

Peter Tschmuck
Philip L. Pearce
Steven Campbell *Editors*

Music Business and the Experience Economy

The Australasian Case

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Preface

The Australian music business has its origins in the nineteenth century when an agent of the Edison Company demonstrated the first phonograph on the Australian continent in 1879. From the outset of its music-business history, Australia has responded to and sometimes led many of the global, social, cultural, technological and economic developments that have occurred. Famous classical musicians such as Dame Nellie Melba, Percy Grainger, Dame Joan Sutherland and Sir Charles Mackerras originated from Australia. As the seventh largest recorded music market, Australia was also a fruitful ground to launch the careers of international pop stars such as Helen Reddy, John Farnham, Olivia Newton-John, Kylie Minogue, Men-At-Work, AC/DC, INXS and the brothers Gibb, better known as the Bee Gees. Besides international chart toppers, local music talent has always played an important role in the domestic live and recorded music market. Indigenous, folk, jazz, classical and pop musicians still contribute to a vivid and diverse music scene.

The Australian music sector has a significant economic impact on the Australian economy, and, therefore, one might wonder why the body of academic literature concerning music business in Australia is relatively small. Possibly the relative inattention to music and business reflects the compartmentalisation of academic disciplines which separates creative endeavours from studies of management and business. This book attempts to fill this gap by gathering academics from several disciplines to highlight Australian music business from perspectives as diverse as musicology, music pedagogy, economics, tourism and marketing research, anthropology and cultural studies. The contributions, therefore, help to understand different aspects of music in the experience economy.

This book was inspired by a delicious dinner at Gianna Moscardo's and Philip Pearce's home in Townsville, Queensland, where a gathering of academic scholars reviewed the possibilities for linking music and the experience economy. There is a close relationship between food and music as pointed out in the introductory chapter where it is suggested that, like food, music is a carefully delivered experiential product in the contemporary world.

The experience economy pathway to bring together an understanding of the appreciation of music, and the money to be made from that appreciation, is

developed in this book through considering the context in which music occurs, the meaning it holds for individuals, its role in creating value for business brands and its contribution to festivals, events and sports. The success of individual artists, record companies and new technologies is integral to the music-business relationships. It is argued throughout that music drives personal identities and fosters relationships through its rich emotional connotations. In brief, music is a core component of many life experiences and a source of interest not just to those who produce and create it but to many others who benefit from it financially and experientially.

Therefore, please enjoy the experience of reading this book on the Australian music business, which was enabled by generous financial support from James Cook University, Townsville, Australia and the University of Music and Performing Arts, Vienna, Austria.

November 30th, 2012

Peter Tschmuck
Philip L. Pearce
Steven Campbell

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From Discord to Harmony: Connecting Australian Music and Business Through the Experience Economy

Philip L. Pearce

Abstract It is argued that connecting music and business presents some challenges. There is the primary issue of the different values of people who inhabit separate worlds; the music set oriented towards expressive, identity affirming creativity and their business counterparts driven by instrumental values underpinned by personal commercial gain. By analysing the way access to music has evolved for Australian audiences, a process shaped by rising affluence and technology, it is possible to see the mutual intersecting interests which reside in creating enabling environments where audiences can enjoy diverse musical styles. This sense of co-production, a covert liaison between music entrepreneurs and the musical audiences, can be further understood by analysing the component parts of experience including an appreciation of the sensory, relationship, affective and personal capital components of listening to music. The players in the music and business sector may be different but it is possible to depict their points of harmony through an appreciation of the dimensions of the modern experience economy.

1 Introduction

At times, it is difficult to be articulate or literate about music. The very form of the phenomenon affects humans in nonverbal ways. Equally business actions and thinking can be difficult to document because the processes are not always public and often involve confidential material. Further, but not unimportantly, the kinds of people involved in the worlds of music and business may be viewed, at least in terms of initial stereotypes, as rather different: one set dominated by the desire to be

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creative and expressive, the other more focussed on the goals of making profits and earning cash. The joint consideration of music and business in an academic context might therefore be seen as a very challenging task. The present chapter offers a pathway to attack these difficulties. In particular it suggests that by linking music and business through an understanding of the experience economy, initial insights as well as guidelines for future analyses and practice may emerge.

