HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Reference: Copyright, music and small business

DARWIN

Thursday, 6 November 1997

OFFICIAL HANSARD REPORT

CANBERRA

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Members

Mr Andrews (Chair)

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

HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Copyright, music and small business

DARWIN

Thursday, 6 November 1997

Present

Mr Andrews (Chair)

Mr McClelland
Mr Kelvin Thomson
Mr Mutch

The committee met at 2.38 p.m.

Mr Andrews took the chair.

CHAIR—I now open this public hearing of the committee's inquiry into the licensing of copyright for the playing of music in public by small businesses. The subject matter of this inquiry is the law under which royalties can be collected from small businesses for the use made by them of copyright materials when the music is played on commercial premises. We have taken evidence in all other capital cities to date and some regional centres and received some 170 written submissions to the inquiry. We look forward to hearing from the witnesses not only from Darwin but from Broome and Alice Springs.

[2.38 p.m.]

LANGTON, Professor Marcia, Chair, Aboriginal Studies; Director, Centre for Indigenous Natural and Cultural Resource Management, Northern Territory University, Darwin, Northern Territory 0909

CHAIR—Welcome. Although the committee does not require you to give evidence under oath, I should advise you 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 the submission which you have provided to the committee today. Would you care to make some opening remarks about it?

Prof. Langton—Yes. The written submission, which was prepared by me and my research associate Christen Barrie, supports the position taken by APRA that no changes to the Copyright Act resulting from this inquiry should have the effect of reducing licence revenue to APRA and, by extension, Australian artists, given that APRA returns approximately 87c in every dollar collected to music copyright owners. In addition, the submission makes the point that a change to the Copyright Act to move the onus from the agreement between APRA and small business to broadcasters could have potential impacts on Aboriginal songwriters and composers.

The point I am making is this: there is a substantial contribution to Australian cultural product and to the Australian tourist market by Aboriginal artists. This has been documented by the Australian Tourist Commission and the Bureau of Tourism Research. In the lead-up to the Olympic Games, Aboriginal tourist products including music, especially the ever popular didgeridoo music, will be used intensively by small business to promote sale of their products from souvenirs to clothing, to tours and to the creation of an ambience of 'genuine Australianness'. I want to make an amendment to my submission. At page 2, paragraph 7, in the first line it should say 'Olympic Games', not 'Commonwealth Games'.

The growth of the Australian tourist industry in general is linked to the growing international awareness of Aboriginal culture. So Aboriginal songwriters and composers—long overdue to receive some commercial benefit from the broadcast of their customary or traditional music—may be disadvantaged again if the recent licence agreement between APRA and small business were altered.

I make the point that there is concern in the music industry at the moment about the likely introduction of legislation to allow parallel imports into Australia, which industry lobby groups such as ARIA believe will have a detrimental impact on Australian artists.

There is mounting evidence that in the case of traditional or customary music the ARIA argument is a strong one. In the field of so-called world music, small labels collect folkloric music from ethno-musicological collections, remix selections—often in an arbitrarily and in a culturally insensitive way—and publish the product as new age or world music to an ever growing audience. This is a form of cultural piracy and is a form of theft, which may be exacerbated by the introduction of parallel imports.

In addition to being the Director of CINCRM, I am the Chairperson of the Australian Institute of Aboriginal and Torres Strait Islander Studies, elected by the membership and subsequently appointed by the

last Minister for Aboriginal and Torres Strait Islander Affairs. The institute houses a large collection of traditional Aboriginal music collected by ethno-musicologists over decades. This collection is protected by the AIATSIS Act, the Australian Institute of Aboriginal and Torres Strait Islander Studies Act, and by the Archives Act and by copyright law.

I have been approached in my capacity as chairman by such new world or world music or new age labels, whose clear intention is to unlawfully copy, remix and publish Aboriginal cultural property, which in many cases is of a significant religious nature. Many of the new world music products are remixes of musical traditions from different cultures, segments edited together—Inuit, Turkish, Chinese, Tibetan, Aboriginal—as if there were no specific meaning to any of these cultural traditions. They have been transformed in the age of digitalisation in a global washing machine effect to produce a post-modernist mush. The sources are not acknowledged or recompensed, and the overall effect is culturally destructive and offensive. Aboriginal music is treated by this part of the industry as if it were a neverending natural product unable to be exploited by any label, as if there were no composers of this music deserving of recompense.

I cite the recent national Aboriginal and Torres Strait Islander cultural industry strategy prepared by ATSIC:

> Despite awareness of copyright and intellectual property rights amongst Indigenous artists, there is still some way to go in ensuring recognition of these rights by non-Indigenous individuals and agencies . . . There is a need to identify strategies and mechanisms for ensuring that Aboriginal and Torres Strait Islander artists are remunerated fairly for their artwork, through collection of royalties.

I think the point needs to be reiterated that Aboriginal music is a valuable and finite cultural product like any other and is deserving of the respect and protection of the Copyright Act like any other cultural product. The proliferation of Internet web sites which incorporate music, including Aboriginal music, is another matter for concern in this regard. APRA is the best defence against this kind of cultural piracy and the only effective defender of licence arrangements for Aboriginal songwriters and composers in Australia.

I draw the attention of the committee members to the points made about possible amendments to the Copyright Act in the recent report *Our Culture, Our Future, Proposal for the recognition and protection of Indigenous cultural and intellectual property* by Terri Janke, solicitor and principal consultant from Michael Frankle and Company, solicitors. The paper notes that copyright law:

> . . . in its present form, is not always appropriate in preventing and remedying the misuse of indigenous artistic, performing, literary and musical works. This is because Australian copyright law protects economic and individual rights rather than communal and personal rights such as integrity.

It notes:

> . . . many commentators argue that amendments to the Copyright Act would be too complex and that in enacting any amendments, Australia would need to recognise its obligations of reciprocity under the Berne Convention.

Yet the report notes there has been little discussion concerning what amendments are proposed. The report suggests the following amendments which ‘might be workable depending on how they are implemented’:

. Moral Rights Amendments to allow Indigenous communities with the rights of cultural integrity and attribution;

. Introduction of a new part to establish a collecting agency for Indigenous works;

. Extension of Performers' Rights.

In the introduction to the submission, I also draw attention to this book ***The Didjeridu: From Arnhem Land to the Internet*** by Karl Neuenfeldt, who is a lecturer in communications and media studies, Faculty of Arts, Central Queensland University. It is a collection of very important papers about the yidaki or didgeridoo, with an introduction by one of our partners Mr Mandawuy Yunupingu of the Yothu Yindi band. His foreword is an excellent and brief summary of the religious significance of the yidaki.

I have not mentioned this in the written submission, but it has been reported from Europe that there are now 60,000 European yidaki players. A major yidaki or didgeridoo festival is held in Europe annually.

CHAIR—I want to go back to some of the matters that you mentioned at the outset. I am not sure whether you are aware of this but in the most recent discussions we had with APRA in Sydney a proposition was put forward that, whilst the income that would be attributable to the playing of music on radio needs to be protected in some way, APRA would be happy if Australian copyright law were changed to reflect the Canadian copyright law which, in effect, says that licence fees will not be collected from businesses for the playing of radio or television. The quid quo pro of that is, of course, that the licence fee paid by the broadcast radio stations would be adjusted so that the income would still be derived on behalf of the copyright owners.

I am just interested in whether you have any particular comment about that proposal. I should also say that the Council of Small Business Organisations, COSBOA, said in their evidence to us that that change is one which they would support and that they thought would solve—I think this figure is right, from recollection—something like 95 per cent of the problems their members perceive are in existence.

Prof. Langton—I am aware of that. However, the problem with that is that it presumes that all music is played on the radio.

Mr McCLELLAND—No, sorry, they only supported that collection from the broadcasting stations in respect to—I should say that the other way around—they are only talking about rebroadcasting through a radio. Their position in respect to the playing of CDs is still that it needs to be obtained at the source of the playing of the CD if it is in a small business. So they are only talking about the rebroadcasting of what is on the radio.

Prof. Langton—Well my point is the point you are making—that is, that there is an enormous CD industry. That is why I mentioned the new world segment of the music industry. For instance, Womad in Adelaide is a world music festival and is not often played on the radio.

Mr McCLELLAND—No, they are saying—

Prof. Langton—Yes, I understand the point that you are making.

Mr McCLELLAND—APRA is still saying that they want to collect their licence fees in respect of small businesses playing CDs—

Prof. Langton—I support that position.

Mr McCLELLAND—Yes, but what about the protest from small businesses who turn on the radio and say that they want to listen to the races or the news and the songs are played as part of the program, but essentially it is for their private use? So they are complaining about it. APRA have put a submission to us saying that instead of that complaint they are receiving about the collection of the rebroadcasting of music through turning on a radio the revenue is collected at a source earlier—namely, from the broadcast stations. So that is the thrust of that question. What is your view on that?

Prof. Langton—I support APRA's position. But what I want to be sure of is that you understand that Aboriginal music represents a special case. Let me give you an example. I do not know if you have ever been into an Australian Geographic shop or a tourist souvenir shop in Kakadu National Park. There are collections of CD music which are remixes of bird sounds, of didgeridoo music and of water flowing through creeks as if Aboriginal music is just like bird sounds and flowing water, it just materialises from little animals somewhere. The artists are not acknowledged; they are not remunerated.

The music is taken out of a Smithsonian collection. The Smithsonian publishers have published for many years Aboriginal music. It is mixed with bird sounds, water sounds and insect sounds in some sort of mishmash of meditation music. In every tourist shop that you go into across north Australia this music is playing. There is no effective protection of Aboriginal artists who might be Mr Murabuda Wurramarrba, who just gave you evidence.

Mr McCLELLAND—I think there would be. I think the problem is enforcement. I am not a copyright expert—

Prof. Langton—But if the Copyright Act is changed without looking carefully at the impact on Aboriginal artists then Aboriginal artists could, as it were, slip through the floorboards because you are trying to make small business happy without taking into account the special case of Aboriginal music being remixed into an ever growing international black market of so-called world music.

