HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Reference: Copyright, music and small business

BRISBANE

Monday, 16 February 1998

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

Copyright, music and small business

BRISBANE

Monday, 16 February 1998

Present

Mr Tony Smith (Acting Chair)

Mr Price

The committee met at 10.08 a.m.

Mr Tony Smith took the chair.

PREECE, Miss Elysa Marie, General Manager, B105 FM Pty Ltd, 16 Campbell Street, Bowen Hills, Queensland

ACTING CHAIR (Mr Tony Smith)—Welcome. I apologise for being late. Due to a personal problem, I could not get here before now. Thank you very much for coming in. We welcome you, and any

people who are in the public gallery, to this hearing. We have had a number of hearings in relation to this particular issue all across Australia. They have been extremely useful in respect of the terms of reference of the inquiry and in getting the full background and feedback from all sides of this particular question. This will ultimately lead us to make a report after we review all of the evidence.

Because we are not legally constituted—pardon the pun—as a quorum today, the Parliamentary Privileges Act does not apply to evidence that is being given. I just caution witnesses in relation to that, because they will not be covered by legal privilege. However, the committee can, at a later date, authorise the evidence that has been given and, as I understand it, a retrospective conferring of the privilege. I am not quite sure of the legality of that, but anyway, that seems to be the position. Bearing that in mind, we welcome you. Would you like to make an opening statement?

Miss Preece—Yes, I would. My name is Elysa Preece. I am the general manager of B105 FM Pty Ltd, being a station owned by Austereo Pty Ltd. Austereo owns and operates 14 radio stations nationally. It encompasses both the Triple M and the Today radio networks and, as such, has stations in Sydney, Melbourne, Brisbane, Adelaide, Perth, Newcastle and a 50 per cent joint venture in Canberra. I have been with the group for six years. During that time I have worked in the Melbourne, Sydney, Canberra, Newcastle and now Brisbane markets. With the exception of Melbourne, I have worked in each market in my capacity as a general manager of the radio station.

I am here today because I understand that the committee wished to hear the views of broadcasters on a proposal that radio broadcasters pay to APRA the licence fees that businesses currently are required to pay where the business or its employees use the radio. Our company strongly opposes this proposal. I have no particular knowledge of copyright law, but I understand that, when the radio is played in a shop or a business, a public performance right may be involved. Again, as I understand it, this is quite different from the broadcast right, and the two have no overlap whatsoever.

The radio industry and our company already pay large fees to APRA for the right to broadcast music to the audience within the station's licence area. We already pay for the right to broadcast to all our potential audience. This proposal would require us to pay again to reach an element of that audience simply because they spend varying parts of their day at work or in a shop. That same audience also spends time listening to the radio at home or in the car. What about an employee who listens to a radio in the workplace but does so in the privacy of a personal office?

One of the advantages of radio is that it is a very portable medium. Obviously, broadcasters cannot dictate where people may listen to their radios. We have no way of knowing which people are listening to the radio in circumstances that might make it a public performance, or what stations people are listening to. They may listen to a music station, a news talk station or, indeed, a public broadcast station. They may listen to all three in any one day. In any event, APRA already receives money for any music contained in those broadcasts.

I understand that it has been suggested that these additional fees could be passed on to the station's advertisers. This is inappropriate for a number of reasons. In the first place, the radio advertising market is very competitive and extremely cost sensitive. It is not simply a matter of passing on the costs. It is doubtful

that any station in Australia could simply add a percentage to its existing rate card, at the very least without some considerable backlash from advertisers and probably a reduction in revenue. Added to that, it seems unfair that every advertiser would have to pay a levy on its advertising costs just so that those same business places that listen to the radio are relieved of paying a small annual fee to APRA. I believe that advertisers would be very concerned to hear that advertising rates were to be increased because it had been decided that radio should pay for these fees to APRA.

In summary, we believe that the proposal is unfair to radio broadcasters and to their advertisers, and we totally oppose it.

ACTING CHAIR—Thank you very much. You basically talk about the opposition, I suppose, to such a proposal. Is it on the basis simply of your being concerned about an increasing burden for advertisers; that it may frighten advertisers away? What are you particularly concerned about?

Miss Preece—That is certainly one of the concerns. I believe that, for instance, in a station such as B105—but also regional markets that I have worked in—there is already a very refined cost structure. To assume that we can simply add an additional cost on would be extremely inhibitive to the station. Therefore, the assumption that we can add it onto advertisers is, I think, an unfair one; but also the other element is that it does seem to me quite clearly to be a case of double dipping: we already pay for the right to broadcast the music.

Mr PRICE—I am not trying to pin you down, but can you give me an idea of the range of moneys that the right to broadcast costs?

Miss Preece—It is a considerable amount. I am reluctant to commit the actual amount paid by one station. I know that Gaye Wallace is representing the group and she could perhaps give you an indicative range for the group, so that it is not quite so sensitive; but it is a significant cost in our operation.

Mr PRICE—What is it based on?

Miss Preece—It is based on a percentage applied to our gross advertising revenues.

Mr PRICE—So the presumption is that the more advertising you get, the greater the reach?

Miss Preece—Yes.

ACTING CHAIR—In terms of the actual amount that you are paying to copyright collecting societies, can you give us some idea how these fees are calculated?

Miss Preece—It is based on a percentage of advertising revenues.

ACTING CHAIR—That is the only basis? You just said that, of course.

Miss Preece—Yes.

ACTING CHAIR—Do you have to give lists of what music you are playing and that type of thing?

Miss Preece—Yes, we do submit that information to APRA, and the percentage that is applied to gross revenue then depends on the extent of music in the relevant format.

ACTING CHAIR—Do you have any requirement to play Australian content?

Miss Preece—Yes, we do. Again, that is something that varies commensurately with a station's format. For instance, B1O5's requirement is that in excess of 25 per cent of the total music broadcast be Australian.

ACTING CHAIR—As to the picking up of this extra amount that is being collected from small business, as I understand it, we do not have specific figures. Is your view simply a general concern about that? If it is a question of the quantum of the amount, if it is spread across a number of other stations, is there a cut-off point where you would say, 'That is not so bad, but that is far too much,' or is it an in-principle opposition?

Miss Preece—Very much it is an in-principle opposition, as well as the economic impact to the station. I guess I look at both as contributing factors; but it certainly is an in-principle opposition in that I believe it is duplication of fees that as a broadcaster we are already paying, and paying quite substantially.

ACTING CHAIR—As you may be aware, the background to this is that there have been a number of complaints from small businesses in my own electorate and many other members' electorates about the imposition of having to pay a licence fee in order to listen to the radio. That is a very strong thing that is coming through, particularly where it is not an entertainment situation, and the music is purely for staff members. Sometimes, in the case of one hairdresser in a shop or a single operator, having to pay a levy is particularly galling. You probably have sympathy for that view, do you?

Miss Preece—I will impart some of my personal experience in responding to that, and this has been in my role as a general manager in four markets over the last three and a half years. Something that I was particularly exposed to in the smaller markets, such as Canberra and very much Newcastle, where I responded to those complaints personally—and they would be small businesses calling the radio station to inquire about this issue—was that the discussions that I have had with people who called the stations reflected very much that the manner in which they were suddenly made aware of this requirement really tended to get their back up more than anything else. I found in every case that, as a result of a rational discussion with them—without going into the details of copyright, because I am not an expert—and the fact that somebody was prepared to talk to them about this issue and to explain how it had come about and that it really was not the responsibility of the radio station, at the end of those conversations, those small business operators agreed that, at the end of the day, it is a $40-a-year fee. It is actually not the amount; it is the principle and the way that they were informed to which they have really taken umbrage.

ACTING CHAIR—Can you also comment on this aspect? There is an argument, is there not, that the more you encourage small businesses to play the music, the more your station and advertisers are given a plug. If there is this disincentive in the form of the licence fee, they may say, 'I am turning the radio off, and

that is it.' Do you see how it can cut both ways? You have an interest in encouraging them to do it, and it in turn may provide a greater market share for you if they do do it. If they, as it were, cut their losses and say, 'The radio is off,' you suffer and APRA suffers as well. Perhaps there is a bit of give and take, is there not?

Miss Preece—It is an interesting suggestion. I will respond by saying that our listeners' at-work listening comprises one element only and there are three main elements, none of which are mutually exclusive. Of the three, at-work listening is certainly a very, very distant third. Predominantly, the strongest area for us is listening at home. Second is in-the-car listening. I guess what I could say is that at-work listening, I believe, complements listening habits of a listener who is already attuned to the station both at home and in the car. I think for radio more than any other medium there is a loyalty factor. In the first instance, that is built is up very strongly with at-home listening. You mentioned before that quite often listening at work can be in the form of, for instance, a hairdresser who is there by herself, quite often for most parts of the day. To me, it is difficult to distinguish that from listening at home if it is listening in a personal environment. But I guess fundamentally it gets back to how is that different, for instance, if they are to play CDs at work. Why is the responsibility with the radio broadcaster to again pay for that performance right?

Mr PRICE—There is a problem, isn't there, in getting accurate ratings for radio stations because of the number of radios. Is that not the case? I am just trying to think of how many radios I have at my home, and I have lost count. There are a few.

Miss Preece—Sorry, when you say that there is a problem with—

Mr PRICE—Getting accurate ratings about which station is the most listened to and by what audience, because of the huge number of radios.

Miss Preece—Yes, I guess the system that the radio industry has is as accurate as we can possibly get it.

Mr PRICE—No, I was not—

Miss Preece—I guess you are right: there are a number of radio stations in any one household and, in fact, in any one household there will be different loyalties to different stations.

Mr PRICE—There could even be conflict. We could help family law by banning radio, couldn't we?

Miss Preece—You never know, but I think that, at the end of the day, what we try to do is define the listening habits of each person who is actually given a diary in the survey period. So regardless of whether somebody else in the household listens to a different station, the listening habits of that one person are what is defined.

Mr PRICE—The big music stations are the FM stations, aren't they?

Miss Preece—Yes.

Mr PRICE—Am I right in thinking that there was a huge up-front licence fee charged for people to get those licences?

Miss Preece—Yes.

Mr PRICE—Did any of that money go back to artists or to encouraging Australian performers?

Miss Preece—It is an area that I am not entirely sure of so I really could not answer that. I do not know. Obviously, we paid the fees for the licences. How that was distributed, I do not know.

Mr PRICE—Again, is there an ongoing fee to maintain the licence? Is there an annual fee?

Miss Preece—Yes, we do pay an annual fee to the ABA as well as ongoing fees to APRA.

Mr PRICE—What is that fee used for? The one to the ABA?

Miss Preece—I do not know I am sorry. I cannot answer that.

Mr PRICE—Are you able to give me an order of what that fee is or should we use the same methodology?

Miss Preece—Again, I think, probably apply that on a group basis. On a station-by-station basis, it is quite sensitive because anyone who knows the formula can then work out what our revenues are.

Mr PRICE—By then, work out—

Miss Preece—Yes.

Mr PRICE—Obviously, APRA is suggesting that, contrary to what you are saying, there is an elasticity about advertising costs. Have you got any examples that you could share with the committee that would reinforce your view that advertising on radio is not priced right?

Miss Preece—In that-

Mr PRICE—Where fees have gone up and dollars have gone down.

Miss Preece—I guess that I can say on a day-to-day and week-by-week operating example, I am very conscious of just how sensitive we, in fact, every market that I have been in, how sensitive we are to rate. I think that that sensitivity is, in fact, only going to increase with the introduction of new licences. I think that, particularly from here on in we will be under ever increasing pressure from advertisers. There is very little elasticity and it is very market driven.

Mr PRICE—Over the last five years on average, on an industry basis, what has happened with advertising? Has it gone up according to the CPI? Is it static? What has happened?

Miss Preece—It is probably not a question that I can give a general answer on, I guess, because I have been in a different market really every year now for the past five or six years.

Mr PRICE—Are you going to settle down now?

Miss Preece—Have hair drier, will travel. Certainly, on a market-by-market basis, it varies quite dramatically. I can certainly remember some years—and I refer to the Newcastle example, which was for me 1996-97—when the market declined substantially over the prior year. Obviously with that, advertising revenue has declined.

Mr PRICE—And within the rate card, has that declined as well or was that status maintained?

Miss Preece—Certainly in a competitive situation, the rate will not be as strong as you would have been able to get in a buoyant market. Definitely, that is the case.

Mr PRICE—Is there an association that we could get that information from on a state and national basis?

Miss Preece—In terms of rates?

Mr PRICE—Yes, just to see what has happened.

Miss Preece—Probably not. The industry itself does collate in some markets through Price Waterhouse. It shares rate information on a station-by-station basis. We do not do that here in Brisbane. I believe in Melbourne and Sydney they do share rate information, but again it is within the operators.

Mr PRICE—There are some advertising agencies that specialise in putting radio ads to air. So if we were able to contact one or two of those they could give us a feel for that, if they were prepared to?

Miss Preece—Yes, they could. Most agencies deal with all media, but they certainly could give you some indication of just how rate driven the markets are.

Mr PRICE—Thank you.

ACTING CHAIR—Just in terms of the current position ratings wise, how is B105 going?

Miss Preece—B105 is No. 1 and has been in this market—

ACTING CHAIR—For some time?

Miss Preece—Since 1990.

ACTING CHAIR—Does that position influence you at all in the way that you view the proposal or the suggestion by APRA that you play a part in ameliorating the problem of small business?

Miss Preece—No, it does not. On the one hand, my personal view has been formed—I will not say over six years but certainly over three or four years—ever since I have been a general manager and have received feedback from the business community. On a personal view, no. I have been in Brisbane and, in fact, general manager of B105 for only six months. So probably of any of my experience, B105's position has had the least impact on my view, and I absolutely endorse the company's view.

ACTING CHAIR—Would you have any sort of idea of whether there is an alternative to the APRA suggestion that maybe radio stations should be able to collect this extra amount? Apart from your suggestion that you have discussed it with small business people, I can tell you for everyone you have said that to I can give you 10 others who would say that they do not want a bar of it, even having explained it to them.

Miss Preece—Yes.

ACTING CHAIR—Do you have any view about whether there is somewhere in between we can go?

Miss Preece—As I said, my view is based only on my personal experience and I have found in every case that I have had that discussion with small businesses that they have said, 'Look, at the end of the day, it is only $40 a year.' So I guess I do not have a view that represents any sort of compromise which would involve radio, once again, paying additionally.

ACTING CHAIR—Thank you very much for your evidence, Miss Preece. That was very good.

Miss Preece—Thank you very much.

[10.35 a.m.]

SMITH, Mr Neil David, Executive Officer, Fitness Queensland Association Inc., Office No. 6, Level 1 Sports House, Cnr Caxton and Castlemaine Streets, Milton, Queensland

VAN LEEUWEN, Mrs Cheryl Ann, Member, Fitness Queensland Association Inc., Office No. 6, Level 1 Sports House, Cnr Caxton and Castlemaine Streets, Milton, Queensland

ACTING CHAIR—I welcome you to give your evidence today. You heard what I said before about the privilege aspect. Just bear that mind. I know that you are not going to launch into a defamatory attack upon anybody, but we are always fair game, aren't we, Roger? Apart from us, obviously bear that mind. Thank you very much for coming.

I notice that you have supplied some papers to the committee secretariat this morning. We thank you for that. Is there an opening statement that you would like to make?

Mr Smith—Just to inform you that we are from Fitness Queensland. We are the peak representative body to the government for the fitness industry and this encompasses gym and fitness centre owners, fitness leaders and trainers and the providers of services or products to the industry.

Mrs Van Leeuwen—Fitness Queensland or its members believe that there may be a case for music fee collection where the playing of music is proven to be of commercial gain and that the current system of music fee collection is inappropriate, inadequate and unjust. I will explain those.

Without written evidence, I believe through my involvement with APRA and our fighting of a case with them in the Copyright Tribunal, that in Japanese and American copyright Acts small business operators are exempt from copyright payments where the playing of music, both from a primary source, for example, a CD, or a secondary source, for example, radio or TV, does not bring any commercial gain. Copyright holders are remunerated, as they are currently in Australia, by broadcasting licence fees and recorded music sales.

