

# The Licensing of New Recorded Music Business Models in Australia: Current practice, the barriers to entry and an investigation into the need for legislative reform

Ben Rynderman  
LL.B., BMus

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# Abstract

New and disruptive recorded music business models are generating significant revenue and providing new opportunity for an industry that is rapidly diminishing in size. However, launches in Australia of these new businesses are being significantly delayed, in some cases by up to a decade. This thesis investigates the reasons behind Australian launch delays and seeks answers from key members of industry. If the Australian industry is to benefit from the revenue potential of new services, these delays need to be examined, understood and overcome.

Key statistical data was sourced and analysed regarding the current financial state of industry and levels of new service adoption. Semi-structured interviews with key figures in the Australian recorded music industries were also conducted over a 4 month period in 2012-13 and this data was analysed in an attempt to reach conclusions as to the reasons behind launch delays, seeking key themes resonating across industry. A further analysis of existing copyright legislation was conducted and this thesis also seeks conclusions on whether legislative reform may expedite the processes of launch in Australia.

While conclusions drawn from this research aren't necessarily able to provide concrete answers to the fundamental research questions, they shed significant light on the dynamics of the Australian recorded music industries and the tensions that exist between institutions within it. Further, these conclusions highlight the need for a re-examination of the role of Performance Rights Organisations internationally and highlight the overly complex nature of existing copyright legislation in Australia.

# Statement of Original Authorship

The work contained in this thesis has not been previously submitted to meet requirements for an award at this or any other higher education institution. To the best of my knowledge and belief, the thesis contains no material previously published or written by another person except where due reference is made.

Signature: QUT Verified Signature\_\_\_\_\_

Date:

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## 1. Introduction

It has become clear over recent years that new, disruptive and innovative business models within the recorded music industries<sup>1</sup> have the potential to generate significant streams of revenue. This revenue is becoming exceptionally important and sorely needed in an industry that has lost approximately half its value over the past 20 years (IFPI 2016). Though these new businesses have made significant impact in European and American music markets, for some reason their launches are being delayed in Australia. Streaming services, curated radio models, music locker storage systems and social music platforms have all been held back in their introduction to this market. The fact that these delays exist and the reasons behind them are explored in this thesis. The central question guiding this research is two-fold: *Why is Australia lagging behind the rest of the world in the launch of new recorded music business models? Will legislative reform expedite the launch of new businesses in this territory?*

The questions may be expanded as follows:

Logistic:

1. What is the reason for the delay in launches of new recorded music businesses in Australia?
2. Is Australia's geographic isolation an issue in the establishment of new recorded music businesses?

Market/Demographic:

3. Are there any idiosyncrasies that make Australia's market unique?
4. How do we take advantage of Australia's tech savvy market?

Legal:

5. Does the licensing process play a role in the delays of service launch?
6. Is copyright law stifling innovation in this area?
7. Will legislative reform expedite the launch of new music businesses in Australia?
8. Is a multinational licence, and therefore a global launch, possible?

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<sup>1</sup> The term 'industries' is used throughout this thesis to represent the businesses involved in the recording, ownership, distribution and exploitation of recorded music. This is a complex and evolving space and contains a number of competing interests that are involved in differing aspects of its operation. It is therefore more accurate to refer to these organisations as a group of industries, rather than separate players in one.

In answering these questions, it was necessary to compile both qualitative and quantitative data and thus a mixed methods approach was employed. Through a lens of economic geography, I have analysed existing literature and compiled both current and historical industry data and statistics. I also conducted seven semi-structured interviews with leading figures in the Australian recorded music industries, representing a broad range of areas and interests including record labels, publishers, artist managers, lawyers, collection societies and new recorded music businesses. I then conducted an inductive thematic analysis on this data to establish elements of both commonality and division through the Australian industries. Undertaking this research through the theoretical perspective of economic geography allowed me to analyse specific market dynamics and focus on Australia as a unique territory in the context of the global recorded music industries.

Conclusions drawn from this research are broad. While there are no concrete explanations for the launch delays under investigation, this thesis will show that there are significant differences in attitude held in varying sectors of the Australian recorded music industries. It is clear that those in the 'legacy' industries (labels, publishers, lawyers) view the Australian market very differently to those involved with the new services. While representatives of new businesses view this market as an exciting and dynamic place to experiment and a market very keen to engage with new technologies, those representing labels and publishers view Australia as a market that is too small to attract the attention of overseas services, one that is far too geographically isolated and one that has no real impact on the world stage.

Further, while new music businesses put forth the notion that labels and publishers have made the licensing process very difficult, interviewees representing these companies argue that they have simply been waiting for the opportunity to make deals with the services themselves. Local representatives of publishers and labels similarly attest that there is far too much investment required on the part of new music businesses to justify launching in this territory, while the new businesses themselves suggest that a skeleton staff is able to effect negotiations, set up local networks and even run the operation itself in its early stages. That being said, both parties agree that the idiosyncrasies inherent in the Australian market, with the exception of broadband speeds and availabilities, are a drawcard to new recorded music businesses rather than a deterrent.

In the area of technological adoption, and particularly Australia's tendency to be an early adopter of new technologies, all members of the industries seem to be in agreement that Australians are very keen to experiment and absorb new technologies, even though there are significant delays in the

availabilities of new technologies in this territory. Further, once new technologies are made available here, there is a significant amount of marketing required before the Australian market becomes aware enough of new technologies for their adoption to follow.

With regard to copyright, its impact on industry practices and propositions for reform, there is disparity throughout the industries on whether reforms to our existing legislative regime will expedite the launch of new services—or even whether this expedition is a good thing. Interestingly, those on the recording side appear to have issues with the structure and workings of our existing system, which is predominantly set up to protect their rights. Many in the new businesses, whether seeking legislative reform or otherwise, complain that there is an excessive amount of time, money, and energy spent navigating our complex copyright environment.

It is also evident that the workings of copyright law with regard to ephemeral reproductions needs to be clarified and simplified. If legislative reform is to occur in Australia in the foreseeable future, it is most likely to be in this area and most likely to be an exemption from copyright protection for the ephemeral copy. This thesis proposes that this legislative reform will expedite the licensing process and thus the launch of new recorded music businesses in Australia. Finally, it will be shown that global launches of new recorded music businesses are possible, as are multinational licences, though this will require a revisiting and potential revision of the roles of territorial Performance Rights Organisations in royalty collection for online exploitation.

While these research outcomes may not resolve the ongoing delays in launches of new recorded music businesses in Australia, they may help to create a more open and fluid dialogue between the seemingly oppositional positions of rights owners and new recorded music businesses. It is clear at this point that the fissures in perspective between these two parties are having a destructive impact on the launches of new businesses in Australia. At the very least, these conclusions open the door for further study into the ongoing role of Performance Rights Organisations and their future in an online music environment.

## 2. Literature Review

### 2.1 Background



Sales of recorded music have experienced significant erosion since the turn of the 21<sup>st</sup> Century, requiring a once vibrant global industry to undergo a “major transformation process” (Wlömert 2015). Since the rise of the internet, international recorded music revenues have fallen from over \$40 Billion in 2000 (Leyshon, Webb et al. 2005) to \$15 Billion in 2015 (IFPI 2016). A multitude of factors have been proposed as the reason for the decline of sales in recorded music since 2000, including the diminishing value proposition of the Compact Disc, the end of the CD replacement cycle, the rise of alternative entertainment options (Kusek and Leonhard 2005) and even the democratisation of production and distribution of recorded music product (Anderson 2008). It has become clear, however, that “in the internet age, selling recorded music has become as much of an art as making the music itself” (Madden 2009).

It has been argued that the major record companies have maintained a relatively static business model despite significant changes in the industries surrounding them. Companies such as Warner Music, Universal Music Group and Sony Music Entertainment are the biggest stakeholders in the industries, and source their revenue through ownership of most of the industries’ Master Recordings that generate exchange value. To maintain this position, they have litigated aggressively for the protection and perpetuation of the existing CD-based business and have seemed unwilling to acknowledge the need for alternative business models, very rarely licensing the operation of such models run by other industry players (McKay 2010). Though these same companies themselves attempted unsuccessfully to build and launch alternative non-CD based music retail businesses for the internet (Casadesus-Masanell and Hervas-Drane 2010), many have argued that they have been adamantly unwilling to allow the same of other companies, particularly with the licensing of their proprietary recordings (McKay 2010). Some have even argued that the major labels have “consistently failed to respond to the wishes of their customers and provide them with a convenient and cost effective means of acquiring digital music” (McKay 2010). In short, “the major record labels never miss an opportunity to miss an opportunity” (McKay 2010). There is emotion on both sides of the argument and it has become clear that “one thing that the history of popular music tells us is that the introduction of significant new technologies is rarely uncontroversial” (Marshall 2015).

To understand the current state of play in the international recorded music industries and the potential of new services, it is imperative to examine the nature of the new consumer-facing music business models—either suggested or already operational—along with their current levels of uptake. Further, to enable an understanding of relative uptake levels, it is helpful to analyse the traditional social, technological and cultural factors that impact upon the adoption of new

technologies and consequently how these may affect the adoption of new methods of recorded music consumption. As industry commentators have noted, “innovations must address real problems and needs to survive, but their radical potentials can also be suppressed by the drag of conservative incumbent players, the weight of social conventions and mores, and historical conjunctures” (Burkart 2014).

## 2.2 The ‘New’ Services

The launch of Apple’s iTunes store in April 2003 was a watershed moment for the international recorded music industries and the legal sale of mp3 files online (Apple 2010). Users were able to purchase music “at a relatively lower price compared to physical music” (Koh 2015), and from a both reputable and legal source online. An acknowledgement of the force of the internet and its potential for music retail, iTunes became in 2011 the largest retailer of recorded music in the world (Apple 2011), holding nearly 800 million registered user accounts (Blattberg 2014) and 400 million credit cards on file (Blattberg 2014). It sold over 25 billion songs to February 2013 (Apple 2013), averaging 15,000 songs downloaded per minute worldwide (*ibid*) from a catalogue of over 26 million (*ibid*). This model has become so successful that it has spawned a legion of similar a-la-carte mp3 stores. There are now well over 400 licensed digital music services active online (IFPI 2011), ranging from the largest players like iTunes and Amazon to considerably smaller stores servicing niche or local markets, like [metalmaniacs.com](http://metalmaniacs.com) and [bigpondmusic.com.au](http://bigpondmusic.com.au). On a global scale, download sales represented 52% of global digital music revenues in 2015 (IFPI 2016).

While these figures represent a significant uptake by consumers and a multi-billion-dollar revenue source for copyright owners, it could be argued that the a-la-carte mp3 sales model represents only a minor adjustment to the traditional CD-based business model utilised by the international recorded music industries for decades. While the shift from physical product to digital product represents an evolution in the recorded music industries, it is on the field of new and innovative business models that this thesis will focus. These may be summarised as follows: subscription streaming services, personalised/curated radio, digital lockers and social music.

## 2.3 Subscription Streaming

The subscription streaming model works as follows: a user pays a low monthly subscription fee to gain access to streaming content (as opposed to the downloadable content available from retail mp3

stores) that is accessible from any internet connected device, including computers, smart phones, internet-connected home entertainment systems and some car stereo systems. The subscriber has access at any given time to the entire library that is made available by the content provider, including all copyright protected material licensed from the relevant copyright owners, often the major record companies and music publishers. The notion of constant, unlimited access to (almost) every song ever released forms a major selling point of the service.

Major labels were experimenting with this type of service as early as 1999 (Casadesus-Masanell and Hervas-Drane 2010), so it is not strictly a 'new' business model, though its growing market share and only recent global popularisation makes it new in the eyes of consumers. The worldwide subscription streaming business surpassed US\$1 billion in revenue for the first time in 2013 (IFPI 2014) and now accounts for 43% of all digital music revenue worldwide (IFPI 2016). The number of users paying to subscribe to a music service rose to 41 million in 2014, a significant increase from 8 million in 2010 (IFPI 2016). IFPI reports that 118 billion songs were streamed by subscription streaming businesses in 2013 (IFPI 2014).

Spotify is currently the top paid subscription streaming music service worldwide, with over 30 million paying subscribers (Hassan 2016). It has become the biggest digital music retailer in Norway and Sweden (IFPI 2011) and the second biggest retailer of music in all of Europe, following iTunes (IFPI 2011). However, Spotify represents an amalgam of both the retail online content subscription model and an ad-supported model. Spotify's entry-level service is free of charge to the consumer, but is interrupted every few tracks by "occasional ads" (Spotify 2011). Users of Spotify's free and ad-funded service numbered over 10 million in Europe at the time of their highly publicised US launch (Makkonen, Halttunen et al. 2011).

Spotify is not alone in offering a free entry-level option. Other companies offering similar ad-funded or limited trial periods include Google, Deezer, Rdio and Guvera. Due to the exploitation of several copyrights implicit in the operation of these services, prior to their launch in every individual territory, all of these services have needed to establish licensing agreements with all major record labels, music publishers and even the significant aggregators of independent artists like Tunecore, CD Baby and The Orchard along with independent record label representative bodies like Merlin (Seay 2010).

It is noteworthy that all services mentioned above are concerned exclusively with providing a music service. However, companies representing other facets of the consumer electronics industry are entering the subscription music field. Samsung, manufacturers of mobile phones, televisions and other consumer electronic devices, launched Samsung Music Hub (Samsung 2011), later rebranded as Milk Music (Samsung 2015) and Sony, manufacturers of similar devices (along with a major record label themselves,) launched Sony Music Unlimited in 2011 with licenses from both other major labels (Cashmere 2011).

Especially significant to this thesis is the discovery that “territories see a drop in illegal downloading activity when they offer legal streaming services” (Braxton 2013-2014) and that streaming services “have been significant factors in helping recording industries in some countries arrest their long-term decline” (Marshall 2015). From this perspective alone, it would seem that rights holders would be in full support of the efficient and timely establishment of new recorded music businesses in multiple territories. Industry commentators note that by 2020, digital music revenues will be \$10 billion globally and streaming will account for more than half (Activate 2016).<sup>2</sup>

#### 2.4 Personalised / Curated Radio

As with the streaming services outlined above, personalised or curated radio is not strictly a new business model, though it has taken over a decade to gain significant traction or market share (IFPI 2016). Personalised or Curated online radio allows a user to craft and sculpt the listening experience according to their unique personal tastes. Artists, songs, genres or styles may be added or subtracted from a user’s ‘station’ to allow the user a unique listening experience and a steady stream of music that is precisely honed to their musical preferences. Songs not liked may be skipped up to an hourly limit, depending on premium subscription preferences and purchases, and songs enjoyed may be given a virtual ‘thumbs up,’ encouraging the service to provide more of a similar ilk. While users don’t have the ability to listen to specific albums in full or specific artists eternally, services will link to a-la-carte mp3 stores where purchases can be made. Pandora and Slacker have emerged as major players in this field, Pandora claiming over 81.1 million monthly unique listeners in 2015 (Peoples 2016) with a revenue of \$1.16 billion (Peoples 2016) and a number of other services are beginning to surface as the industry develops.

