

Dear ACCC,

I was reading some of the submissions and read this one.
Lawyer from Banki, Haddock, Fiora

“however ASCAP, the leading performing right collecting society in the United States, charges US\$1.89 per person, which is considerably higher than the AU\$0.78 (including GST) charged by APRA. This returns our attention to the question of making an appropriate comparison between markets. That is, could it be said that the nightclub industry in Australia resembles that of the United Kingdom any more than that of the United States, such that it should mimic the license schemes of one or the other?

<http://registers.accc.gov.au/content/index.phtml/itemId/1111601/fromItemId/278039/display/submission>

I just wanted to add this. I don't think these markets are comparable. Consider the way content is used in the US, un-published artists are not in an exclusive situation, as an APRA artist is. Any creator or entity that is with ASCAP/BMI, is able to directly license what they create to any provider at whatever price they choose, because the ASCAP/BMI contracts are non-exclusive. As I understand?

Example. A band in the US that creates all their own content is able to get on the road, they would be able to license content to the local radio station with their manager possibly for a 3 month term? so the station would pay no fees to ASCAP/BMI for use of that particular content for that term. So the station might license a certain amount of free minutes per week. The band might also license what they create directly to the local live performance venue free of charge, as no revenues would be returned by ASCAP for the venues use.

The situation with the non-exclusive contract might be that more live music is performed. Blanket licenses are always going to be needed, as most bands perform content owned by the larger providers. Yet a non-exclusive contract would decrease the revenues of APRA. APRA and their publishing partners know this, I guess? Although APRA is a non-profit, those on the board are all in the business of making profit, not performing what they create at the local pub.

With a non-exclusive contract, interaction of new content with the Hoteliers Association might grow. A non-exclusive contract would mean more live music for the public from the public in the pub. This is a more practical way to look at things, in the context of the internet. Am I wrong?

As things are at the moment, an artist without an agreement with a publisher has limited access to the Hoteliers Association network of venues.

I feel Publishers in Australia have almost total control over the live performance domain. How many publishers do you see at live events though, looking for content to publish to the public. In many years of performance, I've never met one, nor have I met an artist who has met one at a concert randomly. The publishers have no need to find content, is the music being performed at the pubs in Australia, what the public really want?

A comparison can't be made to US market. As the US market in the US runs on a different wheel. Live performance returns for in the US are about the large content providers and owners, as those that create their own content, will directly license, as it gives them a competitive edge to do so. Is this such a bad situation? The artists might sell something else, rather than getting that live performance return.

Alternatively, The Australian government could subsidize original content directly with the Hotel Association. Yet don't they do this already indirectly anyway? The arts-council have provided the

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platform for how many bands, and triple JJJ promote how many of bands performing at their venues? This gives huge power to these entities.

Only legislation could force APRA to provide a non-exclusive contract to artists. This is what happened in the US many years, partly to prevent the situation we have in Australia. APRA working with current copyright law equals censorship.

Publishers don't go to events. Artists that want to succeed goto lawyers.

Not sure what the solution is, yet arguing over prices is far from the real issue.

regards,

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