2 An Analogy

The extended consideration of an analogy serves to illustrate the experience economy pathway for exploring the music-business relationships. Jacobsen (2008) has provided a rich analysis of the developing role of the experience economy in understanding food consumption. As this chapter uses this analogy on several occasions, some key food – music links can be suggested. The consumption of the food by patrons corresponds to the consumption of the music audience, the restaurants to the settings in which the music is appreciated, the chefs and staff to the artists and performers, and the restaurant owners to the music managers and entrepreneurs. Jacobsen's account of the rise of the experience economy as an influence on food consumption hinges on several points. By following these issues and concerns the links between music and business may also be formulated.

3 Enabling Conditions

Affluence and in particular the affluence of the last 60 years in western and emerging societies, is a key enabling condition shaping the development of food consumption as a richly varied part of contemporary life. While food has always been pivotal to human existence, Jacobsen (2008: 14) reports that:

Modern food passes through a long and complicated pathway from nature to table and food culture is constantly being created by the interplay of raw materials, tools, recipes, skills and so on and it is formed by climate, geology, history, aesthetics, morals, traditions, politics, economy, power relations, technology, knowledge, education and the rest.

The result of the interplay of these forces is that consuming food has moved from a functional activity to an expressive activity (Noe 1999). The same points can be applied to the rise of music as a contributing element to the entertainment and well-being of many individuals and communities. Examining Jacobsen's list, it is apparent that music, like food, is influenced by similar sophisticated processes in its creation, commercialisation and delivery. When societies develop in terms of their economic well being, the rising affluence creates space for some individuals to focus entirely on cultural and creative tasks. These tasks which include the production and specialisation in music have a cohesive role in creating local identities and

solidarity but they are not without stress points as traditions and interests clash (Diamond 1998). Affluence also works through the process of more and more individuals being able to purchase music and the means to reproduce that music. It is worth concentrating briefly on some of the key items identified in the listing relating to food – those of technology, power relations and education – as they all powerfully influence the music-business relationship with which this book is concerned.

Technology and changes in technology have affected the business dimensions of music production and consumption for a long time. Accessibility to music both through the changes in travel options and the affordability of ways to listen to music are keys to many Australian music – business developments. In Australia during the first half of the twentieth century it was possible to enjoy music in a number of ways. Certainly there was a tradition of live music and performances with the efforts of the state orchestras and formal music recitals in the cities being events of social and cultural significance. In the rural areas traditions of home grown country music styles emerged and country dances in town halls using local musicians were standard components of social life (Knightley 2000). Listening to music in one's home was well developed by the 1930s with the rise of radio and the playing of records with phonographs. By the time the Beatles toured Australia in 1964 the business of music was a well-developed international enterprise and its effects on local life quite profound. And yet, there were still many who could not get access to the latest music trends and whose income levels and location made them peripheral consumers in the growing experience economy.

The second half of the twentieth century corrected many of the access issues. Both musicians and audiences were able to travel with greater ease thus permitting globally prominent performers to undertake more frequent tours of the country. A cohort of music business promoters arose to both generate and create a demand for touring stars and many of these entrepreneurs became wealthy and long standing figures in the Australian music business scene. The technology of marketing music was already well developed by the 1960s and the international stars as well as some local talent were household names due to radio programs, the introduction of television to a high percentage of households, and the ready availability of the music on vinyl records. The power of the radio stations to promote certain artists was a point of controversy in the development of the music business. Initially the number of commercial radio stations in Australia was limited to a tightly clustered set of owners and the opportunities for independent and less popular forms of music were very limited. In what seems now like a very conservative and racist approach, some commercial stations refused to play American artists such as Ike and Tina Turner because the music was seen as too concerned with the (subversive) issues of black America (Mac 2005). It was indeed only in the 1990s that indigenous Australian artists began to play a significant role in Australia's musical lexicon as figures such as Jimmy Little who paved the way earned some respect, and the considerable talents of performers such as Yothu Yindi, Geoffrey Gurrumul Yunupingu and Jessica Mauboy were fully recognised. The rise of local record

labels is a large part of this Australian music story and is documented in considerable detail in a later chapter of this book.

