can do that now at the table, but I am sure that we are getting down to very small sums in terms of looking at one-person operations.

Mr Cottle—At the moment we cannot do that simply because, in order to do it, we would need to obtain the information from the licensees to feed into the computer and so produce a report. When an applicant fills out an application for a licence, we do not ask them how many employees they have under this particular tariff, so we could not provide that information. We can produce a breakdown of the number of licensees into different business categories—restaurants, hotels, retail shops and electrical stores.

Mr TONY SMITH—Hairdressers and so on.

Mr Cottle—Yes.

Mr TONY SMITH—In effect, just taking a broad-brush approach, one would think that we are discounting that $1 million substantially when we are looking at just one-person barber shops, the mechanic under the car and this sort of thing.

Mr Cottle—It would our position that, if the committee were minded to put the liability on the broadcasters and shift it from the business, it would be unwise to qualify that shifting and relate it to factors such as the number of employees or the kind of usage. So far as the kind of usage is concerned, once you get into subjective criteria or criteria that is capable of being interpreted differently by different parties, frankly it becomes a fair employment bill for lawyers and nothing more. We are struggling to avoid further uncertainty and a situation that opens up the possibility of frequent litigation.

So far as the number of employees is concerned, it seems to me the problem is that, firstly, the categorisation of people as employees may be something that small businesses are more reluctant to disclose to anybody—the number of employees is a sensitive issue. Secondly, the number of employees changes during the year—and it can change dramatically during the year. Thirdly, it seems to me to be too arbitrary to say, 'If a business has five employees, it has no liability; if it has six employees, it has a liability.'

Mr TONY SMITH—Yet the collection is so arbitrary. When it comes to the small business person who has a radio tuned to the ABC and then he flicks it to some other station, it becomes an incredibly indiscriminate fee. How do you possibly allocate that fee fairly to artists when the small business person turns on the cricket, turns on Radio National and so forth? At the end of the day, it is such an indiscriminate fee, so you have that problem anyway, have you not?

Mr Cottle—There are two issues that that comment gives rise to. One has to do with how we distribute the royalties we receive, and the second is whether the licence schemes should be more complicated and introduce a set of criteria that distinguishes the value of usage. As we said in our primary submission, we have not gone down that path principally because users have not sought to distinguish the value, and secondly because it does further complicate and bureaucratise the system. We have tried to keep it as simple as possible, but we acknowledge that it is swings and roundabouts.

Mr TONY SMITH—Or, arguably, do you take that $1 million out of that package altogether to convince the broadcasters that maybe it is not a bad idea?

Mr Cottle—We have said that it is completely fair and consistent with the convention and with international precedent to shift the liability. It would be completely unfair, inequitable and inconsistent with our convention obligations to simply dismiss the

right on the basis that it is an irritation to users. I could not put that submission more strongly on behalf of authors.

Your comment gave rise to a second issue—how we distribute the money. In the case of the royalties we receive from radio and TV sets, frankly it could not be easier because we can pool that money with the money we receive from the broadcasters themselves and operate on the exhaustive analysis of material that we obtain from the broadcasters. There is a step in logic involved—that is, we make the assumption that the pattern of public performance by means of radio and TV sets follows the pattern of broadcasting. But it is a statistically valid means of approaching the issue.

Mr McCLELLAND—Firstly, you have indicated that if the committee were of the view to go down that Canadian route, then APRA, by and large, would accept it. Is it your desire for that to happen; do you put it as highly as that?

Mr Cottle—I have to say that I think it would be a sensible solution.

Mr McCLELLAND—If that solution were adopted—please feel free to challenge this—it seems to me that the PPCA is doing a bit better than you are in respect of that CD collection. They seem to be obtaining more revenue, maybe because their licence fee is higher.

Mr Cottle—May I just interrupt and say I do not know what their licence fees are, frankly. I believe that we have many more premises licensed than PPCA. I stand to be corrected if that is wrong.

Mr McCLELLAND—Assuming that section 69 were amended and the radio stations and the TV stations paid that portion of the million-odd dollars, however that figure is calculated, in relation to the balance, which is about another million, which is the licence fees from playing CDs and tapes, would it be possible—I suppose this is something you would have to think about—for you and PPCA to come up with a common collection arrangement where one or other of you collects it on behalf of the other for perhaps some sort of commission? In other words, businesses would be getting only one entry point to collect these licences. Would that be feasible or totally out of the question?

Mr Cottle—It is certainly feasible. It is not an issue or idea, frankly—and I think I mentioned this at the hearings in Canberra—that we have pursued because we believe that the ACCC would have serious objections to it. However, if I were to place myself in the position of a small business playing CDs or tapes and knowing that these two letters were to arrive, each requesting a licence fee for essentially the same thing from the user's point of view, I would have to readily admit that I would be confused and it would take a certain amount of investigation on my part, certainly an effort to read all of the materials, to understand the difference.

On the other hand, I do not think Australian businesses should be treated as morans. Those who run Australian businesses are intelligent people capable of understanding these kinds of ideas, in my view. I again emphasise that the vast majority of licensees that we have under these licence schemes pay the fees, accept the explanation and understand what it is about. We are not dealing with the majority of small Australian businesses in this situation.

Coming back to your proposition, I do think there is merit in that proposition, and I think it ought to be something that is pursued with PPCA.

CHAIR—Can I just follow that up. You said, Mr Cottle, that you had endeavoured to contact, I think were your words, 180,000 plus businesses. I took it by implication, but this may be wrong, from what PPCA said when they were making their submission that in calculating their forgone revenue in fact somewhere in the order of 40,000 actually had licenses. Is that accurate?

Mr Cottle—Again, Mr Chairman, the figures are actually in our original submission.

CHAIR—Forgive me for not—

Mr Cottle—I will have to, I must say, turn to those figures, which are at the bottom of page 19 at 11.61. We have 23,116 licensees under the licence scheme for playing CDs, tapes or background recorded music. They pay us a total of $1.68 million. So the average licence fee per licensee under that scheme is $72 per annum. That means that there are obviously chains of licensees there.

Mr McCLELLAND—And roughly half of those would be CD players, would they?

Mr Cottle—Probably the great majority. I think that, when PPCA talks about the opportunity cost of section 199(2) under the act, it is really talking about the second category—that is, the licences that we have for people who are playing radios and TVs—because that is the area that PPCA does not have a right to license at the moment. So their opportunity cost would be based on the fact that we currently have 37,000 licensees under that category.

Mr McCLELLAND—I see.

Mr Cottle—That is close to the 40,000 figure that you have mentioned.

CHAIR—You have, let us say, 40,000 licensed under that provision. Of the 180,000 or so businesses, what do you realistically think the figure is? I know this would obviously be some sort of ballpark guesstimate. Do you think half of those actually do

play music, or is it a quarter? You must have made some sort of rough assessment of this.

Mr Cottle—I may ask Mr Cooper to comment on that.

Mr Cooper—Of the 180,000 businesses around Australia, approximately 125 had direct contact. The rest of them were made up of businesses that had gone out of business, were not trading at that particular point in time. So the total universe is 180,000. We contact about 125 actual leads. Records show that approximately one in three businesses are using music in some way in which a licence would be applicable. So we are talking around about one-third of the 125,000 at any point would require a licence.

CHAIR—I suppose what I am getting at is you think the number you actually have licensed now is a fair percentage of the potential users.

Mr Cooper—In some categories we are heading towards complete—

CHAIR—One hundred per cent?

Mr Cooper—Not a 100 per cent but heading towards compliance.

CHAIR—Two observations about that. One is I recall that—this is on a tangent but it was an interesting observation—when the GST was introduced in New Zealand the estimated number of businesses actually doubled when the people registered, so there are a lot more businesses out there than perhaps we know about. On the other hand, I suppose there has been a move, which is continuing, towards what I think people call micro-businesses, which are the businesses that are operated from home. Of course, they are probably a category from which it would be much more difficult to collect a licence fee, for a variety of reasons.

Mr Cooper—For licensing from home, yes, they may have been contacted. Perhaps a computer software shop type operation might operate from home. In those particular cases, once they were notified that it is a home operation, then no further pursuit would take place.

CHAIR—What I am saying is, though, there is a trend in business to more people operating businesses at that micro level at home, where obviously it is not—

Mr Cooper—We are probably talking about architects, accountants—that type of area, which we normally would not be writing to.

CHAIR—This is all leading me to this observation: what we are talking about, then, in terms of your forgone costs, if we were to move to the Canadian scheme in terms of forgone revenue, is about $1 million. That is what we are talking about.

Mr Cottle—As things currently stand, that is right.

CHAIR—And therefore you would be looking for the tribunal to factor that into the broadcast licence fee?

Mr Cottle—That is correct.

CHAIR—Fine. That gives us a ballpark figure. Can I just ask you one other matter, then. Leaving aside radio broadcasting and now dealing with tapes, CDs and so on, and leaving aside the possibility of some cooperation between you and PPCA to overcome the confusion and any difficulties you might have with the ACCC about that, there is still the problem—even it is a less obvious problem than it is with radio—of where a new tape or a CD falls.

The categorisation that Mr McClelland has put on a number of occasions in these public hearings is that you can look at performances which are entirely private or private in their nature. At the other end of the scale, there are those which obviously involve a public performance component, of which an obvious example to me would be where music is played at a gymnasium for the purposes of an aerobics exercise and without it you are not providing what people want, so it is obviously a commercial component.

In between there is some area of what might be regarded as ambience, and there is probably a whole range of what ambience is. There are some which are more obvious than others. In a restaurant ambience might be part of creating the setting. I know that often in doctor and dentist rooms and surgeries they have soft music playing in the background. Jeans stores have it blasting out so that, when you get within 100 metres of them, you know there is a jeans store somewhere nearby, which is apparently ambience—I cannot quite work it out myself, but anyway.

Let us say that we accept the radio proposition and all round we could sort that out—I do not know whether we can; we have to talk to the radio broadcasters. But we also have to look at the other problems as well. If you have three categories or three pigeonholes between private enjoyment—even though it might be on commercial premises; the person is peeling the spuds out the back or something like that—the ambience, the restaurant type of situation and quite clearly the integral commercial performance, where on that spectrum do you draw the line between when a fee becomes payable and when it is not?

Mr Cottle—If I can begin to answer that question, which I think entails quite a lot of material, in picking up Mr Smith's comment earlier in the day about the need for a balancing in interests, what we say about that is that there has already occurred a balancing in interests in formulating, firstly, the international standards and, secondly, incorporating those international standards into our domestic law. What the international community has done through the process of forming a convention is to draw the line in

relation to performance at where the performance is public. In other words, the dichotomy applied by the law and the convention is public versus private.

It is fair to say that the courts have struggled to some degree in evolving what that dichotomy really means, what 'public' means and what 'private' means. They have moved away from a formulation based on private or quasi-private or quasi-family to commercial versus non-commercial. We think that is the fair approach, because it goes to the reasoning that some commercial value is being derived by the user. So we think the way the courts have currently formulated the law is the correct approach. It is certainly the approach that is consistent with the interpretation of the convention around the world.

