

**SENATE STANDING COMMITTEE ON ENVIRONMENT AND COMMUNICATIONS
INQUIRY INTO
THE ECONOMIC AND CULTURAL VALUE OF AUSTRALIAN CONTENT ON
BROADCAST, RADIO AND STREAMING SERVICES**

SUBMISSIONS OF APRA AMCOS

16 FEBRUARY 2018

Introduction

1. APRA AMCOS is grateful for the opportunity to make a submission to the current inquiry of the Senate Standing Committee on Environment and Communications (**Committee**) into the economic and cultural value of Australian content on broadcast, radio and streaming services (**Inquiry**).
2. APRA is the collecting society in Australia in respect of the public performance and communication rights of composers and music publishers. AMCOS is the collecting society in Australia in respect of reproduction of music in certain formats, including on CD, DVD, online, for use as production music and for radio/TV programs. Together, APRA and AMCOS control the copyright for such purposes in almost all commercially available musical works, by virtue of assignments from their local members and affiliations with similar overseas societies. Since 1997, the two organisations have been administered in tandem, and these submissions represent the united view of both.
3. APRA AMCOS represents more Australian copyright owners than any other party. APRA AMCOS have more than 95,000 songwriter and music publisher members and 145,000 businesses licensed across Australia and New Zealand.
4. APRA AMCOS is well placed to comment on the economic and cultural value of Australian music on broadcast, radio and streaming services as APRA AMCOS has relationships with all relevant media platforms, granting them a blanket licence to use its vast repertoire of musical works (including effectively all Australian music) on their services.
5. As an organisation representing the interests of tens of thousands of Australian songwriters, composers and music publishers, APRA AMCOS strongly supports the promotion of Australian music across all media technologies. A threshold requirement for a sustainable Australian music industry is the continual encouragement and development of original and creative Australian works.
6. APRA AMCOS notes the references in the *Broadcasting Services Act 1992* to the important role that Australian creative content has in shaping Australia's identity and character. While the cultural value of a vibrant Australian music industry cannot be overstated, the flow-on effect of this policy objective is equally clear; it stimulates significant investment in Australian creative industries and provides valuable export opportunities.
7. In making these submissions, APRA AMCOS acknowledges the parameters imposed by the Australia – United States Free Trade Agreement (**AUSFTA**) when it comes to amending Australia's content quotas for broadcast, radio and streaming services. However, we also note the counter-balancing provisions of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (**UNESCO Convention**).

The current state and operation of the market for the Australian music industry and the contribution the Australian music industry makes to the economy:

8. After more than a decade of declining revenues and evolution as the global music industry grappled with the (ongoing) challenges arising from the digital disruption of traditional media platforms, the Australian music industry is once again in an economic growth phase.¹ APRA AMCOS, which only licenses the copyrights in musical works (not the accompanying sound recordings), collected \$386.6 million in gross revenue for the financial year ended 30 June 2017, which represented an increase of 16 percent (more than \$50 million) on its FY16 gross revenue.
9. APRA AMCOS licenses what it believes to be all radio and television broadcasters and legal streaming services currently operating in Australia. In total APRA AMCOS currently has 618 traditional broadcast media clients and 54 digital new media clients. This includes 260 commercial radio broadcasters; 281 community radio broadcasters; 53 commercial television broadcasters; 6 subscription television broadcasters; 24 music download services; 13 music streaming services; and 12 video on demand services.
10. APRA AMCOS' observation is that competition between these media services is fierce. For this reason, amongst others, APRA AMCOS offers a largely standardised set of licensing terms to each media sector so as not to give any individual participant in the market a competitive advantage over another service operating in the same sector.
11. Licence fee collections from broadcasters (radio and television, free and subscription) remained APRA AMCOS' principal source of revenue in FY17. APRA AMCOS collected \$125.3 million in broadcast licence fees in FY17, down marginally from the previous year's \$127.6 million.
12. APRA AMCOS' strong revenue growth in FY17 was largely driven by the ongoing rise in the number of consumer subscriptions to music and video streaming services. Digital revenue, comprising licence fee collections from music streaming, paid music downloads, video on demand and user-generated content, increased from \$67.8 million in FY16 to \$110.3 million in FY17.
13. **Appendix 1** to this submission shows APRA AMCOS' gross revenue broken down by media sector and shows the changes in the make-up of our revenue collections from FY16 to FY17.
14. The growth in Australia's digital consumption of music is best illustrated by the evolution of music streaming services in Australia over the last six years. By our estimates, 12 months into the launch of music streaming services in Australia there were around 900,000 paid subscribers to those services in Australia and New Zealand. Six years after the first streaming service launched in Australia and there are now approximately four million paid subscribers, which means that more than one in eight people in Australia and New Zealand are paying for a music streaming service. Even greater numbers of Australians access those services for free under the ad funded tier of those services. This extraordinary growth meant that licence fees collected by APRA AMCOS from music streaming services alone exceeded \$62 million in FY2017, representing 127 percent growth on the previous year.

