

# Association of Liquor Licensees Melbourne

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28 November 2015

Intellectual Property Arrangements Inquiry  
Productivity Commission  
GPO Box 1428  
Canberra City 2601

Dear Sir/Madam

## **RE: Intellectual Property Arrangements**

This submission is prepared by the Association of Liquor Licensees Melbourne Inc, (ALLM), an industry collective that represents the interests of Melbourne's bar and nightclub proprietors: [www.allm.org](http://www.allm.org).

The main area of IP that impacts our industry is Copyright, which will be the main topic covered below. The fundamental problem is the high cost of copyright levied on small businesses. Other issues involve unnecessary record keeping, the lack of competition resulting in higher prices, impeding access to goods and services which could be addressed by way of parallel importing, lack of transparency and impacts on investment by business.

Our industry is required to pay copyright fees to two collection agencies, one for the copyright in the publishing (Australasian Performance Rights Association Limited – APRA), and the other the copyright in the recording (Phonographic Performance Company Australia Pty Ltd - PPCA). Their fee structures and methodologies are calculated separately and independently.

Copyright fees increased significantly in Australia in 2008 following an application by PPCA to the Copyright Tribunal of Australia to increase fees. As a result, Australian businesses commenced paying significantly more, up to 10 times more, for copyright than similar businesses in USA, UK, Canada, and European countries. This is not in the best long term interest of the Australian Community.

The Tribunal agreed to allow PPCA to increase fees from \$0.0748 to \$1.05 per person phased in over a five year period starting at \$0.51 per person. The Tribunal also determined that APRA, who were not a party to the proceedings, should also receive \$1.05 per person. Their fees at the time were \$0.1121 per person. Current fees are \$1.25 for PPCA and \$0.85 for APRA, the latter slowing down the rate of increase after consultations with the Australian Hotels Association. In real terms, PPCA fees have increased over 1500% and APRA 650% in the past

nine years. Analysis documenting the rates of increase and a separate analysis comparing local and international rates are included in our submission. High fees in a monopoly market negatively impacts trade and investment decision making by business, and we are prevented from accessing copyright from overseas suppliers because APRA and PPCA and their affiliates have regional agreements.

In this submission we will deal with both agencies separately where issues are peculiar to their organisation.

## **PPCA**

In 2007 when PPCA applied to the Copyright Tribunal of Australia to increase fees, it was in a climate of diminishing revenues for them. The music copyright industry was in turmoil as music retail sales were declining rapidly, as they continue to do. Nightclubs in particular were seen as a soft target because they have no choice but to allow DJs to play the music that is part of their repertoire and in keeping with the personality of the venue.

The evidence relied on by the Tribunal in this matter was economic analysis undertaken by Allen Consulting Group, on behalf of PPCA to “**determine the value derived from the use of recorded music by nightclub and dance party operators**” at [80]. It was not an independent review by government, but rather a survey commissioned by a private company with monopoly status looking to justify significant price increases on its customers, customers who are not entitled to shop elsewhere. A copy of 2007 court transcripts from the Tribunal and subsequent appeal in the Federal Court are attached for your records and reference.

Para 80 then went on to state that “The Society (PPCA) concluded from the economic analysis that the economic value of the right to play recorded music in a nightclub venue was \$6.97 per person per night of operation, based on the licensed capacity of the venue.” The proposed figure of \$6.97 was recommended by PPCA of which they sought to claim one third, or \$2.32, with the balance to be shared between the two other beneficiaries, the owner of rights in the musical works (APRA) and the business operator [112].

The Tribunal eventually decided to discount the \$6.97 amount by 40% to take into account various factors and then determined that the balance \$4.19 should be distributed to the Operator 50%, and 25% to both PPCA and APRA [215]. The resultant figure was \$1.05 [261] to be phased in over a 5 year period and then linked to CPI. This was however followed by a note;

**"The exercise that results in that figure is, of course, to a considerable extent, arbitrary and artificial. Nevertheless, it has a rational basis for arriving at what has been described as a judicial estimate of what a reasonable but not too anxious licensor would require to be paid and what a reasonable but not too anxious nightclub operator would be prepared to pay for the right to play recorded music at nightclub venues" at [217].**

The Tribunal took evidence from a number of night club respondents at paragraphs 190-201. Home Nightclub in Sydney estimated their PPCA fees would increase to \$480,000pa, an amount

which would have exceeded its net profit [191]. Other venues made similar comments and their trading histories and personal experiences are summarized in the Tribunals findings.

