



HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Reference: Copyright, music and small business

ADELAIDE

Friday, 20 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

BROWNSEA, Mr John David Leslie, Executive Director, Small Retailers Association of South Australia Inc., 321 Port Road, Hindmarsh, South Australia 5007	663
BUDDLE, Ms Noelene Joy, General Manager, Austereo Pty Ltd, 128 Greenhill Road, Unley, South Australia 5061	653
CHILDS, Mr Robert Norman, President, Songwriters, Composers and Lyricists Association Inc., PO Box 228, Kensington Park, South Australia 5068	640
HEYSEN, Ms Emily Dorothy Kelly, Chair, South Australian Music Industry Association, 11 Jeffcott Street, North Adelaide, South Australia 5006	634
LANGDON, Dr Jeffrey Francis, Manager, University Radio 5UV, 228 North Terrace, Adelaide, South Australia 5000	648
MALANDRIS, Mr Michael, Member, Fair Fitness Music Association, 359 Goodwood Road, Westbourne Park, Adelaide, South Australia	596
RIZOS, Mr Evangelos, Chairman, Fair Fitness Music Association, 359 Goodwood Road, Westbourne Park, Adelaide, South Australia	596
SIEKMANN, Mr Peter Francis, National President, Australian Small Business Association, Innovation House, Technology Park, South Australia 5095	623
SHELTON, Ms Cindy Mary, Chief Executive Officer, South Australian Council for Country Music Inc., PO Box 609, Blackwood, South Australia 5051	658
TONKIN, Mr Clive, Member, Australian Small Business Association, Innovation House, Technology Park, South Australia 5095	623

HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
(Subcommittee)

Copyright, music and small business

ADELAIDE
Friday, 20 February 1998

Present

Mr McClelland (Chair)

Mr Mutch

Subcommittee met at 10.15 a.m.

Mr McClelland took the chair.

MALANDRIS, Mr Michael, Member, Fair Fitness Music Association, 359 Goodwood Road, Westbourne Park, Adelaide, South Australia

RIZOS, Mr Evangelos, Chairman, Fair Fitness Music Association, 359 Goodwood Road, Westbourne Park, Adelaide, South Australia

CHAIR—Welcome to the continuation of this public inquiry into the licensing of copyright for the playing of music in public by small business. I welcome the witnesses, and thank them for coming along. Members of the public and others who are attending this meeting are also welcome. The subject of the inquiry is the law under which royalties can be collected from small business for the use made by them of copyright materials, consisting of the playing of music on commercial premises.

The committee comes to this Adelaide hearing with a background of public hearings last year, and having received some 170 written submissions to the inquiry. We had to postpone our earlier plans to come to Adelaide; however, the committee is pleased to be here receiving your evidence today. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Mr Rizos, would you like to make some introductory remarks?

Mr Rizos—Yes. As far as the role of the Fair Fitness Music Association is concerned, we are trying our best to create a fairer and better licensing system for fitness centres. We have here a copy of an affidavit as well as evidence that we would like to present to each member of the committee. Perhaps you could take a copy back for everyone. I wish to speak on behalf of these. Is that okay?

CHAIR—That is an affidavit?

Mr Rizos—An affidavit as well as evidence I am here to be talking about.

CHAIR—Whose affidavit is it?

Mr Rizos—It is my affidavit.

CHAIR—Is it an affidavit prepared for any other tribunal?

Mr Rizos—No, it was only prepared specifically for this inquiry into copyright royalties for music played by small business. It was very similar to the submission that we put in for the committee, and it just elaborates more on information that we think is relevant to these proceedings and to the terms of reference.

CHAIR—I will have a quick look at a copy of the affidavit, if I may. We will accept the document as an exhibit. Thank you. It is up to you, Mr Rizos, but you might

like to outline the direction you are going in.

Mr Rizos—I will explain a few points of this affidavit, and then I will make a summary of it, if that is okay. If you would like, you can interrupt me and ask me questions as we go. Basically, I have been the owner and operator of Body Workshop Fitness Centres for approximately 15 years. In the past, I am quite sure that during a 10-year period we have been paying APRA and PPCA fees, but we were quite concerned when fees increased by approximately 500 per cent. The fees combined with APRA and PPCA were about \$5,000 per year and then they went up to \$25,000 per year. We thought it quite necessary to do something about it, especially because of conflicting information we—

CHAIR—Can I interrupt you there? In your business, do you play radio or tapes?

Mr Rizos—Both. We play radio in gymnasium areas, and sometimes tapes, but in exercise classes we only play tapes.

CHAIR—How is that \$25,000 made up?

Mr Rizos—Well, half and half. I do have a distribution list, if you like. It is tabled in this. I think it is ER 1.2. We made a calculation on current APRA—sorry, that is current APRA fees compared to the rest of the world. It might be better to go to table ER 0, which looks like that. That shows you a complete distribution of the centres that we operate, as well as the number of classes that we operate, and the calculation.

CHAIR—I see.

Mr Rizos—If you see the calculation down the bottom, for this year it would be approximately \$12,286. That would not include the use of radio music in our gymnasium areas. Not all our centres have gymnasiums. So you could say it is about \$12,500 or \$13,000 times two, because APRA and PPCA are combined, which would be approximately \$26,000 or \$27,000.

CHAIR—That is across your 10 centres.

Mr Rizos—That is correct.

CHAIR—My understanding, for instance, with the PPCA is that they have got a maximum fee on any centre.

Mr Rizos—\$1,800?

CHAIR—Yes.

Mr Rizos—Times that by 10, and it is \$18,000. I am only saying \$12,500 or \$13,000 for PPCA, and about \$12,000 or \$13,000 for APRA. But we used to pay about \$5,000, and to go from \$5,000 to \$25,000 is about a 500 per cent increase. Say that next year they decided to increase it again by 500 per cent: we wouldn't have any fall-back, because we allowed the first increase to happen. That would take it up to \$125,000 per year. Say that they then decided on another 500 per cent increase. That would take it to \$625,000 a year. Say that after a couple of years they had another 500 per cent increase. It would be \$3.2 million a year. We are not going to let this stop—

CHAIR—I have got here that PPCA's fee is 73c per class.

Mr Rizos—Yes. APRA's is fairly similar.

CHAIR—To a maximum of \$1,181. APRA covers radio broadcasts, as I understand it, which you say you use in the gymnasium area. Is that right?

Mr Rizos—That is correct, but that is not conducted for classes. Tapes are used for classes, or CDs. Radio is in the gymnasium area, and it has a licence fee per annum where exercise classes such as aerobics, circuit or aquarobic classes are held. That is the 72c per class rate. You can conduct one or two classes per day.

CHAIR—If you are not using radio music in your classes, your circuits and aerobics, don't you have an argument that it is simply background radio music, and you can pay a much lower background radio fee?

Mr Rizos—We have tried. We have not covered that in this application here with the parliamentary inquiry, but certainly in the discussions and in evidence—and I have got correspondence between APRA with me that did try to explain what the use of music was—

CHAIR—What the use of the radio was?

Mr Rizos—No; what the use of the radio was in gymnasiums, and what the use of pre-made tapes in the exercise classes consisted of, and their primary use. Now, there was a low fee for gymnasium background music, \$100 or \$200 a year, but a very high fee which would work out to \$6,000 or \$7,000 or \$8,000 per year for aerobic classes.

CHAIR—Well, let us work on this.

Mr Rizos—The reason is that they believed that there is primary importance in music being used in aerobic classes. In other words, you cannot conduct aerobic exercise classes without it.

CHAIR—Yes. Can we quarantine this? It is easy to comprehend the aerobics

classes and the circuit classes, but you use tapes there.

Mr Rizos—Yes.

CHAIR—Okay, so the music is using tapes and CDs, and the fees go to the PPCA.

Mr Rizos—It also goes to APRA, because APRA represents songwriters of those tapes and that music.

CHAIR—So you have to pay them as well?

Mr Rizos—That is correct.

CHAIR—On the same basis?

Mr Rizos—No. APRA represents songwriters and lyricists and composers, whereas the PPCA represents the record publishers or the record companies, as well as the artists; in other words, the people playing the music as well as the record companies who physically make the CDs. APRA represents composers; in other words, the people who sit down and write the songs and the lyrics.

CHAIR—Yes, I am aware of that. But the point you are making is that you have to pay both APRA and the PPCA—

Mr Rizos—Correct.

CHAIR—in respect to your using a CD. So it works out effectively to 72c or 73c doubled per class?

Mr Rizos—On their new calculation method, which we have not accepted yet. As I said, we don't mind paying, as long as we can pay a reasonable fee similar to other businesses with similar types of views. Dancing schools pay \$30 or \$40 per year, and we believe an exercise class consisting of dance movements is exactly the same as a dancing class. America uses exactly the same formula for dancing classes or aerobic classes, but Australia believes that it has a better understanding of what everything is and it wants to charge differently for those two types of uses. So we certainly are complaining about that as an issue. But, as far as the terms of reference are concerned, it does not really come into what we are here to talk about.

We are going to be discussing that at the Copyright Tribunal, where we have made an application. Actually, we are the first small business ever to make an application to the Copyright Tribunal. We have also made an application against PPCA, and we are the first ever small business to make an application against the PPCA—that is, in the history of the

Copyright Tribunal, which is over 20 years old and which is there to listen to these disputes.

CHAIR—Yes. I have interrupted you. Please continue.

Mr Rizos—Basically, we are concerned about the unreasonable collection methods, and I have outlined that in point 1: forcing businesses to sign contracts that are not filled out, sitting in rooms and not wishing to leave until papers have been signed, and then billing people later. They use very forceful collection methods, and have on staff a team of solicitors and their own in-house solicitors who work very hard at collecting fees; but I cannot see them working very hard on distributing the fees. Distribution is another angle.

CHAIR—Just on that, you have mentioned ‘they’. Is that collectively, or has your experience in respect of the PPCA been different from your experience in respect to APRA?

Mr Rizos—I do not think PPCA is as aggressive, but I think they are both just as bad as each other. As far as the tariffs are concerned, we believe Australians are paying the majority of money for these collection societies, and the majority of the music that is played by these organisations is overseas music. In their own country of origin, businesses are allowed to pay a lot less for using that music, but in Australia we are penalised and we have to pay much more. So we think there is a bit of a problem there.

Also, we have requested things like being able to have non-royalty playing music listed—what it is, and what we can play in our centres—and we have been refused that type of information. We have asked for a discount for playing non-royalty types of music. There are CDs and music from countries that are not affiliated with APRA, and music that is too old to collect APRA fees. We have asked them to clarify that, and we have been refused that information.

As far as specifically answering the terms of reference goes, I will quickly go into 1(b), on whether the ‘royalties sought take sufficient account of the likely limit on the number of employees or customers of the small business’. Unfortunately, from what we can see, they do not, but they do make quite strenuous calculations of what type of businesses are playing the music. They separate the industries and then try to make strenuous calculations on how to extract the maximum money from those individual businesses. I do have a list in my submission, at table ER 3, that shows you quite strange and quite detailed calculations and collections systems they use to collect.

On music for discos, they collect 1.69 per cent of door takings. How do they go to the length and trouble of trying to administer that? That must be a nightmare for them to try to administer for the collection of money. For fitness centres, they are saying 70c per class. How do they know when classes are and are not conducted and when classes are cancelled for low use? They want two per cent of gross expenditure on live performance:

how can they really find out what was negotiated between the venue and the person?

CHAIR—To interrupt you for a second, do the ER 3 charges relate to the PPCA or to APRA?

Mr Rizos—They relate to APRA. As far as I am concerned, they go to extraordinary lengths to make sure that they can extract and calculate terrific ways of accumulating the most money possible. But then I have found hardly any reasonable way of distributing those funds that they have collected from small business back to the artists. Distribution is a point in the Copyright Act, at part 135: if there is no distribution method, the Attorney-General has got the power to cancel APRA's power as far as being a collecting society in relation to small business goes. I think the Attorney-General should move to cancel APRA's power for collections like this, because there is no distribution system that I am aware of.

CHAIR—I must say the our terms of reference are at the input end rather than at the output end.

Mr Rizos—That is true. If we are aware that we are inputting and there is no way of them distributing, why should we input?

CHAIR—That is an argument that you may wish to make, yes. It is a question as to whether it is relevant to our terms. Please continue.

Mr Rizos—As far as the input is concerned, we have been taken, by abuse of the court procedures, through different courts throughout the country, including Parramatta, North Sydney, and the Magistrate's Court in Adelaide, while the Copyright Tribunal proceedings were in place. We had to ask before those Magistrates' Courts by mail for those to have a stay of proceedings until the Copyright Tribunal had made a decision, because the Copyright Tribunal is apparently the proper jurisdiction.

CHAIR—I see. Legal action was taken against you, was it?

Mr Rizos—Yes.

CHAIR—By whom?

Mr Rizos—APRA and PPCA. APRA took us to Parramatta, North Sydney, and the South Australian Federal Court, and of course they threatened us that, if they had to take us to court, it would be a \$1,200 establishment fee. Then, when we did appear at court, they stated quite bluntly that if we did lose the Federal Court case we would be put in gaol.

CHAIR—Who alleged that?

Mr Rizos—The judge, the magistrate, said that if we did lose the case and if we did refuse to pay the fees, the penalty would be gaol.

CHAIR—You have to be careful to say which court, because the Federal Court judges are of course judges and not magistrates. So which court at which—

Mr Rizos—The South Australian Federal Court, at 25 Grenfell Street.

CHAIR—Which judge was it that?

Mr Rizos—I have got it on file. If you like, I can pull that out.

CHAIR—No; that is okay. We will leave it there.

Mr Rizos—Okay. I will skim through the next term of reference. We talked about 1(b), how they take into account how many people are listening to the music. I think that is a very important point. As for radio listeners, they know how many radio listeners are out there; they have got surveys; radio stations know. If you divide up how much money radio stations pay between the radio listeners, it would probably be 0.0006 cents in the dollar to every radio listener enjoying that music per song, okay? Whereas, we pay 20c per person listening to the music per half hour.

CHAIR—How do you calculate that?

Mr Rizos—Quite easily. Take a radio station, say, here in Adelaide. There was a disco radio station called—

CHAIR—No; how do you calculate 20c per hour?

Mr Rizos—You say it is \$1.40 per class, and then you divide it by four people that could be in the class at the time, and that would be how much per person?

CHAIR—I do not know. How much does a person pay for their class?

Mr Rizos—No. How much do we have to pay for letting them enjoy the music? We have to pay \$1.40 for having the music on, and four people enjoy that music, since there are four people in the class. So it is \$1.40 divided by four, which would be 35c.

CHAIR—Would you do that? How often would there only be four people?

Mr Rizos—Very often: half the class.

CHAIR—What is your average, though?

Mr Rizos—The average would be 10 or 12 people per class.

Mr MUTCH—How do you charge? On the basis of that, if you had four people in a class, would you add a surcharge or at least a charge?

Mr Rizos—No, we do not.

Mr MUTCH—What you are really saying is that you would much prefer to have a bigger class.

Mr Rizos—Absolutely, and I think a lot of these calculation methods were based on—

Mr MUTCH—Were these based on averages, or what?

Mr Rizos—Fitness centres in Sydney, I think, are what they were based on.

Mr MUTCH—That is average class sizes? There must be huge differences in the number of people in each class.

Mr Rizos—In each state, as well. I know that Sydney has very large fitness centres and they have very large overheads, so they have large rooms accommodating 50 or 60.

Mr MUTCH—And what is the duration?

Mr Rizos—Half an hour.

Mr MUTCH—What if a class is an hour? Do you pay the same fee?

Mr Rizos—They do not pay a fee. They pay membership for a year.

Mr MUTCH—No; in terms of the fee you pay to APRA, is it based on an hourly class?

Mr Malandris—No, it is just based on per class.

Mr Rizos—Whether it is half an hour or one hour, it is the same rate.

Mr MUTCH—What if it is a two-hour class?

Mr Rizos—It would be the same rate, but we do not conduct any two-hour classes.

Mr MUTCH—And is there no consideration about the size of the class?

Mr Rizos—The amount of people in the class does have a consideration: once there are more than 20 people, I think, it goes up. But for anything under 20, it stays at that rate.

Mr MUTCH—So there is a classification of that.

Mr Rizos—There is; but we never have 30 people in a class, so it does not really affect us.

CHAIR—So your point is that the method of calculation is a bias towards larger centres who have more people in their class?

Mr Rizos—And I think it was basically established from centres interstate, which do have higher overheads for everything. APRA and the licence fees have now become our major overhead, over practically everything that we have.

Mr MUTCH—Do you have any insight into the ballet classes? Presumably that is based on small backyard sorts of ballet operators.

Mr Rizos—Ballet classes are listed here in this with sporting meetings, radio—

Mr MUTCH—I presume they would have small classes.

Mr Rizos—A ballet class could have a large class. I take my daughter to ballet.

Mr MUTCH—What is their rationale based on?

Mr Rizos—I am not too sure, but dancing classes pay \$40 for one day per week. If you run ballet classes on one day per week, you pay \$40 per week for the dance class.

Mr MUTCH—In our terms of reference, we are asking whether the Copyright Tribunal is the most effective avenue to seek review?

Mr Rizos—Yes, and that is what we are seeking. We are seeking a review.