Mr MUTCH—Are you just referring to the use of music that is played by an artist—say the didgeridoo is played by an Aboriginal artist—and then that music is pirated and put into a mix? What is your view on someone else playing the didgeridoo? There are 60,000 players in Europe, which is quite extraordinary. If someone else is making up sounds on the didgeridoo and then using that, do you have a position on that? Is that acceptable to you, that other people can use that traditional instrument in their own way?

Prof. Langton—It is impossible to say that those people are using the yidaki improperly because there are now so many of them and there is no way of preventing it. People can draw the analogy that the flute was invented in Europe but now you have African flute players—that is, playing the orchestra flute—and they are regarded as artists, so why shouldn't white didgeridoo players be regarded as artists? So it is an

impossible argument. I am not concerned with that point. But what I am concerned with is that Aboriginal artists whose works have been pirated and remixed have their rights protected in the outcome of this committee. I understand perfectly well the points made to me by Mr McClelland, but I want to ensure that you are aware of this problem of Aboriginal music being remixed.

Mr MUTCH—You are really saying it is more of a problem in Aboriginal culture and the stealing from Aboriginal culture rather than in European cultural music and, therefore, special steps have to be taken to ensure that every effort is made to identify the originating artist and to recompense those artists. Are APRA taking those steps to your satisfaction?

Prof. Langton—I think APRA has done a very good job. There is a lot more to be done and it is set out in this Janke report, which I mentioned. But the point is that it is not just Aboriginal artists either. I have heard world music which has, for instance, Hungarian folk singers remixed with Eskimo music.

Mr McCLELLAND—The situation you have related is a straight out breach of copyright and it is an enforcement problem. If the composer or the musician is identified and someone has stolen that intellectual property without proper recompense, that is a straight out breach of copyright. That is an enforcement issue more than whether the law is or is not.

Prof. Langton—Yes, it is true that that is the case. But also if you have CDs, such as this ever growing industry that I am explaining to you—

Mr McCLELLAND—But they are still breaching copyright if they are doing it.

Prof. Langton—Yes. But if they have to pay a fee under a licence arrangement to APRA for CDs then it is easier to monitor copyright breaches.

Mr KELVIN THOMSON—On the issue of CDs, I am certainly sympathetic and I think other committee members are sympathetic to that proposition, too. That is to say, where a small business, a tourist place, is playing tapes and CDs to set a mood or ambience or whatever to promote their product there is a very strong case that the licence arrangements ought to continue. There is a distinction in my mind between the CDs and tapes on the one hand and on the other someone turning on the radio or TV to get an update on the cyclones and so on.

Prof. Langton—Yes, I agree. That is what I am saying. I think there is a distinction to be made. The distinction is not just between rebroadcast and CDs nor simply between simple copyright breaches and licence arrangements on CDs. But a licence arrangement is actually a system for protection of copyright. So it permits, because one has parties to an agreement, monitoring. So, for instance, on the practical side, ethno-musicologists familiar with the Smithsonian publications might turn on a radio or walk into a tourist store and recognise a traditional Arnhem Land cut mixed in with Hungarian folk songs and Turkish music and say, 'That is Mr Wurramarrba of Groote Eylandt or Bickerton Island singing in 1964 at the such and such ceremony. I must call APRA immediately.'

CHAIR—But what is APRA going to do if that is the case? I suppose APRA can report it to—

Prof. Langton—The Australian Copyright Council, yes.

CHAIR—the artists concerned and then they can take some action.

Prof. Langton—Yes, they act on the artist's behalf. Artists can report it to the Australian Copyright Council or go to their lawyers and litigate.

CHAIR—Yes, I understand the argument you are putting. But it is no different an argument than if, say, if I am World Music and I take the Melbourne Symphony Orchestra playing the second movement of Mozart's 21st piano concerto and mix it with some raindrops, wind rustling and something else, is it? I am really doing the same thing as you are complaining about. But presumably your complaint, if I can put it that way, is that it is easier to pick up that happening with conventional Western music than it is with Aboriginal music? Is that the nub of it or is it a complaint which would relate in both instances?

Prof. Langton—It is a matter of the value attributed by a society to different kinds of music and the commercial power behind the label. If you commit a copyright breach against the ABC, which publishes the Melbourne Symphony Orchestra, then you are taking on a very large institution which would vigorously defend its copyright, but a small label which can shut down its company and change its name overnight will think nothing of exploiting Aboriginal music. They imagine that there are no people to defend the Aboriginal copyright for that music because they think that Aboriginal music just wafts out of the trees, that didgeridoo music is somehow natural. They have no respect for the identity of the individual composers of the music. They imagine that there is no defence system or system of protection and that they can take this music—Inuit music, whirling dervish music or whatever they like—because it is 'traditional', which to them implies that it does not have the protection of copyright law.

The point I am making is that these breaches go unnoticed. People walk into the Australian Geographic shop or a tourist shop and hear some didgeridoo music on one of these remixes, but it does not occur to anyone that these are copyright breaches. The point is this: in your recommendations I hope that you are mindful of this area of breach and the possibility of ensuring that Aboriginal musicians are protected by a system such as APRA's licence agreement with small business, which is part of a wider system of copyright protection.

CHAIR—But your argument, if I can put it in a nutshell, is that any watering down or any widening of the exemptions in relation to the playing of CD and tape music by small business would have the effect, in practical terms, of reducing the copyright protection that Aboriginal artists enjoy?

Prof. Langton—It could have, yes.

CHAIR—I have a couple of questions of detail. You mentioned the Smithsonian collection. Who owns the copyright for that? Presumably, it is the artists? How did it come to be gathered? What is its history? I take it from what you have said that that is a collection of music that has somehow become generally available.

Prof. Langton—The Smithsonian is in Washington—

CHAIR—I know what the Smithsonian is, yes.

Prof. Langton—and, like the Australian Institute of Aboriginal and Torres Strait Islander studies, it is a collecting institution. I give it as an example because it has similar functions to the institute. It has a music collection like the institute. For instance, it has music tapes collected by ethno-musicologists around the world. It depends on the circumstances of the laws of any country or United States law—or the assertion of rights by musicians, for that matter. In the institute the copyright of the music is, firstly, according to the Australian Copyright Act. Secondly, the institute has a deposit system so that the wider cultural notion of group rights can be acknowledged if the depositors so wish.

I will give you an example from our centre. We are publishing an ethno-botany, that is, a botanical compendium from a particular language group in the Northern Territory. The collectors of that information have put all copyright in the language group, so the manuscript is copyright Iwaidja speakers: not the authors—the Iwaidja speakers. So unlike, say, a court finding under the Copyright Act that some intellectual copyright is held by the authors and some by the informants who gave the information, the authors have attributed all copyright to the Iwaidja speakers.

A similar arrangement could occur with an institute ethno-graphic item. The ethno-musicologist might, if the material were to be published, attribute all copyright to, say, the language group or the clan group or the people singing on the tape. The Smithsonian has published Aboriginal music. I do not know what its copyright arrangements are, but the fact of the matter is that it probably holds the world's largest collection of ethno-musicology.

CHAIR—Taking the example of the tourist shop playing a CD of new world music which includes, let us assume, pirated excerpts from traditional Aboriginal music which it obtained somewhere, are you aware of any cases where those CD companies have been prosecuted or taken to court in any way on the basis of someone saying, 'Well, this was so and so, and they had no right to the copyright'?

Prof. Langton—No, but I think it is inevitable because there have been such copyright cases in relation to visual arts.

CHAIR—Using designs on T-shirts and things like that? Yes.

Prof. Langton—And carpets. In the recent Federal Court carpet case the decision went in favour of the Aboriginal artists.

CHAIR—I obviously am not a musicologist. Is it possible when listening to, say, a CD which includes some didgeridoo playing, to say, 'This is a particular recording'? I take it from what you are saying that there is sufficient expertise to be able to identify a particular recording that has been pirated.

Prof. Langton—I think so. The didgeridoo—or the yidaki, to use the correct term—originates in Arnhem Land and only in Arnhem Land. The assertion that it is the traditional instrument of Aboriginal Australia is incorrect; it is a traditional instrument of Arnhem Land and only Arnhem land. Those recordings of yidaki that exist from the time before the didgeridoo was pirated around the world were made by ethno-

musicologists, and those still living would recognise the pieces of music. It seems to me that it would be more than likely that they would recognise the piece of music because they recorded it and they would listen to it to catalogue it. All of this music is catalogued.

Mr MUTCH—Are you aware of the Phonographic Performing Copyright Association?

Prof. Langton—No.

Mr MUTCH—That is another organisation that collects royalties as well. You obviously had had contact with APRA and I just wanted to ask your view on whether you thought there should be more than one collecting body—but you have not had contact with them. One of the concerns we have had expressed to us is that people who play music in shops and so forth, small business proprietors, one day get a letter from APRA saying, 'We want you to pay a licence fee,' and after they have checked out the authenticity of the organisation they then get another letter from another group and they think there might be a fraud. I was just interested in knowing your view on the two groups.

Prof. Langton—I was not aware of that.

Mr KELVIN THOMSON—How many indigenous musicians belong to APRA? Do you have a feel for it?

Prof. Langton—No, I do not, sorry.

Mr KELVIN THOMSON—In your experience, would they tend to be associated with APRA and involved in those things, or not?

Prof. Langton—I am sorry, I do not know, but it is actually a point worth asking. It is an important point. I think it is probably unlikely that a radio station would ever play an Australian Institute of Aboriginal and Torres Strait Islander Studies published recording. Moreover, it is probably unlikely that a tourist shop would play such recordings. They are more likely to play these world music remixes, as I say, because the ethnographic collections are hours and hours of ritual music which, to the untrained ear, might sound boring—which is precisely why they are remixed.

I have never had a complaint personally about a breach in relation to an ethnographic collection, but what many people have said to me is that they have heard their music played in these remixes. Obviously, composers and players recognise their own music.