Going beyond that: we certainly accept that, once you have a public performance, there are different values that attach to different circumstances of performance. However, that does not go to whether the right should or should not exist; it goes to what value should be pay for it. That is an issue which is absolutely within the purview of the parties themselves to negotiate or, in the absence of successful negotiations, within the jurisdiction of the Copyright Tribunal.

You can argue about whether APRA's licence schemes fairly reflect differences in value, but I would put to you in that respect that, if anything, those licence schemes are in a great many circumstances probably too low, with the result that the music itself is undervalued in the minds of the users. Secondly, we have, rightly or wrongly, striven for as much simplicity in those fees as we possibly can. We think, again, that any attempted differentiation in the law based on the different nuances of usage would be folly. It would be folly because it would lead to litigation. In other words, if you were to put a provision in the law which said, 'Where the public performance of music is incidental to the main purpose of the business, a lower fee shall be paid than in the case where the usage is featured,' all that will do—

Mr McCLELLAND—I think it is fair to say that there were three categories of evidence from commercial users. The predominance was, yes, they would cop it for the gymnasium/discotheque sort of situation. Some of them would not even cop it for ambience and certainly all of them would not cop it for private usage, that is, the mechanic under the car or the person peeling spuds out the back. But perhaps the more balanced of the evidence from the commercial interests was that they would cop both ambience and the clear integral part of business and discotheque.

In respect to distinguishing those two categories—ambience and clear integral categories—from the personal use, it was put to us that a straightforward method might be to distinguish a situation where the music was through a reticulated system, that is, through speakers throughout either the shop, restaurant or whatever it might be. That would be a straight out, physical test as opposed to a philosophical or subjective test as to whether it was integral or not integral. What do you think of that physical test as opposed to the subjective test?

Mr Cottle—I think if the physical test were either based on the number of employees or based on the kind of system by which the music was performed, whether it was a reticulated system or some other system would certainly not be acceptable to us. It would certainly be in breach of the convention and it really would not have a lot of logic. Who is to say that the performance of music in a particular shop by what is commonly referred to as a boom box—which is a self-contained unit with speakers built in—was not far greater, far more featured and far more deserving of a reward to the composers than a reticulated system mildly playing background music in a truck stop?

I think that that kind of differentiation would give rise to all sorts of inequities. The principle point of concern it seems to me is with what you have described as the private kind of performance. Bear in mind a court will look at all of the circumstances of a performance. It has to be a performance in public.

Mr McCLELLAND—I am not speaking for other committee members, but our job is to try to keep it away from the courts. That is the real nuisance. People say, 'I could go to court, but it's not worth arguing for $37.' This is where the annoyance comes out of it. Our job is to come up with a formula that keeps it away from the courts.

Mr Cottle—We completely agree with that approach.

CHAIR—I will just quote you from Mr Justice Gummow's passage in the Commonwealth Bank case, which no doubt you are familiar with. He draws a distinction, as you will recall, between performances in public and those which he described as domestic or private. I quote:

> In determining whether a performance answers the latter description, the nature of the audience is important. In coming together to form the audience for the performance, were the persons concerned bound together by a domestic or private tie or by an aspect of their public life? Their "public life" would include their presence at their place of employment for the supply of a performance to assist the commercial purposes of their employer.

With the greatest respect to His Honour, that last sentence more or less begs the question. I think what Mr McClelland is getting at is that we would like as a committee—and again I am only speaking for myself now, but I concur with what he said and I suspect it probably is the view of most of the members, if not all, of the committee—is to be able to provide some guidance, even if it is not legislative guidance. That will mean that this can be sorted out, all the parties can go away and there is a reasonable expectation within the music community and a reasonable expectation within the business community as to what as a matter of public policy the parliament would view, because the government of the day needs to respond to any recommendations we make. As I said, it may not be a legislative proposition we put in place here; it may simply be some sort of guidance to the parties.

Mr Cottle—May I ask in that connection, Mr McClelland, whether the circumstance of what you have described as the private performance is one where the

performance is only audible to people who are working in that environment? In other words, we are really excluding a situation where music is audible to the general public in a business, namely, retail businesses or other similar kinds of businesses. We are really talking about music in the workplace.

Mr McCLELLAND—Yes. We had evidence from APRA earlier that as a matter of policy they do not collect from individuals where it is only heard by individuals. But the proposition put to us by the commercial interests in respect of those two categories—ambience and the discotheque sort of situation—was, yes, the public would come in. For instance, in relation to a pharmacist having music while he is making up packets of pills, that music would be heard as people entered the store. But the argument of those commercial interests was that it was inappropriate to charge that pharmacist simply because people could overhear the music. Again, to make the physical distinction between the pharmacist whose music was overheard and someone who actually had it as part of their ambience or background for the benefit of the customers, there was this physical distinction of whether it was reticulated.

Mr Cottle—In our experience, the kind of circumstance you are talking about invariably relates to the use of a radio. Almost never do people install CD players or tape systems or, indeed, commercial background music systems purely for the purpose of making their own life in an individual person's working conditions more appropriate. If an employer or a small business person goes to the trouble of having recorded music playing, it is almost always an ambient issue for the store as a whole and that members of the public are affected, or it is directly related to making the working conditions of more than one staff member more conducive to fruitful work. So we would argue in those circumstances that the right ought to be retained unfettered and it is fair that some payment be made. But the overwhelming majority of cases where that sort of situation has arisen have concerned radios.

Mr McCLELLAND—Speaking from a personal point of view, I can see the logic of that in terms of distinguishing between radio and someone who actually puts in a CD. But, if it were restricted to the test as to whether the radio situation was intended for public broadcast, would that be a more acceptable test?

Mr Cottle—I personally think not, because it would grossly add to the costs of valuation. In other words, we would have to conduct research by physically looking at all of the small businesses and the way in which they use radios to play music in public, which would add tremendously to the costs of valuation. So I think that would be a counterproductive measure. If one were to accept our proposition in relation to the liability for radio performances, it really should apply across the board, regardless of the circumstances of radio performances. If you accept the double-dipping type argument, then you have to accept it in both situations, regardless of the purpose for which the performance by means of the use of the radio is occurring. So I think that would be our position there.

Mrs ELIZABETH GRACE—I have a series of questions, but the first one is purely curiosity. Coming to terms with this public performance definition—which we all are having trouble with; the general public is anyway—if you are having a fundraising function at a school or a football club, or there is a fashion parade, and they play all sorts of music, is that subject to some sort of copyright? Is it possible for them to be penalised for doing that sort of thing?

Mr Cottle—The issue, firstly, is whether a public performance is occurring. If it is occurring in a football club or at a fashion parade or at a school, it would normally be a public performance. Bear in mind that we do have a licence agreement in place with almost all schools throughout Australia under which they pay a very modest annual fee covering all public performances. So it would be licensed under that scheme. But the distinguishing characteristic again is whether it is a performance in public. If it is a performance in public, there is a prima facie obligation to obtain a licence if music is being played. Our policy in relation to charitable performances is that, if others who are contributing goods and services to the performance are donating their goods and services, we will do likewise. In other words, in the fashion example, if the fashion models are not being paid to turn up and model the clothes, we are very happy to grant a complimentary licence. We do that very frequently throughout Australia.

Mr TONY SMITH—Retrospectively?

Mr Cottle—Very rarely do we get applications prospectively for licences.

Mrs ELIZABETH GRACE—The other situation that came to mind was a fundraising function in your own home. You open your home up and you have a cocktail party, a barbecue or something like that.

Mr Cottle—Or a Tupperware party.

Mrs ELIZABETH GRACE—Yes, although I did not know they were still around. And you play music and everybody ends up dancing on the back lawn because you have got your speakers blaring. Is that subject to licensing?

Mr Cottle—No, we do not license that; we have never licensed that. We would regard that as a private performance.

Mrs ELIZABETH GRACE—That was just a curiosity thing because of the way we were talking about public performances earlier. Could you tell us, please, how you collect the names and addresses of the people that you contact?

Mr Cottle—Over the past few years we have attempted to call most businesses in Australia to find out who the owner of the business actually is or who the appropriate person is who should be written to. It is done, generally, by telephone calls, or there is a

fair amount of published information available through a number of different data sources that we have accessed over the past couple of years. Often, it is from commercial data services.

Mrs ELIZABETH GRACE—Following on that, do you analyse what type of businesses there are? There are things like the Doll Collectors Club of NSW, the Flag Society of Australia or the Book Collectors Society of Australia. Those sorts of people have been getting accounts. It is highly unlikely that they would be rushing out and having music playing for public performance. I am just wondering whether, when you get your lists, somebody analyses them.

Mr Cottle—I should firstly make this clear: no-one gets an account unless they have applied for a licence. It seems to us that, in many of the submissions that have been made to the committee, there has been a fundamental confusion between APRA's correspondence with those who hold licences—those who have applied for licences and who have a contract with APRA—and those who are being asked whether or not they need a licence. An account never goes to anybody unless they hold a licence with APRA. That is the first point.

Secondly, it may be that those kinds of societies and groups are playing music in public. If we have written to them and asked them to advise us if they are and, if so, to take out a licence, they have either applied for a licence or they have written back saying, 'We don't play music.' If they have written back and said that they do not play music, that is the end of the issue as far as we are concerned. But Mr Cooper may have something to add.

Mr Cooper—I do not think the flag organisation is one that comes to mind in this instance, but last year we did a mail-out to most groups around Australia and that kit included our annual report, a sample of a licence, our brochures et cetera and information about APRA. We did not write directly to any of those people that you referred to a moment ago—just to their associations to inform them that an organisation called APRA exists and, if music is being publicly performed, a licence may need to be taken out.

Mrs ELIZABETH GRACE—May I suggest that the material you sent out was not conducive to that type of interpretation. As you say, you do not send accounts but all the people who have received information from you in the last 12 months and who have contacted me believe that you have sent an account and a demand for payment. So there is something radically wrong in your marketing or in their translation of what you have sent them. So there is very much a crossed wire situation here, and one of the reasons we are sitting here today is because of the perspective and the interpretation that business has put on the material received from you. From that point of view your translation and their translation are, obviously, poles apart.

I would also like to follow on from a comment that Ms Faulkner made at the last

meeting. We asked about legal proceedings and I will quote from that. She said:

> On the question of legal proceedings, there has not been a single legal action launched in relation to a person who has received the correspondence through the telemarketing campaign since its inception—not one. I have not even written a letter of demand to any business.

She went on:

> Over the last five years there would have been less than 100 actions around the country [for infringements].

She stated further:

> These are largely cases that have been launched in relation to large music users, not to small businesses at all.

We have received as evidence, here on the committee, letters from small businesses that are letters of demand. There is no other translation of it. They are letters of demand; they are threatening letters saying, ‘Pay up or else.’ That, to me, seems a contradiction of what Ms Faulkner was saying.