If this is the case, is it not inappropriate that these fees still exist in Australia, especially when copyright groups are collecting from broadcasters and through music sales? We believe that the indirect public performance of music through primary and secondary sources—which are readily available to customers, staff and members free to air in their own homes or offices—when not played for commercial gain, for example, in the gymnasium area of a fitness centre, be exempt from copyright fees. We did have a question to ask about the proposition by APRA in relation to the Canadian model. That has been answered, so that has obviously been proposed. We are obviously in support of that.

I also refer you to the submission of Mr Nathan Shafir of Peninsula Sports and Leisure, Seaford, Victoria, which you have there, where he quotes from our industry's affidavit to APRA and describes the various types of classes available to the public at fitness centres as further proof of how inappropriate the current system is and the fitness industry's claim that music is not central or integral to its operation. I submit a limited survey conducted by some Queensland fitness centres as presented to Mr Anthony Smith on 15 October. I do not have copies of that; Mr Smith has the original.

The survey asked fitness centre members to rate the importance of various factors upon their attendance at an aerobics class. The results clearly show that music is not a highly relevant factor in their choice of class and the survey totally defeats APRA's arguments for their on average 150 per cent to 200 per cent fee increase for fitness centres in 1994-95, increases that PPCA is hoping to piggyback on without even a scrap of consultation with our industry.

As an example of how inappropriate the current system is, APRA and, I am assuming, other groups including PPCA are allowed to collect fees where a business mainly listens to ABC news, which broadcasts non-stop news or Federal Parliament, or a radio station that broadcasts classical music for which copyright is generally expired.

Mr Smith—We believe that the current system is inadequate for two main reasons. Firstly, it only collects from some of the people some of the time. APRA and PPCA do not collect from all businesses throughout Australia which may be eligible, so the burden of payment is placed on those businesses on their mailing lists only. When funds are also collected through licence fees, APRA and PPCA have absolutely no idea what mix of music has been played and who the beneficiary of subsequent fees should be.

The present system does not allow for those artists whose work is used to be properly rewarded. APRA/PPCA has no knowledge or indication of the type of music being played or favoured by fitness centres or gym facilities. The current system, we believe, gives an inequitable reward; artists sharing in a pool of money have no acknowledgment that our industry chose their music as opposed to another artist's or style of music. According to a letter sent to me on 11 November 1997, which I think you have a copy of, moneys are collected and distributed directly to PPCA registered recording artists. If APRA/PPCA has no knowledge of the artist being used, how can they remit moneys to the correct artists? Conversely, how do we as an industry know that we are not inappropriately funding both companies as the artists we use may not be PPCA/APRA registered artists. Therefore, where does that money go? This also raises the issue of payments going overseas from APRA and other groups. If they have no idea who deserves the money here in Australia, how can they determine what percentage should go overseas and to whom?

As TV and radio stations and all other commercial organisations pay for their commercial use of music, the collection of another set of fees from small business owners who mostly gain no commercial value from the playing of music, combined with some of the aggressive, threatening and standover tactics used by APRA and PPCA, only confirms the belief in the business community that these fees are inappropriate, inadequate and unjust.

The whole credibility factor for these organisations, the people they represent and the fees they charge is further exacerbated by the ridiculous nature of some of the charges; for example, extra fees for extra number of speakers. APRA and PPCA both charge fees based on both usage and how well we deliver this product to customers. In relation to music videos, we are charged per TV and, again, per size of screen, although they are all connected to the same video player and are playing the same video. The same is true for the number of speakers in a facility. Most organisations would rather have more speakers at a lower sound level to even out the volume in the facility. It is the same customer comfort that governs the choice of TV numbers and screen sizes. Why should we pay extra fees for speakers and screens playing the same music?

In the case of a sports ground arena, for example, they may have four commercially powerful speakers that can cover a huge area and broadcast to thousands. A fitness centre, after undergoing refurbishment, went from two commercial-quality speakers on the ground to 18 small ceiling speakers. This would mean it was paying nine times more than previously. After refurbishment, payment based on the number of speakers would have had the centre paying more than the sports ground with its huge coverage area.

Mrs Van Leeuwen—Our industry has some very serious concerns at present and for the future. Our industry is now aware that another copyright group, ARIA, is on the copyright bandwagon and seems to have similar financial collection aspirations as PPCA and APRA. Unofficially we have heard that there are other groups in the background waiting their time also. Where will it all stop? After all, the cleaners and the canteen workers at music production houses could probably prove that they have a case as well.

I know that this is a silly example, but it is what is perceived in our industry and other industries: what we as small business owners see is a 150 per cent to 200 per cent fee hike in 1994-95, followed by two other groups now claiming around the same amount of money. We are very concerned at the future implications of all of this. After previous increases, there was a marked decline in our industry in the number of classes where music was played due to the extortionate fees charged. This has resulted in fewer classes and either reduced hours for staff or a reduction in staff. If a plethora of mirror-image organisations are allowed to charge our industry for the same product, which should be carried out at point of sale, the results will be detrimental for both employees suffering job losses and also for users who will lose the current level of facility and services provided. Some of our members are facing future annual payments of $10,000 to $20,000 and this will have a serious impact on the employment levels in our industry as it will not become financially viable to conduct a class where music plays some part and a fee is payable.

This is one of our major concerns. At this point aerobics is on the decline. Up to 50 per cent of activity in the aerobics area has declined in the last couple of years for other reasons, but the APRA and copyright music tribunal instance is something that is really going to cruel the whole industry. We also have a concern that the current Copyright Tribunal is ineffective in the sense that small business and generally most associations do not have the funds to take on the likes of the tribunal, APRA, PPCA or other groups.

Our recommendations are to change the act to allow for exemptions so that charges are levied only where a business has a provable financial gain from the music. Firstly, in the case of recorded music and videos, these once-off charges should be levied at the point of purchase so that payments are made to artists and are truly reflective of the sale of their material.

Secondly, once a product is purchased and copyright fees are paid out of the purchase price, this should be the end of the line for fee collection and for music copyright. We do not have to pay General Electric every time we use a toaster either at home or on a commercial basis and we do not have to pay a car manufacturer a fee every time we drive a car or truck for domestic or commercial use. As with either the car or toaster scenario, more frequent use of music tapes, CDs or videos will result in more frequent purchases and, therefore, more frequent payment of copyright fees. A point of purchase model would also result in all of the people paying all of the time compared with the current system in which only a percentage of businesses pay copyright fees.

Thirdly, if a point of purchase model is not adopted, then any fee should be a one-off payment that all relevant copyright claimants can share in as decided by themselves instead of piggybacking on each other's claims and getting the same fee over and over again.

We would also like noted that the first, second and third recommendations are all in line with current government policy to reduce paperwork and compliance burdens on small business.

Mr Smith—Finally, we would just like to point out that, so that small business owners can have their grievances, complaints, et cetera, heard officially and not have to face going to the wall financially to take on the likes of APRA through the Copyright Tribunal which may have a vested interest in monitoring the status quo or increasing fees, they should be able to apply to the Australian Competition and Consumer Commission to be heard.

ACTING CHAIR—Thank you very much for that submission. I would just like to ask you about a few things. As I recall, there has been a decision of the High Court which has negated an attempt to levy a fee at point of purchase. I may stand corrected, but I have a funny feeling that that is, in fact, the case so there is a legal problem with that. You talk about a one-off payment. How do you see that working?

Mrs Van Leeuwen—At this point, aerobics instructors buy prerecorded specifically set tapes because we need a certain number of beats per minute and things like that. So the people who compile those tapes actually pay fees there and then when they are producing them. We have to pay those fees when we purchase the tape. We then have to pay again when we play the tape. This is what we are saying: at the production point there should be a fee paid then and that is it; end of story. We can use it. If we use it a lot, we buy another tape and they get more money. But the fact that there is a triple dip along the way is the thing that we are objecting to.

ACTING CHAIR—You would say that right at that production point when the mix—

Mrs Van Leeuwen—doing all the bits and pieces.

ACTING CHAIR—When all of that is done and it is all compiled together, you would then buy that mixture and you would pay X fee. But rolled into that fee would be a fee that—

Mrs Van Leeuwen—rewarded those people. If it is done at that point, our major bugbear is APRA or PPCA; there is not one group out there that could tell me the type of music that is played in a fitness centre. They are just collecting the fee. As I was saying, where it is for commercial gain, a fee is appropriate, but we want to see the artists that we use rewarded because we do not have the same types of choices for music in class as, say, a radio station does. I believe that APRA pretty much bases its distribution on those sorts of things. We want to see the artists we choose rewarded. So if it is done at point of purchase, records are kept; you know which tapes have been sold and you know which artists to reward.

ACTING CHAIR—You would say that the present system is far too haphazard?

Mrs Van Leeuwen—In terms of fitness centres, absolutely.

ACTING CHAIR—Whereas that proposal may be slightly different from the High Court decision which is a unique and discreet production situation. It may be a slightly different thing from that decision of the High Court and it would more accurately reward—

Mrs Van Leeuwen—people who should be rewarded.

ACTING CHAIR—Individual contributors to the mix, I suppose.

Mrs Van Leeuwen—Yes.

ACTING CHAIR—In relation to the point you also made that they would have to show that the music was integral to the class; that it was of benefit, a lot of people—I think we have had quite a few before us—would argue strongly that fitness centres would be one area in which it is integral without having to prove it.

Mrs Van Leeuwen—I disagree strongly with the word 'integral', because we have proven that it is not.

ACTING CHAIR—Can you explain that because that is important? It has been assumed almost everywhere that we have gone in Australia that that is one area where it is integral.

Mrs Van Leeuwen—That survey, as I said, listed 10 different reasons why you might attend an aerobics class. Again, I cannot remember the exact results. It was like seven or eight; you have got the survey.

ACTING CHAIR—Yes, I will give that to the committee at some later stage.

Mrs Van Leeuwen—People do not go to an aerobics class to hear the music and they do not come to a fitness centre to watch the TV or listen to the radio; they come to an aerobics class because of the instructor, the time slot or the type of exercise that they are doing. Music is way, way, way down the far end of why they are there. I could not imagine that you would find even one person in the whole of Australia who says they go to a gym so they can listen to the radio or watch TV when it is free to air at home. It just does not wash. We are not arguing here that some fee should not be paid. In aerobics we are saying, 'Yes, there is some commercial gain.' We do not agree with APRA and PPCA who say it is integral because we feel it is not, but we are saying, 'Okay, we will pay the fee,' but let us make it one fee, reward the people who should be rewarded and have things distributed correctly instead of this. All we see it as is a grab for cash.

ACTING CHAIR—You mentioned that other group as well. Do you see that there is an argument, for example, that really it is a bureaucracy that is being rewarded rather than the artists?

Mrs Van Leeuwen—That is the major impression I would say that our industry has, and I know PPCA and APRA can prove to you that only 10 per cent of the funds go to the set-up and maintaining of their associations, et cetera, but yes, it is regarded as such.

ACTING CHAIR—From memory, APRA is a little bit more astute than the PPCA on that.

Mrs Van Leeuwen—Yes. It is a real concern for us because we are a real target and the fact that there are more and more groups. They can get the Yellow Pages out and we are easy to find, unlike a lot of businesses for which you have to go into the White Pages. At my own club, I cut my classes by 25 per cent when APRA put its fees up. That affected my staff, my clients and employment levels. Because of the fact that PPCA is now on the bandwagon, many other clubs will do the same thing. We now hear that ARIA and a number of other groups are out there. It is really tough. As you well know, there have been other parliamentary inquiries into fitness centres et cetera closing down and the Department of Consumer Affairs is trying to draw up a draft code of practice to run them. These sorts of fees with people just getting on the bandwagon will kill a lot of them.

ACTING CHAIR—Can you make some observations about the individual charging aspect—the class charging? Do you think that so much per class and the figure that is—

Mrs Van Leeuwen—currently paid?

ACTING CHAIR—Yes.

Mrs Van Leeuwen—Again we do not have an argument with paying a once-off fee if we had to stay with that. But the fact that we have to pay a number of groups the same fee is what we are arguing about.

Mr Smith—It is also charged based on the way that the service is delivered. You are not only charged for the class; you are also charged for how well you provide that service to your customers, for example, in terms of the number of speakers, the number of television screens you have and the size of the screens. So the whole thing is seen and is perceived in our industry as a money-grubbing exercise in as many possible ways.

ACTING CHAIR—What percentage of your business outlays do these charges represent?

Mrs Van Leeuwen—I could not give you an exact figure, but a large centre at the other side of town—

Mr Smith—It is paying currently in excess of $5,000.

Mrs Van Leeuwen—To APRA.

Mr Smith—And PPCA combined.

ACTING CHAIR—That is the annual fee, is it?

Mrs Van Leeuwen—That is right. And it was $2,500 more or less for APRA. Now they are up for another $2,500. If ARIA comes along, it wants another $2,500. Then there is somebody else down the track who wants another $2,500.

Mr Smith—This is after, of course, the classes have been cut and reduced.

Mrs Van Leeuwen—Numbers have dropped and it is a declining industry. They will push it out the door.

ACTING CHAIR—Do you see that class fitness centres are really in a difficult situation from all sides?

Mrs Van Leeuwen—Absolutely. The industry is in a total state of decline for a number of reasons, but this will be the final thing that shuts the door. There are clubs now which, after the APRA incident, have taken aerobics totally out and just put in electronic equipment. Aerobics is now fighting electronic equipment with all the whiz-bang lights and buzzers. The choice is between either having a piece of equipment that is easily maintained, can be used 24 hours a day and for which an instructor is not needed, or running an aerobics class. On average, aerobics classes would be responsible for 50 per cent of your wages bill in days gone by. If you have got 50 per cent of your wages bill going out in aerobics and you have $10,000 to $20,000 on top of that amount in music fees, it is a pretty easy decision. You can put in one piece of equipment and not have to do much.

ACTING CHAIR—You mentioned red tape and the impost there. You would prefer this to be done at the mixing stage and to deal with one agency?

Mrs Van Leeuwen—That is right. And then let them have a bunfight as to how much will go to each group. We cannot see that there is any logic, rationality or legality to all of these different groups getting on. Surely it is one fee for playing it. Then if another two groups want to come on line, they fight the others for their fair share. It should not be our responsibility.

Mr Smith—If it was done at the point of sale and a central fee was collected, it would be up to those various groups to prove their own interests and to take a split of the fee.

ACTING CHAIR—Lastly, I think you may have mentioned, although I am not sure, the Fair Fitness Music Association's action against APRA in the Copyright Tribunal. Did you mention that?

Mrs Van Leeuwen—No. We have heard of them. We are about to investigate that.

ACTING CHAIR—You are not aware of the proceeding?

Mrs Van Leeuwen—No.

ACTING CHAIR—Thank you very much for your evidence. It was most useful today. I appreciate your coming in.

Proceedings suspended from 10.46 a.m. to 10.58 a.m.

WESTAWAY, Ms Leesa Jayne, Owner/Operator, Sandbarz Nite Club, PO Box 1155, Caloundra, Queensland 4551

WOOD, Mr Gary Edward, Owner/Operator, Sandbarz Nite Club, 66 Bulcock Street, Caloundra, Queensland 4551

ACTING CHAIR—I welcome the witnesses from Sandbarz. Mr Wood, thank you very much for coming along. We welcome you to today's hearing. You may or may not have been here when I mentioned that, because the committee is not sitting with a quorum, the rules of parliamentary privilege do not apply. Accordingly, I warn you to be careful about anything you say, because it is not covered by parliamentary privilege. Invariably, I think the committee, when it next meets with a quorum, will authorise the evidence that has been given. However, I give you that warning at the outset. As I say, thank you very much for being here. Would you care to make an opening statement?

Mr Wood—Our nightclub business is on the Sunshine Coast. It operates, at this stage, four nights a week from 8 till 3. We have only been there for two years at this stage. Over those two years, APRA was in the door about three weeks after we first opened. Our issue with APRA is not that we have to pay a fee, so to speak, but the way that it charges its fees. For us, as a nightclub or disco, its fee is 9.27c per person who walks in the door, or 0.69 per cent of the total door take for the year, whichever is the greater. Our argument is that the music we play does not necessarily bring people into the room. We have to create an atmosphere, put on events and supply entertainment other than just music. Music is a secondary factor. The harder that we work to get people through our door, the more money it makes, which to me seems a totally unfair system.

ACTING CHAIR—The music does not change?