¹ Whilst finally once again enjoying a period of revenue growth, the Australian music industry as a whole has still not returned to the same size as existed in 2003, let alone the size the market would have been today had it not been disrupted by unauthorised online services and instead grown in-line with CPI or population growth over the last 15 years.

15. **Appendix 2** to this submission shows APRA AMCOS' music streaming revenue as a percentage of total gross revenue in the years 2012 to 2017.
16. The growth in Australian consumers' subscriptions to video on demand services was also strong in 2017. It has been reported that over 1 in 3 Australians had subscribed to the Netflix service alone by June 2017.² APRA AMCOS' revenue from video on demand services in FY17 reflected these take up levels, with licence fees collected amounting to \$14.1 million representing year on year growth of 69.9%.
17. The export potential of Australian songs was another noteworthy feature of 2017. Australian songs performed by Australian artists such as Sia, Vance Joy and Flume enjoyed significant overseas chart success last year, as did Australian songwriters such as Samuel Dixon who was awarded a Grammy for his work on Adele's album *25*, Ben Abraham for his work on Kesha's *Praying*, and Kylie Sackley who writes songs for high profile US country artists such as Faith Hill, Alan Jackson and Leann Rimes. And earlier this year Brooke Ligertwood and Ben Fielding from the Australian band *Hillsong Worship* won a Grammy in the category of Best Contemporary Christian Song for their song *What A Beautiful Name*.
18. The recent success of Australian music in important overseas markets is reflected in the international revenue APRA AMCOS collects on behalf of its members. In 2013 APRA AMCOS collected \$21.8 million for the use of its members' works in territories outside of Australia and New Zealand. In 2017 APRA AMCOS collected \$43.5 million, with international revenue from the use of Australian music overseas effectively doubling in that five year period.³
19. APRA AMCOS' international revenue growth over the five year period from 2012 to 2017 is set out at **Appendix 3**.
20. APRA AMCOS is committed to the continued growth of the export market for Australian music, including through initiatives such as Sounds Australia, co funded by APRA AMCOS, the Australia Council and Federal Government. Over the past 9 years Sounds Australia has showcased more than 800 Australian artists at more than 55 industry events, in 56 cities across 20 countries. Sounds Australia has presented 180 showcase events, providing Australian artists with 1,461 unique performance opportunities, in addition to hosting 122 B2B Networking events resulting in at least 1,793 career-advancing business outcomes; including signing record deals, securing booking agents, festival offers and sync placements.
21. Vance Joy, Flume, Chet Faker and Courtney Barnett are just some of the artists whose first international showcase was with Sounds Australia.
22. In January this year Sounds Australia appointed Dom Alessio (former Triple J host) as a Digital Export Music Producer specifically to investigate the opportunity and potential of increasing the number of Australian artists included in overseas curated digital playlists on services like Spotify and Apple Music.

² Roy Morgan Research, "Over 1 in 3 Australians now have Netflix as subscriptions jump 20 percent in first quarter of 2017". 8 June 2017. Finding No. 7242.

³ Note that these international amounts only reflect the songwriters' share of international revenue which is the share collected by APRA AMCOS on behalf of its songwriter members overseas. The actual amount earned by these works in overseas markets would be approximately double the amounts quoted above, with the other half being paid to the overseas sub-publisher and a portion thereof returned to the Australian original publisher.