Mr MUTCH—But you have submitted that you are having some difficulties in that whole process.

Mr Rizos—No; the process is quite okay. It is just difficult that it is not in our state; it is difficult that it is a—

Mr MUTCH—That is what I was reading. You said that you have to travel.

Mr Rizos—We are not travelling. We are doing it through telephone conferencing.

Mr MUTCH—Okay.

Mr Rizos—A dancing class annually pays \$40 per year.

CHAIR—Can you give us that roughly in percentage terms? It is fairer to work out an average; because, if you had four people at an aerobics class, you would be going out backwards, I gather.

Mr Rizos—But, you see, we have a gymnasium, we have a swimming pool and squash courts. We have cardiovascular fitness areas. We have lots of other areas that help support the income of the exercise classes when the numbers are low.

CHAIR—All right, but please work on, say, an average of 10 people in a class. Ten is easy to work out.

Mr Rizos—All right.

CHAIR—People pay an annual membership, I suppose. They do not pay per class?

Mr Rizos—They pay an annual membership. The majority would pay about \$150 per year.

CHAIR—What hourly rate would you be paying your instructor or instructress?

Mr Rizos—Say \$20 an hour.

CHAIR—To conduct that class.

Mr Rizos—Yes.

CHAIR—And then on top of that you have got this \$1.40.

Mr Rizos—That fee on top, as well as electricity, rental, administration, staff, computer, time, airconditioning, cleaning and everything else that comes into it.

CHAIR—Is it possible to work that out? I don't want to get into your business confidentiality, but what percentage of your total overheads would the APRA and PPCA fees represent?

Mr Rizos—It depends on the centre. Apparently the fees went up from \$1.60 per day in 1994, prior to that, and in other calculations it went to this per class rate in 1995.

CHAIR—Yes.

Mr Rizos—That went up, by a bogus committee that apparently gave APRA authorisation to put up the fees. It was negotiated totally out of court.

CHAIR—All right, but just keep focusing on the issue, if we can. Earlier in your evidence you said about \$25,000 a year.

Mr Rizos—Yes.

CHAIR—So it is about \$2,500 per centre?

Mr Rizos—No, the smaller centres pay less, because they conduct fewer classes, and this new fee was set to help small centres. Luckily, we do have a lot of small centres: say, four or five small centres and four or five large centres. For the large ones, the new fee structure brings them up from paying about \$1,000 per year to paying about \$4,000 or \$5,000 per year.

CHAIR—What would be your total overheads for \$4,000 or \$5,000? What proportion would that be?

Mr Rizos—Total overheads would be \$500,000, including all wages and everything.

CHAIR—So it is \$4,000 as against \$500,000.

Mr Rizos—Yes.

CHAIR—Roughly what percentage would that be?

Mr Rizos—It is probably one per cent.

CHAIR—Yes, a bit less than one per cent.

Mr Rizos—We have small centres that turn over only \$40,000 a year. Now that, to some people, is hardly even an income, let alone the \$40,000 per year you have to take out as expenses for instructors, electricity, rental of the premises, and all the other different costs you have. Then you have to pay this music fee, which for a small centre is probably about \$2,000, and so it is \$2,000 compared to \$40,000. Originally this new calculation was set up to help small centres. That has not really happened.

Mr MUTCH—You talked about a committee set up to review the fee structure.

Mr Rizos—Yes.

Mr MUTCH—Who set that up, and what was that about?

Mr Rizos—I would like to know, but apparently someone fronted up saying, ‘I’m the President of the Confederation of Fitness Centres. I represent all of Australia, and we are going to negotiate with APRA a new fee structure,’ and everyone was just dumbfounded. Who elected him? No-one did. This person owned a fitness centre. Apparently this person has now dropped out of the fitness industry altogether.

Mr MUTCH—But what constraints are there upon APRA to prevent them from just—

Mr Rizos—I do not think there are any.

Mr MUTCH—The fees that we have got now are the thin edge of the wedge—and, as you said, next year they could be up 500 per cent.

Mr Rizos—That is right.

Mr MUTCH—What stops them from doing that?

Mr Rizos—There is nothing, and that should actually be something that you people should look at. I have put recommendations in my report to say that the government or the Attorney-General should have the power to somehow review any price increases if they are above CPI.

CHAIR—Are you a member of a professional organisation dealing with gymnasiums or commercial associations?

Mr Rizos—As I said, the Fair Fitness Music Association now has 25 fitness centres under its representation. I have the folders here from all around the state, and I have not even started a mail-out asking fitness centres to join us. So we are already representing 25 centres, and one of the 25 people is Nathan Schaeffer who, apparently, once the original review was happening back in 1995, heard about the review and this one-man committee that was trying to negotiate an increase of fees for the fitness centres, and went in and joined that committee. Nathan Schaeffer is from the Victorian Fitness Industry Association.

He went along because APRA was trying to force a rate of \$1 per class on the fitness industry, and he thought he did a really terrific thing by making it 70c. He got his 70c, but unfortunately now he regrets that he got it at 70c. He realises that he did the wrong type of negotiation and he has joined our association to help us negotiate the correct fee structure. We are happy to pay, as I said, with a business—

CHAIR—I suppose it is a matter for you as to whether you can fund it, but is it

more appropriate for the association—

Mr Rizos—We do not have an association in South Australia.

CHAIR—I am sorry; I thought you said he has joined your association.

Mr Rizos—He has joined our association, which is the Fair Fitness Music Association. We are asking people to join by paying \$100 per centre. Hopefully, we can have some authority which would be helpful from the Federal Court inquiry, and have all the fitness centres of Australia join us. I know they are all eager to join us. They just want to know the progress, and we have to be able to communicate to them, and they will have to be able to send us money. Once we do have a lot of fitness centres in Australia joining us—and probably there are about 1,500, we will hopefully have \$150,000 to be able to fight this.

CHAIR—We will leave that. Before you commenced your proceedings in the Copyright Tribunal, did you sit down with APRA and PPCA to voice your grievances?

Mr Rizos—Yes. We had in-conference discussions, as per the—

CHAIR—With both organisations?

Mr Rizos—No; only with APRA.

CHAIR—Only with APRA?

Mr Rizos—Yes.

Mr MUTCH—What can you do? You are in a business where you require music accompaniment.

Mr Rizos—We are happy to pay. Why can't we pay like—

Mr MUTCH—What could you do if you didn't use the royalty-receiving music? There is other music, presumably.

Mr Rizos—There is, and we do use it, and we have made tapes, and we play those tapes in our classes, and we have conducted those classes with those tapes, and we have videotaped those classes and sent them to APRA as evidence. You can even note on *Good Morning, Australia*, on the *Oz Aerobics* show, they used to use normal commercial music. That actual program has gone international to America, and they are using non-royalty tapes on that *Oz Aerobics* program every morning at 6 o'clock on Channel 10, and they are doing it to royalty-free music.

Any time aerobic classes are conducted on TV from America, you will notice that they are always on royalty-free tapes. There is an abundance of that type of music, and we can use it, but we have asked them, 'Can we use half that and half what we've got, and get a discount?' and they said no.

Mr MUTCH—I'm sorry, you are paying royalties on music—

Mr Rizos—Yes, on commercial music.

Mr MUTCH—And that doesn't have the right to charge royalties?

Mr Rizos—We can if we want to, and we have done that.

Mr MUTCH—No; are you saying you're paying APRA fees?

Mr Rizos—We have not yet, but they are requesting fees for us playing normal commercial music within their repertoire of music, but we have also been able to obtain music which is copyright-free.

Mr MUTCH—There is no question about that, is there? You are not paying fees for those classes, presumably?

Mr Rizos—We should not, but we have asked them for a discount by not paying fees for those classes, and they have refused.

Mr MUTCH—So you are paying fees for those classes?

Mr Rizos—We are, if they end up charging us.

Mr MUTCH—At the moment, you are paying APRA fees for—

Mr Rizos—We have not paid for two years.

Mr MUTCH—For music that has no royalties on it?

Mr Rizos—We have not paid for two years, until the Copyright Tribunal makes a decision.

Mr MUTCH—I see. You are saying that they are actually asking you to pay fees—

Mr Rizos—Yes, for those moneys.

Mr MUTCH—For music that doesn't attract a royalty?

Mr Rizos—Yes.

Mr MUTCH—Sorry; keep going.

Mr Rizos—We think that is quite unreasonable, as well. There are 190 countries of the world, and 50 or 60 apparently are within APRA's repertoire or within APRA's affiliated rights agreements, international agreements—so there are another 130 countries in the world that are not part of APRA's affiliated scheme, and you should be able to play their music without APRA charging fees. It seems strange to me that whenever APRA is licensed as a business they take no effort in finding out what you are playing. They find out how much money you make but they don't find out what music you play. If APRA is there to represent—

Mr MUTCH—How do they find out what money you make?

Mr Rizos—They have asked us for a complete profit and loss report from all of our business within the Copyright Tribunal, and we have had to submit those.

CHAIR—They were subpoenaed, were they?

Mr Rizos—No, they just requested them but they said that if we do not supply them they will summons them to the court.

Mr MUTCH—What is the rationale for the fee they charge? Is it based on what the market will bear?

Mr Rizos—I have asked them that question and they said, 'Because you're a very profitable industry—'

Mr MUTCH—They are interested in your profits.

Mr Rizos—Yes. They said, 'Because you're profitable, you can pay it.'

CHAIR—That may be a bit unfair to them.

Mr Rizos—I have got that written down. Do you want me to pull it out? Typed up, from them.

CHAIR—I accept your evidence on that, but you wouldn't survive, would you, if you put on an aerobics class without any music? It would be silly. No-one would turn up. Music is an integral part of your business.

Mr Rizos—You go to the army and you do exercise, callisthenics classes. Do they play aerobic music in the background? No. If you go to footy training, it is the same

thing.

CHAIR—But how would your business go, if you didn't play music?

Mr Rizos—How would music sell, if there were no exercise classes or dancing?

CHAIR—Can you answer my question? How would your business go against your competitors, if you just cut out music in your aerobics classes?

Mr Rizos—We would be able to find a way to find non-royalty music. We could have it published for us.

CHAIR—Leaving that aside, if you had no music—

Mr Rizos—It would survive, because we still have the gymnasium, swimming pools, spas, saunas, and squash courts. We would just eliminate exercise classes.

CHAIR—It is an integral part of exercise classes, isn't it?

Mr Rizos—At the moment.

CHAIR—Aerobics is exercise to music.

Mr Rizos—At the moment.

CHAIR—And it is an integral part of it.

Mr Rizos—I would not believe 'integral'. I believe the most important aspects of an aerobic exercise class firstly is appropriate venue. You cannot have it without the appropriate venue and surroundings. Secondly, it would be the instructor conducting the class. You can have the best music in the world, but no-one is going to come unless you have a good instructor. Then it would be perhaps even the organisation that conducts the sessions. If you do not have a reputable, well-marketed organisation, no-one is going to come. Then you start conducting the classes with the instructor.

CHAIR—I must say, from a personal point of view, that you have got difficulty in persuading me that music is not an integral part of an aerobics class.

Mr Rizos—I would say music is, but not necessarily the music that is within their repertoire.

CHAIR—But, again, people are more likely to come if it is popular music that they can identify with.

Mr Rizos—I can prove you wrong there. I can prove that more people will come to non-APRA music with a terrific instructor, rather than to terrific music with a terrible instructor. So the instructor is more important than the music, as long as there is some type of beat or music in the background.

Mr MUTCH—You can obviously play terrific music at home.

Mr Rizos—Absolutely; and usually, during an aerobics class these days, instructors wear microphones, and so you cannot even hear the music. The only thing you are listening to is the beat. That is about it. You are following. You ask a lot of our clients when they come out of the classes, ‘What did you think of the class? What did you think of the music?’ and they will say, ‘I didn’t even know any of that music. I didn’t come because of the music. I came to get fit.’ That is of primary importance, and then it is because of the instructor.

CHAIR—I can accept all that, but the reality is that music is played by all gymnasiums because it is an integral part of the aerobics.

Mr Rizos—Dancing schools also have music as an integral part. Why do they pay \$40 a year, but we pay \$4,000?

CHAIR—Now we are getting into it, aren’t we? If you accept that music is an integral part, although maybe not the essential part, of an aerobics business—

Mr Rizos—An integral part, yes.

CHAIR—An integral part, then we are looking at what a fair fee for that is.

Mr Rizos—Okay.

CHAIR—Your instance of \$4,000 on a \$500,000 disbursement ledger or costs of business—about one per cent—probably does not sound too bad.

Mr Rizos—But how about a \$40,000 turnover on a \$2,000 fee?

CHAIR—That is a point.

Mr Rizos—That is about eight per cent of your running expenses.

CHAIR—It may be that they should be focusing upon their methodology, so that the one per cent regime applies across the board. Would you agree that a one per cent payment for the music component is not a bad cop?

Mr Rizos—I would only agree if they could prove to us that the money they

collect from small businesses gets distributed to the appropriate source.

CHAIR—That is the other side of the equation, and that may well be a matter that their members might want to take up. But, from your point of view, in terms of it being accepted that music is an integral part of at least the aerobics-cum-circuit sector of the business, is one per cent a fair cop to pay for the music component, or isn't it?

Mr Rizos—It might be, but—here we go again—we have said that \$500,000 is the total turnover of the organisation, but that includes five activities: pool, spa, sauna, squash, aerobics, super circuit, cardiovascular fitness room, and aquarobic classes. Then you have to divide that \$500,000 by seven, and you get \$60,000. So the percentage goes from one per cent up to four or five per cent again.

CHAIR—All right.

Mr Rizos—That is a higher percentage than practically every other source of business. The fitness industry is paying the highest percentage of music of any industry in Australia or the world, per person listening to every song that is being played, and for music that is not even popular music. The music that we play is music that does not get played on radio: it is specifically made for exercise sessions.

CHAIR—Sure. Just come back to—

Mr Rizos—Apparently, the distribution goes back to popular music artists; it goes on commercial radio stations, and our music—

CHAIR—We will come to that in a second. I want to just deal with this point. Five per cent or four per cent of the costs identifiable with aerobics is unreasonable, on your evidence.

Mr Rizos—Absolutely.

CHAIR—Would one per cent identifiable to the aerobics-cum-circuit stuff be a fair cop?

Mr Rizos—I believe half a per cent would be quite fair—as long as they again—

Mr MUTCH—On what basis?

Mr Rizos—There are other industries paying half a per cent; and as far as five per cent—

Mr MUTCH—You said it yourself: it is completely subjective, isn't it, really? There is no real basis for whatever the fee is. Is there any internationally agreed fair

price?

Mr Rizos—There is. We have, in part 3 of our evidence, received copies of tariffs all around the world for exercise sessions and we are paying one of the highest exercise session tariffs around the world here in Australia, and we use music from overseas. Say, for example, that Italy makes a terrific exercise music track. Italians are only charged a small fee for playing that music, but in Australia we are charged a very high fee. That songwriter is happy to receive a small fee in his own country but, from Australia, he wants so much more. Why? We have the tariffs here that show that, if we were in the majority of other countries of the world—including America—we would pay a lot less than we do in Australia, and the majority of our music comes from America. We would be happy to pay the American tariff, because they base it on dancing schools, which pay only \$40 per year in Australia.

CHAIR—Yes. I have got to say that that would appear ridiculously unfair to the musicians.

Mr Rizos—I do not believe so, because the musicians do not receive the money, not from our source of income. I have asked that question, and they have refused to answer. I have requested them to prove that even affiliated countries of the world do not receive the money. As I say in my affidavit, I have asked APRA six times—

Mr MUTCH—We have heard evidence from artists who tell us that, although their cheques are often very small, they hang out waiting for their cheques. But there is evidence that the producers of music do get paid.

Mr Rizos—But how much?

Mr MUTCH—A lot of them do not get paid very much at all, but some of the bigger artists obviously get paid huge amounts.

Mr Rizos—Why do they pass themselves off by saying they are making a living, when the majority of artists get hardly enough to even sustain themselves for one week? One of the top producers, apparently, who is on TV and radio and does live performances, says she is a top composer in Australia—I have got the evidence in here—yet she only gets \$3,500 per year. What type of livelihood is that?

CHAIR—We have had evidence, and we will continue to have evidence, from the actual producers and musicians themselves—

Mr Rizos—Really?

CHAIR—But let us talk about your evidence from the small business point of view.

Mr Rizos—If you are seeking evidence, that question I have asked is this: give us a list of the top 500 receivers of the royalty. Then you will be able to see—

Mr MUTCH—In Australia, do you mean?

Mr Rizos—From wherever it gets distributed to.

Mr MUTCH—I am sure we can ask for that information without any problem.

Mr Rizos—I have requested that.

Mr MUTCH—I am sure we can ask for that information. Anyway, we have got other witnesses banking up, so we want to get through your points.

Mr Rizos—As well, how much do the employees of APRA receive from the APRA organisation per staff member within their organisation?

Mr MUTCH—We can ask for that, too.

Mr Rizos—If you can, ask for it.

Mr MUTCH—Yes, sure.

Mr Rizos—And those two points are in here, because I have been refused that information, but I will pursue it with the songwriter.

Mr MUTCH—They asked for your profit and loss—

Mr Rizos—Absolutely.

