

National Cultural Policy Submission



22 August 2023

AMPAL Submission to the Australian Government's consultation on a renewed National Cultural Policy.

The Australasian Music Publishers' Association Limited (**AMPAL**) welcomes the opportunity to contribute to the Federal Government's consultation on a renewed National Cultural Policy.

AMPAL is the trade association for music publishers in Australia and New Zealand. Our members include large multi-national companies as well as many small businesses. AMPAL's members represent the overwhelming majority of economically significant musical works enjoyed by Australians.

AMPAL strongly supports the development of and investment in a renewed National Cultural Policy. Music publishers invest in songwriters across all genres of music. They play a critical role in nurturing and commercially exploiting their writers' musical works and providing returns to songwriters. AMPAL and our members also recognise the immense cultural and artistic significance of the works that music publishers represent, and their contribution to Australia's cultural heritage.

AMPAL acknowledges the previous support and investment provided by the Australian Government to contemporary music through the Live Music Australia fund and the First Nations Contemporary Music Program, the expansion of the Sounds Australia program, Women in Music Mentorship program and the boost to the Contemporary Music Touring Program administered by the Australia Council.

However, AMPAL submits that there is the opportunity for increased government recognition of the cultural and economic importance of the music industry, and increased investment in the industry to help realise the full potential of Australia's musical talent. We echo the comments of APRA AMCOS in calling for the establishment of a dedicated agency or office within government tasked with growing and developing contemporary music through a rapidly evolving environment.

AMPAL supports the four key priorities for the music industry as identified by APRA AMCOS:

- A federal, state and local whole-of-government policy and investment commitment to Australia as a net exporter of music.
- A commitment to provide equity of access to music education in schools nationally, including in contemporary songwriting.
- A national and coordinated approach to reduce red-tape together with tax incentives to protect and promote the cultural infrastructure of live music venues.
- A re-commitment to local content to ensure the production and performance of local music content across all media platforms.

AMPAL is a signatory to the Australian Contemporary Music Industry's Joint Submission to this consultation. We have had the opportunity to read the submission made by APRA AMCOS and we

endorse and refer to these submissions for the key priorities that we believe must be considered within a renewed National Cultural Policy.

Music publishing businesses

Music publishers make a critical contribution to the creation of great Australian music. The business of music publishing is essentially twofold: signing and developing songwriting talent; and licensing their works in a way commensurate with their value and the moral rights of the creators. The foundation of the music industry is the songs and compositions. It is crucial that songwriters and composers continue to create their works, so that we can all continue to hear great Australian stories through music.

AMPAL submits that a theme that seems to run through some recent debates on copyright and other industry matters is that there will always be music, and that the commercial music industry's rightful application of copyright laws is an impediment rather than a facilitator of the creation of meaningful cultural content. Nothing could be further from reality. Compelling music content requires investment, production, talent and marketing. Music publishers actively support the songwriters they represent to allow them the time and resources to create. They work with other intermediaries in the business such as record companies and managers to bring the works to market. They are responsible for the collection and distribution of songwriters' income on a global basis and they create new income streams for songwriters by facilitating licences within the continually evolving digital space.

The cultural contribution that songwriters, composers and music publishers make to Australia is clear. Songs and compositions by great Australian songwriters and composers, and performed by great Australian artists (who often are also the songwriters themselves), have become part of the story of our country. Furthermore, the remarkable economic significance of Australia's copyright industries was highlighted by PricewaterhouseCoopers (PWC) in 2020. In its report, PWC found that Australia's copyright industries employed more than 1 million people (8.3% of Australia's workforce), generated economic value of \$124.1 billion (6.8% of GDP, and the fifth largest industry by value added in the Australian economy) and generated over \$4.8 billion in exports (1.5% of total exports). The music industry is a highly innovative and productive industry, comprised of many small businesses, and accounts for a significant part of this economic contribution. Indeed, Music Australia has estimated the music sector contributes \$4 to \$6 billion annually to the Australian economy. With respect to music publishing, AMPAL's annual financial survey of its members in 2019 reported the value of the Australian and New Zealand music publishing sector at more than AUD\$280 million for the year.

