



Music Rights Australia's Submission in Response to the
Australian Competition and Consumer Commission's Issues
Paper of the Ad Tech Inquiry

21 April 2020

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RESPECTING AND PROTECTING CREATIVITY

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Music Rights Australia thanks the Australian Competition and Consumer Commissioner (ACCC) for the opportunity to make a submission in response to the Ad Tech Issues Paper (the **Inquiry**).

1. About Music Rights Australia

Music Rights Australia (**MRA**) is an organisation that protects the creative interest of artists within the Australian music community. MRA represents over 100,000 songwriters and music publishers through their association with the Australasian Mechanical Copyright Owners' Society (**AMCOS**) and the Australasian Performing Right Association (**APRA**)¹, and more than 125 record labels – both independent and major – through the Australian Recording Industry Association (**ARIA**)².

MRA made a submission in 2019 in response to the ACCC's Final Report into the Digital Platform Inquiry. In that submission, MRA supported Recommendation 5 that there be an inquiry into advertising services and advertising agencies. Since 2014, MRA has called for a review into the placement of advertising on websites which promote illegal music, copyright infringement and counterfeit products.

In this submission, MRA will provide information of brands advertising on websites illegally offering Australian artists' music, and address issues raised by Question 46 and 48 of the Inquiry through the lens of the music industry and the impact which the placement of advertising on illegal music sites, such as stream ripping sites, Bit Torrent sites and cyberlockers has on the creative industries as a whole including music.

¹ See www.apraamcos.com.au

² See www.aria.com.au

2. Introduction

Music Today

It is important to discuss the Australian music industry as pre COVID 19 and post COVID 19 as the music industry has changed dramatically. Data from the pre COVID 19 period does not reflect where income for artists and recording labels is coming from today.

Prior to the COVID 19 Pandemic, growth in the recorded music industry was fuelled by the growth in licensed music streaming services.

The IFPI *Global Music Report 2019*³ stated:

"In Australia, the total market increased by 11.0% (US \$4.4m) to S \$446.6m.

.....

Streaming incomes continued their dramatic growth in Australia, with total streaming revenues rising by 40.9% (US 81.5m) to US 280.5m during 2018, following growth of 60% (US 74.8m) in 2017 and 87.3% (US 57.9m) in 2016. Streaming contributed more than twice as much to recorded music industry revenues in Australia in 2018 than it did in 2016 and nearly ten times as much as in 2014.

Overall, streaming revenues constituted 62.8% of the total Australian music market and 71.4% of all sales revenues in 2018."

The APRA AMCOS *Year in Review 2018/2019* reported that by the end of the financial year, audio streaming revenue had reached \$105 million, an increase of 28.2% from the previous year. Public performance revenue was \$92.4 million which was 19.6% of the 2018/2019 reported revenue⁴.

Live Performance Australia's *Attendance and Revenue Report 2018* showed ⁵:

For Contemporary Music

- *"Revenue was up 32% from 2017*
- *Attendance was up 19% from 2017*
- *Total Revenue (ticket sales) \$1,092,275,549*
- *Total Attendance (tickets issued 10,088,329"*

For Festivals in 2018

- *"Revenue up 1% from 2017*
- *Attendance up 14% from 2017*
- *Total Revenue (ticket sales) \$102,015,922*
- *Attendance (tickets issues) 975,233."*

³ The IFPI Global Music Report 2019 page 64

⁴ APRA AMCOS Year in Review 2018/2019 page 5, available at https://apraamcos.com.au/media/YIR/2019/APRA_AMCOS_Year_in_Review_2019.pdf

⁵ Attendance and Revenue Report 2018, available at www.liveperformance.com.au

Effect of COVID 19

Post COVID 19 streaming revenues for recorded music are proving to be robust but live performance incomes have disappeared as festivals and live events have been cancelled.

Incomes from live performance and the allied services associated with tours and festivals disappeared overnight.

In the hope of generating income, many performers, labels and event organisers are moving to online streaming to keep in touch with their fans and to support themselves.

More than ever the ability to make money in the online environment is crucial for the sustainability of the music industry.

What needs to happen to ensure the music industry and other creative industries are supported online

Pre COVID 19, the current legal environment did not adequately protect the creative industries online. The move to online streaming of live music events and other performances will be seriously compromised if there are not immediate and long lasting changes made to the authorisation provisions of the *Copyright Act 1968*, and if the Ad Tech community is not required to take sustained and meaningful steps to cut off the money which advertising gives to illegal music sites.