We believe that any credible economic analysis should have assessed total annual copyright fees (from both collection societies), and compared them as a percentage of business net profits. This analysis would have clearly demonstrated the disproportionate nature of the quantum of fees.

To demonstrate the increased cost to venues, ALLM charted the increases in fees from PPCA since 2006 using venue capacities of 350, 600 and 1,000 trading three nights a week. Annual costs for businesses of this size have increased from \$4,084, \$7,001 and \$11,669 to \$68,250, \$117,000 and \$195,000 respectfully, remembering also that there are many venues with far greater capacities. Please refer to the following table for the detailed analysis.

		<b>350 Capacity venue open 3 nights per week</b>	<b>600 Capacity venue open 3 nights per week</b>	<b>1,000 Capacity venue open 3 nights per week</b>		
<b>PPCA Fees</b>	<b>\$ per person rate based on capacity</b>	<b>\$ per annum</b>	<b>\$ per annum</b>	<b>\$ per annum</b>	<b>% Increase per annum</b>	<b>Cumulative '% Increase</b>
2006	\$0.0748	4,084	7,001	11,669		
2007	\$0.0748	4,084	7,001	11,669	0.0%	0.0%
2008	\$0.5100	27,846	47,736	79,560	581.8%	581.8%
2009	\$0.6400	34,944	59,904	99,840	25.5%	755.6%
2010	\$0.7800	42,588	73,008	121,680	21.9%	942.8%
2011	\$0.9100	49,686	85,176	141,960	16.7%	1116.6%
2012	\$1.0500	57,330	98,280	163,800	15.4%	1303.7%
2013	\$1.1900	64,974	111,384	185,640	13.3%	1490.9%
2014	\$1.2200	66,612	114,192	190,320	2.5%	1531.0%
2015	\$1.2500	68,250	117,000	195,000	2.5%	1571.1%

We also note that at the conclusion of the five year pricing implementation period, which ended in 2012, prices increased 13.3% in 2013 alone. The only explanation for this is that PPCA may have applied the combined CPI over the five year implementation period in Year 6, and not for Year 6 alone. If this is correct, it is indicative of the power and motives vested in a monopoly organisation looking to price gouge their licensees. If this hasn't been applied incorrectly, or not what the Copyright Tribunal intended, the amount overcharged should be refunded for 2013, 2014, and 2015.

Needless to say this cost is difficult for small business to carry. Australian businesses are paying significantly more than what comparable businesses overseas pay to play the same music. A fairer outcome would have resulted had the Copyright Tribunal taken international tariff rates into account, considering the majority are affiliated with our collection agencies. This means that our collection agencies charge local businesses significantly higher rates on music owned by local and overseas interests, than what the overseas agencies charge their small businesses, including Australian music. The net outflow of funds from Australia is significant. The following tables summarises fees in the UK and Ireland. Note that the conversion to Australian dollars is based on our Australian dollar which is weak at the moment. You will notice that the USA is not

included in the following table because to the best of our knowledge, USA does not have copyright on recorded music.

