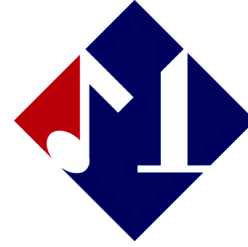


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Australia's representative to the International Music Council



Music Council of Australia

February 28, 2009

Ms Joan Warner, CEO
Commercial Radio Australia
By email

Dear Ms Warner

Re: Review of the Commercial Radio Codes of Practice

The Music Council of Australia thanks Commercial Radio Australia for the opportunity to make this submission to its Review of the Commercial Radio Codes of Practice, in response to the Request for Public Comment.

1. THE MUSIC COUNCIL OF AUSTRALIA

1.1 The Music Council is comprised of a Council of 50 persons and a number of networks with a membership of approximately 6,000. The Council includes nominees of 15 national music organisations, and distinguished individuals elected to 35 positions, each one assigned to a different aspect of music or musical activity. Through this structure, the Council is broadly representative of the music sector in Australia. The Music Council of Australia is the Australian representative to the International Music Council, based in UNESCO, Paris.

1.2 The purpose of the Music Council of Australia (MCA) is to bring together all sections of the music community in order to advance a diverse and vibrant musical life throughout Australia. To achieve this, MCA, independently and in partnership, gathers and provides information, conducts research, undertakes advocacy, ensures representation in relevant forums, and initiates and realises projects that advance musical life.

1.3 The Music Council supports the objective set forth in the Broadcasting Services Act 1992, of promoting the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity, by prescribing minimum content levels of Australian music. It has been active in support of such objectives in other contexts nationally and internationally,

including the International Music Council and the International Network for Cultural Diversity.

1.4 The interest of the Music Council in making this submission is to maximise the benefit to the development of a diverse and high quality Australian music arising from the activities of the broadcasting and recording sectors, with particular attention to the objects of the *Broadcasting Services Act 1992*.

1.5 It is the view of the Music Council that the changes to the Australian Music Code proposed by Commercial Radio Australia are antithetical to that objective.

2. REVISITING THE PURPOSE OF THE AUSTRALIAN MUSIC CODE

2.1 The Australian Music Code now has a long history and given the radical changes now proposed by the CRA, it may be timely to recall its purpose.

2.2 For a brief account of the history, we cite a study commissioned by the Music Council: "The first Australian local content standard was introduced as part of the 1942 Broadcasting Act. This stipulated that not less than of 2.5% of music time be devoted to the work of Australian composers. [The inference is that even this token level had not been achieved in the absence of regulation.] In 1956 it was raised to 5%. In 1973 the Australian Broadcasting Control Board introduced an auxiliary quota for Australian-performed music; this was initially set at 10% and was increased to 20% in 1976. In 1987 the Tribunal conducted a review of the standard, as a result of which amendments were introduced changing the compliance period from 24 hours a day to between 6am and midnight. The 20% level, along with the 1987 amendments, remained the standard until 1992 when the new Broadcasting Services Act made local content quotas part of a self regulatory code for commercial and community broadcasters."¹

2.3 The statement of the Commonwealth's purpose is the opening statement in the Code that is the subject of this review.

"The purpose of this Code is to implement the object, set forth in the *Broadcasting Services Act 1992*, of promoting the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity..."

2.4 This purpose is consistent with statements by the Commonwealth in various other instruments. Under its Charter, one of the objectives of the subsidies given through the Australia Council is to support the development of Australian identity.² Such an objective is cited also in the charter of the ABC.³ This commitment also strongly influenced government policy in negotiating international trade agreements.⁴ These objectives have continued over many

¹ Paul Mason: *Assessing the impact of Australian music requirements for radio*, at Music Council of Australia, 2003, <http://www.mca.org.au/web/content/view/104/6>

² "(T)o foster the expression of a national identity by means of the [arts](#)". From the Australia Council Act

³ "(B)roadcasting programs that contribute to a sense of national identity and inform and entertain, and reflect the cultural diversity of, the Australian community." From the ABC Charter.

⁴ "Australia has long recognized the essential role of creative artists and cultural organizations in reflecting specific values and characteristics of our society [and will support them in multilateral trade negotiations]". Australian Government Intervention on Negotiating Proposal on Audiovisual Services, CTS Special Session, Geneva, July 2001)

years under both parties of government and can be assumed to have bipartisan support. They indicate, *inter alia*, a belief that cultural activity can be an agent in the formation of national identity. For some, it *is* national identity.