Mr McCLELLAND—It would be good if they were members of APRA, because they might then get enforcement. It seems to me that what you have been describing is an enforcement problem.

Prof. Langton—The APRA arrangements are very recent, and one expects it to grow over time.

CHAIR—Professor, thank you for your submission and for coming along and discussing it with us this afternoon. We appreciate that.

[3.15 p.m.]

FROST, Mrs Carole, General Manager, Northern Territory Chamber of Commerce and Industry Inc., GPO Box 1825, Darwin, Northern Territory

CHAIR—Welcome. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are the legal proceedings of the parliament and warrant the same respect as the 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 which you have provided to us today. Would you care to make some brief opening remarks?

Mrs Frost—Thank you for the opportunity to put in a late submission. It is a particularly busy time in the territory and there has been a lot happening, and so it was pleasing to get another letter reminding us that you were coming and offering us the opportunity to make representation.

In the submission I have given you an overview of the chamber's role, a profile of the Northern Territory business community, and then the concerns that have been expressed to us, generally after the wave of invoices has gone out from APRA and the other bodies charging the fees. There was quite a concerted campaign this year by the small business community outlining all those concerns, and that is what I based this submission on. I do have some additional comments to make that are not in this letter that came to me just before I left so, with your permission, I will add those in as well.

CHAIR—Yes.

Mrs Frost—The Chamber of Commerce plays the same role as all the other chambers and I am sure that you have heard before what I have to say in my submission. In fact, I heard a little bit of the previous submission and some of the comments made about the comments you have heard. They are no different. The chamber provides the same services to its constituency as other chambers of commerce do. We are a broad based umbrella group. We have over 1,000 members and, by our reckoning, we represent about 20 per cent of small business.

The only thing I would exclude us representing in any great form would be the mining industry, which the Minerals Council represent in its sector. I have listed there that the chamber does provide a series of services. The one which I would draw main attention to today is that the chamber has a role in representing its members to committees, government departments, parliamentarians, authorities and other industry associations, and it is in that context that I am here today.

We hear a lot about small to medium enterprises or SMEs. In the territory we tend to talk about 'very small enterprises'. VSE is a new acronym, but one which we feel reflects more of the sort of business that we are dealing with. I have given you an attachment which shows a pie chart of how our membership is made up. We feel that it is pretty indicative of how territory membership, excluding the mining industry, is compiled. The main part is that approximately 86 per cent of territory business employs less than 20 employees. So you can see that there is a difference between the national recognition of a small to medium business and what we consider happens in the territory.

As I said, we represent a wide range of businesses, the major private sectors in the territory. We are mainly a service industry so we provide services to tourism, defence, mining, the rural sector, offshore oil and gas, and various other export activities.

We face quite a few challenges in the territory: maintaining and gaining a skilled work force; the cost of infrastructure; and the cost of doing business in the Northern Territory. We are now getting a fair amount of competition coming through from interstate companies that see the opportunities in Darwin, in the Top End, in the north of Australia. I have listed there some of the new opportunities which we are actually quite proud of but which do offer us opportunities and challenges.

I have also listed that one of our major concerns for operators is compliance with legislation. I may have missed some, but I do not think I have exaggerated in the list that small business has to comply with in doing business and, in all that, there is a cost. We believe that the federal government at the moment has a policy of trying to cut red tape or is certainly trying to reduce the cost to business of compliance. The Australian Performing Rights Association fees, the APRA fees, which are the ones that I am mostly aware of, fall into the same sort of nuisance category as a lot of the others from a small business point of view.

The complaints that I have had are predominantly regarding the playing of radios in the workplace. So I am not here to talk about any of the other parts of copyright or concerts or anything of that nature. This is predominantly the playing of radios. There is very little playing of tapes. I heard the previous person talking about souvenir shops playing music in their shops. They are probably playing the music they sell, which is a product. Aboriginal music on tapes and CDs is a product, and they do play it to promote and to sell.

But that part aside, the major part, as I say, would be playing radios in workshops. The area that I did not list in here, and I was asked to bring up by some of the retailers, is the playing of radios in retail shops—the dress shops, the shoe shops, those sorts of places. I have not had any representation from the major players—the Coles, the K-Marts. This is from the smaller retail outlets.

The points they raised are that there seems to be double-dipping. We are aware that the radio stations pay copyright fees. There is, I suppose, an anger or a feeling that it is double-dipping; it is cheating.

The radio in a lot of places is played predominantly by employees in workshops, offices and storerooms for their pleasure. Those areas are not considered public by the business operators. I take that aside from the retail outlets. This is in the workshops and offices. They are not considered public by business operators who can and do restrict areas to parts of their premises. Quite often, the radio does not even belong to the business operator; it is brought in by the employee.

The cost of compliance is an ongoing concern. I noted in the booklet that was put out the actual fees that are charged in relation to small business: $37 to $55 a year or $37.09 for businesses with small numbers of employees. The cost compliance in writing a cheque for $37 is worth more than $37. So it has a multiple effect. I am not advocating that you put them up. I noticed they have not gone up for a while. We are advocating it is a waste of time in not only writing the cheque but posting it, being collected at the other end and administered. I know what the bank fees are on deposits.

I would suggest that the compliance concerns are very real. It is not just: 'Oh dear, we've got to write another cheque.' It is the fact that an invoice comes through. If you talk to business people, any invoicing that goes out worth less than a couple of hundred dollars is not worth sending. The cost of collection is ridiculous. The first time a business operator has to make a phone call to find out who these people are you have just doubled the cost again. So it is a real concern I feel.

When the last series of invoices went out it was seen as, again, part of government not fulfilling its role in cutting red tape and of government interference. There is a very close link. Because APRA is bound by government legislation, it is seen as government. I do not know if you have had that view put to you before, but I have. It might be copyright but it is done through government legislation, so it is seen as government. For larger companies, the impact on budgetable items onto small business has got to be taken into account as well.

What the views are that we have had and what the chamber considers is that the imposition of these fees must be looked at in the context of the federal government's commitment to cut red tape and compliance costs. We also feel that possibly there is a need to redefine the word 'public'.

The comment we get quite often from our business people is that because the public can hear a radio it does not mean to say it is being played for the public. That is where you have a workshop where somebody comes in and drops their car off and the radio is playing in the background. They come back later on and pick the car up and the radio is still playing in the background. There is a very clear definition by the business community of what is public and what is not. As I said before, there are areas that are not public so it could be that the radio is playing in the workshop where the public have no access but they can hear it in other parts of the business.

As I said, I do not think there is anything new in any of these concerns. I know that the other chambers of commerce have made representation to you but it just seems that every time this happens it is another round of indignation, letters to politicians, phone calls to us, media releases in all forms including airing in newspapers, on radio and questions in the House, we believe. Last time Senator Grant Tambling brought them up and I believe Senator Bob Collins also had representation as well as Nick Dondas. If you add on all those compliance costs, it is costing a fortune.

I would leave my comments there. Perhaps there needs to be a redefinition of 'public' and there needs to be some sort of clarity or recognition of what this multitude of legislation requirements place on small business.

CHAIR—Taking the question of the radios being played in small business as distinct from CDs or tapes, there has been a proposition put forward by APRA which, in effect, I think it is fair to say has been endorsed by the Council of Small Business Organisations; namely, that we should recommend to the parliament and to the government that the Copyright Act in Australia be amended to reflect the Canadian provisions in this regard; namely, that where there is music played by way of a radio in small business there be no copyright fees or licences collected but that the licence fees paid by the radio stations to APRA would be adjusted to take into account the income which would otherwise be lost by the musicians and performance artists. Do you have any views about that?

Mrs Frost—I certainly would agree with the first part in small business being excluded. I have already said that the cost of sending those invoices by APRA—and I know there are other copyright associations—if an analysis was done, must be quite horrendous. There are figures around which I am sure you can get from accounting firms that would tell you the cost of sending out a single invoice, that the cost doubles when you send out a reminder notice, and that the cost triples when you answer a phone call querying the account, et cetera. I would suggest that if that administrative burden was taken away from APRA they may find that there would be some leeway in not increasing the APRA fees at all.

CHAIR—The evidence in round figures—and these are not exact—is that the amount collected from small business is about $2 million a year. The suggestion was, yes, there would be administrative costs that would not be involved but you could be talking about lost income of perhaps $1 million—that is, half of it might be administrative costs. The proposal would be that when the licence fees are set for, in particular, the radio stations there would be some adjustment made for that loss of income which would otherwise come from small business. Ultimately, in one sense business is paying because presumably the radio stations will adjust their advertising rates to reflect that. But it does take away the administrative burden and the nuisance value that you have described from the perspective of small business.

Mrs Frost—Yes, I was going to say that an obvious solution for the radio stations is to increase their advertising fees. I guess the chamber would argue against increasing fees to anybody. Radio stations are our members as well.

CHAIR—But aren't musicians small business people, too? From a philosophical point of view, couldn't they equally be members of the Northern Territory Chamber of Commerce and Industry?

Mrs Frost—Yes, but I do not have any at the moment.

CHAIR—No, I know you do not.

Mrs Frost—Yes, and I agree. Certainly there are swings and roundabouts and we would accept that, in removing one impost, there may be a cost implication somewhere else. That certainly would be recognised by the small business community. I would hope that the increase in fees to the radio stations certainly would not be in the order of what it is costing small business to comply at the moment.

Mr McCLELLAND—No, there is talk about something in the ball park of about $1 million spread across the country.

Mrs Frost—So you are not talking of adding on $100 a year. People choose to use radio stations. It can be budgeted for and all those sorts of things.

Mr McCLELLAND—I think the evidence was it would represent on their figures a six per cent increase on what the radio stations currently pay by way of licence fees.

Mrs Frost—Yes.