23. APRA AMCOS has long referred to the music export success of Sweden as an exemplar for the economic potential of investing in local songwriters. Sweden is one of only three countries globally that are net exporters of music (behind the USA and UK), and has the highest music royalty earnings per capita in the world.
24. APRA AMCOS has invested substantially in development programs including the high school based SongMakers program, which provides the opportunity for budding songwriters and producers to work intensively with some of Australia's most prominent songwriters and producers. The program has been co-funded by APRA AMCOS and the Federal Government for the past four years, and future funding is being sought. Over 2,400 students from 200 schools nationally have been through the intensive two day program.
25. Further, APRA AMCOS provides international co-writing opportunities for Australian songwriters through its SongHubs program.

The value and importance of local content requirements for television, radio and streaming services:

26. APRA AMCOS' strong view is that local content requirements continue to remain highly relevant to the Australian broadcast media landscape. Ensuring that Australian content remains easily accessible to all Australians helps to develop and reflect a sense of Australian identity, character and cultural diversity. In particular, our local songs are a vital means of expressing our ideas, perspectives, values and identity and equally a means of projecting that voice to our fellow Australians and the world.
27. Noting in particular the existing quota levels (which are already low by comparative international standards) and the so-called "ratchet down provisions" of the AUSFTA, APRA AMCOS advocates in the strongest possible terms that the Australian content requirements that currently apply to the various broadcast sectors be neither removed nor decreased. In so doing we also note the UNESCO Convention to which Australia became signatory in 2009 which contains a right and obligation on Australia to adopt measures to ensure a broad range of cultural goods are accessible in Australia, including our own.⁴
28. APRA AMCOS' more detailed comments on the application of local content requirements to specific media sectors follow below.
29. ***Commercial Radio:***

The local content requirements for commercial radio broadcasters are set out in the Commercial Radio Code of Practice (**Code**) which is administered by Commercial Radio Australia (**CRA**). The Code prescribes minimum quotas of Australian music that broadcasters in each radio format must broadcast, from a 25% Australian music quota for contemporary music-rich stations to 0% for predominantly talk, news or sports formats.

Absent the prescribed quotas in the Code, or in the event of a reduction in the quotas, APRA AMCOS would be very concerned that the amount of Australian music broadcast on commercial radio in Australia would likely decrease.

⁴ In particular, refer to Article 1(h) and Article 2 of the Convention:
<https://en.unesco.org/creativity/convention/about/text>

APRA AMCOS considers the commercial radio industry to be generally compliant with the existing local content requirements under the Code. However, APRA AMCOS is in the possession of some independently sourced data which suggests that a small number of commercial radio broadcasters may not be meeting their local content obligations under the Code. APRA AMCOS is involved in constructive ongoing discussions with CRA to address these concerns. In the event that APRA AMCOS is unable to satisfactorily address any non-compliance issues in co-operation with CRA it will lodge formal complaints under the Code with the relevant broadcasters directly and, if necessary, escalate the complaints to the Australian Media and Communications Authority (**ACMA**).

Another key concern that APRA AMCOS continues to have with the local content requirements under the existing Code is that broadcasters are able to self-categorise which *format* they are for the purposes of determining which Australian Music quota applies to their service. For example, if a station categorises itself as falling within the ‘Classic Rock’ format, a minimum quota of 20% Australian Music will apply, whereas if the same station categorised itself as ‘Gold – encompassing Classic Hits’, an Australian music quota of only 15% would apply, and if the category of ‘Easy Gold’ were chosen, the quota would be only 10%. The various format categories do not appear to be defined anywhere within the Code and to the best of APRA AMCOS’ knowledge have not been updated in over 20 years. Furthermore, there appears to be no avenue by which a music rights holder is able to challenge the format category a broadcaster assigns to itself.

APRA AMCOS is unsure why the format of a service ought to be determinative of the applicable Australian music quota percentage for that service. APRA AMCOS proposes that all music focussed services ought to be subject to the full 25% Australian music quota. Furthermore, APRA AMCOS proposes that compliance with the existing 25% Australian music quota would be much easier achieved, monitored and enforced if CRA amended the Code to include a “1 in 4” policy. In other words, a requirement that during the relevant broadcast period, all music stations be obliged to broadcast at least one Australian track in every four tracks broadcast by the station. This seems to APRA AMCOS to be a very simple and transparent way of complying with the Australian Music quota requirements and would ensure that Australian music is broadcast throughout the day.