Creative Industries are also strong contributors to employment growth, growing 40 per cent faster than the economy as a whole. Music industry businesses, including music publishers, are significant employers of Australian workers. Expenditure associated with live music alone in Australia is estimated to generate some 65,000 jobs, half of which are full-time. With the right policy, investment and industry settings, the further economic potential of the Australian music industry is strong.

Local content

The importance of Australian songs to our national identity cannot be overstated. Songwriting and composing represents a key medium for self-expression and to this extent needs to be encouraged and nurtured as a fundamental part of Australia's cultural landscape. For Australians to have access

to such a diversity of voices and views necessarily requires that the voices and views are given continued scope and incentives for creative manifestation.

AMPAL believes that licensing is always better than regulation – particularly when the digital environment is continually developing. The transition from the analogue to the digital world has continued apace and we are at the point where there are an abundance of digital services available to the Australian public. These services are gaining traction but the market is still in a fragile space. The reason for the role of government in audio and audio-visual media is to ensure that outcomes in the public interest are delivered which, in the absence of government intervention, might not be delivered in an unregulated market. Adequate levels of Australian content across platforms are understood as necessary for the government to deliver its social and cultural broadcasting policy objectives.

It remains true that in the absence of local content requirements, Australian content would be reduced on commercial broadcast services. Australia's existing content thresholds are by no means unique or onerous compared to overseas markets. Any reduction of current local content quotas would have a detrimental impact on today's Australian songwriters and artists, while also discouraging future investment in new Australian artists.

AMPAL therefore supports the current local content quotas for television and radio broadcast services as a minimum. However, AMPAL submits that all music-focused commercial radio services ought to be subject to the highest 25% Australian music quota under the Commercial Radio Code of Practice. AMPAL also submits that the current commercial radio quotas should be extended to digital-only radio broadcasts and other platforms, to the extent permissible within the provisions of the Australia-United States Free Trade Agreement. AMPAL also notes its concern that commercial radio stations are able to self-categorise which format they fall within for the purposes of determining which Australian Music quota applies to their service under the Code.

The Australian content quotas should not be viewed as an additional impost for operators in Australia's media environment, or as a form of forced supply, but rather should be recognised as an obligation that is inherent in gaining access to the finite analogue and digital spectrum to offer a commercial service to the Australian public. The safeguarding and extension of Australian music quotas will ensure that Australian musicians will be able to benefit from the development of a strong digital economy and that Australian music continues to be heard on the airwaves.

AMPAL also acknowledges the increasing importance of playlists on music streaming services, and submits that those services should commit to the promotion of Australian music included in playlists on their Australian service offerings.

Live music is also an extremely important channel for Australian music to be heard. A thriving live music sector is of critical importance to the entire music industry, including music publishers and songwriters. Indeed, a great number of songwriters are also performing artists in their own right. The Australian live music sector has a great tradition of being an 'incubator' of local talent and as an artist training ground for local and international success. More Australians attend live music than sport. Live music is also used to enhance sporting events such as NRL grand finals, AFL grand finals, the Olympics and Commonwealth Games ceremonies.

More broadly, as the University of Tasmania has highlighted, 'among its many attributes, live music events build communities and social connections; provide economic value, employment and career paths; and help create vibrancy, buzz and atmosphere in a precinct'. Live music makes a vast social and cultural contribution to Australian metropolitan and regional communities. This significance, together with the economic contribution, was highlighted in research by the University of Tasmania.

The study found that the live music sector contributed \$15.7 billion of value to Australia in 2014, with taxation revenue generated for all tiers of government, and that for every dollar spent on live music, three dollars of benefit is returned to the wider community.

AMPAL is supportive of policies that foster a diverse and vibrant live music culture across metropolitan and regional areas, and that provide for the sustainability and establishment of permanent and temporary venue spaces for music and for the arts. We refer to the submission of the Live Music Office in this regard.

It is critical that First Nations music is at the heart of any creative industries strategy. There is a cultural importance of indigenous storytellers for all Australian stories. First Nations music is central to how we define ourselves as a nation, and our place in the world. As noted in the joint music industry submission, there is a necessity for government and industry to partner on the development of sustainable pathways for Aboriginal and Torres Strait Islander people into the industry through education, the development of First Nations led, owned and operated music businesses, a robust Indigenous cultural intellectual property and copyright system, live music opportunities and export development. AMPAL supports greater investment in music-focussed programs and support in these areas to underpin the development of Australian cultural and linguistic diversity in music.