2.5 In an online world, does free-to-air radio still have an important role in offering access to Australian music and so contributing to the achievement of these Commonwealth objectives? Marrakesh Records and Human Capital is publishing a survey of over 1,000 United States 15-24 year olds, exploring their listening habits and attitudes to music discovery. Generally, the US market is a little ahead of Australia in switching from the physical to the online market. A report summary states that "Music is hugely important to the age group. 60% of 16-24 year olds would rather go without sex than music for a week... MP3 players are the most widely used device for listening to music (81% of the age group have used one in the past week), followed by the computer (80%), radio (71%), TV (68%), CD player (59%) and mobile phone (54%). *Radio is the most important medium for finding out about new bands/artists (67%).*" [Our emphasis] ⁵

2.6 Various studies have shown an interdependence between airplay of Australian performances, production of recordings of Australian works and performances by the Australian recording industry, and sales of those recordings. They are cited in the Music Council study by Paul Mason, already referred to. Mason demonstrates that there was not a correlation between increased production (that is, more titles) and sales, but that there was a correlation between increased airplay and sales. This has an economic implication, obviously. But it also is perhaps a more substantial indication that the audience is listening to Australian music because it has committed funds to purchase the recordings. Most importantly in the present context, Mason gives data showing a probable correlation between the Australian music content quotas and record sales.

2.7 Of particular interest, given the Marrakesh Records and Human Capital finding about the importance of radio in offering access to new bands, is the introduction of the "New Music" regulation in the year 2000. Writes Paul Mason: "A proposal was raised at the 1987 Australian Broadcasting Tribunal investigation, that the local content quotas should be amended to incorporate incentives for playing new Australian material. While unsuccessful at that time, the Code was amended in 2000 to incorporate such a requirement. Analysis of the figures for the production and consumption of Australian music throughout the 1990s suggest that this amendment to the code had the effect of stimulating both the production and consumption of local products... (B)etween 1994 and 1999 the production of [recorded] Australian music averaged 10.73% of the total of recorded music released in Australia including international product... Of particular interest is the change in these figures between 1999 to 2000, leaping from 9.85% to 15.5%, the greatest 12-month change over the whole period... (T)he increase coincides with the introduction

⁵ Reported in *mi2n* email newsletter, February 17, 2009. If this is the case, the Australian content standards do not serve the motivation well, since the requirement to broadcast new music (not very new, but released in the previous 12 months) can be satisfied by airplay of as little as one minute per hour.

of amendments to the code of practice for commercial radio to include quotas for new music...

2.8 "Supporting the assumption that airplay is a driver of sales, figures for the sale of locally produced recorded music in Australia show a parallel increase in this period. The International Federation of the Phonographic Industry (IFPI) reports show that the sale of "national products" - local artists' recordings compared to those of non-Australian artists, and expressed as a percentage of the total CD sales in Australia over the period - rose from 12% in 1995 to 28% in 2000. This increase in market share had its highest jump in the 1999 - 2000 period, mirroring the similar trend in local production, that may be seen to follow the amendment to the codes to encourage the airplay of 'new music'."

2.9 While the Australian content quotas have evolved since their introduction in 1942, further change has been made more difficult by the ratification of the Australia United States Free Trade Agreement, which has set a cap of 25% on the local music quota on radio. This, of course, is the status quo for the most popular formats. Adjustments can be made within this limit -- e.g there could be movements up or down for any of the formats, or for the new music requirement.

2.10 The Australian local content requirement is modest compared with those in a number of other countries with similar regulations. For instance, the Canadian quotas go up to 35% and the French quota up to 40%.

2.11 Even more interesting is the local content situation in other countries and regions. So far as we know, data about airplay are not collected widely, but data about record sales are. It seems to us fair to assume some correlation between sales, for which evidence is available, and airplay, by implication from sales. Why would broadcasters not broadcast music for which popularity is demonstrated by sales, or record companies not produce and sell recordings of music favoured by broadcasters?

2.12 Australian economist David Throsby prepared the chart shown below for UNESCO, based upon figures from IFPI. It dates from 2000. Alas, there has not been a UNESCO report since then and in that time, much else has changed. However, it serves the broad purpose here of showing that compared with most other countries, Australia is inundated with foreign product. Ironically, the USA has the highest local content of all, while being the most unforgiving of other countries' regulatory support to local music in their domestic markets.

Domestic and imported record sales: selected countries: 2000 ⁶

Country	Proportion of record sales (%)		
	Domestic	International	<i>Classical</i>
United States	92	5	3
Canada	12	82	6
Brazil	75	24	1
Mexico	46	52	2
France	51	42	7
Germany	40	52	8
UK	51	41	8
China	47	53	-
Japan	78	22	-
Indonesia	53	47	-
Australia	28	68	4
South Africa	23	74	3
World	68	28	4

2.13 At the time of the survey, the percentages of domestic sales had tended to grow, not fall. Some conjecture that this represented an assertion of local identity in response to the ever more intrusive globalisation. The largest growth was in Asia. (See next chart.)

Trends in share of domestic repertoire in record sales: by region^(a): 1991 to 2000 (per cent) ⁷

	1991	1996	2000
North America	83.6	85.0	89.2
Latin America	52.3	54.2	53.7
Europe	n.a.	n.a.	40.4
Mid-East	72.9	57.8	65.1
Asia	67.6	70.5	75.2
Australasia	23.4	11.6	24.8

2.14 While the influence of free-to-air radio may decline with competition from various online alternatives, for the present it remains a very important point of access to music, including Australian music. It is difficult to believe that in the absence of local content regulations, Australian commercial radio would continue to provide adequate access to Australian music.