In the alternative, APRA AMCOS submits that there would be improved transparency and compliance with the format-specific Australian Music quotas, if:

- the various categories of format service were updated, simplified, reduced in number and defined in the Code; and
- the category of format applicable to each station was determined by a third party (rather than the broadcaster itself). For example CRA could determine the category of format which each of its members properly sits, with the ability for a music rights holder to refer a particular categorisation by CRA to the ACMA for review in the event of dispute.

30. ***Community Radio:***

The local content requirements for community radio broadcasters are set out in Code 5 of the Community Radio Broadcasting Codes of Practice (**Community Radio Code**) which is administered by Community Broadcasting Association of Australia (**CBAA**). The Community Radio Code prescribes that of all music programming, community radio stations must broadcast at least 25% Australian music, except for ethnic and classical music stations which must broadcast 10% Australian music.

APRA AMCOS commends the CBAA on including these Australian music quotas in the Community Radio Code and notes with approval the stated purpose of the code being “to reflect the commitment of community radio stations to develop Australian music and provide opportunities for performers to have their work regularly broadcast”.

APRA AMCOS is not in possession of sufficient music usage data to indicate whether or not community radio broadcasters are complying with the prescribed Australian music quotas under the Community Radio Code.

APRA AMCOS calls on the CBAA to take a more active role in policing its members’ compliance with the Australian music quotas under the Community Radio Code and ensuring non-compliant members are held accountable for any breach.

The Australian Music Radio Airplay Project (**Amrap**) was established by the Federal Government in 1998 to ensure the distribution of new Australian music to community radio stations nationwide - helping broadcasters promote music on air and online.

Over the last two decades the service has supported thousands of artists, distributing over a million Australian music tracks to community radio for airplay. APRA AMCOS understands that over 80% of the community radio stations use Amrap services to access Australian content and promote artists on air and online.

Amrap has proven to be effective and innovative having developed services that address market failures, and generated solutions to challenges faced by the Australian music and community radio sector in particular the ongoing upheaval of a digitising industry. Amrap's suite of services have expanded to include digital music distribution, airplay tracking, support for royalty reporting, radio on demand, and social media integration. Amrap generates considerable value for artists, music businesses, community broadcasters, Australian culture, and the economy.

APRA AMCOS is a key stakeholder in Amrap. It is critical that Amrap continues to operate and evolve as an innovative service that ensures Australian artists are heard by Australian audiences.

31. ***Public Broadcasters:***

APRA AMCOS recognises that Australia’s public broadcasters, particularly the ABC, have contributed enormously to the development, production, distribution and promotion of Australian content and, in particular, Australian music content.

Relevantly, the ABC’s function, as set out in its Charter, includes that the ABC is to provide programs that “contribute to a sense of national identity” and to encourage and promote musical arts in Australia. In APRA AMCOS’ view, the ABC assists in fulfilling its obligations in that regard with important initiatives that actively support and showcase local Australian content, including the “Unearthed” and “Ausmusic Month” projects and the ABC’s impressive record more generally for the delivery of Australian music across its radio and digital services.

As noted below, APRA AMCOS remains supportive of the retention of Australian content quotas for commercial television broadcasters given they act to ensure a viable level of Australian content on Australian screens.

As a result of the ABC’s and SBS’ already substantial support of Australian content, it is understandable that the imposition of specific quotas for Australian content on

Australia's public broadcasters may be seen as unnecessary. Nonetheless, in the absence of quotas being so extended to, APRA AMCOS considers it vital that:

- ABC and SBS management teams continue to support Australian songwriters, performers, filmmakers, artists, and technicians by developing, making available and actively promoting high levels of Australian audio and audio-visual content on their services;
- ABC management continues to fulfil its Charter obligations by actively maintaining an 'industry best-practice' level of Australian music content on its broadcast radio and digital services, which may even be boosted, for instance, by a public pledge to deliver a minimum percentage of Australian music across all its music channels, both via broadcast radio and online;
- Australia's public broadcasters remain a key platform for supporting and promoting Australian content; and
- Australia's public broadcasters continue to be provided with adequate public funding such that they can continue to develop, produce, distribute and promote high levels of Australian content, including high levels of Australian music content.