Mr Cottle—Ms Faulkner was talking about copyright infringement actions against those who are playing music who have been advised of the rights and who have declined to take out a licence. The correspondence that has just been tabled relates to debt collection proceedings. We have 80,000 business licensees throughout this country. Many do not pay their debts. Of course we have to take legal action to collect debts based on existing contracts.

Mrs ELIZABETH GRACE—I am sorry, Mr Cottle, these people were not APRA licensees. These were people who had been sent the information from APRA, who had not taken any notice of it and who eventually, after several letters, have been sent these letters of demand. They were not licensees of APRA that had not paid a renewal licence or anything of that sort, they were people who had received your material, had ignored it for all sorts of reasons and then, eventually, had been sent letters of demand. I feel that that is putting legal proceedings in place.

Mr Cottle—I would like to do two things. This is the first I have heard of this particular issue. If I may, I will take it on notice, examine what the situation is and give a full explanation to the committee within 24 hours.

Mrs ELIZABETH GRACE—I would like you to qualify that, because this is the reason that we are here today—this type of material that has been getting out to the small business community. That is why there has been this huge demand on us to do something about it.

Mr Cottle—Secondly, I think Ms Faulkner was in the room. May I ask Ms Faulkner to comment on the particular issue at this stage?

Mr Cooper—Can I just add one thing? With regard to the first one, the pharmacy, invoice No. 41351 on page 2 says 'invoice No. 41351/0002'. That is an actual licensee number. This person took out this licence in May or June 1996. There is a signed application. Their annual renewal notice, which is what this invoice statement is, is for a signed licence agreement. They have not paid it and that is why it has been referred for debt recovery.

Mrs ELIZABETH GRACE—Maybe they do not want to renew it.

Mr Cooper—But if they are publicly performing music—

Mrs ELIZABETH GRACE—Maybe they have stopped that. You have sent them a letter of demand without finding out whether that is what they need.

Mr Cooper—They have a signed licence which indicates that they are using music.

Mrs ELIZABETH GRACE—But I am saying that their circumstances may have changed.

Mr Cottle—The contract the licensee signs asks the licensee to advise APRA if circumstances change. All we have to do is receive a letter telling us that the music is no longer performed, and there is a pro rata refund of licence fees paid and the licence is terminated—it goes off our system. It is like notifying the Department of Motor Transport about a change in your address or the Tax Office about a change in your circumstances or your address.

You have tabled three bits of correspondence here, I might say without notice to us. The first two pieces of correspondence relate to debt collection proceedings relating to existing licensees who have signed licence agreements and who have failed to pay their fees. The third issue relates to the Seymour Hotel about which we propose to provide a very detailed and on the record submission to the committee. This is a hotel that was not contacted as part of any telemarketing campaign or small business licensing campaign. This is a hotel which, over a long period of time, has told APRA to go jump and that it would refuse to pay licence fees. The situation here really has nothing whatsoever to do with the small business licensing campaign. Having said that, we will provide a full written submission on that matter to the committee.

CHAIR—I appreciate your willingness to do that. In relation to the first matter, a licence had been signed and had been paid in year one. This, in effect, was sent as a renewal notice for year two. It was then ignored and this correspondence was forwarded.

Whether it is year two or year three, that is not my point; it is a subsequent year to when the licence was first taken out. When the renewal notice is sent in any year subsequent to the first year, is there any indication on that to say, ‘If you are no longer playing music, please indicate that that is the case’?

Let us take an example. Let us just hypothetically take this pharmacy. Let us say, ‘Yes, we took out a licence. We were playing music for ambience, but we’ve now changed our mind about that, for whatever reason. We’re not playing any more.’ We get a renewal notice. I am just wondering whether it would be of assistance if on that renewal notice there was a paragraph—I partly mean to assist you as well—or a note which said, ‘If your circumstances have changed and a licence is no longer required, please tick this box’ or ‘please indicate’ or something like that.

Mr Cooper—Apart from the actual invoice that is sent out—and this one would have gone out during June—there is a letter which goes out which actually thanks the licensee—this is their renewal notice—for continuing to use music. The letter then goes on to ask if they would like further information about APRA and there is a direct telephone line to one of our staff members, and concludes by once again thanking the licensee.

In addition to that, a licence for the 12-month period is attached, along with a sticker to put in the window if they choose to and a brochure which is called *Where the APRA dollar goes*, which I believe you will have a copy of and which indicates how we collect the money and how it is distributed. That is what is sent out, along with an envelope to actually send back to our accounts department.

Mr TONY SMITH—My recollection of the evidence of the pharmacist in question was that she spoke to APRA and told APRA that the music was on a little radio, a trannie, for her benefit.

Mrs ELIZABETH GRACE—That is right and only one day a week.

CHAIR—The one who gave evidence is not this one.

Mrs ELIZABETH GRACE—No, but it is this one, is it not?

Mr TONY SMITH—It is in relation to the second one, is it? Sorry, the second one, the Putney pharmacy one, I think. I think I made the observation, ‘If you had never said anything to APRA, they would not have had any case against you, because in effect you acknowledged that you were playing music.’ In that situation, do you exercise a discretion?

Mr Cottle—Of course, and we get through the fax machine every day invoices from small business saying, ‘We’ve turned the radio off’, or ‘no longer playing music’, or ‘no longer applicable’ and the licences are terminated. It is the end of the issue.

Mr McCLELLAND—How do you call off the dogs, so to speak? I was a lawyer and I know there is a breakdown when something has been referred to a debt collection agency. From the first document here, I surmise that Bridgement Smith and Associates is a debt collection agency. They in turn have used Vrachnas and Co., solicitors. If you have received a communication from a particular pharmacy and it has already been farmed out to the debt collection agency and they have in turn retained solicitors, how do you pull back that chain?

Mr Cottle—They are on-line to us, computer linked to us, through e-mail and have access to our account systems. So the accounts staff e-mail them on a daily basis, talk to them daily. If they receive information that that licence is no longer applicable, that is the way we are able to then cease taking the action.

Mr McCLELLAND—You do not think from a public relations point of view you might be better off to do this in-house rather than from the perception of through the dogs?

Mr Cottle—If the dogs mean the solicitors who act for the debt collection agencies—

Mr McCLELLAND—The debt collection agencies and the private solicitors.

Mr Cottle—There is a huge cost indeed in-house. That would be the first issue. I think that it would be useful if we were to provide the committee with a full description of our debt collection procedures and we give you copies again of all the correspondence that goes out. The Chairman's suggestion of a paragraph to the effect that 'If you are not using music, please advise and the licence will be terminated' is extremely helpful. We are happy to take that on board. But we should give you the whole picture before we start examining individual cases on a piecemeal basis.

Mr TONY SMITH—I thank Eric McCusker for his comment on music that is no longer available because that is an important aspect of the point, which I have made elsewhere, about marketing. If it is not available, that has discounted that point considerably. So there are arguments both ways.

I was interested to hear some of things that Jenny Morris said, too. From a philosophical point of view sometimes I have encountered a mindset amongst artists. That is not a criticism; it is just a mindset. I understand how you think it is property; it is quite understandable and legitimate. But there are a lot of discounting factors involved in the whole process. A small business person who purchases or negotiates a lease and pays for those premises is providing for artists a venue for their music. That has to be a discounting factor. Whether you like it or not, an objective analysis is that that is a discounting factor.

The second discounting factor is that for music that is not available it does provide an outlet for your music to be promoted. Who has not been in a shop, heard some music and said, 'I am going to get that' and got it? I have done it several times. It happens. The next point is: what about writers who are constantly getting quoted? You are constantly photocopying. I know that could be a technical breach of copyright, but people do it all the time. They quote writers. There is intellectual property in written works too, but people constantly quote them in speeches.

I heard a speech the other day which, I was absolutely convinced, was lifted straight out of an American journal. In effect, all of those discounting factors and the balancing matter that I referred to this morning move the goalposts away from the objective nitpicking—if you do not mind me saying so—that goes on in relation to small businesses and so forth. Taking all those matters into account, there is room to move on this issue, I would have thought.

Ms Morris—Can I ask you to make your first statement again so I can address that? It was about the way small businesses create an environment by buying premises and playing the music. Is the gist of your statement that we, as the writers, are benefiting from their playing our music to the public?

Mr TONY SMITH—In a sense, there is an advertising of your product through that mechanism.

Ms Morris—Yes, that is the point. What good is advertising my product if I do not benefit monetarily? As Eric said, some of the Mondo Rock tunes that are played in small business situations are doing nobody any good except the person who hears them and gets enjoyment from them. He cannot capitalise on them because they are no longer available for sale.

Mr TONY SMITH—I made that point. It is part of the process. I do not have a problem with what Eric said. It is a very good point. But current music is played as well in that whole scheme of things.

Mr McCusker—To me, it is like wearing jeans with a Levy label on them and saying, 'I am giving you this benefit by walking around the street with "Levy" written on me. Can I have the jeans for free or can I get 50 per cent off because I am promoting your product?'

Ms Morris—Another thing is that half the time people do not know who they are hearing because it is never back-announced.

Mr Perjanik—When you start off in the music business when you are 18 and in a little rock band, the first thing you hear is, 'Kid, we are going to give you 20 bucks. We will make you a star.' You hear this all your life. When you are a bit older they say, 'We

have this tour coming up and you are going to back this famous person. We can only pay you 100 bucks a night, but it will really make you' and off you go. You get your first film and they say, 'We have no money, but you will get your name in lights.' Terrific. This argument goes on and on. Radio stations say, 'We made you what you are today.' That is not true. Radio stations never play records to do you a favour; they do it because they are popular. As one radio station guy said to me, 'We don't make hits. We play them,' and that is the bottom line.

Mr TONY SMITH—But not initially. The song might be absolutely dreadful and nobody wants to buy it. The market forces take over there, don't they?

Mr Perjanik—In the final analysis, the audience out there decides. Sure, these things do help; they are stepping stones. But if we held the radio station argument that 'We are promoting you', no-one would ever pay composers. We would say, 'You guys have fame but no fortune.'

Mr Cottle—May I just say a couple of things about that? A famous judge once said that there is no known principle of law that a person's property may be expropriated because it is good for them. That is the first point. The second point is that radio stations have long since ceased to be the great promoters of current repertoire that they may have been 30 years ago. Radio stations play music now purely to make profits. They play what is already a hit, what has already been sold and on many occasions what was already a hit many years ago.

Thirdly, in relation to the photocopy analogy, an important legal right is breached if a small business does photocopy protected copyright works. There is an agency which licenses that right which deals with thousands of small businesses and large business throughout Australia. It is called Copyright Agency Ltd. Authors increasingly look to that agency for royalty income in the same way that composers do from the public performance right. A literary author would certainly regard the breach of that right with just the same degree of importance that we regard the public performance right.