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<sup>2</sup> While not addressed specifically in this thesis, it is critical to note that the single biggest ad-funded ‘music service’ globally is youtube.com. Analysis of youtube has been omitted as it is not a dedicated music service and therefore falls outside the scope of this thesis. Notwithstanding, it is of note that youtube accounted for 48% of all streams of music in Quarters 1 and 2 of 2015. (Activate 2016)

iHeartRadio is a service that presents an interesting fusion of traditional terrestrial radio broadcast that is streamable from the internet, along with personalised stations created by users. In an era where the impact and popularity of terrestrial radio is increasingly questioned (Badooqwala 2010), it seems that Clear Channel, an American company that owns significant terrestrial radio holdings, has sought a way to capitalise on its traditional media holdings while simultaneously futurising its notion of radio and customisability for the user.

Personalised or Curated Radio is now being bundled into the application offerings from subscription streaming services. Spotify, Rdio and Google have all included Personalised Radio in their desktop and mobile applications and other Subscription Streaming service providers are swiftly following suit. There is significant pressure on providers like Pandora and Slacker to offer something more than what the subscription service providers are able to provide as simply a bonus to the subscription offering. Similarly, Apple introduced iTunes Radio, a curated radio adjunct to their a-la-carte download store, in the United States on 18 September 2013 (Zoladz 2013).

From a licensing perspective, it is worth noting that Pandora has operated in the United States since 2000 without a license from any record label or aggregator, due to a provision in section 114 of the United States Copyright Act that enables a compulsory license to be granted to any web-based service offering a non-interactive stream of music (Conley 2007). Though the stations on Pandora are indeed customisable and editable, the restrictions imposed by the service render the service technically non-interactive. Interactive streams, such as those offered by subscription services, are unable to obtain the compulsory license and services and “must negotiate directly with the rights holders of sound recordings, i.e. the record companies [and publishers], for the right to perform the sound recordings online publicly” (Conley 2007). Conversely, Slacker established licenses with all major labels and significant independent labels prior to its launch in 2007 (Hefflinger 2007).

## 2.5 Lockers

With the rise of cloud computing, significant industry players such as Google and Amazon saw the potential for the integration of music storage and streaming services to be coupled with their cloud storage systems, initially designed for other types of data storage (Kafka 2012). In short, a user is able to upload their pre-existing digital music collection to an online storage repository (essentially an online hard drive available to the user alone) and to stream that collection to web-based players or app based versions on portable electronic devices. At their introduction, the immediate benefit to

consumers was the service's ability to "remove the need for removable memory cards and cable tethers to personal computers, and [to] use wireless connections for transferring data from a leased central database, or from a user's own storage 'locker'" (Burkart 2014). A free subscription sees a minimal amount of storage space made available to users, while premium (paid) offerings allow users significantly larger amounts of storage space. Amazon's Cloud Player, for example, offers users the ability to store 250 imported songs for free, whereas the Premium offering allows storage of 250,000 imported songs in a multitude of file types for a fee of \$24.99 per year (Amazon 2011).

This model and the storage/streaming systems utilised have drawn the ire of record labels and copyright owners as they were initially launched without permission or licenses to exploit the copyright-protected materials being uploaded and streamed. And again, the online locker model is not a strictly new service. In 2000, MP3.com offered a very similar, if not identical service to those reviewed here "before it was sued by the Recording Industry Association of America (RIAA), consumed by Vivendi Universal, shut down, and its infrastructure integrated into Pressplay" (Burkart 2014). Google and Amazon have argued that the upload and retrieval of a user's purchased material to and from their computer to a cloud drive is identical to the process occurring in the user's own home with an external hard drive, a process allowed under Fair Use and Format Shifting provisions in the Copyright Act. Cat Griffin from Amazon said at the time of launch that "Cloud Player is an application that lets customers manage and play their own music. It's like any number of existing media management applications. We do not need a license to make Cloud Player available" (Cheng 2011).<sup>3</sup>

As the model evolved, Amazon and Google both combined their locker services with their a-la-carte mp3 stores. Users are now able to buy music directly from the company's respective online store and have it automatically side-loaded to their online locker for streaming at a later date. These purchases don't count towards the user's allocation of space in the online locker.

A later entrant to this model, Apple launched their iTunes Match service in November 2011 with a slight twist on the upload/store/stream service originally offered by Google and Amazon (Bertucci 2012). Rather than have users upload their sometimes enormous volumes of data to the proprietor's servers, iTunes Match reads through a customer's iTunes library and matches it with artists and songs already stored by Apple in their iTunes Store infrastructure. Thus, the only upload necessary is for songs not featured in Apple's 26 million strong catalogue (Apple 2013).

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<sup>3</sup> The copyright machinations and implications of this service (and the others discussed in this section) will be analysed later in this thesis.

With license agreements already in place with all major record labels and a significant majority of the world's independent labels, Apple was able to establish this service quickly and easily, gaining a significant advantage over its competitors. Having launched services in the absence of agreements with labels, Google and Amazon have had to backtrack somewhat and acquire licences in order to launch their own Scan & Match services. All three now offer similar services, though Google retain an element of difference, offering this service for free (Kafka 2012).

## 2.6 Social Music

2011 saw the introduction of several new services that focus on social and communal interaction as central and integral to the music experience. Turntable.fm, for example (along with its very similar emulators plug.dj and rolling.fm), was a web-based service that simulated a virtual club environment and allowed users to play the role of a DJ, selecting and playlisting the music heard by a room full of listeners. Listeners are free to join or leave any of a multitude of rooms, traditionally sorted by genre or theme, and all listeners may comment on the music chosen, interact with the DJ and/or other listeners and award the DJ points based on their track selections. The listener may become the DJ in a room or start a room of their own design at any time. An entirely new platform, Turntable.fm was launched in May 2011 and had 140,000 registered users in its first month (Team Turntable 2013) and over 400,000 by its second (Team Turntable 2013).

Significantly, at the end of June 2011, in the midst of this surge of popularity, Turntable.fm was forced to eliminate all access for users outside the United States (Team Turntable 2013). While it was able to continue operations under the auspices of the Digital Millennium Copyright Act as a “non-interactive, non-subscription digital audio transmission”<sup>4</sup> within the United States (Conley 2007), in the absence of international licenses from Copyright owners it could not operate in international territories. The service did not obtain licenses from the major record labels until March 2012 and was only available afterwards within the United States (Buskirk 2012). The owners have since said that obtaining licences and their efforts to “play by the rules... really stunted our growth” (Popper 2014). Unfortunately, the site's owners ultimately announced that “the cost of running a music service has been too expensive and we can't outpace it with our efforts to monetize it and cut costs” (Team Turntable 2013). Regardless of its popularity and significant uptake, turntable.fm was forced to close in November 2013.

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<sup>4</sup> It was the same section of this legislation (17 U.S.C. § 114(d)(2) (2006)) that allowed Pandora to continue to broadcast in the United States when access for international users was disabled.

Through the early 2000s, the introduction and proliferation of the iPod and portable music players made music consumption intensely personal, often undertaken as a solo experience with a user isolated by headphones or earbuds. There is evidence, however, that the notion of 'social' music is becoming increasingly important to the listener of the 2010s. The sharing and communicating of listening preferences and musical choices have become major selling points of all new music services. By way of demonstration, when the listening choices of Spotify users were integrated with Facebook's news feed, the service gained 1 million new users in the space of two days (Olanoff 2011). Further, Spotify CEO Daniel Ek claimed that over 1.5 billion songs were shared through the Facebook infrastructure in the two months following the integration (Solomon 2011).

## 2.7 Market Share of the New Models

Digital music revenue grew by 10.2% in 2015 to US\$ 6.7 billion (IFPI 2016) and digital channels now account for an estimated 45% of recorded music revenues globally (IFPI 2016). For the first time in 2013, digital revenues overtook those generated by physical sales of music in Australia, accounting for 54.7% of all trade revenues (Australian Recording Industry Association 2014). In Sweden subscription services accounted for 84 per cent of digital revenues in the first ten months of 2011 (IFPI 2011). We have witnessed an industry metamorphosing, albeit sluggishly, in front of our eyes. New business models and new methods of acquisition are being adopted by consumers in numbers that indicate a commercially viable future.

While these numbers are encouraging and display a renewed enthusiasm in the music-buying public to engage with legal and innovative services, it is sobering to note that the total revenue garnered by subscription streaming services worldwide in 2012 was still less than that generated by the sale of mobile phone ringtones (Australian Recording Industry Association 2014). Given that mobile users have been able to configure and craft their own ringtones from songs of their choice *for free* for well over a decade, the ringtones market shouldn't even exist. Notwithstanding the limitations, the market for new recorded music business models is certainly growing and it is in this realm, the emerging frontier of digital music sales, access and acquisition, that the worldwide recorded music industry may recover some of the losses it has experienced since the turn of the millennium.

In February 2015, Pandora announced that they had reached 2 million registered users in Australia and were adding 20,000-30,000 new clients per week (Mason 2015), despite only launching officially in July 2012 (Eliezer 2013), and in July 2014 it was reported that over 1.65 million Australians over



the age of 14 regularly stream music on their mobile devices (Eliezer 2014). At any given time in the United States, “on average, over half a million people are listening to Pandora” (Westergren 2013). Slacker is also claiming significant penetration, boasting 26 million registered listeners (Westergren 2013). Industry analysts eMarketer.com have predicted that over 53.7% of the American population will interact with online radio on a monthly basis by the end of 2016 (eMarketer.com 2013). These numbers suggest a growing, enthusiastic and interested market.

## 2.8 Factors that Influence the Adoption of New Technologies

The world has certainly embraced CD technology in the 33 years since Billy Joel’s 52<sup>nd</sup> *Street* was embedded on a small PVC disc and sold in Japan (Heater 2012). However, it may be some time before consumers are as receptive to streaming, locker, social or personalised radio services. Substantial research has been undertaken in this area and has highlighted a number of factors that influence the uptake of such technologies (Ironmonger 2000, Arthur 2006, Walker 2006). Factors that influence a society’s adoption of new technology include individuals’ willingness to engage, technical anxiety, user-friendliness, and perceived advantages. An examination of these factors may throw some light on emerging recorded music business models and their relative levels of consumer adoption.

At a general level, adoption or rejection of new services is affected significantly by the personal capacity and willingness of individuals to engage with new services (Agarwal and Karahanna 2000). In terms of the recorded music industries, the willingness of the individual to examine new methods outside those that are already familiar will be critical in their adoption. Unfortunately for these industries, it would appear that the established methods of consuming digital music are predominantly illegal. IFPI has stated that 95% of music downloads in 2008 were from illegal sources (Longino 2009), while MUSO reported in 2016 that 12 billion visits to websites in 2015 were for the sole purpose of streaming pirated music content (Ingham 2016) and that global music piracy downloads grew by almost a fifth in 2015 (*ibid*).

Further, the user may be swayed away from adoption by technical anxiety and the perception of risk involved in using new services (DeRuyter, Wetzels et al. 2000). This seems to be a genuine concern of those hesitant to engage with new recorded music business platforms, particularly online locker models. There is a fundamental certainty for a consumer in buying a plastic CD and playing it at home in their free-standing CD player. Tangibility, physical presence and the absence of reliance on computers, phones, streaming technologies and internet connections create a sense of calm and

stability for a listener. In fact, while 65% of consumers store “some level of personal information... in the cloud” (KPMG 2011), KPMG reports that 25 per cent of people indicate they are “concerned about their ability to retrieve their data from online services” when it comes to cloud computing (KPMG 2011). This perceived risk is also reflected in studies that highlight the security and technical reliability of a new system as a factor in its widespread adoption (Bitner 2001).

Moreover, the accessibility and user-friendliness of the system are critical in its widespread adoption by consumers (Walker and Johnson 2006). This is an area of particular concern to creators and marketers of new business models in the music industries. For example, it has widely been acknowledged that Spotify “actually modelled their desktop interface after iTunes, so it’s also very familiar and fairly easy to use” (Bertucci 2012). If users may switch from one service to another without the need to learn a new set of commands or acclimatise themselves to a new software environment, the new model becomes more attractive.

Finally, a significant determining factor in the adoption of new technologies has been found to be the comparative benefits and advantages offered by the new system over that which is already established (Agarwal and Karahanna 2000). This may be the one area in which all the new models and services excel in their appeal to the marketplace. The convenience and portability of streaming and locker models, the recommendation and discovery capabilities of personalised radio, and the social integration of models like turntable.fm are generations ahead of that offered by CD or a-la-carte mp3 stores.

It has been established that there are a multitude of factors that determine whether any given service reaches the critical mass of widespread adoption. However, it is clear that “increasingly, the public is displaying a willingness to adopt legitimate services” within the recorded music industries (Rae-Hunter 2012). This offers a potential lifeline to an industry that may otherwise suffer from a permanent decline in revenue.

## 2.9 Adoption of New Technologies in Australia

Australia has traditionally been an enthusiastic adopter of new technologies, as typified by the case of colour television. By 1985, over 93% of Australian households owned a colour TV set, though it was only made available in Australia in 1974 (Ironmonger, Lloyd-Smith et al. 2000). Internet adoption in Australia tells a similar story. As far back as 2001, 52.7% of Australians had accessed the internet within the previous 12 months (The World Bank 2016). By 2010–11, 79% of people in

Australia aged 15 years and over had accessed the Internet, while 96% of those aged 18-24 years accessed the Internet (ABS 2012). Significantly, by 2010-11, 68% of all Internet users in Australia had used the Internet to purchase or order goods or services for private purposes (ABS 2012). The following table (Figure 1) compares numbers of Internet users per 100 people in Australia to worldwide usage and use through significant regions between 2001 and 2014. It demonstrates that Australian internet adoption has not only kept pace with that of the United States, but has far surpassed adoption rates across the world and been more rapid than that of OECD countries, Europe, Asia and the Middle East.