In summary, APRA AMCOS recognises the important role that public broadcasting plays in respect of the provision of Australian content to Australians and supports any initiatives that would ensure that the ABC and SBS are not only able to maintain the current levels of support for Australian content, including Australian music content, but to significantly increase those levels.

32. ***Commercial Television Broadcasters:***

32.1 Australian Content Quotas for Commercial Television

APRA AMCOS considers the quotas for Australian content on commercial television remain a valuable and important contributor to the quality and quantity of Australian content on Australian commercial television.

APRA AMCOS is of the view that, in the absence of or reductions to the Australian content quotas on commercial television, there would be less local content produced and broadcast on Australian television, which would, in turn, have a significant and detrimental impact on Australian composers and songwriters.

While not a natural or automatic consequence, in practice, a greater level of Australian audio-visual content being made available to Australian viewers on commercial television relates directly to a higher level of Australian music content on those channels and, therefore, directly contributes to higher royalty distributions to APRA AMCOS' local members. More generally, higher levels of local content on commercial television also leads to a stable and successful local screen production industry, which in turn gives rise to a 'derived demand' for both existing musical works and specially composed musical scores by local artists.

This position is supported by an analysis of the amount of Australian music used in commercial television programming versus the amount appearing in the programming of the major video on demand streaming services. APRA AMCOS estimates that approximately 25.1% of licence fees it collected from commercial television broadcasters in FY17 was allocated to Australian works. Conversely, the percentage of

APRA AMCOS licence fees allocated to Australian works as a result of programming on the major overseas video on demand services operating in Australia in FY17 was less than five percent.

For these reasons, APRA AMCOS maintains that the local content quotas currently in place for commercial television broadcasters should, at a minimum, be retained and supports any reform to the quotas that would increase the availability of Australian content on Australian television screens.

32.2 Tax Offsets

APRA AMCOS' experience is that the availability of Australian content on Australian screens is improved by both demand and supply side interventions through the current Australian content quotas on commercial television broadcasters *and* the various tax rebate arrangements offered by the Australian Government.

APRA AMCOS acknowledges the importance of the suite of supply-side production incentives available for film and television productions in Australia to the maintenance of a sustainable local film and television industry.

In APRA AMCOS' view the Producer Offset, the PDV Offset and the Location Offset schemes make a valuable contribution to film and television production in Australia. And, as noted above, a higher level of Australian audio-visual production has important positive flow on effects for the Australian music industry.

APRA AMCOS supports any initiatives that may assist in ensuring that Australian-made music forms part of Australian-made film and television. In that regard, APRA AMCOS:

- continues to support supply-side interventions such as the current production incentives to assist in ensuring Australian film and television production remains viable and successful;
- maintains its previously expressed position that there is a gap in the reckoning of Qualifying Australian Production Expenditure ("QAPE") thresholds under the production incentive offset schemes,⁵ whereby musical works created and/or orchestrated in Australia by Australians do not receive any greater consideration or recognition under these schemes over and above those musical works composed by a foreign national but produced in Australia;
- considers that encouragement of Australian-made television production is particularly important with the recent arrival into Australia of foreign-owned and operated video on-demand services such as Netflix and Amazon, and the popularity on those platforms of television-style series;
- supports any initiative to extend the current Producer Offset rebate of 40% for feature films so as to also apply to television and documentary productions;
- supports any initiative to remove the cap of 65 hours under the current Producer Offset scheme.
- strongly supports the Producer Offset scheme in particular, given:

⁵ APRA AMCOS Response to Convergence Review Discussion Papers (28 October 2011)

- a) Screen Australia has recently released a report stating that 91% of surveyed production companies considered the Producer Offset scheme “critically important” to the operation of their businesses; and
- b) the Producer Offset scheme includes an assessment by Screen Australia as to the presence of “Significant Australian Content” in a film and television production (**SAC Test**),⁶ including the extent to which the “look and feel of the project is Australian or the project has a significant creative connection with Australia”.⁷ It is APRA AMCOS’ strong view that Australian-made music is well placed by its very nature to bring a strong sense of “Australian-ness” to any production that is taking advantage of that scheme, and would support the inclusion, as an indicia of “Australian-ness” under the SAC Test, of the presence of musical works that are composed and/or orchestrated by Australians. Furthermore, APRA AMCOS calls on the Government to introduce a new condition that any Australian Government funded production be required to include Australian composed or orchestrated music in the production in order to be eligible for such funding.