⁶ **Source:** Calculated from International Federation of Phonographic Industries (IFPI) data. Prepared by David Throsby for the *UNESCO World Culture Report 2000*.

⁷ **Note:** ^(a) Limited numbers of countries included in some regions; see further in *The Recording Industry in Numbers* (London: International Federation of Phonographic Industries Secretariat). Calculated by David Throsby from IFPI data.

3. CRA'S ACKNOWLEDGED PROPOSALS FOR CHANGES TO CODE 4

3.1 The CRA's proposals can be divided into those to which it has drawn attention and others that result from unacknowledged deletions from the code. The former are as follows:

OVERVIEW OF THE PROPOSED MAIN CHANGES

5. Australian Music Code (Code 4)

The proposed changes to Code 4 remove the references to the role and function of the Australian Music Performance Committee (AMPCOM).

The current requirement to liaise with and report to AMPCOM provides an additional and unnecessary administrative layer. Currently, the commercial radio industry reports to AMPCOM, who in turn reports to the ACMA.

The proposed process whereby the industry reports directly to the ACMA on its compliance with the Australian and New Australian Music Codes will be more efficient, quicker and less administratively burdensome.

For clarity, a new Category F is proposed, in addition to the current categories. This covers formats other than music, particularly open line and sports formats.

A new Clause 4.6 has been inserted to cause Code 4 automatically to expire on the date of any amendment to or repeal of section 152(8) of the Copyright Act 1968. This reflects the balance that exists between this part of the Copyright Act and the Australian Music Quotas in maintaining an equality of negotiating positions between the music industry and the commercial radio industry.

COMMENTS ON THOSE PROPOSED CHANGES

4. The proposal to terminate AMPCOM

4.1 CRA proposes that AMPCOM should be disbanded. It gives as the reason: "The current requirement to liaise with and report to AMPCOM provides an additional and unnecessary administrative layer." It goes on: "Currently, the commercial radio industry reports to AMPCOM, who in turn reports to the ACMA. The proposed process whereby the industry reports directly to the ACMA on its compliance with the Australian and New Australian Music Codes will be more efficient, quicker and less administratively burdensome."

4.2 It seems implicit in this statement that AMPCOM's only function is to take delivery of a report from CRA and then pass it on to ACMA. However, inspection of the current but here undisclosed description of the structure and function of AMPCOM contained in Content Standard 4 shows that it has a much broader and more important role:

Australian Music Performance Committee (AMPCOM)

The Australian Music Performance Committee (AMPCOM) is a voluntary association comprising an independent chairman and representatives of Commercial Radio Australia Limited, the Australian Record Industry Association (ARIA), the Australian Music Publishers Association, the Musicians' Union and the Media Entertainment and Arts Alliance.

The objects of AMPCOM are:

1. To maximise the exposure of Australian music on commercial radio, having due regard to the availability of appropriate broadcast-worthy material and the needs and preferences of the Australian listening public.
2. To monitor the commercial radio industry's observance of Code of Practice 4 of the Commercial Radio Codes of Practice (Australian Music) registered by the Australian Broadcasting Authority ("the Code").
3. To monitor the music industry's production of Australian music performances and composition.
4. To monitor the effects of the Code on performers, composers, producers of sound recordings, musicians and broadcasters.
5. To review the operation of the Code and to recommend changes to it as considered necessary.
6. To consider such other matters, relevant to the above objects, as the Committee thinks fit.

In pursuance of the above objects:

(a) The Committee must meet at least quarterly.

(b) Commercial Radio Australia must use its best endeavours to ensure that stations treat the Code requirements as a "safety net" only, in anticipation that the majority of licensees will exceed the requirements, subject to the availability of suitable material.

(c) Commercial Radio Australia undertakes to provide regular halfyearly reports to AMPCOM (including but not limited to stations' APRA log returns) on the performance by Commercial Radio Australia members in relation to the Code, and to produce and publish an annual report (in the event no such report is published by the Australian Broadcasting Authority) which will show individual licensees' performances.

(d) ARIA undertakes to provide regular reports on the production and availability of sound recordings featuring Australian and non-Australian music in the categories identified in the Code.

(e) The parties agree that, having regard to the current nature of the Australian music industry and the extent to which Australian artists perform Australian compositions, the interests of Australian composers are protected by the Code. This situation will be monitored.

(f) AMPCOM will be responsible for deciding into which category each station's format falls if a dispute about that matter arises.

4.3 Furthermore, sections 4.3c, 4.4 and 4.6 of the Code require that certain issues must be referred to AMPCOM before decisions about them can be made.

4.4 So it would seem that the proposal to disband the role of AMPCOM is put forward not simply in order to remove some redundancy of process but rather, to weaken the involvement in and monitoring of Australian music content standards by the representatives of the music sector. In fact, in the absence of AMPCOM, there will be no regular means of communication between the music and radio broadcasting industries except possibly by appeal to ACMA.