Figure 1: Internet Users per 100 People 2001 to 2014 (Individuals who have used the internet from any location in the last 12 months)														
Region	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
World	8.1	10.6	12.3	14.2	15.8	17.6	20.6	23.3	25.8	29.2	31.8	35.1	38.0	40.7
Australia	52.7				63.0	66.0	69.5	71.7	74.3	76.0	79.5	79.0	83.0	84.6
United States	49.1	58.8	61.7	64.8	68.0	68.9	75.0	74.0	71.0	71.7	69.7	79.3	84.2	87.4
OECD members	33.5	41.6	45.8	50.6	54.2	56.6	61.9	63.9	65.3	67.6	68.6	72.2	75.8	78.1
Central Europe and the Baltics	10.2	18.2	22.5	29.2	34.6	40.7	45.1	50.5	54.9	58.4	58.9	61.5	63.3	66.9
Europe & Central Asia	16.4	23.1	28.4	32.4	35.2	38.1	43.7	47.4	50.7	56.2	59.2	63.9	66.3	69.2
East Asia & Pacific	7.3	9.0	10.5	12.6	14.7	16.6	20.8	25.3	29.5	34.2	37.4	40.7	44.4	46.9
Middle East & North Africa	2.1	3.8	5.1	8.4	9.8	11.8	15.0	18.7	21.6	24.9	27.7	31.3	34.7	38.3

It is clear that the Australian public have for some time been engaged with the platforms and systems necessary to lay the groundwork for the introduction of new internet based music business services. More importantly, however, Australians have proven themselves to be disproportionately enthusiastic buyers of music. Data relating to Australian music sales will be analysed later in this thesis.

## 2.10 Economic Geography and the Music Industry

Economic Geography is not a new lens through which to analyse music and the music industry. Scholars have in the past investigated the geographic distribution of musical evolution, the distribution of industrial hotbeds along with the creation and dissolution of local scenes that

emerge, thrive and disperse within the music industry. Florida, Mellander and Stolarick (2010) investigate the economic geography of music in the United States between 1970 and 2000 – arguably tracing the contour of the peak of the physical music consumption era—identifying clusters and concentration of musicians and music industry bodies. They identify that traditional genre-based clusters, like Detroit’s Soul or Seattle’s Grunge, have given way to larger urban centres that offer more economic opportunity and a broader range of potential income streams.

Further, Florida and Jackson (2010) investigate the emergence of Nashville as a third major centre of music industry activity, alongside New York and Los Angeles. They argue that clustering of music industry activity to key centres creates potentially superior economic outcomes for musicians along with possibly heightened artistic activity. They identify, however, that smaller clusters of industrial activity persist throughout the United States in smaller regional centres, enabled by the falling costs of music production and distribution through the emergence of cheaper and more readily available technology.

Similarly, Watson (2008) investigates the Economic Geography of London’s music industry, though he analyses it through a lens of “relational and organisational proximity” rather than geographic proximity. He identifies that one of the key elements of globalisation of industries concerned with media content is the concentration of its activity around key centres of global capitalism. Further, he identifies that the connectedness of key London music industry firms to the worldwide music industry is advantageous to its local participants.

In a more modern context, Verboord and van Noord (2016) analyse the impact of the internet on the importance of geographic positioning and specifically “the extent to which social media can reduce inequalities in mainstream media attention between artists from central cities in popular music production (e.g., New York, London) versus more peripheral cities.” They identify that the internet has irreversibly changed the structure and organisation of popular music and note that social media has made it easier to disseminate and consume music from anywhere in the world. Ultimately, they conclude that geographical origin plays a “pivotal role” in the amount of attention received by artists from traditional media and online user-critics.

While these theses identify the machinations of local music industries and the benefits or detriments of locality to local participants, they do not focus on the interplay of global music services and the music consumers of different markets. Perhaps tangentially, but perhaps also closer to the central

tenets of this research, Malecki (2002) investigates the Economic Geography of the internet's infrastructure and its localisation. While his investigation traces the physical hardware of the internet and identifies the urban centres at which that hardware is interconnected, he also identifies key themes on the transition of physical industries to online-based industries. Music, along with other forms of readily digitised entertainment, is one of these key areas.

With regard to music licensing and the roles of technology and industry, much has been written about the licensing process in the United States and Europe. Seay (2010) argues that a legislative restructuring of copyright is necessary to enable the success of new recorded music business models in the United States. He suggests also that the current statutory mechanisms for licensing are far too complex to enable successful launches of new businesses.

From a European perspective, Mazzioti (2011) suggests that the territorial nature of European music licensing is at odds with the borderless nature of internet distribution. Further, he argues the "unbearable complexity of online rights clearances" is preventing companies from "taking advantage of the E.U. cultural sector as a whole" (Mazzioti 2011). He suggests that collection societies across Europe have further complicated issues by separating the acts of reproduction and communication and insisting on separate licensing processes for each, regardless of modern technologies that don't necessarily treat each act distinctly.

With regard to potential reforms of existing licensing systems, again the bulk of literature focuses on the United States and Europe as a basis of investigation. Conley (2007) argues that global licensing of performance rights should be attainable from a music publisher rather than a multitude of potentially outdated territorial collection societies. Day (2009) argues that our traditional notions of performance, reproduction and distribution are outdated in the internet age and that licensing needs to be updated accordingly. He suggests a range of reforms that will be discussed in detail below. Masur (2011) discusses the involvement of Internet Service Providers in the licensing process and argues for collective licensing of musical works—as reflected in the college-based Chorus system in the United States. McKay (2010) argues that a compulsory blanket licence fee would expedite the licensing process, wresting control of the music industry away from the major copyright owners who have traditionally been hesitant to relinquish their power over the use of musical works. Braxton (2013) investigates current European licensing practices and argues for greater centralised control over the governance and transparency of the territorial collection societies, seeking an aggregation of existing collection society repertoires for easing of multi-territorial

licensing. While the above literature deals broadly with the issues discussed in this thesis, none of these learned authors approach these issues from the perspective of the Australian recorded music industries.

### 3 Theory

By its very nature, music is a creative pursuit that relies on human interaction. Not surprisingly, then, musicians and music consumers tend to gravitate toward one another in geographic centres. Hubs of musical activity like Detroit, New York, Los Angeles, Nashville, London, Paris, or on a more local level Melbourne, Sydney and Brisbane, have existed throughout musical history as hotbeds of cultural evolution and musical progress. From an economic perspective, it has been suggested that these locations are not merely “spatial accumulations of physical capital, but also evolving pools of human skills and aptitudes” (Scott 1999). This is especially the case in the musical realm. This thesis addresses the issues surrounding the launch of new business models within the recorded music industries from a perspective of economic geography.

William P. Anderson identifies that economic activity includes all human action that produces goods or services, transfers goods or services from one to another, or creates utility through the consumption of goods and services (Anderson 2012). Activity undertaken by the recorded music industries engage with all three of these areas: the recording of works, the distribution of recorded works and the consumption of recorded music by consumers in a variety of formats. The question of economic geography, then, is an enquiry into where these activities take place and why these activities are undertaken in specific places—or in the case of delays in launches of new music business models in Australia, why they are *not* undertaken in one specific place.

Human activity by definition must occur in a discrete place at a particular time. Where humans have gathered in a place other than the source or location of the goods required for activity, the distance between them must be overcome (Anderson 2012). Traditionally this has occurred through the movement of either people to goods or of goods to people. This is still the case in industries concerned with the consumption of physical goods. In the case of the recorded music industries, CDs, vinyl records and even cassettes continue to be pressed and shipped through and between continents.

Since the invention of the phonograph, the recorded music industries have been global in nature and analyses of their economic activity across international borders have been thorough and frequent. International bodies such as IFPI publish annual reports on international recorded music sales and data is readily available on trends and patterns of digital consumption in the more modern era. Thus, analysis of the recorded music industries through “the spatial configuration of its economic activity” (Anderson 2012) on a global basis is a natural extension.

Provided it has been made available, a consumer may now access music and any digital music service from any place with readily available and suitably rapid internet access. With the introduction of the internet, its increasing availability and the continuing acceleration of data transfer, we might now be more concerned with the passage of information between two discrete points rather than physical goods. The geography that concerns this investigation could then be defined as being virtual in nature. It is clear that moving “intangible, invisible information is not the same as the transportation of goods” (Malecki 2002). It is much easier and can by its nature be highly profitable (Hills 1998). Fittingly, the largest e-commerce industries are those that deal in information: travel and ticketing services, software, entertainment (including music) and financial services (A. Wycoff and Colecchia 1999).

Further, it has been suggested that “few forms of globalisation can be observed or experienced so directly as the global circulation of symbols and images, and ~~(culture)~~ <sup>(localisation)</sup> commodities” (Korten 2003). Given the international nature of recorded music consumption, particularly in the digital realm, and the absence of reliance of musicians on natural resources, it could be assumed that the recorded music business and its distribution services would have decentralised, abandoning traditional notions of the musical hub, and rendering the economic geography of this investigation moot. On a broader economic stage, it has been recognised that “changes in technology and competition have diminished many of the traditional roles of location” (Porter 2000) and that “it no longer is necessary to locate near large markets to serve them” (*ibid*). However, it appears that “locational clustering [in the music industry] continues in the face of globalization” (Florida & Jackson 2010).

Michael Porter defines a cluster as “a geographically proximate group of interconnected companies and associated institutions in a particular field, linked by commonalities and complementarities” (2000). Importantly, clusters also “extend downstream to channels or customers” (*ibid*) associated with these businesses. Porter highlights that “influences of clusters on competition have taken on growing importance in an increasingly complex, knowledge-based, and dynamic economy” (*ibid*)

such as those represented by the global recorded music industries. Moreover, due to the continuing territorial nature of record industry licensing practices, the sovereign nature of copyright law and the existence of territorial collection agencies, we must concern ourselves with the land borders of countries and the physical geography of the music market.

Having defined the geography of the investigation, we must then establish the factors that determine whether economic activity occurs in a specific geographic location. Whether commercial recorded music activity, or indeed any economic activity, is conducted in any given place is dependent on a broad array of variables. The decisions of firms, households, governments, private and public institutions and the availability of natural (or in this case technological) resources (Anderson 2012) will all play a contributory role. In the case of the recorded music industries, the firms in this equation may be identified as two groups: the legacy music businesses and rights holders, more closely defined as the record labels and music publishers; and newer businesses that seek to exploit copyright protected works, described here as the new recorded music businesses. The role of government in this process is in the drafting and operation of copyright law and its various instruments, made more complicated in this instance through varying legislation that may conflict across international borders. Public and private institutions are represented here by territorial collection agencies and industry bodies that represent the interests of rights holders. Finally, given that this discussion concerns music consumption in a digital realm, natural resources may be identified as the availability and speed of wired internet along with that of wireless data made available through mobile telephony and handheld devices.

The global recorded music business is no doubt complex and the relationships between its stakeholders are deeply interconnected. It will not be possible to study each of their impacts in isolation as they exist in a state of constantly shifting interdependence; public and private institutions function subject to and as a result of government regulation, firms are dependent both on each other and the consumption patterns of households, government is responsive to household pressure, households can only consume that which is offered by firms, and so on. An analysis of their interplay across a number of conceptual fronts will hopefully allow a global picture of the research question to manifest.

According to Anderson, the role of the economic geographer “is to perceive order in all this complexity, to untangle webs of interrelated decision making and to elicit some basic principles that drive the evolution of the economic landscape” (2012). Further, the geographer attempts to



eliminate “incidental interactions in order to focus on the main driving forces of the spatial economy” (*ibid*). This thesis will examine the role of each of the decision-makers involved with the launch of new recorded music businesses in various territories, analyse the relationship between them and attempt to determine the key players that are instrumental in the decision making process.

#### 4. Methodology

To understand the context and the environment in which new recorded music businesses will operate in Australia, it was necessary to analyse existing quantitative data on the history, development and current standing of the Australian and international recorded music industries. Given the shifting and relatively dynamic nature of these industries, an accurate portrayal of its technological development, current methods of distribution and consumption, and fiscal wellbeing were essential. From this perspective I was then able to analyse the relative impact, the relative necessity and the potential economic impact of the introduction of a new recorded music service.

Until relatively recently, tension existed between purists of quantitative and qualitative research methodologies who argued that “qualitative and quantitative research paradigms, including their associated methods, cannot and should not be mixed” (R. B. Johnson and Onwuegbuzie 2004). Quantitative researchers believe “social observations should be treated as entities in much the same way that physical scientists treat physical phenomena” (*ibid*) and that causes of social outcomes may be observed through strict empirical testing where researchers remain detached from objects of study (A. Tashakkori and Teddlie 1998).

Qualitative purists, however, contend that multiple realities exist, dependent on the perspective of the viewer, and that the subjective knower is the only true source of reality (Guba 1990). The knower cannot be separated from the known (*ibid*). They argue that research by its nature is “value-bound” (R. B. Johnson and Onwuegbuzie 2004), that it is impossible to separate generalisations from the context and time of data collected (*ibid*).

The differences between these two positions are summarised poignantly by Bazely as follows:

Qualitative and quantitative approaches have been distinguished (and thereby defined) on the basis of the type of data used (textual or numeric; structured or unstructured), the logic employed (inductive or deductive), the type of investigation (exploratory or confirmatory), the method of

analysis (interpretive or statistical), the approach to explanation (variance theory or process theory), and for some, on the basis of the presumed underlying paradigm (positivist or interpretive/critical; rationalistic or naturalistic). (Bazely 2004)

While these viewpoints seem diametrically opposed, “combining quantitative and qualitative research has become unexceptional and unremarkable in recent years” (Bryman 2006). Indeed, “mixed methods researchers value both the tension and complementarity that often emerges with the mixing of methods as a means to learning more about the subject at hand” (Fitzpatrick 2014). This approach was well suited to this enquiry due to the subjective interpretation required of numerical data, along with the grouping and potentially numeric interpretation required of textual data. In a mixed methods approach, “if one uses numbers, interpretation is still involved. If one’s data are texts, counting may still be appropriate” (Bazely 2004). Accordingly, following an analysis of historical and statistical quantitative data, I attained qualitative data by conducting semi-structured interviews with members of the recorded music industries in Australia.