Since 2014, MRA has called for changes to authorisation liability to ensure there is a clear and effective obligation on digital platforms to effectively and permanently remove unauthorised music from their platforms. Nothing has been done.

As a result of the COVID 19 pandemic, streaming, including live streaming of concerts and streaming on the range of licensed digital services, will be the main avenue to sustain the music community revenues. Now more than ever copyright owners require certainty that they will be paid when their music is on digital platforms and that they can have unauthorised content removed instantly and permanently. It is essential that illegal sites which are sustained by advertising will no longer be supported by the Ad Tech community which includes brand owners, advertising agencies, aggregators and the digital platforms.

Once live streaming replaces live performances and events it will be essential for copyright owners to be able to protect their works online. The Government must take the following steps:

- 1. Digital platforms must be required to either enter into cooperative agreements with rights holders to pay for the creative content which third parties, which are not authorised to do so, place on their services or they must remove the material permanently.**
- 2. The Ad Tech community must be required to stop fuelling the growth of illegal sites through the placement of advertising on those sites.**

3. Advertising on illegal sites

In 2014, MRA made a submission to the *Copyright Online Infringement Discussion Paper*. Copies of pages 4-6 of the MRA submission appear as **Appendix A**. In the submission MRA referenced the Digital Citizens Alliance study *Good Money Gone Bad : Digital Thieves and the Hijacking of the Online Ad Business* and produced data which showed illegal sites were using the Australian recording artists' works to attract consumers to their sites, which were supported by advertising revenues.

The Digital Citizens Alliance updated the study in May 2015 in *Good Money Still Going Bad: Digital Thieves and the Hijacking of the Online Ad Business*⁶. The updated report made some key findings about the prevalence of creative content, including music, on illegal sites.

It found that⁷:

- Despite increased awareness within the advertising community of the issue, there were still instances of signature brands advertising on illegal sites which stole creative content and which were primarily supported by advertising revenues.
- The type of site which fell into its search criteria for the study had shifted and the primary sites which were making the money from advertising were now streaming sites which inserted video advertisements into the stolen creative content.
- The online streaming sites were less expensive to set up and so had lower barriers to entry.
- The sites had increased instances of downloadable malware and malicious software like bots which placed consumer safety at risk.

"The content theft industry's low barriers to entry and the ability of operations to switch domains quickly make it easy for new sites to fill the void left by those that do get shut down."

⁶ Good Money Still Going Bad: Digital Thieves and the Hijacking of the online Ad Business (May 2015)

⁷ Good Money still Going Bad page 2

Recently, White Bullet United Kingdom reported⁸:

*“More people are taking to living life on the web and that means the internet pirates are benefiting. White Bullet Q1 2020 data shows a **50% traffic increase** to the top pirate websites since the last quarter in the US and the UK alone.*

Much of this is due to consumers looking for more available free content. More pageviews equates to more advertising displayed to these new website visitors, and more eyeballs means more money to the pirates and the ad companies placing those ads.

There have been more than 6 billion ad impressions on pirate websites since lockdown in Q1 alone.”

The exploitation of Australian artists’ work on illegal sites continues and the ad revenues which these illegal streaming sites continue to make undermine licensed streaming services⁹ which do pay artists and record labels for their work.

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Image: Screenshot of [www.vidtomp3](http://www.vidtomp3.com) homepage with banner advertising

⁸ <https://www.white-bullet.com/brands-are-paying-their-advertising-partners-to-put-their-brand-reputation-at-risk>

⁹ www.digitalcontentguide.com.au; www.pro-music.org

If Australian consumer behaviour mirrors that reported by White Bullet, this will seriously damage the incomes of local and international artists and further weaken an industry which is reeling from the effects of the COVID 19 pandemic.

Prior to the COVID 19 pandemic the music industry was seriously impacted by the unauthorised use of music on digital platforms and the use of music on illegal stream-ripping sites, BitTorrent sites and cyberlockers.

As the impact of COVID 19 pandemic plays out and the music industry shifts to live streamed events it will be essential for creators to ensure they capture the revenues which come from the streams. Under the current law, this is not easy to do or certain to succeed.