CHAIR—I will leave aside the radio issue for a moment. I know this next topic is not the substance of the complaints that you have had—they have been more about radio—but, nonetheless, we have to address the playing of CDs and music. The Deputy Chairman has put to a number of witnesses around the country that, in a sense, you can divide the circumstances in which music is played in a business into three categories.

One is purely private enjoyment. The second category is what might be regarded as ambience—for example, background music being played in a restaurant, a shopping centre or even a jeans store to attract a particular age group clientele. The third category is where the music is unambiguously a part of the commercial operations, such as music being played in a gymnasium for an aerobics class, without which you might have trouble running the aerobics class.

If you use those categories, where should a line be drawn in terms of when licence fees and royalties are payable? Should it be between purely private however that is defined—which is another issue, I know—and ambience, or between ambience and commercial?

Mrs Frost—We did talk about ambience music with some of the retailers and we found is that there is a lot of cross-utilisation of other people's resources. If you look at the advertising on the television, for example, you might see an advert saying, 'Go to the carwash next to Red Rooster.' Red Rooster does not charge the person for using its name and it gets the spin-off. It is quite happy for its name to be used in that. It could be argued the same for a dress shop or another shop where music is used to attract a particular type of clientele. If they hear the music, they will go and buy the music, especially if there is a sign in the shop saying, 'Music played here is available from the music shop around the corner.'

So there is that sort of trade-off that goes on. Fashion accessories are used in dress shops that are available from another shop and car accessories are used somewhere else. So there is that cross-fertilisation, if you like, of selling each other's product without cost. In recent discussions with some of the shops, they consider that they are doing free promotion for a particular record or a CD.

Mr McCLELLAND—The argument that has been put to us though is that, because someone walks around with a Levis sticker on the back of their jeans, does that mean they are entitled to free jeans?

Mrs Frost—Yes, I always thought that somebody should pay me for wearing Levis.

Mr McCLELLAND—But in reality?

Mrs Frost—I am just saying that that is one aspect that is being considered; that it is cross-fertilisation, if you like.

Mr McCLELLAND—There is another issue there. One witness was from Mondo Rock, which was a well-known Australian group. He said, while the music or songs which he wrote are frequently played on the radio, it is impossible to buy a Mondo Rock CD now. So the playing of his songs is of no benefit to him in terms of selling CDs.

Mrs Frost—You would ask why his record is not available. That is his problem. Surely his marketing

company or his record company—

Mr McCLELLAND—It is not his company, but take that argument. It is frequently the case from that evidence that songs are played when the CDs are not on the market. If you accept that there is such a thing as intellectual property, and some witnesses have not accepted that—just as someone's merchandise is their property that they sell, the small business musician's property is their intellectual property—is it fair to say that people have to pay for jeans despite having a label on the jeans, but the musician is not entitled to recompense for the use of his property simply because there is a label or name attached to it?

Mrs Frost—Wouldn't he have got some copyright fees when the original CD or the original tape was sold?

Mr McCLELLAND—He would get some.

Mrs Frost—I would not use that as a very good argument. I would still argue that Mondo Rock should be out there getting someone to re-release its record. I understand what you are saying and I am not disagreeing. We talk about intellectual property in small business as well.

Mr McCLELLAND—I am trying to say that there has to be a bit of reasonableness and a bit of balance here.

Mr MUTCH—If you were a radio station, you could argue that you are giving these artists much more coverage than the local fashion shop.

Mrs Frost—I would have thought that Mondo Rock would be upset if its record was not being played.

Mr MUTCH—No-one seems to argue that radio stations or television stations should not pay licence fees and royalties, yet they would be the ones with the biggest claim on giving free publicity for the artists.

Mrs Frost—Yes. I used to work in radio for five years. I know that filling out the forms and keeping track of it was always considered a pain, but we did not very often argue that it should not be paid. The option is that each of the recording artists open their own shop and sell it, which is just not practical, so they appoint an agent. I guess you could say a radio station is like an agent.

Mr MUTCH—So your argument basically is that radios and I presume you mean TVs as well should be exempted if they are being used in small businesses and out the back. It has been put to us that maybe they should be exempted and the recoupment of the royalties should be done in a more centralised way—the radio stations and television stations?

Mrs Frost—I have not had any representation about television. The only time the television goes on is for the Melbourne Cup. I know they are used for promotion videos, but it is usually in-store videos promoting their own product.

Mr MUTCH—Have you had submissions made to you from shopkeepers and small businesses in isolated areas who use radios and televisions as communications mediums to find out about natural tragedies, disasters and so forth? They keep it on for that reason. Do you have any evidence of that up here?

Mrs Frost—Not in the true remote areas because they do not pick up the radio. No, I would not have had any evidence of that. That is a place where more CDs and tapes will be played because there is no access to radio. You are talking there more of places like the wayside inns and the roadside stops where they would possibly play taped music in their restaurants. That is probably the only place they would play it.

Mr MUTCH—That leaves us with one dilemma. If you are in an isolated station and all you have is a CD player because you cannot get the radio and your equivalent retailer in Darwin is exempted because the radio and television are exempted you still have to pay.

Mrs Frost—Yes. You could send out another bill for $37.09, or whatever it is, I guess. It seems a bit ludicrous.

CHAIR—That is because have to pay high additional transport costs to get your goods to your remote location?

Mrs Frost—They generate their own power out there, they pump their own water and they are on call 24 hours a day. I think the roadside inns are a different case altogether. They are recognised in the territory as providing a community service and treated accordingly.

Mr KELVIN THOMSON—You were talking earlier about the need to get decent definitions of public and private. It seems to me that if we got a characterisation based on the medium—that is, CDs and tapes—where the intellectual property dimension of that was recognised and people had to pay licence fees, but that in the case of radios and TVs the intellectual property argument was fainter and the public interest of people being able to play those things was greater, perhaps that would be an easier way to sort it out. Some of these other distinctions that are talked about are difficult to apply in practice and are conceptually a bit messy as well.

Mrs Frost—I was reading with interest the definition of public and I noticed the couple of cases that were used there. I come back to the effort that goes into collecting $2 million. If you are saying that it is costing 50 per cent of that to collect it, it does not seem to be very efficient. So there has to be a more efficient way of doing that, recognising that there is copyright and there is intellectual property.

I would think there certainly seems to be an acceptance that radio stations pay the fees, and possibly rightly so, even though they could say that, as you said earlier, they are actually marketing the product for the artists. But that aside, I feel that if you treated it that way it would sort out so many of those vague areas or the major areas of concern that would then allow the next review—and I assume that there are regular reviews of legislation—to look at some of the real issues that could be addressed, if there were any.

Mr KELVIN THOMSON—But if a person says, 'I don't want to pay the licence fees; I don't want to be associated with APRA or any of this stuff,' and they play the radio or have the TV on, then they are

not in that business. If they want to choose the music that they are playing, as you do in the choice of a CD or a tape, then there is an argument that they are using the intellectual property of the composer and then they are up for the licence fee.

Mrs Frost—It would be a lot easier to argue that they are deliberately using a particular artist to sell their product. Whereas, if it comes at random over the radio, with all the advertising that goes on for the opposition's product as well, it—

CHAIR—To take that a step further, if they have chosen to use a CD, wouldn't it be simpler to say that the presumption is that you are using it for some commercially related purpose unless you show otherwise?

Mrs Frost—Yes.

CHAIR—Which is basically the current law. Not quite, but that is the effect of it.

Mrs Frost—We all know there are fads in particular types of music. If you are aiming the young market, the tourist market or the slow easy music to encourage a different market segment into your premises, you are definitely choosing the type of artist you want to promote.

CHAIR—I thank you for the submission from the Chamber of Commerce and Industry, and also for coming along today and discussing it with us. Thank you.

Mrs Frost—Thank you for the opportunity.

[3.45 p.m.]

HUNTER, Mr Arnhem, Goolarri Media Enterprises, Broome, Western Australia

CHAIR—Mr Hunter, could you tell us in what capacity you are appearing before the committee.

Mr Hunter—I was a drummer for *Bran Nue Dae*, an Aboriginal musical; a former radio broadcaster at Radio Goolarri; Broome Aboriginal Media Association; a former book editor at Magabala Books. I am an ex-pearl diver; a clinical death survivor. What else? A bit of everything.

CHAIR—That is probably enough.

Mr Hunter—Coming from the music industry, I am well aware of copyright and protection in the industry and the collection of royalties, the operation of APRA and things like that. There is lost revenue out there. My interest is cross-media at the moment. Radio Goolarri is branching out into all branches of media. We have Goolarri film and television. We want to get print media up and running as well. There is dance theatre, and music and recording as well.

If I can just digress for a moment, Helen Darville has shown us that in mainstream publishing there are transgressions with appropriation, I guess you would call it—cultural appropriation in that sense.

Then you have got Leon Carmen who showed us that cultural appropriation was happening to Australian aboriginality, and lo and behold the arts world got a shock with Eddie Burrups' paintings. It showed us that the mistake was not just in one branch of the arts or media and it was not just literary. The lady from America with *Mutant message down under* showed us that the boundaries are not national anymore, they are global. So we have to seek indigenous copyright protection on a global scale; the boundaries are no longer national. We are concerned with the electronic media.

Basically I am expressing a concern from indigenous interests in all forms of media, not just music. We need greater awareness and education for copyright protection of indigenous cultural protection.

Our concerns with music, in regards to language, are that it is sometimes difficult to say what is a traditional work or not. Sometimes an elder might dream a song, and he has passed away. His descendent goes to record that elder's story in music, and then the community claims ownership of the recording. Originally it was an individual's story. These are boundaries for Aboriginal individuals to work out within their communities. I am just bringing to the committee's attention that any of the issues facing the so-called mainstream become very, very complex on the Aboriginal side of things.

As another part of my background, I have also attended the federal indigenous music conference in Melbourne, the state music summit in Perth and a federal music summit in Canberra discussing things like Australian content on radio, which is very distressing, and the dwindling number of live venues for live performance of music in Australia. It has come to the industry's attention that the generation between musicians used to be 10 years apart, and now it is 15 years.

