



AUSTRALIAN RECORDING
INDUSTRY ASSOCIATION

**ARIA SUBMISSION TO THE PARLIAMENTARY
INQUIRY INTO AUSTRALIA'S CREATIVE AND
CULTURAL INDUSTRIES AND INSTITUTIONS**

October 2020

1. Introduction

1.1 Australian Recording Industry Association (ARIA)

The Australian Recording Industry Association (**ARIA**) is the peak trade body for the recorded music industry in Australia. ARIA is a not for profit, national industry association that proactively represents the interests of its members.

ARIA has more than 100 members ranging from small boutique labels typically run by 1-5 people, to medium sized businesses and very large companies with international affiliates.

ARIA is active in many key areas of the music industry, for example:

- acting as an advocate for the industry, both domestically and internationally;
- supporting Australian music, and creating opportunities to help it be heard;
- playing an active role in advancing the protection of creators' rights and making submissions to government on copyright reform, regulation and other issues where it has the information and expertise to do so;
- collecting statistical information from members and retailers and compiling numerous ARIA Charts with data provided by retailers and data suppliers across Australia;
- providing, in certain cases, a reproduction licensing function for various copyright users on a non-exclusive basis; and
- staging the prestigious annual ARIA Awards which recognises the achievements of Australian recording artists. ARIA works closely with the NSW Government agency Destination NSW on the annual ARIA Awards.

ARIA's primary objective is to advance the interests of the Australian recording industry. The role of ARIA is not to monitor, supervise or intervene in the pricing or other commercial decisions of its members.

1.2 Looking Back – Transition to a Digital Industry

The past 20 years has seen unprecedented upheaval, innovation and change in the music industry, both globally and in Australia.

The proliferation and ease of access to peer-to-peer networks and file-sharing technologies in the early 2000s lead to mass online copyright infringement. In a few short years, consumers became accustomed to being able to access any music they wanted, when they wanted, all for free. The losses caused by online infringement was compounded by the difficulty rights holders faced in protecting their work, with tracing and taking legal action against infringers a costly and protracted process.

This shift in technology and consumer behaviour was devastating for artists and record labels, regardless of genre, size and geographic location. From 2001 to 2014, global revenues declined by over \$9 billion.¹

The industry responded to these changes and challenges by transforming how music could be delivered and consumed by music lovers. The music industry was one of the first creative industries to embrace new models. The rise in popularity of the subscription model has seen services such as Spotify, Apple Music and YouTube Music becoming household names and acquiring larger shares of the overall recorded music market, not just the music streaming market. It is now possible to enjoy music through many platforms, at every price point, including for free via ad supported models.

Since 2003, the Pro-Music website (www.pro-music.org) has provided music listeners around the world with a constantly updated database of legitimate services from which they can legally acquire music through their preferred medium (be it physical, digital downloads or streaming) and at every price point. The Digital Content Guide (www.digitalcontentguide.com.au) is Australia's own guide, helping Australian consumers to find music, films, e-books and video games from legitimate services. The Digital Content Guide is administered by Music Rights Australia, an organisation in which ARIA is a primary stakeholder. Both of these online services are free to consumers.

The music industry is now a digital industry. In 2010, the physical market (including CDs and vinyl) made up 73% of the Australian music market. In 2019, physical products accounted for 10% of revenue, while streaming revenue accounted for 80% of the market. The popularity of subscription music streaming has driven a return to growth for the music industry. The Australian music industry generated \$445 million from streaming royalties in 2019.² The resilience of the Australian music industry and its ability to adapt to a dramatically altered consumer and distribution ecosystem is a testament to its innovative nature.

