HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Reference: Copyright, music and small business

CANBERRA

Thursday, 4 December 1997

OFFICIAL HANSARD REPORT

CANBERRA

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Members

Mr Andrews (Chair)

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

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

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

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

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

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

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

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

(f) the likely future technological or other developments in

(i) the playing of music in public; and

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

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

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

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

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

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

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

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

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

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

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

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

WITNESSES

HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Copyright, music and small business

CANBERRA

Thursday, 4 December 1997

Present

Mr Andrews (Chair)

Mr Barresi Mr McClelland

Mrs Elizabeth Grace

The committee met at 10.08 a.m.

Mr Andrews took the chair.

CRESWELL, Mr Christopher Colin, Assistant Secretary, Intellectual Property Branch, Commonwealth Attorney-General's Department, Robert Garran Offices, Barton, Australian Capital Territory 2600

DANIELS, Ms Helen Elizabeth, Senior Government Lawyer, Copyright Section, Intellectual Property Branch, Commonwealth Attorney-General's Department, Robert Garran Offices, Barton, Australian Capital Territory 2600

CHAIR—I declare open the public hearing of the committee's inquiry into the licensing of copyright for the playing of music in public by small businesses. I welcome witnesses and any members of the public and others attending this meeting. The subject of the inquiry is the law under which royalties can be collected from small businesses for the use made by them of copyright materials, consisting of playing music on commercial premises. This is the last hearing that we will have for this year. We expect to have some further hearings next year.

I welcome the witnesses from the Attorney-General's Department. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament.

We are in receipt of the submission from the department of 26 November 1997. Before asking if you would like to make some introductory comments in relation to it, I must apologise and advise you that another matter will arise at 10.30 a.m. at which a number of members of the committee have to be present, and so I will need to adjourn the hearing then, hopefully for no longer than about half an hour, for that purpose. I am sorry about that, but the matter has just arisen. Would you care to make some opening comments now?

Mr Creswell—Mr Chairman, we do not really have any opening comments of substance, because we would refer the committee to our submission and merely affirm that we are happy to assist the committee in answering questions within the capacity of our knowledge and expertise. Perhaps I can just confirm that the Intellectual Property Branch, which we represent, is responsible for assisting the Attorney-General with his portfolio responsibility for the Copyright Act l968, and that includes responsibility for Australia's membership of international conventions relating to copyright.

CHAIR—Thank you, Mr Creswell. You may be aware that, in effect, a proposal has been put to the committee by APRA, supported by various small business associations, that we adopt a legal position in Australia similar to that which seems to apply in Canada: namely, where music is played by way of radio in business, that there be no royalty fees paid in relation to that but that there be an adjustment of the fees paid by the broadcasters for the playing of it by the radio stations in the first place.

I wanted to ask you about that. It was submitted that that is the situation under Canadian law. Firstly, are you aware of the way in which the Canadian law operates and the background to those provisions? Secondly, is the Canadian law consistent with our international obligations?

Mr Creswell—Mr Chairman, as you would understand, our knowledge and interpretation of the

Canadian legislation is necessarily imperfect. It is a matter ultimately for Canadian lawyers to understand and explain where it applies. Indeed, even this morning in a chance conversation with some other persons, the incomplete nature of our knowledge of the Canadian law was brought home to us—not that we ever intended to put ourselves forward as experts on it—and so we can only give a qualified response to your question about what the Canadian law does.

That is related to the question that you also raised as to what the requirements of international obligations are. Again, we are not satisfied that we have completely accurate information on the extent of Canada's international obligations. To demystify what I have just said or to give it some reality, there have been successive revisions of the Berne Convention, the original act of which is over 100 years old. Certainly, to my knowledge, at least until recent times Canada was a member of a version of the Berne Convention earlier than the one of which Australia is now, and has been for some time, a member. Australia is a member of the current Paris 1971 act whereas Canada—at least until recently, if not now—has been a member of an earlier version. This would have consequences as regards Canada's obligations in relation to public performance rights.