Mr Wood—The music is the same every night in terms of what is played. The music may vary in the eight hours during which it is being played, but it is still the same style of music throughout the four nights. Again, similar to the previous case, there is no record of how these funds are distributed. It has no idea of what style of music and what artists we play within the club. As I said, people do not just go to the nightclub for music; they go for various reasons, be it to drink, to meet someone or to play games.

ACTING CHAIR—Have you ever done a survey of your patrons as to the reasons they go?

Ms Westaway—No, but we could.

ACTING CHAIR—That may be very helpful for the committee. You may have heard some of the evidence that was given by the fitness council. It did a survey, which ultimately will come into evidence. It may be of assistance. We hear a lot of assumptions from both sides, for example, that music is or is not integral. Perhaps the best way of doing that would be to survey some of the patrons and see what they say. Obviously, sometimes the questions in any such survey can be structured to get a result. Having said that, I think if you gave a list of various things and got patrons to tick them in order of priority, that would give some idea of the importance of it from the perspective of the patron. In relation to the calculation, I am a bit intrigued about that. It is 9.27c per person?

Mr Wood—That is correct.

ACTING CHAIR—How was that struck?

Mr Wood—We have to keep a tally of people who walk in the door. We do that for our own benefit as well. Our security staff keep a hand counter and click it as people come through the door throughout the night.

ACTING CHAIR—The figure that was charged, how was that calculated?

Mr Wood—I supply them with the figures.

ACTING CHAIR—And that amount of 9.27c is what they said is the amount. Was it negotiated with you?

Mr Wood—No, it was not negotiated whatsoever.

Ms Westaway—We tried to negotiate, but it is a set fee.

Mr Wood—So if I say that 50,000 people came through the door last year, it would be 50,000 multiplied by 9.27c. If I charged each of those persons $10 to walk in, and 0.69 per cent was the greater figure of that amount that I showed as door takings, then that would be the fee.

ACTING CHAIR—What was your annual fee?

Mr Wood—Just on $2,500.

ACTING CHAIR—What way would you say is the best way to assess it?

Mr Wood—I would agree with a flat fee. I worked in the hotel industry for quite a few years prior to the nightclub industry. We were charged per monitor, per CD player and per radio. It might have been $50 per TV or $32 for a VCR or whatever the case may be, then that was it for the year. So you could use that piece of equipment as many times as you liked and bring in whatever business you can with it at that one flat fee. Or another way may be, we supply the equipment, but the actual disc jockey supplies the music, so maybe the disc jockey should be registered with APRA and pay a fee to play that music.

ACTING CHAIR—And then he would pass that on to you as part of his fee?

Mr Wood—It would be incorporated in his salary package. He might say, 'Our contract is such and such plus X.'

ACTING CHAIR—Getting back to what you said before about how you tried to negotiate, there were no negotiations; is that what you are saying?

Mr Wood—I spoke to them several times in relation to the way the fee was calculated. We are only a very small business. There are only four or five of us who run the whole business. For us to pay that fee, it is quite a lot of money. In the end, the only thing that we could do was we took it to a solicitor. We do not have the funds to take them on. So the only way we negotiated was to negotiate the fee to be paid over several months, but there was no reduction in fees.

ACTING CHAIR—Would you prefer a process whereby you could sit down and talk to them about it?

Mr Wood—Yes. We sent them many letters in relation to the fee. I think I have submitted a few. Never at one stage did we get a written response from anybody in relation to the fee. All that was ever sent was an account less a payment. There were no discussions.

ACTING CHAIR—So there was a certain arrogance demonstrated by APRA in just being unwilling to listen or ignoring anything that you said?

Mr Wood—They totally ignored us. At the end of the day we were just issued with a summons, no phone call, just a summons.

ACTING CHAIR—And the only thing you could do about that was get solicitors to negotiate payment, because you had no defence in law to the summons?

Mr Wood—That is right.

ACTING CHAIR—Do you feel that these sorts of tactics put you and other businesses at risk?

Mr Wood—They do, yes, especially in this economic climate. It is not easy for any small business out there. To be unable to negotiate something and sit down and talk about it, I think it is totally unfair. I mean, there is this large organisation, and we are only a very small organisation by comparison. We feel totally shut out. As a nightclub, we have spoken to many, many small businesses in the hospitality industry, and they have never heard of APRA, yet they still play music. The nightclub is obviously a fairly easy target for them—they do not employ great lots of staff to go around and see all those other small restaurants or small establishments; they can just pick up the phone book and look through the phone book and see the nightclubs listed. They can just ring them and tell them, 'We want to see the figures,' and that is who they will target.

ACTING CHAIR—Did you attempt to telephone anyone at APRA at all?

Mr Wood—Yes.

ACTING CHAIR—What happened there?

Mr Wood—My discussion with the guy at APRA was purely based on the calculation of the fee. I spent probably 15 or 20 minutes on the phone discussing why I thought the fee was unacceptable. In some

terms he agreed with me, but there was nothing that he could do about it, and the fee just had to be paid.

ACTING CHAIR—You do not recall to whom you spoke in particular?

Mr Wood—No, I could not tell you. It was the Brisbane office.

Ms Westaway—Was it Paul?

Mr Wood—I could not tell you his full name.

ACTING CHAIR—Did he indicate that he would refer your concerns on?

Mr Wood—No.

ACTING CHAIR—I notice that you have written also to Mrs Sheldon.

Mr Wood—I went and saw Mrs Sheldon when she was in Caloundra.

ACTING CHAIR—In summary, you do not by any means begrudge artists their just fees?

Mr Wood—No.

ACTING CHAIR—But you are saying that the process involved here leaves an awful lot to be desired?

Mr Wood—It certainly does.

ACTING CHAIR—In terms of non-negotiation of anything, in terms of APRA not bothering to get back to you, and just hitting you with a summons?

Mr Wood—And the actual calculation. I do not believe we should be paying a per person fee. We work very hard on our marketing and getting people to come in the door. I do not believe that we should be charged nearly 10c per person who actually comes in. Whether or not they stay is irrelevant. They may walk in and walk out. But that figure is actually being clicked in on my counter, and I count that person as one person who has been in tonight.

ACTING CHAIR—I suppose it is arguable that some might hear the music and walk out.

Mr Wood—That is right.

ACTING CHAIR—Thank you very much for your material. I appreciate very much someone who is working at grassroots level giving us this background. It will be considered very, very carefully.

[11.20 a.m.]

BALDOCK, Mr Ian, Executive Director, Queensland Retail Traders and Shopkeepers Association, PO Box 105, Kelvin Grove B.C., Kelvin Grove, Queensland 4059

PRATT, Mr Daniel Gleeson, Business Development Officer, Queensland Retail Traders and Shopkeepers Association, PO Box 105, Kelvin Grove B.C., Kelvin Grove, Queensland 4059

ACTING CHAIR—Welcome to the inquiry today. Thank you very much for coming and also for your submission. We have had some strong submissions from retailers right around the country and also from—

Mr Baldock—COSBOA, the Council of Small Business Organisations Australia?

ACTING CHAIR—I am getting a little bit confused, but I recall that that one was a very strong submission. Would you like to make an opening statement?

Mr Pratt—Thank you. The QRTSA really has one central theme, and, indeed, it touches on what was submitted previously to the committee: we feel that there should be only one point of payment for copyright royalty. What is going on at the moment is clearly a case of double dipping, where copyright is paid on the purchase of recordings and by broadcasting companies when they broadcast the recordings free to air. In the case of recorded music, a retailer who purchases a CD from a licensed distributor is paying a royalty for this recording. There is a big difference between a retail shop that plays a single unit tape machine or CD machine at the back of the shop and a retail outlet chain that has a very sophisticated marketing strategy of which a particular genre of music may form an integral part. We believe that, since it is impossible to define the two ends of the scale, it would be very difficult to classify a particular retailer as profiting directly from a particular form of music. Given also that these recordings have been paid for and the royalties have been directly attributed to the source, copyright owner or the artist as the case may be, we certainly do not have a problem with that, because a lot of those artists are small business people themselves. What we do have a problem with is the case where the royalty is paid twice. Indeed, it appears that an entire organisation or almost a complete industry has been born from this exact process. We submit that retail shops playing prerecorded music through a single sound system should be exempt from paying a second royalty above that which the artist or copyright owner has already received at the point of purchase.

In the case of free-to-air broadcasts, broadcasting stations pay a high copyright royalty based on the fact that, once performances are broadcast, they are free for all to enjoy. With particular regard to many small businesses that play single radios, we submit that many such radios play talkback shows that have very little prerecorded or copyright worthy material; yet these retailers are expected by APRA and the like to pay similar fees to others which may have very much mainstream music, day to day, all day. As well, many rural retailers are kept informed of outside events by their work-based radios. We have had recent events up north. As we well know in Queensland, we have a lot of flood and rain at this time of year. Indeed, a lot of rural retailers depend almost entirely on information from the outside through their radios.

Product recalls are simply far more efficient when they are done through the radio; through the

multimedia. For example, if we send a group managers' fax out to a lot of the banner group managers, it could take days before that information, albeit urgent, reaches the actual retailer who is passing the stock on to the public. We have had, of course, recent examples with the Arnotts Biscuits scare, the Heinz baby food, et cetera, salmonella in smallgoods. A lot of the retailers removed the stock immediately, as soon as they heard the scare on the radio. We believe that the current system puts that under threat, because for a lot of retailers the only option, if they are going to have to pay this fee, is to get rid of the radio. They are time poor. They do not read the newspapers in the morning with a cup of coffee. They are home far too late to catch the news on the television. Their only link to the multimedia is the radio. We submit that retail shops playing free-to-air radio broadcasts should be exempt from copyright royalty.

We raise some serious questions about the actions and accountability of copyright collection agencies. The information obtained from the Internet site of APRA clearly, in its opening remarks, points to one of their key purposes: developing, negotiating and implementing new licence schemes. It seems to be an unending quest to find more money by exploiting the legislation. It, of course, may be a different case, but simply by reading that, it does not herald a great deal of accountability as far as the legislation is concerned on the face value of it. We would question exactly how much total revenue is collected that actually goes to copyright owners. Indeed, the information on the Internet site for APRA points to 1996: approximately $58 million was collected in Australian licence fees and a further $8 million was generated by Australian music played overseas, of which 13 per cent was awarded to APRA for administrative costs, which, on a quick calculation, calculates to about $8.5 million just for administering this sort of thing. We would be interested to know and raise the question: exactly how much of the total revenue comes from small businesses and, in particular, retailers? What is the cost of raising this revenue?

Finally, we submit that the central theme of copyright has been forgotten in respect of retail shops being burdened with the doubling up of fees that have already been paid either through purchasing CDs, et cetera, through licensed distributors or by hearing free-to-air broadcast which has been prepaid by the broadcasting station. The Copyright Act 1968, section 108, subsection 2 clearly points out that a person who has given an undertaking referred to in the last preceding subsection is liable when the Copyright Tribunal has determined the amount to which the undertaking relates—and our point, in fact—to pay that amount to the owner of copyright. We would raise the question as to whether or not the owner of the copyright always receives his or her due in respect to a particular track that may be played by a particular retail shop at a particular time of day.

If information serves that Canadian retailers are exempt from those extra royalties—and Canada is party to the same international treaties as Australia—we would submit that why should one country exercise this flexibility within those treaties and not another? That concludes our initial statement.

ACTING CHAIR—Thank you very much for that. It was most helpful. You are representing businesses across the retail sector, both small and large?

Mr Baldock—Yes, in the food sector, we represent all the independent banner groups. In the non-food sector, the only ones we do not have are the major retailers. From that second tier down, for example, the largest furniture retailers in Queensland are members of ours as are sports goods—across the whole spectrum.

ACTING CHAIR—Would you have some of the lesser food retailers, such as Foodland?

Mr Baldock—Yes, all of those; pretty much 100 per cent of those.

ACTING CHAIR—We have had a lot of submissions—and very compelling ones—citing instances of the bloke under the car or fixing the truck, and he has the radio going as opposed to the person, say, who walks into Foodland and hears music. Do you draw a distinction between those two situations?

Mr Pratt—There is a distinction, but we feel that it would be impossible to define it and create a licence. You would end up having a different licence fee for every individual business, because they are all so different. There is the aspect of, for example, jeans shops that have a specific marketing ploy and play fifties and sixties popular music to market their product and their whole image. That is very different from the corner store at Goondiwindi that has a local radio station playing.

There are a million different grades and in between. We did, in fact, discuss it and think whether or not there could be a question of creating gradients or cutting it off. Indeed, in our submission we have alluded to the state Trading (Allowable Hours) Act, which has a definition of 20 employees or fewer. But even that, we felt, might not be too accurate and we just decided that it would be simply far fairer on all concerned rather than to blanket everyone or tar everyone with the same brush just to put strict limitations and exempt independent retailers or retailers with one single unit playing.

ACTING CHAIR—In effect, with your comments particularly about the rural type of small business or in the more isolated communities where the radio is absolutely imperative in times such as this time now with floods and so forth, you would say that they are very compelling reasons for the individual shopkeeper to get his or her information through that way. In terms of drawing people into the shop, what do you say? Is it a drawcard?

Mr Pratt—Certainly not. I do not think that any consumer goes to a particular shop because it plays a particular kind of music. Therefore, I would think it very unfair for someone like APRA to come in and say, 'You play a lot of contemporary rock and this is your licensing fee.' It may contribute to the image but it is not what draws them in. Indeed what we heard from the nightclub people before us is that people come in because there are promotions, free drinks, et cetera; they do not come because of the music. As you pointed out, they may walk out because of the music. It is a small addition, but I think that it is very difficult and almost impossible to say that people are buying from that shop because they play this music. This is why they are being hit with the licensing fee: because they are supposedly profiteering from someone else's work.

Mr Baldock—I think also if we take small business that may be open and trading for 15 hours a day, the operator is there for 15 hours a day. If you take the amount of time that a consumer actually spends there, in particular if we take the likes of a corner store/convenience store where the transaction is usually fairly quick—it is in, it is grab a carton of milk, a packet of cigarettes or whatever and it is out again—throughout the course of a day, the amount of time that is actually taken up where consumers are there and listening to the radio is nothing like the 15 hours that the operator is spending there. So it is for their own benefit, in essence, that a lot of them have that playing in the background.

ACTING CHAIR—Did you say something about the prerecorded music?

Mr Pratt—Yes, indeed. That music that has been purchased from a licensed distributor, the royalties have very accurately gone to the copyright owner there as opposed to this shotgun effect of collecting because you play on a certain playing list or have a certain radio broadcast. But that can change from day to day as your staff changes. We would submit that those prerecorded works played on a single unit in a retail shop much like a radio is hardly a reason for an incumbent fee. It is not really part of what brings a consumer there. Therefore, it is not really part of the retailer profiting.

ACTING CHAIR—What do you say, though, to the artist who is saying, 'Look, this shop is playing my music. I have spent a lot of time composing that song', and in the case of the composer or in the case of an artist who is playing it et cetera, 'and I am not getting my reward'?

Mr Pratt—I would say that they have purchased that music from you and they have purchased it and paid you a royalty for your work. Quite simply, if you want to go on profiting, then go on working like the rest of us instead of one good idea and sit back for the rest of your life. I do not think that is what this country is about. I think that the current situation is simply an exploitation of a loophole in the legislation. It is a very old piece of legislation, the Copyright Act, and I think that its original intention of rewarding work—a fair day's pay for a fair day's work—has been lost.

Mr Baldock—I think that we should perhaps briefly add as well that it is not so much the amount of the fee in itself; it is that fee added to other fees that retailers pay both in the state and federal arenas.

ACTING CHAIR—I think that many of the one-off operations have made that point, certainly to me in my own electorate, that it might be only $37 but that is $37 on top of the environment levy, on top of the rates and so forth. That is the additional problem. So you are suggesting an alternative approach that would exempt the small business from radio playing, so to speak. In terms of prerecorded music, you would say a one-off at the production mix. Is that what you are saying?

Mr Pratt—Yes, at the purchase of the recorded music from a licensed distributor, that the fee is passed on there.

ACTING CHAIR—I think that there is a legal problem with that. That is the only thing. I think that there has been a decision in the High Court which has determined that there is a problem with collecting it at that point. So maybe that is one of the reasons behind why that track has not been gone down.