Mr TONY SMITH—One would think even more so, perhaps. I am just curious about the letter from Faulkner and associates. Are the four songs that are referred to there all overseas artists?

Mr Cottle—Yes, that is correct.

Mr TONY SMITH—This raises another question. Taking out of the equation the international treaties for a moment, are we collecting more for overseas artists than we are for our own?

Mr Cottle—It is true that those who play music in public and broadcast it in Australia choose to play more foreign music than local music. It has been and remains a

sore issue for Australian writers, recording artists and recording companies, but it is the choice of the user, not the choice of the owner. The disadvantages to the nation that are occasioned by it ought not to be visited on Australian writers and Australian artists, in our submission. Secondly, the trend is reversing.

In the current financial year, APRA will earn approximately $10 million in export income for this country from foreign performances of Australian compositions. Ten years ago that figure may have been $2 million or $3 million a year. At the same time, the proportion of the domestically collected royalty pie that APRA pays out and, indeed, the record companies pay out is becoming more and more oriented towards local composers and local artists.

Mr TONY SMITH—What is the balance?

Mr Cottle—The balance at the moment is about two to one. About 46 per cent of APRA's total distributions go to foreign authors and about 22 to 23 per cent of our total distributions go to local writers.

CHAIR—I thank you for your submission and subsequent submissions, Mr Cottle, and also for coming along and discussing them with us today. We look forward to any further material you may provide to us. Depending on any other issues that might arise in the course of our hearings, can I leave it open—I know you are monitoring what we are doing, so I probably do not have to put this on record—that if we want to discuss some other matters with you again, we could do so.

Luncheon adjournment

[2.19 p.m.]

SIMPSON, Mr Shane, Principal, Simpsons Solicitors, 56 Kellett Street, Potts Point, New South Wales

CHAIR—Welcome. Do you have anything to add regarding the capacity in which you appear?

Mr Simpson—I am the author of the review of Australian copyright collecting societies done for the Attorney-General and the Department of Communications and the Arts. I have been invited to answer questions before the committee.

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. We have your report as an exhibit to the inquiry because it is referred to in our terms of reference. It might be useful as a starting point for you to give us an overview of the system of copyright and licensing in relation to music.

Mr Simpson—I am terrified by the task you pose, Mr Chairman, because it is so complex.

CHAIR—And I want you to do it in one minute.

Mr Simpson—Yes, and use no adjectives. As you would understand, copyright is a system of statutorily awarded rights. One of the difficulties I have in my daily life as an intellectual property lawyer enforcing rights of this nature is that it is very difficult for members of the community who have not had the fortune—or misfortune—to come to terms with these rights. It is very difficult for them. If anything is described from the very beginning as an 'intellectual property right', you know that you are in trouble. Then if you say, 'You have an intellectual property right which has no existence in itself in the real world and yet can manifest itself in all sorts of forms, whether it is the public performance right or the broadcast right,' the general public starts to glaze over, and who can blame them?

When you add to this the fact that this series of rights, as real as they are, are accorded by an essentially incomprehensible piece of legislation—certainly to the non-expert lawyer—the problem gets considerably worse. One of the most difficult pieces of legislation to understand is the drafting in relation to collecting societies. One of the great difficulties I had—and I approached the task of making this report with considerable experience already in the copyright area—was to work out what some of these clauses actually meant. And there are still a couple of clauses which I defy anybody to give me a certain response as to what they mean.

That does not make for good law in my books and you can see the result of that in the sorts of responses you have had from your community and which have given rise to this very committee. Of course, that is not all that is involved, but it is a part of it. The things are difficult in themselves and they are very poorly expressed in the first place.

The statutory rights are essentially administered and enforced by the collecting societies. One of the things I was asked to consider and report on was the efficacy, efficiency and equity of the societies. In the early 1990s there had been considerable rumblings in the community as to where the money went, how the societies worked, the presence of slush funds and all those sorts of things which gave rise to the inquiry. I confess that I approached the task feeling excited on one hand and as though I had been passed a poison chalice on the other. It was a very pleasing experience because in looking at those aspects of the societies I was surprised by the efficiency and equity I found through rigorously going through the societies. It was not just me. I had an IT person who went through all their IT systems to see if they could use those sorts of machines better and I had an efficiency expert looking at the administrative processes and analysing those. Perhaps I will leave those general comments there.

CHAIR—The issue before us arises from the interface—if I can use that expression—between the collecting societies on one hand and small business on the other. Your report probably predates these matters which are causing concern in the community.

Mr Simpson—It does.

CHAIR—The concern is probably twofold. One relates to perceptions about the manner by which the licences are sought to be obtained and the royalty fees paid and the other about the circumstances in which a licence and royalties are payable: that is, the question of public performance and what constitutes a public performance and whether somebody playing a transistor radio in the corner is a public performance versus sound piped throughout an office or a shop.

Two things come up that I would be interested in your comments on. One is the proposition that in effect has been put today by APRA in relation to the performance rights of music played on the radio. They are positing a new scheme based on the Canadian model whereby there would be no royalties collected from business in relation to music played on the radio but the royalties would be collected from the radio or television broadcaster instead. That is one issue. Perhaps I will stop there for the moment and seek your comments or views about that.

Mr Simpson—I heard that proposition this morning for the first time but I must admit that, at first blush, it seems enormously sensible—sensible because if you are simplifying the administrative structure by which you collect the income, it obviously makes the collection of income cheaper and faster, and it is also going to reduce the understandable confusion within small business—in other words, in the community.

It is not that APRA are mistaken in the attitude they are taking towards the rights. These are rights that are given under our law. I do not think we can blame them for enforcing something on behalf of their members that is accorded to those members by the legislature. How they go about that is a different issue, of course. But if we can introduce legislation which assists the legislative process so that the collection, the identification and the distribution are easier, that must be a good thing.

CHAIR—The other issue is in relation to recorded music—CDs, tapes and the like. It is not posited that that should be part of any change and, therefore, there would remain the entitlement to license and collect royalties in relation to music played in that manner by business.

One of the things that we have discussed with a number of witnesses is to look at a categorisation, if you like, of performance ranging from one end of the spectrum where it is purely private, for personal enjoyment and about which there may not be much of an argument, but could possibly include somebody peeling the potatoes out in the back room of a restaurant who has a radio on for their own personal enjoyment which is not wafting through to the restaurant, to the other end where, quite clearly, the music is an integral part of the commercial activity—for example, aerobics classes at a gymnasium. Then there is some area in the middle which might be regarded as ambience background music in a restaurant, a doctor's surgery or a dentist's surgery or something like that. The question then is: where do you practically draw the line in terms of what constitutes a public performance along that spectrum?

Mr Simpson—I think that is enormously difficult. I do not have any difficulty with the first two categories: the foreground and the background music used in a commercial or professional setting. That is quite clearly a public use and I do not see any real benefit in distinguishing between them as far as value is concerned. I am sure that we can build an economic construct which allows us to do these things, but is it really worth it at the end of the day?

I would be very surprised if my dentist used the same music in her surgery as a jeans shop uses to sell jeans because it would have exactly the wrong effect. In the jeans shop, they want to give me a sense of excitement and, in the dental surgery, they want to relax me as much as possible—still using the music for a valuable, professional or commercial purpose. I do not have any difficulty with that.

The third category, the person who uses music in a workplace essentially for his or her own private benefit, is difficult. I think that we would perhaps all agree that it is not worth licensing such a person. I suspect that APRA would probably take a similar approach. But, in terms of application of principle, it is very difficult. It may well be one of those things which, at the end of the day, we have to leave to good commonsense. I hope there are some things we can leave to that.

Mr McCLELLAND—In your report you made a recommendation about section 152, subsection 8, about the restriction on fees payable to the PPCA predominantly by commercial broadcasters. What was the basis of that recommendation?

Mr Simpson—I find it anomalous that the broadcasters are essentially protected from a process of free negotiation. I think that we are in an era in which negotiation between stakeholders is almost central to the way we approach arriving at tariffs. We have brought it into our employment workplace environment in no uncertain terms. I do not think that broadcasters are people who need to be protected against the big bad record companies. Here you have two corporate bodies—representative bodies of pretty equal bargaining power—and one has the benefit of a legislative umbrella. I cannot see why it is needed.

Mr McCLELLAND—The evidence from APRA was that the reasoning behind the distinction was that two different treaty obligations, one applying to the writers or—

Mr Simpson—That is why it exists, but not why I believe it should go.

Mr McCLELLAND—So, irrespective of that background, you think commonsense suggests it should go?

Mr Simpson—The international treaty obligation explains why there is the difference.

Mr McCLELLAND—Yes.

Mr Simpson—That is as may be.

Mr McCLELLAND—Yes. If we went down this route of looking at the—

Mr Simpson—Excuse me, I would just like to clarify something. That is in fact slightly confusing two things. What we were talking about with the treaty obligations was the payment to the copyright owner of the sound recording in relation to broadcast, that is, international treaty ramifications. The one per cent umbrella is quite different and, quite honestly, I do not know what the political reasoning was but I suspect it was effective lobbying by the broadcasters at the time.

CHAIR—Country radio stations, I am told.

Mr McCLELLAND—If we were to go down this route of amending, I think, section 69—although I must say I have not read the section—so that commercial broadcasters effectively were charged an additional levy to compensate for the on-broadcast, would that leave over the playing of CD music, both for APRA and PPCA?

Mr Simpson—Correct.

Mr McCLELLAND—In your report you made a recommendation regarding the desirability of a joint collection arrangement and APRA pleasingly said that that certainly would have some merit to it. Are we left in a situation where such a joint collection arrangement would have to be worked out through APRA and the PPCA with goodwill, or is there any role that we, as members of parliament, can play in either inducing or—one does not like to use the word 'compelling'—encouraging that to occur?

Mr Simpson—I think the question is excellent. In order to give it a really full response, I would clearly need a little time. In principle, I can see no reason why the two societies should not combine forces for the licensing function in its new limited form that we are talking about. I would need to give some thought as to how this committee might encourage that. I suppose it would depend, to some extent, on how much the committee wanted to involve the legislative process in forcing the parties to actually do it. Clearly—I say clearly, but it is not clear to outsiders—there are in fact considerable factors whereby PPCA and APRA, record companies and music publishers, do not see eye to eye. From the outside, it must seem that they are all in bed together—and a very cosy old bed it is. But in fact there is no love lost between music publishers and record companies. So any encouragement the committee felt appropriate I am sure would probably only act to enhance the likelihood of that joint approach to licensing coming about.

Mr McCLELLAND—If you have got any thoughts on that, perhaps subsequently you might let us know.

Mrs ELIZABETH GRACE—Mr Simpson, in the final recommendation of your report you say that it is a matter of urgency that further study be made on the impact of new technologies on copyright and collecting societies and potential new methods. Would you like to expand on that a little bit for us, please?

Mr Simpson—Yes. As far as I know, that matter of urgency has gone nowhere, although, to be fair to the societies themselves, I understand that most of them are keeping quite a close eye on development of new technologies.

