



50 Cribb Street Milton QLD
4064
1800 679 748
info@nightlife.com.au

27th July 2018

Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House Canberra ACT 2600

RE: Inquiry into Australian Content on Broadcast, Radio and Streaming Services

Dear Committee Secretary,

Nightlife Music (Nightlife) refers to the call for submissions to the Senate inquiry into the economic and cultural value of Australian content on broadcast, radio and streaming services (the Inquiry), and welcomes the opportunity to comment on this issue.

Nightlife is primarily focussed on the exploitation of music-related copyrights in public performance markets and will therefore address elements (b) and (c)(i) of the Inquiry. Additionally, Nightlife would also like to introduce the following matters for consideration:

- 1) Broadening the scope of the Inquiry to include the public performance sector.
- 2) Encouraging businesses to use local licensed music services that promote Australian content and capture play data to inform content quotas and improve revenue repatriation accuracy.
- 3) Disincentivising business use of consumer streaming for public performance to fast-track access to more Australian content and ensure rights holders are accurately paid for use of that content.

Nightlife thanks the Committee Secretary for giving due consideration to these matters.

Kind regards,

Mark Brownlee
Managing Director – Nightlife Music

General enquiries or requests for clarification relating to this submission can be directed to:
Stuart Watters, Director – Licensing & Business Affairs | Nightlife Music Pty Ltd

BACKGROUND ON NIGHTLIFE MUSIC

Established in 1989, Nightlife is Australia's premier music subscription service for business and with 120 staff is the country's largest employer in the music-tech space. Privately-owned and headquartered in Brisbane, it represents locally developed IP and technology that is consistently adapted to meet the evolving needs of our 4,000 clients nationally. Our clients cross all industry segments, but our primary verticals are hospitality and fitness, where the value of music in public performance contexts is greatest.

As a music-tech business, Nightlife depends on the rights holders and Collecting Societies to not only provide content but also to ensure certainty in licensing to underpin the business and provide confidence to continue investing in the product. Equally, Nightlife and our peers rely on the rights holders and Collecting Societies to ensure the industry is functional and distributing revenues appropriately from the users that we invoice to the creators that they represent.

Given Nightlife's twenty-nine-year history working with both the licensors (our 250+ content suppliers globally) and licensees (our clients throughout Australia and export territories) and our technology background, we are uniquely positioned to provide informed insights into copyright reform. Creating stability for technology innovators (which includes many small Australian businesses) as well as creators can only result in a positive benefit to the Australian public from an economic and social context.

Nightlife is an avid supporter of Australian artists and since inception has ensured that it delivers sufficient information to rights holders and Collecting Societies alike, to enable them to pay the appropriate artist when their music has been used. The music industry is more complex today than ever before with more rights holders, content and service providers creating an explosion in data and music usage. While there has been a marked increase in revenue opportunities for all rights owners, market reach and audience penetration has never been more complex with a media landscape that is congested and seeking new ways to reach audiences.

INCLUSION OF THE PUBLIC PERFORMANCE SECTOR

Reach of the Public Performance Sector

The public performance ecosystem is not well understood by the general public and the broader music industry alike, yet is one of the key ways in which the majority of the population are exposed to music on a day-to-day basis. There are millions of songs being heard every day in the public performance space, which is enormous and covers every business imaginable and even extends to DJs and live acts.

Nightlife's reach alone is approximately 6 million people per week across 7,000 locations, and if measured alongside its competitors, would easily reach the equivalent of the Australian population each week through music played in the local pub, grocery store, gym, service station, bowling alley, sports club, theme park and so on. In each of these instances, businesses are required to pay license fees to the respective Collecting Societies: APRA for musical works and PCCA for sound recordings.

Nightlife Music is backing calls by a united APRA / AMCOS and Screen Producers Australia for rule changes in Australian content but warns an entire sector, namely the Background Music Sector, is being overlooked on the grounds that:

- digital disruption extends further than radio, television and streaming services; and
- many people discover music for the first time when they are out with their friends, and that's why the public arena is so important when it comes to showcasing new Australian talent.

In hospitality alone, there are more than 85,000¹ places to meet for a drink or eat out and most would be playing some form of music. Similarly, there are almost 4,500² fitness businesses in Australia where music is a major factor. Accordingly, the majority of the Australian population hears music in a public performance context each week and this is comprised predominantly of recorded music (for example, delivered by the Background Music sector) with the balance provided by live music.

Benefits delivered by the Public Performance Sector

The combined per annum revenues for APRA and PCCA from public performance licensing fees exceeds \$100m, which contextualises the breadth and value of this sector to the broader Australian economy. Furthermore, this sector is experiencing continued growth, (similar to digital distribution), while revenue associated with more traditional distribution channels is experiencing a downturn. There are three (3) key benefits delivered from music use in public performance spaces:

- 1) Audience reach delivers cultural value;
- 2) Public performance exposure of Australian music influences consumer purchasing; and
- 3) Revenue generation delivers financial value to the entire music ecosystem and broader economy.