The commercial radio industry seems to be more concerned with on-selling American recorded product. The industry has been fighting to have Australian content on radio increased. Surely that act of possibly legislating for an increased content on radio would increase the revenue available for revenue collection by APRA and other agencies, while also seeking to define what has entered into the public domain and what has not. I think Australian content on radio is only five per cent, with 2½ per cent of that being new recorded music—that is, music recorded within the last two years.

I think the Australian Musicians Union, among other interested parties in the Australian music industry, is seeking to have that extended to 15 per cent of Australian content on Australian radio with five per cent of that being new Australian music—that is, music that has been recorded in the last two years. That simple act alone would greatly increase the possibility for gathering revenue from our own artists rather than see a whole swag of money go offshore all the time.

The concerns about the dwindling number of live venues make it hard for Australian aspiring musicians to have live heroes. All my heroes are still alive, but now it seems why be the musician when you can put the cap on backwards and wear your basketball T-shirt outside the singlet? We have to be careful about the Americanisation of our collective Australian culture. Music is a very powerful medium, and I welcome this inquiry into copyright protection for all Australian artists, both indigenous and non-indigenous.

CHAIR—There is a broad range of issues which you have touched on and, fortunately or unfortunately, depending upon your point of view, many of them are outside our terms of reference, even though I know they are of particular concern to those involved as musicians.

Mr Hunter—Yes, I realise that.

CHAIR—Our focus is more particularly about this issue of where music is played by small businesses, should licence fees which are currently collected continue to be collected? Should there be any changes in the manner of collection of fees? One thing I am interested in with relation to this issue is that, in terms of collecting agencies like APRA, how important are they to indigenous artists?

Mr Hunter—They are important, and it is very necessary that someone collects. A majority of events, both Aboriginal and non-Aboriginal, indigenous and non-indigenous, are self-managed and sometimes to their own detriment. Any assistance that they can get in the marketplace is very useful. I cannot praise APRA's role enough for the work that they have done, and yet every year there is still a substantial amount of unclaimed royalties, again through the fault of the artists or their management themselves who do not follow up these things. Songwriters are registering with APRA but they are not coming forward to claim their due. I guess that is how APRA pays their way.

CHAIR—In your experience of Aboriginal indigenous artists involved in the music business, would most be members of APRA?

Mr Hunter—No, they would not. Some towns or communities are fortunate enough to have a musicians organisation. In Broome, we have the Broome Musicians Aboriginal Corporation, which is trying to bring awareness to musicians of the Kimberley. There are a lot of artists spread out over a large area. It is

very difficult to sign people up and to educate people. It is starting to happen now with the appointment of musicians to teaching positions on education campuses rather than music teachers that come through the institutions.

I know a few musicians who are getting work. They are starting to tell the young fellas, 'You should sign up. You are losing money here. You need to protect yourself.' I myself have had a copyright dispute. Someone stole my work and I had to seek legal help to get it recognised as my work, to be accredited as the sole copyright owner of the work and to get paid for that work.

I have used the Australian Musicians Union to be paid for a publicity call. They were going to pay only the actors, not the musicians, even though the actors just walked up to the microphones and sang while the musicians packed the gear, set it up, packed it and set it up again. I would have had a hard time trying to extract payment from the tour management without the help of an organisation such as the Australian Musicians Union.

I have received an APRA cheque in the past for a recording I have done. That was made possible only because I filled out an APRA membership when I was in the band. We knew it was out there, but the education does not come down unless there is organised infrastructure on the ground for Aboriginal musician groups.

CHAIR—Do radio stations in places like Broome, Alice Springs or Katherine tend to play more music of local artists or do they tend to play what you would hear anywhere else around the country depending on the style of station?

Mr Hunter—It is pretty national. I think in Broome we would probably play Scrap Metal and Brand New Day a bit more than Aboriginal artists from the rest of Australia. On the whole we draw recorded talent from right around the country. It has been six or seven years since I was a broadcaster, so I am not right up on broadcast policy at the station that I am representing here at the moment. My interest now is in multimedia and cross-media.

ACTING CHAIR (Mr McClelland)—Did anyone assist you to enforce your copyright—the Musicians Union of Australia or APRA?

Mr Hunter—The Arts Law Society of New South Wales. Because the *Away* program on Radio National was produced out of Sydney, I used the New South Wales law firm to go after them.

ACTING CHAIR—Is copyright significant to your ability to compose and/or produce music?

Mr Hunter—Yes, to actually listen to the ABC Radio National evening program and hear my work going to air right across the country as someone else's work was a shock. I could not believe that that could actually happen. Everyone in my world knew that I wrote it.

ACTING CHAIR—That is from your inability to enforce or prevent someone else using your intellectual property. But from the point of view of obtaining payment for someone else playing your music,

is that something that would assist you or people to develop Aboriginal music?

Mr Hunter—Yes, when I realised that you can actually be paid to broadcast your work, it was encouraging. Any artist who sees their paintings go up from $80 to $700 would find it pretty awesome.

Mr KELVIN THOMSON—You raised the issue at the start concerning the need to promote Australian music and so on. Do you have a view about the way in which the royalties or licence fees and so on that are collected are distributed or have you given any thought to whether it could be improved or changed in some way?

Mr Hunter—I was a late nomination for attendance here actually and my mind is whirling because my interests lie in so many different fields, I must confess. I heard the previous witness mention that there might be $2 million out there but we might have to spend half a million to get it and he said, 'Is it worth it?' To my way of thinking, I have seen so many things run at a loss that I would have to say, yes it is worth it. If it is in front at all—

Mr KELVIN THOMSON—I was not so much thinking about the cost of collection, the administrative issue, but say the fact that a lot of licence fees that APRA and so on collect ultimately go to the likes of Bob Dylan or Paul McCartney or whoever because the formula indicates that a lot of their music is being played on radio and so on. You raised at the outset the issue of support for Australian music. Let me say that the counter proposition is that we are signatories to international conventions and so on in relation to these issues and—

Mr Hunter—Yes, if our music is played overseas and—

Mr KELVIN THOMSON—Yes, so if we are seen to be supporting the home team in breach of those conventions others will not be too keen to provide royalties and so on back here. Nevertheless, I am interested in whether you have got any thoughts on that.

Mr Hunter—I still cannot help returning to the issue of increasing Australian content. I just do not know. Maybe it is not much help.

ACTING CHAIR—In other words, encouraging—

Mr Hunter—Encouraging new artists, emerging talent.

ACTING CHAIR—Getting the broadcasters to play more Australian content.

Mr Hunter—Yes. In the indigenous media network we are doing that. We are trying to stay Australian. When you listen to commercial radio all they do is play more Cold Chisel. There are other recording artists. There is Mondo Rock for one.

ACTING CHAIR—Then perhaps the copyright fees will follow the increased content is what you are saying?

Mr Hunter—Yes. If we want to really boost the Australian music industry we should hassle the people that control the music stations, make them legislate and increase Australian content on the radio.

ACTING CHAIR—With the Whitlam government I recall a point system where they had to achieve a certain allocation of points and they earned those by playing Australian content.

Mr Hunter—Right. Collection agencies, funding for them, fees, air charges or ambient music in a massage place—I do not know whether they are like musak and they are paid at the beginning and you do not have to worry about chasing it all.

ACTING CHAIR—We would not be able to answer that because none of us have had experience in massage establishments.

Mr Hunter—I mean the real ones. There is a bone of contention there from the authentic massage industry too, trying to get sex workers not to use the term massage. I am just wary that copyright permeates the whole issue. There is the issue of imagery as well—who is in shots for film and television. It is all across media. What is an issue for one aspect of the arts—music. We suggest to ongoing inquiries that it is a minefield out there and it faces all the other branches of media as well.

From the Aboriginal side of it, our concerns are: when does a so-called traditional work enter the public domain? The issues for Aboriginal communities and Aboriginal artists is sole ownership works—one community or one skin group ownership works. In Broome we have related skin groups. We all borrow from each other's language. There is not much of a problem but if a Broome band used some Maningrida words, we would be in trouble. We would have to seek permissions and things like that.

At Mudburra we match a traditional story teller with perhaps an artist from a different skin group. The story teller might say, 'Yes, I want her to do the illustrations for my book,' but we still have to clear it with the author that it is okay to have an Aboriginal person from elsewhere providing images for their group's traditional story. The permission departments are flat out trying to keep up with the indigenous organisations.

CHAIR—There are obviously many more problems beyond what we are looking at at this stage.

Mr Hunter—I think I am here purely to bring that to your attention.

CHAIR—Can I say, without wanting to seem rude, that you have done that. We have to keep moving. I thank you for coming along and for discussing it with us today.

[4:09 p.m.]

MICALLEF, Mr Richard, Head of Music, Central Australian Aboriginal Media Association, PO Box 2608, Alice Springs, Northern Territory 0870

Mr Micallef—I am the key adviser to all of our Aboriginal musicians and songwriters, which are quite substantial in number, and to the CAAMA group.

CHAIR—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 your letter of 29 September and also the additional material you provided today. As you know, the focus of the inquiry whilst on copyright is in one sense fairly narrow. I am wondering if you would like to make some opening remarks to the committee?

Mr Micallef—Yes, Mr Chairman. I have read all the documentation and I applaud you for taking such a great interest in indigenous copyright owners. I really do think, having worked at CAAMA for four years now with many Aboriginal musicians, they do think long and hard about their intellectual copyright ownership.

The reason I am saying that is because CAAMA has done a lot of exploratory and policy work on this issue. We have come up with some findings. I heard you ask some questions. We have over 400 songwriters on our recording contracts of which we have about 50 major recording contracts. We have been around for quite a long time. Since 1980 we have produced over 100 albums. Everything is pretty legalistically set up. We went through a campaign in the late 1980s to register most of our music makers as songwriters with APRA. So a lot of our clients are members of APRA.