My own view is that collecting societies are going to be hugely important in the new era if we assume that CDs and records of various types are, in fact, a doomed technology and that within, let us say, 10 years—time scales in these things are always rubbery—the primary source of entertainment, communications and, certainly, bringing music into the home will be through cable. We will have access to the entire world repertoire of recorded music, which is an exciting possibility.

But the traditional means of collecting income for our rights owners is going to be very different in that era to that which exists in this era. If we go home from our work and decide that we wish to listen to Jessye Norman singing Strauss's *Four Last Songs*, we

will not have to have that CD in our collection any more; we will be able to simply punch it up on the machinery that we will all have. It will play in our homes in beautiful stereo, quad or whatever the technology is at the time.

There are still going to be all the rights owners who are involved in the process of recording—right through to us listening to it. They will all have to be remunerated. Yet every one of these performances—and, yes, they are private performances rather than public performances—is going to be of minuscule value. The only way that it is going to be financially viable to collect this income is through collective administration and, essentially, run by computers.

A computer, a database, perhaps run by Telstra, the provider or whoever—but let's not get too caught up on where it sits—will make the division, identify the use, who used it, what was used, who the rights owners were, the record company, the publisher, the composer, the cable provider and other relevant people who have to get a lick of the lolly. That fraction of a cent will be divided up into even smaller fractions and sent off in the relevant directions.

That is why I say that collecting societies are going to be hugely important. In this environment, it is absurd to think of individual rights owners as having any ability at all to enforce their rights or, indeed, to negotiate tariffs, schemes and so forth. It will be collectively administered.

Mrs ELIZABETH GRACE—You have just about put all the music shops out of business, haven't you?

Mr Simpson—I do not have any shares in music or video shops.

CHAIR—Nor are you planning to by the sounds of it.

Mr Simpson—Nor am I planning to.

Mrs ELIZABETH GRACE—The scenario sounds a bit as if that might be the case. Just following on from that and your matter of urgency, do you feel that the collecting agencies should be giving this fairly serious consideration now, or should this be something that the government should be looking at from a regulatory point of view? Where do you think it should be going?

Mr Simpson—I think it is too early to be looking at it from a regulatory point of view. On the other hand, I think both the societies and the relevant parts of government have to be keeping a very close eye on this because the technology is moving so fast and many of us are not aware of the impact that even existing technologies, let alone that which is just over the horizon, are going to have on our business. You made the comment, 'I wouldn't have a record shop.' That is the sort of commercial impact that we have to

look at in these sorts of issues.

One of the things in relation, for example, to APRA and AMCOS is that I think we are going to see an enormous change in the music publishing industry in an environment in which a huge proportion of the income comes from mechanical royalties from records—that will largely disappear. I know that the introduction of transmission rights and so forth have been on government agendas for some time, but it really is a matter of urgency. It is not something that can be deferred any longer. The transmission of copyright material is going to be, in my view, the primary means by which it is delivered. It has all sorts of economic advantages in terms of point to point: it is cheap to deliver, lots of people can get into the delivery business and you do not have the delivery of copyright material being caught up in bottlenecks—whether it is through ownership or inefficiencies. These are the sorts of issues that I think both representative rights owners and rights users should be thinking about right now.

CHAIR—On that issue, presuming the sort of scenario that you painted eventuates, even radio stations may well cease to have collections of music that they call on. If it is easy for an individual to dial up some centralised global storage of music, one would have thought it would be equally economically advantageous for a radio station to do likewise.

Mr Simpson—That may be so, but I suspect that they may choose not to do so simply because anything based on cable has a nasty habit of falling over. If the quality of their show is dependent on something as unstable as that, they would probably be unwise.

Mrs ELIZABETH GRACE—By then we would have probably invented something that is far superior anyway.

Mr Simpson—Let us hope.

Mr TONY SMITH—You may not know the answer to this. I was curious about the historical reasons behind the collections of radio and TV licence fees. Am I correct in assuming that that was solely to fund the ABC and not for any distribution to copyright holders?

Mr Simpson—I have no idea.

Mr TONY SMITH—Okay. On 4 and 5 of your summary of recommendations, I would not mind if you gave a very brief outline of the reasons for those recommendations.

Mr Simpson—With your permission, that is how we started.

Mr TONY SMITH—I beg your pardon. I missed the beginning. I will read *Hansard*.

CHAIR—If the scenario you outlined develops, does that strengthen the case for the repeal of section 152?

Mr Simpson—I would need to think about that. I would have to take that on notice, because it is a very important issue and I would hate to treat it lightly. I can get back to you on that.

CHAIR—While we are on section 152, as I understand it, while at least at the drafting stage or the discussion stage back in the late 1960s it was contemplated there would be a review after five years, that review clause did not appear in the final legislation. Apart from your recommendation, have there been other recommendations to repeal that section?

Mr Simpson—I think that PPCA has lobbied in that regard. I do not know of any other but there may well be.

CHAIR—If you can accept the basis of the question, if the rationale back in 1968 or 1969 for the cap was in some sense a protection of radio stations in regional and rural areas in particular, when a quarter of a century ago I presume most of them were still individually owned or there certainly were not the networks that exist today, does that have an impact on that rationale today where we have very few individually owned radio stations and very large networks?

Mr Simpson—It is a very different environment. We are no longer in the media environment in which we are trying to promote the existence of outback radio and so forth. We have moved a long way since that. Why networked media proprietors should have the benefit of it over the rights owners in the material that they are broadcasting quite frankly escapes me.

Mr McCLELLAND—Following on from Mr Andrews's question as to whether we should decide to move to allowing APRA to collect on broadcast of radio directly from the stations, I suppose there is an argument that, if the song writers and music composers are benefiting from a much more efficient collection methodology, it is difficult to see why the musicians and people who are members of the PPCA should not also have the same more efficient collection methodology rather than what we have heard today, the very high expense of pursuing the individual traders.

Mr Simpson—The expense of doing it in the way that it is being done now is crazy. I am sure there are less emotional adjectives that could be used, but essentially it is. If there is a better way to run that particular part of one's business, you would have to be sorely tempted to take it, wouldn't you?

Mr McCLELLAND—Yes.

Mr Simpson—One of the other things that I hope we might have a chance to address is the recommendations that I made in relation to the ombudsman role.

CHAIR—I was about to ask you that. You made a suggestion for an ombudsman for copyright collecting societies. One of our terms of reference is dispute resolution mechanisms. Perhaps you would like to elaborate on your proposal and the reasons why it is valid.

Mr Simpson—When I was looking at the Copyright Tribunal as a body resolving some of these issues, there was a lot of comment about the cost of it, the formality of it and so on. It is a formal body; it does regulate a very complicated series of provisions in the act. It is headed by a judge. It is an arena for lawyers. There are all sorts of reasons which make this expert body very good at what it does in so far as it is able to do it. But there are clearly—as I can see and you can see from those submissions that you have received—a huge number of grievances out there that need to be addressed by somebody independent of the societies themselves. I suspect that body is not the tribunal and the tribunal would not want to know about such a task. It is like being the complaints officer at David Jones. It may not be the sort of job that everybody aspires to but it is a function that you need within your construct.

In terms of the Copyright Tribunal, you will have noticed that I made certain recommendations as to its jurisdiction. I certainly felt that the way that the act presently regulates what matters can go before the tribunal was unnecessarily restrictive, and basically recommended that you should be able to take issues relating to any copyright licensing scheme, whether statutory, voluntary or whatever, to the tribunal.

It is quite an inverted system at the moment whereby you have to bring yourself within one of the sections before you have a right to go to the tribunal. Too limited. Open it up. It is an expert body, and we have few enough expert tribunals in the country. Let us use it as much as possible, within reason. Its use must be administratively and financially sensible. There are a lot of uses to which it could be put which would still comply with those sorts of limitations.

I used the word ‘ombudsman’ simply as a flag, because I thought that by now the reader would be familiar with the concept of what an ombudsman does. I do not actually care about what we call this function, but it gives a flavour of the purpose. It could be a part of the tribunal’s structure. It could be, if you like, the ground floor upon which people come in before they filter up. On the other hand, it might be situated within the Attorney-General’s Department. There are various approaches that one can have.

It may be that for some time it may not even be a full-time task. I do not know. One would have to look at the scheme in greater detail. One of the things that I thought was interesting, though, was that it could easily be funded by the stakeholders themselves. Yes, it would probably take some government money to kick-start it, but, after that, the

system is ideal in that the fewer problems you have, the less you need of an ombudsman's office and therefore the cheaper it is to run and therefore the less it costs the societies to actually run it. It gives them a direct incentive along the food chain to improve processes and keep them as lean, informative and politically astute as possible.

The stakeholders might include the major users of rights as well and the people who would be using the other end, and that might include broadcasters. I do not know. The idea is simply that we should take a wide approach to whom the stakeholders are in resolving disputes about rights ownership and rights usage. Everybody has an interest in doing that cheaply and having access to alternate dispute resolution mechanisms. The ombudsman role could certainly be a valuable place for small business to call first and say, 'Do they have a right to do this? Do I have to pay'—all of those sorts of very basic things. At the moment, all they have to ring is the person who is actually demanding the money from them in the first place. That does not make much sense to me. A simple circuit breaker would be provided by the ombudsman function.

If there is a problem that goes beyond mere information, then alternate dispute resolution systems could be brought into place. These sorts of ADR approaches are becoming more and more common in our system and should be encouraged.

A precondition for accessing the tribunal on some issues may be that the parties have actually been through ADR, so that you are, in essence, forcing them to undertake the quick and cheap approach to dispute resolution before you insist on a legalistic and very expensive approach to dispute resolution.

Mr McCLELLAND—I understand the New South Wales Industrial Relations Act has that as a precondition to accessing jurisdiction. I think the parties have to exhaust an agreed internal dispute resolution procedure before coming to the commission. We should have something along those lines.

Mr Simpson—That sort of idea makes sense to me.

CHAIR—I was just thinking that the banking industry ombudsman is an industry based ombudsman which might provide some sort of model for an ombudsman which is not established by legislative or regulatory mechanisms. There being no further questions, I thank you very much for coming along today and discussing the matter with us.

Mr Simpson—A great pleasure. Thank you.

CHAIR—If you come to some formed view about those matters which you took on notice, we would appreciate any comments you have.

[3.02 p.m.]

THORPE, Mr Jeremy, 43A Wells Street, Newtown, New South Wales 2042

CHAIR—I welcome Mr Thorpe. In what capacity are you appearing before the committee?

Mr Thorpe—I am a regulatory private sector consultant specialising in law and economic matters. Previously my background was with the Commonwealth Treasury and formerly the Office of Regulation Review within the Industry Commission, but I appear today as a private individual.

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 parliament.

We are in receipt of your submission, Mr Thorpe, of September this year. Would you care to make some introductory remarks?