Mr MUTCH—And so I am sure we can ask them for that sort of similar detail.

Mr Rizos—Terrific. I have even been discussing it with the Songwriters Association of Australia, and the South Australian one, which has only got 300 members, and they will be starting to ask those questions as well.

Mr MUTCH—One other question I wanted to ask you is about the fact that there is more than one collector.

Mr Rizos—Yes; we do not mind that.

Mr MUTCH—Is that a problem for you?

Mr Rizos—No; we do not mind that. We believe that, if dance schools get charged

\$40 per year, why can't we pay that? Music is integral to dancing schools. If a small business that makes \$2 million per year pays \$100 per year, why do we have to pay \$2,000 when we only turn over \$40,000?

Mr MUTCH—So you are not arguing that it should be just one collecting agency?

Mr Rizos—We do not mind one or two. We do not mind anything about anything, as long as we know that the fee that we get charged is similar to that for other businesses and that we are not being discriminated against only because they apparently believe that we receive a lot of money—because we do not. Then we want to make sure that they collect the 12 per cent and that the rest gets passed onto the appropriate people, just as they pass off to the rest of the community that they do, which I believe is very misleading: part V of the Trade Practices Act.

CHAIR—All right. We will focus on our terms of reference so that your evidence hits our target. We will just keep you on that.

Mr Rizos—Quite often, APRA does state that to organise a distribution system for small business music is virtually impossible, because it is too hard to administer. I find that quite strange because, when they started off in 1926 collecting \$9,000 per year from the businesses of Australia—and now it has turned out to be \$70 million per year—surely they can put a bit of time and effort into actually making sure that they distribute the money properly and into how they should distribute it—which also comes back to collecting. If they know where the money is coming from, then they know where the money is going to go to, and they should put some time and effort in a simple form—

CHAIR—I must tell you that your evidence is going to be much more relevant to us if you focus on the collection side of the equation.

Mr Rizos—This is the collection side. When they collect, they should ask what percentage of it is from radio and from which radio station; and, if it is from TV, from which TV station. If it is other than music on the radio, they should ask about the age of the music, its country of origin, if there is a high percentage of—

CHAIR—Okay; that evidence is in. But your point is that they should be more particular or discerning in their methodology of collection.

Mr Rizos—Of collection.

CHAIR—Sure. We have got that point there.

Mr Rizos—I am sure that would aid distribution, and it would make us feel more aware of what is actually happening with what is being collected. As far as my final analysis is concerned, and as far as what I wanted to talk about with small business—in

particular, music and the creation of it and what is played in small businesses—it is quite often tape and CD music. It is peculiar to that type of business. If you have got an Indian restaurant, you play Indian music; if you have got a Greek restaurant, you play Greek music; and if you have got a church choir, you play church music.

CHAIR—That would make sense.

Mr Rizos—These particular songwriters who supply music for these particular groups are, I believe, not being represented and are not getting any returns back for their incomes.

CHAIR—Can I just get you to focus again? You can be much more relevant and have much more impact if you focus on our terms. We have had evidence from church musicians, and we have had evidence from ethnic musicians. Let us concentrate on that. But you should let us know what you have got from the business side of things.

Mr Rizos—As I said, with these particular types of groups, you find that, within all of its information, APRA passes itself off to be representing the music of the world, and passes itself off to fully explain—in lots of different types of brochures of information to members and in information on the Internet—to aerobics users and to the Attorney-General, complete lists of whoever uses the music, what type of music is being played throughout the world, the record companies that supply the music, and all the people that they apparently represent.

Mr MUTCH—Isn't that useful information, though?

Mr Rizos—It is useful, but it is highly misrepresentative, because all this information in every piece of documentation that is received states that they collect money and distribute it to the appropriate artists. But I have asked this question: 'Have you got a distribution system that proves that the money you collect from small business goes back to the artists?' And they do not have one. I believe that, if they are here to help the Australian music industry and help fund the Australian music industry and develop it, they have got a role to play in starting to help distribute that money back to the appropriate people, to help encourage them to continue writing good music. It is not happening.

I have even spoken to an Aboriginal radio station up in the Northern Territory, and they told me that they are quite disappointed with how APRA sends them the cheque and then they have to distribute it to all their songwriters as well, and the cheque sent is really quite small.

CHAIR—But wouldn't it be a heavy onus on you to record how many times you have played Celine Dion and how many times you have played the Dooby Brothers?

Mr Rizos—I am not saying that. I did not say that at all. I said the distribution system at least should put some type of system in place rather than just asking how many

classes you conduct—in other words, just finding out the financial side of your business, rather than trying to establish the music side of it.

CHAIR—But, if you are—

Mr Rizos—The basic outline of the type of music is what is needed: which country of origin, the age of the music, what percentage of new artists, and what type of royalty-free music is played.

Mr MUTCH—But surely they have got to do things based on percentages and survey work?

Mr Rizos—But they use the percentages of radio: ‘If you are not playing radio, why aren’t you playing radio?’ Because you want to hear a specific type of music: so put that down.

Mr MUTCH—But wouldn’t that be a hell of a problem for a small business to itemise every piece of music they used?

Mr Rizos—That is the application form that they have to use. Then you can rest assured that, if the country of origin—

Mr MUTCH—Is this your application form you are suggesting?

Mr Rizos—This was within the affidavit.

Mr MUTCH—That was their form?

Mr Rizos—No. This is within the affidavit that I have submitted to you, because they do not take any care at all in trying to ascertain what type of music—

CHAIR—This is your suggestion? I see.

Mr MUTCH—But wouldn’t that be just more book work for small organisations?

Mr Rizos—They collect \$70 million. Can’t they try to make sure that the money goes to the appropriate people? I will do it for them for \$1 million, if they want. These days, there is computerised technology. They used to only collect \$9,000 per year. Now they collect \$70 million. Can’t they take some care in ensuring that they are finding out what type of music it is that they are collecting money for?

CHAIR—They may be able to take some care, and you have indicated you would be prepared to fill it in. How many other small businesses do you think would find it of benefit to them, and how many others would find it a giant nuisance?

Mr Rizos—Give them a discount if they do fill it out.

Mr MUTCH—Anyway, that is an interesting suggestion to assist APRA in working out who should get the money, but we are really more interested in your concerns as a business, and representing other fitness centres, about the manner in which the fees are collected and so forth. I think you have given us some of those concerns. Did you have any further concerns you wanted to raise with us?

Mr Rizos—Only that, as I said, you could have a copy of all this information that represents APRA as working on behalf of every composer throughout the world. Do you want any of that?

CHAIR—No. We will keep your affidavit, because it puts your argument in a form which is easy to digest.

Mr Rizos—As part of my affidavit I also listed the fact that we did try to register people with APRA over the telephone, and APRA refused to take registration of a person who was making music for playing in small business. I have a transcript of that available, and I have copies for all the members, and I want to distribute them.

Mr MUTCH—Wait a minute. A person who wanted to be registered with APRA would just fill out the form and register.

Mr Rizos—They would not supply me a registration form. They said, ‘Don’t worry about it. We’re not going to register you.’ You can read it all here. If you want, I can read through the information that is here in the transcript. As far as proof and evidence that this transcript actually happened goes—

CHAIR—What is the transcript?

Mr Rizos—It is a transcript of notes and tape-recordings that I took of different communications between Festival Records, PPCA and APRA, six different people in the organisations asking people, ‘How can I get my son to make money out of the music industry? His music is in small business at the moment, and it’s being played.’

CHAIR—I will just stop you there. There is difficulty with tape-recordings because, in various states, there are issues as to the legality of tape-recordings if the person does not consent to their use.

Mr Rizos—I am not giving you the tape-recordings. I am giving you the transcript of notes that I took, made up from notes that I took from the telephone.

Mr MUTCH—From the telephone?

CHAIR—You are better off to give your—

Mr MUTCH—So you are not giving us a transcript of a tape-recording?

Mr Rizos—No. This is notes and evidence of what I could dictate—

CHAIR—You are better off giving us the thrust of your evidence. The point that you are making, referring to the phone conversations, is that from the distribution to the performers you say that they are not focusing on the extent to which that performer's particular music was played in small business, is it?

Mr Rizos—Yes, and they wish to offer no help whatsoever to registering performers whose music is played in small business.

Mr MUTCH—We probably do not need all of it.

CHAIR—No, I do not think so.

Mr MUTCH—You make the complaint. We are just interested in your complaints.

Mr Rizos—But you people are on behalf of the Attorney-General, and if there is no distribution system and people are being refused money when they are properly entitled to money—

CHAIR—No, we are accepting your evidence on that. We are reluctant to take material based on tape-recordings. There are public interest considerations, and we would prefer you to give your account now. You can give your evidence, which you have done, of the thrust of those conversations. We are reluctant to take a document which is based on a tape-recording, because of the public interest considerations when people have not consented to being put on a tape-recording. But by all means give any additional evidence that you can give now of your conversation. Feel free to expand on that.

Mr Rizos—Well, as far as the conversation was concerned, I found it quite disgusting and disturbing that, as far as all the promotional information received through all types of—

CHAIR—You might just diarise: let us know who you had a conversation with, and the substance of it.

Mr Rizos—All right. I had a conversation with Melissa from Festival Records, who was the receptionist, as well as the PPCA receptionist, and Rosh, one of the ANR people from PPCA, or whoever. Then in APRA I had a conversation with Millie on two occasions, then I spoke to Rosh again, and I asked them all the same question: 'My son wants to make a career of making music for small business. They already enjoy his music;

they're purchasing his music directly from him in cassette form. Apparently he's got copyright on it, and now apparently these businesses are paying APRA for royalties. Can he please register with you people to receive some money?'

They said, 'Absolutely not. He's not entitled to any money. He won't be entitled to any money unless his music is actually on commercial radio stations. For example, Triple M plays live performances, and he has to make six live performances before he can be entitled to any money, or he has to be on TV. Unless he meets those three criteria, there is no point registering him. He will not be distributed any money whatsoever until those three criteria are taken into account, and there is no point in registering him. We will not allow him to register.'

Then they went into specific detail about how the music industry is a very difficult industry to get into, and how even if you make your CD through the record company, you practically will not be left with anything. I said, 'My son wants to make a career in the music industry. He's a fantastic musician; everyone loves his music. Can you help me?' and they offered no help whatsoever, except for saying, 'Look up the publishers and go ask all the publishers you can. They might be able to help you. We offer no help and assistance in this type of matter.' I thought that, if APRA and PPCA really are there to try to assist musicians of Australia make and build the heritage of the musical culture in this country—culture being defined as acting, music and—

CHAIR—Sure. We are veering away from our terms of reference now, and time is becoming paramount.

Mr Rizos—I believe that, if APRA can prove to us that they collect the money from small business, have a distribution system, and supply the money to the appropriate people, that is fantastic—if they can prove that. But, if they cannot prove that, until such point in time that they can prove it, I believe the Attorney-General should put a hold on APRA collecting money from any small business. If it takes one, two or three years for APRA to prove that it has collected money from small business, taken it and distributed it to the appropriate owners, that is terrific. If it takes three years, then small business can back-pay APRA for the past three years. But, if they cannot prove that, then a very detailed review must be made to ensure that some sort of system is in place so that the appropriate people receive the appropriate royalties. We are not paying \$50,000 for the past two years if we know that the appropriate artists are not going to receive the appropriate moneys. That is also misrepresentation or misleading information, as per the Trade Practices Act, in what APRA is trying to do.

CHAIR—Yes; we will not get into that.

Mr Rizos—And that is the conclusion of everything, but there is a lot more information in my affidavit, and I do wish that you people would read it and act on some of the points, especially about trying to obtain court orders for those three instances. We

need a court order from APRA proving how much money it sent to Greece for the past six years. I have requested that nine times, because they refused that.

CHAIR—We do not make court orders. We are giving a report to parliament.

Mr Rizos—Right. I believe APRA is sending hardly anything to its affiliated society in Greece. I am Greek born; I am a Greek dancer. I believe I have a right as an artistic performer to request that APRA truly has some sort of representation of how much money it has sent to the affiliated society over the past six years, and we wish Greece then to confirm back in writing that that is what it has actually received.

CHAIR—We will not be doing that.

Mr Rizos—You won't be doing that?

CHAIR—No.

Mr Rizos—All right. I hope you can give a court order or make a request about how much money and who does get distributed the amount of money after the 12 per cent that they take out for administration.

CHAIR—Yes. We have received from both organisations their outgoings, and that is in evidence, but we will have a look at whether we need to clarify any additional issues in that. Thanks very much for coming along and giving your evidence.

Mr Rizos—Thanks very much.

[11.10 a.m.]

SIKMANN, Mr Peter Francis, National President, Australian Small Business Association, Innovation House, Technology Park, South Australia 5095

TONKIN, Mr Clive, Member, Australian Small Business Association, Innovation House, Technology Park, South Australia 5095

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

Mr Siekmann—Certainly. I do not know how well aware you are of our association. It was formed in 1982 in Sydney, and its maximum membership rose to about 22,000, covering all states and territories in mainland Australia. Our articles of association state that our membership must comprise only individuals who own and operate their own small business, as defined by the Australian Bureau of Statistics.

CHAIR—Effectively sole traders, are they?

Mr Siekmann—No, not necessarily sole traders; it can be incorporated in a body or partnership or anything like this. But they must in fact basically own and operate or be the proprietor of that business. Accordingly, we probably are the only national body in Australia which represents the grassroots of small business. We do not represent other trade associations or anything of such a nature. We certainly do not represent larger businesses, as some other organisations do who purport to support small business.

The reason I am here is that we have had considerable complaints from our membership about the demands for licensing fees to be paid. Reading between the lines, part of the displeasure is in the actual methods of demand, part of it is in the actual fact of paying, and part is in the actual impediment to their business—their compliance costs of having to fill out the various forms: more rubbish than there is now. This is particularly apparent because of the election promises during the last federal election where the federal government promised that they would reduce compliance costs.

We gave evidence before Charlie Bell in his commission that a major part of the compliance costs of industry did not fall in the federal government area. The implication of the Bell report was: ‘There were four hours spent filling out federal government paperwork; therefore, if we reduce this by two hours, we will be fulfilling our promise.’ That is a lot of rubbish. As we said in our submission, the majority of compliance costs fall below federal government legislation; they fall down to the level of state government legislation, local government legislation and imposed standards, codes of conduct, and

other such matters.

There are 800,000 small businesses in Australia. If they are all investigated and asked to fill out their forms, in complying with this there will be—and I put the figures down there—a cost of some \$64 million to industry, just in the complying with the requirements to fill out the various forms.

CHAIR—What are the forms?

Mr Siekmann—The forms are really quite extensive. You have to answer various details.

CHAIR—As I understand it, there are two relevant organisations, the PPCA and APRA.

Mr Siekmann—Yes.

CHAIR—Firstly, let us deal with those two organisations. What form in particular from APRA is it that is time consuming?

Mr Siekmann—I do not have the forms here, but you obviously would have the forms. You sit down and try and work out the data for all that and actually fill it in, and it is not something that can be done by a junior person of the organisation; it has to go to the proprietor, a man whose time is probably worth between \$103—

CHAIR—For instance, with the form that you were holding up, Mr Tonkin, how long would it take to fill that in?

Mr Tonkin—My son is the managing director of our company, and it took him quite a considerable time first of all to try and work out how to understand it.

CHAIR—Give us an estimate, in minutes.

Mr Tonkin—I would say roughly an hour; because, in essence, when we looked at the initial form, our particular application did not even appear on the form.

CHAIR—So how often would he be required to fill that form in?

Mr Tonkin—This form is only required to be filled in annually. Nonetheless, as I say, in this particular instance it took him well over an hour, because he had to make several phone calls because our particular application was not there.

CHAIR—What about the PPCA? Do you have any experience in respect of PPCA forms?

Mr Siekmann—Their form is not dissimilar to that one, as I recall it, but I do not personally have experience in filling out one of theirs.

CHAIR—That is also required to be filled in annually, is it?

Mr Tonkin—It would be but, to date, as far as small business is concerned, we have only been involved with the APRA form.

CHAIR—Just on that point, what would small businesses mainly confront? Would they confront a situation where they are playing radio, or would they confront a situation where they are playing CDs, or would it be both?

Mr Siekmann—Perhaps we can get down to this in due course.

Mr Tonkin—I can answer that: it is primarily radio. This is where small business is really being hit to leg—primarily with radio. My own daughter is a podiatrist. She has her own practice and is a single operator, and she received one of these letters—which, quite frankly, is threatening.

CHAIR—Where was that letter from? Which organisation?

Mr Tonkin—APRA. As a result of that, she elected to remove the radio from her premises, wrote to APRA and indicated that that was the case. That radio was there basically for her companionship when there were no-shows or downtime, or for listening to the news and that sort of thing. She just wasn't interested, so she removed the radio from the premises rather than conform to this, shall we say, rather dictatorial approach that APRA has adopted by having the weight of what I consider flawed legislation at their disposal.

CHAIR—Right.

Mr Siekmann—Rather than getting down to individual case studies, I think we need to have a broad look at what is going on.

CHAIR—Please continue.

Mr Siekmann—With this type of thing, there are a lot of instances where people turn the radio on. You yourself in the morning turn the radio on to listen to the news, or perhaps to get the weather. You have individual employees within a workplace that want to do the same thing.