	Tariff	350 Capacity venue open 3 nights per week	600 Capacity venue open 3 nights per week	1,000 Capacity venue open 3 nights per week
<b>UK - PPL</b>				
<a href="http://www.ppluk.com">www.ppluk.com</a>	PPLPP001			
<b>Tariff for the use of public use of sound recordings</b>				
Based on average attendances				
British pounds for event.		£ 72.24	£ 98.64	£ 125.04
AUD @ 0.48 as at 20 March 2015		\$ 150.50	\$ 205.50	\$ 260.50
Rate per person at 100% patronage	AUD	\$ 0.15	\$ 0.21	\$ 0.26
Rate per person at 75% patronage		\$ 0.11	\$ 0.15	\$ 0.20
Cost per annum at 75% patronage		\$ 6,163	\$ 14,426	\$ 30,479
<b>Ireland - PPI</b>	Commercial Disco & Night club			
<a href="http://www.ppimusic.ie">www.ppimusic.ie</a>				
<b>Commercial Discotheques and Nightclubs</b>				
Rates per event (Euros)		€ 66.27	€ 138.58	€ 234.97
AUD @ 0.68 as at 20 March 2015		\$ 97.46	\$ 203.79	\$ 345.55
Cost per annum at 100% patronage		\$ 15,204	\$ 31,791	\$ 53,906
Cost per annum at 75% patronage		\$ 11,403	\$ 23,843	\$ 40,429

Australian businesses are looking at ways of reducing these exorbitant fees. One option open to licensees is to try and eliminate PPCA costs altogether by only playing music that is **not** controlled by them. This is based on our understanding that 80% of music originates from overseas, mainly from the USA, which does not have an equivalent copyright category.

PPCA covers copyright in the recording, and it should be noted that there are many cover versions of original songs, and a cover of an American song by an Australian musician for example may be covered, but the original version by the US musicians, or a cover version of an Australian song by an American artist may not.

ALLM wrote to PPCA last year requesting a list of recordings of songs that they represent. PPCA would not provide this list. The reply from PPCA referred ALLM to two schedules, one of which is a list of licensors, mainly Australian based, and the second, a list of labels that licensors is Schedule 1 have their recording with. The following was extracted from PPCA's licensing terms and conditions;

**(j) Licensed Sound Recording** means a Protected Sound Recording in which the copyright is owned or controlled by a Licensor listed in Schedule 1, and which has been released on a label listed in Schedule 2, in any form including digital or other electronic machine-readable form

This would appear to indicate that if the majority of PPCA's licensors are Australian, they cannot therefore claim to represent the majority of music from overseas, unless an Australian has performed on that recording. The following link, from the PPCA website, is a comprehensive list of their Licensors.

We believe PCCA must have this level of details in order to distribute fees to licensors and should be available online (as is available with APRA) or on request. This will provide transparency and ensure that businesses using PCCA controlled music pay the appropriate fees, but those who elect to play music outside of PCCA control, do not, and can't be pursued by PCCA. Businesses require greater certainty. PCCA has refused to provide this information to ALLM to preserve its revenues, whether entitled to them or not. ***A business should not be held to be in breach of copyright if they have taken reasonable steps to ascertain the copyright status of music from the responsible authority, but that request is denied.***

Notwithstanding this lack of transparency, businesses should be permitted to import music copyright from overseas suppliers under a parallel importing regime. This will be discussed in more detail below.

## APRA

### Pricing

Prior to the Copyright Tribunal decision, APRA fees were \$0.1121 per person based on attendance figures. By way of comparison to liquor licence fees in Victoria at that time, they were greater.

ALLM has also calculated the impact of APRA fees on small business. Using venue capacities of 350, 600 and 1,000 and trading three nights a week, annual costs for businesses this size have increased from \$4,590, \$7,869 and \$13,116 to \$34,808, \$59,670 and \$99,450 respectively, an increase of 650%. As APRA's fees are based on attendance, for the purpose of this exercise, an assumption was made that venues operate at 75% of capacity; therefore both the old fees and new fees in the calculations above have been discounted by a factor of 25%.

The following table summarises increase in APRA fees since 2006.