As it says in the note we put forward, essentially we would support a status quo on this issue. The issue of small business paying modest fees we consider a crucial one. This is an important decision because it may very well temper future decisions.

I was going to tell you a little story about Blek Bala Musik, one of our bands getting ready to tour Europe next week. But I think Mr Hunter, a former colleague, expressed quite a lot of the issues quite well. Musicians work very hard and for no wage and sometimes for no allowances in the production of their copyrights. We are going to take a band to Europe and we will probably lose $10,000. However, we do not see it as a loss; it is an investment because we are enhancing the promotion.

The reason musicians work so hard in the production of their music is that they know that later on, if there is a modicum of success to it, they will be paid for the performance of their music on radio and elsewhere. We have researched this with our members and found that this is indeed a very attractive prospect for them. But by saying that someone like Ross Wilson should make more records I think we are overlooking a very crucial factor—Ross Wilson has made a few records and he has moved on.

Records are often made at great cost and then recouped by the record companies. So the recording artists often does not earn that much income initially from the recording, but they can earn income from their performing rights immediately. Mr Ross Wilson, who has worked hard all his life, is entitled to sit back and enjoy some performing royalties. That is basically our view at CAAMA. I feel that musicians have demonstrated their willingness to work many long hours to enhance their copyrights. The reason for that is that they can identify a kind of superannuation income from APRA.

There are two copyrights, as you know. There is the recording copyright and, of course, the songwriters' copyright. These broadcast rights are established all over the world, and naturally a collection process by APRA exists. We recognise this controversy as an indicator that APRA is doing a good job. We have nothing against small business. We simply believe that the user should pay for the use of music. We are quite clear that it enhances business atmosphere. We recognise the fact that there is some sort of backroom workshop facility for the boys in the back who are listening to music to help them work and that is not considered the same as restaurants and the front of shops that are using music to entertain and create an important ambience in their trading zone. Basically we are quite pleased with the work that APRA is doing.

I will just touch on a few questions you asked others. Certainly, $1.8 million is a significant amount of money. I am not sure of the exact proportion, but I think it is more like 13 per cent deductions that APRA makes in the collection of that sort of money. I sometimes ring APRA and say, 'Hey, I'm doing your work for you because my songwriter lives out at Maningrida and I have to get him this $6 cheque.' But I want to do that because I know that one day that will be a $600 cheque. There are more significant cheques. The fact is, CAAMA must support the money flowing through to the songwriter through all the uses. Musicians are also in small business. Ambience has real value.

In the collection of this money—just to answer Mr Thomson's question—we are looking forward to a better distribution system from APRA. The reality is that Bob Dylan gets a bit of my songwriter in Maningrida's money, but the direction for the assessment of songwriter amounts used on broadcast media is improving all the time through technology. We are looking forward to the day where many commercial radio stations are now automated and so many will be automated in the future. It is all together possible that if one song is played on one particular radio station X number of times the calculation will be absolutely accurate and relevant to the songwriters of that song. At the moment it is all averaged out. The reason I am saying this is that we are going in the right direction for the better accountability of this payment.

Basically, we have seen this motion to scrap small business fees as very dangerous because it is flying in the face of international convention. It is also flying in the face of historical trend. We have secured some legal advice and some business advice and we have read things. Generally speaking, it is possible that the future will see fewer copyrights and more performing rights—in other words, people will be able to download and play music from the Internet; people will program their own music on radio stations; and people will in fact buy fewer records but listen to just as much music, more music probably, because it will be more finely tuned to their needs.

That being the case, it is absolutely imperative that we protect the performing rights of songwriters. We have an interest primarily in Aboriginal songwriters, our clients. We have a wider interest in Australian songwriters and all songwriters. Australian songwriters can enhance their income by increasing exposure. But

the point of the matter is that all songwriters need this source of income protected because it is often the reason that they work so hard on promotion. It is a significant source of income. It is already an established practice.

There are possibilities for blanket licence arrangements, but, generally, we want to move in the direction of specifics rather than blanket licences. I would love my songwriter in Maningrida to get that real amount of money from that amount of airplay that that particular songwriter secured.

I feel that small business has many alternatives. They do not have to play radio. If they want free music they can buy muzak or they can play music of composers who have been deceased for more than 50 years—namely, classical music. There is quite a lot of ambient music that does not have any performing aspects to it. So they can buy this specialist service. They have alternatives.

The argument that music has been purchased once is a bit unfair because, as I am sure you know, there are two kinds of copyright: one, to buy the music; and, two, to perform it in a public place. If this fee is abolished it will absolutely send the wrong message to the public and to small business. In Australia we believe that we need very much to look at what our resources are and what our intellectual resources are. We believe that, with Aboriginal culture, we can add a lot of value to Australian music, its promotion overseas and how it earns income. But the problem is that if we do allow this sort of dropping of the copyright fees, naturally we are going in the wrong direction for the collection of intellectual rights in the future.

This is a key resource. The signal we would send to small business and to the public is that we do not value this resource. We must value this resource. This is our future. This is how we see it. It is tied up in our cultural identity and it is also a ticket of recognition that can travel around the world: identifiable Australian music playing on other radio stations and earning income for our songwriters.

The Australian music industry is under siege from all sorts of angles at the moment, namely, the massive international import of copyrights. Australian music does need a bit of additional support in fighting the massive marketing campaigns of, basically, the United States record companies. I am saying this because it is a bit like what my colleague said earlier: musicians work very hard. They walk around anticipating one more straw which will break their back. They work many hours. They have very little income. As I said earlier, they pay off their recording costs through their own recording royalties, and often their performing royalties are the only thing they can look forward to. That could be the straw that breaks their back.

With the Prices Surveillance Authority, in a way we welcome that there will be more competition in the market and that it will shake out a few people. We feel we will survive, but a lot of Australian musicians will suffer because they simply will not be able to compete with the merchandising and marketing of international companies that are based here and which will start reducing the price of records to retailers. We need to protect our Australian songwriters as much as we can—even though they are not the only ones who are subject to this issue—in preparation for this. I think I have covered quite a few of my points.

CHAIR—I have some questions for you, Mr Micallef, regarding the playing of music via the radio in small business—leaving aside, for the moment, CDs, records and tapes, et cetera. A proposition that has been put forward to us by APRA, which has been endorsed by the Council of Small Business Organisations, is that

we should adopt the Canadian copyright system, namely, that no licence fees would be payable in respect of music played through the radio in business and that the licence fees payable by radio stations themselves would be adjusted to reflect any loss of income which would otherwise flow to the artists concerned. Do you have any views about that?

Mr Micallef—We have got a 'maybe' on that one at the moment. If it is necessary for APRA to take a step back we would probably support it because the songwriter will continue to be paid. I would not expect any change for the use of other pieces of music.

Mr McCLELLAND—For CDs and so forth?

Mr Micallef—For CDs and so forth. They should still be paid for, so I do not see how the fee could be reduced anyway. What concerns us about this is that it might simply drive radio further away from Australian music, in a way, because if they need to earn more advertising dollars they will simply increase their advertising rates and be driven by advertising. I do not know if I am making myself clear. The more pressure you put on commercial radio, the more they increase their advertising rates to compensate. Commercial radio is driven by advertising; it is not driven by culture. So we lose content. It is not that direct a connection, but it can be demonstrated. I think that since deregulation a few years ago we have seen a decline in Australian music content. That is tied to this issue, and what Mr Hunter said is true.

We would prefer it if the situation were status quo. I do not really feel that APRA should back down just yet on this issue. Except for the point that radio will earn some promotion from being played in somebody's shop, it is fair that they pay a little. There is that side of the argument: they should pay a little. But we have this other big picture view that already commercial radio is far too driven by advertising and hardly driven by culture.

Mr MUTCH—It would save on administrative costs if APRA did not have to go to all the trouble they are going to at present to get small businesses to comply by paying fees for radio and television, wouldn't it? Presumably they would save a lot of money on that?

Mr Micallef—There would be some administrative savings, and there would be another benefit, as I said earlier. Radio, particularly commercial radio, will count who is the songwriter for which song better, and that will probably have a good effect in ten years time on our songwriter incomes.

CHAIR—I take it from what you have said—leaving radio aside now—that, so far as CDs, tapes, records and whatever other technology might be developed in the future, in your view the status quo should remain?

Mr Micallef—Absolutely.

CHAIR—That is, that licence fees should continue to be payable by business more or less regardless of the use to which they might put the music?

Mr Micallef—Not regardless of the use. We consider that it is a use—it is a marketing use. It adds

value to their business.

CHAIR—But, when I say regardless of the use, I am saying that there are, quite obviously, different uses. To take an example—I am not sure if you were here before—music being played by a gymnasium as part of an aerobics class is so integral to the commercial activity of the gymnasium you could hardly claim that it is otherwise.

Mr Micallef—That is right.

CHAIR—There may be a question mark in some instances over what we might call 'ambience', which may be of lesser—

Mr Micallef—Maybe. How much do you think it is worth? How much is music worth?

CHAIR—Versus, say, someone who simply has a CD playing in the workshop of a garage. As I said, regardless of the use, without making distinctions between any of those.

Mr Micallef—I think there should be scales, yes. But, yes, they should still pay and, on the subject of aerobics, substantially more than $57, because without music they do not have a business. Substantially more than $57. As I said, it is an indicator that APRA is doing a good job. I appreciate there was some talk of the letters being a bit hard. However, we work in this field and you have to be a little bit hard. I am happy to be here if I can just impress the importance of sending the correct signal to business and to music users at this point. It is not a minor inquiry. It is a very significant issue and we need to pick the right answer. The signal if this is abolished will be very deleterious. It will say, 'Music is of very little value. Now that you have this right you can continue to make your bootlegs.' Small business has been identified as a source of considerable bootlegging: copy a CD, take it to work and play it all day. I have gone into many shops, many businesses. This is another matter—it is a policing matter—but I am sure APRA has its own strategies.

CHAIR—Is this playing a tape of a CD? Is that what you mean?