#### 4.1 Quantitative Analysis

In order to establish a picture of the current state of the Australian and international recorded music industries, I compiled and analysed both scholarly and industry based literature on music consumption, music sales, listener take-up of new services and market share of new music businesses. Reports from the International Federation of the Phonographic Industry [IFPI] and the Australian Recording Industry Association [ARIA] were extensively referenced and accessed, along with websites and press releases from music services and music industry and technology industry news portals and websites. I was then able to create a basis of understanding from which to analyse the current state of the Australian industries and to compare the Australian market to those overseas. Further, in order to establish whether Australia was indeed a market that was amenable to the introduction of new music technologies, statistical data was compiled as to Australia’s history in adopting new technologies.

#### 4.2 The Interview Study

Having established that Australia was indeed a market that was both amenable to and suitable for the introduction of new music consumption technologies, I conducted seven semi-structured

interviews with leading figures in the Australian recorded music industries over a period of four months in 2012-2013. Interviews were sought with a broad range of industry representatives in order to build a picture of the overall Australian recorded music industries, including representatives of record labels, publishers, artist managers, entertainment lawyers, collection societies and new recorded music businesses themselves. As will be established later in this thesis, all of these industries have a pivotal role to play in the establishment of these businesses in any geographic market. It is noteworthy that a number of people currently working for major record labels were approached for interview but all either declined the invitation or neglected to respond. There is considerable consternation throughout the industries regarding the relationship between major labels and new recorded music businesses, as demonstrated later in this thesis, and it may be that the Australian representatives of major labels are unwilling to comment on the current state of play.

A semi-structured interview comprised of open-ended questions allowed me to canvas opinions of participants along multiple lines of enquiry, while allowing participants an unlimited range of responses that may be limited by the use of a structured interview or questionnaire (Ayres 2008). This format allowed me to raise necessary and particular aspects of my research question with each member of industry while also allowing participants the freedom to address areas of their own concern through the process. For example, those active in the publishing areas of the recorded music industries may have spent more time discussing copyright legislation and potential reforms than the technological adoption rates of Australian consumers. Given the information sought was subjective in nature, focusing on participants' own understanding of the *reasons* behind the delays in launches of recorded music businesses in Australia, significant breadth was necessary to allow participants the opportunity to reflect on the multitude of factors at play. As highlighted by Galletta, "the semi-structured interview is sufficiently structured to address specific dimensions of your research question while also leaving space for study participants to offer new meanings to the topic of study" (Galletta 2013).

Participants were asked their opinion as to the reasons behind the delays of launches of new music businesses in Australia. These responses were explored in detail with specific attention paid to the area of expertise of the participant. Throughout each interview, however, I maintained a structure that sought to address each of the following areas:

1. Why is Australia lagging behind the rest of the world in the launches of new recorded music services?

- a. Is it a geographic issue?
  - b. Are the delays connected to issues around licensing of content?
2. Are there idiosyncrasies in the Australian market that make it unique?
3. Are multinational launches of new services possible?
4. How do we take advantage of a market that is tech-savvy and willing to adopt new technologies?
5. Is existing copyright legislation stifling innovation?
  - a. How do we address the issue of the ephemeral copy?
6. Is there conflict in this area between publishers and record labels?
7. Are new recorded music services marketing to the wrong demographic of consumer?
8. Is the role of the collection society changing?

Interviews were conducted by either Skype video conference or telephone and recorded live with the permission of participants. One exception was John Watson who preferred to answer questions in writing. Given this, Watson's interview was not semi-structured, but was structured around the lines of questioning listed above with a specific focus on his role as a record label owner. On average, recorded interviews were approximately 1 hour in duration and were transcribed over a period of months utilising an audio playback system that allowed recordings to be slowed for the purpose of more accurate transcription.

Following data collection, I conducted an inductive thematic analysis in an attempt to identify patterns of meaning and expound upon key themes. Put simply, inductive analysis makes use of "detailed readings of raw data to derive concepts, themes, or a model through interpretations made from the raw data by an evaluator or researcher" (Thomas 2006). The primary purpose of such an analysis is to "allow research findings to emerge from the frequent, dominant, or significant themes inherent in raw data" (*ibid*). While deductive analysis (often of quantitative data) attempts to test collected data to prove or disprove a hypothesis, inductive analysis (more often of qualitative data) "allows the theory to emerge from the data" (Strauss and Corbin 1998). Given the open-ended nature of questions asked of participants and their slightly differing areas of expertise and experience, analysis of this sort was suited to this research.

While emergent themes were often self-evident along lines of interview questioning, more themes became apparent in the analysis of collected data. These are expounded later in this thesis. Inductive analysis also enabled the categorisation of data into approachable segments and for

conclusions to be drawn, or to be attempted, in each of the key areas of the research question. Given that the focus of these interviews were the personal experiences and observations of participants' professional lives, extensive fact checking was not required.

Once data were compiled, it became apparent that a number of interview areas would not be relevant to the discussion of the research questions of this thesis. This material was therefore excluded from the analysis that follows. With reference to the list above, the areas excluded were the following:

6. Is there conflict in this area between publishers and record labels?
7. Are new recorded music services marketing to the wrong demographic of consumer?

## 5. Study

### 5.1 Delays in Australian Launches

As indicated above, Australians have proven themselves to be disproportionately enthusiastic buyers of music. The Australian recorded music market generated retail revenues of USD\$376.1 million in 2014 (RIAJ 2015), making it the 6<sup>th</sup> largest recorded music market in the world while ranked only 12<sup>th</sup> by Nominal GDP (IMF 2016). The following table (Figure 2) illustrates Australia's historical ranking in the global retail recorded music market compared with its global GDP (Nominal) ranking:

Figure 2: Australian Recorded Music Industries Retail Value v Global GDP (Nominal) Ranking

Year	Australia's Global Recorded Music Industries Ranking	Recorded Music Industries Retail Value (US\$millions)	Global GDP (Nominal) Ranking
2001	8 <sup>th</sup>	675.8 (RIAJ 2006)	16 <sup>th</sup> (IMF 2016)
2002	9 <sup>th</sup>	636.1 (RIAJ 2006)	15 <sup>th</sup> (IMF 2016)
2003	7 <sup>th</sup>	673.8 (RIAJ 2006)	15 <sup>th</sup> (IMF 2016)
2004	6 <sup>th</sup>	716.7 (RIAJ 2006)	14 <sup>th</sup> (IMF 2016)
2005	8 <sup>th</sup>	637.7 (RIAJ 2007)	15 <sup>th</sup> (IMF 2016)
2006	7 <sup>th</sup>	583.6 (RIAJ 2008)	15 <sup>th</sup> (IMF 2016)
2007	6 <sup>th</sup>	564.8 (RIAJ 2009)	15 <sup>th</sup> (IMF 2016)
2008	6 <sup>th</sup>	555.3 (RIAJ 2010)	14 <sup>th</sup> (IMF 2016)

2009	6 <sup>th</sup>	456.2 (RIAJ 2011)	13 <sup>th</sup> (IMF 2016)
2010	6 <sup>th</sup>	408 (RIAJ 2012)	13 <sup>th</sup> (IMF 2016)
2011	6 <sup>th</sup>	475.2 (RIAJ 2013)	12 <sup>th</sup> (IMF 2016)
2012	6 <sup>th</sup>	507.4 (RIAJ 2013)	12 <sup>th</sup> (IMF 2016)
2013	6 <sup>th</sup>	430.8 (RIAJ 2014)	12 <sup>th</sup> (IMF 2016)
2014	6 <sup>th</sup>	376.1 (RIAJ 2015)	12 <sup>th</sup> (IMF 2016)

In the 13 years between 2001 and 2014, Australia has only 5 times been lower than the 6<sup>th</sup> largest music market in the world by dollar value, and in that time never lower than 9<sup>th</sup>. Through this entire period, Australia’s GDP was never ranked higher than 12<sup>th</sup> in the world and was in 1 year as low as 16<sup>th</sup>. This is a staggering statistic for a country that is ranked 53<sup>rd</sup> in the world in terms of population (United Nations 2015).

While the data presented is compelling, it is necessary to consider whether in the absence of the availability of disruptive digital recorded music business models throughout this period, that Australia experienced a slower decline in physical recorded music sales than that experienced around the world, creating a temporary and artificial bump in Australia’s per capita music expenditure. However, the decline in physical sales of music in Australia was no less rapid than that experienced by the United States and indeed the rest of the world. In 2003, at their peak, wholesale sales of CDs in Australia totalled 50.3 million units (Tschmuck 2012). By 2015, this figure had dropped to 11.3 million units (ARIA 2016) – a diminution of 77.5%. In the United States, consistently the world’s largest recorded music market, 2003 saw sales of 635.8 million units (Brown 2016) and by 2015, this figure had dropped to 165.4 million (*ibid*) – a very similar diminution of 78.7%. It is clear that Australians are genuinely enthusiastic buyers of music, well beyond measures of GDP or population.

Notwithstanding this fact, the launches in Australia of almost all streaming services, curated radio services, locker services and social models has been delayed for several years, in some cases up to a decade, compared to availability in other parts of the world. Given the size and significance of the Australian market, it is incongruous that services promoted as a potential saviour of the recorded music industries should be delayed in their launch for this territory.

The following table (Figure 3) illustrates the delays between initial launch of new music business services and their launch in the Australian market:

Figure 3: Service Launch Dates and Australian Launch Dates		
Streaming / Subscription Services:		
Company/Service:	Original Launch Date / Place	Australian Launch Date
Spotify	October 2008 / Sweden (Heater 2014)	May 2012 (Eliezer 2014)
Mog	December 2009 / USA (Eliezer 2014)	June 2012 (Zoladz 2013)
Rdio	August 2010 / USA (Hefflinger 2007)	January 2012 (Blake 2014)
Deezer	October 2007 / France (Braxton 2013-2014, Jolly 2014)	April 2012 (Jolly 2014)
Locker Services:		
Company/Service:	Original Launch Date / Place	Australian Launch Date
Amazon Music	March 2011 / USA (Amazon 2011)	Late 2012 (although no smart phone apps currently available in Australia)
Google Play Music	October 2011 / USA (Grabham 2011)	May 2013 (Hopewell 2013)
Personalised Radio Services:		
Company/Service:	Original Launch Date / Place	Australian Launch Date
Pandora	2000 / USA (National Music Publishers Association 2001)	July 2012 (Was available in limited form in Australia from launch until licensing restrictions saw it disconnected for all territories outside USA in May 2007. (Greeley 2013))
iHeartRadio	April 2008 (Hernandez 2012)	July 2013 (Australian Radio Network 2014)
Slacker	June 2007 (Australian Law Reform Commission 2013)	None
Social Music Services:		
Company/Service:	Original Launch Date / Place	Australian Launch Date

turntable.fm	January 2011 / USA (Team Turntable 2013)	None
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From the data highlighted above, it could be concluded that that Australian launches are delayed simply due to the place of Australia within the global recorded music industries. It stands to reason that Australia is the 6<sup>th</sup> largest market and accordingly launches of product should occur after successful launches in the top 5 markets. However, this is not the case. The following table (Figure 4) uses the example of Spotify to illustrate launch dates across the top 20 retail recorded music markets.

Figure 4: 2014 IFPI Global Rankings and Spotify Launch Date in Each Territory		
2014 IFPI Global Ranking (RIAJ 2015)	Country	Launch Date
1	USA	July 2011 (Ek 2011)
2	Japan	[not available]
3	Germany	March 2012 (Rego 2012)
4	United Kingdom	October 2008 (Lynskey 2013)
5	France	February 2010 (Butcher 2010)
6	Australia	May 2012 (Spotify 2012)
7	Canada	September 2014 (Katz 2014)
8	South Korea	[not available]
9	Brazil	May 2014 (Rego 2014)
10	Italy	February 2013 (Spotify 2013)
11	Netherlands	May 2010 (Spotify 2010)
12	Sweden	September 2008 (Lynskey 2013)
13	Spain	October 2008 (Lynskey 2013)
14	Mexico	April 2013 (Peoples 2013)
15	Norway	October 2008 (Lynskey 2013)
16	Austria	November 2011 (Rego 2011)
17	Belgium	
18	Switzerland	
19	China	[not available]



20	India	
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It is clear that Spotify hasn't been rolled out simply along lines of industry size or net value and that there are other factors at play. The following table relists the above countries in order of launch date, with reference again to their IFPI ranking in 2014.

Figure 5: Spotify Availability Sorted by Launch Date		
Launch Date	Country	2014 IFPI Global Ranking (RIAJ 2015)
September 2008	Sweden	12
October 2008	Spain	13
	Norway	15
	United Kingdom	4
February 2010	France	5
May 2010	Netherlands	11
July 2011	USA	1
November 2011	Austria	16
	Belgium	17
	Switzerland	18
May 2012	Germany	3
	Australia	6
February 2013	Italy	10
April 2013	Mexico	14
May 2014	Brazil	9
Sep 2014	Canada	7
[not available]	Japan	2
	South Korea	8
	China	19
	India	20

Though it remains the 6<sup>th</sup> largest retail recorded music market, Australia was the 12<sup>th</sup> country within the top 20 markets to attain the Spotify service. It is of note that the service remains unavailable in Japan, the 2<sup>nd</sup> largest retail recorded music market, and was launched in countries ranked 11, 12, 13,

15, 16, 17 and 18 before it was launched in the 6<sup>th</sup> ranked market. It is simply not true that services are being rolled out along dollar value lines.

However, while Australian recorded music purchases are disproportionately large, when compared to population and GDP, like the rest of the world it has suffered significant losses since the recorded music industries peaked at the turn of the century. The Australian Recording Industry Association (ARIA) reports that the wholesale sales of sound recordings in 2001 totalled \$647.6 million (ARIA 2002), whereas the same wholesale figure in 2015 reached only \$333.8 million (ARIA 2016) —a 48% diminution of these industries in only 14 years. Critically, it has been observed that “the music industry is undergoing a fundamental transition from a product-based industry to a service industry” (Priest 2008) and delays in the launch of new services will doubtlessly lead to delayed recovery or further harm for the Australian recorded music industries. The reasons behind these delays were sought from interviewees and representatives of the firms within the economic geography of Australia’s recorded music industries.

## 5.2 Why is Australia Lagging Behind the Rest of the World?

The fundamental question of this research and of the interviews conducted has been this: why is Australia lagging behind the rest of the world in the launch of new and innovative music business models? Interviews conducted with members of the Australian recorded music industries have suggested several possible reasons, amongst them that Australia is either lower on the list of prioritised countries identified for launch or simply too difficult to consider for the launch of new services. Interestingly, rather than identifying difficulties in licensing content, some interviewees highlighted a possible unwillingness on the part of the new services to launch in this territory due to a perceived lack of business opportunity.