The ABC (Australian Broadcasting Corporation) played a prominent role in the presentation of music to its listeners across the generations and for a variety of music tastes. Unlike the local commercial stations, whose range was restricted to the main cities and some country towns, the ABC had a wide net of stations which were for a long time the only reliable services available in outlying rural areas. The ABC always featured classical music as a base for its activities. Additionally, from the 1970s the ABC offered a long running nation-wide Sunday morning music show "Australia All Over" which provided a venue for country and local artists rather than for the international and domestic popular music. The rise of country and other music festivals during the 1970s and beyond as discussed in chapters in this book was one way in which certain styles of local music found a public voice and audience. By 1975 the ABC had also developed a radio station JJ, now known as Triple J, which provided an outlet for independent Australian music. Rock and varied independent music styles became the hallmark of the independent JJJ style. These contributions by the national broadcaster thus created space for a range of musical tastes which supplemented the activities of the commercial networks. The role of the ABC was complemented by a number of television programs centred on music; firstly Bandstand in the 1960s and then Countdown in the 1970s and subsequently Rage in the 1990s and beyond. Contemporary contest shows such as Australian Idol and The X factor have also used public television to fill airtime with positive career and business results for the successful artists. As reviewed in one of the chapters of this book the popular appeal of music was used from the late 1980s to expand the experience at the country's main sports events both in terms of live music at the sports games and as significant contributions to the promotion of games and codes. The creation of big events to support local music such as the Big Day Out have developed a successful following in the last decade and also support many local artists.

In the midst of this growing interest in Australian music a rather unusual area of musical marketing- that directed at children- developed the best commercial success of all. The children's music group The Wiggles emerged in the late 1990s. By 2008 the four band members were named as Australia's top earning entertainers for the fourth year in a row; their popularity endures despite some complexities and changes of group members. Their appeal is now global and Business Review Weekly reported that the group earned A\$ 45 million in 2009 through album sales, television and theme park work as well as through franchising their concept of a pre-school band to other countries (Field and Truman 2012).

Beyond television and the success of events and touring, the power of the internet and the practices of file sharing and the use of YouTube as music promotion tools have all contributed to a new landscape for the Australian music business. One of the chapters in this book explores these issues in detail. As is the case for food and the rise of restaurants and public dining, the origins of music as a part of the experience economy does indeed appear to be guided by the forces of rising

affluence, the technology of communications and transport, and the power of key figures and organisations who shape taste and access.

4 The Components of the Music Experience

In common with other approaches to assessing experience at least five issues must be considered to reach an understanding of why music, like modern eating experiences, fits into the realm of the experience economy rather than simply being a service or product for consumption. The mental, physical and social worlds of the music consumer all help define an experiential encounter as opposed to a service or material object purchase. The elements to be considered include the sensory qualities of music, the emotional power of music, the personal capital needed to appreciate the performances and compositions, the social context in which music is appreciated and the activities and behaviours which have come to be associated with the form of consumption. These elements follow the writing of Schmitt (2003) who uses these five components of experience and the further dimension of the time or duration of an experience to describe in rich detail the better management of customer experiences for business profitability. There are broad generalities which can be made about all of these elements in this introductory chapter and several further details about each of these components are explored in specific chapters where, for example, the role of music in social occasions such as events and festivals is considered.

Clearly music is a sensory experience. This is not simply a matter of hearing a rich array of sounds but is associated with types of music generating strong bodily sensations built on basic rhythms. There are clear physiological responses to the ordered and sometimes loud patterning of the sounds and these processes can be detected in young babies and persist through the lifespan (Eibel-Eidesfeldt 1989). There is also abundant anthropological documentation of the widespread sensory power of music across cultures to shape out of body experiences which are pivotal to rituals and group solidarity (Meares 1973).