As to your question about the Canadian system, if indeed that is the Canadian system, of making broadcasters responsible, or at least liable, for public performance by turning up the radio receiving their broadcasts, I would refer you to our submission where we referred to the Spicer committee report which really said it quite succinctly. That is in paragraph 15 and, more particularly, paragraph 43 of our submission. Effectively, the Spicer committee felt that there was a problem with imposing liability on broadcasters for the use by somebody else of their broadcasts to publicly perform the works being broadcast, namely, that the broadcaster had no control over that and also that it did not seem necessarily right that the sources of their revenue—advertising or, in the case of public broadcasters, the public purse—should be expected to bear the additional cost of royalties for the operation of a set receiving that broadcast where the person operating the set was somebody else, distinct from the broadcaster. Does that address your question?

CHAIR—I was going to come to that. I understand your difficulty in not being able to comment conclusively on provisions of various foreign legal jurisdictions. Let me put my question another way. If Canadian law provides this sort of exception and there are some exceptions in the United States law—in fact, there is a bill, as we understand it, before the Congress that would widen those exceptions for small business—is it reasonable to assume from that that that approach is consistent with the general provisions of the international instruments?

Mr Creswell—If I can answer that in two stages, in the case of Canada I have to qualify it again because I am not sure which act of the Berne convention—

CHAIR—Do not bother qualifying anything else. I will accept that what you say about overseas law is subject to the qualification that you have—

Mr McCLELLAND—Basically we are asking you whether you think it is a good idea or not a good idea.

Mr Creswell—In the case of the US, where I know that they are a member of the current act so they

have exactly the same obligations as us, I can proceed straight to the substance of your question. I understand that there are bills in the US Congress providing for various exceptions. I also understand, but I do not actually have the papers here, that when the Copyright Office—which is the equivalent to the Intellectual Property Branch, responsible for copyright policy—has been asked for its opinion by Congress it has advised that this bill, if enacted, would risk putting the US in noncompliance with its international obligations. From what we know of this we would have agree with that. Such substantial exceptions, like carving out a particular category of users of music from what is admittedly a public performance, would really risk noncompliance.

Mr McCLELLAND—But would we be carving out a category of users or deeming the fee to have been collected on their behalf?

Mr Creswell—We may be at cross-purposes here. I understand that with these proposals—and I am sorry I am not more specific about the proposals—the US Congress did not intend to transfer the liability from some category of small businesses to radio broadcasters. I think it was just to say that this category of small businesses would not have to pay any royalties, full stop, and neither would anybody else.

Mr McCLELLAND—I do not think we are suggesting that. We are suggesting that it be collected on behalf of small businesses at the point of the radio stations.

Mr Creswell—If the end result is that music copyright owners get equitable remuneration for what are properly to be regarded as public performances of sound recordings then the person made responsible for paying that remuneration is probably not a matter that would be dictated by international obligations. The convention is concerned with ensuring that the music copyright owners get equitable remuneration but there may be other considerations. There may possibly be constitutional considerations. We have already had a constitutional problem with a royalty scheme three or four years ago where the then legislation sought to impose a liability on manufacturers and importers of blank tape for paying remuneration to music copyright owners for home taping by consumers of those tapes and that was held to be unconstitutional.

We have not exhaustively examined this because that scheme was put into legislation without any reliance on international obligations whereas here we are implementing an international obligation. As there was a problem with the legislation with regard to whether it imposed a tax in reality, we would certainly look at that. The principle was that the tape manufacturers and importers were being asked to pay something for getting nothing in return, as far as the court was able to establish. They did not get anything directly for having to pay this royalty. If you analogise and carry that across here you may say that the broadcasters are being asked to pay something for no reward in return. I do not say that is a completely definitive analysis but it has to be taken into consideration.