Mr Pratt—In the purchase of a licence or the purchase of a work—let us say I go down to Chandlers music and I purchase a CD—part of the money that I am paying goes to that artist or the copyright owner as the case may be. That is what we are talking about. We are not talking about creating an additional fee; we are saying that it has already been paid and having to pay it again is simply unfair.

ACTING CHAIR—Do you get many complaints about the process—small businesses ringing up and complaining about APRA?

Mr Pratt—Absolutely. I am very often a lot of people's first port of call. I am the business development officer; I get a lot of different inquiries. Recently, when the first invitation to make submissions to this inquiry occurred in the papers, I did get a number of calls from retailers ranging from food retailers to non-food retailers stating that they had been treated very unfairly and that APRA were—perhaps they were too busy or perhaps they did not care—simply serving them with the notice. There were no negotiations whatsoever, there was no process of consultation allowing them to be aware or giving them some sort of idea or indication as to why they are paying this fee. As far as many of them were concerned, it was going to government, concerning which I had to counsel them that the opposite was the case.

ACTING CHAIR—Have you yourself had dealings with APRA?

Mr Pratt—No, I have not.

Mr Baldock—I have. We had them in our office, it would be now probably 9 or 10 months ago. They certainly offered a concessional rate to the members of the organisation if we did all the collection for them. We politely told them what to do with that idea. Basically, it was a very cordial meeting, but nothing really came out of it other than basically them telling us that they had decided that it was time to really get out in the marketplace and collect their dues, which they had been remiss in not doing fully in past years. I think that that was part of the problem, that suddenly out of the blue retailers got these notices of something that they had never even heard of before. But we did not resolve anything to any great degree.

ACTING CHAIR—I do not know whether you were here to hear some of the evidence from the general manager of B105.

Mr Baldock—No.

ACTING CHAIR—Recently, APRA has suggested that the law be changed so that broadcasters bear the responsibility of paying the royalties for the public performance of music via radios. Do you think, if that was done, that would address some of the problems your members are having?

Mr Pratt—I do not think so, because it does not address the fact that people may not play a particular station. As I said to Ian this morning, in the majority of retail shops, when the casuals come in after hours or on Saturdays, they play a different radio station. When the owner is there, he may switch it from B105 over to 4BC. Once John Laws is finished in the morning, they may switch it over to another station. I think that again it would be another case of a shotgun attempt at raising this revenue without actually addressing who is playing what, who is profiting from whose work and rewarding them justly.

Mr Baldock—We do not know. It is not a question that we have asked, to be honest. We understood that there was a possibility that the station advised their play list to APRA so that APRA could more accurately track who was due for royalty payments. If that was the case, combined with this, I think that would certainly help the situation dramatically. However, if it was just an amount then we would have difficulty in the same way as the fellow from the nightclub. He was saying that he would far sooner pay a set amount per annum and I can see his reasoning for that, but how would APRA know where that is to go? We see that as one of the difficulties of the whole system.

ACTING CHAIR—That has been mentioned by a number of other witnesses. In relation to some of your members generally, do they listen to radio or are they playing CDs and tapes more?

Mr Baldock—More radio. I would say 80 to 20, except for those that specialise in music such as music stores, Retravision, electrical stores and that type of thing. The average across-the-board would certainly run at about 80 to 20.

ACTING CHAIR—Do you think the fact of that shotgun approach that you perceive—and I am just commenting on what you are saying—caused antagonism amongst your members to the way it is going? If they could see artist A getting rewarded, there might be a grudging acceptance, but it would be more acceptable than this odd approach?

Mr Pratt—I think a lot of them feel they have been caught up in the net with the big fish 'Why should I have to pay this licensing fee when I listen to talk-back all day?' Many of them have no idea, like Ian said. It is completely out of the blue. They did not even know APRA existed and here they are being hit with a fee yet they have been doing this for years, playing various radio stations. I think a lot of them have been kept in the dark and I think that is a lot of the reason why there is antagonism towards APRA.

ACTING CHAIR—And not understanding exactly how it works.

Mr Pratt—Precisely.

Mr Baldock—A number have certainly made the comment, 'How do we know that the money that we pay, or the majority of it, actually gets to the right person or gets back to the artist?'

ACTING CHAIR—Indeed, how does APRA know?

Mr Baldock—Your point is well made, that that does not mean to say that they may accept the fee, but they may more grudgingly accept it. Although it would still be grudging, I think it might help the situation if they knew for sure that it was definitely going back to the right people. I think that would be difficult to track.

ACTING CHAIR—Is there anything else that you wanted to add in summary?

Mr Baldock—Basically, we believe that the Canadians have struck a system which seems to work. It seems to be fair and equitable. As Dan said earlier, if the Canadians can do it, we feel that it is something that we should look at and perhaps should model our system on what they have done.

ACTING CHAIR—Thank you very much.

[11.44 a.m.]

HALL, Mr David Matthew, Chair, Arts Law Centre of Queensland, Level 2 Metro Arts, 109 Edward Street, Brisbane, Queensland

ACTING CHAIR—Thank you very much for coming, Mr Hall. You may have heard my comments about parliamentary privilege, but I will repeat them. Although we are not operating as a quorum of the committee, we are of course able to take your evidence. A duly constituted committee can endorse the evidence and it will be received as the normal course of events occur in this sort of thing. I say at the outset that your evidence is not subject to privilege when it is given, so be a little bit careful of what you say given that warning. Would you like to make an opening statement?

Mr Hall—Yes, I would, thank you. Firstly, I would like to clarify some of the matters that have been put to you this morning from a legal perspective and then say some additional things. In relation to the question that the licensing income to an artist should be exhausted as at the time of purchase of a CD or other embodiment of a musical work, one has to appreciate that the Copyright Act and Australia's international treaty obligations grant to copyright owners a number of different rights comprising copyright, including a right of reproduction, a right of public performance and a right to broadcast. They are all separate rights. The right of reproduction is exhausted on the pressing of the CD and, yes, an artist or copyright owner does receive royalty income from the exercise of that discrete right of reproduction. I might say it is somewhere between 35c and $1 that an artist gets as a result.

ACTING CHAIR—Per CD?

Mr Hall—Yes. It is about 1 per cent. It does not exhaust or in any way affect the other rights granted to copyright owners, including the right of public performance or the right of broadcast. They are separate rights and may, in fact, be owned by separate people. It makes no sense to say that a payment can be made in respect of a musical work embodied in a CD in relation to the broadcast rights or the public performance rights.

Secondly, in relation to the question of the non-negotiability of the schemes that APRA administers, the Copyright Act contemplates that collecting societies will administer schemes, but to do so the collecting societies such as APRA must operate those schemes in an entirely non-discriminatory way. It is not appropriate or practical for a collecting society to negotiate with 5,000 different people throughout Australia to strike different bargains. It would no doubt cause even greater furore if Joe Bloggs up the road was paying 0.016 per cent of a cent less than Mary Smith on the other side of town.

In relation to the blanket complaint that nobody knows that the artists actually get the money, I say two things: firstly, perhaps better sampling might be a solution to it, but that will cost more; secondly, with the greatest respect to the people who have given the evidence, it has nothing to do with them or their members. It is a question of whether or not the members of APRA are satisfied with the returns that they receive by virtue of their membership of that association. If they are not satisfied with the returns that they are receiving, they are entitled no doubt—as perhaps some of them do; I do not know—to raise that question at the annual general meeting of the company of which they are a member and at which they are entitled to

vote. It is their concern and only their concern.

On the last question in relation to the level of fees, in so far as aerobics classes are concerned I understand that the licence fee is $1 per class. Therefore, to be paying $2,500 in licence fees for aerobics would mean that 2,500 classes per year were being undertaken, which is something in the order of 10 classes a day five days a week. I could only conjecture the amount of income generated by such a level of aerobics classes.

In relation to the other main points that I would like to make, we all have to understand that Australia has copyright law pursuant to certain international obligations under the Berne Convention and the Agreement on Trade Related Aspects of Intellectual Property under the General Agreement on Tariffs and Trade. We are required to grant copyright owners rights to be able to benefit economically and to commercialise their work.

We have granted certain rights pursuant to those international agreements under the Copyright Act and it does not make any sense to qualify or limit a part of one of the rights for one or a number of sectional interest groups. If the public performance of music by a small business is to be exempted, it raises the questions: on what basis should other businesses be exempted; or why should not other works be exempted? Why should not a small business which runs a piece of computer software be entitled to say, 'I am a small business and it is far too onerous for me to have to pay for the right to reproduce the software but because I am a small business and I do not pay a right for music, why should I pay it for computer software?'

We have proper legal and international obligations and it is my submission that to do away with the ability of an author to benefit economically from the public performance of a musical work would put Australia in breach of its international treaty obligations. That has significant consequences at least after the year 2000 under the World Trade Organisation's General Agreement on Tariffs and Trade which would possibly involve trade sanctions.

The second point I would like to make is in relation to the playing of a musical work in a business with, as I understand it, a staff of up to 67, which would cost a business 10c a day. To my mind $37.09 is not an onerous obligation on any small business. Thirdly, whilst there has been some discussion this morning about this, I submit that the playing of music is worth something to the business involved. Whether it be by virtue of staff amenity or morale or that it makes people buy more, I do not know. The fact of the matter is that, if it was not worth something, it would not be played.

A small business owner has to weigh up the cost of a licence verses the cost of not having the music. If it is the case that music does not bring people to a nightclub or it does not cause people to enjoy their shopping experience, the answer to that problem is: do not play music and there will be no need to have a licence. However, if they weigh up the cost of a licence and the cost of not having the music and they decide that the cost of the licence is less than the cost of not having the licence, they should get the licence. It is my submission that, if people make the decision to play music, they do so because it is worth something to them. It is just unjust and not feasible to say that they should obtain the benefit of that to the detriment of the person who owns the right to publicly perform that music.

The last point that I would like to make is that there needs to be a recognition that musicians,

composers and artists in general are small businesses, too. They generate significant income and economic benefit for Australia and without them both our cultural and economic life would be much worse off. We are talking about something in the order of 20,000 business people, who people are saying should be denied a significant source of income in circumstances in which their average income is between $6,000 and $10,000 per year.

ACTING CHAIR—Thank you very much for that. In relation to this point about the small business operator, the amount of money and so forth, you probably would have heard the evidence before about that being yet another impost. I am probably speaking of the most extreme example here of the bloke who fixes cars. He is a single operator. He fixes a car and he has the radio going beside him while he is underneath the car or truck. He finds it very hard to understand why he has to pay that $37 for the privilege of listening to the radio while he is working—and it is his business. Can you feel sympathy for him in that situation?

Mr Hall—I must say no, because he has to understand and perhaps be educated. I do not think it is a case of saying, 'It is all too hard. Let us forget about the poor artists because we all know they do not do anything worth while and they are not real workers and they do not generate any real income. We can just forget about them. They do not have any political clout so let us just forget about them.' People need to be educated so that they understand that, 'What you have to understand is that you are listening to a piece of music. You are getting enjoyment out of that.' They may not be getting enjoyment out of that, but we cannot start talking about making distinctions between people's ability to enjoy music. If it is being played and it is being publicly performed, it is exercising the right of the copyright owner.

ACTING CHAIR—I think you made a point before that, if you do not like it, just do not play it. Leaving aside the point that the previous witnesses made about the shopkeeper, the North Queensland floods and all of those sorts of things and just taking the pure, very small, single operator: the hairdresser, the garage man or whomever. Are you really sort of cutting off your nose to spite your face by saying, 'Do not play it'? Really it is in the artists' interests for other people to hear that piece of music. If somebody buys a radio and plays that music or alternatively if somebody leases a little hairdressers shop and plays that music, arguably—and we have heard this from other witnesses—that person is providing a free venue for the artist to be heard by other people who come in and say, 'I like that, I will go and buy it.' If it is not on, the venue is not there for the person to hear it and so in effect, while that $37 might not be paid, the artist also is losing an opportunity to be heard by a wider market whereby that person who hears it might say, 'I am going to buy that.' Do you see the argument?

Mr Hall—Yes, but your argument confuses the distinction that I drew before between the right of reproduction and the public performance right. Yes, it may mean that extra income will be generated as a result of sales of CDs or embodiments of sound recordings, which is an exercise of the reproduction right. An entirely different owner might own that right. I do not think you can just say that it is entirely analogous and that, if you get free airplay and people are not paying for it, more people will have their radios on so more people will hear the music so more people will go and buy CDs. That may or may not be correct. In any event, we are talking about public performance rights; we are not talking about reproduction rights.

ACTING CHAIR—Those rights still in some way come back to the artist, do they not?

Mr Hall—Yes.

ACTING CHAIR—So even if someone goes and buys more CDs or whatever because they have heard the music, the artist is going to benefit from that?

Mr Hall—Yes, but they are entitled to benefit from the exercise of the right of reproduction and the exercise of the public performance right. Copyright is not one thing; it is a bundle of rights. Every time a part of that bundle is exercised, the owner is entitled to benefit from it.

ACTING CHAIR—I understand that, but you surely have to understand that, if small business owners provide a venue—they lease a shop—and buy the radio or the recording equipment, their argument is: why should they have to pay for something that they are doing in their little one-off business operation for their own benefit? They are not drawing people into the shop because it is for them. They want to hear the news, the cricket and other things.

Mr Hall—Customers come in, don't they? Customers must come in or they are not operating a business very successfully. So customers come in and, hence, it becomes a public performance.

ACTING CHAIR—I guess it is one of those arguments that cut both ways. That is what we are hearing a lot of from other small business owners, anyway. If you tell them to cut it off, would you suggest that artists would support that? Would they rather not have their music heard at all or would they rather take a bit both ways and say, 'I would rather have it heard than hope I can get something out of APRA'?

Mr Hall—I think they would say that they would. Put it this way: given the homogenous nature of radio airplay in Australia, I think a lot of artists do not get radio airplay and probably do not really care. They are more concerned about other aspects of the public performance right. If you are saying that the choice is either between getting a share every time someone pays $37 for a licence or having their tracks heard for free, I would have thought that they would not want to undermine the importance of the right of the public performance right and the right to receive equitable and just remuneration for the exploitation of their works.

ACTING CHAIR—Interestingly, you spoke about international obligations. Firstly, do you know how many countries are a party to the Berne Convention?

Mr Hall—Off the top of my head, not exactly, but it is certainly a significant number. I am just trying to think of the figure, at last count, in relation to the TRIPs agreement. Certainly, over 100 nations were signatories to that.

ACTING CHAIR—As to the amount that Australia collects, I think we have heard some figures that APRA is collecting—and I might stand corrected here—a significantly greater proportion of royalties in respect of overseas artists than those for our home-grown artists. I might be wrong, but I thought that over two-thirds of the collections were for overseas artists. But I am sure I will stand corrected when I refresh my memory at some later stage. In terms of international obligations and so on, are you aware of our return from other signatories to the convention? Are we doing better with our collections?

Mr Hall—I cannot answer that. I do not know.

ACTING CHAIR—It seems to me that that may be one of the areas where we will need to get some figures—not from you—at some stage, that is, to see how we rate in terms of our international obligations.

Mr Hall—I am certainly aware that APRA has reciprocal arrangements with other collecting societies throughout the world in relation to the collections that they make on behalf of Australian artists.

ACTING CHAIR—We have a submission from Mr Cvetkovski, a barrister-at-law, who I think you know. Have you seen his submission?

Mr Hall—No, I have not.

ACTING CHAIR—There is something that I will get you to comment on.

Mr Hall—Where am I looking?

ACTING CHAIR—I refer you to pages 4 and 5 of Mr Cvetkovski's submission. Have a very brief look at that. I will get you to comment on what you think of what he is saying, and particularly the points that he makes about discounting and the way he distinguishes businesses.

Mr Hall—I must say that the discount in terms of small traders, such as a motor mechanic, who does not have an audience, seems to me to make some sense. My only concern would be in terms of structuring a scheme to determine whether or not the business is one that does not have an audience and whether it is in fact substantially or primarily for personal use or enjoyment. That would be my only concern with that type of arrangement.

ACTING CHAIR—In other words, you would say that it could be administratively difficult?

Mr Hall—It could be difficult in terms of defining the class that would fall within that scheme of licence. Yes, a motor mechanic under a car is probably a pretty clear example. But I do not know who else you would include. I certainly would not include your hairdresser in that class.

ACTING CHAIR—Not a single operator barber shop?