CHAIR—We might explore this a little, because it is a significant issue as to just when a personal broadcast or a radio turned on for personal use becomes a public broadcast.

Mr Siekmann—I think this is the crux of it.

CHAIR—Yes. Just focus on that. You might have some views. There are three different levels, really. There is the situation where a business might use music as a fundamental part of its business—such as, for instance, in a discotheque.

Mr Siekmann—We actually have the structure within this document.

CHAIR—Yes, but I am wanting to explore it and get your views on it. Say you have got a situation where it is clearly a discotheque, for instance. Music is an essential part of the business: people would not go to a discotheque if there were no music there. Then you have got a situation, sort of the middle rung, where it is used to create an ambience, such as when a jeans shop plays upbeat music; or you might be going into a garden store—

Mr Tonkin—A mood symbol.

CHAIR—Yes; even my dentist plays relaxing music to calm me, to set a calming ambience. But then you go to a situation where you might go into a grocer and he has got the radio on.

Mr Siekmann—He wants to listen to the races.

CHAIR—Yes. Or you might have a mechanic in a garage out in the workshop, and the radio can be heard in the actual customer area of the business. Do you have any views in those three categories?

Mr Siekmann—We have gone into detail in the submission.

CHAIR—Yes, but let us explore your views now. Do you have any views as to when it is or is not appropriate to charge a royalty for copyright, in those three categories?

Mr Siekmann—Yes. Incidental music or incidental broadcasts should certainly not fall within APRA's determination of charging costs.

CHAIR—What do you mean by 'incidental'? Help us here with some terminology and concepts, because we have got to get down to the specifics. Most people have tended to give evidence saying that it is a fair cop in the discotheque and even gymnasium situation—depending on how much and how it is calculated.

Mr Siekmann—We accept that, within certain parameters.

CHAIR—Right. We have heard evidence of problems at that personal usage stage; on the other end of the spectrum, there is the mechanic in the workshop situation. What

are your views initially on the ambience stage, that middle stage where it is used as part of the ambience of the business?

Mr Siekmann—We feel that the end result is that it should not be charged, unless the performance is resulting directly in somebody obtaining remuneration from that performance. This is actually defined within the *Oxford Dictionary*. There should not really be a charge. Apart from anything else, particularly when you are talking about broadcast music, royalties have already been paid on that, so it is a question of double-dipping. It also adds to the considerable costs of running a business.

Surely, if they need to get that extra money, it should be charged at a central collection point. Within this submission I have proof that the amount of money returned to them is minimal. The largest imposition in costs on business is actually filling out forms, mailing them and such things. What we should be doing is to charge them for the cost of filling out their forms, because it is in fact up to them to prove that the average small business is not complying with copyright licence.

Mr Tonkin—With regard to the ambience factor that you referred to, in my opinion and, I believe, in the opinion of most small business people—and we are talking about the hairdressers, the delis and my daughter, the sole podiatrist—this is where the legislation is flawed, whereby these people by the strict letter of the law are liable for a fee when in fact that music is not deliberately being played for the benefit of the public. A hairdresser, for instance, when working in the shop, likes to have the radio going, not for their customers so much as for themselves; it is just a companionship aspect. To be hit for that with a fee—when it is almost similar to them switching the radio on, as they perceive it, in their own home—is where the whole unfairness aspect comes in.

I believe that the element of simplicity is the way we should go. In Peter's submission from ASBA, there are two lines in his summary which say that ASBA considers that, in order to fulfil the requirements, royalties should only be collected at the source—meaning the point of sale of recording and/or at the point of broadcast. Outside of that, it does become double-dipping, and there are enormous problems created from that point on by bad legislation. I do not disagree with the intent of the legislation, but I certainly disagree with the application, because not all legislation is perfect, and this lot is flawed. So let us be man enough and strong enough to virtually turn around and say, 'This has got a bug in it. Let's iron it out.' It is definitely double-dipping in this situation, and this is a very simple way to overcome it, by making sure that the artists are catered for; and you get away from this public outcry about ambience.

CHAIR—To take that up, it is easier to take it at the point of broadcast in respect to the radio situation; that is—

Mr Tonkin—Muzac and TV, yes.

CHAIR—What do you say in respect of someone who actually uses a CD? Say that your hairdresser has a reticulated system through the studio and they are actually intentionally putting on their selection of CDs which may suit the tone of the particular hairdresser. Leaving aside the radio, is it fairer that a business such as that, deliberately playing a CD—or even a restaurant playing their particular mood music in CD form—should pay a royalty for using that CD? I am not talking about radio; I am talking about CDs.

Mr Siekmann—Can I put a word in here? As far as we are concerned, playing CDs a reasonably incidental basis like that should not really be the subject of—

CHAIR—But is it reasonably incidental?

Mr Siekmann—Yes, it is reasonably incidental when you talk about this. Take an aerobics class. The chap who was sitting in this chair formerly is actually a member of our organisation, and I have talked to him. He has various axes to grind, and he decided to come along independently to put his point of view. I think he is against the fact that we say that, to a degree, aerobics studios derive their income directly from the playing of music. However, again, the major proportion of it is to provide the aerobics studio, the instructor, and everything else, and the music—even there—is partly incidental. It does, nevertheless, contribute. However, if that particular person wants to play uncopyrighted music off a disc, he should not have the imposition of a licence fee placed on him by a person who is—

CHAIR—Yes, sure. Let us not talk about uncopyrighted music, but about copyrighted music.

Mr Tonkin—My view there is that, first of all, the person who purchased the disc has in fact already paid copyright fees in buying the disc.

CHAIR—Yes. This is an issue, isn't it? For instance, if I go and buy a computer software program for home use, I would pay a much lower licence fee than I did in my solicitor's practice, where I had other people using it. So you are paying a higher licence fee for bulk users.

Mr Siekmann—No; you only pay licence fees for the instrument which is using it. You can take that instrument anywhere and allow anybody to use it, with your computer, or listen to it or look at it. When you get more than one, that's when you have to pay. But, in this case, if you have to play two CD discs, you pay two sets of copyright. Now, with your example, there is an electronic copy made of the disk, basically, within your computer—

CHAIR—Yes, but the cost is factored in, having regard to multiple users or multiple beneficiaries of the software.

Mr Siekmann—Yes. You are copying within your computer net, so the next computer can use it. Now, with this, you are not.

CHAIR—Yes; but clearly a computer software program appears on someone's computer screen, and clearly it is able to discern it according to terminals. But the nature of music is that if you have five different CD players playing five different CDs, it would be an horrific and uncomfortable environment, but the concept I am trying to get to is that you pay more for your licence fee if it is going to be a multiple user situation.

Mr Siekmann—Yes, if it is going to be used by multiple units, if you have a number of copies. Basically, if you hang a painting on the wall—

CHAIR—That's not necessarily right, is it?

Mr Siekmann—Yes, it is.

Mr Tonkin—By the number of terminals in a building—

CHAIR—My software is going to be in a network situation.

Mr Siekmann—But what your computer does is copy it to the next computer, so that a person can look at it on a different terminal. This is not the case here.

CHAIR—All right; that is your distinction. I see that.

Mr Siekmann—And also, to take that one step further, if you go and buy an original painting from an artist and you hang it on a wall, you can take that anywhere you want and you can allow anybody to look at it, or anybody to do what they like with it. But the day that you start copying it, you are subject to some royalties to the artist. If you decide to copy your CD, fair enough: you are subject to some copyright law there. But, while you continue to use that one CD, no, you are not subject; you can play that.

Mr MUTCH—I want to follow up that point you made about aerobics studios. You mentioned in your submission that you understand concessions of this nature have been refused—that is, you say that they should not have to pay a fee on non-royalty music. Was that obtained from the Fair Fitness Music Association, or is that from some other source?

Mr Siekmann—We rank this gentleman as a member of our association—

Mr MUTCH—But was it he who gave you that information?

Mr Siekmann—And also Perfect Fit.

Mr MUTCH—They also have the same concern?

Mr Siekmann—Yes.

Mr MUTCH—And the same story?

Mr Siekmann—Yes.

Mr MUTCH—They have been refused a concession based upon non-royalty music?

Mr Siekmann—Yes.

Mr MUTCH—That is interesting. Thank you. Do you have any musicians who are members of your organisation?

Mr Siekmann—We would have, but I could not pick them out in detail.

Mr MUTCH—You have not consulted with them about their side of the story, with respect to the obtaining—

Mr Siekmann—We have asked one or two musicians around the place, but these are only individuals. I cannot say that this is any sort of broadly based thing.

Mr Tonkin—I know that you can have non-copyrighted music, because we supply car stereo equipment and one of our major suppliers, Alpine Electronics, has been able to overcome some of this. They actually constructed their own disc called Highway One. There is a situation where we use that disc quite often in demonstration facilities. It is non-copyrighted music, but we are still paying a fee.

Mr MUTCH—So are you saying that you think that all use of radio and television should be exempt? Or don't you take it that far?

Mr Siekmann—I would suggest that all use of radio and television—and here is the grey area—which is incidental to the operation of the business should be exempt.

Mr MUTCH—If it is for the use only of the proprietor or for employees, would you say that should be exempt?

Mr Siekmann—Yes, definitely, in that case.

Mr Tonkin—This is where the line is so hard to define and draw. This is why I think that aspect of the legislation, while it may be there with good intent, is clumsy.

Mr MUTCH—You make the point in your submission that the person who is playing a radio or television has no choice in the content of the program.

Mr Tonkin—None at all.

Mr Siekmann—This is why I wanted to go through this in a structured fashion. We have no rights in determining what is played, the quantum of the licence fee, how often to pay it, whom to pay it to, where it is distributed to, or anything. And yet it is demanded by private organisations that we pay this money, and that is backed up by law.

Mr MUTCH—The grey area is interesting. The committee was sitting in a cafe, and I think there were four television screens. This was just a normal coffee shop which was playing television. Would you consider that they should have to pay a fee?

Mr Tonkin—In my opinion, no.

Mr Siekmann—I would concur with that.

Mr MUTCH—Is that because it is incidental?

Mr Tonkin—It is incidental.

Mr MUTCH—It was difficult to hear it, anyway.

Mr Tonkin—They are making their living out of food, not out of telly.

Mr MUTCH—I wonder why they had four television sets in a very small coffee shop.

Mr Tonkin—That is purely for, shall we say, the side benefit or fringe benefit of their patrons, but their main living is—

Mr MUTCH—Or the ambience.

Mr Tonkin—Yes, the ambience. Their main living is coming from food. But I would still say to the committee that one thing that really should be taken into consideration quite strongly is the aspect of double-dipping. It is just not fair. It is being paid twice.

CHAIR—You indicated before that you wanted to go through your points in a structured way, but we have not wanted to do that. We have wanted to pry some specifics out. But feel free to resume that, if you would like to.

Mr Siekmann—Basically, the only reason I wanted to do that was because it

would have been, in the initial stages, to structure what we were going to say.

CHAIR—Fire on, and then tidy up. We have probed into some specifics from the point of view of our report, but I have not wanted to put you off your game, by any stretch of the imagination; so you pull it together.

Mr Siekmann—There are two basic areas reasons we believe that this should not be charged. One is the unfairness of it, the fact that you are being forced to pay for something which you really are not using, or are not having any say over what it is that you are using. The other simply is the cost to industry, and the inefficiency of the whole thing. If you examine APRA's and PPCA's balance sheets, you will see that APRA particularly—and they have given this in evidence—claim that their collection fees are minuscule compared with the amount which they collect. They have a very efficient operation going, and they in fact collect some \$40 million, which is a lot of money; and to collect that, it costs them some \$7 million, heading up towards \$8 million.

But what they say—again, looking carefully at their balance sheet—is that some \$30 million of that is collected from broadcast situations; in other words, situations where they could probably have an office in Sydney and send out a bill once a year. The other \$11 million would comprise most of the expenditure of the \$7 million, from walking from door to door trying to pick up money from small business. I have not necessarily got the right to tell them how to run their business or anything like that, but it appears to me that if small business has to pay that—and, on top of that, there are all the ones which have not been collected—you can do a rough sum about how much this is going to cost.

Clive says it took his son an hour to do the form. I would suggest that, within his organisation, if he really looked at it, it took a lot longer than that. It took his son an hour. Clive, I'm sure, had to look at it for another 20 minutes. His wife probably had to process it. The lads out in the workshop probably had to answer some questions. Somebody had to go and stick it in the mail, write a cheque, and pay the appropriate stamp duty, and everything like this. We have put a figure on this, and about \$40 per application is what it costs a small business. Multiply that by 800,000 and you have got as much as they are collecting in total. This cost to industry is enormous, and nobody realises how much little things like this compliance cost actually add up to. Really, they are not getting anything back from it. If you add to that the distribution fees, it is going to be a negative factor. That is the once-over.

The other side of it is the actual legitimacy of the licensing. There are two people out there who can collect licensing fees. We do not know who they are collecting for, or anything like that. They do not have to state it. They come along and say, 'Yes, we have the right. Give us some money. Fill out that form.' Well, prove it. We do not know whether it is legitimate or not. Under the Hilmer report, if somebody wants to come along and compete with them, they are going to have to be licensed to do the same thing. Nobody can refuse them. Anybody can get into this racket and start expanding it, and all

of them can put forward fees which we have got no control whatsoever over. They can nominate their own fee without us having any ability to question it.

Secondly, under the legitimacy area, we have got no right—particularly in a broadcast situation—to even select what we want to hear. I turn the radio on in the morning to listen to ABC News Radio. They do not play one record, as far as I know. Yet, if I had that on in the workplace, I would be charged a fee, too. In fact, I do have it on in the workplace, and I am running illegally by having it on at the workplace at the moment, and I am damned if I am going to pay APRA for listening to what is happening in parliament today.

Mr Tonkin—Taking up Peter’s point, there is one thing I would like to raise. I have spoken of this law that I believe is out of tune. This law appears to give an almost monopolistic private enterprise industry the powers of a government body, a la the Tax Office or the police department. Now, you may think I am joking on this, but I do not know whether you are aware that this is the licence, and on the back of it there is one sentence here that says, ‘APRA by its accredited representative shall have unrestricted right of entry during all times of performance.’ I do not think even the Taxation Office can do that. That is pretty lethal. I am sorry, Peter, but that is on there.

Mr Siekmann—No; that is fine. I had not picked that one up. That shows that—

Mr Tonkin—Actually, when we did fill in our forms two years ago and sent them in, we crossed that out and initialled it. This is the licence that has now come back, not crossed out.

CHAIR—Sure. We have run over time, but I do not want to cut you off on any points that you want to make.

Mr Siekmann—That is probably what it ultimately boils down to. I guess it is wrapped up in the summary, and we have virtually covered everything which runs along those lines. With all law there is an intent in the law, and we hold with the intent: we do not argue against the rights of people to claim on their intellectual property. But the intent is the firm sale of goods for money, where copyright comes in. When you get down to incidental areas, beyond the aerobics studio, and even partly in the aerobic studios where they are playing non-copyrighted music, I am sure the intent of the law—and, certainly, our world obligations on copyright—do not cover the incidental playing of music or performances as such.

CHAIR—Thank you very much for coming along.

[11.50 a.m.]

HEYSEN, Ms Emily Dorothy Kelly, Chair, South Australian Music Industry Association, 11 Jeffcott Street, North Adelaide, South Australia 5006

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

Ms Heysen—Certainly. I will give you a little background about the organisation. SAMIA, the SA Music Industry Association, is a membership based, non-profit association, and it represents a number of sectors within the music industry, including songwriters, musicians, small business, retail, wholesale, radio and a fairly wide spread of music industry groups. It is fair to say that a substantial section of our membership are songwriters and composers, and that is why they are quite keen and interested to see how this inquiry will go. Most of the songwriters are not paid to create their work. Their income comes in large part from the sale and licence of their copyrights, which is their intellectual property. Many composers depend on their copyright rights for income. SAMIA basically opposes any diminishing of these rights.

Small businesses do not have to play music. The fact that they do play it indicates that they recognise the benefits to their business for both customers and staff. The fact that they have been so proactive with their submissions to this inquiry indicates that they are determined to keep doing so. Although it appears that the fees required to do this are fairly reasonable, obviously the paperwork and the method of collection appear to be arguable.

I have spoken with a number of small businesses about their copyright obligations, and I would have to say it appears that there is a general lack of awareness about both the copyright itself and the various collection agencies, including APRA and PCCA, and about what exactly their role is, what this copyright means, and the differences between the copyrights. The association believes that a general education awareness campaign will do a lot to counter this lack. Any further questions about the amount of licence fee and other aspects of licences can be dealt with through the Copyright Tribunal.

I have read through some of the other submissions, although I cannot say that I have read through all of them. With regard to the proposal for liability for public performance to be placed on the broadcasters, and also to the other proposal that perhaps one collection agency be employed to collect both licences, although we have got no official position on either of those suggestions, we think they are interesting and should be discussed further.

I suppose we actually agree with the Western Australian Music Industry Association's submission and the point they make about the waiving of collecting of copyright licences for small businesses—which is basically putting the rights of the songwriters at risk internationally. It is entirely conceivable that, should APRA and the PPCA be precluded from collecting the rights of overseas copyright owners through small businesses here, the same could occur for our songwriters overseas, through a breach of international agreements.