Mrs ELIZABETH GRACE—One of the things that we have come upon is the confusion about what is a public performance. Most small businesses consider that if they are playing the radio in their workshop or in the background to keep them entertained and give them some information, and that type of thing, that this is not a public performance. Yet APRA say that once the radio is played outside the home—outside a domestic residence—it becomes a public performance. Many of the business people have expressed a view that they do not consider this as a public performance. Do you sympathise with this view? Do you have any

comment to make on that?

Mr Creswell—It is not really up to the department to say what is justified or not. It is a case of what the law has been interpreted to be by the courts. Our understanding is that the courts, over quite a number of cases, including a couple of recent cases at the highest level—namely, the High Court of Australia—delivered fairly clear indications as to what is a public performance and what is not. Our understanding is that it can consist of performance, in this case of music, in front or in the presence of a very small and select number of people—a handful of people.

But if it is in a commercial context—as Mrs Grace said, if it is for the entertainment of the people working in a small workshop, perhaps the copyright owner would say—the courts have endorsed this—that those are the circumstances in which the copyright owner would expect to be able to licence the use of his or her work, however small the collection of people. Use is being made in a commercial context of their music or, to put it another way, if it was not of any interest or value to the workers in this case, or perhaps people in a waiting room, they would not be playing it.

Going back to the original way of putting it, it is a commercial set of circumstances in which the copyright owner would expect to be able to licence the use of the works in that way.

Mr McCLELLAND—Has any thought been given to a system of registration of the collection agencies perhaps under the provisions of the Copyright Act? In other words, should that registration system be necessary or should the industry not be able to come together with their own code of practice, as a pre-condition to their carrying on their activities? Would that be something that would be workable or unworkable?

Mr Creswell—There are a couple of different comments that can be made in response to that. Firstly, the collecting societies—perhaps with the one exception of the PPCA, but certainly the APRA and non-profit corporations under the Corporations Law—have reporting obligations under that law, but I guess that relates to the management of their finances. I understand that Mr McClelland might be referring to the conduct of the employees of the corporation in licensing businesses.

Mr McCLELLAND—Yes.

Mr Creswell—It is possible that a registration system could be established. It would be taking copyright law as such into a new area—namely, regulating conduct, which perhaps relates to the common law of privacy or even the right under common law or state law to be on private property.

Mr McCLELLAND—For instance, in the Jambunna case, they determined that registration of trade unions, and hence regulating the conduct of trade unions, was incidental to the industrial relations power. It is arguable, I suppose, that registration of collection agencies for the purpose of collecting copyright fees could be incidental to that.

Mr Creswell—Mr McClelland has raised a very important point, and has perhaps raised it more squarely than I had in asking where is the power to do this? I referred to the Corporations Law and then said that that has its limitations relating to the financial wellbeing of corporations rather than the activities of their

employees. It could be quite strongly argued that as collective administration of copyright is increasingly the way to go for the practical workability of copyright, legislation regulating the activities of collecting societies could be sustained by the copyright power, because it has become the way to administer copyright.

How far that could go—as I say in regard to concerns about their conduct on private premises, or even using the telephone to contact people or sending mail, which of course, as the committee knows, has been the subject of a lot of concern about the nature of the mail communications that have been made by collecting societies—again, I suppose the post and telecommunications power could be relied on.

There are a lot of angles to be looked at, Mr Chairman, but how do I try and draw this together? I think it could be done legally, but I think there are a number of policy issues to be addressed as to how far the Commonwealth, as a matter of policy, would want to take copyright law in this direction.

CHAIR—Mr Creswell, I am going to have to adjourn the hearing for a short time. I do not think there are any other questions from the committee members, but I have one which perhaps you can take on notice. Would it be possible for you to look at the effect of the High Court decision in the blank tape case on a change to the law in Australia which reflected the Canadian provisions? That is, give us some advice about any problems or difficulties you may see arising if the Canadian provision was to become the law in Australia.