Systemic issues still challenge the music industry. Online piracy continues to be a major issue, devaluing the work of artists and depriving them of income. In 2019, a survey by the International Federation of the Phonographic Industry (IFPI)³ found that a quarter of all respondents used unlicensed platforms or methods to obtain music.⁴ The behaviours of 'pirates' have changed, with 'stream-ripping' becoming an increasingly popular form of copyright infringement.⁵

¹ International Federation of the Phonographic Industry (IFPI), 'Global Music Report 2020 – The Industry in 2019' (2020) 12, available at https://www.ifpi.org/wp-content/uploads/2020/07/Global_Music_Report-the_Industry_in_2019-en.pdf.

² Australian Recording Industry Association (ARIA), 'ARIA Releases 2019 Wholesale Figures' (Media Release, 22 April 2020) 2, available at <https://www.aria.com.au/industry/statistics>.

³ See <https://www.ifpi.org/>.

⁴ IFPI, 'Music Listening 2019' (2019) 7, available at <https://www.ifpi.org/wp-content/uploads/2020/07/Music-Listening-2019-1.pdf>.

⁵ Ibid 5, 21.

Recent changes to Australia's *Copyright Act 1968* (Cth) have gone some way to providing rights holders with more tools to protect their work and investment. However, this still remains a costly, drawn-out process against acts of infringement that are frequent, global and constantly evolving.

Even when music is legitimately consumed, there is still the issue of the 'Value-Gap' – the difference between the value extracted by liability protected online services from the use of copyright content and the remuneration received by artists and rights holders. This gap threatens the sustainability of the music industry and undermines the ability of artists to receive fair payment for the use of their work.

1.3 The Current Situation - 2019/2020

2019 saw a continuation of the growth the music industry has experienced over the past five years. Revenues for the 2019 calendar year grew 5.5% from the previous year, totaling over \$555 million – this was the best result the industry has seen since 2004.⁶ Of this, 80% was derived from streaming services, an 18% increase from 2018.⁷ Although the physical recorded music market continues to shrink, the resurgence of vinyl has continued, growing a further 2.5%, now comprising 38% of Australia's physical album revenues.⁸

The Australian music industry continues to be a significant contributor to the wider community. In 2018, a PWC study found that the Australia's music, theatrical and opera industries contributed \$11.315 billion to the Australian economy and employed 96,598 people.⁹

Although these results are positive and would normally be a reason for optimism and celebration, it is important to note that these figures were achieved prior to the outbreak of the COVID-19 pandemic. 2020 and beyond will look drastically different.

2. COVID-19

The COVID-19 pandemic has created exceptional challenges and barriers to the music industry. The need for all levels of government and industry stakeholders, from artists, record labels and venues, to work together to support the industry has never been greater.

While the popularity of digital music streaming services has continued and will likely be an important contributor to artists' livelihoods, all other streams of income relied upon by the industry have been disrupted. Since March 2020 artists have not been able to tour, cutting off the main income stream for not only the artists and their support crews, but also for the local economies which see an injection of cash from tours and festivals. The closing of shops and businesses that

⁶ ARIA, 'ARIA Releases 2019 Wholesale Figures' (Media Release, 22 April 2020)1.

⁷ Ibid 1.

⁸ Ibid 1.

⁹ Price Waterhouse Cooper, 'The Economic Contribution of Australia's Copyright Industries 2006 -2018' (June 2020) 13, 22, available

at https://www.copyright.org.au/ACC_Prod/ACC/Media_Releases/The_economic_contribution_of_Australia_s_copyright_industries__2006-2018.aspx.

play music in their premises has caused a decline in public performance revenues which in turn has impacts across the music ecosystem.

The estimated cost of COVID-19 on the entire Australian music industry earlier this year was initially estimated to be around \$350 million, but this loss is on track to rise substantially higher the longer COVID-related shutdowns and restrictions continue.¹⁰

ARIA acknowledges that governments across Australia have already acted to support the music industry, as well as Australia's other creative sectors. ARIA is honored to participate in the Creative Economy Taskforce, providing guidance to the Australian government on meaningful ways the creative industries can be supported during this period of upheaval and to help rebuild the sector as it emerges from COVID-19. The establishment of the taskforce to provide an industry-specific perspective and tailored relief has been overwhelmingly well-received by the music industry.