4.5 In addition, there is no alternative proposal for monitoring and reporting on record production by the recording industry. To our knowledge, this is not an objective promoted by PPCA or ARIA. It perhaps also indicates a lack of concern by CRA, which is in itself interesting if the quota requirements were set at least in part by an estimation of the availability of suitable recordings in the various formats.

4.6 The most recent (2007) AMPCOM report, incidentally, shows overall good compliance with the Code by radio broadcasters. On the other hand, very few stations do more than safely meet their quota. It is interesting that stations in the community and public sectors (with self-imposed targets) manage to do so without apparent detriment to their viability. It might be noted that to the extent that community stations depend on listener subscriptions, they are even more commercially vulnerable than the commercial stations since there is a direct connection between listener satisfaction and payment of the subscription.

4.7 The Music Council of Australia opposes the proposal to disband AMPCOM.

5. The new Category F

5.1 CRA proposes a new category F: "All other formats of service (including, without limitation, programs which are predominately (sic) comprised of open-line and sport content." This would have a zero Australian content requirement.

5.2 Reference to the ACMA website shows that currently, Category C includes News Talk / Sports Talk, and these formats carry a 15% Australian content requirement.

5.3 Such broadcasters give very little time to music and a broadcaster playing say 4 tracks of music per hour would be required to include an Australian track approximately once every two hours. On the one hand, the survival of Australian music does not hang on this requirement. On the other hand, it is hardly burdensome on the broadcaster. The Music Council, on balance, sees no reason that the 15% requirement should not be maintained for these stations.

5.4 It is noted that the CRA has added the Hip Hop format to the Category C (15%) list. From our perspective this is a positive move, although as we understand it, it has been taken unilaterally without discussion with AMPCOM. Whether Category C is the appropriate level is open to conjecture.

5.5 The Music Council suggests that Category E might be redefined to include all musical formats not otherwise included in Categories A to D. There is continuing rapid change in the musical world with creation of new formats that did not exist at the time the current schedule was devised. Further, with the introduction of digital radio and the creation of additional channels, some channels may be committed to formats not now found on free to air radio. The redefinition of Category E would be a simple way of accommodating the change without altering the Code, pending consideration of which category they might most appropriately fit.

5.6 It is the Music Council's understanding that an important reason that formats have been placed in categories lower than Category A is perceptions about the inadequacy of supply of Australian recordings of suitable quality.

Since we are now in the nineteenth year of the operation of the tiered code and in the tenth year of the operation of the New Music code, the Music Council recommends a review of the placement of formats within the categories with a view to moving each one as close to the 25% level as practicable.

5.7 Given the above considerations, a category F could contain only stations that do not broadcast music. This may have some utility in clearly identifying such stations and in a sense, bringing all stations under the Code. The Music Council simply notes the possibility.

5.7 The Music Council of Australia proposes:

- ***that the content of Category E should be altered from "Nostalgia, Jazz, Soft Jazz" to "All musical formats not included in Categories A to D."***
- ***support to the inclusion of a Hip Hop format into Category C***
- ***a review of the placement of formats within the categories with a view to moving each one as close to the 25% level as practicable.***

It notes the possibility of the creation of a category F for broadcasters who do not broadcast music, and therefore have a zero broadcast requirement.

6. Disbandment of Code 4

6.1 The CRA states that "A new Clause 4.6 has been inserted to cause Code 4 automatically to expire on the date of any amendment to or repeal of section 152(8) of the Copyright Act 1968. This reflects the balance that exists between this part of the Copyright Act and the Australian Music Quotas in maintaining an equality of negotiating positions between the music industry and the commercial radio industry."

6.2 What is being suggested here, with characteristic opacity, is that there should be a trade-off: if the 1% cap on broadcast royalties to record companies and performers is removed, then the local content requirements should be entirely disbanded.

6.3 In support of its proposal, the CRA claims that there is a (presumably purposeful) "*balance that exists between this part of the Copyright Act and the Australian Music Quotas in maintaining an equality of negotiating positions between the music industry and the commercial radio industry.*" It makes no argument in support of this less than self-evident rationale.

6.4 The Music Council draws attention to the fact that the purpose of the Australian music quota is, as stated by the Commonwealth, to promote "the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity..." It is a *cultural* purpose. While issues of feasibility must be considered, such as the supply by the recording industry of a sufficient supply of recordings of adequate quality and appropriate genres, and the financial viability of the stake-holders including the broadcasting industry, they are incidental to the cultural purpose.

6.5 The purpose of a royalty, however, is primarily economic, and only incidentally cultural. There is a prima facie disconnect between the setting of a royalty rate and the local content quotas. PPCA informs the MCA that there

was never such a connection. A decision about one has no relevance to the conditions of the other.