Mr Creswell—Mr Chairman, were you hoping that I might respond to that at a resumed hearing later today?

CHAIR—No. I was hoping you might respond to that in writing, Mr Creswell.

Mr Creswell—I am very relieved that that is your expectation. Would you like us to return after the—

CHAIR—No. There are no further questions, so I thank you for—

Mr BARRESI—Can I ask as well, in your reply to the Chairman's question, if you can also reply in that same letter—it may be included somewhere here, but I have not seen it—what right of redress do businesses, say, in the United States or Canada or some of these other nations, have if they are disputing the licensing arrangements with their own particular organisations?

I know that we are recommending an ombudsman of copyright and collecting services be established—I am not sure how far that goes and whether it is effective—but what else is happening out there internationally to appease these business people?

Mr Creswell—You want to know the right of redress that we know of in other countries?

Mr BARRESI—Yes.

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

morning.

Short adjournment

[11.19 a.m.]

BROWNE, Ms Kylie Elizabeth, Acting Director, New Technologies Branch, Intellectual Property Branch, Department of Communications and the Arts, 38 Sydney Avenue, Forrest, Australian Capital Territory

DANIELS, Dr Verna Kay, Assistant Secretary, Intellectual Property Branch, Department of Communications and the Arts, 38 Sydney Avenue, Forrest, Australian Capital Territory

CHAIR—I welcome officers from the Department of Communications and the Arts. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. We are in receipt of the department's submission of 27 November. Would you care to make some opening comments?

Dr Daniels—We would. The Department of Communications and the Arts welcomes this opportunity to address the committee on our submission and to amplify some of the comments in it. The submission focuses on two major areas: the concerns that have been expressed to our minister, the Minister for Communications, the Information Economy and the Arts by small businesses and, secondly, how these concerns might be addressed by recommendations that arise from the review of collecting societies, that is, the review known as the Simpson review of collecting societies. This was a review carried out by Professor Shane Simpson, a prominent intellectual property lawyer.

The department is currently chairing the interdepartmental committee that was established to look at the recommendations of the Simpson report. The IDC itself comprises members of the department of communications, the Attorney-General's Department, and representatives from the tax office and Treasury, the ACCC, and the Department of the Prime Minister and Cabinet.

Since submitting our submission, the IDC has met again on 26 November. So some of the things that I will be saying will be drawing on our latest discussions. At that meeting, a number of steps were agreed upon to progress the advice that we will be giving to government on the Simpson recommendations. This advice will include further consultations with collecting societies with a view to obtaining their in principle agreement to the development of a code of practice. We are about to arrange a further meeting with collecting societies in January to look at the development of a code of practice which would involve all of the collecting societies.

I will address the two areas that I mentioned at the beginning. Since APRA began its licensing campaign, our minister has received over 130 representations about the licensing of small businesses for the playing of music on their premises. Let me just give you an indication of the content of some of those representations. They have raised a number of concerns. Approximately 75 per cent of those representations related to the legality and the fairness of collecting remuneration for playing music on business premises. That was by far the most important area covered in the letters.

The need to obtain licences from both APRA and the PPCA arose in approximately five per cent of the representations. The manner in which the collection societies have approached small business to obtain licences was raised in about 10 per cent of representations. Whether funds collected are actually provided to the relevant music copyright owners, given the collecting societies' administrative costs and the difficulties inherent in contributing those funds, was a matter raised in about 13 per cent of representations.

I would like to spend the rest of the introductory remarks talking about the Simpson report itself and how some of the matters raised there may go some way to alleviating the concerns of small business. By way of background, the Simpson report was launched by the former Minister for Communications and the Arts in mid-1995. It was the fulfilment of a commitment made by the former government in its 1993 cultural statement 'Distinctly Australian' to review the role in the accountability of copyright collecting societies.