The taskforce has been an excellent first step, however further long-term policy planning is required to cement the industry's recovery. The music industry was one of the first industries to be shut down by necessary measures to stop the spread of COVID-19, and it will be one of the last to return to normalcy. All parties must work to assist the industry to survive this difficult period, so at the other end when restrictions are lifted Australia's music community is ready to get back to work, fill our stages and venues with music, and take our stories and music to the world.

3. Copyright Framework: Supporting Creators' Rights

The key element to all industries and institutions that create and rely on creative, original works is an effective, fit-for-purpose copyright framework. Copyright law is a fundamental part of the Australian music industry: it safeguards the rights of creators, provides artists and labels a means by which to earn an income, and incentivises new and old acts alike to create more works for everyone to enjoy.

Creating a framework that effectively protects copyright in a constantly evolving digital environment has proven a difficult task. This difficulty is shared by artists and labels attempting to protect and enforce their copyright against constant infringement, often by actors operating outside of Australia's borders.

Looking at Australia's copyright framework, and how it can support copyright creators online is particularly relevant as COVID-19 has contributed to artists and music users utilising online platforms at unprecedented rates.

In one sense, the increase of regular online users has been a boon for artists and the music industry. By the end of June 2020, it has been reported that Australians consumers had 12.2

¹⁰ | Lost My Gig, '2nd Survey Reveals Extension of Financial Assistance Needed' (13 May 2020), available at <https://ilostmygig.net.au/latest-news/f/2nd-survey-reveals-extension-of-financial-assistance-needed>.

million subscriptions to digital music streaming services.¹¹ Of these subscriptions, over 50% were paid, an 8% increase from 2019.¹² However, parallel to this growth is a resurgence in music piracy, with music torrent websites experiencing a significant increase in visitor numbers.

Similarly, artists have attempted to replace or supplement the loss of income and live, in-person engagement with fans through online means. Live-streamed events and performances have suddenly become the norm. However, there is often limited scope for an artist to sustain a livelihood from these online performances.

With no ability to derive income from touring and live performances due to COVID-19 related restrictions, enabling artists to exploit their own works, while preventing third-parties from illegally profiting from their creative endeavours, will be an important means of support.

Even after these COVID-19 social distancing restrictions have been removed and live performances are able to take place once more, streaming is still going to play a major role in a post-COVID world. Regional centres that often miss out on live touring can be connected to Australian and international audiences on an unparalleled scale. Artists based in geographically remote locations that would normally have little opportunity to perform live in capital cities or overseas will be able to showcase their artistry to the world via online performances. The embrace of on-demand and live streaming as viable income streams means that for many artists and music lovers, music will be discovered, marketed, distributed and consumed entirely online. As copyright creators increasingly rely heavily on the digital environment to earn their livelihoods, it is vital that all discussions regarding changes to copyright laws keep online rights protection at the forefront. The current legislative framework does not sufficiently protect artists and rights holders from the unauthorised online use of their work, particularly where their work is uploaded to third party platforms. In some instances, this content is made available on unauthorised platforms where advertising and other revenue is directed solely to the operators of these platforms and not the artists or rights holders. These unauthorised platforms negatively impact the ability of artists and rights holders to be remunerated for the use of their work on these platforms.

4. Local Content

The Australian music industry contribution to society is not just limited to its economic dollar value or its soft power diplomacy. Music plays an integral role in shaping and defining Australia's unique cultural identity. It is a medium through which individuals can share their differing ideas, perspectives, histories and voices, reflective of the diversity within Australian society. At the same time, it can bring us together to protest, mourn, remember and celebrate, uniting a crowd through our shared voice.

¹¹ Telsyte, 'Subscription Home Entertainment Soars in Australia' (17 August 2020) available at <https://www.telsyte.com.au/announcements/2020/08/17/subscription-home-entertainment-soars-in-australia>.