A close reading of the reasons cited indicates a specific division in attitude within the Australian recorded music industries. From an economic geography perspective, the firms responsible for determining service availability view the capacity of this market very differently. Specifically, there appears to be delineation between those working within the new music businesses themselves and those involved in other aspects of the industries. The new businesses see Australia as a territory both suited to and of a sufficient size to sustain the launch and operation of new services, while the established music businesses—namely labels and publishers—view the local industries as unattractive

due to market size and relative importance. The following section outlines the viewpoint of some of the key industry members interviewed as part of this research.

Shane Simpson is a prominent Australian Music Industry lawyer, author and academic and has written many theses and a seminal book on the legal machinations of the Australian Music Industries. Simpson suggests that the issue is multifaceted. He identifies that the Australian market is “still dominated by the overseas companies” (Simpson 2013) and that significant multinationals with interests in the Australian music industries, including the major record labels and publishers, are hesitant to license their catalogues to new service providers in multiple territories before they have had the opportunity to trial the terms of licences in territories like the US and Europe (*ibid*).

He suggests also that Australia is “not a big enough market for [the service providers] to care about” (*ibid*) and that there will always be a number of issues to smooth over in the initial launch market before a world rollout can be considered. “It’s like buying the first model of a car. It’s no bad thing to wait until version two of the car has come out” (*ibid*). The model should be tried, smoothed out and perfected before it is sent outward to the world.

Ironically, however, Simpson highlights the fact that he has acted for significant players within the industries who “will often quite enjoy having a fight in Australia where nobody gives a damn as to the result” (*ibid*). Labels and publishers have identified in the past that Australia as a market is small enough to test out legal or business practices “without having to do something as destructive as commencing proceedings in the United States” (*ibid*). However, in the case of licensing of new music consumption models, the labels and publishers seem to have taken a conservative route as the practice concerns the introduction of new technology and business models (*ibid*). Importantly, Simpson emphasises that there is no legal reason that Australia is delayed in its access to new services, but suggests that it is purely based on “corporate and market” reasoning (*ibid*).

Stephen Peach was CEO of both ARIA and the Phonographic Performance Company of Australia (PPCA) between 2002 and 2010. After his departure from these organisations, Peach was a key player in the licensing negotiations that enabled Pandora to launch in both Australia and New Zealand. Peach suggests that though Australia is “a sophisticated copyright market and a sophisticated western based economy, [it is] nonetheless way down the priority list for a lot of the international services” (Peach 2014). Realising the potential for a service like Pandora in Australia, he contacted the service directly as he was keen for “Australia to be the first country outside the US

rather than the sixth or tenth or twentieth country outside the US to get a service like that because I'd seen that that's what was happening" (*ibid*). Australian launches, it appears, when left in the hands of the services themselves, are being delayed for reasons unknown even to those involved in the process of launch.

In essence, Peach agrees with Simpson in suggesting that Australia is a market that may be too small to offer sufficient returns to new services. He points out that the setup costs for an Australian service are not going to be significantly different to those in another territory, nor the quantum of work involved in licensing content for a new service, but that the economies of scale in other territories will push an Australian launch considerably further into the future (*ibid*).

I think it just ultimately makes commercial common sense that you would probably put Australia down the list, in the expectation that by the time you get around to talking about Australia the precedents have really been set in the international markets about how much it's going to cost to license content, what the terms are, etc. And you're hoping, I expect, by that stage that it becomes a bit of a cookie cutter approach. It therefore reduces down to a reasonable level, and a level that is commensurate with the size of market, the costs and the resources that need to be applied to the whole setup. (Peach 2014)

Mark Callaghan, ex-Managing Director of Music Sales Publishing (Australia), current Publishing Services Advisor at APRA|AMCOS and board member of the Australian Mechanical Copyright Owners Society (AMCOS), echoes a similar theme. He suggests that it may be not economically sound for services to launch in this territory based on market size or, interestingly, due to perceptions of the immaturity of the market and its potential lack of interest (Callaghan 2013). However, Callaghan stipulates that it is not the publishing industry preventing the launch of new services in Australia.

I can't speak for the record companies, but certainly I know that as far as publishers are concerned, we have always really embraced these start-up services. You've always been able to get an APRA|AMCOS license for these services. So, I know that, being on the AMCOS board, I can tell you that there's never a problem. They tell me that it's never due to anything to do with problems getting a license. So, maybe there's an issue with the record companies. (Callaghan 2013)

Nonetheless, Callaghan also points out that labels have usually negotiated licences with new services in Europe and America before contemplating territories further afield. It follows then that their

Australian counterparts, as subsidiaries of larger American companies, should be able to forge similar agreements.

John Watson, former head of A&R and International Marketing at Sony Music Australia and current CEO of record label Eleven: A Music Company, advocates a different perspective. He argues that the delay in timing of the launch of services between the US/Europe and Australia does not necessarily indicate that Australia is lagging behind, but rather that this same delay is evident in many fields of technology, including satellite and cable television (Watson 2013). Watson suggests that Australia is often “bundled into S.E. Asia” in the thinking of global companies and that the region is often one of the last in the world to receive focus in the introduction of new entertainment technologies and industries. Given that Europe and America account for “the vast majority of global repertoire and sales”, companies will naturally focus on these regions in the first instance, only turning their attention to secondary markets like Latin America and S.E. Asia once settled in primary markets (*ibid*).

Of course, the companies would all deny that they perceive the world in such a way but on some level it's kind of inevitable. If 80% of your sales, or whatever the number is, are coming from two regions that also happen to be situated close to where you live and 20% are scattered a long, long way away then it's not unreasonable for that 20% to be further from top of mind to a person in London or NY. Similarly, if you're a label in Australia wanting to do a deal with Spotify or suchlike then your global boss might hold you back from so doing until they get the 'important deals' done in North America and Europe. (Watson 2013)

Michael Smellie, former COO of both Sony Music Entertainment and Sony BMG, takes a similar standpoint to Watson. Smellie was instrumental in the negotiations that brought the iTunes Store to Australia and his experience working in multiple territories for a major record label allows him a unique insight into the workings of the multinational recorded music industries and their relationship to the Australian industries. Smellie suggests that Australians may have a warped perception of the importance of the Australian industries on the world stage (Smellie 2013). Though significantly placed in the IFPI rankings, the half billion-dollar industries proudly claimed in this country occupy “one nanosecond” of the attention of the rest of the world (*ibid*).

Colin Blake, Head of Territory (Australia & New Zealand) for Rdio takes a different perspective. Though hesitant to speak for new services generally, he suggests that Rdio specifically delayed its launch in this territory because they wanted to be “doing it here, participating in the music industry

in Australia, and not just flicking a switch from afar” (Blake 2014). Blake suggests it was based on a resources issue: the service wanted to have people on the ground to set up advertising agency support services and to establish partnerships in the local industries before launching in Australia.<sup>5</sup>

Jane Huxley, Managing Director at Pandora (Australia and New Zealand), suggests there are a number of factors at play. Firstly, she asserts, a lengthy and convoluted licensing process delayed the launch of Pandora in Australia.

It took Pandora about 3 years of conversations, led by Stephen Peach, with APRA/AMCOS, PPCA, PPNZ [Phonographic Performance Company of New Zealand], RIANZ [Recording Industry Association of New Zealand] as they were back then—they’re now together as RMNZ [Recorded Music New Zealand]. It took about 3 years of conversations and many, many, many iterations for us to reach an agreement on a license for Pandora to operate in these regions. (Huxley 2014)

Huxley argues that further prohibitive factors for services seeking to launch in Australia include the cost of mobile bandwidth (*ibid*). She highlights that 70% of Pandora usage in Australia is accessed using a mobile device and as such, the cost of mobile access becomes exceptionally important (*ibid*). Further, the size of the mobile advertising industry in Australia “is still miniscule compared to the usage itself” (*ibid*). In 2013, after a decade of operation, Pandora in the US reached a point where revenues earned from mobile advertising finally matched the costs involved with running the service on mobile, so the relative size of the advertising market in Australia is of considerable import for all ad-funded new music business models. Huxley notes, “as we see more money coming into the mobile market, which is inevitable, then we’ll start to see the economics of services looking at this country change” (*ibid*).

While this broad query identifies one of the variables responsible for the decision to launch services in Australia, further factors at this point require investigation. The multitude of factors highlighted above as determinant in the process include the role of government (particularly copyright legislation and the licensing process), households and their willingness to adopt new technology and music industry bodies. An economic geography reading of the research question requires investigation of all these aspects.

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<sup>5</sup> It is noted that Rdio ceased operating globally in November 2015 and key assets of the company were purchased by Pandora (Risley 2015).

## 5.2 Is Australia's Geographic Isolation an Issue in the Establishment of New Recorded Music Businesses?

As highlighted earlier, the perception of the essentially 'virtual' geography of an online service is inaccurate. Local elements play an important role and clustering continues even in the provision of online services. Above and beyond the licensing process, it is possible that Australia's geographic isolation provides a factor in the delay of launches of new music businesses in this territory. Stephen Peach highlights an erroneous perception held throughout the industries and public that once licences are in place, new recorded music businesses are able to simply flick a switch and 'turn on' a new service in a new territory without any physical presence.

It's usually far more complex than that. Not only just the licensing negotiations themselves, but you need to have, particularly if you're an advertising supported model, you're going to need to have local sales and marketing teams because even global brands will advertise on a territory by territory basis. So you need to have your local sales teams and local sales efforts. You need to have marketing teams and most countries—and Australia is no different—have a desire for their own content, their own music to be part of any such service. So you have the ingestion costs of Australian repertoire in a market that's reasonably small. The ingestion costs will be the same. You probably need to have local hosting and streaming infrastructure just to make sure that you haven't got lag issues, particularly if you've got tens of thousands or hundreds of thousands of concurrent users going at any particular point in time. You need to set up the infrastructure to meet all that. (Peach 2014)

Peach suggests companies that simply make a service available without a local presence or local focus "limit the upside potential for those sorts of services" (*ibid*). He highlights last.fm as a service available in Australia with no physical presence except the engagement of a local sales network. He notes that music consumers "don't have much awareness of last.fm in this market" (*ibid*).

Mark Callaghan similarly suggests that the need to invest at a local level could cause new services to be wary of venturing into new territories. The requirement to source advertising for ad-funded models and to invest in local marketing is potentially prohibitive. He argues that companies will need to "get the profile of their business up and they just think—they do a cost/benefit analysis and they say 'let's not do it yet'" (Callaghan 2013).

Michael Smellie agrees that

media is a local business... I would say that if you want to establish in Australia, you need to be local. You need to have a relationship with local creative talent, with local bands. I don't think even the record labels, like MCA when they set up here initially before it was merged in to Universal, they immediately said 'we need to establish some local presence here as well. We don't only need to sell the catalogue of Nirvana and Guns N Roses' and whatever else they had at the time, 'we also need to engage with local bands. If we want to be relevant in this economy, we need to engage with local bands'. (Smellie 2013)

Further, he argues that it is considerably simpler for a service based in Europe to spread itself further around Europe than it is to establish a base of operations in a geographically remote location.

Once you establish in the UK and in Germany, for example, just to pick two markets, it's much easier to roll it into Austria, Switzerland, Ireland, Sweden, etc., etc., than it is to pack a team up and send them half way around the world. 'Let's go to Australia instead of going to Spain.' Its market is a similar size, but you know what I mean. (*ibid*)

Smellie suggests that it is not simply the physical presence of the business in the new territory, but the sheer expense of employing all the requisite business managers to ensure the new operation runs successfully. He recalls a recent conversation held with the head of a major publishing company who was exploring the possibilities of establishing an Australian operation:

Too bloody far away. Too hard to manage. Managing Europe's easy—we put a boss in London and he looks after all the countries. They're an hour's flight away if he's got a problem. The US we can do—he can even do Latin America. They're big countries all in one place.' He said 'Australia's on the other side of the bloody world. It's in the middle of nowhere and it's too difficult to manage.' He's talking about management costs here, the cost of getting a manager and director and keeping tracks on them, you need finance directors and accountants and auditors and all that shit that goes around that—his assessment was it's all too hard for the opportunities. (*ibid*)

John Watson observes that most major territories throughout the world are themselves part of a significant regional block. "Obviously UK/Germany/France/Holland are part of Europe while the US, Canada and Mexico work together on most things" (Watson 2013). He suggests that Australia's geographic isolation becomes a broader issue when considered in the context of our most proximate trading partners. Watson suggests that there is "a legitimate business case in making us a second tier priority" when staffing of a new service is arranged on a regional basis (Watson 2013).



Conversely, and seemingly in keeping with the divide between rights owners and new businesses, Jane Huxley suggests that there's no need for significant local presence in the early launch stages of the service and that Pandora was run entirely from a home office for the first six months of its Australian operation. "I started in December of 2012. I ran the business from home for 6 months. When I say home, I'm really talking about my handbag. I ran it with 2 pairs of shoes and an iPad. Flats, heels and an iPad for 6 months" (Huxley 2014).

Pandora's Australia-New Zealand operation is growing swiftly, and employed a staff of 32 by the end of 2014 (Huxley 2014). Colin Blake expected something similar of Rdio's initial Australian operations. Though supplemented through a joint venture arrangement with DMG Radio Australia, Rdio Australia in 2014 was comprised of a staff of four people (Blake 2014). Blake suggests that other services will enter the market when "the opportunity to make money here exist[s] and/or they [have] the sales force in place or representation in place that they could start working within" (Blake 2014).

Opinions are divided on Australia's geographical isolation and its impact on the attractiveness of this territory to new recorded music businesses. Again, those involved in new recorded music businesses themselves see minimal impact of this factor and those in the heritage or legacy businesses—those involved with record labels, publishers and collection societies—see intrinsic problems. It seems that new businesses and services are not afraid of operating in the de-clustered global fashion made possible by the internet, combining central management situated overseas with a skeleton staff entrusted to run local operations. This differs significantly from the setup of local subsidiaries of major record labels and publishers that, as Michael Smellie comments, run relatively large and seemingly autonomous operations in each territory. Australia is without question situated a long way from markets, but the impact of this geographic isolation remains unclear. While this addresses (or attempts to address) one element of an economic geography reading of the research question, the ambiguity of its impact demands we explore the availability of resources within the territory and the behaviour of households within it.