The Simpson review arose out of concerns amongst copyright users and individual members of collecting societies about the efficiency of the societies, and also out of a general uncertainty in the community about the nature of collecting societies themselves—their bases and their operation. It was considered that, in assessing the future needs of copyright administration, it would assist government to have more detailed and concrete information on the administration of copyright societies themselves. The Simpson report was based on an examination of overseas literature, submissions from a wide range of bodies, and a number of discussions and contacts. The chair of the review also drew on specialist advice from a number of areas.

The report provides extensive and detailed material about the societies themselves. This was seen as important, given that one rationale for the review was the absence of any readily available source of detailed information about the societies, and I think we could say in some ways that the Simpson report provides a handbook and guide to collective administration in Australia. The report provides a review of the basis, corporate structure, history and operation of the five major copyright collecting societies. It included 37 recommendations to government and 69 recommendations to the societies themselves. The department's submission has identified four key recommendations arising from the review, which we think are particularly relevant to the current inquiry; and I would like to run through those very briefly.

The first key area is increased education and public relations programs for collecting societies, and we believe that this would have the capacity to provide small businesses with information on the legal and commercial basis upon which remuneration is collected for the playing of music. Such programs could also address the manner in which APRA and the PPCA approach businesses about the need to obtain relevant licences. As we noted in the submission of the department, APRA and the PPCA have already appointed public relations officers in response to the recommendations in the Simpson report. However, it may be that their public relations and information campaigns can be improved.

Standards for information provided to potential licensees could be provided for in a code of practice that is worked out in consultation with users. We believe that, as a minimum, all exceptions to payment for the playing of music should be clearly delineated, as should the possibilities for lodging complaints and access to mediation, in any publicity and education information that is provided by the societies. Bodies representing users, particularly general bodies and peak bodies, should also be kept informed of the material sent to their members.

The second area is cooperation between collecting societies, particularly between APRA and the PPCA. We believe that cooperation between collecting societies may remove the need for small businesses to be approached twice for licences to play music. We understand that both APRA and the PPCA have cited possible objections from the ACCC as a reason for not proceeding down this path. We suggest that cooperation between societies need not involve unwelcome and enforced mergers between societies—and the ACCC, I think, was most concerned with that aspect of cooperation—but that it could simply involve coordination, particularly of their approaches to small business. For instance, APRA and the PPCA could combine the material they provide to small businesses for soliciting licences and could send it out under a single covering letter, including an explanation of the different coverage and licences of the two societies.

We would not expect cooperation at that level to encounter any difficulty with trade practices legislation or with the ACCC. As I mentioned before, the ACCC is a member of the Simpson IDC, and preliminary advice from their representatives on the IDC confirms that view. The ACCC notes that APRA and the PPCA are not competitors in this instance, as their respective licence coverage is quite different. These are really matters for the ACCC to comment upon, but I felt it would be useful to report the discussion that we have had at the IDC itself.

In the third key area that the IDC is considering in response to the Simpson report, it has agreed to explore the possibility of a code of conduct for collecting societies in general. It is proposed that there will be a meeting with collecting societies in January to gauge their reaction to this proposal, and we have not had the opportunity to discuss this proposal with all of those societies.

To minimise government regulation and cost to industry, the IDC favours a voluntary code administered by industry, in the first instance. We believe that such a code could be reviewed after a period of two or perhaps three years, to determine whether it is working to the satisfaction of copyright users and members of collecting societies, with a view to making the code mandatory or enforceable under legislation—either under the Copyright Act or under the Trade Practices Act—if users and members are dissatisfied with the general operation of the code or with the level of compliance. The view of the IDC is that light-touch self-regulation within the industry would be a useful first response, with other possibilities after a review, if that were shown not to be working satisfactorily.

The code would be designed to meet the ongoing concerns of both copyright users and members of collecting societies. It could address such matters as the distribution of funds to members and methods of collection from small business and other users. A code of conduct could also make provision for mediation and dispute resolution between small businesses and collecting societies. It is envisaged that such a code would be developed in consultation with all interested parties: the collecting societies, user groups and other relevant groups, with some government involvement.