Lastly, I would have to say that I disagree with some of the points I heard earlier from small business that music is often incidental or does not have an effect on the staff or the customers. I think it is quite well recognised that it can be used as a tool of the trade—for example, with gymnasiums. I would like to see an aerobics class occur without the use of music! It would be very amusing. Also, with jeans shops, restaurants, et cetera, it is quite well documented that such businesses employ the use of specific types of music to encourage the customer to feel comfortable or vibed up about buying their product. I think they recognise that themselves. So to argue that it is incidental or does not have an effect in terms of profit is, I think, questionable.

CHAIR—Thank you for that. Our first witness today sought to criticise the collection system, if you like, from at least the point of view of challenging the methodology of paying out to the artists. Your organisation represents artists. What is the point of view of your organisation about the benefits that your members receive from the payment of copyright?

Ms Heysen—It is very interesting that, when it comes to music, it is a very emotive issue. A lot of the artists feel quite strongly that, in a number of areas, various businesses like to employ them in venues to play live for nothing, for a promotional opportunity. Businesses do not want to have to pay copyright for their music, because it promotes their music. Use on the Internet of their music should be, people believe, for free, because it is for promotion. At the end of the day, where does the artist make their living? It is through the ownership of that copyright.

CHAIR—Yes.

Ms Heysen—Most definitely.

CHAIR—I suppose that on the other side of the equation the small businesses would say, 'We shouldn't pay in respect to the use in our businesses, because they get paid if they give a live performance.'

Ms Heysen—In the use of music, there are the two areas: there is the use of the CDs and tapes, or the use of the radio broadcast or TV broadcast. When a CD is sold, it is with the intention that it is a single sale for a single listener, and that is exactly the agreement that is entered into. It is not intended to then be used for further public

performance. It is the same with radios: the intention is that it is a radio usage for personal use, and the difference is that a business is then rebroadcasting that to more than just one person, to create an ambience, either to make it a comfortable working environment for their staff and to increase their productivity, or to make their customers feel comfortable, or whatever.

CHAIR—Is the receipt of copyright payments important to your members?

Ms Heysen—Absolutely.

CHAIR—Are they happy with how it is working, in terms of how they are getting paid?

Ms Heysen—As far as the artists are concerned, yes. I have heard very few complaints on their part about how that occurs.

Mr MUTCH—From the point of view of a small business person, we have had a number of submissions from individuals and so forth; and, for instance, some small businesses use the radio for information purposes. Do you think they should be exempted? In the sense that there are typhoon warnings and this type of thing that can be carried on the radio, or that they are listening to the radio for news broadcasts and the talkback, do you think they should have to pay a licence fee, if it is just for the use of the owner and/or staff, for information purposes?

Ms Heysen—That is an interesting argument. If I were in a small business and I listened to talkback or news, et cetera, I certainly would not be running to the radio to turn it off every time a piece of music came on, just in case I actually heard some music. To say that it is actually solely for information purposes and that they do not use it for music at any stage is an argument that would be difficult to prove, but I do not think I would have as much expertise on that as I possibly could have. Maybe there are other businesses who could answer that one.

Mr MUTCH—Take the example of the political electorate office. I would be happy for the staff to be listening to broadcasts for information purposes but, if they had music on, I would rather they kept it very low. That is one example of where you would be really using it for the purpose of getting information.

Ms Heysen—If that is their case to argue and it is fair and reasonable, then—

Mr MUTCH—Would it also be a good PR exercise? Generally speaking, you are talking about a very limited use. Take the idea of a mechanic under a car with the radio on: in terms of PR, wouldn't it be better for APRA to make an exclusion for the staff under those circumstances? The anguish that seems to be coming to us from small business is something that I think would be worth ameliorating, if possible.

Ms Heysen—That is certainly worth considering; but, again, I would have to say that music can be used not only for the customer but also for the productivity of the staff. If it helps them with their own work and increases their productivity, I would argue that that is a good tool of the trade, as well.

Mr MUTCH—It would be a bit hard if you were the head plumber and you had 10 plumbers working under you, all of them running around carrying their own transistor radios. You could tell them, ‘I don’t want you to use the radio; don’t use it on my behalf, thank you very much.’ It would be very hard to stop them, and you would be liable.

Ms Heysen—Certainly, and I do not think I have enough knowledge to go into the specifics of that kind of scenario. The other thing is that I think that the type of fee that they are looking at paying annually is quite reasonable. I was listening to the arguments being put forward this morning about the paperwork that they have to contend with, and I would suggest that one hour per year is not, in my view, entirely unreasonable. There are certainly other amounts of paperwork they do for various other things which are much more time consuming. I do not know that it is the fee that they are arguing about: it is probably more the principle. I also think that some businesses do not tend to understand the reason they are paying that fee and where that copyright goes to.

CHAIR—On that point, do you think enough has been done to educate business on the nature of intellectual property attached to music and on what the copyright fee is for?

Ms Heysen—Over the past couple of years, the awareness has been raised a little more, but a lot more could be done.

CHAIR—For instance, you indicated that you have discussed the matter with some small businesses.

Ms Heysen—Yes.

CHAIR—Was their attitude different after those discussions?

Ms Heysen—Yes, it was. It is also interesting to note that, when it comes to things like computer software or use of literature, et cetera, everybody really clearly understands their obligations there. If somebody is perhaps breaching the copyright, and the various authorities actually speak with them about it or send them paperwork, they do not actually freak out about the formal nature of that sort of communication. I think it is interesting that, when it comes to the songwriting royalties, they are singled out as being somehow authoritarian or very—what is the word?—aggressive in their approach, et cetera.

CHAIR—On the other hand, you would say it would be desirable if the methodology of collecting charges could be pursued on smoother water, I suppose. It

would be in the interests of your members to have less aggravation in the collection.

Ms Heysen—Certainly; but that sort of scenario occurs when the awareness is not there in the first place. If there were more awareness in the first place about their obligations, why they are paying these copyrights and what they mean, probably the situation would not occur where they feel that they are being threatened by APRA or the PPCA. It would not get to that sort of extent, if they understood the principle in the first place.

CHAIR—You mentioned in your evidence that you thought the issues of centralised collection are worth pursuing. That would be relatively easy with radio or television, because you would go to the point of broadcast, I presume. It is a little more difficult in respect to the playing of CDs.

Ms Heysen—Yes.

CHAIR—Have you got any thoughts on that? Would you still need to collect CD royalties at the point of playing situation?

Ms Heysen—Yes, I think so. These are only personal views. As I said before, I do not have an official position from the association on that one, so these are personal views. I have heard a couple of arguments from some people who have made submissions that perhaps, if the PPCA and APRA got together and had one collection person or one collection method, that might help alleviate some of the friction being caused.

CHAIR—I do not know if they exchange databases, but they might find if they did that perhaps they would both do well out of it. I just do not know.

Ms Heysen—Yes; I do not have as much awareness about that as I should have to be discussing it, I think.

CHAIR—Just to underline the point, would your members suffer if the small business sector or the business sector were taken out of the copyright regime, in that they would be paid no royalties?

Ms Heysen—Absolutely. I also think that there is an increasing trend to use music in small businesses. For example, when walking down Rundle Mall maybe three years ago, occasionally you could hear the odd strain of a radio here and there; but, when walking down there nowadays, it is almost as though every second store has music blaring out of the shopfront. It seems to be a trend that is increasing. Also, with the new technologies, such as the Internet, et cetera, it appears that the trend is that there will be more forms of broadcast music in the coming years. If that is to be the case, we are looking at a situation where the opportunity for those songwriters to earn income out of copyright is going to be increased over the years. So they would argue quite firmly that it

is a right that they would like to protect for their future years.

CHAIR—If the ability to obtain royalties from the business sector were taken away, would it have any effect on the viability of the Australian music industry?

Ms Heysen—That as songwriters and musicians have very limited ways of actually making their money—as it tends to be a lot of other sectors of the industry that make their money first—we do have to protect all avenues for the various parts of their income. I would have to say that the copyright of their intellectual property is a prime source of their income.

CHAIR—That is helpful. Thank you very much for giving evidence. You didn't want to add anything?

Ms Heysen—No, that is fine. Thank you very much.

[12.05 p.m.]

CHILDS, Mr Robert Norman, President, Songwriters, Composers and Lyricists Association Inc., PO Box 228, Kensington Park, South Australia 5068

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

Mr Childs—I must explain what SCALA is. We formed in 1987, about 10 years ago. You may wish to take some of these documents. I was told there may be 14, so I think we may have overcompensated. I am sure there are more than enough. We are a broadly based original music society established to encourage original music of any style. Our membership is largely based in South Australia, but we have members in all states and major territories of Australia, and also members in overseas countries—in New Zealand, Singapore, the United States of America and Ireland—and we have had members in the past in the UK, Canada and Hong Kong.

We got up to about 280 members last year, so we represent quite a few songwriters. As we have grown every year since we formed, we would expect to get to about 300 by the end of this year. We are a fairly active society. As you can see from the documents I have handed out, we run a weekly venue; we have run that for over 10 years, which is no small commitment. We have a weekly radio program for original music. We run two annual song competitions, and various other song competitions from time to time, and we put out an album every year. The last three have been on CD, and we expect to put out two more CDs of mainly local original music this year. The last CD included a song from some songwriters in America, from Nashville in fact, so we are becoming quite international. We also run a Web site which, according to our ISP, we estimate had 180,000 hits in 1997 from a total of 70 countries. Because that counts every file that is downloaded, how you translate that into actual people who visit our Web sites is another matter. They are the raw data.

There are a number of issues that have been brought up in this inquiry, and the two main ones are the dealings with APRA, and the rights of songwriters and the collection of those rights. Our personal relationship with APRA has been variable. It was fairly cordial early on, but it has cooled significantly over the past five years or so, and that is largely due to the fact that the people we used to deal with in APRA have gone. They used to come over and provide free workshops and information, and APRA itself just does not seem to have much of a relationship at all with us—and has not for some years. It has undertaken some activities without reference to us.

From that point of view, if this translates into their dealings with small business

and they treat small business in the same way, I can understand that there may be some feelings of aggravation. However, I would say we have had a lot of dealings with small business ourselves, in terms of getting sponsorship for song competitions and things like that, and we have generally had some good support from the small businesses for the music industry. But I think we have all dealt with small businesses who do not have a good relationship with the public in general. Just as you may run an inquiry into the dealings of APRA with small business, you might just as easily run an inquiry into the dealings of small business with APRA and with songwriters in general.

The other main issue is the issue of songwriters' rights to income. Small business itself needs to understand that songwriters are basically small businesses in themselves. We have found this ourselves over many years, in putting on workshops and that sort of thing. Most of our members want to make an income from the music industry, so they come along and effectively want a cash flow; they want a reward for their efforts.

With most small businesses—the corner deli, the surgery, the pub or whatever—if someone decides they want to do that sort of thing, they get a loan or they use their savings. They buy into the business and from day one they can get a cash flow for their efforts. They may not do so, but generally that is the case. They would expect someone would come in and purchase something or purchase a service or whatever. Often a lot of those people who run those businesses are not well trained. A lot of people, as we know from our evidence throughout the small business industry, are inadequately trained and have an inadequate understanding of cash flow and business plans and things like that.

For songwriters, composers and lyricists generally, the road to getting a cash flow for their efforts is very long and arduous. You can imagine that, if you start off as a songwriter, you decide you have got a talent for songwriting. What has led up to that in your training phase might be, for example, purchasing CDs—an expense—so that you have got examples of other people's songwriting. It might be purchasing song books and other books on songwriting or composing. It might be attending courses to learn about the music theory and the music industry and that sort of thing. So there are a lot of expenses in setting up.

Then there is the next phase, perhaps, of learning an instrument and buying an instrument. Maybe there is a recording phase, in which the songwriter attempts to record their material; that may involve employing musicians. It certainly involves either purchasing recording equipment or getting the services of a recording studio. When they have finally got a recording, a lot of songwriters then post off or tape those recordings on cassettes, and duplicating a number of cassettes is another cost; or they copy them on CDs increasingly now, which is another cost. They take those along to recording companies or publishing companies.

So far, we are talking about costs that have been outlaid by the songwriter, and no income has come in yet. If eventually they get a contract or some sort of success and they

get commercial airplay—because, let us face it, that is where the real money comes in, for songwriters—and a major label picks them for distribution and sales through chart stores rather than independent record stores, then, provided that the surveys and their computer database are on track, it is likely that APRA and other organisations will finally start collecting royalties on their behalf, and in six or 12 months they will get their first cash flow. Now, from song to income may take years for a songwriter. That is what it is like for songwriters.

If you are talking about the collection of those rights, the current situation is that for any business that is playing copyrighted music, there is no doubt that they are playing that to enhance their cash flow, and in that sense their use of that copyright material—

CHAIR—There may be two different categories, I suppose. There may be the mechanic in the back workshop, as opposed to the jeans shop that we have discussed.

Mr Childs—Isn't that enhancing the mechanic's work performance?

CHAIR—I suppose that is debatable.

Mr Childs—I think it is, and I would debate in favour of playing music in the workplace being found to enhance work performance. I personally do not like music being played in the workplace, because I find it a distraction; but a lot of people do not think so, and I recognise that. I think that a lot of businesses play music to increase productivity.

CHAIR—Can we focus on two issues? Do members of your organisation obtain the benefit of royalties distributed by APRA and/or the PPCA?

Mr Childs—Yes. You will notice in the newsletter that I distributed to you that we recently ran a survey of our members, asking them some general questions. We surveyed about two-thirds of our membership, so about 200 survey forms went out. We got an extremely poor response, I must say, but the strongest response was from those who do get an income from APRA—and I am talking about thousands of dollars per year.

CHAIR—So, while you voiced some concerns with APRA earlier, it wasn't in respect of the distribution of the royalties?

Mr Childs—Not at all. We have got no problems about the rights. We understand that there may be some problems about the way in which APRA go about it, and they may need to improve that. But, similarly, small business itself perhaps needs to improve its understanding, and that may be the problem. I understand that most small businesses do not want to pay out anything more than they need to, because it is a hard life for a lot of them; they work a 15-hour day.

CHAIR—Do you feel that more could be done on the education side of the

equation?

Mr Childs—I think so. At the same time, though, if that cuts into the songwriters' rights payments, we would not necessarily want to see that. But, if it is a necessary adjunct to securing those payments, then it is a necessary adjunct.

CHAIR—Sure. What about your members' payments from the PPCA? Are they getting any payments through that channel?

Mr Childs—I imagine so. We did not specifically ask about the PPCA. We are talking about members who are getting \$10,000 to \$15,000 per year. That is a not insubstantial part of their income; it may be the bulk of their income, for some of them.

CHAIR—Yes. What would be the effect if that business side of copyright were cut off and businesses no longer had to pay any copyright for your members? Would it cause hardship?

Mr Childs—If there were no substitute, certainly. One of the suggestions is that it be put upon radio stations to hire it.

CHAIR—Yes; centralisation.

Mr Childs—That is right.

CHAIR—You have no difficulty with that suggestion?

Mr Childs—If the radio stations are prepared to pay more, that is another issue. But again I come back to the fact that small business needs to realise that, in playing music to increase the ambience of their business and make it more attractive to customers, they are trying to increase their cash flow and, in so far as they are using copyright music, they are entering into a partnership with the copyright owner of the music.

Mr MUTCH—In the last edition of SCALA News, you distributed a survey. Have you received a number of responses to that survey?

Mr Childs—Very few—some very passionate responses, though, from members whose income was high from APRA. Generally, I suspect that most of our members do not get high royalty payments. Realistically, most of our members, if they have got recordings at all, would probably only get airplay on public radio and would probably sell most of their material through gigs, and so they would not be selling through the major CD outlets and they would not be getting airplay on the commercial radio stations. So their payout from APRA, if they have even registered with APRA, would be fairly small; perhaps hundreds of dollars. But there are some members who are getting thousands of dollars—as I said, \$10,000 to \$15,000 per year.

Mr MUTCH—Could those surveys be made available to the committee? Is that possible?

Mr Childs—Sure. But, as I said, there are very few of them—half a dozen or so from the 200 we sent out. There was not a huge response.

Mr MUTCH—Do you feel some sympathy for the small business proprietor who only listens to the radio for the news and broadcasts?

Mr Childs—The ABC has a channel that is exclusively news and broadcasts. They could listen to that, if they wanted to, and if they were doing that—because that channel plays no music at all, I understand—that would seem a fair thing. I am not convinced that most businesses that have the radio on just generally are listening only for the news and the information. There is a kind of cementing process that goes on between chat, and that is provided by music, generally.

Mr MUTCH—The radio station presumably pays for the cement.

Mr Childs—They are paying for the broadcasting right. They are not paying for the usage right by the business. Basically, there is a usage of music by whatever means, whether it is by turning on the radio and getting music or by playing a CD. By usage right I mean, to cover it, using music for a purpose. As far as I can see, that usage is basically to increase their profitability, to increase their cash flow, or to improve the morale of their employees—which again is to increase their cash flow and their profitability. Even real estate agents now advise vendors who have open houses to turn the music on, to improve the ambience of the house they are trying to sell. I have been to a few open inspections lately and at almost every one they have had classical music or Cat Stevens' greatest hits playing very softly in the background.