		350 Capacity venue open 3 nights per week	600 Capacity venue open 3 nights per week	1,000 Capacity venue open 3 nights per week		
APRA Fees	\$ per person rate based on attendance	\$ per annum	\$ per annum	\$ per annum	% Increase per annum	Cumulative % Increase
2006	\$0.1121	4,590	7,869	13,116		
2007	\$0.1279	5,239	8,981	14,968	14.1%	14.1%
2008	\$0.1279	5,239	8,981	14,968	0.0%	14.1%
2009	\$0.5100	20,885	35,802	59,670	298.7%	355.0%
2010	\$0.5800	23,751	40,716	67,860	13.7%	417.4%
2011	\$0.5800	23,751	40,716	67,860	0.0%	417.4%
2012	\$0.7100	29,075	49,842	83,070	22.4%	533.4%
2013	\$0.7100	29,075	49,842	83,070	0.0%	533.4%
2014	\$0.7100	29,075	49,842	83,070	0.0%	533.4%
2015	\$0.8500	34,808	59,670	99,450	19.7%	658.3%

As is the case with PPCA, Australian businesses are paying significantly more for copyright on publishing by international standards of around 10 times more than what overseas music venues from developed countries pay for playing the same music, for the same product. The following table compares overseas rates from collection societies affiliated with APRA, including USA, UK, and Ireland.

		350 Capacity venue open 3 nights per week	600 Capacity venue open 3 nights per week	1,000 Capacity venue open 3 nights per week
<b>USA - BMI</b>	<b>rate per person per annum</b>			
<a href="http://www.bmi.com">www.bmi.com</a>				
<b>BMI 'Drinking Places' open 2-4 nights pw</b>				
Enhanced recorded music USD	\$ 3.25			
if admission charge, add... USD	\$ 1.80			
if dancing to live or recorded, add... USD	\$ 1.80			
Rate per year per occupant USD	\$ 6.85			
AUD @ 0.72 as at 27 November 2015	9.51	3,330	5,708	9,514
<b>USA - SESAC</b>				
<a href="http://www.sesac.com">www.sesac.com</a>				
<b>Mechanical Music - Enhanced</b>				
Annual Fee USD	\$	602	\$ 1,140	\$ 2,010
AUD @ 0.72 as at 27 November 2015	\$	836	\$ 1,583	\$ 2,792
<b>UK - PRS for Music</b>				
<a href="http://www.prsformusic.com">www.prsformusic.com</a>				
<b>PRS for Music - Commercial Discotheques</b>				
British pounds per 1,000 people	£ 99.62			
AUD @ 0.48 as at 27 November 2015	\$ 207.54			
Rate per person	\$ 0.2075	11,332	19,426	32,377
<b>Ireland - IMRO</b>				
<a href="http://www.imro.ie">www.imro.ie</a>				
Rates per event (Euros)	€	42.24	€ 52.67	€ 66.34
AUD @ 0.68 as at 27 November 2015	\$	62.12	\$ 77.46	\$ 97.56
Cost per annum	\$	9,690	\$ 12,083	\$ 15,219

For an Australian collection agency to charge local businesses significantly higher rates on music owned by local and overseas interests, than what their overseas affiliates charge their local businesses, requires your examination and justification. The net outflow of funds from Australia is significant. Our small businesses are effectively funding copyright owners overseas. Business cannot continue to pay these exorbitant fees.

Another simplistic way of explaining this is to look at a song from the UK group Rolling Stones. Currently an Australian business pays APRA \$0.85 per person attending their bar or club. The

same song would attract only AUD\$0.05 with USA collection agency BMI, approximately AUD\$0.13 if played in the UK via PRS for Music, and about AUD \$0.12 if played in Ireland via IMRO. Simply put, each of these jurisdictions remit money collected from their licensees to the rights holder in the UK (and other countries), after deducting their running costs. Based on 15% running costs, APRA would remit \$0.72, BMI \$0.05, and IMRO \$0.10 to the PRS in the UK.. However if an Australian song was played in the UK. PRS would only remit about \$0.11 back to APRA. This should be examined closely.

Our businesses are being grossly overcharged with the majority of this money remitted to overseas copyright holders.

### **Red Tape**

One of ALLM's major objectives is to reduce fees for our members, and to reduce unnecessary red tape. Any achievement and benefit will hopefully flow on to other small businesses and the wider entertainment industry. We would like to make a number of suggestions and trust the Productivity Commission will make a full and frank assessment of these suggestions.