For example, if live performances are ripped by unauthorised operators and then placed into cyberlockers (which charge minimum access fees because they display ads at the access point for uploads and downloads), or are posted to a social media account or to a range of digital platforms, then that revenue will be denied to the artists.

Currently there are serious flaws in the authorisation provisions of the Copyright Act which mean artists have little or no ability to protect these live performances from being ripped and it is unlikely that the digital platforms would act promptly or effectively to stop the live performance from being ripped or to remove the copied performance from their social media services or platforms, or have the cyberlocker blocked.

The ripped live performances would remain on the social media platforms, the digital platforms and in the cyberlockers with impunity and the various actors in this scenario make money from the advertising. The artist gets nothing.

This is just one of many scenarios which threaten the revenue potential of live streamed events. It is essential that the digital platforms and the Ad Tech community are required to act as responsible corporate citizens to ensure the creative industries are not further undermined by the unlicensed use of their works by unauthorised third parties or by the illegal copying and storage of their works onto advertising-supported illegal sites.

Advertising Standards and Self-Regulation

Since 2013, MRA has lobbied the online advertising community to adopt uniform standards to stop advertising on illegal music sites and other online sites which offer counterfeit products. While there was some interest in the beginning from the Audited Media Association of Australia (**AMAA**) there was resistance from the online advertising community overall including brand owners, advertising agencies, ad platforms and the digital platforms.

Some progress has been made internationally as set out in the Ernst and Young, September 2017 report *Measuring Digital Advertising Revenue to Infringing Sites* which stated¹⁰:

“Many digital advertising industry participants are taking various quality control steps to fight the corruption, including:

- Contract wording from the buy side (e.g., advertisers and agencies).*
- Use of “do not advertise” lists at multiple levels to block ads being served to these sites.*
- Use of data analytics firms to identify ads being served at these sites and then inform the brands.*
- Legal action by content owners. “*

Despite these actions, the study found: “that in 2016, digital advertising revenue linked to infringed media was an estimated \$111 million, including \$36 million from premium advertisers and \$75 million from non- premium advertisers, such as gaming, dating and virtual private network security services.”

While this amount was a relatively small percentage of the US digital advertising revenue, Ernst and Young did conclude that:

“While the \$111m ad revenue estimate represents less than 1% of the total US digital advertising market, that figure must be evaluated in the context of the overall harm that infringing content inflicts upon content producers”¹¹.

In its most recent *Trust Report*, AMAA¹² stated:

“Digital ad fraud and non- human traffic concern continues, for marketers and agencies alike.

.....

There are conflicting reports of the level of Australian digital ad fraud but it’s recognised as a global problem and predicted by the World Federation of Advertisers to grow to be in excess of USD \$50 billion globally by 2025.”

The level of digital ad fraud was ranked #2 as a concern by the industry responders to the AMAA survey.

AMAA concluded, “the collection of consumer data, the level of ad fraud and the opacity of the digital trading ecosystem remain top issues the industry needs to address”.¹³

¹⁰ Measuring Digital Advertising Revenue to Infringing Sites page 2, available at <https://www.tagtoday.net/piracy/measuringdigitaladrevenueinfringingsites>

¹¹ Measuring Digital Advertising Revenue to Infringing Sites page 4

¹² AMAA Trust Report 2019, available at <https://auditedmedia.org.au>

¹³ AMAA Trust Report 2019 page 26

Internationally attempts have been made to harmonise the self-regulation of the advertising industry's placement of ads online. After consultation with ad agencies, publishers, the content protection sector and consumer organisations, the European Commission released a Memorandum of Understanding on online advertising and intellectual property rights which sought to dissuade the placement of advertisements on websites which illegally provided copyrighted content. While larger ad services firms did sign onto the voluntary agreement, EUIPO's *2019 Status Report on IPR Infringement* found that advertisements were still prevalent on infringing websites, and that 46% of advertisements were from mainstream brands (in contrast to ads for gambling and porn sites)¹⁴. Studies also found little evidence that the Memorandum impacted the behaviour of small or medium firms¹⁵.

Despite many studies and the Ad Tech industry recognition of the problem, self-regulation has achieved little and the damage to content owners continues to grow because there is systemic resistance to real and effective change.

It should be noted that all the statistics which have been quoted in this section are pre COVID 19 figures. White Buller's report shows that consumer behaviour is shifting, and illegal sites are exploiting that shift.