Mr Hall—No.

ACTING CHAIR—Around Australia we have heard a lot of complaints that people do not receive an adequate explanation about how it all works. And you have explained that well today. Do you think that APRA should do a bit more homework in terms of explaining to businesses how these things work?

Mr Hall—I do not know necessarily whether APRA needs to do the explaining. It is not APRA's role to do that. APRA's role is to represent its members and to collect royalties and distribute them. But I certainly think there is a role for someone to take on some education of the public about what is happening

and why it is that they have to pay for something, for example, if they are playing a CD they have already bought, or they have to pay if they listen to the radio.

ACTING CHAIR—Do you feel some sympathy for the businessman who is working 15 hours a day, is time poor, as the previous witness said, and is hoping to hear information, for example, about a food poisoning scare or a cyclone that is bearing down on Innisfail? Do you feel some sympathy for the person who is really relying on that radio for information?

Mr Hall—I suppose they could always listen to a news and talkback program rather than a music program in those circumstances.

ACTING CHAIR—Provided they have one.

Mr Hall—I suppose that is true. I suppose in a shopkeeper's situation it is difficult. In a sense I can feel some sympathy for them, but I also feel sympathy for the artist whose music, as a result of that radio being played, is heard by customers of the shop. I suppose they could also be listening to news.

ACTING CHAIR—Do you make the assumption, as many witnesses have done, that the radio or cassette playing in the background or other background music generally is an integral part of the business ipso facto, no questions asked? Do you just assume that?

Mr Hall—I assume that it is by virtue of the fact that they choose to do it. As I said before, I think they have to weigh it up. You make a decision: 'Do we want to have music or don't we? If we do, it's going to cost us $37 and 55c for every additional speaker. Is that worth it, yes or no?'

ACTING CHAIR—If a number of businesses, as some of the businesses have suggested this morning, conducted surveys indicating that music was priority No. 12 of 13 priorities, ought that make a difference to the way they are assessed?

Mr Hall—No.

ACTING CHAIR—Why?

Mr Hall—Because there is no justification for making value judgments as to whether music is liked or not liked by the people who happen to hear it. The only question is: is the music being publicly performed?

ACTING CHAIR—I understand that. However, what about a bloke who comes into a disco, hears the music and says, 'I'm not listening to that', and goes out? He is counted, and the business is charged just because he walked through the turnstile.

Mr Hall—I suppose that, certainly if that occurred in every situation, that nightclub would not last in business very long. But the upside or the roundabout to that is that there would be people who would go in there and stay a very long time, probably pay a cover charge and spend probably an enormous amount on

alcohol.

ACTING CHAIR—Thank you very much for your evidence. It is much appreciated.

[12.11 p.m.]

CVETKOVSKI, Mr Trajce, Barrister-at-law and Member of the Australasian Performing Right Association

ACTING CHAIR—Welcome. Thank you very much for your submission and your appearance here today. Would you care to give us an overview of what you have written?

Mr Cvetkovski—Yes, I can do that. I can also provide some statistics that you perhaps have covered previously with Matt. I have come here today as a bit of a devil's advocate, because I am a member of APRA and I also run a small business. I do get royalty cheques from APRA, but I also get clients from small business. So what I feel is missing from this whole debate is going beyond the socioeconomic and legal/philosophical justifications for having a collecting society. Quite frankly, we need one. We have to have one. We are part of a very advanced capitalist society where, as members and signatories to various conventions, we do need to reward those who own intellectual property. But what I feel is missing from this debate is the two parties coming together and working out how we get around this issue. Quite clearly, the debate is heated, but nobody really wishes to offer a solution. People are flirting with the issue of perhaps finding a better way to administer it, but nobody is really directing the issue. I do not have the answer, but what I do feel is that there should be some body to work out the best way to administer this business of collecting royalties where small businesses wish to use music. I think that should be the solution. I really do not think it is an issue of why small business should pay. I think small business should pay. What I do think is the way APRA is going about it perhaps could be refined. So that is really where I am going to pitch this whole thing.

I will just rely on the submission, of which you have a copy. I do have a copy of a slightly tidier version. When I say that, I mean that I have found a couple of apostrophes that should not have been there. I would prefer this one to be submitted at a later stage.

I think everybody has covered who APRA is and what APRA represents. I think where we should go is to work out why royalties should be collected for artists. As I said, I think we have a duty to do that. What we should do, though, is work out and define what a blanket licence is and then work out the problem with the term 'blanket'. The immediate problem that comes to mind is that it is an all-encompassing thing. It traps everybody. It traps the person who relies on music specifically, that is, the club owner or a trendy music cafe. It also traps the mechanic who is listening to the race calls or cyclone warnings. So you have the rights to use recorded works. Then you have the broadcasting. Then you have the rights to permit public performance. Then you have other associations, like the PPCA on top of that, so things become very multi-dimensional. What we should work out is: who is doing what; which small business is using music; which small business is not using music; which small businesses are using music occasionally and so on, until perhaps we could work out at the end of the day who is doing what with the music, as opposed to just assuming, 'Look, the law says you must pay for royalties. I do not want to hear anything else about it.' I think we should go

beyond that and just work out exactly what is happening with the music.

I had planned to read from this submission, but I must have rehearsed it well in my mind. The first problem is the collection methodology, which I raised earlier. APRA asks for a licence from small business. I do sympathise when small business says, 'Where is the money going?' I think that is a very real issue. The only answer APRA really can provide is, 'Look, it is a blanket licence. You were given the opportunity to use this music.' 'Yes, but where is the royalty going?' APRA say, 'That is simple. We calculate a dollar-for-dollar value.' For example, if you listen to commercial radio, and let us say that there are particular bands charting, the rate of that blanket royalty to a degree will go to those particular bands which are played constantly, because the assumption is that we are all listening to that station, we are all listening to that commercial radio.

The problem is that I know a lot of businesses which do not listen to commercial radio. In fact, I know a lot of businesses which listen to music that is not even a part of APRA's repertoire. So whereas it is a small percentage, I think they are very real considerations. It gets back to the point that I think we need to expand it further after we have established that, firstly, royalties must be paid and secondly that Australia must honour its international obligations. But once we get beyond that hurdle, and if we can, I think the real issue is: how do we go about administering the adequate royalty rate for small business? The amount is significant enough. The amount collected from blanket licences is, I think, about $13 million from about $66 million. That is not a drop in the ocean. So I think there is enough room here to allow the debate to extend to the best or perhaps the more accurate calculation methodology for blanket licences. I could probably go on, but I probably anticipate a lot of your questions, so I might just stop there.

ACTING CHAIR—For the record, could we get from you your experience in the music industry and your own personal background?

Mr Cvetkovski—I run a label in association with a couple of other fellows, Marski Music. We write our own music, and we have artists on our label. It is primarily for export, because the nature of our music is dance music, an often missed genre in today's contemporary music world. My experience from the music is that we write music that is commercial, that is, music that may attract radio play. We also write music which is dubbed 'underground', which perhaps may not attract conventional radio station play.

Now, that is where I come from in terms of musical background. I am a member of APRA, and I am often pleasantly surprised to find an APRA cheque, albeit extremely modest, but nevertheless it is evidence that APRA collected money on my behalf. But I can say with much honesty—sorry, with great confidence; a bit of a Freudian slip there—I can say that I sincerely doubt that any of that money was collected from a blanket licence.

My personal collection is, we fill out a form whenever we play a venue, and so on and so forth, and sometimes a TV station may use a few seconds of our song, but it is all nicely worked out. But I know that I have not received a cent from small businesses, notwithstanding the fact that I have heard my music played in stores and so on and so forth. Mind you, they are not big stores; for example, they are specialist mountain bike shops or the occasional dance or techno nightclub that may last only a few months, but the issue still remains that I have heard my music publicly performed. As to whether or not I am getting the money, I do

not know. That is probably another reason why I am here. APRA says, 'We are a vital body. We have to collect money because artists rely on this. It is bread and butter stuff.' Yes, that is true. But the bitter irony is that most of the money is going to the guys who have budgets of millions anyway, because they are charting, and the dollar-for-dollar methodology used to calculate blanket licences is going to these guys who hardly need the extra cash, or petty cash, as I would probably like to refer to it. That is where I am from, primarily, as a musician.

ACTING CHAIR—Have you found that people who are involved in the music industry are aware of their rights under copyright law?

Mr Cvetkovski—Generally; well, to take that further, most people are aware of APRA and what APRA does. Their eyes glow when you tell them, 'Yes, you can get money for your music being played in public', but as to the complexity of copyright, no. It is a pretty technical area. I do not think small business is really expected to know the complete intricacies. By the same token, I think more education should be made available as to just how this bundle of rights spins around the music.

ACTING CHAIR—To what extent do you think songwriters depend on royalties from public performances for financial support?

Mr Cvetkovski—That depends on the artist. It can be extremely significant. Again, just as it is difficult to bundle small business into one box, we need to work out the type of artist and which artist relies on the public performance. It really depends, but a significant proportion would rely on the public performance. It is my further submission that a greater proportion would rely on the broadcast, that is, the initial point, that is, radio play. But quite a few rely on public performance, yes.

ACTING CHAIR—You mention also in your submission the multi-dimensional scope of copyright that has led to complete confusion with collecting societies. Do you think that there is a problem with the educative role of the collecting societies, that there has not been a better method adopted?

Mr Cvetkovski—Yes. The task is difficult. Firstly, logistically it is difficult to collect royalties. Secondly, it is probably just as difficult to educate, but I think it is necessary. That is where I believe the government has to play an important role as well, because it really is a part of our society to explain why people should be rewarded for the use of the music. I would also mention that I think that APRA has a very strong obligation here, because it does enjoy the privilege of being the biggest public performance collecting society, because it is successful. I think it has a duty. I know this goes beyond the task of collecting royalties, but I think there are philosophical justifications for educating people, particularly if you want money from them.

ACTING CHAIR—You may have heard the small business group that was here earlier. Some might say—and I am not saying that I am saying it; and it may be a simplistic point—'You have done the job once, now get off your backside and do another one.' You can juxtapose that fairly simplistic argument with the rights inherent in the Copyright Act. I am asking: should artists sit back and say, 'Look, we have the Copyright Act and it says that, and that is in tablets of stone. That is the end of that argument.' Should we not think about that? Is that thought provoking in this day and age?

Mr Cvetkovski—Absolutely, and it will continue to be thought provoking because the Copyright Act, a 1968 document when, perhaps, pop music was starting to invent itself, is just that: it is a 1968 document. As we all know, the law does not jump to amendments that quickly, so, with the advent of new technologies, with the increase in people waxing their mouses and surfing the Internet, I think there is room here to expand on justifications for it, quite certainly. The thing about, 'A job's done; off you go, get on with it', is the analogy small business are using, that is, 'We bought this CD, why do you want more money?' That, unfortunately, in my submission, is wrong. When you do buy an object, such as a CD, that is what you are buying: you are buying that physical thing; you are buying a CD with 74 minutes worth of digital data processed, but you have not bought the data. You have bought the physical thing. You own the CD player to press the button and play, but the rights, that is, the intangibles, the unseen things, you did not buy. Those types of educational tasks have to be in place, because that is the law and it is not the Australian law; it is international law. That has to stay. But I think there is room to work out solutions within that structure.

ACTING CHAIR—The argument from that person may be: should it have to stay?

Mr Cvetkovski—Yes. I would submit, yes, because once we start to break that down, apart from the obvious problem, that is, answering to the rest of the world why we refuse to collect royalties, I can jump in now with the figures. What was your question in relation to how much money——

ACTING CHAIR—In terms of our being a good international citizen, how do the other signatories to the convention measure up?

Mr Cvetkovski—On my amended version, it is footnote 2. It is probably page 3 or 4, but it is footnote 2. It states that, as I mentioned previously, APRA collected $42 million: $2,200,000 in interest and APRA received $7 million from affiliated overseas societies. I am not sure of the figures as to how much Australian music is being played overseas, but I can give you a current example. The local boys, Savage Garden—living in the northern suburbs—are now probably laughing all the way to the international bank because they have chart success in the US and one No. 1 hit. That is not an easy feat. It is not done often by an Australian act. Those royalties will be collected on their behalf and they will receive a cheque from American collecting societies, British, you name it. There is the international obligation. If we start to disassemble this, we start to affect musicians' rights. In that category, we can throw in INXS and the Bee Gees. We can throw in everybody, people who have sold millions and millions of albums overseas. We need a system intact. We need to refine how the local system can adequately satisfy the collecting—

ACTING CHAIR—That is an interesting statistic, because it is perhaps pregnant with two implications: one being that we are doing pretty well on behalf of the overseas artists, and the overseas collection agencies are not doing all that well for us; or, alternatively, we are not getting the air play overseas because we are smaller and our product, apart from some of those artists you have mentioned, receives a limited play, because of our artistic endeavour or whatever. Does that sum it up in a sense?

Mr Cvetkovski—It cannot, because the very nature of music is that it is an interesting game. The more acts that are encouraged to do better, the more acts that may achieve more success overseas. If we take, for example, a particular snapshot or time frame, it may be significantly different next year. These figures may change somewhat. I can add more lists—

ACTING CHAIR—You would have to look over a period.

Mr Cvetkovski—Yes, you would have to gauge that. I can say with confidence that the more Australian artists are encouraged to seek overseas success, then, yes, we will see those figures change. That would be a problem to calculate, so we really could not put anything in a nutshell.

ACTING CHAIR—That is an interesting point, really, because in a sense the more that Australian artists are encouraged here, the more that balance could change because of their recognition spreading.

Mr Cvetkovski—Yes, and that has to help because locally and internationally they are being rewarded. That is where I think that it is very important for Australia to maintain to its utmost its reciprocal rights with collecting societies and affiliates overseas. We should not get out of that. We have to do that because, in APRA's defence, many musicians are small business owners. So we are all in the same boat. That is why I really feel that this debate has to go beyond the philosophical and into the practical.

ACTING CHAIR—Getting to the practical and getting to the single operator hairdresser or the bloke under the truck in the shed in Woop Woop who just has his radio there and he is listening to hear where the latest cyclone is, where the floods are coming from, or what have you, do you see the pressure that is being put on these people with this impost? 'Thirty-seven dollars is not much,' is a common thing that has been said to us around Australia, but you tack it on to every other little one and it becomes quite big and you would know from being at the bar that the little charges add up eventually into quite big charges.

Mr Cvetkovski—Quite.

ACTING CHAIR—Is there an answer to all of that?

Mr Cvetkovski—Not directly, but I am confident that there is an answer in working out how this royalty should be collected and administered, because they are the very real scenarios. I just think that it is unfair that a mechanic or perhaps the barber, or even a sole trader, for example, just because they may have the radio on in public whilst they are painting a building somewhere, I just think that it is unfair that everybody should be lumped together, that is, in the same boat as the trendy clothes store. For example, I have been into shops where they will not even play any other music except, say, dance music and quite specifically because it is a young clientele, it is a young approach. They do need their music because it attracts people in. To lump everybody, just because they are small businesses, for the purposes of the law, I think, is not fair and I think that we should work out solutions for that.

ACTING CHAIR—Have you looked at the Canadian example where they have provided exemptions and so forth?

Mr Cvetkovski—I did not quote that example because I have not studied their model enough to warrant direct quoting, but that is a very good model. I am aware of that model and there are European nations that allow certain exemptions, depending on the nature of the business. So I think that is where we should be going, but a carte blanche transplant, I feel, would be inadequate because it would perhaps not address the central small business issues for Australia. Yes, we need to look at overseas models. We need to

look at the good aspects and the bad aspects and perhaps filter something and form our own unique hybrid. Again, it is the term ‘blanket’. That is the problem. Perhaps we may even redefine the term. It is this issue that needs refinement.

ACTING CHAIR—It seems to me from listening to the previous witness that there is a legal way of looking at these things. You could be said to be a little bit hidebound by the legalities of the three categories and so forth, whereas the bloke on the shop floor or the woman on the shop floor is basically saying, ‘Look, radio is free to air. Have they not been paid already? I bought the radio, and anyway, in my little shop that I pay rent on, somebody might hear a song and say, "I am going to buy that".’

Mr Cvetkovski—Yes.

ACTING CHAIR—It cuts both ways.