The first initiative is to simplify APRA's compliance requirements. At present, a great deal of time is required to maintain attendance records due to APRA's license terms and conditions that require licensees to keep attendance records. These are reported annually to APRA and form the basis of the following year's provisional fees. Unless the reporting is submitted in a timely fashion, APRA issue provisional invoices based on the previous year's actual, having to then credit these invoices and replace them with new invoices once current attendance figures are reported. Reconciling and checking these movement, is a challenge, confusing and takes an unnecessary amount of time.

A license fee based on attendance records can also result in disputes between the reporting licensee and APRA. It is common knowledge that APRA send staff undercover to check up on venues to verify attendance records. This practice has been in operation for many years. It formed part of the complaints made by licensees to the ACCC in 2013 in APRA's application for reauthorisation. Running a small business has enough challenges without having to deal with this kind of behaviour.

By signing the annual return, by default, Licensees are also agreeing to accept APRA's terms and conditions, one which gives APRA the right to have a licensee's books of account audited. As far as ALLM is concerned, this information, and attendance records, is privileged business information that third party suppliers should not be entitled to. APRA and their staff do not need to know our businesses to this degree.

One way to avoid the above compliance hurdles is for APRA to adopt a much simpler reporting system. ALLM supports the licensing system used by BMI, a collection society from the USA.

BMI licensees simply fill in a one page form by selecting a series of options that relate to their business. Each variable has an associated cost and the options include live music, recorded music (DJ's), or enhanced recorded music, whether there is a dance floor and if there is a cover charge. The sum of each of the variables is multiplied by the venue capacity to derive the annual fee. BMI, which is one of several copyright agencies in the USA, also offer a 10% discount for upfront payments, and a further 5% discount for licenses that belong to an industry association, no doubt a benefit of competition not available in Australia. BMI also cap license fees at US\$10,867 per annum. The license application process would take no more than 30 minutes to complete. Refer to the following link for further information.

<http://www.bmi.com/forms/licensing/gl/ede.pdf>

APRA would also benefit from a simplified system as they would eliminate most of the processes associated with verifying admittance records, including the cost of sending out staff to check up on venues.

### **APRA's Financials**

APRA's financials are a matter for them however we would like to note that their revenues increased 76% in the nine years between 2003/04 to 2011/12 from \$99.5m to \$175.2m. This demonstrates their major focus of driving revenues upwards from local licensees. APRA also claim on their website to having ""one of the lowest cost to revenue ratios in the world"

As at 30 June 2012, APRA reported \$31.7m of Property Plant and Equipment in their balance sheet, consisting of Land and Building at cost of \$21.0m, and \$10.7m for Plant & Equipment. The merits of a collection agency investing their member's money in land and building and considerable plant and equipment is a matter for APRA and its members, however the often quoted claim by APRA that their operating costs of between 12-14% of revenues are in line or better than international benchmarks may be understated because they don't pay rent. Rent is obviously a major cost to business. For the purposes transparency and accurate comparisons with their sister organisations, an allowance for a rent component would need to be made, or at minimum document this important omission.

According to their 2014/15 Annual Accounts, Royalties paid and payable to members and affiliated societies totalled \$200.4m. There is no breakdown between royalties paid and payable to local and overseas publishers. They do however report distributions received from affiliated societies. This net exodus of funds should be reported to clarify how much of the copyright fees collected from Australian businesses are sent to overseas interests.

### **APRA's Terms & Conditions**

The APRA standard terms and conditions lean heavily in APRA's favour. Due to the monopoly power they enjoy, they are able to dictate conditions in Licensees contracts, weighted in their

favour. Not agreeing to THEIR terms & conditions, could prevent a business from being able to operate.

One example is Clause 6.4 and Clause 6.5 of the Recorded Music for Dance Use in Nightclubs. Clause 6.4 states that in the case of underpayment of provisional fees the licensee ‘**must pay** the extra to APRA with 14 days’, however in the case where provisional fees exceed actual fees, Clause 6.5 states that ‘APRA **must at its option**, either credit or refund the amount of difference’. Why should APRA have the benefit of a more generous repayment plan?