8.9 The history of the local content quotas and the cap seems to make any connection highly unlikely. At the time the cap was imposed, a local content quota had been in existence for a quarter century, but it applied only to Australian compositions and was at the very low level of 5%. A more substantial quota was not introduced until several years after the broadcast royalty for recordings, and with it, the cap, began. While this is speculation, it is difficult to envisage that the cap was conceded in 1968 by the record companies as compensation for a minimal local content quota already in place for a quarter century -- nor that the cap was offered by the record companies in 1972 in return for revised local content standards, four years after it was actually imposed. But even were the latter the case, such a concession has long ago been overtaken by other circumstances.

8.10 Concerning the CRA's present proposition about "maintaining an equality of negotiating positions", it is difficult to comment since it gives no indication of where it believes the inequality lies. Presumably, CRA is concerned that PPCA would have the dominant position.

8.12 The first thing to note is that the quota levels are in the charge of the CRA and the royalty rate is subject to negotiation by the parties and mediation by the Australian Copyright Tribunal. Any inequality would seem to favour the CRA.

8.13 Going beyond the normal negotiating structures, we could look at the ultimate sanctions possible for each party in the case of a dispute. For instance, PPCA could not deliver an ultimatum that until certain conditions are met, it is withholding all music from broadcast: firstly because of the statutory right to broadcast copyright recordings, secondly because US recorded performances do not have a copyright in broadcast, and thirdly (but not very consequentially) because copyright in some recordings has lapsed. On the other hand, the CRA, in theory, could deliver a decision of its members that until certain conditions are met, they will cease all broadcasting of music or more likely and as happened around 1979, all broadcasting of music other than content, such as US content, which does not carry a royalty. So the ultimate sanction is available to one party and not to the other. We do not suggest that CRA would resort to such action, but in extremis and theoretically, it is available.

8.30 **In summary**, the MCA can find no rationale for a link between the retention of the 1% cap and the disbandment of Australian content quotas nor for an inequality of negotiating positions between the main parties.

8.31 Before the introduction of the quotas, there was virtually no Australian music on Australian radio. This is why they were introduced. Since then, almost every advance in the amount of Australian music broadcast on commercial radio has been a consequence of a change in regulations, not spontaneous action by broadcasters. As shown by the AMPCOM report (<http://www.aria.com.au/pages/ampcom.htm>), most broadcasters even now do little more than meet the quota.

8.32 Paul Mason notes that "By the late 1940s, commercial radio representatives were arguing that the majority of stations were exceeding the

minimum [local content] requirement, claiming levels of up to 5%. It is interesting to observe that on this basis, it was suggested that the Code was no longer necessary.”

8.33 The more energetic and persistent CRA is in attempting to weaken or abandon the Australian content requirements, the less confidence can be vested in the proposition that Australian content levels would be maintained in the absence of the quotas: not least because US repertoire can be broadcast without payment of the record company/performer royalty.

8.34 Presumably, along with the disbandment of quotas would go any procedures for monitoring the levels of Australian music broadcast and the benchmarks against which adequacy is assessed, including the varied level of expectations with the various musical formats.

8.35 *The Music Council of Australia rejects any proposal to disband the Broadcast Standard Code 4 and finds neither merit in the particular proposal advanced here by the CRA nor substance in its argument for doing so.*

7. THE CRA’S UNACKNOWLEDGED CHANGES TO CODE 4

7.1 The CRA has made very significant changes to Code 4 by simply deleting sections of the current Code. These are the statement of Purpose, although here a new statement is substituted, and the Definitions, which are simply deleted.

7.2 The name of ACMA is substituted for AMPCOM in three clauses. This follows from CRA’s acknowledged proposal to disband AMPCOM.

7.3 Since the deletions referred to here were neither acknowledged nor shown through display of the current Code and the changes to it, only the vigilant would be aware of them.

8. Purpose

8.1 The statement of purpose in the current version of the code is as follows:

The purpose of this Code is to implement the object, set forth in the *Broadcasting Services Act 1992*, of promoting the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity, by prescribing minimum content levels of Australian music.

The commercial radio industry is committed to supporting the music of Australian artists and composers. The quotas adopted by the industry depend upon the availability of Australian music to suit station formats. The commercial radio industry will continue to encourage the increased production by the record industry of Australian music relevant to stations formats and the preferences of the Australian listening public.

8.2 CRA proposes to delete that statement and substitute the following:

The purpose of this Code is to set out the Australian music quotas required of licensees in relation to their radio broadcast activities.

8.3 The deletion of the sentence “The commercial radio industry is committed to supporting the music of Australian artists and composers” seems very significant, when set alongside the proposal to disband the industry monitoring

body and to terminate the Australian content code if there is a quite unrelated change in the Copyright Act.

8.4 Also deleted is the Commonwealth's object in para 1 for the Australian content code. Does this, along with the deletion of the sentence stating the industry's commitment and its new statement of purpose, indicate that the commercial radio industry does not subscribe to the object and rationale set forth by the Commonwealth but rather, seeks simply to set forth the requirements of broadcasters in meeting a Code from which it would prefer to escape?