In the fourth key area, the Simpson report recommended the establishment of an ombudsman of collecting societies—which could give both users and members of collecting societies an avenue for voicing complaints and concerns about the operation and the administration of collecting societies. We believe that this may be more appropriately addressed by a code of practice and proposals for mediation.

The final point that I would like to make on behalf of the department is about the proposal in relation

to the Canadian model. We understand that another solution to small business concerns that were suggested to the committee would effectively mean that radio broadcasters rather than small businesses would be liable for the public performance of music, and also that the Canadian legislation may be a model. We have no comments on that legislation or the legality of that process. We have not addressed the issue in our submission. While we have had some preliminary discussions within the department, we have had no opportunity to consult with the broadcasting industry. If the committee were to view this as a serious option, we would be happy to prepare a second submission, following consultations.

CHAIR—On the last point, you can take it that the committee views it as a serious option. Therefore, any further advice you would like to place before us would be appreciated. I say that in the context, which is on the public record, that it is a proposal put by APRA and seems to have reasonable support from the business community representing small business interests, in particular. I think I can speak on behalf of the committee when I say it is a serious option which we will give consideration to.

Thank you for your further comments and particularly for outlining the further deliberations of the interdepartmental committee. In relation to the deliberations of that committee, is there a time frame in mind as to when that committee might give advice to government?

Dr Daniels—We will be meeting again with the collecting societies for a second round table in January and following that we would move as quickly as possible to prepare advice for government.

CHAIR—Concerning the code of practice which you were speaking about, I recall that in relation to the discussions between the collecting societies and the ACCC there had been a stalemate reached with different proposals being put forward. Has there been any advance in relation to that? For example, you said the ACCC has been involved in the interdepartmental committee and that on some grounds there was preliminary advice from ACCC officers that a certain course of action would not offend competition policy principles. Has that gone any further?

Dr Daniels—Ms Browne might like to comment on one part of your question. I would just like to comment that the ACCC certainly sees no difficulty in proceeding towards a code of practice for collecting societies in general and would wish to be very much involved in developing the guidelines.

CHAIR—Before you move on, and this is my recollection of the evidence as I do not have it in front of me to refer to specifically, my recollection of some of the evidence that we had, and I think it was from the ACCC, was that there had been some difference of opinion between the ACCC and the collecting societies as to the nature of that code of practice.

Dr Daniels—The ACCC has been dealing with a matter with only one of the collecting societies, with APRA. What we are looking at is a code of practice that will involve all of the collecting societies. As far as I am aware, the ACCC did not see that there was any problem or handicap in moving in that direction.

Ms Browne—At the interdepartmental committee, the ACCC was in favour of the idea of a code of practice. They were also in favour of the idea of appointing a mediator, or the code of practice providing for a mediator, whereby users and members could go for dispute resolution in relation to licensing and other

matters of concern between the small business and the collecting society.

On that general level there is support from the ACCC. However, as to the nuts and bolts of what would be the powers of the mediator and when you could go to the mediator, I guess that would be subject to further development when we were looking to develop the nuts and bolts of the code. Certainly, the general principle of a mediator as part of a code of practice was supported by the ACCC at the IDC meeting and we will be putting that to collecting societies when we meet with them in the new year.

The advice from the ACCC just recently was that cooperation between APRA and PPCA in simply sending out their material under cover of one letter should not have any competition problems. They made the point that in this instance, APRA and PPCA are not competitors because APRA is simply licensing on behalf of the underlying rights owners and PPCA is providing a licence for the record producers, if you like. They are two separate areas, so they are not in competition with one another.