Mr MUTCH—There is a distinction there, if they are CDs, as opposed to the use of a radio, when you cannot choose the music. If you are playing a radio, you have got no choice about the content, in terms of music that you do not necessarily want; whereas, if you are playing a CD, it is pretty obvious that you are playing it for the music and for the ambience.

Mr Childs—It is a fine distinction, because of the place. We have a venue known to us in the office, a kind of nightclub bar in the city; they play a number of CDs, including our CDs, for which we are very grateful—because it is good that they consider our local songwriters good enough to play in the context of commercial songs from major label songwriters. They generally have those CDs on a shuttle system. They have one of those five-CD trays that they put them in. Again, you could really argue that, whilst the choice of putting those five CDs in is theirs, they really have no choice in the randomness with which those songs come out. There are shades of grey in all of this, I think.

Mr MUTCH—This might be a question better addressed to APRA, but you might know. If I am a songwriter musician and performer, and a gym comes to see me and they want me to provide them with music—of which I can make my own CD, presumably, and provide it to them directly—presumably they can pay me directly for the use of that music. The question I was interested in was whether, if I was also a member of APRA, I would get a double-burger out of that?

Mr Childs—That is something you really would have to address to APRA. What you are really pointing to—and this is something that may be relevant—is whether it is possible that APRA needs competition in the marketplace. Frankly, the Australian music industry might not be big enough to have a competitive copyright collection society, particularly in the performance of music. In the much larger American market, the formation of BMI, which came out of a dispute within ASCAP in the 1940s in America, was in some ways the making of the American music industry, because ASCAP was basically tin-pan alley and the songwriters in New York.

BMI was formed basically by the radio stations in America who objected to paying a higher royalty to ASCAP. They went around subsequently and signed up all the alternative music sources around America: the hillbilly, country and folk music. So, in a way, that broadened the kind of music that was heard on radio in America. Given the different nature of the music industry now internationally, and given also the much smaller size of the Australian music industry, even compared to America in the 1940s, I frankly doubt that that would be an option.

There are a few other things: the public perception of the whole recording industry, the whole music industry, is that recording companies and publishers take the bulk of the money from recordings and that songwriters get only peanuts—you know, a few cents. Some of that might flow through into attitudes of small business. They think this is just—

Mr MUTCH—Sure: so what is the fact?

Mr Childs—The fact is that that probably is the case. That is probably something that should be looked at as a separate issue, but the fact is that there are still people writing songs at the end of this process and, whilst they may only be getting a few cents, those few cents add up.

Mr MUTCH—It's still a worthwhile thing for them?

Mr Childs—Absolutely.

Mr MUTCH—Yes.

Mr Childs—When you are talking about sales of millions, it is an income for somebody.

Mr MUTCH—You have indicated that some of your members are in fact getting thousands of dollars.

Mr Childs—They are getting a good income.

Mr MUTCH—Yes; that point has been made.

Mr Childs—To summarise what I have been saying, the two main issues are that APRA might need to improve its dealings and that, likewise, small business might need to improve its attitudes to the public in general.

Mr MUTCH—Sure.

Mr Childs—There are many small businesses that I have dealt with where there is a siege mentality—‘I am a customer. I am bringing in money. Why are you treating me in this way?’- and I think some of that comes through in some of the submissions before this inquiry. The other thing is that songwriters do perform work. They are actually working. Music is not a frippery, and it is not free. People have put the original creative idea into it, and the people that have played it and produced it have worked. It is work. It is just as legitimate as the work of anybody who opens a deli at 7 a.m. and works until 7 p.m: it is still work.

A lot of songwriters have to network to meet musicians and other people in the industry. They have to put themselves into situations that most people in small business would not tolerate. Most of the music industry occurs in smoky, loud pubs where your drinks can be nobbled and all sorts of things go on. If you said that your working environment was something in which you had to be subjected to sound levels of 120 decibels, and the air was thick with carcinogenic gases, and people were overcome by drink or drugs or whatever—

Mr MUTCH—Atmospheric ambience!

Mr Childs—Most people would say, ‘I wouldn’t want to work in that sort of situation.’ But they are the sorts of situations that musicians generally, and songwriters in particular, would have to expose themselves to, as part of the process of getting a cash flow in doing their work. Some people might think it is fun but, believe me, a lot of our members ring me and ask, ‘What can I do to go the next step?’ and I say, ‘Basically, you’ve got to network. You’ve got to go out and meet musicians and record your song.’ Most of them say, ‘But I don’t like smoking and drinking and loud music,’ and I say, ‘Sorry, but that’s what you have to do.’

I would like to briefly refer to the terms of reference from (a) to (f). With (a), the information needs to be improved on both sides—by APRA and by small business. Next to (b) I have written, ‘It will be fairer to take into account the general profitability of the

business,' because that is the one relating to the number of employees and the number of customers. That might not go over very well with small business.

Mr MUTCH—I understand your point there.

Mr Childs—For (c), there is no discernible difference. That is in answer to your question earlier about the difference between having a radio on and having a CD on. For (d), on the business about having a common copyright collection agency, I would say that it would require a proper cost-benefit analysis. If you are going to set up another organisation, the cost of funding that organisation may defeat the purpose of having a central collection agency; but that is something that surely you could do a cost-benefit analysis on to determine what would be the most effective method. Term of reference (e) is on the Copyright Tribunal. It is now based in the eastern states, I understand, and that might be a hindrance; but we have got no other real views on that.

For (f), I have said that it might be possible that downloading of music on the World Wide Web enhances a songwriter's payout in the future, but our experience is that the benefits from the World Wide Web technology are overstated at present. I mean that it is technically possible now to put CD quality music on the Web and download it over the phone line. It is possible to link that into a bank account so that when you, as an individual, want to download, say, a song by me, you type in your credit card details and that makes a payment to me and then you can download the song and listen to it recorded onto CD, if you have got a CD burner at home.

Mr MUTCH—A CD burner?

Mr Childs—Yes, the technology is there, and it is possible even now to do it. The technology is still a bit slow, but that will improve over time. You could even go further and say that it would be possible also to download and print out on a colour printer, which you own, CD covers and lyrics and things like that. The technology is there and it will be possible to link it into actual royalty payments directly by credit card on the Internet.

I would suggest there is a lot of caution about that at the present time, and certainly there is evidence from around the world that a lot of commercial World Wide Web ventures have failed where people have thought they are going to make lots and lots of money on the World Wide Web selling things all over the world. There are quite a few of those I have had evidence of that have failed in the general business industry, let alone in the music industry.

CHAIR—Thanks very much for coming along and thanks for your evidence. It was very helpful.

Proceedings suspended from 12.36 p.m. to 1.36 p.m.

LANGDON, Dr Jeffrey Francis, Manager, University Radio 5UV, 228 North Terrace, Adelaide, South Australia 5000

CHAIR—Welcome. Thanks very much for coming in. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament, and warrant the same respect as proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as contempt of parliament. Would you like to make some introductory remarks?

Dr Langdon—Yes, I am here as manager of probably the leading community broadcasting station in this state, but one of 15 or 20 community broadcasting stations in South Australia. Although I am not here in a representative role, I did think it was opportune to make representations to the inquiry whilst you visited South Australia, just to reaffirm the voice that I am sure you will be hearing, or have heard, from around the country in regard to the community broadcasters' view on what I understand is the proposition to impose upon radio stations the need to collect APRA fees to cover broadcast in small business circumstances. Along with, I am sure, most of the other sectors in the broadcasting industry, we as a sector feel it is an unjust move.

I do not want to take much of your time, because I am sure you will have this attitude reasserted continually, and in fact I am led to believe that the President of the Community Broadcasting Association, Kath Letch, will be making representations to your committee in Melbourne, if she has not done so already. As background, the South Australian community broadcasting sector is mostly made up of small, struggling community stations. There are about 15, and possibly up to 20 with the new temporary licences being issued at the moment. It is only a small sector with a total turnover of approximately \$4 million.

We pay variable rates to APRA for the rights to broadcast musical performances. Under the old scheme, it was two per cent. There is now a sliding scale, but I imagine we pay something like \$50,000 to \$100,000 out of South Australia to APRA. Although adding some sort of surcharge on to that might not sound like a lot of money, in the case of quite a few stations in this state, finding their APRA fees is one of their single most difficult tasks.

CHAIR—On that point, is there any distinction between what a commercial station would pay, and what your station as a community station would pay?

Dr Langdon—We are both bound by the same principles, but we have slightly different sliding scales, I believe. Ours has just been renegotiated. I think we are still actually operating under the old system, which was a flat two per cent, but now it goes from 1.25 to 2.75, depending on the proportion of music that you play. On that I think it is fairly similar to the commercial sector's licensing.

CHAIR—What would it cost your station, for instance?

Dr Langdon—We are, as I said, one of the bigger ones, so 5UV pays about \$5,000 or \$6,000 per year to APRA.

CHAIR—And how do you raise revenue to keep your station afloat?

Dr Langdon—We are advantaged by being owned by the University of Adelaide, so they chip in about one-third of our required turnover. But, as with most other community stations, we raise the bulk of our funds from listener support, through subscription; from some level of corporate support through sponsorship, a type of advertising; and from general fundraising, from CD launches right through to lamington sales. It is about one-third in each of those categories across the sector.

CHAIR—If there were to be an additional supplement or additional surcharge, if you like, in respect of the business community, how easy or difficult would it be for you to pass that on to those current subscribers, sponsors and donors?

Dr Langdon—In our case, I am presuming that this surcharge would be a small additional percentage on top of what we pay, given the sorts of fees that businesses are being asked to pay at the moment. That is a presumption on my part. It depends exactly on what the extra surcharge is. In our case, if it were half on top of what we pay already, that would be a considerable imposition—\$2,000 to \$3,000—for us. But, as I said, we are more atypical.

A typical station would be a station like 3D, which is totally volunteer-run, with a total turnover of, say, \$80,000 per year. Two per cent of that is a small amount of money, and so the extra surcharge would not be significant, but it would be unjust. That is the key factor that we are here to make the point about, in that the arrangement between the artists and composers whose music we play and us is filtered through the representative organisations—all three of them: APRA, AMCOS and PPCA—and we are licensed through those organisations to broadcast that material.

We would resist having to pick up that responsibility for third parties, purely because APRA finds it difficult to identify those third parties, or to get the small amount of dollars off them. It is not our job. We should be only dealing with APRA, or dealing with the artists who have APRA as their agent, in regard to what we are legally responsible for, and that is a broadcasting right.

CHAIR—A lot of small businesses have come along to give evidence as to the additional administrative burden of filling in the form, drawing a cheque and posting it in, and basically administering the paperwork. Do you have any sympathies with their argument that, on a cost-benefit analysis, that is not worth continuing?

Dr Langdon—No. They probably could make the same argument about the chores of buying stamps to send their accounts payable notices to their debtors and creditors and so on. It is a bit of a chore, but it is something they are responsible for and they have to do it. We have to do it with APRA. If you talk to APRA, I think you will find that they in fact do not make much out of the collection of fees from the community sector, because it is such a small sector, financially. Nevertheless, because we are required by law to have that arrangement, they do go through the process of collecting the money, and we at the station level arduously fill out the paperwork—not the cheque that we sign once a year, but the numerous APRA forms that we fill out—knowing that it is part of our legal responsibility.

CHAIR—Do you know how many workplaces, as opposed to homes, listen to your station?

Dr Langdon—Not many.

CHAIR—Not many.

Dr Langdon—We are an education talk station of the quality of Radio National, and therefore we have ratings similar to Radio National's.

CHAIR—So no businesses have given you feedback as to complaints at having to pay these fees?

Dr Langdon—Not to us, no. We are a talk station. Most businesses would have 5AD on their PA.

CHAIR—What is your view of the concept of copyright for musicians and songwriters? Is it an appropriate thing to protect at that small business level?

Dr Langdon—Definitely, yes. I meant to say that. We, as a sector, support the rights of composers and performers to have income from the public performance of their material, and we 100 per cent support any decision to reaffirm that. But we simply do not think we are the appropriate body to collect those sorts of funds for a third party.

CHAIR—Do you think there could be a role for educating the small business sector as to the reasons behind this intellectual property?

Dr Langdon—Yes. My barber, for instance, has been approached on an ad hoc basis by one of the APRA agents and asked to pay \$70 a year, I think it was, and he told them to get nicked, because he did not think he really should be paying that. He is, like many small businesses, going to sort of stonewall them until he gets a fright of some sort that will make him realise this is an additional cost of running his business that he legally has to meet. It is a problem that businesses have operated in a vacuum for many years, not

thinking they had that legal requirement. If the sector could assist in any way in terms of a public education campaign, I would recommend that our sector, essentially through the CBAA, did some promotional material that could be sent out to stations to play.

CHAIR—A major argument of the small business sector is that there is an element of double-dipping. They are saying that APRA are getting their licence fees from the broadcasters, and then they are double-dipping by obtaining the licence fees from the business sector. Is that a legitimate complaint? If not, how can the two dips be distinguished?

Dr Langdon—I am not that well versed in the copyright law to know whether or not it is a double dip, but I am assuming that that issue has been addressed before, and that it has been determined that the public performance of a radio station's broadcast in a business environment is legally required to pay a fee separate from the broadcast fee that the station is required to pay. But, if that is an issue, people need to take that up in terms of addressing the interpretation of the law. But I had assumed that issue had been resolved in the affirmative.

Mr MUTCH—What about those businesses that just listen to the radio for information? You are in a bit of an exceptional category anyway, because you obviously do a lot of verbal communication rather than songs and so forth, but what about those businesses that just have the radio on essentially for information purposes? In North Queensland we heard that people had to keep the radio or television on for warnings of typhoons and all the rest of it. It was an essential service that they were listening to. Wouldn't you agree with their argument that really they have got no choice and that they have to listen to the music in order to get the information they seek?

Why shouldn't the commercial broadcasters, who are getting the advantage of advertising revenue because of the material that is being played to these individual shopkeepers or whatever, be the ones who pay it? They are the ones that assemble the music and decide when the music appears, and they have complete control over it, whereas the people who are in the shop or the corner store or whatever have no control over that.

Dr Langdon—But we do have a licence to have people listen to our music, with APRA. So the fact that they might be listening at home or incidentally as they walk past the front of Big W is not really an issue. It is the fact that we got a licence to broadcast music and have people listen to it, and we have an agreed fee to pay APRA for that licence, for that responsibility.

Mr MUTCH—But that is essentially the double-dipping argument. The shopkeepers say, 'Why on earth should we be paying, when we've got no control over where the music appears on the programming?'

Dr Langdon—If you want my personal opinion about it, if they are required to listen to the radio for essential information and they do not make the broadcast generally available to customers, I could probably support the argument that they did not need to pay a fee. But if it is on, as it often is, through the speakers coming out of the roof in the supermarket or whatever, then that is a different kettle of fish.

CHAIR—Thanks very much for that.

Dr Langdon—Yes. As I said, I wanted to reaffirm our position on that, so thanks for the opportunity.

CHAIR—We appreciate that; thank you.

[1.51 p.m.]

BUDDLE, Ms Noelene Joy, General Manager, Austereo Pty Ltd, 128 Greenhill Road, Unley, South Australia 5061

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

Ms Buddle—I am the General Manager of Austereo Adelaide, which encompasses Triple M and SAFM radio stations.

CHAIR—Thanks for coming along. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Having said that, would you like to make some introductory remarks?

Ms Buddle—I would, thank you. I have worked for the Austereo group for 11 years in various roles, including those of group management accountant and financial controller for the stations in Adelaide. I have become aware of a proposal put to the committee for the payment by radio broadcasters of public performance copyright fees currently payable by small businesses who have a radio playing in their premises, where that radio is audible to the public. I understand the committee has some difficult problems to resolve arising from a need to balance interests between owners and users of material attracting copyright protection. However, irrespective of how difficult it might be to find a solution, I think the proposal of some submitters to this inquiry for a convenient solution by having someone who does not even use the relevant right pay for it to be totally unfair.

I believe the committee would already be aware that radio stations pay very substantial fees to APRA for the right to broadcast music. APRA currently have a case before the Copyright Tribunal which seeks substantial increases—40 per cent in Austereo Adelaide's case—in those radio broadcasting copyright fees. These fees are currently based on a royalty-type calculation; that is, a percentage of gross income for the radio station, with a scale of percentages depending on the amount of music played. APRA are seeking to increase the percentages paid. The proposal for radio to pay again is really double-dipping. It is especially unjust to contemplate a further copyright fee collection from radio, given some of the background to this inquiry.

At the time that APRA chose to commence a blanket campaign for collection of fees, our Adelaide radio stations received an enormous number of complaints. In the worst weeks, between 40 and 80 calls were received by staff at our Adelaide stations. The main sentiments expressed were annoyance, and at times outrage, at the way persons believed they had been treated by APRA, and also puzzlement and a lack of understanding of the licensing scheme proposed. Many were also suspicious about literature that they received,

and thought it was a get-rich scheme by some party. They had never heard of APRA.