8.5 The Music Council of Australia opposes the alterations to the statement of Purpose.

9. Definitions

9.1 Section 4.8 in this Code of Practice 4 gives definitions of terms used in the Code. At present, this section reads as follows:

ABA means the Australian Broadcasting Authority.

AMPCOM means the Australian Music Performance Committee.

AMPCOM Monitoring Period means the six month periods from January to June and July to December each year.

Australian Performance Period means the total period of 126 hours occurring in each week between the hours of 6.00 am and 12.00 midnight daily.

Australian means a person who is a citizen of, or is ordinarily resident in, Australia.

Music or **musical item** does not include music in advertisements, program promotions, station promotions or theme or bridging music.

New Australian Performance means a sound recording of a previously unpublished performance of a musical item performed by an Australian which has been on sale to the Australian public for a period not exceeding 12 months from the date which is recorded in "*The Aria Report*" as the date of its initial release in Australia.

New Release means a previously unpublished sound recording that has been on sale to the Australian public for a period not exceeding 12 months from the date which is recorded in "*The Aria Report*" as the date of its initial release in Australia.

9.2 What could be the purpose of deleting the section setting forth the definitions of the terms used? "**ABA**" is a simple matter of identification. "**AMPCOM**" would not need definition if CRA's proposal to disband it is accepted, nor, therefore, the "**AMPCOM Monitoring Period**", although this might be renamed as the "**ACMA Monitoring Period**" were monitoring to continue, a matter on which CRA's new Code is less than clear. "**Australian**" requires definition since in the Code, it includes other than citizens.

9.3 The definition of "**music**" or "**musical item**" serves to preclude the inclusion of incidental music such as advertising jingles in satisfaction of the content quota. The removal of the definition allows the inclusion of this music which serves a non-musical purpose and is often of negligible musical value.

9.4 The definition of the **Australian Performance Period** requires that the Australian performances are broadcast during the time of day when most people are awake and might listen to the radio. The definition was designed to prevent the practice of concentrating the Australian content into the early morning hours. The effect of deleting the definition is the disbandment of the requirement.

9.5 The definitions of **New Australian Performance** and **New Release** are necessary to the operation of the New Australian Performance requirement. Without the definition, the meaning of the word "New" in this context is entirely subjective, open to dispute and confusion, and the requirement is almost impossible to comply with or monitor. Could that be the purpose of the deletions?

9.6 The Music Council of Australia opposes deletion of or alteration to the section on Definitions.

10. DISSATISFACTION WITH THIS PROCESS OF REVIEW

10.1 While the Music Council of Australia values the opportunity to make a submission to this review, it finds the process to be unsatisfactory.

10.2 The Act places the process in the charge of Commercial Radio Australia (CRA), a party that has a clear conflict of interest. The conflict indeed is demonstrated by its actions with regard to the current review; we will describe those in the next section. Submissions to the review are to be provided to CRA which can take them into account in modifying its final presentation to the government via ACMA. However, while the public has the opportunity to inspect CRA's initial draft, CRA does not state that it will offer its final draft for public inspection or comment before presentation to government, nor is it required to do so. That draft may indeed incorporate views delivered in submissions from the public, but it as easily can seek to counter them through arguments that are not available to the public for challenge.

10.3 The Music Council made a submission to the previous CRA review. It received no offer of discussion nor any indication that its views had been taken into account. It did not receive the final CRA presentation to government. Nor did it receive any acknowledgement from the ABA.

10.4 The Music Council of Australia believes that regular review should continue, but that it should be conducted by ACMA with the purpose of achieving equitable, expert and transparent consideration of the views of all stakeholders.

11. DISSATISFACTION WITH THE CONDUCT OF THE REVIEW BY CRA

11.1 The Music Council of Australia finds the conduct of the review by CRA to be unsatisfactory because of various actions that seem intended to promote self-interested outcomes.

11.2 The only form of invitation to the public to make submissions to this review was through a small advertisement in the press. The Music Council of Australia, as the national music council and the source of a submission to the previous review, was not informed of the current review. Neither, we are informed, were the members of the industry monitoring body, AMPCOM. While CRA no doubt met its formal obligations by placing the newspaper advertisement (discovered by accident by one interested party), to fail to

inform its industry colleagues who are the members of the monitoring body that its submission proposes to disband, seems to go beyond absent-mindedness.

11.3 The invitation is presumably in the language prescribed by the Act, and so the public can make any comment that takes into account the purpose of the Code and its conduct since the last review in 2004. However, so far as the Australian content requirements are concerned, the presentation is of those changes proposed by CRA.

11.4 These are shown in a section titled

OVERVIEW OF THE PROPOSED MAIN CHANGES

5. Australian Music Code (Code 4)

Following this is a brief description of three changes: the disbandment of the industry monitoring body, a change to the content quotas and the disbandment of the quotas in certain circumstances.

11.5 CRA does not provide the current text of the code, it does not offer information showing changes to or deletion of text. All that is offered is the text of the totality of the new proposed code. Parenthetically, the present Code is not to be found on the CRA website, of if there, is available only to its members, not to the public. Fortunately, MCA was able to discover the present code on the ACMA website.