Another example is APRA’s right to audit or examine a licensee’s books of account. Clause 8.1 states that ‘APRA may on 14 days notice.....audit or examine the Applicant’s books of account.....’ and Clause 8.2 states that ‘The Applicant must pay the cost of the audit.....’ This clause serves no purpose other than to attempt to intimidate licensees. This would not be necessary if fair fees were based on venue capacity and nights of operation, rather than on a turn-style (per person) basis. A conflict of interest could also exist if APRA Directors and staff, who have close links to the music industry, and who could have possibly own venues or have financial interests in venues, audit other venues. We do not believe that a supplier should have the power to examine a customer’s financial books of account.

### APRA & PPCA Combined Impact

Using venue capacities from the example above, annual copyright fees for both APRA and PPCA combined are \$103,058, \$176,670 and \$294,450 per annum resulting in weekly costs of \$1,981, \$3,397 and \$5,662.

This represents a 1000% increase since 2006. Businesses cannot sustain paying fees at this level for copyright. Please refer to the following table for the detailed analysis.

		350 Capacity venue open 3 nights per week	600 Capacity venue open 3 nights per week	1,000 Capacity venue open 3 nights per week		
<b>APRA-PPCA Total Fees</b>						
2006	\$0.1869	8,675	14,871	24,785		
2007	\$0.2027	9,323	15,982	26,637	8.5%	8.5%
2008	\$0.6379	33,085	56,717	94,528	214.7%	241.3%
2009	\$1.1500	55,829	95,706	159,510	80.3%	515.3%
2010	\$1.3600	66,339	113,724	189,540	18.3%	627.7%
2011	\$1.4900	73,437	125,892	209,820	9.6%	697.2%
2012	\$1.7600	86,405	148,122	246,870	18.1%	841.7%
2013	\$1.9000	94,049	161,226	268,710	8.0%	916.6%
2014	\$1.9300	95,687	164,034	273,390	1.6%	932.6%
2015	\$2.1000	103,058	176,670	294,450	8.8%	1023.6%

ALLM also conducted analysis on the impact copyright fees have on gross margins. Assuming a drink spend of \$20 per person (2 to 3 drinks is the average in nightclubs), and 25% cost of goods sold, gross margins from liquor sales reduced from 75% to 66% after deducting copyright fees. Looking at it another way, copyright fees represent 9% of sales in this example. This reduction is significant because every business needs healthy gross margins to pay for all of their overheads and return profits. Our gross margin calculations follow. A large hit to the bottom line will factor greatly in business decision to invest in this industry.

<b>Gross Margin Analysis</b>	<b>350 Capacity venue open 3 nights per week</b>	<b>600 Capacity venue open 3 nights per week</b>	<b>1,000 Capacity venue open 3 nights per week</b>
Attendances	54,600	93,600	156,000
Drinks per head	\$20	\$20	\$20
Annual Sales	\$1,092,000	\$1,872,000	\$3,120,000
COGS at 25%	\$273,000	\$468,000	\$780,000
Gross Profit	\$ 819,000	\$ 1,404,000	\$ 2,340,000
Gross margin	75%	75%	75%
Less Copyright fees	\$ 103,058	\$ 176,670	\$ 294,450
Adjusted Gross Profit	\$ 715,943	\$ 1,227,330	\$ 2,045,550
Adjusted Gross Margin	66%	66%	66%

It should also be remembered that venues are also an important breeding ground for songwriters and musicians who benefit significantly from having their music played in venues. Music venues therefore play an important role in making new music popular, and the development of musicians and artists. It is this popularity that leads to music reaching the mainstream and on radio, and leads to performances at concerts, and the selling of merchandise, which creates massive revenue streams for the publishers and artists. For copyright collection societies to argue that music is only to the benefit of licensees is a myopic and selective point of view.

ALLM consists entirely of small privately owned businesses battling with constant changes in legislation and pressures from community groups. Our increased liquor licence fees now go towards paying for compliance officers to perform tasks normally done by the Police. In fact, the increased Police force still monitors venues, causing confusion when different standards are enforced. It is definitely safer in a licensed venue (even more so in a smaller venue) than on the streets during busy nights.