33. *Streaming services:*

APRA AMCOS notes that new media music and audio-visual streaming services are not currently subject to any Australian content requirements. APRA AMCOS also notes the limitations in the AUSFTA in relation to the extension of Australian content quotas to any digital new media service. Given the ongoing shift in Australian consumers away from traditional media to subscription streaming services, this is of some concern.

Whilst the most popular music streaming services are large multi-territorial services, APRA AMCOS notes that they do tailor their service offerings to the local territories in which they are made available, albeit to varying degrees depending on the service.

APRA AMCOS is in ongoing discussions with the major music streaming services as to how they can demonstrate their commitment to Australian music on their Australian services. One option would be for music streaming services to voluntarily commit to making available in prominent positions on their Australian service offerings: (i) local playlists (such as a Sounds Australia playlist); (ii) include a minimum of 25% local content in locally curated playlists.

APRA AMCOS does not consider this to be an onerous or unreasonable request to make of music streaming services operating in Australia. In fact, promoting playlists featuring increased levels of Australian music to Australian consumers in an on demand environment may even prove to make good business sense rather than be seen as a cost or inconvenience. It is also a way for foreign multi-national companies (who are generating significant revenue from sales to Australian consumers) to support the local music industry in one of the increasingly important territories in which they operate.

Brief observations on recent related international comparators

⁶ This assessment is undertaken by Screen Australia in accordance with its obligations to assess for Significant Australian Content under s.376.70 of the *Income Tax Assessment Act 1997*.

⁷ Screen Australia (2015) Producer Offset Guidelines, 16 November 2015, Section 2.1.2 p.6. Available <<https://www.screenaustralia.gov.au/getmedia/7aca56fc-d523-4cee-a336-7c6340395252/Guidelines-producer-offset.pdf>>

34. APRA AMCOS notes the recent reports from similar inquiries in Canada and the UK and simply observes that both reviews resulted in the affirmation of strong local content requirements in both territories. APRA AMCOS does not consider the existing local content requirements in Australia to be in any way excessive when compared to similar territories around the world.

Conclusion

35. APRA AMCOS is grateful for the opportunity to contribute to this Inquiry. APRA AMCOS remains available to assist in any aspect of this inquiry. Please do not hesitate to contact me in this regard by email at .

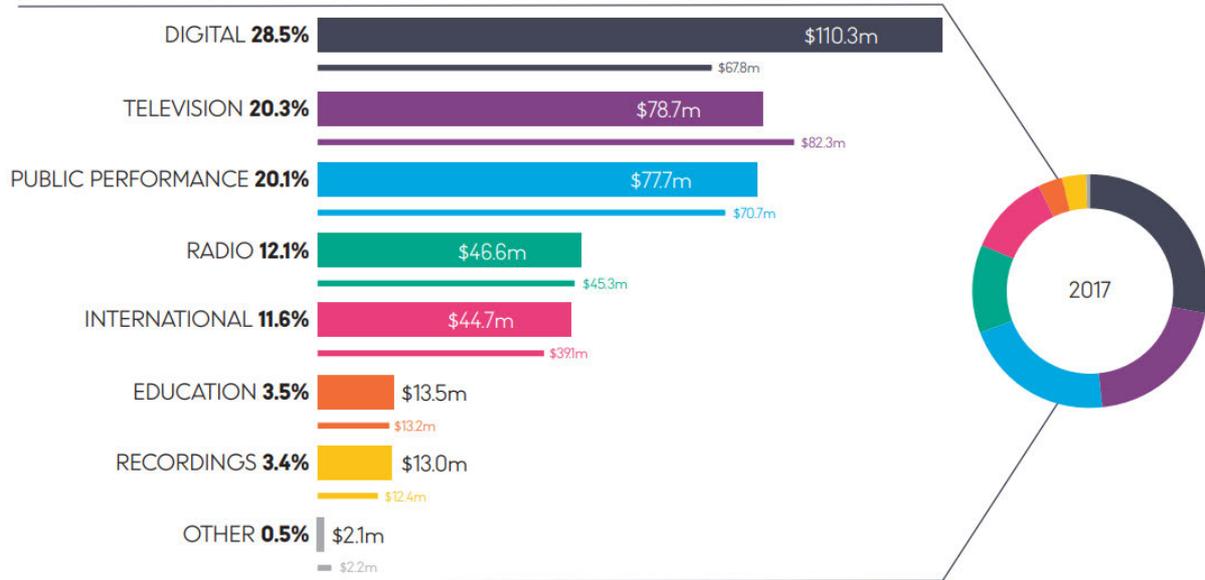
Jonathan Carter
Head of Legal, Corporate & Policy
APRA AMCOS