Mr Cvetkovski—Indeed. That is where I think the problem is. If somebody were to ask me, and they have asked me, ‘They are double dipping. I am providing a service. I am marketing this band in a cheerful fashion.’ In my submission, to me that would be just incidental. It is a bonus. It still does not address the issue. Again, it would be in the education sphere, distinguishing the difference between the broadcast, the public performance and what the shop owner has bought in terms of rights. I have had some hairdressers say to me, ‘We are providing a service by having the music on because it is used to prevent other people from eavesdropping because hairdressing salons can become quite confidential.’ I said, ‘Well, there you go. You are using the music for a service. It is a musical partition.’ We can go on and on with all the various examples.

ACTING CHAIR—They are all cancelling each other out.

Mr Cvetkovski—Indeed, knee-jerk reactions. I think that if we were to peel it like an onion we would get to the legal and, unfortunately, that is where the tears are coming from, if you pardon the pun. That is where I think we should be heading; we should be heading towards working out a useful model, a practical model that is unique to Australia but, by the same token, taking into consideration our international obligations.

ACTING CHAIR—Thank you very much.

Mr Cvetkovski—My pleasure.

ACTING CHAIR—That has been very useful and, I must say, entertaining, too.

Mr Cvetkovski—Thank you very much.

ACTING CHAIR—We will adjourn now for lunch.

Proceedings suspended from 12.30 p.m. to 2.00 p.m.

CLARK, Mr Darren Robert, President, Queensland Music Industry Network (QMusic), Metro Arts, 109 Edward Street, Brisbane, Queensland

PEARSE, Ms Rosemary Anne, Business Affairs Manager, Queensland Music Industry Network (QMusic), P.O. Box 878, Fortitude Valley, Queensland 4006

ACTING CHAIR—Welcome to the hearing. Thank you very much for the submission. Because we are not a properly constituted committee today as we do not have a quorum, be a little bit careful as parliamentary privilege does not attach to what you say. Accordingly, if you want to defame anybody, defame me. Do not worry about that because we are always fair game! Be a little bit careful. If there is anything that you feel a little bit unsure about, let us know. Generally speaking, from what I can gather, all the other witnesses have handled it very well.

Thank you very much for your submission. Your evidence will be taken down and it will form part of our subsequent deliberations as a committee when we come to do our report. I do not want to anticipate what the committee will do, but ordinarily it will ratify today's evidence as part of the overall hearing. Let us get on with it.

Again, thank you very much for coming. If you would not mind, but it is up to you, could you give us an outline of the background of your evidence? Then we will ask some questions.

Mr Clark—Our evidence is on behalf of QMusic, which is a State industry representative body. Its members, as far as we are aware, are made up of all sectors of the contemporary music industry. In excess of 2,000 people from the local industry are represented. The primary objective of the organisation is grassroots industry development in Queensland, particularly where there are less established infrastructures within the industry and it is relatively young and new. A lot of the association's work is information dissemination and trying to allow Queensland industry participants to compete and participate nationally, where normally the distance and the lack of contact at the top end of the industry is not available.

In its current incarnation the organisation is just in excess of three years old, but the history of a state association in this industry is nearly 12 years old. QMusic also participates at board level in an organisation called the Australian Music Industry Network, which is a network of associations with, I suppose, the criteria for participation being that they are membership based organisations. Therefore, they are appointed by a broad based membership and the board members or committee members of each of those organisations are all elected as opposed to self-appointed.

ACTING CHAIR—What is your basic purpose? What are you set up to do?

Mr Clark—It is really based on grassroots industry development and infrastructure development.

ACTING CHAIR—Does that mean nurturing new talent and that type of thing?

Mr Clark—It is everything from participating in education and training, and we work as a peak body or an information industry source to everybody from TAFE and any of the major institutions right down to

the independent private providers. We provide network and infrastructure for a number of sectors within the industry, whether that be advice or lobbying on their behalf or just direct work in terms of stimulating growth and participation. We receive funding from the Brisbane City Council and the state government and the rest is self-generated through the activities of the organisation. We provide a reasonable amount of information back to them in return for the developmental work and, I suppose, we are the source of broad based information for the industry.

ACTING CHAIR—As part of your role, do you advise artists in relation to copyright matters and that sort of thing?

Mr Clark—We would more refer them to sources of advice and identify the sources of information that they should be pursuing and encouraging. For example, we hosted a conference on this issue in November last year. We had over 300 direct participants and I am not sure how many have since received copies of the documentation. We brought up national speakers to put forward all positions. It is that kind of referral as opposed to specific professional advice.

ACTING CHAIR—As a result of that funding, do you have an office and a secretariat type situation?

Mr Clark—Yes.

ACTING CHAIR—Obviously part of your key role would be to mix in music industry circles?

Ms Pearce—Absolutely, yes.

ACTING CHAIR—Can you give us an overview of what you think about the current arrangements in relation to copyright? We have your one-page note here, but do you want to expand on that at all?

Ms Pearce—QMusic strongly opposes the removal of parallel import restrictions. As an organisation which represents the needs and interests of the music industry in Queensland, we believe that the removal of those restrictions would adversely affect the music industry on many levels and the objective of the proposed Government action is to reduce the price of sound recordings to consumers. However, the resulting ripples of destruction would be felt throughout an industry that relies on the day-to-day, knife-edge struggles of countless small businesses and individuals. This is where the large part of the industry exists. It is not at the top end of the record companies; it is done at the grassroots.

QMusic believes that the music industry relies on the development activities at the grassroots. Hence, it is through these activities that copyright material is developed, nurtured and refined to the point where the more established industry infrastructure takes it on for wider sales, distribution and promotion. The impact analysis provided in the regulatory impact statement does not examine the deeper long-term impact of the proposed lifting of restrictions. The K Mart bigger buying capacity, bigger price reductions mentality has seen the destruction of countless small businesses and the loss of an Australian retail culture. Instead we have the clone-like, featureless shopping malls that are now prevalent throughout our country.

The beneficiaries of the proposal will be multinational record companies, the large, primarily non-

Australian owned retailers and the pirates. The losers will be the small independent retailers, the Australian CD manufacturers, the Australian composers and performers who will have even less of a chance to develop their full potential, the band managers, booking agents, promoters, venues, photographers, journalists and many other industry practitioners and the Australian consumers who support our young, rapidly evolving industry. To support the lifting of parallel import restrictions is to deny and devalue the contribution that music makes to Australian culture.

ACTING CHAIR—I should say at the outset that this inquiry is not directly concerned with that particular policy. That is a government policy. As you may see by the terms of reference—which are in front of you—the committee is particularly interested in how any changes to the current royalty process, such as the collection by APRA from small businesses and so forth, would impact on artists and so on. I know that in your letter you said that you feel that the current arrangements are adequate and should stay. Basically, I wanted to ask you a couple of things about that.

A number of things have come up, but one thing that has irked a lot of our small business people has been the licence fee payments collected by APRA from small businesses—little backyard operations—for just playing a radio while, say, they are cutting hair or fixing a truck in the backyard. I wonder whether you felt that there was some basis for changing that and taking more into account the difficulties that small business has in complying with paying all of these fees on top of everything else and what you felt generally? That is one aspect of the inquiry, but it is an important one. Have you ever addressed your concerns to that? Do you think that that situation should stay the way it is, that APRA should continue to collect those licence fees?

Mr Clark—Most definitely. I suppose our primary position is on a greater level protecting the actual rights and copyright of the stakeholders, which to us is not just the musicians or the songwriters but all those people who are impacted around them. In Australia it is a very small marketplace. We compete with the major countries externally on supply of repertoire and the rest of it. But when it comes back to actually generating revenue and there being enough disposable money that is being put back into the industry, we really do not have enough to go around for the effort that is put in. It is a difficult exercise for anybody to set out on a career in the music industry, particularly someone who looks to invest time, money and energy into developing copyrights, and there are so very few local opportunities for that to be exploited to the point where it can give you the return that you have put in for your time and investment.

At the end of the day it should remain the right of the person to place value on and have some control on the usage of those copyrights or those creations that they have had in the same way that anybody who owns anything else or has invested or created anything else should be able to do that. If someone chooses to generate income as a direct or indirect result of the public performance of those copyrights, there is a level of choice that exists for that person to decide whether or not to actually use that copyright or that piece of work in the pursuit of generating income in whatever it is that they work. They do have a choice to decide to go one way or another, whereas for the copyright holder without these laws and without the current controls and the bodies such as APRA that are collecting on their behalf, that right is just simply removed.

An example that we gave some time ago was the comparison between a schoolchild being offered a pair of perfectly, scientifically sound and correct sandshoes from the shelves of K Mart or Target as a home brand and the alternative being a pair of Nike Airs that would potentially be anywhere between five and 10

times the price. Every time the child would go for that. A lot of money and time goes into creating that perceived value through the marketing, promotion and whatever else of that product, which is very difficult to justify, particularly to a parent who cannot really understand the difference between the two. Sometimes it may even be a lesser product. But there is still that value there. If someone chooses to use a song in a similar fashion where there may be material that is available that is not quite as hip or happening or whatever else or there is a choice between using somebody's copyright because of the amount of time, marketing, money and promotion or whatever else that has gone into making that a useable commodity, surely that person should retain the right to say that, if it is to be used, it is to be paid for; and there is a choice to use it or not use it.

ACTING CHAIR—One of the things that I have struggled with throughout this inquiry has been, on the one hand, understanding that point of view but, on the other hand, not understanding the potential to cut off your nose to spite your face in a sense. When it comes to the small business operator or the sole trader who has a radio going for news and cricket and the odd song might come on—and that is his business; that is his little workshop and that is how he runs it—to have a civic official of some sort come in and tell him that for the privilege of playing his radio in his own little shed he has to pay $37 a year, he might say, 'That is it. I will not play the radio. I will do without.' At the same time the potential that another person comes in and hears the odd song and who may be attracted to that song and want to go out and buy it is lost. In that tiny microcosm there is the potential to be penny-wise and pound-foolish.

I will just read to you what Mr Cvetkovski, who gave evidence here earlier, said. He made this comment. I would just be interested to hear what you say about this. It states:

> Furthermore, APRA does offer a staff scheme rate of $37.09 for business with up to 67 works or $0.55 per employee per year for a larger workforce. These licences are primarily for music used in staff development and training, corporate videos, conferences, corporate functions, staff rooms etcetera. The primary focus is on staff members not customers. Perhaps this fee could be further discounted for sole traders or partners. For example most small car repairers do not really have an audience. A person will drop a car off and collect it at a later stage.

What do you think about that comment that perhaps some adjustment should be made for that small but nonetheless significant market in terms of our economy? What do you think about Mr Cvetkovski's comment?

Mr Clark—Once again it boils down to a commercial decision by the copyright holder. If they, as the person who has created the works, feel that it is a commercially viable direction to move to provide that kind of reduction and to actually offer that as a potential marketplace in which their material will be heard and the rest of it, I really think it is their decision. If they choose to offer that for whatever reason by actually risking a few pennies, as you said, in one area and generating additional in another, I think that is a decision for the copyright holder as opposed to something that should be enforced upon them to say, 'This is what we perceive as being commercially viable for you.' I cannot see how that can happen. In the same case, why is it that this small person, the sole trader or whoever else uses that material, even if it is for their own personal satisfaction, relaxation or whatever else it is that leads them to choose to actually have the performance of that material, also directly or indirectly leads them to another commercial decision. Similarly, I think they would take offence at being told that they either must or must not play the material.

ACTING CHAIR—What you are saying is that it really is a matter that could in the whole scheme

of things be taken into account but provided the artist was consulted and they became part of any decision.

Mr Clark—That is what I think the case is for. If a case can be put forward that suggests that here are some really good, strong reasons why as opposed to a case that has been put forward that says the current laws should just be changed, that a number of stakeholders would like the rules changed or something enforced on the supplier from whom they are receiving this material.

ACTING CHAIR—One of the views I think that was given to us in one hearing we had in North Queensland was in relation to the sole hairdresser in the shop who pays the lease and provides the venue. Where is the discount the other way, sort of thing? Do you know what I mean?

Mr Clark—It depends on how you look at it and where the base is. I would wonder where somebody, no matter what industry they were in, could have anything designed for them in that kind of level for the sort of fees that you have just quoted. When you think about how it is divided up and what the actual owner of the copyright gets in the process, it is a very small amount. I think that it is already a very modest fee for a person to actually entertain their clientele or create a better environment in the hairdressing store or whatever it may be for a year.

ACTING CHAIR—We do get quite a few people saying that. However, as you probably know, in business every little fee goes on top of every other little fee and, suddenly, you have a great big fee. I guess it is a case of working out where a fair balance can possibly be struck involving all parties. That seems to be what you are saying.

Mr Clark—As I said, currently the people performing the music have the choice. They choose that it is better to have it than not to have it.

ACTING CHAIR—What do you think of the suggestion made recently by APRA that the law could be changed so that broadcasters bear the responsibility of paying the royalties for the public performance of music via radios? What do you think of that?

Mr Clark—I think it is very complicated to start with. It is a difficult exercise.

ACTING CHAIR—But this is a complicated area, is it not?

Mr Clark—I know. Once again, though, the broadcasters in their own right are also businesses. Some are big and some are small. I think there would be implications for the owner of the copyright. They would be the people who would suffer as a result of an effort to reduce costs or make material more easily accessible or inexpensive to the people who are using it. I think there are some contradictions concerning the debate which has been floating around about the double dipping between the broadcasters' fees and the end users' fees. But I do not think there should definitely be a blanket sort of decision to transfer it from one area to another.

ACTING CHAIR—It has been suggested that the value of music to business varies depending on its nature and the purpose for which the music is being used and that this should be taken into account. For

example, the distinction has been made between an employee who listens to the radio for personal entertainment and information and a restaurant creating an ambience and a gym or nightclub where arguably—although having heard some of the evidence today, I am not quite sure about this—music plays a vital role. However, I am told that that may not necessarily be the case in terms of how the patrons perceive it. But leaving all of those arguments aside, do you think that is a valid distinction, that is, between the employee who listens for personal information and the ambience-type situation?

Mr Clark—I think so. However, are you suggesting that degrees of fees should be changed for that reason? Once again, to me it is a business decision. If I were an employer who had a restaurant and I could potentially benefit from the ambience created through music being played for my clients, I might go out and spend a lot of money on a sound system—that amount could be the equivalent of tens of years of APRA fees—and I would not think twice about doing that. I take offence at that, because they are willing to spend all of that money on hardware and equipment but are not willing to acknowledge that there is also a similar value in what is being played through it. The same thing goes for any other facility. If they see no value in the performance of the music, they have the right not to use it.

ACTING CHAIR—Do you think that the collecting societies—we have APRA, the PPCA and I understand there is another one hovering around—have effectively educated their members and licensees about the law in relation to music copyright?

Mr Clark—I think they have done so with their members, but I think part of the reason that we are here is that the education of the licensees has been a little late in coming. It has only been in recent years that they have increased the level of activity that it is their charter to undertake. Possibly, it was all a bit too quick in terms of the licensees. The education of what it is all about has been lacking. It has all come a bit too fast.

ACTING CHAIR—That is a good point. Do you think it would be feasible to have virtually the collecting societies getting together so that there is not so great an impost with respect to paperwork on businesses?

Mr Clark—I do. However, the danger there relates to monopolistic-type problems. I think it makes good sense all round, but I would see that the perception from the licensees, once again, would be that this big, bad organisation had control over everything, and the advantages of reduced paperwork may be matched with an equal amount of negativity. However, to me it would make good sense to do that.

ACTING CHAIR—Did you want to sum up at all or say anything further?

Mr Clark—The last point was probably the key to the exercise, that is, education and understanding. I was operations manager for a large retailer. I remember looking at the expenses for the first time without at that point understanding what those fees were all about. I remember looking at those and thinking, ‘This is an unnecessary expense and a good way to save money.’ At face value that is how it would appear. There needs to be an understanding of where it comes from. For the general public and potentially a great many of the licensees it is very easy to turn on a radio, CD player or cassette player and hear music. It is very easy not to understand what went into generating it. That is where we come from. We represent not only the people who

have sat down and come up with the creative product that people everywhere enjoy but all of those people who have participated in and around them and who also draw their livelihood from the revenue that those people generate. There are a lot of mouths to feed, and for a very small amount of money.

ACTING CHAIR—Thank you very much. We appreciate your submission.