11.6 In Appendix 1 of this submission, MCA shows the current code and the modifications to it proposed by CRA.

11.7 In making this comparison, it is discovered that while CRA has identified some of the "proposed main changes", others are effected simply by deletion of text and the public's attention is not drawn to these deletions. The statement of Purpose is deleted and a new Purpose substituted. As noted above, this deletion removes an important description of the Commonwealth's purpose with regard to local content standards in the relevant aspect of the Broadcasting Act and, significantly, CRA's statement of commitment to Australian music.

11.8 CRA also deletes the entire section given to definition of terms. Also as already noted, the effect is to remove requirements concerning broadcast hours and to make it virtually impossible to maintain the "New Australian Performance" requirement.

11.9 Add to this the opacity of language and argumentation for those "proposed main changes" acknowledged by CRA. The presentation is a good deal less than forthright.

12. IN CONCLUSION

12.1 Last September, the Music Council of Australia held a summit for one hundred leaders of the music sector. That summit confirmed its support for local content quotas for radio broadcasters and indeed believed that they should be strengthened. The Music Council believes that the application of Australian Content Quotas to commercial radio broadcasters remains essential to the cultural and economic health of the Australian music sector.

12.2 The Music Council rejects all current proposals by the CRA for change excepting the addition of Hip Hop to Category C of the quota schedule. It proposes that a regular process of review should be instituted and managed by ACMA, and that there should be a review of the categorization of formats in the quota schedule.

Yours sincerely

Dr Richard Letts AM
Executive Director
Music Council of Australia

For the Board

APPENDIX 1

CODE OF PRACTICE 4 AUSTRALIAN MUSIC

[Words struck through have been deleted from Code 4 by the CRA. Words underlined have been added by CRA.]

Purpose

~~4.1 The purpose of this Code is to implement the object, set forth in the *Broadcasting Services Act 1992*, of promoting the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity, by prescribing minimum content levels of Australian music.~~

~~The commercial radio industry is committed to supporting the music of Australian artists and composers. The quotas adopted by the industry depend upon the availability of Australian music to suit station formats. The commercial radio industry will continue to encourage the increased production by the record industry of Australian music relevant to stations formats and the preferences of the Australian listening public.~~

The purpose of this Code is to set out the Australian music quotas required of licensees in relation to their radio broadcast activities.

Broadcast of Australian Music

4.2 Subject to this Code, a licensee must ensure that during the Australian Performance Period, either:

- (a) the applicable proportion of the total time occupied by the broadcasting of music by the radio service consists of music performed by Australians; or
- (b) in the case of a licensee which broadcasts musical items of a reasonably similar duration, the applicable proportion of the total number of musical items broadcast by the radio service consists of musical items performed by Australians.

4.3 (a) For the purposes of clause 4.2, the applicable proportion of total time or total number of musical items (as the case may be) in respect of a radio service must be determined based upon the predominant format of the service in accordance with the following scale:

Category Proportion	Format of Service	Applicable
A	<input type="checkbox"/> Mainstream Rock <input type="checkbox"/> Album Oriented Rock <input type="checkbox"/> Contemporary Hits <input type="checkbox"/> Top 40 <input type="checkbox"/> Alternative	Not less than 25%
B	<input type="checkbox"/> Hot/Mainstream Adult Contemporary <input type="checkbox"/> Country <input type="checkbox"/> Classic Rock	Not less than 20%
C	<input type="checkbox"/> Soft Adult Contemporary <input type="checkbox"/> Hits & Memories <input type="checkbox"/> Gold - encompassing Classic Hits <input type="checkbox"/> News Talk/Sports Talk <input type="checkbox"/> Hip Hop	Not less than 15%
D	<input type="checkbox"/> Oldies <input type="checkbox"/> Easy Listening <input type="checkbox"/> Easy Gold <input type="checkbox"/> Country Gold	Not less than 10%
E	<input type="checkbox"/> Nostalgia <input type="checkbox"/> Jazz <input type="checkbox"/> NAC (smooth jazz)	Not less than 5%
F	<input type="checkbox"/> <u>All other formats of service (including, without limitation, Programs which are predominately (sic) comprised of open-line and sport content</u>	<u>0%</u>

NOTE: Underline indicates new text.

Note: All formats subject to review as set out in Attachment "A" - page 13.

(b) In the case of a radio service whose format is within categories A, B or C of clause 4.3(a), the broadcast of New Australian Performances as a proportion of total Australian Performances prescribed by this clause shall be in accordance with the following table, when calculated across all Australian Performance Periods occurring in any financial year, subject to clause 4.3(d).