Mr Thorpe—Certainly. The beginning premise that I have started with is one that does not really fit well with a lot of discussions on copyright. Copyright is, naturally enough, dominated by the legal profession and there is a very legalistic approach and attitude towards it when in fact, if you look at the fundamentals of copyright, you will see it is actually an economic tool. The tool is there to stimulate innovation, and many people see that. But where I might fall between the gaps is that my submission does not support small business arguments but, equally, does not really stand up to defend the collecting societies.

There is a very valuable role for collecting societies, but I am afraid that at times they may be seen as overstepping their power. Copyright is a legislative grant of market power. In many cases, we try to regulate market power so that it is not abused. I would suggest in this case that the regulatory regime that surrounds the collecting societies does not adequately limit the potential for abuse of the legislative market power. So what I have suggested in the submission is a revised framework for looking at how to regulate collecting societies which hopefully would go some way to alleviating some of the concerns of small business.

I would like to come back to two points that are not in my submission. One is the concept of double-dipping, which I have been reading about in the previous submissions, and the second one is the vision of technological developments that we were presented with by the previous speaker.

Firstly, the concept of double-dipping comes up all the time in submissions by

small business. As an economist, I would suggest there is nothing wrong with the concept of double-dipping. It makes a lot of sense if it is used to share risk. If the licence fees are spread over a range of people through the chain—for example, a broadcaster will have to pay a certain licence fee and someone down the chain is playing the broadcast on the radio—it allows the uptake of the intellectual property at an earlier stage because it is priced more cheaply, and it allows the copyright to be spread throughout the community to a much greater extent. But ultimately, the author, or the right holder, should be able to gain the full value of the intellectual property.

Essentially, the problem with double-dipping occurs when the price is not discounted at the earlier stages and it is imposed at a higher level all the way through. In that case the double-dipping can be seen as an abuse of market power, so to speak. I think there is a logical economic argument for the double-dipping, and I do not support small business in that case, as long as the rights are priced correctly throughout the chain.

I was quite interested in the view of the previous speaker, Mr Simpson, on the role of collecting societies as future technologies develop. He is quite correct that collecting societies will always have a role. They will change and develop with new technologies, and we are seeing that already. But the interesting thing with technological development is that it tends to take power away from monolithic organisations and to enable individuals to control their rights in much greater detail.

I refer the committee to a large section of the publication by the Office of Regulation Review that I wrote a few years ago and which I mentioned in my paper. It details how increasing technology, rather than making it more difficult to enforce rights, will actually make it easier for individuals to enforce their rights. We are seeing this already with some forms of technology, particularly with broadcasting over the Internet, with radio broadcasts and so forth. The individual with the right software can enforce their copyrights, and increasingly, with the right software, they can charge.

This is developing in the area of micro-payments which, in the banking world, is coming along quite dramatically—in other words, being able to charge by 0.1c and bill it to your mastercard. Previously, the charge had to be in fixed denominations or in certain dollars and cents. As we move to micro-payments, we allow individuals to control their rights much more. For example, because people are approaching other people through the Internet to purchase, view, hear or see their copyrights, it is the author who in many cases has some control. There still will be, and is, a role for collecting societies in this new world of new technologies, but I would not want to overemphasise it. I think we will see much more devolution of power to individuals. It is a very different view.

CHAIR—It is, and you have not convinced me yet, Mr Thorpe. I do not pretend to be an expert, but let me try to tease out why I remain sceptical at the moment. I understand what you are saying about great many users of, say, the Internet, but it also seems to me that there is a degree of monopolisation as well. Look at the Microsoft

network and the degree to which they have market share, for example, and the lengths which they have gone to to protect that. I know there is a court case going on in the States at the moment on anti-trust lines which is challenging that, but nonetheless it seems to me that there has been a considerable contraction of the number of players. If Apple falls over or has to form part of it, then you are getting more contraction.

Mr Thorpe—I am really thinking at a different level from that. I am thinking of the people who are using the infrastructure that those kinds of companies provide. While with that kind of systems software basis there might be a contraction and a lot of market power, it is about individuals being able to access the Prime Minister's Web page. He would have some control over what I see and, if he wanted to, he could charge me for what I see—if I wanted to—without any need for a third party to be involved in collecting this money. The infrastructure is now developing whereby the individual can collect through third parties but in no way through traditional collecting societies; for example, through the IBMs of the world, through the mastercards and through the banks. I think that is where there is a fundamental difference. The need for a third party to actually monitor the collection and enforce people's rights is lessened in that kind of digital regime.

CHAIR—Projecting into the future, won't that only be true if individual composers or creators of pieces of music are able to put them onto the system themselves and then people have access, if you like, to a market?

Mr Thorpe—Yes.

CHAIR—That is the theory. Why won't what eventuates be the opposite of that, that is, major players who can get in there with sufficient capital resources to build a global library of music will be those who have the capital in the first place to create that sort of system, would probably already be tied up with—if not in a joint venture or part of—the major players and then, because of the size of the musical resources they are able to put together, can dominate the market?

Mr Thorpe—I think there is always a risk of that, particularly with already published material. As new people are coming in, I see that risk lessened a fair bit. I think a lot of traditional conceptions about where new technologies are driving it are imposing the way we think today on the future, and we just cannot predict it in many ways.

I will give a parallel example. It has always been predicted that copyright is doomed because, if you can freely copy, the cost of copying is zero. I read in the paper last week an example of a book publisher that has put all its books on line. You can just go and copy any book they have. They have actually increased sales by, I think, 40 per cent since they have done this. It is totally turning convention on its head because people do react differently as those patterns develop.

I think the patterns in this case are in the nature of production. Because people can produce and distribute their own material more easily, they will feel more incentive to do that. With the traditional collecting society, people have not felt that they have been able to distribute and monitor, so the third party has had a very big role. You can see that in the passion that these people have for APRA, the PPCA and so forth in their submissions. With the new technologies, they have the ability to monitor their own distribution far more effectively, although they cannot monitor the second and third distributions down the line. The second and third distributions are where the collecting societies have a role, but with the initial distribution the individuals will have much greater control.

That puts a bit of emphasis back on the types of licensing terms that you have for collecting societies. At the moment, I understand, because of some blanket licences, authors do not have a right of distribution or a right to refuse. In a digital world, you might prefer the kind of system whereby the author allows second and third style collections, but initial distributions should be up to them.

Mr McCLELLAND—Is there a case for requiring registration of the collection agencies under, for instance, the Copyright Act? By way of example, corporations—and I understand APRA and the PPCA are registered corporations—operating in the economic world have to register under and operate in accordance with the Corporations Law. Trade unions operating in the framework of the industrial relations law have to register under that law and, if they do not do the right thing, there are de-registration provisions, penalty provisions and so forth. Is there a justification for requiring collection agencies collecting or enforcing intellectual property entitlements to register under the Copyright Act?

Mr Thorpe—I have an answer but I will qualify it first. I do not practise in any way on a day-to-day basis with collecting societies so my views are a bit naive to some extent. To my mind the concern that has come out through a lot of the submissions—and it was mentioned in the previous discussions as well—is that individuals, when they are approached by collecting societies, are not sure who these people are and have nowhere to turn to. There is a role for some kind of licensee, even at a minimal level, to prove authentication and to reduce some element of transaction costs whereby you are a registered collecting society and it is quite verifiable and easy to determine on a simple level that, yes, you are a legitimate collection society.

We do it with charities, for example. Essentially, it is quite similar. Charities turn up at doors asking for money. In a way it is a form of consumer protection to have some kind of basic registration, but you need some kind of body to give it some kind of authenticity that registration is valid at a minimal level.

CHAIR—I am not sure what the law in New South Wales is in regard to charities but, as far as I recall, in Victoria the only certificate of authenticity, if I can put it that way, is the Treasurer's decision to give grand tax deductibility status to the charity. There is a range of other charitable activities that would not have that status.

Mr Thorpe—That is right. In New South Wales—and I stand to be corrected here—there is a registered charity. You have to have the seal of approval and you are shown to be a registered collector. I think that kind of registration system would be very good, from the aspect of consumer protection, because there seems to be some element of fraud taking place, as far as one or two of the submissions are concerned.

Mr McCLELLAND—Again by way of an industrial analogy, under state legislation and certainly federally there are restrictions on organisers entering workplaces. They have to give seven-days notice, and there are various things about them not interfering with work and so forth which would not be appropriate. Is that over-regulating a situation by requiring collection agencies to give forewarning or have the information which must be contained in their approaches and that sort of thing?

Mr Thorpe—I do not really have a view on that.

Mrs ELIZABETH GRACE—You were talking before about the futuristic bit of collection agencies and things like that. What comment would you have on how collection of licence fees by these collecting societies/agencies could be less onerous on small business now? This is one of the reasons our inquiry is under way.

Mr Thorpe—The principle concern running throughout my submission is with how copyright licences are valued at the moment. It seems very arbitrary. There is essentially no third party review because I do not believe that the tribunal, as the last resort, has been adequately handled to deal with the issue of determining licences. Since it has been so rarely used, I do not think, going down the line, that copyright licences have been adequately assessed. That is one issue and I might come back to that.

The second issue is that there is a competing goal here. On one hand, many people would like to see a single collecting society that would essentially be a one-stop shop for collecting licence fees. My view is quite different from that. We should be promoting a marketplace of collecting societies, and each collecting society should have the ability and the incentive to go out and collect licences over a broad range of types of intellectual property.

At the moment, each collective licensing society seems to collect a particular type of copyright and each defends it on the grounds that they are specialists in the area and that specialisation is good and it helps their members. It is a very membercentric focus, rather than seeing the type of focus that small business might like which is: 'I would like to get all my licences, over a range of different types of copyright, from one society but I would like to be able to shop around to find the cheapest society.'

Mr McCLELLAND—Isn't the converse that, if you have a proliferation of collection agencies, the small business proprietor is going to keep on getting these people knocking on his door?

Mr Thorpe—That is quite right. If you did want to take a regulatory route—and this is anathema to me; as a regulatory economist I find myself invariably writing deregulatory type of work—it would be quite feasible to say, 'These are licensed people,' and have it quite clear who has been licensed. The regulator would know from a statutory list or just a list who has paid their licence fees, and that should be known to the collecting societies. That should stop any of that kind of harassment.

Mrs ELIZABETH GRACE—They work a bit like insurance companies do at the moment; you shop around for the best price and take that.

Mr Thorpe—That is right, and they sell a range of different types of insurance. The trouble I have here is that I do not know how you can force the collecting societies to do this. Their members probably like the fact that the collecting society does just what they want. As I made clear in my submission, that style of competition between societies exists overseas and there is nothing inherently stopping it developing in Australia. We almost need an entrepreneurial collecting society to come in.

Mr McCLELLAND—Although, if they were not doing the job by their members, a group of their members could go and set up their own agency to collect it on behalf of five, two, 10 or 20 if they were not satisfied with the job that was being done.