We also refer to our further comments in our submission in response to the Supporting Australian Stories on our Screens—Options Paper on the importance of local screen content.

Copyright

Underpinning the livelihood of songwriters and composers, and the business of music publishing, is of course copyright law. From the outset, it should be noted that AMPAL has been deeply concerned by some of the findings and recommendations made by some inquiries in recent years, in particular, in relation to copyright, and the creators that depend on the current certainty of Australia's robust, balanced and flexible copyright laws in order to encourage their innovation and to be rewarded for their creative efforts in advancing the cultural heritage of Australia. The World Intellectual Property Organisation has previously noted that one of the primary purposes of copyright is: '...to encourage a dynamic creative culture, while returning value to creators so that they can lead a dignified economic existence...'. This aim of copyright law must be given sufficient consideration in any Government policy decisions.

The music industry has been transformed in the digital age, and the industry has been innovative in adapting. Music copyright owners including music publishers have comprehensively demonstrated their flexibility in licensing a broad range of new digital music services. The Digital Content Guide sets out the range of these services. An argument frequently raised in copyright debates is that with regard to creative content in Australia, there is a problem with price and availability. However, the Digital Content Guide indicates the availability of music immediately, globally and at a variety of price points – including advertisement-supported models. It is important to note that Australia has repeatedly been one of the earliest markets for the launch of new global music services by licensees. Those with a viable business model have been able to receive the licences they need. Clearly our copyright laws have not prevented services such as iTunes, Apple Music, Spotify, Amazon and others from successfully establishing themselves in the Australian market, nor have copyright laws acted as a disincentive to innovation. In contrast, these services have chosen not to enter territories where copyright protection is weak.

What has made the ongoing digital transition for the music industry possible is a strong, flexible copyright framework providing certainty for creators and other copyright owners, as well as

licensees. Australia's IP system has adapted well to changes in economic, commercial and technological changes in the past, and if it remains as a robust IP framework, it will continue do so into the future.

Most recently, content owners and licensors, including collective licensing groups moved very quickly to provide surety and relief to sectors impacted by COVID – from small to big business, and including the education sector. Any 'modernisation' of copyright should not mean weakening the rights of creators and copyright owners, particularly at a time when the arts and creative industries sector has been decimated with creators earning less and no clear picture as to when and what a COVID recovery will look like. AMPAL disagrees that the first response to the impact of technology on the copyright regime should be to broaden the scope of existing exceptions or to introduce new free exceptions. It would seem that much of the push for greater exceptions to copyright comes from the proponents of 'innovation'. However innovation should not be used as an excuse for building businesses that free ride on others' intellectual property. On the contrary – copyright enables innovation, and rights holders including music publishers and creators require certainty in intellectual property laws in order to encourage that innovation. This will in turn lead to the development of new legitimate models for distribution of creative content, while also appropriately rewarding creators. It is licensing – not exceptions to copyright – that drives innovation.

In 2018, AMPAL welcomed the passage of the Copyright Amendment (Service Providers) Act 2018 into law. It is pleasing that the Act reflects the current international trends with respect to copyright safe harbour law, and is consistent with the basic principles upon which the copyright safe harbour laws were developed. It remains AMPAL's position that any service going beyond the activity of a strictly neutral and passive intermediary should not be eligible for copyright safe harbour protection. AMPAL thanks the Government for taking our concerns into consideration during the consultation process, and submits that the current laws have created the right commercial environment for service providers and music copyright owners to engage in commercial discussions which will benefit copyright owners, the various commercial services and consumers now and into the future. With the major increase to live performance on digital platforms during the COVID-19 pandemic, AMPAL submits that the Australian Government has the opportunity to ensure there is a review in the application of the authorisation liability provisions under the Copyright Act 1968 to online services.

Please do not hesitate to contact me if I can be of any assistance or provide any further information regarding the above.

Yours Sincerely

A solid black rectangular box used to redact the signature of Matthew Capper.

Matthew Capper

Chair, Australasian Music Publishers' Association Limited