Music is not simply linked to the experience economy through its sensory qualities. There is a strong cognitive component to the enjoyment of music, where the term cognitive can be defined as the personal capital or knowledge base to appreciate music, or more often one particular type of music where the individual develops a keen familiarity with the genre. In a recent humorous and successful demonstration of the structure of popular music, the Australian band Axis of Awesome reveal and to some extent mock the structure of popular music with their “Four Chords” song. The humour consists of demonstrating how four chords form the basis of many different popular music items while the lyrics are simply a string of the relevant song titles. The success of the song, as documented by nearly two million YouTube hits, depends on the public understanding and memory of the items being portrayed.

The emotional power of music and the way cultures have used music for a range of purposes forms a further strong case for the inclusion of music as core to understanding the experience economy. The well defined range of music for solemn occasions such as for the funerals and for those who have died in battle is testimony to the emotional pull of key performances. It is also common for music to be used as a part of the emotional appeal which persuades so many to consume, or how to vote and ways in which to play. Lively party music is its own distinct genre while musical styles which define and enhance national, ethnic and local identity are bonding tools for communities. There is a powerful intersection here between the emotional power of a musical piece and the long term understanding and memory for that music; the emotional and cognitive processes work hand in hand to build the experience of many significant musical items.

Two more elements have been identified by Schmitt in his analysis of experience. The first- the social component of the experience -has already been briefly mentioned. Like the dining and the eating experience, music may be enjoyed in isolation and indeed many aficionados do prefer to contemplate and envelop themselves in their own deep and private musical encounters. Nevertheless the celebration of music with others is also apparent, not just in the great festivals and musical performances but also when music is integrated into and forms a core part of other entertainment including movies, ballet, opera and television programs. There is a further and global link between music and the final component of Schmitt's dimensions that of action and behaviour associated with the experience. In the case of music the behavioural component may range from the mildest form of bodily response as in humming, swaying or tapping through to orgiastic and uninhibited singing and dancing (cf. Daniel 1996).

5 The Link to Business

The business consequences of the rich and multi-faceted experiential components of music can be identified in a systematic way. For financial value to be created from the experiences of others the operators in the music businesses have to attract solid numbers of customers, and retain those individuals while periodically recruiting new and further consumers. There is a key relationship between the purchase price of the music and the numbers of people buying that involvement. Mass markets can be profitable if costs are low and hence prices low with the low unit profits compensated by the scale of the purchases. Boutique markets can be a solid financial investment if the price is higher and technology and logistics limit the extra burden of producing smaller numbers of purchased items. Importantly the use of technology, designing extended activities and experiences and the smart use of within company human resources can lower costs and add to the appeal of the accessible product.

Viewed in these ways the business dimensions of music do not immediately appear to be different to those operating in the world of manufacturing where

market size and costs incurred for producing the product are inevitably tied together. The distinguishing issues for the business figures operating in the world of the experience economy lie firstly in the design of the experience which may be viewed as a co-production process.

The essence of co-production is that the music business entrepreneur has to build opportunities and be sensitive to the nuances of the use of the music by the consumer. Music, while important to many, is not essential to life and its role as a discretionary contributor to well-being needs to be marketed and reinforced by those who wish to make money from the artists who produce it. It is valuable here to turn again to the food and dining experience analogy. Jacobsen suggests that the food host “creates the frames in which the eating takes place and the frame creating is an important part of the food experience economy” (2008: 23). The frame and setting for the music appreciation and consumption is equally significant. The celebration and enjoyment of music is augmented by the settings created within Australia for its consumption. These settings and the people who come together in these spaces to share the conviviality of common tastes are remarkably varied. They include such varied settings as the dusty savannah meeting grounds of the indigenous Laura dance festival, the outdoor arenas of the country music festival in Tamworth and the elegant chambers of the Sydney Opera house. Nightclubs and karaoke houses, pub bars and RSL (Returned Serviceman’s League) halls all serve these setting functions for particular kinds of people and for set music styles. Performances at these venues offer regular demonstrations of how the music experience is available to enthusiasts on a regular basis.