Mr Thorpe—That is right but the members, by their very nature, tend to be smaller. That could happen quite feasibly. That is what has happened in some ways with some of the newer collecting societies. They have decided that they are not covered sufficiently or at all under present collecting societies and have gone out to establish new ones.

CHAIR—As I understand—I stand to be corrected because I have not got it in front of me—there is an element, if you want to take a purist's view, of anti-competitive conduct in that. I understand that there is a restriction in the agreement that the author or creator of the work has with the collection society that he or she will not go to some other body for a period of time.

Mr Thorpe—That is right.

CHAIR—So, if you were to take your deregulationist view—

Mr Thorpe—You would want to take that out.

CHAIR—You would have to legislate to ensure that that provision did not remain; otherwise there is not much incentive in setting up a new society if everybody already belongs to one or the other.

Mr Thorpe—That is right. The ACCC is obviously in the process of looking at an

authorisation application for APRA and I am sure you are all aware of that. I mentioned in the back of my submission a list of suggested principles that were put forward by Peter Lupton and Peter Drahos—Peter Drahos is from ANU—which would essentially have one of the goals you suggested to strip out those kind of anti-competitive elements that would stop the development of a competitive marketplace.

Mr McCLELLAND—You are looking at it from a different focus. If those collection agencies wanted to exist, they could only exist with the patronage of the writers or the members generally, whether they be music producers or so forth. Is it not more of an incentive for those collection agencies to be gung-ho to get the best possible outcome for their members rather than to act as responsible citizens balancing, yes, their members' rights against the interference they have on small businesses? Are you not going to see more of the aggressive tactics that small business has complained of?

Mr Thorpe—That is a fair comment. Firstly, I do not think that there has been the same kinds of problems in, for example, the United States, which does have that kind of that system.

Mr McCLELLAND—Have you seen it? By that I mean you do not know what collection methods they use.

Mr Thorpe—They do not seem to have had the same complaints level.

Mr McCLELLAND—I do not know your authority for saying that. I can only say that you see it all the time with demarcation disputes between trade unions. One union is particularly aggressive in advancing its members' rights and people would say, 'Standover tactics!' while others would say that it is some particular industrial technique. At the same time, one union will bag the other union, which is their competitor, for not doing enough to advance their members' causes. So, you are getting an escalation, if you like, of aggressive tactics to recruit members. Doesn't your proposition risk that occurring with collection agencies?

Mr Thorpe—Yes and no. It is called competition in the sense that it is not the same as the union example. I contend that in this case the only way that a small business can say to anyone coming in, 'No, I've already got a licence,' is if they have one. If there is an obligation to have a licence they have to have one from someone. Once they have got one they can just tell everyone else to go away. They can be pestered and interested only if they are offered a better price or a better service in some kind of way. Just as you are pestered every day with ads for a whole range of products, you might only want one of them but you still take in the ads just to see if there is anything better out there.

Mr McCLELLAND—Isn't there a risk that the commercial interests will set up a collection agency, sell everyone a licence for $1 for 10 years and then hold up this licence for 10 years.

Mr Thorpe—You would have to have members who would be willing to put up with that and I do not think you would get the members.

Mr McCLELLAND—There are all kinds of complications.

Mr Thorpe—I understand the comment but I think this is a case where you can say no. It is acknowledging that there is an obligation to pay. The small business concern is principally that they do not accept there is the obligation to pay. I think that is really what it comes down to.

CHAIR—Mr Thorpe, I thank you for your submission and also for coming and discussing it with us.

[3.27 p.m.]

BAULCH, Ms Elizabeth Mary, Executive Officer and Principal Legal Officer, Australian Copyright Council, 3/245 Chalmers Street, Redfern, New South Wales 2016

CHAIR—Thank you for coming, Ms Baulch. 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. We are in receipt of the submission from the Copyright Council. Would you care to make some opening remarks?

Ms Baulch—Thank you, Chairman. The committee will be aware from our submission that we are a non-profit organisation. We receive some government funding, principally from the Australia Council. We do a number of things as set out in the brochure that was enclosed with our submission but the most relevant to this committee is, firstly, raising awareness about copyright for both owners and users of copyright. We do this by giving free legal advice, providing information sheets, publications and seminars.

Secondly, we make submissions about copyright law and policy, particularly in relation to creators and performers. There are 25 organisations affiliated with us whose own members are owners of copyright or performers. They are listed in the brochure that was enclosed with our submission and they include APRA and PPCA. Maybe I should say that we also have an APRA licence, a PPCA licence and a licence from Copyright Agency Ltd for the photocopying we do in our organisation.

We also enclosed with our submission some background materials about copyright and music including what the different rights are in relation to music, who owns them and how income is generated from copyright for composers and performers. We hope this was useful for the committee and we will be more than happy to provide any other information like this for the committee, to provide some framework for your inquiry.

The four main points that we would like to raise again today are, firstly, the importance for the committee of taking into account international treaty obligations in relation to any recommendations that the committee may be considering. We have set out in our submission what those obligations are. For example, an exemption for the playing of music by small businesses would clearly be in breach of our international treaty obligations, as well as unfairly reducing the income of composers.

The second point that I would like to make is that copyright enables creators to make a living from their work because it requires payment for use from people who derive benefit from creative work. The principle is that the more people who benefit from music, for example, the more the creator gets paid. The fact that one person gets the benefit from

the music, such as a broadcaster, does not diminish the benefit that somebody else gets from that same piece of music. That point is sometimes lost. If a restaurant is playing the radio to create a more pleasant environment for its clients, it is still getting that benefit, even though the broadcaster who originally broadcast the music also got a benefit from the music. On the other hand, if nobody likes the work then the creator does not get paid at all, irrespective of how long it took to write or how difficult it was to write.

The third point is in relation to the Copyright Tribunal. The tribunal already provides a mechanism for people who want an independent arbiter to review fees or other licence conditions. It is important for the committee to note that there have been a number of instances where people have appeared before the tribunal without legal representation and the tribunal has been at great pains to ensure that those people have an opportunity to be heard.

My last point is that this inquiry has arisen out of a lack of awareness and understanding about copyright, and that the way forward is to increase the level of awareness and understanding about copyright. It is not only about music but also, for small businesses, it is about other copyright obligations they may have in relation to their activities such as photocopying—an issue that came up earlier today—or copying somebody else's advertising brochure or what they can do with computer software.

It is not only about obligations to others that small businesses need to know about but also a great awareness about copyright material that they may be producing themselves and what rights they have in that material in relation to other uses of it.

They are the only points that I wanted to make in a formal way, but I am more than happy to answer any questions that the committee may have.

CHAIR—With regard to the question of public performance, in your submission you make reference to Professor Ricketson's work on the Berne convention. The quotation cited, in the final sentence, says:

This therefore will exclude only performances in the immediate family circle.

What seems to be a major cause for concern, which has probably largely given rise to this inquiry, is the circumstance where an individual claims that, in effect, a broadcast or music is only being used for one's immediate personal enjoyment, even though some others may possibly be able to overhear it. The difficulty I have with what Professor Ricketson says, and in effect what Justice Gummow posited in the Commonwealth Bank case, is that, in a sense, it begs the question that we have to address; that is, it does not fully determine the issue. Quite clearly, there are circumstances where not only one's immediate family might be involved, for example at a party at home, which could be said to have the nature of a public performance strictly construed or interpreted under the act. Can you elaborate on that?

Ms Baulch—I think APRA gave evidence before that they do not licence private parties in private homes.

CHAIR—They did not concede though that it was not a public performance. They simply took the practical approach of saying, 'Well, we would not bother to pursue a licence there.'

Ms Baulch—Yes, in which case there is no issue, I would have thought, in the same way as APRA does a licence, that is, the kitchen hand chopping up potatoes out the back of the restaurant where nobody else can hear the radio. There are situations which may conceivably be public performances, but APRA does not seek to licence them. So, it seems to me that it is not an issue.

CHAIR—Can I suggest it is? Last Saturday morning I went into a florist shop in Albany to buy some flowers and the marker between what I might call the public area of the florist shop where all the flowers were was basically a counter across the middle of the shop. Behind it was where the flowers and the displays were prepared and where the proprietor had a radio. Now conceivably she could claim that that was in the private area. The radio was not playing very loudly, but if you are in the shop, unless you had fairly poor hearing, you would hear the radio. Now, where does that fall?

Ms Baulch—I would have thought if it could be heard by the customers coming into the shop, then that is a public performance.

CHAIR—If it is not peeling potatoes out the back, it happens to be a more open layout or it happens to be a new style pharmacy which is on an open layout rather than the old style of pharmacy which had a separate room at the back, is that the point of difference as to whether you are engaged in a public performance and whether you pay a licence fee or not?

Ms Baulch—It depends whether the performance of the music is not only for that proprietor, the shop, the person chopping up potatoes or whatever, but also for the members of the public and the customers of that business who are coming into the shop. It may have a two-fold purpose. It may be to prevent the shop owner from getting bored to death waiting for a customer to come in, but when the customer comes in, it creates an ambience in the business. I would say that is beneficial to the business.

CHAIR—You would say that once a third party is present, that in itself creates—apart from in a private house, on commercial premises of some description or in professional premises—the situation of a public performance for which a licence should be obtained and royalties paid.

Ms Baulch—If the music can be heard by members of the copyright owner's public, as that phrase has been defined by Mr Justice Gummow and also referred to

recently in the High Court, then yes, it is a public performance which is licensable by APRA.

Mr McCLELLAND—You do not look at the intended use?

Ms Baulch—I would have to consider further whether the intended use has an effect on who the copyright owner's public is. I am happy to do that and get back to the committee about that issue if that is the question.

CHAIR—I am not sure whether you were here when APRA representatives were giving their evidence. They have posited a suggestion that in relation to performing rights and radio broadcasts that we change the legislation in Australia to reflect the Canadian legislation. Do you have any comments about that?

Ms Baulch—In principle, it is an odd situation because the person who is getting the benefit of the use, the small business, is not the person who is paying. Somebody else is paying for the small business's benefit. So in principle, it is an odd position to take. However, I understand the practical reasons for doing that and in that case the important factor will be to ensure that the benefit to the small businesses continues to be part of the value that is paid for and that the benefit to the broadcasters and the benefit to the small businesses are not conflated in some way so that the value of that benefit to the small businesses is not lost.

CHAIR—Presumably, if that is the Canadian situation and maybe elsewhere in the world, it is not contrary to the Berne convention?

Ms Baulch—I assume not, because the copyright owners are still being paid for the use, but the liability has been shifted to another person.

Mr McCLELLAND—I suppose it is hard in that the business community might ultimately end up paying, because advertising payments would presumably increase to at least the commercial radio stations, which would generally wash over within the business community.

Ms Baulch—That may be the case. I do not know. I would not like to speculate about that.