Whilst not envying APRA's position—and, after all, nobody is going to automatically take to the fee collector—some predictable negativity by prospective fee payers should have been properly encompassed in APRA's plan to launch a collection strategy. At the end of the day, its licensees are also its customers. But they did not seem to feel that way. It seems particularly inequitable that a disastrous marketing job by APRA should position it to argue that it be relieved of its job of collecting fees itself from small business by having radio pay instead.

I have had the benefit of reading a statement by my fellow General Manager, Elysa Preece, who gave evidence to the committee in Brisbane this week, and I agree wholeheartedly with its content. It is equally impossible, in the Adelaide market, for radio stations to pass on costs to advertisers. We compete with all other media in the market on an everyday basis. Recent financial data released by the Australian Broadcasting Authority revealed that there are many stations in Australia operating at a loss. Many are simply small businesses struggling to survive.

In addition, I am not sure if the committee is aware that there are plans for a number of new commercial radio licences to be issued in various capital cities, including Adelaide, in the next 18 months. This will have an inevitable financial impact on existing operators. It is difficult for me to offer any solution based on changes to the copyright law, as I am not an expert in that area. However, most of the most emotive responses from people objecting to the fee do appear to relate to situations where they are listening to the radio for their personal pleasure only, and it happens to be audible to others in the workplace. It may be that the concept of public performance could be addressed in the act with more clarity. In summary, we strongly oppose the proposal. I close my statement.

CHAIR—Thanks. You mentioned that you had received a number of complaints regarding double-dipping, with small businesses believing that there is double-dipping on the part of the collection agencies in terms of getting the licence fee from broadcasters, on the one hand, and then from small businesses. What is your view as to whether there is double-dipping? In other words, can the reasons for the payment by the broadcasters be justified as a separate criterion from requiring payment from the businesses?

Ms Buddle—To clarify my statement, the complaints from the public were not of the nature of the double-dipping; that is actually Austereo's stance on it. The complaints were in relation to the manner in which the fee was collected. In relation to the double-dipping issue, my point is that we already pay substantial fees. We, as broadcasters, have no control over how the broadcast is played, and therefore we should not be liable for any further payment. We already pay a fee, a substantial fee, to broadcast music.

CHAIR—Do you think for a business which uses music as part of the business—say, at David Jones, where they may have music coming out of a speaker system, or at a

hairdresser or a jeans shop—it is appropriate that they pay in respect to the musicians' copyright?

Ms Buddle—As I said before, it is a difficult question because there are so many different instances. The interpretation of a public performance can vary. You have offered the example of David Jones, which is a large organisation, or of a hairdresser's, which may just have one or two people in there. But I would take the point that people that are entering those businesses are not actually going into that business for the sake of listening to the radio. The radio, in those instances, is there as a background for the entertainment of the employees of that business.

CHAIR—It may or may not be, mightn't it? It may be there to create a sort of ambience as part of the business: a jeans shop wanting to convey that it is a cool sort of hip place for patrons to be.

Ms Buddle—That is true. I guess it would depend on what station they were playing, but they could use it in that way.

CHAIR—And musicians have argued, 'While we're not selling a loaf of bread, we're still selling our intellectual property. If it's being used to enhance the business, then we're entitled to get some recompense for the use of our property.'

Ms Buddle—And I would say that we have already paid a recompense in our APRA fees. We have already paid our broadcast licence, which will go to those performers. Radio stations have already paid a licence fee which goes to those performers.

CHAIR—How is it presently calculated? I know you mentioned that there is a case before the Copyright Tribunal.

Ms Buddle—Currently it is 2.66 per cent of revenue, which is paid on a calendar year basis. It is based on revenue for the financial year ended 18 months prior to that period, but it is 2.66 per cent of revenue for that year.

CHAIR—Gross?

Ms Buddle—Gross revenue.

CHAIR—So it is like turnover; it is not coming out of—

Ms Buddle—Profits? No. It is gross revenue; that is correct.

Mr MUTCH—I think we have covered most of the issues. I am just interested in the philosophical argument about why a small proprietor, some little business that is listening to the radio and really has it on for information purposes, not for ambience even,

should have to pay a fee, when it has already been paid for once by the broadcaster. If they were putting up a proposition that they should not have to pay that fee, why does that necessarily mean that you should have to pay more anyway, because you are already paying the fee? You are paying the fee.

Ms Buddle—Yes, I agree.

Mr MUTCH—And you are paying the fee so that it goes to that person that is the little corner store owner.

Ms Buddle—Yes, we are paying for the right to broadcast.

Mr MUTCH—To that person.

Ms Buddle—To that person; that is correct.

Mr MUTCH—That is right; so their arguing that it is double-dipping seems to me to be fairly logical, because you are paying the fee once. But maybe you might agree—the previous witness tended to agree—that there might be some exceptions for those people in that position where they do wish to have information on the radio, and are using it basically for their own personal information and not for the ambience or for attracting customers. They thought that maybe an exemption could be applied.

Ms Buddle—I guess my argument is not so much about whether there should be a fee levied on some businesses that are using the radio, because obviously that comes into the copyright laws and what constitutes a public performance. As I said, I am actually not an expert in that field. I feel strongly about the way that it is levied: what is convenient for APRA—because it could be applied to radio stations or to radio broadcasters—is not the right way to go about it, just for the sake of convenience. That is where the double-dipping issue comes into it, I believe.

Mr MUTCH—We heard from another witness today, and they gave us an example of a podiatrist who now refused to play any radio in the podiatrist clinic, on the basis that the fee was an imposition: therefore, you are missing out on a listener.

Ms Buddle—That is true. Every time someone switches off the radio, that is to the detriment of the radio industry. Also, part of the issue is the confusion that people feel because they do not understand the copyright laws, have not had them explained to them and do not understand APRA's position or the role it plays in the collection of the fees. So I feel it is also part of a public education process.

CHAIR—You have given evidence that you think that could have been done much better.

Ms Buddle—I believe so, because the calls we were receiving were mainly along the lines that people were totally confused and thought that it was almost a fly-by-night scheme, because there was no awareness of APRA and the role that it had to play in the community. Perhaps, if the marketing process had been done better up-front, there would not be this confusion in the community.

CHAIR—You have given evidence about APRA necessarily, because they relate to radio broadcasts. Do you have any views in respect to the PPCA, which collects in respect of the playing of CDs? Take, for instance, a restaurant playing a particular type of CD music for atmosphere in the restaurant, or a hairdresser playing CDs for the actual purpose of creating the sort of image of the hairdresser: do you have any views on that?

Ms Buddle—It is hard for me to comment on that, because I guess that comes back to the definition of public performance, and I am not entirely au fait with the way that CD manufacturers pay their fees as well, whereas my area of expertise is in the area of APRA fees.

CHAIR—Sure. I understand. Thanks very much for coming along.

Ms Buddle—Thank you.

[2.05 p.m.]

SHELTON, Ms Cindy Mary, Chief Executive Officer, South Australian Council for Country Music Inc., PO Box 609, Blackwood, South Australia 5051

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

Ms Shelton—Yes, certainly. While I have no connection with the work at APRA or the PPCA, I represent an awful lot of people in the country music industry in South Australia who actually write the songs or perform the songs that are being broadcast. Since I was contacted initially to see if I would speak to the committee, I have spoken to a number of musicians and songwriters throughout South Australia. I am coming from their point of view, in that they have a right to earn money for their work, and that really is the basis of what I am here to say, although I am not a musician myself. I guess I am here to plead the case of the performers and the songwriters.

Once a song has been written and/or recorded, those practitioner professionals really have no way of earning an income from their services. They do not get paid wages. They do not get paid salaries. Occasionally, they are commissioned to write music for films or television or stage shows, and they get paid a fee for that; but, generally speaking, songwriters do not get paid for their work. The only way they can control in any way the use of their work is through copyright. They are, in effect, small businesses; they run their own small business. To me, if all the other small businesses in Australia are exempted from paying copyright royalties, then they are actually depriving those professionals from earning an income, or certainly from earning a part of their income. That is the basis of why I am here.

CHAIR—Sure. Do you think it is appropriate that small businesses or any businesses should be required to pay for the use of music in their businesses?

Ms Shelton—They are providing a service to their customers or their staff. They are creating a pleasant atmosphere, if it is for staff. They are creating a pleasant atmosphere for customers; and in some circumstances they are actually encouraging customers to come into their premises if music is being played there, particularly in the case of popular music. If you are into popular music and you are walking along the street and you hear something that you are particularly fond of, you will stop and listen and you will go in and possibly buy something or book a service of some kind.

Certainly, to me, it is used either to create an atmosphere or to induce business, and there is absolutely nothing wrong with that. It is just that the people who provide that

atmosphere and provide that inducement for business should also be able to earn some income from it. It is their services which are being used.

CHAIR—So your evidence is effectively that that is the property, and the only property, that the musicians have to obtain remuneration from?

Ms Shelton—Yes. Take the example of computer software, which is also protected by copyright. I do not pretend to know an incredible amount about copyright but, as I understand it, if you use, reproduce, borrow, coopt or steal software for your computer which you are not authorised to do, then you pay a hefty fine if you are caught. That comes under the copyright law. When you have people like authors or artists or sculptors, they have a certain amount of control over the use of their artistic creation. For anything that is photocopied from the book you have written, you have the royalty fee. You control the sale of a painting or the sale of a sculpture.

It appears to me that musicians and songwriters should also be able to earn an income from their right, in the same way as authors, software designers and painters do. It seems that it is a fair and proper remuneration for the service that they provide.

CHAIR—How is country music going in South Australia?

Ms Shelton—There are a lot of fans of country music. My association has 12 member clubs, and those clubs provide social activities for their members. They vary between 20 members and 500 to 600 members. We also have several industry professionals, professional musicians and songwriters, who are members of our organisation. We have an information service to which, at this stage, 160 people subscribe. So we are providing an information service to consumers. We are also providing industry support to professionals within the industry.

CHAIR—What is the level of understanding among those professionals of their rights to intellectual property?

Ms Shelton—From the discussions I have had with most of the musicians and songwriters I have spoken to over the last couple of months, they feel that they have a right to earn a fair remuneration for their property, which is their songs or their performances that are being used for other purposes.

CHAIR—There has been a submission to us that, rather than have copyright or royalties collected at the point of small businesses—and I am talking about the case of radio broadcasts—there should be an additional levy placed on the radio stations or television stations as compensation, in lieu of the payment from small business. What do you think? Do you have any comments as to whether that would be desirable or undesirable?

Ms Shelton—It appears to be a fair submission, and I would certainly be very interested to see whether that eventuates, and how it could be levied and how it could be run. More to the point, what about the broadcasting of CDs and tapes in the business premises? It says on a CD and tape, when you buy it, that unauthorised performance is prohibited. Anywhere outside of the home is, to me, a public performance. Whether that is to staff members or to members of the public, it is still public. It is more than just personal use. Those CDs and tapes are sold for personal use.

CHAIR—Do you think the collecting agencies have done enough to educate their members, the actual performers, on the system of copyright, how it is collected and how it gets back to them? What is your feeling on their relationship with their members?

Ms Shelton—I do not have a lot of knowledge of the PPCA but, from my understanding, the songwriters in particular rely heavily on APRA to collect royalties for them. They really have no way of policing how often their music is played. While that precludes them from physically policing who is playing their music and who is copying their music, they are quite happy for APRA to license people and collect fees on their behalf. We are not talking about enormous fees. It is only something like \$55 per year, isn't it, for the use of tapes and CDs, and \$37 or \$38 per year for broadcasting radio stations? That is \$1 per week.

CHAIR—Do you think there could be some benefits in a merger of the collection—that is, APRA and PPCA getting together in terms of their approach to businesses?

Ms Shelton—From a personal point of view, and from the point of view of the people that I represent, provided that a suitable format can be worked out between the two, I cannot personally see a problem with that. But it is a matter of whether an equitable format can be worked out. It would certainly make life a lot easier for a lot of people.

CHAIR—If the system was up and running smoothly in whatever way, shape or form, that would be in the interests of your members—in the sense that, if things were running smoothly at the collection side, that is probably going to ensure that the pool of funds is preserved to distribute to your members.

Ms Shelton—Absolutely. Probably both collection agencies need to do some public relations work and explain their position to the public and to those small business owners. I do not know whether the negotiations they have had so far have been fruitful or whether they have been misunderstood, but to me a fee of \$37 and \$55, or whatever those figures are, is so nominal that it is negligible. It does provide an income to the people whose property is being used, and who have no control over people using their property.

You pay for an electrician, a plumber, a doctor, a lawyer and a PR consultant. They are entitled to earn a fee for providing their professional services. In a lot of cases,

you are paying for their expertise, not for a specific product that you can touch and see. It is only fair that the same should apply to creative people for the service that they provide, too.

CHAIR—So you think there is some ignorance in the business community as to this notion of intellectual property on the part of creative people?

Ms Shelton—I think so. It is a very widespread notion. Because 99.9 per cent of the population are not musicians, performers, or songwriters, and have no connection with the industry side of it, to them, music is entertainment. It is not a business; it is entertainment. This was really encapsulated quite some time ago now. I was the first manager of the Country Music Festival in this state. Johnny Chester was one of my guest artists, and one of the fans came up to him for an autograph and she said, ‘John, what do you do for a living?’ He said, ‘I sing and write music.’ She said, ‘I know that, but what do you do for a living? How do you earn your salary?’ I think that is the case with most people who have no connection to the music industry. It is an industry. It is a business. People are providing a service, and they are entitled to get the money for that.

CHAIR—Is it also an element of culture, in the sense that there is a brand of Australian country music? Is that part of our Australian culture, do you think?

Ms Shelton—Any music that is written in Australia by Australians is part of Australia’s culture. Country music, in particular, tells stories, and it tells stories about Australia, the land and the people. So, perhaps slightly more than other forms of contemporary music, it does play a part in our culture.

CHAIR—Is there any sort of general public benefit in assisting the industry to develop by way of recognising intellectual property, do you think?

Ms Shelton—I certainly think that if songwriters, particularly, and performers as well, can earn an income from doing what they do, then the community would benefit from that, because there would be a lot more Australian product available.

CHAIR—And if the copyright were taken away, or that avenue for the business payment of licence fees were taken away, would it impede the ability of people to be full-time musicians, performers and writers?

Ms Shelton—There are not too many full-time musicians who earn money only from music. They cannot afford to, particularly not in South Australia. The reason is that a considerable number of venues around the state no longer have, or may never have presented, live music for the entertainment of their customers, and so a lot of people are not being exposed to that.

CHAIR—The point I am trying to make is this, though: would it impede the

development of the industry if that revenue from licence fees from small businesses were taken away?

Ms Shelton—There would be fewer people expressing their artistic talents by producing music. What would be the point, if they are not going to earn any income from it?

CHAIR—Yes.

Ms Shelton—It would not be a devastating thing which would hit like a thunderbolt tomorrow, but I believe it would discourage performers, and particularly songwriters, from producing Australian product. There would certainly be encouragement for them to go overseas. We see it in this state, because there are not huge volumes of people to attend our performances in this state. Not only does South Australia miss out on a considerable number of touring artists from overseas, but a lot of brilliant South Australian artists have to move interstate or overseas to earn a living.

CHAIR—So that could be an additional pressure which could result in the loss of some Australian talent?

Ms Shelton—I do not think it would be a huge one, but it would add to a lack of confidence in their own abilities and in their ability to earn money.

CHAIR—Steve, do you have anything further to ask?

Mr MUTCH—No; you have covered it pretty well between the two of you.

CHAIR—All right. Thanks very much for coming along and giving evidence this afternoon.

Ms Shelton—You are welcome.

[2.38 p.m.]

BROWNSEA, Mr John David Leslie, Executive Director, Small Retailers Association of South Australia Inc., 321 Port Road, Hindmarsh, South Australia 5007

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

Mr Brownsea—Yes; I am aware of the requirements.

CHAIR—Would you like to make an opening statement?

Mr Brownsea—Yes. We became involved in this because our association, which is part of a group of similar associations around Australia, had some very real concerns about the requests being made of our members to pay this fee. We decided that it was quite clearly taking what was probably generally intended by the act to be a much broader arena than could have been possibly envisaged by those who had passed the act at the time. We did in fact come across APRA early in the piece, and in fact I raised this matter with our members in our journal which we produce every month. Soon after that, our members seem to have been the target, and I suppose that is the price you pay for informing people of what may or may not happen.

We see it as really being, to some degree, a tax on a tax, or indeed a tax or an imposition on what should be their right, if not their privilege, to listen to a free-to-air broadcast. We also see that the radio is not a broadcasting device but rather a receiving device and, therefore, that they were not broadcasting in real terms but were merely receiving what had in fact been broadcast by other parties.

When talking to our members about this—and we did take the trouble to ask them rather than be loosely interpreting what they might or might not want—certainly their reasons for listening to the radio basically were the same as any other person's in the first instance: a source of information, a source of entertainment, or whatever. But beyond that, for people in the food industry, there are some reasons why they may in fact need to listen to the radio. Certainly we still have food poisoning occurrences, as you would all be aware, and from time to time the quickest way to hear about these—if not the only way—is certainly via the radio.

It is an instant news medium, and our members do listen in case there is a warning about a product. That also leads to a product recall. Once again, by the time retailers generally and the public hear about product recalls, it could almost be up to a week down the track, but it is much too late if they have not removed the product from their shelves. So there is a real reason why they need to listen to the radio to get that.