[2.27 p.m.]

HOLLERAN, Mr Rhys, Managing Director, RG Capital Radio Pty Ltd, Level 1,80 Petrie Terrace, Brisbane, Queensland

ACTING CHAIR—Mr Holleran, would you like to make an opening statement?

Mr Holleran—I have a short prepared statement. I am from RG Capital Radio and I am the managing director of that group of companies. The company operates radio stations in the following areas of Australia: the Gold Coast, the Sunshine Coast, the Fraser Coast of Queensland; Rockhampton, or the Capricorn Coast; the Toowoomba-Darling Downs region; and the central coast of New South Wales. We have also got licences that we are yet to operate in Albury and Shepparton, in Victoria. These services are typically in medium to large regions of Australia.

I am appearing today because I believe that this committee is considering a proposal that radio broadcasters pay to APRA the licence fee that business currently pays to APRA, whether the business or its employees use the radio. RG Capital Radio strongly opposes such a proposal. I am here today as a broadcaster. I do understand that when a radio is played in a shop or business a public performance right may be involved. This has nothing to do with the broadcast right that is relevant to our radio stations.

Our company and my fellow broadcasters already pay large fees to APRA for broadcasting rights within our service areas. To have to pay again for the same privilege is unfair, unjustifiable and inequitable. Our company already pays for the rights to broadcast to its potential audience. The suggestion that we pay again for listening in a work environment, in our view, is a case of double dipping. Our company has no control over where people listen to their radios, nor do we know the circumstances that might lead us to believe it to be a public performance.

In the regional areas that I represent, they may be listening to music or they may well be listening for vital information. Recent cyclones in the north of this state meant that many radios were on, but not for the performance of music. Our company knows no way you could determine this. To impose an additional cost on our business—and most of them, especially in my markets, are small businesses themselves—would be intolerable. We could not, as might have been suggested, pass on the cost to advertisers. In our markets, with heavy competition from other media, we simply could not sustain it.

The suggestion that advertisers pay for this cost is simply unfair. It seems ridiculous to me to suggest that advertisers pay for a benefit received by some other business who enjoys the benefit of a public performance of our radio stations. It seems more likely to us that the suggestion is that we pay the fees designed for the administrative benefit of APRA and relieve them of the task of collecting fees. The administration of our APRA licences already is a time-consuming task. Most of my stations have very small staff numbers and struggle with a multitude of tasks to deliver a comprehensive service in their markets. So, in conclusion, our company proposes to this inquiry that any additional fees would be both inequitable and unjustifiable.

ACTING CHAIR—Thank you very much for that. The committee, of course, has fairly wide terms

of reference. This issue has arisen probably down the track a little. It did not start out that way, but as the committee got going I think APRA came up with a suggestion along these lines: that as some of the force of the submissions, particularly from small business, was resonating, I think APRA was perhaps looking for some answers itself, and it came up with a suggestion. Nonetheless, as can happen in committee hearings, issues do arise. To have them met with a strong submission like yours is very beneficial. You operate a number of stations, do you?

Mr Holleran—Yes.

ACTING CHAIR—It is just the one licence, but you are linked; is that right?

Mr Holleran—Each radio station is a business in its own right, and we operate it as a group. So I manage the group.

ACTING CHAIR—That includes the commercial side? It is not a community-type organisation?

Mr Holleran—No, it is all commercial.

ACTING CHAIR—I do not suppose that you want to go into fees. That would be commercially sensitive material.

Mr Holleran—I would prefer not to, other than to say that it is a lot of money. We do contribute a fairly significant sum of what would constitute radio's contribution to APRA fees in a year.

ACTING CHAIR—I suppose that it does not concern you as much, but do you think that there are problems with the administration of the fees that are charged at a small business level, particularly the one owner type of business?

Mr Holleran—I think there are. We are often on the complaint end, because when an APRA officer approaches a business, if they are listening to one of my radio stations, they are inclined to complain to us in the first instance. I guess they go along the lines of, 'Is this for real? It was not explained to me. I did not understand that there was a right involved.' I think this is a general comment, but I think that they felt a bit beaten up by the people concerned and that a general explanation of it was not forthcoming. To me it seems that there is a real PR problem. APRA needs to get the message across to small businesses to make them understand what it is that they are complaining about.

ACTING CHAIR—Do you think, in fact, that there is maybe even a cultural problem with this situation? We have heard arguments, for example, that suggest that it has been penny-wise and pound-foolish—that you are, as it were, crushing the small business operator, the one owner sole trader, over this extra impost when, in reality, if he turns off his radio, he is depriving the artist of possible exposure to other people who might want to buy the record, the tape or what have you. So there is a little bit of rigidity there.

Mr Holleran—I think it is a definitional one of what constitutes public performance. An instance cited to me at one of our radio stations was that of a panel beater and his assistant. Generally speaking, I

guess that customers would come in at the end of the day to collect their cars, and that would be their only contact with the business. They would have the radio blaring throughout the day, and it was put to them that they needed to have a licence fee. I guess that they took umbrage at that. I do not think anyone understands what the definition of 'public performance' means.

ACTING CHAIR—Least of all the judges.

Mr Holleran—If I am at a set of traffic lights and the window is down and I have my stereo up loud, are the five people who are standing to cross the traffic getting a public performance? And would an APRA officer appear suddenly and whip out for the 37 bucks?

ACTING CHAIR—A bit like the charity collectors at the lights waiting to pounce.

Mr Holleran—Yes. I think that it is stories like that that get to small businesses, and I guess that is why they have a gripe. But from our point of view, we already pay a performance right to broadcast it, and our rights are for the entire audience. If explained to small businesses properly, then I do not think that, by and large, they are going to have terribly many problems. Most of the problems they have from where we sit, which is on the receiving end of complaints, would be from a lack of those businesses understanding what constitutes a public performance right. But telling me I do not know what a public performance right is, too, in many respects.

ACTING CHAIR—If that definition was attended to in a somewhat different way or an exemption granted, your concerns about these costs being passed on to you would be abated, would they not? If there is a change in the definition or an exemption for a small business, then you would not have concerns about it?

Mr Holleran—No, I do not have a concern from that point of view. Our concern is totally with the equity and the cost issue of us having to pay again for something that we have already paid for.

ACTING CHAIR—Obviously you would have a fairly large listening audience. Would your group of stations be listened to a lot in workplaces?

Mr Holleran—Yes. About 20 per cent of our total listenership listen in a workplace environment. It is about 20 per cent.

ACTING CHAIR—It would not bother your business, I take it, as far as you are concerned, if the current situation pertained with better education. You are quite happy with that. You would prefer probably fewer calls from small business, so if there was an educative role undertaken and the small businesses understood it better, then you would be happy with that, would you?

Mr Holleran—Sure. I think that has to go hand in hand with it. Certainly at the moment, just based on complaints we get, there is very little understanding.

ACTING CHAIR—And it is maybe an attitudinal thing, the idea of someone who is perceived generally to be a government public servant coming in and telling people to pay $37 or whatever it is.

Mr Holleran—Sure. You hire a video now, and at the start of the video it talks about copyright laws and how it is owned by the artists. I think that people have a very clear understanding of video piracy, and they have a very clear understanding because they have been well educated. I do not see any such thing happening in terms of the public performance of music.

ACTING CHAIR—So apart from scotching the suggestion that APRA has made, you cannot think of any alternative that could ameliorate the position of small business and, at the same time, ensure that you were not imposted any further?

Mr Holleran—No. To me, it is a simple matter of 'Who derives the benefit should pay the fee.' I think that is a fair concept from any way you look at it. In the absence of any sustained education program, you simply cannot say that the current system does not work. I do not think anyone has actually given it an opportunity to work. That is certainly our experience as broadcasters on the end of complaints from businesses.

ACTING CHAIR—Thank you very much for your evidence. We appreciate it.

[2.40 p.m.]

BRENT, Mr Terry Frank, Director, Eatons Hill Hair and Beauty Salon, 4 Bunya Park Drive, Eatons Hill, Queensland 4037

ACTING CHAIR—Thank you very much for coming, Mr Brent. Eatons Hill is a familiar area.

Mr Brent—Yes, you should be familiar with that one.

ACTING CHAIR—I appreciate very much your coming along today and your evidence. As a small business operator you are very typical of many small businesses that we have heard from in Australia in relation to the one operator business and the experiences that those people have had. Would you like to give us an outline of how the situation has affected you and your business?

Mr Brent—I have a written, short statement if I can read that.

ACTING CHAIR—That is fine.

Mr Brent—My appearance at this inquiry is mainly concerning APRA, the Australasian Performing Right Association, to whom we and thousands of other small businesses pay a fee. It will probably apply equally to the PPCA, the Phonographic Performance Company of Australia. My wife and I control a company which operates a small hairdressing salon employing four people, one permanent, which is our daughter, and three casuals. Only one or two staff are normally on duty at any one time. Our staff play their own portable radio in the salon. We first heard about APRA in June 1996 when we received a demanding letter from them regarding the licence and fee to be paid. Although the current Copyright Act came into force in 1968, it has apparently taken APRA 28 years to act to totally enforce it against small business. Then they acted with a vengeance, for, in a letter that was mis-termed a 'courtesy notice', they threatened us and, I presume, tens of thousands of other small businesses with legal action if a licence was not obtained and a fee paid for playing a radio.

I fully agree that the collection of copyright royalties is a correct method of paying artists for their work. Royalties are collected every time a cassette or CD is sold, from radio stations and from many public broadcasts and performances that people attend for the main purpose of enjoying music. Without doubt, where the playing of music is the major or substantial attraction, it is a public performance. I have no complaints about royalties being collected for such. My objection is that another licence fee is being unfairly imposed on small businesses. They are subject to enough licences and charges already to allow them to be in business. Now they also have to pay just so they can listen to the radio at work.

This licence fee is imposed upon the dubious reasoning that playing a radio or CD player upon any business premises is a public performance. The whole matter of the question is the definition of a public performance. APRA states that music played on any business premises is a public performance. It seems that the term 'public performance' as interpreted does not differ between an open-air concert for 50,000 people and a motor mechanic or a hairdresser with a radio playing. They are all construed to be public performances. What about people playing their own music at a wedding reception or birthday party held in a hall?

According to APRA, these may be public performances and a fee should be paid. I note that the PPCA also charged fees for art galleries and funeral parlours. I do not think people attend those places to listen to music. Where does commonsense enter into the term 'public performance'?

In summary, my submission is as follows. The copyright royalty fees required to be paid for playing a radio or CD in a small business have already been paid by the radio station or in the purchase price of the CD. The playing of music is entirely incidental to the operation of the vast majority of small businesses and is not part of any moneymaking procedure. No artist is being deprived one cent of income because a person half heard some song in a dress shop. The definition of a public performance as apparently now interpreted by the courts is far too broad and should be more clearly defined and should exclude small businesses for whom the playing of music is not a source of income. The original intention of the 1968 Copyright Act may not have been meant to include the persons the courts have apparently now ruled are included. In conclusion, I would like to say that it is very hard to imagine that, when the act was passed in 1968, it was the intention that the local corner store should have to pay to listen to the radio or the funeral parlour should have to pay to play music for the bereaved. Thank you.

ACTING CHAIR—Thank you very much, Mr Brent. I think that was a very succinct and yet very pertinent submission, particularly the concluding remarks and nice summary. On that last point, conditions have indeed changed. Have you been in business since 1968?

Mr Brent—Not in the current business, but yes, since 1961.

ACTING CHAIR—In those 28 years, 1996 was the first time you had encountered this sort of thing.

Mr Brent—Yes. Before that I would not have known who APRA was.

ACTING CHAIR—Before that, you were in businesses where the radio may have been going?

Mr Brent—We have been in videos since 1982 and various other businesses—cafeterias and snack bars where, yes, we did have a radio or something going just to give a background noise so you are not there in dead silence if nobody else is there.

ACTING CHAIR—You would not, at any stage, have regarded that in any commonsense way as a public performance?

Mr Brent—No, in no way.

ACTING CHAIR—So, in effect, do you see this recent move in the last few years by APRA to charge these fees as being just a grab-all type situation?

Mr Brent—I think it is just a money grab by APRA, who already, by their own figures, appear to get quite a substantial percentage out of what they collect. That is their business, not ours. Throughout the brochure that they sent me, they state that the courts have established what is a public performance. They even intimate that playing music in a home under certain circumstances could be regarded as a public

performance. Where is the commonsense in the interpretation if the courts have interpreted this? Like many laws that have been passed, it has been passed as a law and then the courts interpret, interpret, interpret. It seems that the interpretation has now gone well beyond whatever was originally intended.

ACTING CHAIR—Arguably, I suppose a car stopped at the lights with the radio blaring could be heard by a number of people standing at the lights, so that might be said to be a public performance.

Mr Brent—If I am out mowing my grass with the radio going and people stop to listen to a particular song, is that a public performance? I would not think they would take it that far, but in some cases, yes, they have gone too far.

ACTING CHAIR—Are you are saying that the definition should be prescribed by the statute rather than allowing the courts to fiddle with it; it should be a narrowly prescribed definition?

Mr Brent—Narrowed down a lot more. I know that every single circumstance cannot be put down into every act of parliament; but it should be narrowed down certainly by an act, because that is the only way it can be done—so that the playing of music in a business has to be some part of a moneymaking concern rather than just the motor mechanic sitting there with one staff and the radio going and someone saying, 'I'm sorry, this is a public performance.'

ACTING CHAIR—Do you think that there should be a change in the onus of proof—that instead of saying that a public performance is anything, APRA should have to show in any particular circumstance that this playing of the radio at the Eatons Hill hairdresser is a public performance? The onus would be on them rather than the other way, which would make it much more difficult for them.

Mr Brent—That could be part of the way of doing it, because they are collecting fees for this, and obviously not just from us. How many, I would not know. There are 600,000 small businesses in this country so how many they have hit, I have no idea. If they took it off another 100,000, that is another $30 million a year that they are doing—which is not too bad—on the supposed assumption that any business premises is a public performance. You might have an engineering shop out at the back of a block. Apparently, that is a public performance, which is a little bit wider, I would have thought, than the law would allow.

ACTING CHAIR—You seem to be emphasising the link of the commercial side to the use of the music. If there was a way of showing that you were using the music to attract business, that is one thing. However, in terms of what is or what is not a public performance, if it is an incidental thing to the business, that is another thing.

Mr Brent—Yes. It is very hard to narrow down every single case. In general terms, I would say that, yes, if the music is the substantial part of getting customers into your business, I can see the reason for charging. Where it is completely incidental to it and you are just sitting there listening to the radio when you could be sitting at home listening to the radio, all you are doing is changing venues. At our salon, we play the radio simply because if there are no customers, the girls feel as though they are in a funeral parlour. If you get a few women in the salon, especially with my daughter there—I know what she is like—nobody can hear that radio, anyway, but it is still there giving some sort of noise.

ACTING CHAIR—Someone mentioned previously that music at hairdressing shops provides a discreet area where people can talk.

Mr Brent—That is quite possible.

ACTING CHAIR—Music is stopping someone else from hearing you.

Mr Brent—There was some talk at some stage of sending hairdressers to a psychology course. In all seriousness, they were.

ACTING CHAIR—As you say, in your premises this music is just something for the staff and it has got nothing to do with the business.

Mr Brent—No; 80 per cent of the time we would either have one staff on or two. They might have one customer there or two if they are doing somebody's hair with a perm and they are waiting and they do a trim. It is not where you have a great pile of people there or they are just sitting there listening to the music, which they would not hear, anyway. It is just a little incidental thing. As I say, if the playing of the music is entirely incidental to a business, there should be no fee paid. If it does form some part of a definite attraction for people, well, yes, I could definitely see the sense of it.

ACTING CHAIR—Have you ever had anybody come in and say, 'I only come to Eatons Hill Hair and Beauty Salon because of the music'?

Mr Brent—Certainly not.

ACTING CHAIR—In terms of approach, I think you mentioned that you were approached by APRA by mail, not in person.

Mr Brent—Obviously, somebody from APRA had either been to our salon or rung there. I have queried our staff and no-one can remember. The letter we received, which you should have a copy of, was addressed to my daughter, Donna Allen, owner of the salon. So obviously they knew her name but no-one can remember anybody from APRA approaching them. Maybe they have just rung up and asked, 'Do you play a radio there?', someone said, 'Oh, yes.', and they said, 'Fine, good', and then along comes a notice—a very nasty one—that basically says, 'Pay us your fee or we will take you to court.' The approach even from them left a lot to be desired.