Mr Micallef—That is correct. It is playing an illegally made copy and broadcasting it.

CHAIR—But if we were to go down the track in relation to tapes and CDs and the like that a licence fee is payable, it is not going to make any difference whether you have an illegal copy or one that has been pirated from China or one that you bought at Woolworths.

Mr Micallef—No.

CHAIR—If you are playing it on a commercial/business premises, you are up for a licence fee. I understand the other argument that there are rights because of pirating.

Mr Micallef—The other argument is that we need to educate music users on the value of music. Abolishing this decision and taking one step back is going to send the wrong message. In America I believe they are going that way. I have some business there and I am shocked to find that there are some in-store

arrangements for the non-payment of performing royalties. There are a couple of chains who have their in-store deals with others and they are playing the music as a promotion. They are getting songwriters to sign contracts which get around the APRA payments, the appropriate body there.

We can try to find out some more about this trend, but it is a very dangerous trend that is demonstrating exactly what I am saying. There has suddenly been a devaluing of music. The songwriters who have made that foolish decision are finding that they are not getting promotion; they are getting marginalisation. People no longer value the music and make copies.

CHAIR—Given that CAAMA is involved in radio as well, so in a sense you have two hats, presumably in your case CAAMA radio would pay royalties for what it broadcasts to your own.

Mr Micallef—Yes, we send a cheque to APRA.

CHAIR—That, in effect, finds its way back to your own songwriters.

Mr Micallef—Yes, inefficiently, but yes.

CHAIR—If you can answer this, what do you think the reaction of the radio broadcasters would be to a proposition based on the Canadian approach—namely, that licence fees are not collected from the businesses but the licence fee is paid by the radio stations and are adjusted up accordingly?

Mr Micallef—Possibly a lot of wasted energy first. When focusing on it and they assess the promotional value that the radio station has, they may see some benefit. But certainly for the smaller stations and the community stations who do a lot of cultural promotion, any increase is going to be contested. It is going to be contested from us smaller ones. The commercial ones are simply going to put their rates up. I think that we would probably accept it in the end. We are used to paying a little bit more, but I do not see how it is really going to solve the problem for small business because they are still going to need to do their paperwork to pay for the other users.

Mr McCLELLAND—That is only if they use CDs though, is it not?

Mr Micallef—So we are going to turn people off CDs and onto radio, which is 80 per cent foreign broadcasts. That is the effect of what we are doing.

Mr MUTCH—What is the question about CDs? What percentage of CD usage in Australia would be local anyway?

Mr Micallef—Higher, higher.

Mr MUTCH—I know that for one I have only got one locally produced CD. I do not play it because it is not very good, unfortunately.

Mr Micallef—What about Australian CDs? Once more, let us look at the trends.

Mr MUTCH—Except I have Yothu Yindi actually.

Mr Micallef—That is good. Let us look at the trends. The trends are for more Australian music. More Australians are listening to more Australian music. We are surviving. We only make up 11 per cent of the Australian music industry sales. Only 11 per cent are Australian, and that is not a published figure. I have had to find that one out. But it is growing. What happens is that shops in local do play music from local musicians. This is an important phase in their development—this sort of nurturing or beginning phase or building up their value and building up what they call their following.

Every band has a following. That is why they work for years and years and years for no money so they can get the following so later, perhaps, if they are lucky, they may have the audience so eventually they may have their superannuation policy and be sitting there like Ross Wilson. That is what drives them and that is what concerns us: that we are going to take away the reason for creativity. I notice actually that is one of the issues, I think, that APRA brought up.

CHAIR—What small businesses have said to us is that their concern arises from agitation, I suppose, that business owners have felt about this. But what has been said to us by small business bodies is that 95 per cent of what is perceived as the problem would be removed if the radio was dealt with. If that is the case then it seems that one can mount an argument to say that it is only fair that if you want to play a tape, or you want to play a CD, then you pay a licence fee. If the reality is, as I suspect, that in many cases it is being played for ambience, and not just for private enjoyment, then they would still want to play that music and therefore they have to pay a licence fee. Any argument for saying this is unfair would have been substantially, if not completely, removed.

Mr Micallef—We would come on board if that is the perceived solution; it is fundamentally fair. It is only a marketing issue that we are concerned about and we would come on board. But, 'what is small business?', is one question that I was going to ask. Where do you draw the line? The bigger businesses seem to be quite able and happy. In fact, they have done their research and they have found that if you have the right music you make more sales. They are the smarter ones. And they pay. They are happy to pay because they make more profits from the appropriate use of music. We just need to protect the value of the use of music. That is absolutely the fundamental issue here. So where do you draw the line? What is small business? If you want to change the—

CHAIR—The beauty of this proposition is that we do not have to address that.

Mr Micallef—Oh, right, so we will not address that.

CHAIR—I am just saying you could go down a different track. If you are a business that is a sole trader, then you are in a different situation, because that might mean you are using it for private enjoyment. If you have one employee and the employee has got the radio on, is the employee entitled to have the radio on? There are so many combinations and permutations of who might be playing the music, and in what circumstances, once you try to follow a path of defining business according to size. Therefore, any solution along those lines may end up being more complex and causing more problems all around than what you have at the present time.

Mr Micallef—Yes, status quo is what we support.

Mr MUTCH—I am not sure whether it relates directly to our terms of reference, but I note you say that you are the first music label to recognise traditional song owners as having the same rights as songwriters, are you talking about a collective or community ownership?

Mr Micallef—Yes, we are. We have done some research. We have done policy work. We have consulted with our clients, the traditional elders. We are also exploring the possibilities of using traditional music in new formats. New musical formats.

Mr MUTCH—But are you actually talking about paying royalties to a community group?

Mr Micallef—Yes, we pay royalties. The difference between us and, say, a normal record company, is that once the composer is deceased for more than 50 years you do not need to pay them. But with Aboriginal culture the ownership of a song is passed from generation to generation. Although it is not in the international convention, CAAMA, as an organisation, has chosen to pay a royalty for the use of that traditional music which is owned by a community.

We have looked at it, and unlike other folk musics—Bulgarian and suchlike—we are fortunate in Australia to have Aboriginal languages still alive. That is how we worked it out. It is because a language is still alive that we can identify that song to that language group, which may only have 40 people in it. That is just an internal convention but I think it demonstrates how much time we have spent on this issue.

Another thing that is a recurrent theme in the small business argument is that this is promotion for the artist. We contest that. Exposure is not promotion; exposure is basically playing the music. Promotion is repeating the name of the product, advertising the name of the product and putting it in front of the customer's face on not one but four or five occasions. We know the difference between exposure and promotion. Exposure is reasonably valueless as a promotion and is not really a recognised value of being played in shops.

CHAIR—I do not think there are any other questions. Can I thank you for your submission and thank you for coming along and discussing it with us today.

Mr Micallef—Thank you for asking us.

[4.42 p.m.]

JAMES, Mr Alan Ross, Manager, Yothu Yindi Music Pty Ltd, GPO Box 2727, Darwin, Northern Territory 0801

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. Can I thank you for coming along this afternoon to discuss the issue with us. Would you care to make an opening statement?

Mr James—Yes. I have been managing the Yothu Yindi band since 1985. I have been doing that full time since 1987. Essentially, that is all I do. I see my role as being that of representing, firstly, songwriters and their copyright. I see that as being the core of the music industry. There are other ancillary aspects of the music industry that fan out from that point. From that perspective, I guess I see myself as having an insight into this argument from the coalface. Hopefully I can be of some assistance to you.

CHAIR—As you would have heard from some of the previous exchanges, whilst there are a lot of issues obviously floating around to do with copyright music, record and CD production and the like at the present time, our focus is on one or two particular issues relating to this question of the use of music in small business. I will ask you the same question I have asked other witnesses. The proposal that is being put forward by APRA would adopt the Canadian model of, in effect, exempting small business from paying licence fees and then the licence fees paid by radio broadcast stations being adjusted up accordingly to ensure that the income that would otherwise have been lost by the recording artist is, in fact, maintained. Do you have a view about that?

Mr James—I have a couple of views on that. One is that it strikes me as being a very simple solution that could take a lot of heat out of the argument so we can all get on with business. The bit that I resent is that small business is allowed to get away with something that really they are not entitled to. If they get away with it believing that they are within their rights to do so, I think a miscarriage of justice has taken place in some form or another.

Copyright is a key issue in my industry, as it is in the visual arts, and if you wanted to make some comparisons, I think the visual arts is the best industry to look at. If a shopkeeper, whether it be a fish and chip shopkeeper or whatever, has a painting hanging on the wall, he would have had to pay for it. If he has access to every recorded song in the world free of charge, I do not quite see how he can justify that. At $37 a year, it is not as though he is really being charged a great deal of money.

On the administrative process of picking it up, it has taken APRA a long time to get to the point where they have even attempted it and I take my hat off to them for trying. But getting back to what I first said, if radio pays, that is a simple solution. I do not know how much money is involved and what increase in fees that will represent for radio. I think that will be your key issue.

CHAIR—We have some sorts of ball park figures on that, but I do not think they are necessarily

accurate because we have not gone down that track of looking at the actual detailed figure and, in a sense, that is not necessarily an issue for us. It is an issue for those determining the licence fees, should there be a change. Can I just pick you up on the comment about having access to every record that has been made in the world. In a sense that would not occur because it will only be what is played on the radio.

Mr James—There are a lot of different channels and you can flip from channel to channel and choose the one that is playing the music that you like, or you can jump up to the $57 licence and have a CD player.

CHAIR—There may be some small businesses that do rely on the radio just for personal enjoyment, but I suspect that where music is played it probably tends to be cassettes or tapes which are used for ambience as much as anything. In those circumstances, the recording artists are still going to get their licence fees.

Mr James—Sorry, I missed your point.

CHAIR—What I am saying is that if the real use being made or the predominant use or the primary use of playing music in a shop or a store or something like that is to create ambience, that is more likely to be done by the use of CDs or tapes rather than with a radio station that has an announcer coming in every now and again and all sorts of other interruptions to the music. In those circumstances, a licence fee would still be charged and therefore there would be a return to the musicians.