### 5.3 Are There Idiosyncrasies in the Australian Market That Make it Unique?

If the impact of Australia's geographic location is not the determining cause in establishing the reasons behind the delays of service launches in this territory, it is worth examining whether there are idiosyncrasies within the market itself that are a factor. John Watson identifies several elements that make Australia a market that differs from most others.

Watson suggests, as does Jane Huxley, that Australia's slower broadband speed is a potentially detracting factor for services aiming to launch here (Watson 2013). If new businesses are not confident they will be able to guarantee a quality user experience, it's unlikely that an Australian launch is an attractive proposition. However, Watson also notes that Australians are "among the biggest file sharers in the world, so that would suggest that people are able to work with the broadband they've got" (*ibid*).

Additionally, Watson highlights the impact of several major Australian chain stores that have traditionally held stock of physical music product. To this day, many still sell CDs as merely one line among many in a department store style business.

BIG W, Target, K Mart and David Jones all stock CDs and JB Hi Fi is our largest seller of physical music. In other markets you'd typically get one or two such 'hybrid' retailers—Walmart and Best Buy in the US, for example, or FNAC in France—but a higher percentage of retail sales were via *specialist* music stores like Tower or Virgin or HMV overseas. (*ibid*)

Watson notes that as CD sales declined, specialist music stores overseas were less able to absorb the losses and closed, whereas chain stores in Australia were able simply to reappportion floor space to adjust to shifting demands. He suggests, contrary to data analysed above, that the physical market has tapered more slowly in Australia than other markets, reducing the need for record labels to engage with new recorded music business models (*ibid*).

Shane Simpson, on the other hand, identifies that although Australia is a largely English-speaking country situated between predominantly Asian language and Spanish language countries, there is "no particular specific difference" (Simpson 2013) that separates this market and others. He suggests that though we have traditionally been more related culturally to British and American music industry models, "we're indeed closer to our Asian neighbours than the USA or UK in cultural understanding" (*ibid*).

Michael Smellie also suggests that the Australian industries are no different to those overseas and that once a precedent agreement has been established with a new service in a major territory, local arrangements are rolled out in a template style. "As a general rule, they [major labels] want the precedents created out of the US and maybe out of Europe, and then they're implemented locally" (Smellie 2013).

Smellie also hints at the limited ability of major record labels in smaller territories to act autonomously in the negotiation process, suggesting that the fundamental tenets of an agreement with a new service are agreed in the initial launch negotiations in the US or Europe. “People would basically say ‘here’s the kind of deal we did in the US. You should do a deal that’s something like that and if you do, that’s fine. If you want to go outside those parameters, though, you’d better come back to us. If you want to break these key principles, you’d want to get our approval’” (*ibid*). Smellie asserts the only way a major label would be amenable to creating a precedent agreement in Australia is if there was an Australian company that was introducing a global service.

Jane Huxley views the Australian industries in a markedly different way, asserting that Australians are very keen to “look at new ways of doing things” and to “make our mark on the global stage” (Huxley 2014). She suggests that “Australia has always been seen as the right market to experiment in,” (*ibid*) supporting the argument that the technology industry is very keen to become involved in Australia.

We are a first world country, primarily English speaking. The patterns of Australian usage with technology almost mirror that of the US. And in fact that has been our experience since we started Pandora here. So you could look at it as a market too small to bother with or you could look at it as a market the perfect size to experiment with. (*ibid*)

Huxley asserts, however, that Australian taxation legislation is a potentially deterring factor to businesses seeking to establish themselves in this market. “Unfortunately... our legislation particularly around taxation makes it very difficult to come and play. That’s very well documented from... a whole lot of guys that are looking at it from that angle” (*ibid*). This could indeed be another factor driving away new services.

Colin Blake also highlights the willingness of tech companies to experiment in the Australian market, suggesting “the market’s removed enough from the big markets of America and Europe that people might be able to feel like they can sample things here... if it’s a fail and it’s negative maybe it doesn’t have such a big repercussion on their other territories” (Blake 2014). He states that Rdio “were always really excited about Australia from Day 1 and it was always identified as a top tier territory” (*ibid*). Due to the discrepancy between population and size of recorded music industries, Australia is seen as “punching above its weight” and “as a little bit of a gilded prize” (*ibid*). However, Blake also suggests that in the digital music space, Australia is “very far behind and the chances of any of these

businesses being really, really profitable is probably a way's away" (*ibid*). He refers to the fact that Australian revenues from digital exploitation of music overtook physical revenues for the first time in 2013, noting that "this happened well over a year and a half [prior] in the United States and in Europe" (*ibid*). Blake believes that "the hype far outweighs the usage at this point... we're at least 2 years behind in uptake" (*ibid*). Blake suggests that the reasons behind this may be unique to this country: Australia has been subject to the "dominance of a main telco that has been largely government funded for so long" (*ibid*). This has had an impact on data transfer speeds, bundling and, more importantly, pricing. Blake argues that "Australians pay what corporations think they can get away with charging Australians" (*ibid*). This, he states, is not limited strictly to telecommunications, but extends to multiple industries including the recorded music industries.

Although a disparate range of elements unique to the Australian industries were highlighted, none of these elements serve as a barrier to entry for new services in this market, with the exception of the lack of sufficient broadband infrastructure and speed in Australia and taxation policy that may be stifling overseas investment. Watson, Blake and Huxley's observations identify a key element in the economic geography of this study. The absence, or even perceived absence of sufficient digital infrastructure may impact the market in a way akin to the absence of sufficient natural resources in the traditional definition of economic geography. No one sets up a coal mine in an area with no coal, just as no one is launching a streaming high-definition music service in an area without suitably abundant and rapid internet access. The availability of resources is one of the determining factors in the presence of any economic activity in a given area.

However, this needs to be read in conjunction with the fact that several respondents highlighted peculiarities in the Australian market that make it more attractive to services willing to experiment. Australians are big buyers of music and are willing and early adopters of new technology. Given that the households in this market seem receptive to new services, how do we take advantage of this situation?

#### 5.4 How Do We Take Advantage of Australia's Tech-Savvy Consumer Market?

Participants were asked how they felt the Australian recorded music industries might be best placed to take advantage of the 'tech-savvy' nature of the record buying public in this country. Interestingly, there was a feeling throughout the industries that existing data indicating enthusiastic technology adoption in this country is not as positive as it seems. Shane Simpson suggested that he would "take some convincing to suggest that our market really is more tech savvy than many others that are

much larger than us” (Simpson 2013). Drawing a line of comparison to markets in Korea, Taiwan and Japan, Simpson suggests “they’re pretty tech savvy markets and they’re way ahead of us in things like broadband access and usage and so forth” (*ibid*).

John Watson similarly identifies Australia as a leader in the adoption of certain technologies but points out that colour television “arrived here 20 years late” along with cable television (Watson 2013). Similarly, he points out that wireless broadband was “common for several years in America before it was common here” (*ibid*). In the case of music specifically, he argues that it is very difficult for the recorded music industries to take advantage of new technologies and tech-savvy consumers when “doing so means destroying the very thing that’s currently paying your wages. Inertia is a powerful force in life and business” (*ibid*). In Watson’s view, a wholesale adoption of digital music technologies and new recorded music businesses by the major record labels would implicitly dismantle their existing CD-based business model and derail what remains of the industries.

However, Watson’s observations about the late introduction of technologies to Australia are not unique. Colin Blake echoes Watson’s sentiment regarding the late introduction of cable television in Australia.

When I moved to Australia in 2001, my girlfriend at the time... had a cable plug-in TV with an antenna on the roof... The antenna on the roof I hadn’t seen since Leave It To Beaver on TV! I didn’t know that TV antennas existed any more. In the 70s in my bedroom as a kid I had cable television with more than 20 channels, so it blew my mind that in the early 2000’s most Aussie homes only had a hand full of TV channels delivered through an antenna. (Blake 2014)

Michael Smellie sees the situation from a very different perspective. Rather than providing an opportunity for overseas companies to take advantage of a tech-savvy market in this country, Smellie argues that Australia should be producing platforms and solutions that rival those available elsewhere. “If you want more attention on Australia, firstly people have to see themselves as producing content or solutions for the world. I think that’s a key thing” (Smellie 2013).

I think it’s interesting if you look at all the proposals for the NBN, everybody’s thinking of download speeds—nobody thinks of upload speeds. If you see yourself as a creative nation, creating content for the world, then upload speeds are really important too. There’s no focus on that here. I think it’s a lot more than just the infrastructure. It’s attitudinal. (*ibid*)

From another perspective again, Mark Callaghan posits that marketing may actually be the key to engaging Australia's technologically cognisant population. He highlights Nokia's *Comes With Music* project, whereby purchasers of Nokia mobile phones were able to obtain free downloads of an unlimited supply of music for as long as they retained their Nokia handset. Rights owners were paid on a revenue share model dependant on their contributory share of downloaded music.

It's like the 'Comes With Music' thing from Nokia... They advertised it for literally 2 weeks—I mean, what a great thing? Buy a phone; get all the music you want forever! What's wrong with that picture? Nothing from the consumer's point of view. But Nokia kept it a secret. I don't know who's running that company, but they obviously weren't very smart. (Callaghan 2013)

On that front, Colin Blake agrees that while we have a growing number of digital services available to Australian consumers, market awareness is not yet at a level where it allows for significant take-up. Australians may require more education as to the services available, their features and potential benefits.

We're a little bit behind here, so there's a fair bit more education that has to go in to the marketing. You're not entering in to an educated market and just marketing your own brand to get a slice of an existing pie. You have to make the pie. And there has to be several chefs contributing to that pie right now, but a lot of them have not been totally stepping up to do that yet. So, it's been a little bit stop-start because a lot of people have been interested to get in, and that's the proliferation of 14, 15, 16 new digital services, but barely any of them are actually spending consequential marketing money and/or really going hard yet. That may be because they feel like the market maybe needs to mature a little bit more before they're going to get a reward for that dollar. But in the meantime, it means the category lags a little bit. (Blake 2014)

Jane Huxley further illustrates Blake's point, highlighting that Pandora have spent very little money marketing their service in the Australian market. Rather, the service relies on consumer loyalty and word of mouth to spread their message.

I could throw millions and millions of dollars, as iHeartRadio have done for example, where they stuck about \$4m in to that initial campaign, including their on-air house inventory time. I can throw a hell of a lot of money at it but, at the end of the day, the thing that converts better for us is word of mouth. (Huxley 2014)

The above discussion indicates a complicated three-way relationship between households and firms and the importance of digital resources in this space. It appears the feeling among the recorded music industries is that Australians are very rapid adopters of technologies, but, understandably, only when and if these technologies become available to Australian consumers. Further, once that technology is made available, there needs to be significant and widespread marketing of these new technologies before they reach a point of critical mass and are taken up by a public keen to experiment. Thus, once the resources are in place, it becomes the responsibility of the firms to ensure sufficient market awareness of new product and service offerings before they are able to gain sufficient traction in the market to generate significant revenue.

As highlighted earlier, households are unable to buy a product not offered by firms, and even once offered, cannot choose a product in the absence of awareness. It could be established that firms have an increasingly important role to play in the introduction of new services by way of introduction of these services to households. Which firms are responsible for this introduction is another question. It could be argued that legacy industries should be partnering with the next-generation services as both stand to benefit from the proliferation of new recorded music business models. Either way, the role of the firm stands as increasingly important.

#### 5.5 Does the Licensing Process Play a Role in the Delay of Service Launches?

At this point, it is imperative to ascertain whether the licensing process and the attainment of requisite rights plays a role in the issue, as representative of the government role in the geographic economy analysis of the research question. In his description of the licensing process for Pandora Australia and New Zealand, Stephen Peach identifies that there was “a bit of a sticking point” (Peach 2014) over the ways in which licence fees should be calculated. As already identified, this sticking point led to a negotiation process between Pandora and the collection societies that lasted over three years. Pandora sought to license the service for Australia and New Zealand in a similar fashion to the statutory licence obtained under the Digital Millennium Copyright Act for a non-interactive stream in the US (*ibid*). If licensed as a non-interactive service, the service needed only to obtain licences from collection societies in Australia and New Zealand responsible for collecting royalties for public performances of master recordings and music & lyrics. However, in the absence of similar copyright legislation to that in place in the US, this licensing process became arduous and difficult.

As Peach notes, “we spent a fair bit of time trying to negotiate something in Australia and that wasn’t really getting to the point where we needed it to get to” (*ibid*). After negotiations had stalled

with PPCA, an opportunity arose for the Pandora team to negotiate with PPNZ to strike a deal that would cover Australia also through a previously established reciprocal collection agreement. Though representing the same set of copyright owners, the collecting society in New Zealand were seemingly more amenable to the terms offered by Pandora and more welcoming of the service. Thus, today, all streams for Pandora's Australia and New Zealand service emanate from servers located in New Zealand (*ibid*).

In resonance with Mark Callaghan's statements, Peach's negotiations with APRA, who collect performance royalties for public performance of music and lyrics, seemed considerably easier. "We concluded the agreement with APRA [whose structure covers Australia and New Zealand] probably the best part of a year before the negotiations on the recording side were concluded" (*ibid*). This theme is echoed by Shane Simpson who argues that "big copyright owners, let's just call them majors, control what their territories are doing and are going to be allowed to do anyway" (Simpson 2013). The issue, as he sees it, is "an essential recalcitrance in the attitude of record companies" (*ibid*) to license new platforms.

Michael Smellie takes a very different position on the licensing issue. He maintains that local arms of major record labels are and have been very keen for the introduction of new services and they simply "need someone to negotiate with. Somebody has to turn up and say 'Hello, I'm from Pandora, can I please do a license deal with you?'" (Smellie 2013). Smellie suggests also that the new services themselves "may well be difficult to negotiate with" (*ibid*) upon arrival in the territory, potentially leading to lengthy licensing processes.

The digital services themselves paint slightly different pictures of the licensing process. Jane Huxley believes that the process of negotiation and licensing with individual parties would be complex and onerous, potentially leaving holes in the catalogue available to the service after launch. She highlights that Pandora's preference was "not to do direct deals with music companies... instead of having to do 427 negotiations that I would have had to have done in this country, we could do a blanket deal. It also means that there are no digital holdouts" (Huxley 2014).