The philosopher Foucault is famous for asserting that the eye of power, the controlling presence of those who influence behaviour, becomes internalised in those who are being observed (Foucault 1980: 146–166). Drawing on this observation it is pivotal to the marketing of music that the settings and venues in which people enjoy their music create successful and valued spaces for the exchange of social information and background analysis of the music being heard. The music related businesses which provide this knowledge, create events, build sets, design and fit out performance spaces become integral to the music experience and constitute a building block in our broad consideration of the music – business relationships. This creation of venues by those with money and influence shapes the social representations of where it is fashionable to go and, following Foucault, ultimately influences the desired music for any market segment.

Music promoters are probably the best known business faces in Australian music after the performers themselves. Prominent Australians who have fostered the careers of local Australian artists as well as making money from arranging and coordinating tours by international performers include Harry M. Miller, Michael Chugg, Glenn Wheatley, and the TV presenter and commentator Ian ‘Molly’ Meldrum. These figures and many others through their promotional efforts and the management of artists provide one arm of the two act co-production process. They put in place the opportunities for the fans and music lovers to express their enthusiasm but they do not wholly create the experience. The attention, enthusiasm and exuberance of the music audiences play an equally important role in producing

what John Urry has called a collective gaze (Urry 1990). This defining gaze amounts to the celebration of people being together to appreciate what they are experiencing, since a music event with a disinterested crowd is dysfunctional whereas the audience enveloped in the moment and experiencing a sense of flow, even time distortion, is an effective catalyst to positive experiences.

Increasingly technology can provide entertainment where the participant is passive rather than present at a venue or site. Strong influences on public taste and the promotion of musical interests now derive not just from being in settings or accessing television and radio programs, though the older media forms still remain important, but through internet sources and sharing of music preference and performances. Here different kinds of music connected employment emerge. In the digital and electronic access to music as opposed to the immediate enjoyment by audiences, different kinds of businesses play a role in creating value for music lovers. In these cases it is not just the performers as well as the music entrepreneurs and stage managers who matter, but a range of technical and intermediate personnel who form companies where the music can be accessed or purchased through on line tools and apps.

Taken together the Australia Council, using Australian census data, reports that nearly 300 people work directly in the music publishing business as their main jobs (Australia Council 2012). The contrast here is with those who earn money as musicians. The Australia Council estimates 100,000 musicians are paid for their performances annually with a further 200,000 participating on an unpaid basis. It is less clear however how many musicians survive solely on their music. An analysis of the creative economy in 2011 suggests that there are nearly 100,000 registered creative businesses which focus on arts, music and performance and these businesses are classified as sole traders that are one person registered units (Creative Economy Report Card 2011). These figures hide several kinds of complexity because music teachers, a large area of employment in the music sector, may not have music teaching as their main employment or if they work in the school system they may not record their work as music related but instead self classify as education staff. No claims are being made here that Australia maintains a wealthy set of music performers and associated businesses. It is clear however that partial involvement by many performers in the commercial world is common and that much remains to be studied and analysed in the ways musicians and the business world interact and see one another. An important chapter of this book considers the practices and future directions in Australian music education and offers novel directions for those who see some part of their future livelihood as involved in the teaching of music.

6 Synthesis

At the start of this chapter and in the chapter title it was suggested that there are some contrasting styles and frames of mind when the topics of music and business are analysed. The many colourful and sometimes quite public controversies between musicians and those business managers who structure their careers represent some justification for this view. The introductory chapter to this book suggests however that at least in terms of analysing the two themes some common ground is established when an experience economy perspective is adopted. In this approach the business opportunities for music lie in facilitating and designing consumption settings. It is appreciated that there is a co-production of the music experience and operators need to monitor public reaction to their offerings. One way to do this is to consider repeatedly the nature of the provided music experience in terms of the five orchestrated dimensions of experience reviewed previously. Of particular interest is the constant need for the creation of information and personal capital for the consumers so that their knowledge and appreciation of the music acts as a conduit to the emotional, social and sensory experiences in which they participate.