¹² Ibid.

Policies which support the ongoing creation of Australian music, and its availability to Australian consumers, are an important means of supporting, promoting, and evolving Australia's unique national identity and voice.

Grants are an example of initiatives both government and private organisations can use to facilitate the creation of new works and to give opportunities to artists and genres that can otherwise find it difficult to attract funding or attention. They provide valuable support to local artists, enabling them to access resources and tools that develop their talent and add to Australia's catalogue of works and our cultural fabric.

This year, in partnership with PPCA and the Australia Council for the Arts, ARIA launched the first round of the First Nations Sound Recording Grants¹³. Five grants worth \$18,500 each will be made available to First Nations artists and organisations to create new sound recordings, receive managerial advice and support, and access new audiences. Through increasing the quantity, quality and profile of Australia's First Nations artists, as well as local artists, Government can help foster and strengthen an industry which emits a uniquely Australian voice.

4.1 Quotas

Local content quotas play a useful role in providing Australian artists exposure in an increasingly competitive market and giving local audiences the chance to hear our own voices.

Commercial Radio

Over the past year, commercial radio has reported a marked increase in listenership numbers, in part due to the COVID shutdowns which saw more people listening to radio while working at home.¹⁴

Under the Commercial Radio Code of Practice (**Code**), commercial stations are required to play up to 25% Australian music. The percentage they must play is dependent on the station's format. It is the stations themselves who determine, for the purpose of setting their local content quota, which format they fall into. This can dramatically affect how much Australian music the station is required to play. For example, if a station self-categorises itself as a "Hits and Memories" format, its local content quota is 15%, but if it categorised itself as a "Nostalgia" format, the quota is only 5%.

ARIA is of the view that the lack of clear definitions for each format can cause confusion, and the station's own decision as to which format they fall into can be arbitrary. In order to ensure that Australian voices continue to be heard across the commercial radio networks, the formats should be reviewed to increase clarity and ensure all commercial radio stations are playing the minimum amount of Australian music, if not more.

¹³ See <https://www.aria.com.au/industry/news/applications-open-for-first-nations-recording-grants>.

¹⁴ Commercial Radio Australia, '72% of Australians are listening to as much or more radio during the COVID-19 pandemic' (Media Release, 13 April 2020) 1, available at <http://www.commercialradio.com.au/CR/media/CommercialRadio/Media%20Releases/Generic%20Images/72-of-Australians-Listening-to-more-radio.pdf?ext=.pdf>.

Streaming Services

Digital streaming services are now the way the majority of Australian consumers interact with music – over 80% of the industry's revenue was derived from services such as Spotify, Apple Music and YouTube Music. However, despite the key role of these platforms in distributing music, they are not subject to any local content requirements in Australia. As more users access these services, the more influence these services will have in shaping Australian tastes and impacting our cultural identity.

ARIA believes there are a number of initiatives, rather than quotas, that the services could engage with that are relatively low-value but could have a major impact on the visibility of Australian recordings to Australian music streaming users. These include:

- creating locally produced and curated playlists by local employees;
- ensuring Australian content is appropriately represented on its locally curated playlists; and
- promoting Australian artists to local users through internal and external marketing

We note that the major digital music services currently have Australian based teams liaising with the local industry, and are generally very supportive of Australian talent. This is demonstrated through the creation of playlists with Australian-only content, or playlists that feature Australian artists.

Film and TV

Earlier this year, the Department for Infrastructure, Transport, Regional Development and Communications called for submissions to 'Supporting Australian Stories on Screen' Options Paper. During this process, ARIA shared the concern that if local content quotas for Australian television or film productions are reduced or eliminated entirely there would be a loss of Australian voices on our screens. ARIA would like to reiterate this concern, and encourages the Committee to consider supporting initiatives which encourage the creation and consumption of local content. Like most creative industries, the film and television production industries have also been impacted by the COVID-19 pandemic, with local productions being scaled back due to public health concerns. Further incentives to film and television production companies to use local recording artists and composers on their soundtracks would be a way of boosting the local industry and ensuring that locally produced content continues to reflect an Australian voice.