CHAIR—Your submission and your comments today were generally supportive of the tribunal and its current role. The previous witnesses's evidence in the written submission said:

> The Copyright Tribunal has a role in setting copyright licence fees. Under Part VI of the Copyright Act . . . the Copyright Tribunal has the power to hear disputes about terms and conditions of licences or licence schemes administered by collecting societies. Under the Act licensors, licensees and persons desiring a licence may refer disputes to the Tribunal for determination. In this way . . .

Then there is a quote from Shepherd. Is that Mr Justice Shepherd?

Ms Baulch—Yes.

CHAIR—The quote is:

The Copyright Tribunal is an arbitrator. It arbitrates disputes concerning the amounts which should be paid by way of reasonable or equitable remuneration under licences granted, or to be granted, sometimes by statute, for the use of copyright material.

Then the previous witness said:

The Tribunal has been used in such a manner only 14 times since 1968, presumably because the proceedings are perceived to be expensive, slow and unnecessarily legalistic.

I wanted to put that to you, because it seems contrary to the view that you take about the tribunal.

Ms Baulch—I have never been directly involved in an application before the tribunal, so what I say is based on my understanding from others who have. My understanding is that there are top-end cases, if you like, such as the case between APRA and the commercial television stations, where there are lawyers involved, they are expensive proceedings and there is a lot of money at stake. At the other end of the scale, there are much smaller applications involving smaller amounts of money where applicants have appeared in person. My understanding is that they have been given assistance by the tribunal, as I said, to put their case. I also understand that it is much cheaper to bring proceedings in the Copyright Tribunal than it is to bring court proceedings. So there may be a misunderstanding about what is involved in bringing tribunal proceedings and what the costs are.

CHAIR—It is unlikely, isn't it, that somebody who is objecting to a $40 or $50 licence fee is going to go to the tribunal?

Ms Baulch—They may not go on their own, but there may be an application brought by an umbrella body that represents a class of small businesses, for example. I understand that such a person could, if they wanted to, take an application to the tribunal.

CHAIR—What do you think of the suggestion made by Mr Simpson that there should be an ombudsman or a person or an entity of that ilk?

Ms Baulch—I do not have any difficulty with the situation; although I was a bit surprised by the suggestion that it would be paid for by the collecting societies, given that the ombudsman would need to be seen as an independent person. It would seem to me that that sort of position would need to be government funded, not funded by the industries themselves that will be being investigated.

CHAIR—The banking industry ombudsman is funded by the banks.

Ms Baulch—I do not know whether there is any problems with public perception of that person at all. I do not remember that proposal being part of the initial report, Professor Simpson's report.

Mr McCLELLAND—I suppose, from the evidence we have received, people have not understood quite clearly or even agreed with the concept of intellectual property. The reality is that it is there and, in your submissions, you go through the reasons for intellectual property in paragraph 1. Indeed, we have heard evidence from APRA that their members may be receiving about $10 million, I think, in foreign exchange through copyright coming into the country. So, one presumes the money that actually is generated within Australia is even more significant than that. There are legitimate reasons in summary, I am saying, for the existence of intellectual property.

Ms Baulch—Yes.

Mr McCLELLAND—Quite clearly, a number of people do not understand the concept of intellectual property or the reasons for it and there seems to be a problem not so much from the legal perspective—I think if most of these proprietors, from the evidence we have heard, were to go to the Copyright Tribunal, they would lose on the case law, that is, if their music could be heard in public it would be regarded as a public performance—but the issues come down more to a sort of commonsense application as to whether APRA should have gone in heavy or should have said, 'Well, that's a line ball; we'll err on the side of the small business proprietor.' Perhaps that is where an ombudsman or some sort of mediation arrangement would be beneficial to apply a commonsense rather than a legalistic approach. What do you think?

Ms Baulch—Certainly, the Copyright Tribunal, as I understand it, has powers to arbitrate but not to mediate. So, if it were going to have a mediation role and a role of dealing with complaints, its powers would need to be extended in order to be able to do that. Obviously, the number of members of the tribunal and the sitting time which is allowed would also need to be extended if its powers were to be extended.

Mr McCLELLAND—So, perhaps it needs a conciliation tier, for instance?

Ms Baulch—Yes. A number of these issues were raised at a seminar that we co-hosted in 1994, I think, and I have sent some material about that to the committee. This is not a new issue. A number of these issues have been raised and there has been some support for the idea of having an ombudsman.

Mr McCLELLAND—Tell me if I am wrong—I have had no dealings at all with the Copyright Tribunal and I am judging them most unfairly on hearsay—but I understand that they are highly skilled and talented in the area of copyright law. How would they feel

about taking on a more practical conciliation type of function as opposed to intense legal battles?

Ms Baulch—I do not know that I can speak for them. Certainly, at the seminar that we ran a few years ago, Mr Justice Shepherd, who was the President of the Copyright Tribunal, was very open to the idea of rethinking the tribunal's powers and seemed to be open and available to people without legal representation. That is the only indication that I have. There is now a new president of the tribunal and I do not know what his views are or what the current lay members' views are about those issues.

CHAIR—Are the papers of that seminar available?

Ms Baulch—I enclosed them with our submission to the committee. They are actually in that grey document there. We published them as a copyright reporter.

CHAIR—This is volume 13, No. 3, whereas you referred to volume 13, No. 2.

Ms Baulch—Somebody has enclosed the wrong one; I am very sorry about that.

CHAIR—If you are happy to send us No. 2, we would be grateful.

Ms Baulch—Okay.

CHAIR—Can I thank you for your submission and also for coming along and discussing it with us this afternoon.

Ms Baulch—Thank you very much.

[3.50 p.m.]

WADE, Mr Larry David, Managing Director, Christian Copyright Licensing Inc., PO Box 6644, Baulkham Hills Business Centre, Baulkham Hills, New South Wales 2153

CHAIR—I welcome you to the committee hearings. 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. We are in receipt of your letter of 26 August of this year. Would you care to make some opening remarks?

Mr Wade—Basically, the reason I sent the letter is probably the point of interest. I wanted to be able to inform in a pretty informal way about the fact that we are involved with APRA. They asked us a few months ago to take over the licensing scheme that they have for performances for churches. That particular licence is a very small part of what they do and, because of the size and costing of the licence, it is a very difficult thing for them to administer. In the past they approached us as a company to help them take over the responsibility of that licence and, through our connection with the churches that we have, to be able to enlarge a base for that.

Through that it gave me an opportunity to see how they operate within the context of this licence and our people or clientele. All we service are churches, church related groups and that kind of thing. We have been giving them a list of our groups month by month that they could phone and do a follow-up about the performance licence. One of the things that I was assured is that, firstly, they would do it more on a customer service informational base, rather than twisting the person's arm. Secondly, when they were calling them, there would be a courtesy, et cetera.

I have talked to some of the church representatives, whether it be the pastor, treasurer or whoever it is who would be contacted in each case. It is just a very small sampling, but I have received no negatives at all. APRA representatives on this licence and in this situation—and that is all I can address really—have shown a real sense of discretion toward the people they have contacted. They have done it on an informational basis which they assured me they would. I have not received one single negative up until this time.It has been a few months now that we have had this relationship where they are making these calls to our people on the list.

I wanted to just let that be known on the other side of some of the things that were said in some of the other letters. I did not know about the other letters then, of course, but I did want to put this in the balance along with what I suspect was the other direction.

CHAIR—Presumably, churches and similar religious organisations out of a sense of fairness, justice and other such virtues, would have a strong sense that, if there are

rights that somebody else has intellectual property in, that they should be paid for.

Mr Wade—By and large, that is true, yes.

CHAIR—Are there a number of collecting agencies in relation to religious music apart from yourself?

Mr Wade—Yes. You have done your homework. Basically, we are the largest. Next in line would probably be CAL, then after that would be LicenSing, Media Com and then lastly would be Word of Life. Those would be the four primary agencies that would deal with what we deal with.

CHAIR—Is there competition in that field, if I can put it that way, or is it the case that each collecting agency has a niche stable—if you excuse the racing expression, but it is that time of the year—of composers or creators of music?

Mr Wade—It really is a certain amount of overlap. It is not extensive. You are right. We have a certain amount. We have 1,600 publishers, song administrators and owners that we have signed up, which is by and large the greatest number that we have. There were some that would sign with Word of Life, for instance, which primarily is aimed at the Catholic community. For instance, licensing with Media Com would have a certain amount of the Uniting Church, the Anglican Church, a portion of the Presbyterian Church and that type of thing—the more conservative churches, if I can use that term. In that sense there is not a huge amount of overlap, although we do at times have some of the same groups that would be competing for it, to be very honest with you.

Mr McCLELLAND—How significant do you think copyright is in encouraging production, in encouraging song writing or the production of songs?

Mr Wade—I have the privilege of talking on the telephone. Since we are a smaller company, I do a lot of things that in a larger company you would have specialists doing. So I am the one who gets to talk to the ones who want to sign up with us as new song owners. I also had the privilege of talking to those who have been on with us for a period of time. It is tremendously useful to them. We have one person who was painting houses until just recently. Through part of what we are doing and through another avenue, the two connected. He is now involved with going church to church and presenting seminars that he could not do financially—he and his wife together. That is obviously a good feeling for me. Obviously there are some people who, no matter what the situation is, are going to create. They have creative urges and they go with it, and that is good. But I do believe that the fact of remuneration does help.

Mr McCLELLAND—Even for those people there is an argument that it allows them to devote more time and become better creators.

Mr Wade—Precisely.

Mr McCLELLAND—I suppose in your field people would be producing songs or music primarily for reasons of faith rather than profit. Nonetheless, it is still an incentive for them.

Mr Wade—Actually the way it usually works with most of our owners that are creating these songs is that they write it for their local church—whether it be Anglican, Pentecostal or whatever it is—and then it just finds its way out from there. Then they find themselves having to produce it because others want it and one thing leads to another. That is usually the way it has been for the last two years that I can track. Beyond that, I am not sure.

Mr McCLELLAND—But, even in that creative or faith environment, it is still a desirable thing to recognise—to pay respect to the existence of copyright.

Mr Wade—It really is; yes, it is.

CHAIR—I was curious about the description 'song administrator'. What is a song administrator?

Mr Wade—That is something that, when I first came into this industry, was a little new to me, too. A song owner is the one who actually creates a song. An administrator is someone he assigns the rights of that song to who will do two things for him. The first is that he will help promote the song, get it published, get it advertised, whatever they can do to market that song. The second side of it is to collect the royalties that are available for that. So that person does that. It is kind of like an agency, in a sense. They would take a portion of that and then pass the rest on to the song owner.

CHAIR—So it is similar to a publisher?

Mr Wade—Actually it is another niche entirely, although in some cases the publisher might also be the song administrator. But it is two different things.

CHAIR—Thank you very much for your submission and for coming along this afternoon.

Mr Wade—Thank you.

Resolved (on motion by Mr McClelland):

That submissions received in evidence today be accepted as evidence to the inquiry and be authorised for publication.

Committee adjourned at 3.59 p.m.