ACTING CHAIR—I saw that notice in the briefing papers. In effect, it does not give particulars of what you are doing to constitute a public performance. Basically, it just says, 'Pay up.'

Mr Brent—Yes, 'You are in business; pay.'

ACTING CHAIR—And again, to a small business operator, that is not a particularly friendly notice. It is hardly a courtesy notice, you would say.

Mr Brent—Yes. They term it a courtesy notice.

ACTING CHAIR—I understand your point of view, but you rule out having to pay anything for this sort of thing. You would say that that is not just fair?

Mr Brent—In our particular case, when we are only listening to the radio. Every time the radio plays a song, they pay that fee—whatever it is I have no idea; half a cent, one cent, I do not know. So the fee for that copyright as a public performance—let us call the radio a public performance—has already been paid. What they are saying to us is, 'We have paid it once, but we want you to pay it again.' Sometimes they play music at beaches. I assume that they also have to pay, but I am sure that nobody goes to the beach to listen to the loudspeaker screaming out some Rolling Stones record, or whatever.

ACTING CHAIR—For many people, and I am one of them, once they start putting it on it is an incentive to leave. Thank you very much for your submission and all of your evidence. I might just point out that the committee today is not a quorum-based committee. However, your evidence will be transcribed and will form part of the committee's deliberations. So just because I am the only one here does not mean that it is not going to be listened to.

Mr Brent—I was going to ask that, but you have clarified that for me.

ACTING CHAIR—All right.

Mr Brent—So even though you do not have a quorum, it will be taken down and form part of the collection of submissions?

ACTING CHAIR—Yes, it will be and the committee will later authorise it as evidence to be included in all of the deliberations.

Mr Brent—Right. Thank you.

ACTING CHAIR—We will adjourn.

Proceedings suspended from 2.55 p.m. to 3.06 p.m.

THORPE, Mr Gary, General Manager, Music Broadcasting Society of Queensland (4MBS Classic FM), 384 Old Cleveland Road, Coorparoo, Queensland 4151

ACTING CHAIR—Welcome. Thank you very much for coming to the inquiry. May I say at the outset that the committee is not sitting as a quorum committee today, but there are two qualifications in relation to that. One is that that does not necessarily mean that the evidence that we take from you is not just as good as if we were sitting as a quorum. It will be taken down and transcribed. A later, duly constituted committee will authorise the evidence. I do gently warn you that, as it is not a properly constituted quorum committee, the rules of parliamentary privilege do not apply. I do not imagine you are going to launch into a scathing attack on all and sundry, but I give you that warning at the outset.

Again, thank you very much for coming. The inquiry has taken a lot of evidence from all over Australia. That has been a very useful and informative exercise. Would you like to make an opening statement, giving the background as to why you have come along today?

Mr Thorpe—Yes, thank you very much. I do not think I will need the parliamentary privilege warning. Basically, I understand that there is before the committee a proposal from APRA regarding the method for the collection of fees relating to what I think they are terming the rebroadcast of radio programs. I want to put to the committee an aspect which may not have been presented or might not have occurred to the committee, which is in relation to the community broadcasting sector.

I am the treasurer of the Queensland Community Broadcasting Association as well as the general manager of my own station, and, up until this year, the chairman of the board of my station was on the national executive of the CBAA, the overall body for community broadcasting. Therefore, we have a fairly good understanding of the financial situation with community radio stations. I believe that at this point in time there are 19 licensed stations in Queensland. The station that I represent, 4MBS, would probably be one of the larger ones in Queensland.

In relation to the rest of those stations, most of them are sailing very, very close to the wind financially. It is a real struggle for them to keep afloat. Some of them barely achieve meeting their costs each year, particularly those stations in the smaller markets. However, even in the larger markets the community radio stations really do not have the financial resources of the commercial sector. That is the main message that I am here to, hopefully, get across. We are facing all sorts of increases from all directions and it is putting a lot of pressure on the stations in the sector, even in metropolitan cities such as Brisbane.

The stations that cater for a specific target market are really catering for a percentage of a percentage of a percentage. There is an initial percentage that are actually aware of and listen to community radio and then some of those stations cater for a specific interest within that sector, so they end up with quite a small audience base from which to draw their income. Many have attempted to get greater income streams from things such as sponsorship, although they do not have the numbers to draw major funding from sponsorship. Therefore, in virtually all areas they face a very tight year financially, almost to the point where several stations, if they have even a small increase, are in trouble financially. This would not apply so much to the metropolitan cities and I suspect from the APRA proposal—although I have not read it—that it would be most interested in the large metropolitan cities where maybe a large number of outlets are utilising broadcasts

from radio stations. Correct me if I am wrong, but I suspect that that is what they are looking at.

Through this meeting today I want to make quite a clear distinction between the commercial radio stations and the community radio stations. Community radio stations are set up as non-profit companies and they take that quite literally. They do not set out to make huge profits and any surplus that is made in a year is channelled back into the radio station or the community. Therefore, there is no profit motive and it seems to us that it would also be a difficult task to enforce an equitable charge across the radio stations.

My station is a classical music station and I would hazard a guess that the number of retail outlets that would use classical music as a background in their day-to-day trading would be quite small compared with those that use the rock music stations. To my mind, it would be an extremely difficult thing to come up with an equitable means of placing a fee on us compared with those larger metropolitan commercial stations that have rock music. My experience has been that, if you go into a retail outlet anywhere from a fruit shop to a bakery to larger stores, they usually have one of the larger commercial rock music stations on. So our fear is that, if such a system was looked at in terms of a charge, it would be in danger of being quite inequitable for the smaller stations.

ACTING CHAIR—Of course, you are wearing two hats today in a sense. I guess you are really directing those submissions not to the 4MBS hat but to the treasurer of the community broadcasting sector hat.

Mr Thorpe—Yes, in Queensland. Queensland is an interesting case in that it is so widespread. Nineteen stations are spread over a huge distance. The costs of them in just communicating or even getting together once a year are such that a lot of them cannot afford to do even that.

ACTING CHAIR—That group does not include 4CRB, does it?

Mr Thorpe—It does, yes. It is a member of the QCBA, the Queensland Community Broadcasting Association.

ACTING CHAIR—I was on the board of 4CRB and have a very great fondness for the station. Along with a lot of those other stations, although 4CRB is a very established station, it would experience difficulty as has been suggested as a result of any such proposal that the stations, particularly the community stations, pick up the licence fee. You would say that, would you?

Mr Thorpe—Yes. I do not know the details of CRB's financial situation. I understand it is quite established and it has a good sector of the market. CRB tends to take a significantly larger amount of sponsorship than most stations. It is very active in that area, possibly because it is in a fiercely competitive area on the Gold Coast. But the community radio stations here in Brisbane range from the ethnic station 4EB—

ACTING CHAIR—4RPH.

Mr Thorpe—To RPH, which has a difficult task year to year, to the youth station ZZZ—which

frankly is lucky to survive year to year; it is quite well financially managed now but its constituency is mostly the unemployed or students so it does not have a large base to draw upon—through to Aboriginal station AAA. There is a tremendous variety of types of stations. To a greater or lesser extent, they are surviving, but none of them are thriving to the point at which they can take on board extra costs.

ACTING CHAIR—The costs in this area are incredibly onerous in any event even for the small community operator. Would you say that any additional costs might tend to tilt them over the edge?

Mr Thorpe—In some cases, not all. In my station's case, we have just finished quite a long negotiation with APRA as part of the sector-wide revamp of the APRA fees. We were lucky in that we had a small reduction because we were allowed some exemptions because not all of our funding comes through sponsorship. We have to run all sorts of things from music festivals to bus trips to get some money in. Some areas of fundraising were exempted because they were not broadcast related. They are again a minority because you have to keep focused on the main game and that is broadcasting.

We would probably be in a difficult situation if the fees were to increase, because for the past 19 years on air we have allocated a certain amount to various fees. The rest very much goes into doing what we do. There is nothing there left over. It would mean that something would have to go. If there was an increase, we would have to cut out some other activity. Most of our activities are aimed at the community so we would be very sad if we had to change direction in order to meet an increased fee.

ACTING CHAIR—I am just a bit curious about MBS. Because of the music format, would you have to pay anything?

Mr Thorpe—Yes, we pay just under $10,000 a year. I think our last count for this year was around about $9,000. The new formula worked out places us in the highest music usage category. Because of our format, we tend to run virtually the minimum amount of sponsorship. If we ran the maximum amount, which is four minutes in the hour, it would tend to start to sound for our listeners at least a little too commercial, so it would be very counterproductive for us to go to the full four minutes as many community stations can and do. We tend to be fairly conservative so it somewhat limits our sponsorship. To go to the full four minutes would actually have a counterproductive effect on our subscription income, which is about 50 per cent of our income. We do already pay a substantial fee.

ACTING CHAIR—Given that the music you would play would be largely out of copyright, I thought that you would not have to pay that sort of a fee. I am quite surprised at that.

Mr Thorpe—Yes; 99 per cent of the composers of the music that we play are dead and gone. It is an interesting area. That is what we would have thought as well. The way it is formulated, we still pay a percentage. I understand the way the rules currently stand to be that, if we were to play American orchestras performing we would not have to pay any copyright—if we just went to playing all American. It has never been really tempting because, basically, we want to support the Australian music scene and provide a thorough coverage. But if we were in a situation in which it came to the crunch, that is an option which has never seriously been discussed. It is something to do with the copyright agreements worldwide in America. I understand it is not part of the agreement. We endeavour to provide a good coverage of the local scene,

which means we are playing Australian groups as much as we can—Australian orchestras, performers. We would rather pay the copyright fee that we do and give a better service than limit ourselves.

ACTING CHAIR—Are you aware of any discrete businesses that would play—and I hope I use that word advisedly—your music? You would not expect your music at a panel beater's shop, but you might expect it at a mystical boutique book store or something?

Mr Thorpe—In the past five years or so I may have had two or three phone calls from businesses that tend to be more in the professional vein. Their question usually is: 'Are we allowed to play?' We say, 'No.' At that time, I think it was before the court. There was a higher court case I think involving Telstra. We said, 'No, it is better not to. We have no authority at this point in time to say yes.' I think what they were wanting to do is have something that is less full on and more in the way of background music. I think in some ways they probably felt they would be doing us a service by having us in their office so that people heard it. But I think it is highly unlikely that someone would act on hearing a piece of music in a professional office. There is no significant benefit for us; it is obviously beneficial from their point of view to have some appropriate music. But you are right; I doubt you would hear our music at a panel beater's or anywhere of that nature. I think it would be rather a pointless exercise.

ACTING CHAIR—In a sense, you are quite succinctly putting the view that for community broadcasting—and I think this is a very important bit of evidence, because we have not to my knowledge had all that much from this side of the broadcasting sector—this proposal by APRA, which has come up, by the way, in the course of hearings, would be a very significant negative to the community radio sector. And, apart from that, without taxing your knowledge of public performance and what it means, would you suggest that perhaps addressing the definition of 'public performance' might be a better way of ameliorating the concerns of small businesses who have their radios on and who are sometimes caught by this impost?

Mr Thorpe—Yes, you are correct in saying that. Without knowing too much about the definition, I would have to say that the proposal, as I understood it, seemed to me to be extraordinarily difficult and inequitable. However, to my mind, looking at it from the 'public performance' definition point of view would have been a more reasonable and logical means of approaching the situation. Certainly, it would be from the point of view of my sector. I cannot speak for APRA. It can speak for itself.

ACTING CHAIR—Without trying to find out any commercial-in-confidence information, I take it that your revenue from advertising is not significant?

Mr Thorpe—No. The most that we have achieved out of sponsorship in the last 19 years of being on air is $100,000. In that year I think we had to pay a sponsorship salesperson about $25,000, anyway. So that left us with $75,000 or even less. That does not include all sorts of other on-costs. That is just in round figures. That was not significant in terms of the larger scheme of things. However, that figure is quite a good one for a community radio station. My station is more active in the sponsorship area than counterparts interstate. Because we are in a smaller market, we have to work a lot harder. But it still does not bring in anywhere near the sort of income required. You could not run a station on it alone.

ACTING CHAIR—Does your signal stretch to the Gold Coast?

Mr Thorpe—Our service area is the Brisbane metropolitan area. We have people who listen and become subscribers on the north coast and south coast, but their reception is patchy. If they are at a high altitude and have a good aerial, they will pick us up. It is an area that is very attractive to us, particularly in terms of classical music. There are a lot of retired people on the coast. But as the boundaries of our licence area stand currently, we have no authority or permission to go with a full broadcast into there, even though there are people who really want it. We have applied to extend our licence area. It is highly unlikely that there will be enough people in that area alone—for example, the Gold Coast. To support a fine music station requires a large number of people.

As you possibly realise, quite a small percentage of people in the community would actively support a classical music station as opposed to other sorts of stations. We are dealing with a target audience, a niche market. It is attractive to go to the north and south coasts, but our financial ability at the moment is such that we would not be able to afford the equipment to do so.

In cooperation with two other community stations, three of us have combined to put up a higher tower which may put the signal into those areas, but it is primarily intended to improve the reception in Brisbane, which has about 35 hills behind which people cannot pick up our signal well. We have difficulties in Brisbane, let alone on the north and south coasts.

ACTING CHAIR—In those wider areas, people might want to make their own arrangements with aerials and so forth to pick up your station. But that is their business. Have you got any idea of the size of your audience? I would think 4MBS is a pretty significant community broadcaster in Brisbane. I do not know whether you outdo 4RPH. Do you have some idea of your listening audience?

Mr Thorpe—It is difficult, because we have never been able to afford to participate in surveys. Recently—in fact last week—we signed up with Roy Morgan and got a good deal—a cut-price deal—to get some information. It was literally only on Friday that I had a chance to look at the figures. Those figures seemed to be significantly less than the figures that we had been working on for the last decade. Whether they are correct or not I do not know. It is a worry to us. I suspect that it might be more that the quality of our audience in terms of salary and profession and that sort of thing is a more significant factor than the size in terms of numbers.

For the past decade or so we have really not talked numbers, because we have not been given any data. It would have cost us significant amounts to participate in surveys. It is tricky to say. We were working for the last five to eight years on a figure of 100,000 listeners. But the recent Roy Morgan figures tended to be looking at something like a quarter of that. This is a worry to us.

ACTING CHAIR—Of those, you have no idea of the number of businesses that would be tuning in?

Mr Thorpe—No. All I have is the results from I think a University of Queensland survey of our subscribers in the early eighties which showed that we had a high percentage of businesses, professional people and management-type people listening to a classical station, which was probably predictable. But again, ours is quite a different scenario from, say, that of 4RPH or 4ZZZ. They are at the other end of the spectrum. We really have more figures on age groups. Ninety-nine per cent of our audience are over the age

of 21 years, as opposed to the reverse for rock music stations. The data that we have is not significant, but it is basically the only data we have. But it does show that in our case, a classical station, there is a higher percentage of, say, business people or professional people than there is with respect to other sorts of community radio stations which have a different listenership entirely from ours.

ACTING CHAIR—In terms of any businesses that may be tuned in, again it would seem to me that it would be almost impossible to suggest that a licence fee ought to be payable at that end, because of the amount of non-copyright type music that would be played?

Mr Thorpe—Yes. It is in my station's best interests to play music that is 200 years old, because that is the most popular. The music that is well and truly more contemporary, in terms of classical music, is an expensive exercise for us, particularly if it is 20th century choral work. We pay $2.50 per minute grand rights on top of the fees that we pay, which is a percentage of our annual income. So it becomes quite an exercise. So the end result is that we cannot afford to play a large choral piece of music more than 20 minutes long by a living composer, because it will cost us hundreds of dollars to do it. So what tends to happen is that we do not play them, which is rather a shame because it is really doing them a disservice. No-one is hearing them on the radio to be able to then say, 'Yes, I would like to buy that particular piece of music.' So it is an interesting situation, and one that we wish did not exist, because it would significantly free up our programming. It becomes very much a budgetary issue for us.

ACTING CHAIR—Thank you very much. We appreciate your evidence. It has been very useful.

Committee adjourned at 3.30 p.m.