The Ad Tech community must be made to act to prevent the ongoing support of illegal sites which place the creative industries and consumers at risk. There is an urgent need to place the Ad Tech community under obligations to change their practices and to make the changes consistent across the ecosystem.

Should the ACCC have any questions about the MRA submission, please contact Vanessa Hutley at vhutley@musicrights.com.au.

¹⁴ EUIPO 2019 Status Report on IPR Infringement, page 13, available at https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/docs/2019_Status_Report_on_IPR_infringement/2019_Status_Report_on_IPR_infringement_en.pdf

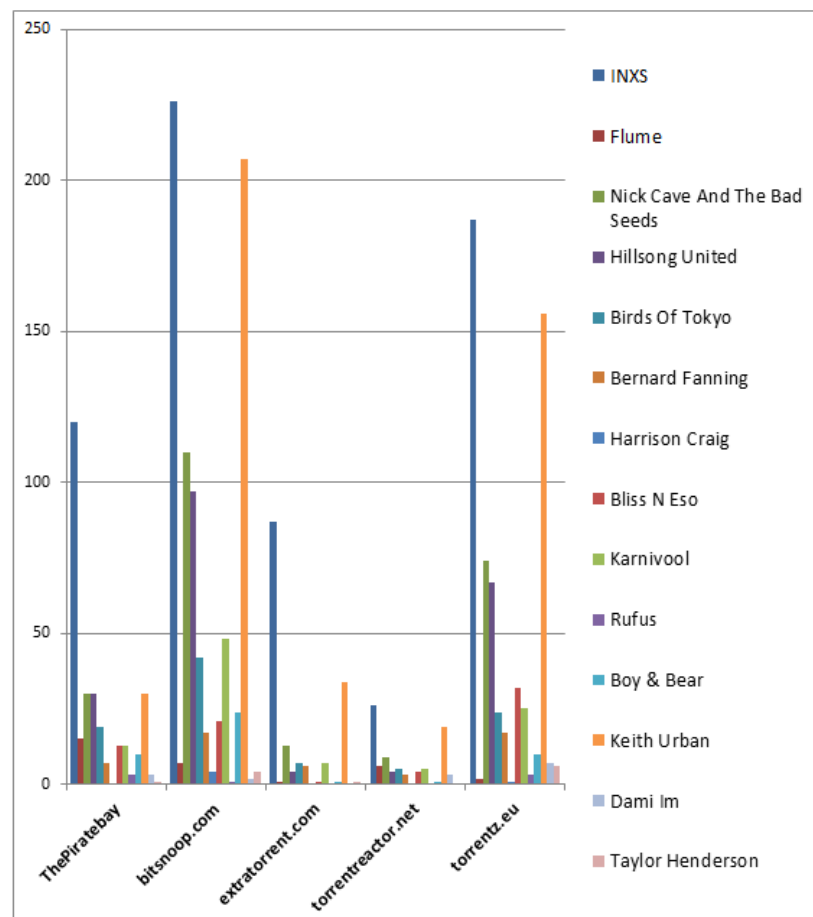
¹⁵ Batikas., Michail, Claussen., Jorg and Peukert, Christian, Follow the Money: Online Piracy and Self-Regulation in the Advertising Industry, 2018, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3140358

APPENDIX A – Music Rights Australia submission to the *Copyright Infringement Discussion Paper* (2014) pages 4-6

a. Ease of access to unlawful material

Despite the range of choices outlined above, according to the IFPI Digital Music Report 2014, approximately 26 per cent of Internet users worldwide regularly access unlicensed services.¹

Licensed music is available where, when and how consumers wish to experience it, yet sites like The Pirate Bay and Kickass Torrents continue to operate and offer music for which they are not licensed. Those sites generate money for their operators from the advertising which appears on them. A recent study titled Good Money Gone Bad: Digital Thieves and the Hijacking of the Online Ad Business,² by the Digital Citizens Alliance, found that the top 30 sites in the US which stream illegal content, or make it available for download, made on average USD4.4 million each year and in total the top 30 illegal sites made USD227 million. In March, MRA reviewed the top five sites identified in that study and, using the ARIA Australia No. One Albums for 2012–2013 as a guide, took a snapshot of those sites on one day and found the following artists' albums on each of the sites (the y axis represents the number of torrents available on the site with at least one seeder).