Conversely, Colin Blake argues that "getting the licence stuff is not a big deal. It really just takes time engaging the appropriate people and getting the lawyers to do their thing. So I think turning on those territories and working to get those countries up, logistically is probably not a huge deal" (Blake 2014). He suggests that the licensing process runs alongside a more complex corporate



process of resourcing and logistics. “When we do turn it on, are we going to give it some attention and prioritise it? It’s more about that sort of attitude” (*ibid*).

Again, those with different roles within the industries have very different opinions about the licensing process and the workability of negotiations. It appears that Pandora in particular found the licensing of this territory to be an exceptionally frustrating process, eventually needing to find a new entity with whom to make a deal and an entirely different country in which to make one. Regarding PPNZ’s eventual replacement of PPCA in negotiations, Peach (2014) comments that he “[doesn’t] think they [PPCA] were overjoyed about it” (Peach 2014). Conversely, record labels have argued that the new recorded music businesses are difficult to license and that the labels are simply waiting for the opportunity to do local deals in local territories.

It appears that the roles of government and legislation, along with the processes made necessary by their operation, are as significant in the economic geography of the new recorded music business as the firms themselves. Again, however, the differing opinions of the firms on either side of the legacy/next-generation divide seem to indicate a complex relationship between these two factors. It is unclear at this point whether the role of government can be seen as a hurdle to the operation of new recorded music businesses in Australia in isolation, or whether its relationship to other factors is prohibitive.

## 5.6 The Copyright Landscape in Australia

An investigation of the machinations of the industries in this fashion must cover the role of government and its instruments. In this context, government is represented by the instrument of copyright and its underpinning legislation. An understanding of these systems is important in order to ascertain the rights that must be licensed by the proprietors of new music business models and services. Further, an analysis of these systems may enable an understanding of why these services are launched swiftly in some territories but delayed in others. It has been mooted that legislative copyright reform may expedite the process of licensing new business models in Europe and the United States. This thesis investigates (in Chapter 5.7) the nature of those proposed reforms and whether such reforms will similarly expedite the process of launching new platforms in Australia.

### 5.6i The Exclusive Rights

In Australia, under the auspices of the Copyright Act 1968, a piece of recorded music is granted copyright protection on four fronts; music, lyrics, the master recording and the actual musical performance embodied on the master recording. The owners of each of these copyrights are granted exclusive rights that are critical to the exploitation of musical works, and particularly relevant to the licensing of the new music businesses discussed above. In Australia, section 31 of the Commonwealth Copyright Act specifies that the owner of the copyright in lyrics and the owner of the copyright in music are exclusively entitled:

- to publish the work in the first instance
- to reproduce the work in a material form
- to perform the work in public
- to communicate the work to the public
- to translate or make an adaptation to the work
- to enter into a commercial rental agreement in respect of the work

Importantly, the owners of the copyright in music and lyrics may be different people, or indeed a number of people. Under section 10, licenses from each owner must be obtained in order to exercise on their behalf the rights outlined above.

In the context of the recorded music business models discussed above, we can safely assume that the first right—to publish the work—is not in question, as such services will predominantly deal with works already published. Further, we may assume that none of the services listed above will be making adaptations to the work, but simply making works available in their original form. Nor will they be entering into a commercial rental agreement beyond that of the license obtained from the owner for the exercise of the remaining rights. Thus, we are primarily concerned with the rights to reproduce the work in material form, perform the work in public and to communicate the work to the public.

The owners of copyrights in sound recordings are granted a similar set of rights under Section 85 of the Act. The owner of this copyright has the exclusive right:

- to make a copy of the recording
- to cause the recording to be heard in public
- to communicate the recording to the public
- to enter into commercial rental arrangements concerning the recording.

Similarly here, with regard to new recorded music businesses we are concerned with the right to make copies, to cause the recording to be heard by the public and to communicate the works to the public. In terms of the copyright protecting the musical performance embodied in the sound recording, we may simply repeat the elements outlined for sound recording copyrights. Under sections 97 and 100AD of the Copyright Act, the owner of the copyright in a sound recording is deemed to be the person or corporation that paid for the recording and also the performers captured on the recording. Thus, performers on a recording are attributed a share of the ownership of the master recording itself and their rights are the same as those of the owners of copyright in sound recordings.

#### 5.6ii Which Rights Must Be Licensed?

In the specific context of new recorded music business models, it seems at the outset that it may not be necessary for each variety of business to license all of the rights outlined above. For example, it would appear that a subscription streaming service need only license the rights to communicate music, lyrics and recordings to the public and to perform the works in public. In the case of these services, no permanently accessible download is transmitted to a user's computer or mobile device for the user to utilise at a later date. If the user wants to replay the song, another stream must be initiated from the servers of the provider (Seay 2010).

However, the complex workings of these technologies become relevant at this point. In the process of a user requesting and receiving a song from a subscription service, a temporary cached version of the file containing the sound recording is created on the user's playback device, often termed an "ephemeral reproduction" (Conley 2007). These copies are stored "on the random access memory ("RAM") of the user's computer. The [device] plays these buffered copies while the rest of the file transmits, buffers, and plays in a continuous process, leaving no permanent file on the user's computer" (Conley 2007). Even though the file is expunged following the completion of the stream, the creation of these files has been deemed to constitute the creation of a material copy of the work. Thus, licenses are required to make material reproductions of the music, lyrics and master recording, along with the more immediately apparent rights to perform the work in public and to communicate the work to the public.

Conversely, it may seem logical to assume that *a-la-carte* online stores need not require a license for the public performance of tracks downloaded from these services. Acquisition of files from an *a-la-carte* store seems to be simply a process of reproduction, or a "digital phonogram delivery" (Conley

2007), in which an end user acquires an exact copy of a file stored on the server of the service—not unlike downloading a document from an email server. Though no actual performance of the file occurs at any point, there is a performance royalty payable in Australia for the exploitation of such files in exactly this manner.

At first glance, it may seem that storage lockers may require the licensing of all rights, particularly in cases where streaming of files is necessary once the files of the user have been uploaded (reproduced) onto the servers of the provider. A service of this type seems to require a combination of the licenses required for both a streaming service and an a-la-carte model. However, services of this type may rely on recent 'format shifting' amendments to the Copyright Act, whereby under section 109A the owner of a sound recording may make a copy of the sound recording for their own "private and domestic use." Thus, once the recording has been uploaded to the server, only performance and communication licences appear necessary. However, if streaming occurs from the server to the user's listening device (as is the case with both Google and Amazon's locker services), the issue of ephemeral reproduction arises once again.

Apple's iTunes Match service operates slightly differently in this regard. Rather than streaming from the iTunes servers, this service allows users to download copies of their uploaded files to alternative Apple iOS devices, creating permanent copies of the files in the new device that may be accessed again at a later date. This seemingly negates the requirement for performance and communication licences, as users are simply uploading and downloading their own files—a process seemingly covered by the format shifting amendments to the Copyright Act. However, in the case of scanned and matched files, it may be argued that the files being downloaded to the user's device are not the *same* files that the user already possessed, but rather files belonging to Apple that are being duplicated for the user's benefit. This is particularly so in the case where Apple replaces a user's initial file with one of a higher quality—a feature boasted by the service (Apple 2011).

As discussed, curated radio services have managed to avoid the necessity to license reproduction rights through the recognition that they are providing music "as a non-interactive webcaster" (Braxton 2013-2014). As such, these services need only secure performance and communication licences to operate within the bounds of existing Copyright law.

#### 5.6iii Must It Be So Complicated?

If the preceding paragraphs seem inordinately complex, then they accurately reflect the current condition of Australian Copyright law. The emergence of new, feature-rich technologies and business platforms has muddied the waters when it comes to the requisite licenses required by new businesses in the recorded music sphere. It has been argued that new entrants to the industries are being forced to be overly cautious and that the current system may lead “online music purveyors to license all rights, an illogical outcome that potentially overcompensates rights holders” (Seay 2010). This in turn may delay the simultaneous launch of new platforms in multiple territories due to the complexities and time consuming process of obtaining *all* licenses in *all* territories—copyrights for the same works may be owned by different parties in different territories, requiring numerous and repeated negotiations. It is certainly clear that “definitional lines separating the exclusive rights, once fairly clear, are now blurred” (Seay 2010).

The complex operation of government in this space is having a clear and destructive impact on firms seeking to offer products to households. Along with the complexity of establishing which licenses are required in any given online music transaction, the sheer expense of obtaining these licenses from copyright owners has proven to be prohibitive for many new entrants to the marketplace (McKay 2010). It is estimated that Spotify pays almost \$10 million per month in licensing fees (Seay 2010), leading some commentators to argue that although it offers a unique and outstanding service, it can never be a profitable business (Robertson 2011). Some commentators believe that the major record labels, traditional custodians of sound recording copyrights, “have used their exclusive right to control the reproduction and distribution of musical works... as a way to prop up failing business models that [have] proved unsustainable in the digital world of the Internet” (McKay 2010). Further, commentators have suggested that “in a competitive digital marketplace, an online music purveyor would be able to calculate its costs of doing business before opening its doors, quickly change its business models to adapt to consumer demand, easily license vast amounts of music” and bring this music to a public eager for its availability (Seay 2010). This is clearly not currently the case. Indeed, some have argued that “Copyright is now a serious impediment to technological and social progress” (Patry 2009). It is possible that reforms to Copyright law are necessary to “streamline the process by which music copyright licenses are obtained in order to cope with—and allow legal music to compete in—a rapidly evolving online marketplace” (Day 2010).

## 5.7 Is Copyright Stifling Innovation in the Australian Recorded Music Industries?

The complexity involved in ascertaining and obtaining the requisite licenses for the launch of a new recorded music business is not limited to Australia, but is also manifesting as a barrier to entry for

new players in Europe and the United States. In Europe, “the unbearable complexity of online rights clearance processes is a major problem for commercial users wishing to develop and launch pan-European online content services” (Mazziotti 2011). Similarly, in the United States, “confusion over which rights are implicated in online transactions has created uncertainty in the marketplace and chilled innovation” (*ibid*). Copyright law has had to reinvent itself with generations of developing technology and in doing so seems to have become overly complex and commercially dysfunctional. There now seems to be a disproportionately large role for government in what should be a relatively simple economic process between firms and households. In the instance of new recorded music business models, copyright, the instrument designed to defend artists and creators of content, has become a legal barricade to the commercial exploitation of content itself.

Stephen Peach suggests that Australia’s copyright system is no more and no less complex than systems in much larger markets. Given our smaller market and a system that contains all the inherent legal complexity of a market much larger, this “probably mitigates against someone deciding to launch in this territory” (Peach 2014). The licence agreement struck between Pandora, APRA and PPNZ, Peach submits, is a demonstration of a simple one-stop licence that should be encouraged across the industries. Ignoring the disruptive and lengthy negotiation process, the service made one agreement with rights holders on the recording side (PPNZ), one agreement with rights holders on the publishing side (APRA) and was able to open its doors to the public. However, Peach acknowledges that this process was simplified considerably as the service has no on-demand elements. “Were Pandora, for example, to offer downloads or to offer songs on demand as part of or as an adjunct to their primary business of providing radio streams, then PCCA or any other collection society on the record side would not have the capacity to license that” (Peach 2014).

Peach suggests further that the complexity of the copyright system may in fact limit the capacity of new services to offer broad and complete catalogues of music.

Unless you’re a really big cashed up player, you’re probably going to do deals with majors and just a few indies, so it acts to lock out a lot of smaller players, unless they just simply sign up to a standard deal. You might have a multiplicity of reporting, different payment terms, all sorts of things get negotiated and there’s a degree of complexity around all of that. (Peach 2014)

Moreover, if those negotiations hit a sticking point, as was the case in the licensing of Pandora, copyright dispute resolution in Australia is a lengthy, convoluted, and costly process.

We've got the copyright tribunal, but the tribunal takes a lot of evidence and is almost run like a court and often takes 2 years from the start of proceedings through to a hearing if you go all that way, and probably another 6 to 12 months to deliver a decision. So, 2 to 3 years of uncertainty. In the digital world, that's 3 lifetimes. And it's also very expensive, so if you're a small player just trying to start out with a world-beating platform, you have no quick easy way of getting all that sorted. So it does mean that the system, I think, tends to favour the cashed up incumbents and the small player who's just got an interesting idea may find it a little harder to get a critical mass of recordings if you're dealing with music. (*ibid*)

Peach therefore argues that copyright is not only stifling innovation, but may in fact act as a barrier to entry for smaller players. If innovation is to come from smaller players, it may not be possible in Australia.

Peach suggests that the complexity of our current system may not just be stifling innovation, but may in fact be a contributing reason for Australia's delays in obtaining services available elsewhere in the world. "If you have a copyright system that is the same as the copyright systems everywhere else in the world, then you aren't really creating any incentive for people to accelerate a march into this market ahead of growing into Europe and other things, so we're perpetually lagging behind" (*ibid*). It is possible that a simplification of our copyright structure may lead to increased interest in Australia as a launch destination.

Michael Smellie suggests that "there are big structural issues" in the existing Australian copyright system that are stifling innovation within the Australian recorded music industries (Smellie 2013). In the first instance, Smellie suggests that competitive licensing is a "critical component" (*ibid*) that should be introduced to the Australian landscape to give creators a choice and to introduce an incentive for collection societies to strive for improvements and efficiencies. He believes the federal government needs to play a role in improvements to our current system, but rather than being a legal issue, Smellie argues that the Australian Productivity Commission should be instrumental in the resolution and improvement of the current system. Further, he suggests they should act quickly, decisively, and authoritatively to simplify the system.

Government should say 'listen, we view this as a problem and we want this resolved. We don't want to tell you what to do, because you are the experts. We'll give you six months to come up with a joint point of view—subject to that, we'll look at putting it in to legislation. By the way, if you don't come back in 6 months time with a signed heads of agreement, we'll just make up our own and you'll just have to live with the consequences.' (*ibid*)

Smellie suggests we need to take a broader, more economically focussed view on reforms to the system. “What do I want in the future? How do I create an economy around it? Ok, now I’ve got that, so how do I write the rules that sit around that?” (*ibid*). This ‘bottom-up’ approach, he suggests, creates the desired result and seeks to legislate around it, rather than being held hostage by generations of copyright law that have fallen behind in both their technological relevance and their applicability to modern recorded music industries.

On the other hand, Colin Blake suggests that our existing system serves to protect rights holders and creators and has the capacity to operate very well, so long as you have the patience, time, and money to work within it.