It is therefore worth noting that in Victoria, music copyright fees are substantially greater than liquor license fees, the license that generates the majority of the income, yet music copyright fees are substantially greater than liquor license fees by a factor of about 10 to 1. Using the venue capacities above, and by way of comparison, liquor license fees in Victoria range from \$6,750 to \$13,500 for businesses licensed to trade to 3am, and \$12,150 to \$24,300 for those licensed to trade to 5am.

APRA often argue that without music, music venues would not be able to operate. It is also true that music venues would not be able to operate without a liquor license. Both work in tandem. It is the level of fees that our industry has an issue with.

The following summary analyses liquor licensing fees in VICTORIA.

<b>Liquor License Costs in Victoria</b>	<b>350 Capacity venue open 3 nights per week</b>	<b>600 Capacity venue open 3 nights per week</b>	<b>1,000 Capacity venue open 3 nights per week</b>
<b>Victorian Liquor License Cost, trading to 3am</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Base Fee	900	900	900
Operating Hours Risk Fee	3,600	3,600	3,600
Sub Total	4,500	4,500	4,500
Venue Capacity Multiplier	1.5	2.0	3.0
Annual License Fee Cost	6,750	9,000	13,500
<b>Victorian Liquor License Cost, trading to 5am</b>			
Base Fee	900	900	900
Operating Hours Risk Fee	7,200	7,200	7,200
Sub Total	8,100	8,100	8,100
Venue Capacity Multiplier	1.5	2.0	3.0
Annual License Fee Cost	12,150	16,200	24,300

### **Parallel Importing**

Another way of promoting competition and lowering copyright costs for local businesses would be to permit them to purchase music copyright from overseas suppliers under a parallel importing regime. This is permitted in many industries and also for music CD's. The ACCC gave the green light to the importation of music CD's many years ago after a local retailer attempted to purchase the CD's from an authorized overseas distributor. The ACCC determined that the importer did not infringe any laws because the imported CD's were "non-infringing" copies.

Parallel Importing has become a phenomenon in the past 5-10 years. It has enabled competition to take place in the market place to the benefit of consumers who would otherwise be subjected to pricing cartels from unscrupulous exclusivity arrangements.

This would enable Australian licensees to buy their copyright from any official copyright collection agency anywhere in the world, thereby offering competition and the benefits this would bring. The collection agency would remit funds in their normal way, or a licensee would provide a list of songs played.

There is ample evidence from the alcohol industry that parallel importing has resulted in lower prices to the consumer by negating the impact of exclusive distribution. The beer product Corona is a perfect example. Current prices are less than what they were in 2000.

International laws and free trade agreements should encourage free trade.

We would support any action your Commission takes in allowing local licensees to purchase music copyright from overseas.

### **Concept of Copyright**

A common argument by Collection Societies is that businesses use music to make money and that these businesses would not be able to carry on a business without music. This is true, however the same point can be argued by other industries such as the power generation industry who could also rightfully argue that without their knowledge, expertise and research and development, businesses could not operate without electricity, thereby entitling them to commissions based on say the turnover of users of electricity.

It cannot also be argued by collection societies that there is no benefit to their members in having their members music played in various mediums such as radio stations and music venues. This is a valuable promotional tool assisting in providing them greater popularity and assisting sales of their music. There would not be many artists demanding that APRA force radio stations and music venues to stop playing their music for fear of exploitation. License fee tariffs should therefore reflect this unique relationship.

An alternative election mechanism ensuring accurate entitlements to copyright owners would be to levy the copyright component at the point the sale of the product. Different pricing would apply for private and public use, with the public use version having a copyright component in the price. A DJ or venue would therefore be required to purchase licensed versions to play in their venue. The onus would be on the purchaser (DJ or Venue), to ensure only licensed version were used and would face copyright infringement penalties for failing to do so, in much the same way that applies to business software. Copyright entitlements would be easy to calculate from record sales with money flowing to copyright agencies via record companies.

We trust our submission is of assistance to Commission's current inquiry.

Vernon Chalker, Hank Oudendyk, Con Sarrou, Nic Albon, Zok Szoeka, Chris Leonardis.

Committee FOR Association of Liquor Licensees Melbourne INC