¹ IFPI, *Digital Music Report 2014*, p 40.

² Digital Citizens Alliance, <http://www.digitalcitizensalliance.org/cac/alliance/content.aspx?page=FollowTheProfit>.

Every one of the No. One albums, and much of the particular artists' back catalogue, appeared on the five illegal sites. All of this music was readily available on a range of licensed online music services, including on free licensed services with advertising.

Despite a huge range of licensed online music services, easy access to illegal streaming and download services, including by use of P2P technologies, continues to impact the local and international music market.

Confidential Annexures

b. Consumer Awareness of legitimate services

Recently, a group of rights holders and their associations worked together to develop and launch the Digital Content Guide.³ The Digital Content Guide is a free service designed to help consumers find online music sites and confirm the sites which they are using are licensed. Search results often serve up illegal and unlicensed sites before they list licensed online music services, as they may not distinguish between the illegal advertising funded services and licensed services. The Digital Content Guide helps consumers check if the services which their search queries have served up are licensed online music services which support the legitimate market.⁴

MRA's stakeholders, ARIA and APRA AMCOS invest considerable resources in a range of initiatives, including seminars, industry and consumer events, and the development of online resources including websites and education programs, to inform their members and the general public about music licensing practices and creators' rights. MRA also operates a website which has practical fact sheets about music copyright and rights protection issues and has links to the ProMusic website and the Digital Content Guide.

Both ARIA and APRA AMCOS also fund the Music Matters campaign which is a music community based program designed to remind people about the value of music in their lives.⁵

A coalition of people and organisations working across the music sector, including the International Federation of Phonographic Industries (**IFPI**), has been producing the ProMusic service since May 2003.⁶ ProMusic is a free service which lists every licensed online music service by category around the world. IFPI also produces a range of publications, including the annual Digital Music Report, which reviews industry trends and issues.⁷ IFPI is also an active member in many of the initiatives discussed in the Other Approaches section of this submission.

³ www.digitalcontentguide.com.au; <http://www.musicrights.com.au/news/digitalcontentguide/>

⁴ Since its launch in August the Digital Content Guide has had 10,000 visits which peaked just after the launch and this has now steadied to between 100-300 hits a day - Source Google Analytics

⁵ See www.whymusicmatters.com.au; www.youtube.com/MusicMattersANZ; <https://www.facebook.com/WhyMusicMattersANZ>.

⁶ Pro Music, <http://www.pro-music.org/about.php>.

⁷ IFPI, *Digital Music Report 2014* <http://www.ifpi.org/downloads/Digital-Music-Report-2014.pdf>.

The current Digital Music Report outlines the vast range of services which international music fans now have:

One of the key hallmarks of digital music today is the high level of consumer awareness and engagement in digital services. Record companies are licensing a diverse range of services, successfully meeting different consumer preferences. This is illustrated in research undertaken by Ipsos Media CT across ten leading music markets for this report. Now in its second year the research shows 61 per cent of internet users aged 16-64 engaged in some legitimate digital music activity in the past six months. Among younger consumers (16-24) this figure is higher at 77 per cent.

The research also finds that consumer satisfaction with digital services remains high. Three quarters of licensed services' customers (76 per cent) described them as "excellent", "very good" or "fairly good" while even the majority of those using unlicensed services (56 per cent) recognise "there are good services available for legally accessing digital music".⁸

It goes without saying that record labels, music publishers, musicians' management and distributors invest heavily in marketing and promotional activities to ensure that music fans know how to find the music they produce, license and sell.

c. The need for effective change

As the music industry's experience makes clear, pervasive online copyright infringement is not caused by a lack of availability and affordability of lawful content or a lack of consumer awareness of legitimate services. Other factors, including the ease with which consumers can access unlawful material, are more significant contributors to this problem.

Further, effective rights protection is an essential component of a legal infrastructure that encourages businesses to invest in new content and innovative business models to meet consumers' legitimate expectations. This is equally true in the physical as well as the online environment.

The legal environment in which that investment takes place should also support the industry by having efficient and effective measures so that creators, and those who invest in them, have the tools to ensure their work is respected and protected online from those who seek to exploit it without rewarding them.

⁸ IFPI, *Digital Music Report 2014* <http://www.ifpi.org/downloads/Digital-Music-Report-2014.pdf>, p 11.