Mr James—I have got personal examples of both. There is a fish and chip shop down the road. I walked into the shop about six months ago and a friend of mine, who is the shopkeeper's accountant, was doing his paperwork. They had the invoice from APRA and they were very upset about it. Somebody walked in that was from the music industry that they knew, so I was grabbed by the ear and dragged over and had to give a full explanation of why and how. It took me about an hour and a half. By the time I left, they were still saying that they were not going to pay, but at least they finally understood why I might think that they should.

We finally agreed on what the best solution was. Because the fish shop guy was saying that he did not care if his customers could hear it or not and that he had it on for his own personal enjoyment, I suggested that he turn the stereo around so it faced him and not the customers and then that would surely take the argument out of it. Again, I do not envy APRA having to deal with people like that.

The other example I have got is in Nhulunbuy where my band comes from. Up until within the last two years, there was one coffee shop for the entire community and that guy is a multi-millionaire. He plays radio and he plays CDs and jukeboxes and he pays no APRA fees whatsoever. I deeply resent that. I know he makes about 10 grand a year out of the jukebox alone, and I have taken the opportunity today to give his address to the APRA people.

CHAIR—If we were to go down the road that APRA is proposing of exempting radio, your coffee shop owner in Nhulunbuy, as long as it is enforced, is still going to be liable anyway to the licence fee. As I understand the licence fee, he will be liable for the category which includes jukeboxes and not just somebody playing their little CD.

Mr James—At the end of the funnel, what you seem to be discussing is what is caught up in the filter on the funnel and is causing a little bit of trouble. Your radio solution is a simple solution. It is not, in my mind, the fully correct solution in terms of the ethics of it. I really would resent it if that fish shop guy thought he did not have any liability whatsoever—music was just free for him to use at any time—because that is just not correct, in the same way that you cannot appropriate people's paintings or photocopy people's written work or a variety of other possible uses of copyright that he might want to use. In terms of our country and the way people think about things, it is important that that is established correctly. In terms of the mechanics of trying to collect $37 from fish shop people, it is a big job.

Mr MUTCH—How do you think you would react if he also received a letter from the Phonographic Performing Copyright Association asking for another licence fee?

Mr James—And then the CAL people and in another 10 years there will probably be another three organisations—who knows?

Mr MUTCH—Do you think it would be better if there was only one organisation that handled music?

Mr James—Copyright is far more complex than that. When I first got into the industry it took me a few years to come to terms with it to the extent that I have now. I fully recognise that most people just do not understand it; it is a brick wall. That does not mean that they should be exempt from it. There are various issues and aspects of copyright and these organisations that have been created have got their own individual functions. To try and sort of join them together in my mind is like trying to join a record company and a publishing company. That is automatically to the detriment of the artist rather than to the benefit of the artist, and I have to represent artists. I would rather these organisations were separate, looking after their own concerns and aggressively doing that.

Mr MUTCH—I am not sure why they need to be separate bodies. Couldn't they adopt a common or cooperative approach? You can understand that the end user comes to us and they think that when they get a letter from APRA they think it might be a fake organisation so they check that one out. Then they get another letter from another organisation, and they are sure it must be a fake.

Mr James—Perhaps we could have a centralised billing system but, in terms of the administration of the various copyright issues, I am not in a position to really give you too much advice on that. The people from APRA could best tell you what their role is versus the various other organisations. I can see your point. The shopkeeper gets three invoices in a year and it is all adding up but, to be honest, it is not a lot of money. In total it might be $100 and they can play the music 24 hours a day, seven days a week: it is still a good deal.

Mr MUTCH—They might be apprehensive that it could be the thin edge of the wedge as well.

Mr James—And I guess we are apprehensive that this is the other way around: you give them one break and they will keep pushing for more. Instead of it just sitting here, then you will have bigger business starting to try and do it. You talk about ambient music and lift music and so forth. In my experience, lift music is paid for. You do not have a big building and have music running through the lifts and expect to do

it for free. Maybe the next step is that people will start fighting for the fact that they do not have to pay any rights at all, and that would definitely be a bad move.

In terms of APRA's role for musicians, I can say that in terms of my band's experience, our average costs were around $200,000 to $250,000 to make an album. We had one that cost $400,000 and still has not recouped. It is still $250,000 behind. You never really know if you are going to get any income from your record sales and so forth and, even if you do, you might have lost so much on the previous one that it is all balancing out.

The songwriters themselves are not necessarily all in the band. For somebody who has written three or four songs who is not touring with the band, so he is not making a wage that way, the only real form of income he gets at the end of the day is via APRA. I have seen these people hanging out for a month in advance of the cheque with some little thing going off in the back of their mind saying, 'There must be an APRA cheque coming soon,' and it finally turns up and it is $400 and you think, 'Big deal,' but they have a smile on their face because it has paid the month's rent and kept that person going. It is really important.

Mr McCLELLAND—How significant was copyright to Yothu Yindi and their development as a band?

Mr James—It is the core of our industry. That is what the music industry is about. He who owns copyright wins.

Mr McCLELLAND—It has enabled their development.

Mr James—It is the measurement of creativity.

Mr MUTCH—Were they able to benefit from the APRA cheques and so forth? Would that keep them going?

Mr James—I would not say we get paid that much from APRA that it keeps us going, but it is certainly enough to be significant, even when your sales and your tours and the various activities that increase your APRA income are down. Maybe I can clarify that point in another way. When a musician signs with a publisher—which most end up doing—APRA's money is not all just automatically sent to the publisher and then deducted. APRA actually sends cheques direct to the songwriter and that, effectively, keeps a lot of songwriters alive.

Mr MUTCH—What sort of percentage of the business would it be? Do you have any idea?

Mr James—It would be 10 per cent.

Mr McCLELLAND—What about the PPCA? Do the band members themselves get cheques from them?

Mr James—Not to date. At the moment we are caught up in a contractual situation with a record

company that means we are being accounted to about four years in arrears.

Mr McCLELLAND—But if that is sorted out you would expect—

Mr James—Yes. We have joined and we have all the paperwork. I am confident that one day, when I have enough spare time to be able to go through it all, the money is there and we will get it. That is not a concern. At the moment we are lucky enough to still have our nose out of the water. I am trying to cook bigger fish and all that sort of stuff.

Certainly once a band slides off the scale of popularity to the point where record sales are down to 10 a week, then these organisations become very important for the individuals involved. That is the majority of bands and the majority of musicians.

CHAIR—Is it fair to characterise the payments from APRA? Is it like a basic wage for many musicians and songwriters?

Mr James—Songwriters only. It relates only to songwriters. A basic wage is probably a little bit too generous. It is not that much. Most musicians are very poor.

Mr MUTCH—Yothu Yindi is an internationally renowned band. Are you happy with the system of payments coming back from overseas? That is the rationale for the whole thing.

Mr James—Yes, very happy. That is why APRA is significant to us. We have toured 27 countries in the world and there is an income stream that comes in maybe 1½ or two years later, but it is working.

Mr MUTCH—I presume your sales would be significantly higher internationally than domestically.

Mr James—In numbers, yes, but in income, no—interestingly enough. Australia is actually our strongest market. It is not for want of trying, and we have not given up. We are going to Germany on Monday and we are back at the coalface. We are playing for the President and the Chancellor of Germany next Friday, and moving out from there.

CHAIR—Is he paying the royalties?

Mr James—Let us hope they pay APRA.

Mr KELVIN THOMSON—I think we have heard a lot of helpful observations this afternoon. I suppose on the issue with radio some of the witnesses were saying that, yes, the playing of music is one function of listening to the radio but there are others. In Darwin, people might be wanting to hear about the weather, cyclones, et cetera.

Mr James—That is the fish shop guy trying to get out of his $37.

Mr KELVIN THOMSON—Seriously, you can say to them, 'You don't have to listen to the radio.

You don't have to pay the $37.' That would amount to a substantial inconvenience, given the other functions that radio and TV perform.

CHAIR—Is it such that, if they can prove they are playing it to listen to only the news and the weather, they would have to pay an APRA fee?

Mr KELVIN THOMSON—They are not suggesting that that is the only purpose for which it is used, but it is suggested that to say to them, 'You don't have to pay the money. You could not listen to it,' does represent some hardship.

Mr MUTCH—I guess the answer to your question is that you have to pay the fee.

Mr James—My experience is that if the fish shop guy said to APRA, 'The stereo is facing me. My public can't hear it. It is for me,' they are going to say, 'Fine, you are exempt.' That is my total understanding of it. I have asked APRA about that, and they have agreed that that is the way they would do it. If you are talking about a situation where you have two JBL speakers and they are blasting out at 80 dB and it is really good quality sound and everyone is in the cafe environment and having a great time, then it is a part of the environment so I do not see how the person has an argument.

Mr KELVIN THOMSON—It is clear that there is a wide gradation of things, from one end of the scale where a mechanic has a radio under the car while he is working there to the full sound system for many employees or for many customers and performing an essential retail function. We are interested in something that is not too complex and not impossible to put into practice, that will do justice to that variety of situations.

Mr James—I think you are always going to end up at a point where there is going to have to be some discretionary allowance, or there is your other alternative, which is just forget it altogether and get the radio stations to pay for it. I can see a lot of situations such as an employer, for instance, saying, 'You will listen to radio Triple J all day,' to the employees. 'I'm going to have it on and you are all going to listen to it whether you like it or not; I want to know what is charting well at the moment at the end of the day,' and things like that. That is certainly a tool of trade.

I have got the radio playing in my office. I, in fact, do not pay APRA fees. I would have to admit, if I was asked, that it is a tool of trade. I am listening to the radio to hear what is going on.

CHAIR—Mr James, thank you for coming along today and discussing the matter with us. We appreciated that.

Mr James—No problem.

Committee adjourned at 5.02 p.m.