Category	New Australian Performances As a Proportion of Total Australian Performances
A	Not less than 25%
B	Not less than 20%
C	Not less than 15%

(c) The commitment on the part of licensees to play a minimum level of New Australian Performances in accordance with sub-clause 4.3(b) is subject to the release of such Performances by the Australian record industry in numbers that are substantially the same as those released in the financial year ending 30 June, 1998. If, in any financial year during the time that this Code is in force, there is a substantial decrease in the release of New Australian Performances, Commercial Radio Australia may revise the proportions of New Australian Performances as a proportion of total Australian Performances, contained at clause 4.3(b), ~~after discussion with AMPCOM~~, provided that any change that may eventuate will not affect the licensees obligations under clause 4.2 and 4.3(a).

(d) Clause 4.3(b) does not apply to a licensee that does not include New Releases in its weekly play lists, having regard to its format.

4.4 For the purposes of clause 4.3, the category into which a radio service falls must be nominated by the licensee and if any dispute arises as to the appropriateness of any such nomination the category will be determined by ~~AMPCOM~~, ACMA, on the basis of the predominant format of the service.

4.5 For the purposes of clause 4.2, where more than one performer is involved in a musical performance, the musical items concerned shall be regarded as being performed by an Australian if the performance is predominantly by one or more Australians.

Changes to Formats

4.6 A licensee must notify ~~AMPCOM~~ ACMA by written notice (through Commercial Radio Australia) of any material change to the format of a radio service operated by it, having regard to the tables in Clause 4.3, no later than 7

days after the change is made and must provide ~~AMPCOM~~ ACMA with all documentation reasonably required by it in relation to the change to the format.

Expiry of Code 4

4.6 This Code of Practice 4 will automatically expire on the date of any amendment to or repeal of section 152(8) of *the Copyright Act 1968*.

MCA COMMENT: The clause number is from the new Code proposed by CRA

~~Role and Objectives of AMPCOM~~

~~4.7 The ABA notes the role and objectives of AMPCOM set out in Attachment "A" hereto.~~

Definitions

~~4.8 In this Code of Practice 4:~~

~~**ABA** means the Australian Broadcasting Authority.~~

~~**AMPCOM** means the Australian Music Performance Committee.~~

~~**AMPCOM Monitoring Period** means the six month periods from January to June and July to December each year.~~

~~**Australian Performance Period** means the total period of 126 hours occurring in each week between the hours of 6.00 am and 12.00 midnight daily.~~

~~**Australian** means a person who is a citizen of, or is ordinarily resident in, Australia.~~

~~**Music** or **musical item** does not include music in advertisements, program promotions, station promotions or theme or bridging music.~~

~~**New Australian Performance** means a sound recording of a previously unpublished performance of a musical item performed by an Australian which has been on sale to the Australian public for a period not exceeding 12 months from the date which is recorded in "*The Aria Report*" as the date of its initial release in Australia.~~

~~**New Release** means a previously unpublished sound recording that has been on sale to the Australian public for a period not exceeding 12 months from the date which is recorded in "*The Aria Report*" as the date of its initial release in Australia.~~

~~**Attachment "A"**~~

~~**Australian Music Performance Committee (AMPCOM)**~~

~~The Australian Music Performance Committee (AMPCOM) is a voluntary association comprising an independent chairman and representatives of Commercial Radio Australia Limited, the Australian Record Industry Association (ARIA), the Australian Music Publishers Association, the Musicians' Union and the Media Entertainment and Arts Alliance.~~

~~The objects of AMPCOM are:~~

- ~~7. To maximise the exposure of Australian music on commercial radio, having due regard to the availability of appropriate broadcast worthy material and the needs and preferences of the Australian listening public.~~
- ~~8. To monitor the commercial radio industry's observance of Code of Practice 4 of the Commercial Radio Codes of Practice (Australian Music) registered by the Australian Broadcasting Authority ("the Code").~~
- ~~9. To monitor the music industry's production of Australian music performances and composition.~~
- ~~10. To monitor the effects of the Code on performers, composers, producers of sound recordings, musicians and broadcasters.~~
- ~~11. To review the operation of the Code and to recommend changes to it as considered necessary.~~
- ~~12. To consider such other matters, relevant to the above objects, as the Committee thinks fit.~~

~~In pursuance of the above objects:~~

~~(a) The Committee must meet at least quarterly.~~

~~(b) Commercial Radio Australia must use its best endeavours to ensure that stations treat the Code requirements as a "safety net" only, in anticipation that the majority of licensees will exceed the requirements, subject to the availability of suitable material.~~

~~(c) Commercial Radio Australia undertakes to provide regular halfyearly reports to AMPCOM (including but not limited to stations' APRA log returns) on the performance by Commercial Radio Australia members in relation to the Code, and to produce and publish an annual report (in the event no such report is published by the Australian Broadcasting Authority) which will show individual licensees' performances.~~

~~(d) ARIA undertakes to provide regular reports on the production and availability of sound recordings featuring Australian and non-Australian music in the categories identified in the Code.~~

~~(e) The parties agree that, having regard to the current nature of the Australian music industry and the extent to which Australian artists perform Australian compositions, the interests of Australian composers are protected by the Code. This situation will be monitored.~~

~~(f) AMPCOM will be responsible for deciding into which category each station's format falls if a dispute about that matter arises.~~