CHAIR—Can I just come back to the Canadian situation, because I think there is some potential confusion in the way in which that might be addressed. It has been suggested that adopting the Canadian situation would involve the removal of liability from the end broadcasters, if you like, the business owners. That would not necessarily have to be the case. Legislation could simply deem that the collection at the point of the radio broadcaster covers all subsequent broadcasts without necessarily removing the liability. In fact, it would seem to me, off the top of my head, that legislation could even set out that the liability had not necessarily been removed from the business owner as a matter of strict law but that it was deemed that the collection had already been made.

I was just reflecting on some discussions with the Attorney-General's Department that there was a thought that further exemptions would be made which might run into problems under international obligations. It seemed to me there is possibly a way through that that does not do that. I just mention that in terms of your response to it so that you are aware.

Ms Browne—But when we put this to broadcasters, are we assuming that broadcasters would end up paying a greater fee? I guess that is what it comes down to.

CHAIR—We are assuming that any royalties collected would represent the use made of the music which has been broadcast. You may say that I am not answering your question but I think I am, if you know what I mean. It would then be a matter for the body to set the fees that are paid by way of royalties by the broadcasters. I should say that we have not yet heard from the broadcasters, so presumably they may have a view about all of this—but they had better be quick.

Dr Daniels—That reinforces the need for us to consult with broadcasters—because of the relationship between our minister and the industry and also the ABC, SBS and community broadcasters. We will do that as soon as possible, but we would need to seek advice from within the department and from the minister before giving you another submission.

CHAIR—Yes, I appreciate that. I just wanted to outline that because it seemed to me there was some confusion earlier this morning that the only way you could do this would be to enact legislation which would

necessarily be in breach of international convention obligations. As I say, this is off the top of my head but it seems to me that that would not necessarily be the case. It seems to me there is a possibility that there could be legislation that does not breach our international obligations which would still achieve that outcome. I simply wanted to say that so that you were aware of that potential when preparing any further submission.

Mr BARRESI—Dr Daniels, could you explain one of the Simpson report's recommendations—I hope you can clarify it for me; I am not sure—on page 2 of your submission which states:

"that there be a multiplicity of societies so that individual societies can represent the disparate interests of the separate groups of rights owners."

Am I reading into that—and I could be reading it incorrectly—that we have a number of societies and therefore there will be a number of societies asking for a licence fee and therefore a small business person could very well have not just two people knocking on his door but four or five? I do not quite follow whether or not your committee has actually considered that recommendation.

Dr Daniels—I referred to five major societies, but there are a number of societies that collect on behalf of other sorts of copyright holders. Copyright Agency Ltd collects in relation to print and to text; and Viscopy, which arose out of the Simpson report itself, is concerned with visual representations. In relation to the playing of music, I believe that it is only APRA and the PPCA.

Mr BARRESI—So it is not making a recommendation that there be multiple societies in terms of the playing of music?

Dr Daniels—No, just that there are a number of other collecting societies collecting on behalf of other copyright holders in other media.

Mr BARRESI—Finally, in the second last paragraph of your submission you talk about the framework of codes of conduct perhaps falling under the new fair trading legislation that was passed in the House last night by the Minister for Workplace Relations and Small Business. Part of that legislation, if I recall, is that if a code of conduct cannot be agreed to, the government would consider legislating the code of conduct. Is that being considered by the groups as perhaps an incentive to develop their code of conduct so it meets the needs of the small business?

Dr Daniels—Yes, there was some discussion at the IDC about the nature of a code of conduct and about the new legislation and the relevance of it to this area. I think the general agreement of the committee at least was that, if after a period of time a voluntary code of conduct had not been working successfully, there were other measures that could be taken and this may well be an incentive to the industry to develop a workable code and to develop one within a useful timetable.

Mr BARRESI—This is the first time I have read it. I was not sure whether the legislation we passed actually covered organisations such as APRA and the PPCA. I thought it covered more franchising type codes. You are comfortable with the fact that legislation will affect the broadcasting rights and playing rights?