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Australian Copyright Regimes and Political Economy of Music

Phil Graham

Abstract In this chapter I review the history of copyright in Australia through a singular and exemplary ruling of the Australian High Court made in 2012 and then relate that to the declining fortunes of Australian recorded music professionals. The case in point is Phonographic Performance Company [PPCA] of Australia Limited v Commonwealth of Australia [2012] HCA 8 (hereafter, HCA 8 2012). The case encapsulates the history of copyright law in Australia, with the judicial decision drawing substantive parts of its rationale from the Statute of Anne (8 Anne, c. 19, 1710), as well as copyright acts that regulated the Australian markets prior to 1968. More importantly the High Court decision serves to delineate some important political economic aspects of the recorded music professional in Australia and demonstrates Attali's (1985) assertion that copyright is the mechanism through which composers are, by statute, literally excluded from capitalistic engagement as 'productive labour'.

1 Context

The aim of this chapter is to map the history of copyright law in Australia against the changing political economic fortunes of its recorded music professionals. During the development of the work, the decision on the 1 % royalty cap for Australian commercial radio was handed down by the High Court of Australia (2012). Royalty caps regulate the amount that can be claimed by collection societies for performance royalties on musical works.

The 1 % cap on the broadcast of recorded performances was first legislated as part of the *Australian Copyright Act* (1968), the Commonwealth statute that has

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since governed intellectual property rights in Australia. It limits licensing claims for the broadcast of recorded works to 1 % of a commercial radio licensee's revenue. The basis of capping arrangements (from the perspective of radio) is that the Australian royalty collection societies (APRA, AMCOS, CAL, Screenrights, and PPCA) have historically been seen as monopolies, that broadcasters fall under a compulsory licensing arrangement, and that a cap is therefore necessary to protect the commercial radio industry from extortionate claims against their revenues by publishing and recording companies (Atkinson 2007). The body that coordinated the defense for commercial radio in the High Court case is the peak industry body, Commercial Radio Australia (CRA). Its public position on the cap and role of radio is that they are champions of local musicians, invest billions in airtime to promote artists, and defenders against the profiteering of 'multinational record companies':

As usual Copyright has been an area of challenge and focus for the entire industry with the simulcast case heard in the Federal Court in October 2010 and the 1% cap copyright case that went before the High Court in May 2011. We are currently waiting for judgement to be handed down in both cases, but have argued consistently that both of these issues are about increasing the profit margins of multinational record companies at the expense of local commercial and public radio stations. The commercial radio industry pays close to \$25 million a year in copyright fees and supports Australian artists in many ways to promote and sell their product. This all adds up to billions of dollars in airtime and promotion. (CRA 2012a)

The mainstay of commercial radio revenues in Australia is, of course, advertising (CRA 2012a)). In effect, the business model of commercial radio consists of the production of audiences for sale to advertisers (Smythe 1981: 25). For most commercial radio licensees, the raw material they use to build their audiences is music (APRA 2012). Of course there are a number of other ways in which to view the same business model: from a contemporary marketing theoretical perspective, the radio stations are "selling" a specific segment of the music catalogue (music as service) to a pre-existing 'market demographic' (for example, youth, adult, family, Christian, ethnic, etc.). In this view, the audience pays for the service by listening to advertisements and revenues from advertising subsidises the audience's free 'listening' to their music of choice. However, the marketing view obscures a number of facts: (1) that commercial radio does not sell anything to audiences; rather, it sells audiences to advertisers (Smythe 1981); (2) that in the production of its audiences, music is commercial radio's primary production factor – its raw material; (3) that the music broadcast on radio is chosen by commercial radio to produce the largest and best defined audience for sale to a specific class of advertisers; and (4) that it is quite plausible to argue (as with the explosion of youth culture in the 1950s and 1960s) that contemporary demographic and psychographic categories are, in large part, a function of the way radio and mass media more generally has segmented its "markets"(audiences) over the last five decades.