5. Export Opportunities and Investment

It has never been easier for local artists to reach a global audience. The proliferation and popularity of digital music platforms has lowered the barriers previously faced by artists seeking to distribute their works in overseas markets. More and more Australian artists, such as Sia, Tones and I, 5 Seconds of Summer and Troye Sivan, are experiencing success in the charts across the

world. Success in the charts is reflected in the growing value of the industry – in 2019, the export value of the Australian music industry valued at \$195 million.¹⁵

While easier access to global distribution channels has contributed to the success and increasing value of Australian artists overseas, research conducted by the Australia Council for the Arts has shown that both industry and government assistance have been key factors in supporting Australian music exporters. Survey participants cited government grants in particular as the most important source of funding for music exporting activities.¹⁶ Government funded institutions, such as Sounds Australia (which receives funding from both the Government and other organisations, including ARIA), are also recognised for playing a valuable role in connecting Australian artists to international markets, and providing opportunities to emerging artists at international festivals and trade conferences.

ARIA has previously noted that, with the support of the Australian government, the Australian music industry should be working towards an ambitious goal of representing 5% (approximately \$2.5 billion) of the global music market share by 2030. For this target to be achieved, support from Government will be critical.

Increased government support will be particularly important over the coming months. The major source of Australian music exports was live touring. Research conducted for the Australia Council for the Arts found that it made up 49% of foreign income for Australian artists.¹⁷ With international travel and borders shutdown, as well as restrictions on venues all over the world making normal performances unworkable/unsustainable, this income stream will likely take a heavy hit.

It is suggested that the Committee recommend the Government adopt policies that will provide increased support and funding to Australian music export activities. ARIA has submitted to previous inquiries that the Government should consider creating a fit-for-purpose music export body that could focus the Australian music industry's exporting activities, and provide Australian artists a clearer pathway to reaching international markets.

The Committee should also consider schemes to increase investment in the local music industry. Currently, ARIA's record label members invest millions into the local industry to support, develop and market recording artists. If this investment could be increased, the benefit to local artists, and all participants in the recording music ecosystem would be immense. International examples demonstrate models where coordinated investment from both industry and Government has achieved tangible results. Over the past 5 years of operation, the Ontario Music Fund (**OMF**) support to thousands of Canadian artists has resulted in over 10 million attendees to OMF-supported music events and in excess of 20 million units of OMF-supported sound recordings sold.¹⁸ The Canadian Independent Music Association, which coordinates export-specific

¹⁵ Richard Vella, Stephen Chen, Shane Homan, Tracy Redhead and Millie Millgate, 'Born Global: Australian music exports' (Australia Council for the Arts, July 2019) 8, available at <https://www.australiacouncil.gov.au/research/born-global>.

¹⁶ Ibid 25.

¹⁷ Ibid 30.

¹⁸ Ontario Creates, 'Ontario Creates Year in Review 2018/2019 (2019) 13, available at https://ontariocreates.ca/uploads/Year-in-Review/Eng/OC_YIR19_EN_AODA.pdf.

schemes, is estimated to have turned \$227,000 of federal government funding into over \$10 million in export value.¹⁹

Previous investment from government in the form of various programs and additional funding to industry bodies has created opportunities for Australian artists to grow their audience and develop their skills both in music and the music business. The \$27.5 million provided through the Australian Music Industry Package in 2019 funded grants to First Nation artists, enabled women in the industry to receive mentorship, funded live music events and support to venues during the COVID-19 pandemic and helped Sounds Australia provide new opportunities for Australian artists in foreign markets. Further and continued investment of this kind would be welcomed by the industry, and would enable this types of initiatives to become ongoing opportunities for current and future artists and music professionals.