Dr Daniels—My understanding was that the legislation was not necessary for the development of a code of practice which could be done on a purely voluntary basis, but that it may well be useful legislation if we were to move into another stage.

Ms Browne—We would look at a voluntary code in the first instance and, if that was not working, look to make the code mandatory and possibly look at the Copyright Act as the appropriate act under which to make it mandatory or some other legislation—so not necessarily.

Mr BARRESI—So it could fall under the other act instead?

Ms Browne—Yes.

Mrs ELIZABETH GRACE—I just have one inquiry. You said that there were approximately 130 representations on APRA and you broke down what they were. Is that a fairly large number for you to receive on one particular item or is that fairly normal or you have had worse? What is the standard of the guideline?

Dr Daniels—I think that it is a substantial number.

Mrs ELIZABETH GRACE—By comparison with other complaints and things.

Dr Daniels—Yes.

CHAIR—I have a question that arises from that in a sense. Recommendation 6 of the Simpson report says that the anomaly that negates the public performance right in sound recordings applying to the use of broadcasts contained in the sound recordings in public venues imposed by section 199(2) be repealed forthwith. In light of the level of complaint that has been made in relation to the radio broadcasts and the comments made by representatives of the business community to this committee, would you envisage that there would also be a negative reaction to the implementation of that recommendation?

Dr Daniels—I think the feeling of the committee at the moment is that it would not recommend the endorsing of that recommendation at present but would await the outcome of this committee's findings.

CHAIR—The other matter is recommendations 4 and 5. As I recall, the PPCA made comments in the public hearings in Sydney about the one per cent limit and the half of one per cent limit levels, which are imposed under section 152. They were calling for the repeal of those provisions and I note that Professor Simpson has recommended that as well. Have you or the interdepartmental committee any preliminary views on that matter, that you care to share with us at this stage?

Dr Daniels—There are a number of matters that arose out of the Simpson review, that are being dealt with in other ways or have already been dealt with. That matter is being dealt with by a separate committee, which will be making recommendations.

CHAIR—Which committee is that, Dr Daniels?

Dr Daniels—That is another interdepartmental committee, chaired by the Department of Communications and the Arts.

CHAIR—And is that committee dealing specifically with the section 152 provisions?

Dr Daniels—Yes.

CHAIR—I am not sure to what extent that falls within our terms of reference, but the matter was raised with us and, therefore, I thought I would give you the opportunity to make a response, if you wished to.

Dr Daniels—Yes, that committee has been meeting and has not finalised its recommendations. A final decision has not been made. That is probably a more precise way of putting it.

Mr BARRESI—I want to raise the comment that you made before about the possible merger of APRA and PPCA: how the ACCC would not agree to it but that they could join in any publicity and promotional material. I would imagine that there is a vested interest there in terms of self-promotion, which is involved as well against that. From your knowledge at this stage, are they displaying a willingness to be part of some sort of joint effort in approaching businesses and in terms of literature and educational programs that they can use?

Dr Daniels—I understand that they are, but I do not know whether I can comment further. It might be a question best addressed to them.

Mr BARRESI—We will ask them. I thought, in terms of your own dealings, that you might have had some feeling of what the overall mood is between the organisations in regard to being cooperative in their efforts.

Dr Daniels—We would certainly hope to raise that in the meetings with collecting societies early in the new year.

CHAIR—I thank you for your submission. We would appreciate that further submission when you are able to present it to us. Secondly, we would probably appreciate having you back again after the response to the Simpson report has been tabled because, obviously, there may be issues arising out of that which we will wish to examine in the light of this inquiry. Perhaps we will make contact at that stage in relation to that. I thank you for coming along this morning and apologise for the delay, which we did not have much control over, and look forward to the further submission.

Dr Daniels—Thank you.

CHAIR—I thank all for their attendance here today and I also thank the parliamentary reporting service.

Resolved:

That the committee authorises publication of the evidence given to it at this public hearing today.

Committee adjourned at 11.54 a.m.