Price changes quite often occur, and it even relates to cigarette prices. For instance, quite often those changes are heard on the radio sooner than in the print media or via other the means we have of getting them. Quite often some of the manufacturers are up to a week late in informing us. We also think they get warnings regarding possible power cut-offs, or reminders about power cut-offs in districts, and certainly regarding where there are roadworks and so on going on. Those do occur, and it is easy to forget that you received a notice about it a month previously. Secondly, quite often the radio is a good source of information regarding people who are working a district over, trying to trick shopkeepers into parting with money, and that type of thing.

So we think there are a variety of reasons that a shopkeeper would certainly want to listen to the radio as a means of hearing valuable business-type information, and not as a means of entertainment necessarily. But, at the end of the day, why shouldn't they enjoy the same level of entertainment from the radio as you or I do? We had a great deal of trouble with that idea. The notion that they are in fact using the radio to create an ambience within their business, or to attract the public, is something we have problems with. First of all, you have got to know that the radio is on inside the shop before you enter, and how do you know if you are going to hear what you want to hear?

This relates to what is a public performance, at the end of the day, and I think those attending a public performance have in fact some idea or notion as to what they are going to hear. They would not be there if they did not like what they were going to hear; whereas, if you walk into a shop and there is a radio on, you do not know what you are going to hear, if anything, and there is no guarantee you will like it. Thirdly, will you be there long enough to hear it, anyhow? So we do not see this as constituting a public performance within what I would say is the ambit of a public performance.

I do, however, acknowledge that what was intended by the public performance contentions is perfectly correct, where people are clearly making money directly out of a broadcast of a particular singer's work or an orchestra's work or whatever. That is entirely different, because those attending do in fact have the anticipation that they are going to hear that, or something closely resembling what they think they are going to hear, and that is all they will hear.

Once again, walking into a shop is really taking a bit of a chance, if that is why you are going in there, and we know of no people who come into shops and stand around and listen for something on the radio and then walk out. It just does not occur. Nor would we contend that it in any way adds to the ambience of that shop. Generally speaking, these radios are not loud and blaring: they are only playing at a sufficient level of audibility for the owners of the shop to hear it when there is nobody in the premises.

Here I will point out that the notion that an inspector can walk in and say that he hears the radio is hardly a guarantee that the radio can be heard. He is allowed to make the accusation, but there is no defence that in fact the radio was not sufficiently loud to be

properly heard. Within this, there is no requirement that a number of decibels be reached, as there might be in deciding the noise that a vehicle is making in terms of the Road Traffic Act. I have a problem, in that it is left to one opinion and there is no defence, as such, that in fact the radio was ostensibly broadcasting what was being heard because it was a receiver.

So that is my introduction to it. A simple example might be someone who builds a Greek restaurant, and they have a tape-recorder playing Greek music they have specifically bought for that purpose. That is a different matter. They are using that medium to add to the ambience that they are trying to create within their premises.

CHAIR—What about a gymnasium or a discotheque?

Mr Brownsea—Probably; because the music is part of the means to earning the income, isn't it? In the case of a delicatessen or many of these other stores where the owners are merely listening to the music, if they turned it off it would make no difference to the amount of business they did. Certainly I have members who have refused to pay the fee and have turned their radios off, and they are the only ones who have suffered personally, because they did not get to hear the news. So, you see, there is quite a difference.

We do not quibble about what I believe was originally intended by these requirements. I believe that those who have their career invested in the playing of this music should get what they are entitled to. But, within the narrow confines of the case that I am looking at, I do not see that my members, or the people I represent, are earning anything or benefiting in any real way in terms of a business return. It may be benefiting as a personal add-on to their day, enabling them to last 15 hours in the shop, which is what we are talking about.

CHAIR—Is there any difficulty in drawing that line for how far you come: down to, say, a discotheque or gymnasium, or to a department store just broadcasting music through its store, or even to a jeans shop that plays loud pop music to attract young people?

Mr Brownsea—I would contend that there is. Certainly, where that appears to be part of the way they do business, in real terms that could be the case, but if a person was listening to ABC News Radio 972, you could hardly say they are broadcasting music, because there is none—plain and simple. Therefore, why should they have to play the licence fee, if they are basically listening to a talkback radio station which plays little music, except for a fill-in when those ringing in fall off. They have no anticipation as to what that content might be—and it could be anything, whether they like it or not. They probably turn their minds off to it, if that occurs.

CHAIR—Is that the challenge, defining that point where something switches from

being a personal playing of a radio to a public broadcast?

Mr Brownsea—I think it is. We acknowledge that there is a line, and we think the line has been shifted to the point where it no longer exists. It has captured everything. You talked about a gymnasium. Clearly, if it is aerobics or whatever they are doing, the music is part of the deal, isn't it? It is part of the way they earn their money. Therefore, music that is involved in that process clearly should attract a reimbursement. But, in the case of a delicatessen or whatever else it might be—where, if they turned the radio off, it would make no difference to the business they did—I cannot see how it could attract a fee. If there is a case, I would really like to hear it.

In real terms, the only people who would suffer might be the owners of that business who then have to spend 15 hours in that shop listening to nothing. They could put a newspaper on the table and people could read that, and the journalists who contributed to that newspaper are then having their articles read by those people who have not paid, so the argument can run away in this case. Really, it requires a fair and properly focused view to be applied to this, and it be decided where music does in fact play a part in the business's ability to earn an income.

Mr MUTCH—What about the other question of whether it plays a part in adding to the comfort and productivity of the workers employed in a business?

Mr Brownsea—In my area, 40 per cent of the businesses are in fact husband and wife teams, or two partners, and another 40 per cent are less than five employees. In fact the average is 4.2. You have to ask each one whether or not it adds to the pleasantness of their day. But I will point out that they can all put an earphone in their ear and they get the same broadcast, but they hear it individually: so where is the real difference? We are really playing semantics then, I think. Is that a public broadcast? They are an employee; they are not a member of the public, if they are an employee.

Mr MUTCH—Actually, if you have got a factory floor with a whole lot of workers working there, and you play music in the factory—or even if they play individual radios—it is deemed to be a public performance. But what we are looking for are some parameters.

Mr Brownsea—If it is their own radio and it runs off battery power, what can you really do about it?

Mr MUTCH—The question I was going to ask you then is this: do you have some parameters you might be able to suggest?

Mr Brownsea—I do understand what you are saying there.

Mr MUTCH—A lot of people are sympathetic about the delicatessen owner who

needs food recalls and this information. We heard that cyclone information was an issue up in Queensland.

Mr Brownsea—Yes.

Mr MUTCH—But what parameters do you give? Do we say that microbusinesses should be exempt? Or should it be the type of business that you conduct that should be exempt? We are looking for some suggestions.

Mr Brownsea—Sure. I understand that in a factory the playing of music may in fact be a means of making the worker feel better about things, but the question then is whether that is an all-music station or a talkback station or whatever. Where do you draw that line? I am not too sure how you could do it.

Mr MUTCH—If you could exempt employees and staff and say that you are dealing here with the public, that is probably a parameter you could set.

Mr Brownsea—Yes, I suppose that where the employees are on site all day that is a different circumstance from a customer walking in and being gone in the shortest time possible, which is what the customers want to do. They want good service, which they get in most cases, and they are gone, aren't they? They have achieved what they wanted to do, and they have got the product they require.

You might argue that if they have to wait in the shop for a short time, perhaps the music, or whatever, might be pleasant—but it also may not be pleasant, if it is the wrong type of music for them. If they are not interested in hearing a particular announcer on the radio espousing his views of what goes on, it might even make them annoyed. So there is the risk element there in the shopkeeper really having that radio on too loud. At the end of the day it would also interfere with their day, because it would interfere with the natural discourse between the shopkeeper and the customer.

While I have been into many shops where they have had radios and so on, I have never found a radio on so loud that it interfered with having a quiet conversation, or that it interfered with anybody else, come to that. I have certainly heard of them being on, and I understand why they are on. I was in one shop recently at Glenelg, on Anzac Highway, where they had been hit for a TV licence as well, and certainly the TV was in the shop, but it was pointing into their little eating area behind the shop and you could see the TV, but not the picture; but they still had to pay the licence fee. Now, that really is nitpicking.

Mr MUTCH—One of the problems with that is that, for instance, the committee visited a coffee shop up in Queensland. It had two televisions on but they actually were set up in each corner and—if you were going to argue this point—it was obviously part of their trying to attract customers.

Mr Brownsea—I cannot argue that point in that case, because it is quite clear what they are doing.

Mr MUTCH—Except that you could not hear the TV.

Mr Brownsea—No; but it is quite clear that they are trying to use that TV as a medium. We do not want to be involved in stupid arguments.

Mr MUTCH—It makes it difficult to set simple parameters.

Mr Brownsea—I think the parameter has to be set where the TV is being used quite clearly for the benefit of customers, who will therefore be there for a longer term than they might normally be. If they are going to sit in a restaurant, they are going to be there for quite some time, so it assumes that probably the company you are keeping in the restaurant is not enough, so you have got to have a TV to keep yourself occupied. If there are two, as in that case, then that is clearly not the owners looking at it, and there has to be some drawing of the line there.

We are not against those who clearly deserve the money from the performance getting the benefit, but where technically it is not really a public performance by people who are specifically delayed there to take part in that performance, or who have an expectation of that performance, then it really is something else. Of course, where the person being requested to pay the fee has a defence—such as that they only listen to whatever it might be and that in fact there is no music involved—why then should they be roped in? As I said, this is an interpretation of the act which has gone far beyond what could have been anticipated at the time. That quite often happens with legal things, and time changes these things in good ways and bad.

CHAIR—That is one point that can be tidied up in terms of defining where the line between a public broadcast and a private broadcast lies.

Mr Brownsea—Yes.

CHAIR—I must say, when I started hearing the cases, I was quite surprised at the extent of the outcry from business when I saw the size of the fee—which, at its lowest, for one broadcasting unit, is about \$35.

Mr Brownsea—Yes.

CHAIR—After tax, is it about \$20 per year? Why do you think there has been an outcry to this extent?

Mr Brownsea—Nobody likes parting with money at the end of the day, and the fact that it is a low fee is irrelevant, to some degree. You are saying that, if it is a low fee,

it does not matter but, if it is a high fee, it really would. We are talking about the principle of the issue and the interpretation of the act and whether or not it was meant to be—

CHAIR—That is partly the point, but has there been something in the circumstances in which it has been collected? We have heard the previous witness, for instance, from the SA Council for Country Music, speak of the benefit that country musicians obtained from these fees. A very important part of that, particularly for a songwriter, is that they have no other means of receiving recompense for their intellectual property. When you look at that side of the evidence we have received, as against the potentially small impost of \$34 or \$35 gross per year, is there something else about how it has been collected that has evoked such a response?

Mr Brownsea—I think there has been an attitudinal thing on the part of the APRA collectors, who really have said to people, ‘The law is on our side, and you will pay.’ The issuing of the temporary licences, I think, was a rather arrogant way to go about it and was tantamount to saying, ‘Now we’ve got you cornered: you’ve accept the temporary one.’ That is what they say. I do not need to show them to you. You have seen them. I have no doubt about that.

At the end of the day, I do not know how their fees are governed. Quite clearly, if the musicians said, ‘Look here, life is really getting tougher and we need to up those fees,’ bear in mind that, if the deli owner wants to get more money, he cannot do anything like that; his only choice is to bail out of the business. I say that musicians can bail out of the business, too, if they are not getting enough out of it. That is the choice we have all got. So theirs is not necessarily the right to demand, but theirs is the right to receive—if in fact it is a fair issue. We are back to the balancing point once again.

CHAIR—That is partly so; but, equally, the deli owner is not supposed to stand out the front and let people take loaves of bread from a trolley in front of his shop without paying for them.

Mr Brownsea—No.

CHAIR—If it is his bread.

Mr Brownsea—Yes.

CHAIR—He is entitled to get recompense for it, just as the music is the property of the musician, and so on.

Mr Brownsea—Yes. I think they are arguing that their craft is above all other crafts. If you get a piece of furniture made by a craftsman, you pay once and it is done and finished, no matter who owns it. It is not the same case in music, you see, so they

really have, via an act of parliament—

CHAIR—It is a different thing, isn't it? This is this concept of intellectual property. It is not something tangible; it is something that people receive through their senses.

Mr Brownsea—Maybe. I, too, play the piano but I choose not to do it for a living. So there you go, you see: I could play this game, too. At the end of the day, as I said, if a craftsman made a piece of furniture that was bought by a restaurant, does that craftsman have the right to say to the restaurant, 'Well, you are still using it; you are making money out of my craft'?

CHAIR—But isn't that the confusion so many people have? That piece of furniture is a piece of property. Each time someone wants to use a sketch plan and photocopies that sketch plan, the architect or the designer of that plan is entitled to copyright for each time his sketch plan is reproduced.

Mr Brownsea—Maybe. I understand what you are saying, but is that really the argument? You are saying that perhaps, if I had my car radio up too high and people could hear it, someone could knock on my window and say, 'Excuse me, you're broadcasting and you're now caught.'

CHAIR—That is going back to your first point about where you define—

Mr MUTCH—Yes; it has been submitted, actually.

CHAIR—That is where you define the line. Firstly, I have got to say there have been suggestions that the education of the small business community has been deficient. No blame attaches to the small business community for this—

Mr Brownsea—We have done it; we have absolutely done it.

CHAIR—Yes—as to this concept of intellectual property. The second aspect is whether the collection techniques could have been a bit more sophisticated.

Mr Brownsea—Probably, on the second one, you are quite right. These inspectors have popped up in funny places, and I must say that they were probably having a nice country trip into the bargain, but that is only my opinion. The rest of it, I think, has been slightly strong-arm, because they did have the law on their side, and you had the choice of changing your lifestyle or they were going to receive money. We are still back to what the rights of a shopkeeper are to listen to a radio in the same way that I can, whether they have got customers or not.

CHAIR—Do you think there are issues which could be sorted out, or at least

partially sorted out, by discussions between your association and APRA or the PPCA?

Mr Brownsea—Maybe; but they do not have to give ground, do they?

CHAIR—It would be in their interests, I would suggest, in the sense that a committee of the parliament is looking at the issue of collection techniques, among other issues. I suggest that it would be in their interests, and the music industry has come along to say that it would be in the music industry's interest, to have this sorted out so that small business understands the purpose of intellectual property and so that a regime for fair, appropriate and regular payment is established. It is in a number of people's interests to have this issue sorted out. Do you think discussions would be worth while?

Mr Brownsea—I am aware of some discussions that have taken place between APRA and one of our peer groups in Canberra, but I am not at liberty to suggest what those might be; otherwise I would be attempting to influence you.

CHAIR—Sure.

Mr Brownsea—I cannot say anything other than that discussions have taken place and that I believe some resolution might be possible, without necessarily knowing what it is in final terms. Commonsense may yet prevail, and why shouldn't it? In the meantime, the problem is there, and it does seem unreasonable that there are some people who spend a great many hours within their business—where customers might only be there probably 30 per cent of the time—who are then left with the alternative of fitting a device to their door which automatically turns the radio off. But then, if a customer comes and goes quickly and another one comes in, that will not work, and they will then be caught, even though they have tried to do the right thing. That is where I have great difficulty: for them, there is no alternative other than to pay the fee or to throw the radio away.

Mr MUTCH—And logically, for those individual people, the fee has been paid by the radio station.

Mr Brownsea—Yes. As I said earlier, it is a tax on a tax. And of course the radio, as I have said before, is not a broadcasting device but a receiving device, and that is what the act talks about.

CHAIR—I think we have covered everything. Did you want to add anything else?

Mr Brownsea—I suppose that, while the fee might seem small, small business is feeling the pinch these days: you have only to look at retail trade figures to see that they are now down for the fifth month in a row. Christmas did not occur, and I see no change to that into the foreseeable future. Every small retailer is feeling the pinch, and \$39 is \$39—or whatever it is they are paying if they use a TV as well. They, in fact, are probably also objecting to the principle rather than to the cost itself.

I have had others whom I have told to forget about it, because they have got a tape deck playing music. I said, 'Look, I'm sorry, but I don't agree with your case. You pay the fee and get on with it, because I'm not going to support you,' and that is where we stand. If the people are gaining a genuine business benefit out of the performance, fair enough. But, in the case of many of these people I represent, putting the radio away would make no difference to their business, but it might to their personal lives and personal satisfaction. They are entitled to get the free-to-air radio.

That is really what we were talking about, in essence: at the end of the day it is an impost on them, in terms both of the loss of radio enjoyment that should be theirs and, indeed, of the fee they are having to pay to buy that enjoyment, a fee which no other member of the public in fact has to pay. There are a lot of grey areas, as I have said.

CHAIR—Sure.

Mr Brownsea—They ought to be resolved, and it must be tidied up. But I really think that the interpretation of the act has far exceeded the original intention. Obviously, there are people who probably have abused that into the bargain, and I make no excuses for them.

CHAIR—Sure. Thanks very much for coming along.

Resolved (on motion by **Mr Mutch**):

That, pursuant to the power conferred by section 2(2) of the Parliamentary Papers Act 1908, this committee authorises publication of the evidence given before it at public hearing this day.

Subcommittee adjourned at 3.02 p.m.