6. Support for the Live Music Industry

As stated earlier in this submission, the COVID-19 pandemic and subsequent lockdowns and restrictions have all but destroyed Australia's live music entertainment industry. While some states have started reopening and loosening restrictions on the number of patrons venues can hold, live performances are not operating at sustainable levels. Even when restrictions have been lifted, there is a concern that the live entertainment industry will remain depressed as patrons feel uneasy about returning to packed concerts while COVID-19 still circulates in our community. This suggests that the live music industry will continue to struggle well into 2021.

The cost of this shutdown has been immense. In 2018/19, live performances of contemporary music generated \$1.09 billion in revenue across Australia.²⁰ Since March this year, there has been a minimum of \$340 million in lost revenue, with this figure expected to significantly rise as venue restrictions continue.²¹ The need among live music industry professionals for assistance has been overwhelming. The additional \$10 million of government funding provided to Support Act²² earlier this year, has been critical to providing desperately needed financial assistance and counselling to artists, live crews and other music workers. The funding has also helped Support Act expand its operations so as to help professionals in the arts community.

It is not just the music industry that has suffered from the loss of live performances. Local communities and economies, especially those in regional Australia, have also suffered from the loss of touring artists and music festivals. Australia's largest country music festival, the Tamworth Country Music Festival, has in previous years brought in \$50 million to regional NSW. The 2021 iteration of the festival, originally scheduled for late January, has already been cancelled. Many

¹⁹ Vella, Born Global: Australian music exports, 114.

²⁰ Live Performance Australia, '2018 Ticket Attendance and Revenue Report – Summary Infographics (National and State/Territory)' (December 2019) 2, available at <https://liveperformance.com.au/wp-content/uploads/2019/12/Summary-Infographics-Jurisdictions.pdf>.

²¹ I Lost My Gig, '2nd Survey Reveals Extension of Financial Assistance Needed' (13 May 2020).

²² Support Act is a music industry charity that provides crisis relief to artists, crew and music workers. <https://supportact.org.au/>.

more festivals, such as Splendour in the Grass in Byron Bay, the Melbourne International Jazz Festival, and Hobart's Dark Mofo, as well as countless individual artist tours, have also been cancelled or postponed, with major questions about the ability of organisers and promoters to bounce back.

ARIA recognises that governments at various levels have already started taking steps to assist the live music industry. Initiatives such as the Federal Government's additional \$75 million in funding to the Restart Investment, Sustain and Expand (RISE) fund and the Live Music Australia initiative, which was previously mentioned, have been a welcomed source of support and a recognition of the importance of the sector. The Federal Government support as well as several funding packages from State and Territory Governments have been well-received as desperate lifelines to an industry on the edge. In NSW, ARIA has been in close partnership with Destination NSW to present *Great Southern Nights*. This ambitious program will see 1,000 live COVID-Safe performances held across NSW in the lead up to the 2020 ARIA Awards in November, AusMusic Month. Great Southern Nights will be a truly state-wide event, with the majority of venues signed up to hold performances located in regional NSW. This program has been overwhelmingly positively received by both the music industry, but also by local communities who are excited by the prospect of the performances injecting some much needed tourism and cash into their economies.

However, continued action and ongoing support is needed to help the industry survive. Ongoing dialogue with all levels of Government on a "bounce-back" recovery strategy is essential. Our industry will be FILO – first in, last out – from the COVID-19 pandemic. In particular, support needs to be given to venues and artists, including clear guidance and assistance to ensure that live music performances can take place as safely as possible while still accepting enough patrons to make those performances economically sustainable. A continued dialogue with Government will provide a strong foundation to assist the music industry to rebuild and bounce back.

ARIA thanks the Committee for the opportunity to contribute to this Inquiry, and looks forward to engaging with all parties further to ensure that the value of the music industry is recognised and its potential achieved, and that continued support is provided through ongoing consultation and collaboration with all levels of Australian Government.