Commercial radio often presents itself as 'marketing' (selling) to the audiences it actually creates:

The combination of the Group's superior listener driven programming, high profile on-air personalities and dual capital city networks has enabled Austereo to capture a market share of 54.7 per cent of the lucrative under 40 demographic. (Village Roadshow 2001)

(...) radio continues to perform well in a very competitive media marketplace. The uptake of digital as an indicator of future success has also been pleasing with listening figures continuing to grow and consistently more products available for consumers. (CRA 2012a)

In some cases the industry presents itself as a passive medium that simply connects advertisers with existing 'consumer' demographics:

With radio, advertisers have the chance to sell wherever a consumer is listening. This could be in the kitchen, bedroom, bathroom, dining room, over the work bench, in the garden, at the beach or the football, in the car, in a shop, an office or a factory. The medium keeps up with the busy lifestyles of today's consumers. Radio gives advertisers the freedom to be as creative as they like, without the huge production costs and lead times. (CRA 2012c)

Yet I argue that these are fundamental and convenient confusions because the 'market' to which commercial radio sells, and from which it draws almost all of its revenue, is clearly the advertisers it charges for access to the audiences it creates. Advertising the value of radio advertising to advertisers is a core function of Commercial Radio Australia (CRA). When speaking to its actual market, commercial radio displays no confusion about its business whatsoever:

The eighth industry wide on-air Brand Campaign 'Smart Marketers use Radio' was comprised of marketing experts discussing marketing objectives, efficiency and effectiveness. The campaign aired four to five times a day with regular creative updates to maintain a fresh appeal for the listeners.

In the second half of 2010 the campaign went on air with the key message 'Radio Advertising, Australia's Listening' and featured 'That Radio Bloke', with the key message; Commercial Radio reaches over 16 million Australians in an average week. The campaign was on air until November 2010 across all metro commercial radio stations. (CRA 2012a)

By construing audiences as "markets" rather than products, CRA obscures the basis of its members' operations: the Commonwealth grant of an "exclusive use" license to use publicly owned electromagnetic spectrum for commercial purposes. Such licenses are, in essence and effect, a lease of real estate (Graham 2006). They provide commercial radio the use of publicly owned property to generate revenues, are exclusive, and occupy a specific geotechnical space. By casting its audience in the role of "market" (albeit it one that never makes a purchase) radio can convincingly describe itself as providing a public service, promoting artists, supporting the arts, and providing a free information service to listeners (CRA 2012a).

2 Platemakers, Common Good, and the One Percent Cap

An historical view of copyright law in Australia brings us inevitably to the Statute of Anne, a mercantile era law passed in 1710 that was premised on a common good associated with the relationship between publishing and public learning. The High

Court's decision on the 1 % cap was made in the context of the 1968 Act. Here is part of the High Court's response to the challenge:

(...) speaking generally the 1911 Act, like the Statute of Anne, took into account and balanced the interests of authors, entrepreneurs and the public. The public's interest lay in the dissemination of copyright works, including dissemination on reasonable terms. Any detailed consideration of the historical context of the Statute of Anne supports this construction of its intent and its provisions. (HCA 2012)

Anne is unambiguous on the public pedagogical function of copyright law. Its title declares it to be 'An act for the encouragement of learning, by vesting the copies of printed books in the authors or purchasers of such copies (...)' (8 Anne, c 19). It is also clearly anti-monopolistic:

Whereas printers, booksellers, and other persons have of late frequently taken the liberty of printing, reprinting, and publishing, or causing to be printed, reprinted, and published, books and other writings, without the consent of the authors or proprietors of such books and writings, to their very great detriment, and too often to the ruin of them and their families: for preventing therefore such practices for the future, and for the encouragement of learned men to compose and write useful books (...) that [the statute] be enacted. (8 Anne, c 19)