16 February 2018

Appendix 1

REVENUE BREAKDOWN

2016/17 VS 2015/16

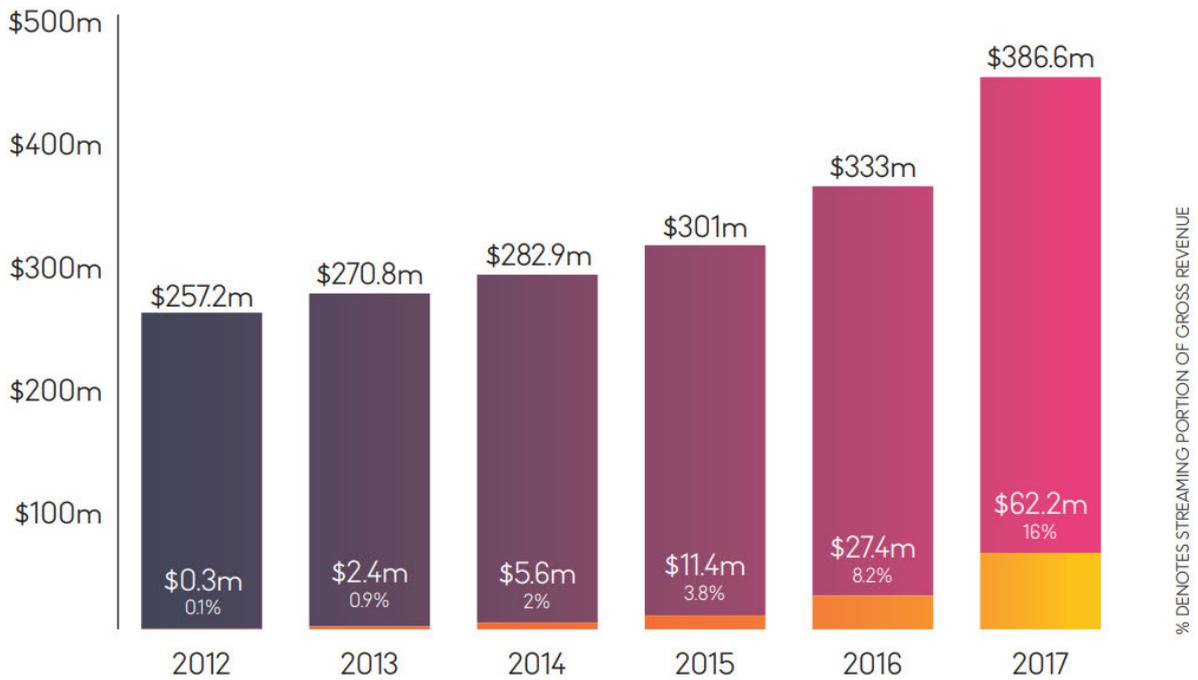


GLITCH IN TV REVENUE

While total broadcasting revenue (television contributing \$78.7m and radio adding \$46.6m) remains the highest source of income again this year, it should be noted that commercial TV revenue was adversely impacted by Network Ten's move into voluntary administration in June.

Appendix 2

STREAMING REVENUE VS GROSS REVENUE



Appendix 3