Based on the scale of revenue, reach and broader economic impact of the Background Music Sector, Nightlife recommends the following:

Recommendation 1:

Include the Background Music Sector and public performance environments in any review of content quotas

USE OF LICENSED SERVICES IN PUBLIC PERFORMANCE

Sourcing Music for use in the Public Performance Sector

Music used in the public performance sector is sourced in one of two ways, and Nightlife estimates that the \$100m+ in per annum revenue generated in associated license fees can be apportioned 50% to each of the following:

- 1) **Licensed Services:**
Licensed services include (but are not limited to) live performances (e.g. bands) and music service providers licensed for public performance (e.g. the Background Music Sector).
- 2) **Unlicensed Services:**
Unlicensed services include (but are not limited to) consumer streaming services which refer to those services licensed for personal use only under End User License Agreements (e.g. Amazon Music, Apple Music, SoundCloud, Spotify, Deezer and iHeartMedia).

Consumer streaming used in businesses doesn't cater for Australian quotas

Consumer streaming services place the onus for music curation on the user, which is perfect for domestic use. Licensed services provided by the Background Music Sector curate music on behalf of a business to reflect the demographic and brand, and by default feature more Australian artists. By contrast, when a business uses a consumer streaming service there is no music expert to match the music to their brand and so for simplicity, the user looks for pre-curated playlists which rarely match

¹ Eating Out in Australia 2017

² IBISWorld Gym and Fitness Centres Australia Market Research report 2018

their brand nor any Australian quotas. Furthermore, as these services are designed for private individuals (not businesses) there is no direct relationship with APRA or PPCA for public performance and no path to the data required to accurately track or repatriate what is used.

Consumer streaming used in businesses makes it impossible to accurately repatriate artists

The absence of a direct relationship between consumer streaming services and Collecting Societies for public performance results in an absence of play data. This has a negative impact to revenue calculation and repatriation accuracy (to the detriment of artistic communities³) and would impede introduction and ongoing monitoring of content quotas.

On this basis Nightlife recommends:

Recommendation 2:

Encourage use of music services licensed for public performance

USE OF PLAY DATA

The Basis of Calculation for Public Performance Revenue Distribution

Licensed service providers in the Background Music Sector are required to provide detailed play data to Licensors. To meet this requirement, there is ongoing investment in data capture and analysis to identify which artists were played (where, when and how many times). By contrast, APRA and PPCA use analogous methods including radio, TV broadcasts and consumer services to estimate what has been played⁴ and repatriate revenue to artists according to these estimates.

The absence of accurate data makes it impossible to accurately track quotas, achieve transparency and ensure the right people are paid when their music is played. While an analogous approach may have been appropriate historically, it is out-of-step with modern practices utilised by similar services all over the world (i.e. it is an archaic practice) and should be the subject of review given the inherent risks of analogous modelling when evidence-based alternatives are available.

The Risks of Analogous Modelling for Calculating Revenue Distribution

Analogous modelling is born out of a time when play data was not available from venues or service providers. However, in 2018 all licensed service providers routinely collect this data, so the need for analogy has been removed. The only core requirement for public performance transparency now, is ensuring that the services used in venues are licensed such that a relationship exists between the Collecting Societies and the business to provide this data.

A by-product of this new data world is the ability to accurately set and track Australian quota metrics similar to those in discussion for radio and TV. The problem with perpetuating analogous models at the expense of using accurate data, is that it assumes that businesses use the same music as consumer radio stations or streaming services, which is a flawed premise. The data available to

³ [Music Australia](#) comment on the challenge of “maintaining viable employment for musicians” and suggest that this can be addressed through “valuing and respecting music in our ‘get it for free’ age” and “increasing lawful use of recorded music”.

⁴ For example, the assumption made in analogous modelling is that what is played on radio is played in public performance.

Nightlife demonstrates that Australian businesses are parochial and want to play Australian music to Australian customers at a ratio that exceeds other channels (including radio). In addition:

- the pool of music used in radio is far smaller to that used in public performance, and frequently shows a heavy bias toward international artists;
- consumer service usage patterns are completely different to the brand-specific programming of businesses; and
- the public performance sector generates more revenue for Collecting Societies than radio.

Nightlife would gladly assist Collecting Societies to define a common standard for all licensed service providers to provide such data, as service providers and businesses alike should be encouraged to use the best (Australian) music and have confidence that the monies collected go to the actual artist that created the content. Nightlife's view is that such an approach would ensure equitability for creative communities (pay when played for all rights holders) and complement the goal of content quotas and Government strategies to grow internationally-competitive industries.

On this basis, Nightlife recommends the following:

Recommendation 3:

Review reporting requirements for public performance to consider modern data practices that would improve transparency and enable Australian quotas

Recommendation 4:

Disincentivise business use of consumer streaming services in public performance