The clear intention of Anne was to assert protections for authors against the market dominance of monopolies that had historically been held in Britain by the printing guilds (Ochoa and Rose 2002). Its rationale was the common good derived from the publication of new works and the public learning associated with that dissemination. An important underpinning assumption of the act is that monopolies stifle innovation (Ochoa and Rose 2002). That the High Court draws on Anne for its historical force is ironic. The bulk of copyrights in Australia (as elsewhere) are owned by an oligopoly of massive corporations. That fact is also noted by the High Court in its decision:

The second to fifth plaintiffs [Sony Music, Warner Music, EMI Music, and Universal Music PG] are the owners or exclusive licensees of copyright in numerous sound recordings, including sound recordings made prior to 1 May 1969. They collectively control (as owners or controllers) the majority of sound recordings which have been commercially released in Australia in the last 70 years. (HCA 2012)

So on one side of the 2012 decision there are massive global oligopolies in recorded music copyrights, and on the other, oligopolies in local, state, and national media properties. Australia is known for its intense level of media ownership concentration. CRA purports to represent 99 % of Australia's commercial radio businesses. Its constituency involves 260 commercial radio licensees but it notes that:

In recent times there has been a consolidation of radio station ownership. Commercial member radio stations are now owned by over 30 operators, with 80 per cent of the stations formed into 12 networks. (CRA 2012b)

The unintended irony of the High Court decision can be understood as good law only if, as Attali (1985: 98) argues, a music recording has been seen historically as a special kind of writing by lawmakers. That appears to be the case in the current

decision which reasserts the validity of separating compositional copyrights from those that subsist in recorded works. The decision refers to the Australian copyright Act of 1911 (which was replaced by the 1968 Act), noting that ‘the 1911 Act granted a copyright to record manufacturers, which was expressly conflated with the copyright of authors and composers of original musical works’ (HCA 2012). Following the Westminster Act of 1956, which ‘distinguished between copyright in works, including musical works, and copyright in subject matter other than works’ and ‘which included separate identification of the nature of copyright in sound recordings’, the 1968 act clearly distinguishes between the rights pertaining to composition and those that pertain to recording (HCA 2012). The net result of this was to give the corporate “person” making the recording a separate but similar status to that of the person who composed the work. The central analogy drawn in the decision in respect of record duplication is the notion of the “plate maker”, a technical concept that has its origins in printed media.

The High Court sidesteps impacts upon composers, performers, and individual (i.e. non-corporate) record producers that may extend from its decision. The underpinning argument associated with the identification of platemakers as authors is one based on capital outlays. It is a hidden syllogism that owes its force to liberal economic constructions. The decision cites the following passage in the 1911 Act:

Copyright shall subsist in records, perforated rolls, and other contrivances by means of which sounds may be mechanically reproduced, in like manner as if such contrivances were musical works, but the term of copyright shall be fifty years from **the making of the original plate** from which the contrivance was directly or indirectly derived, and the person who was the owner of such original plate at the time when such plate was made shall be deemed to be the author of the work. (Imperial Copyright Act, 1911, cited in HCA 2012, my emphasis)

Besides being construed as a kind of mechanical authorship, the plate maker’s right draws its special place in copyright from the common good aspect of Anne. The unspoken economic argument that underpins that part of the decision runs like this: there is significant capital investment involved in the plant and equipment required to make an original recording and its subsequent copies. It is in the common good that these services continue because they contribute to public learning. They cannot continue without statutory copyright protection that allows them to profit from their authorship and protects the property aspect of the ‘plate’. As I show below, privileging the plate maker in current circumstances ignores the dramatically lowered cost of producing and disseminating recorded musical works brought about by the widespread availability of digital production technologies and the fact that every digital recording is now the equivalent of a plate in terms of its potential to generate high fidelity copies.