I’m all in favour of rights being protected and I think, in general, although sometimes things are a bit complex, I wouldn’t want to risk the protection of those rights in order to make business just a little bit smoother. I think if anything I would... rally to bring lawyers fees down more than anything—that’s the real hassle of it all. I think the idea of rights holders or people that are representing the art being extremely protected and making sure that copyright law doesn’t get loose or abused is super important. Thus far, and we’ve done some pretty innovative stuff and some first time stuff, I think for the most part you can make things happen as long as you believe that it’s worth your while to do so and you’re up for paying legal fees and time and effort to do it... I haven’t come into a scenario where, from a rights perspective, it’s ever been ‘absolutely, that’s never going to happen.’ I think anything’s possible, it’s just a matter of being able to justify it and then be able to do what it takes to make it happen, which is sometimes time and money. (Blake 2014)

Similarly, Mark Callaghan is supportive of our current system and is wary of copyright reformists who seek to abandon it altogether.

Their solution is that everything should be free. ‘Copyright’s ridiculous and we shouldn’t have any more copyright as it gets in the way of innovation.’ I just don’t agree with that. I just do not agree with that assertion, mainly because it completely disenfranchises the creators and you cannot do that. You cannot do it morally and financially it’s not fair on the most basic of terms. So, I don’t actually believe that copyright stifles innovation. (Callaghan 2013)

However, Callaghan acknowledges that if you want a licence to operate a new service on a multinational basis, things become a little more difficult.



I mean, look at APRA/AMCOS. I can't tell you how easy it is. Ring up tomorrow and say you want to do an internet radio station, you'll be able to get a license. They'll ask you several questions, I mean if you're a complete joke with no idea you won't get a license, but if you've got half a business model you'll get a license. You can put your station on the air here in Australia. The problem then becomes, because you're on the net, if you want to broadcast or narrowcast to every country in the world, then yes it's a problem. (*ibid*)

Callaghan suggests that the stifling of innovation does not necessarily lie with legislative complexity, but rather with the inefficiencies of record companies and their licensing practices, as opposed to the willingness of publishers and APRA |AMCOS to support new music business ventures.

It's not the fact that you've got to ask two people [recording rights holders and publishing rights holders] to stamp the ticket, if you will. If they're both efficient and good at stamping the ticket, the ticket gets stamped quickly. If it's only one stamp that's required and they're still not together as a company, then there's no benefit. Just because it only has to be stamped once, but it still takes 3 weeks, it doesn't matter if it has to be stamped twice and it happens in 2 days. (*ibid*)

Overall, Callaghan is wary of building in efficiencies to a system due to the potentially unknown side effects of expedited licensing processes.

I agree with the premise. If you were to legislate to get greater efficiency, would you get greater efficiency? Yes, maybe, but what do you sacrifice for that? Do you sacrifice creators being disenfranchised? I don't know... While I don't want to make it difficult, I just wonder if it's the right question to be asking. I'm just a bit cautious to say that efficiency and ease of use in the music business is all that matters. (*ibid*)

Callaghan argues that our current legislative system has not prevented the existing range of new recorded music businesses from obtaining licences and as such may not be in need of change at all.

I know that we've had these sorts of discussions at AMCOS and the truth is that AMCOS management, when these things come up, they say to us 'show me one company that could not get a license'. And that's really where the argument begins and ends. There is no one that they're aware of that has tried to get a license from APRA/AMCOS and couldn't get one... In other words, people say, 'it's so difficult to start a license and it's so difficult to get these rights'. And yet, Spotify did it, Rdio, Pandora. People think there's only iTunes and a couple of others, but there's hundreds and hundreds. It's incredible. And they've all got licenses. (*ibid*)

Pointedly, Jane Huxley vehemently disagrees with Mark Callaghan and suggests the current legislative landscape is a significant hindrance to both the music industries and other creative industries in Australia:

It is. It's hideous. I don't think it's specific to the music industry, though. I don't want to just pick on music and copyright here. Copyright spans all types of creative arts, as you know, and music is one of those ... The whole bloody thing is hideous. It's the chicken and the egg. How can legislation keep pace with the rate of innovation on the internet? I don't even know how to start looking at that issue from a very smart people's perspective, but it is an enormous inhibitor ... Not only in the music business, where it is unbelievably ugly, but it basically is going to inhibit any type of model that touches on a creative economy. And this is the internet—it's what it's built for. I don't know how to solve it. I work with a number of bodies down here to try to stay abreast of some of the issues, to stay abreast of the legislation ... When I started at Pandora, one thing I made very clear was that I could not get involved in that piece of our business because it would take 120% of my time just to stay on top of the changing environment in Australia. Look at PPCA and commercial radio. The only people making money out of music right now are the lawyers. (Huxley 2014)

There appears to be very significant and very passionate conjecture on the role of copyright in a 21<sup>st</sup> century internet-based recorded music business. What is clear, from the perspective of the new music businesses, is that the time, effort and money involved in negotiating licence agreements and navigating the copyright landscape is tremendous. The role of government and its impact on firms has been pointedly and significantly determined as too complex, too onerous and too expensive by firms engaged in the industries. Those involved in the recording side of the business, representing both record labels and collecting societies, highlight an urgent need for reform in our current system.

#### 5.7ii The Rights Clearinghouse

Copyright scholars have suggested that the traditional structure of music copyright licensing be simplified significantly, leaving the job of licensing to a single conglomerate entity (Day 2010). This theory proposes that all interested stakeholders, including those representing music publishers, songwriters, performance rights organisations, record companies and independent artists, be represented by a single licensing entity to more efficiently negotiate rights and royalties (Cardi 2007). The proposed model, known as the Rights Clearinghouse, aims to maintain the current number and structure of rights being licensed, though it is argued that “when the process of

obtaining music licenses is streamlined, obstacles are removed and the legal distribution of music online can flourish” (Day 2010). The model suggests that each organisation or entity represented by the Clearinghouse would be required to grant access to its entire repertoire and to put forward specific and reviewable algorithms for determining license fees based on any conceivable consumer use for works (*ibid*). Once licenses have been obtained for works by a commercial entity, there is no need to modify or alter existing agreements unless interests in a work are assigned to another entity—a not uncommon practice in the recorded music industries.

This model allows all current licensors of rights to retain their role in the licensing process and to set their own prices. While it is acknowledged that the end user’s ability to negotiate in a commercial sense is significantly hampered by this model, it is also argued that individual negotiations with licensing agencies “can be difficult and time-consuming, especially given the sheer number of rights holders involved and the potential for negotiations to break down between parties” (Seay 2010).

There is, however, considerable opposition to this model. Michael Smellie, for example, sees competition within music licensing as essential to business efficacy:

I’m not at all keen on one central license authority. I think that it’s a monopoly—there’s no competition, there’s no reason to innovate and I personally think, and APRA would probably not agree with me and they quote statistics all the time to tell me I’m wrong, if you look at any other fields, not just business but even sport and things like that, it’s competition that makes you improve and innovate and drive forward. So, I intrinsically think we should have competitive licensing. I know some creatives would say that’s a disaster, but I think in the long term it’s good for everybody and will drive a lot more innovation. (Smellie 2013)

### 5.7iii The Right To Commercially Exploit

An alternative proposed model advocates the collapsing of all current rights associated with music exploitation into one single right—a “right to commercially exploit” (Loren 2003), whereby owners of Phonographic rights have a singular licence to grant, along with a singular licence available to owners of copyright in music and lyrics on a territory by territory basis. If the market eliminates the need to determine which rights are necessary in any given transaction, firms attain increased flexibility, enabling constant development of new product and opening new markets to households. Undoubtedly, this would simplify the current landscape by allowing any new recorded music business to obtain a right to commercially exploit a copyright-protected work in any fashion they

desired, without needing to negotiate licenses for each specific exploitation necessary within their business model.

Jane Huxley speaks of her frustration at the limited use of catalogue permitted to Pandora based on the nature of the licence struck between the company, APRA and PPNZ:

When I go about the structure of our business development, etc., one thing I've had hammered in to me is that we can't look at any deals that require us to make a copy of the song. For example, I get phone calls all the time and I had a phone call a week or so ago from Virgin: 'You know we've got a server in every domestic plane, we've got a satellite dish on the roof of every international. We want to offer Pandora to everybody who flies on our flights.' I'm like 'aaaargh!!' My license doesn't allow us to look at that kind of deal because we cannot make a copy of our music... Look, we could stream it through a satellite dish, but the concern that we have with that is what the user experience will be like... You're on a flight to LA and you can get Pandora for the first hour and a half and the last hour and half and in the middle you can't get it. So, it would not be a great experience for people or our brand so we just can't look at it. (Huxley 2014)

#### 5.7iv The Australian Law Reform Commission and the Ephemeral Copy

The Australian Law Reform Commission (ALRC) has undertaken an extensive enquiry into the impact of copyright law on the digital economy in Australia. Reporting in November 2013, the ALRC made significant recommendations that, if accepted and incorporated into legislation, could have significant and wide-reaching impact on the recorded music industries in Australia. Within the terms of reference for the enquiry, the commission stated that they "strongly endorse the principle that copyright law should be responsive to new technologies, platforms and services and be drafted to recognise that the operation of the law is fundamentally affected by technological developments" (Australian Law Reform Commission 2013). Similarly, the Commission has stipulated that copyright law in this country should be "predictable in application in such a way as to minimise and avoid unnecessary obstacles to an efficient market" (*ibid*). Moreover, "Copyright should not be dictating the direction of technological innovation or hampering the development of more efficient systems" (*ibid*). While not addressing the implications of copyright law on the recorded music industries specifically, these themes resonate with the intention of simplification of our current legislative constructs.

Most specifically, the ALRC identified in Recommendation 11.1 that current exceptions in the Copyright Act dealing with proxy or web caching of copyright protected materials be repealed and a

“fair use or new fair dealing exception should be applied when determining whether incidental or technical uses infringes copyright” (*ibid*). While not discussing ephemeral copies of sound recordings specifically, the ALRC highlights, in Recommendation 11.50, that “incidental or technical uses require both reproduction and communication of copyright material” (*ibid*).

The notion of fair use mentioned above is not new to Australian copyright law and seeks to simplify the multitudinous exceptions that exist in the Copyright Act in various contexts, including but not limited to education, reporting the news, parody, and satire. While there is conjecture as to how broad the scope of the fair use exceptions should be, as discussed by the ALRC in the aforementioned report, the ALRC recommend that if the notion of fair use does not wholly encompass the exception sought for incidental or technical uses, “a new specific exception may be warranted to alleviate uncertainty surrounding the current exceptions” (*ibid*). Some very limited extrapolation allows this specific exception to be viewed in the particular application to on-demand streaming services that require a license to reproduce works for the creation of ephemeral copies. The ALRC continues:

This specific exception could also be confined to incidental or technical uses that facilitate lawful use of copyright material... Such reform would provide greater clarity and certainty to innovators that services or products relying on technical or reproduction to facilitate the lawful use of copyright material, will not infringe copyright (*ibid*).

Undoubtedly, the operation of a licensed streaming service is a lawful use of copyright material, assuming all requisite licences are in place. It can further be read from the above that, should this recommendation be incorporated into Australian copyright law, there will cease to be a need for on-demand streaming services to obtain a license for the reproduction of works. Potentially, they may be licensed with performance companies APRA and PCCA, as seen in the case of non-interactive curated radio services like Pandora. Certainly, this would expedite the licensing process and launch of new music business models in Australia by reducing the number of licences required and by reducing the royalties payable to copyright owners. It is noteworthy, however, that APRA/AMCOS vehemently opposed this proposal, stipulating that no exception should be considered that “permitted the caching of downloads tethered to subscription services, or material located behind a paywall” (*ibid*).

Indeed, whether a reproduction right should need to be licensed for the creation of an ephemeral copy is already hotly debated throughout the Australian music industries. Michael Smellie is of the opinion that the right is simply being used as a negotiation tactic by labels and publishers:

I think it's bullshit. At the end of the day, I think what rights holders have done is that they grab hold of everything they can and they use it for leverage to close a deal ... I'm not critical of that—that's their role, to get as much as they can. When I say it's bullshit, I don't mean their negotiation efforts. As a matter of logic, it's bullshit. To give you the perfect example: when an artist's in the studio, they make hundreds of copies of the stuff. We duplicate master tapes and send them around and do all sorts of stuff like that. Nobody in their right mind would come along to the artist and say 'wait a minute; there's 4 copies of the master tape in the studio. You need to pay me for each one. And by the way, you sent a copy to the record label and they then duplicated 4 to send out to create gold masters to stamp out CDs'. That's just nonsense. The view would be that this is incidental to the making of something that you monetise ... Legitimate negotiating tactic, sure, but actually logical bullshit. (Smellie 2013)

Mark Callaghan also identifies the issue as one fraught with complication, though from a publishing perspective he argues that Australia has a very simple method of solving the issue:

It's a hairy old question. You see, again it's hard for me to comment only in the sense that there's just no issue. There's no problem with APRA/AMCOS. That's all I can tell you, because we've arranged our business so we give one license. It deals with everything. So it just doesn't matter to the new business model whether they're paying a dollar and 10% of that dollar goes over here and 3% goes over here. It doesn't matter. They come and get a deal from us and it's just 'give us a dollar' and we'll work out what happens behind the scenes. So if you make the rule that the mechanical for a download is just a dollar, and the entire dollar goes to the mechanical, and for a stream it's a dollar, and the entire dollar goes to the performance, it makes no difference to the new business model. (Callaghan 2013)

In the arena of recording royalties, however, Callaghan agrees that the situation is considerably more complicated.

You've got all these record companies that have gone into different conglomerations for multi-territory licensing. So you end up with not an ideal world where rights are divided by type of right, as in performing, mechanical, etc. It's also divided by territory and it's also divided by repertoire. It's not ideal. You've got to go to this company to get the recording right for this repertoire for these territories. And you've got to go to that company to get the recording rights for those songs in these territories. It is not ideal. (*ibid*)

Stephen Peach agrees that the ephemeral copy is or should be more about how revenue is apportioned, rather than a separate reproduction right necessary to be licensed in the launch of a new recorded music business:

This is where, I guess, it just gets down to negotiation. To my way of thinking, all of that is just copies made incidentally to the delivery, or the exercise of the primary right which is the communication, and should be caught up—and I've always taken the view that they are caught up or caught by those provisions and therefore so they're not separately licensable. But as a belts and braces thing, you always get that license explicitly when you secure license, say through PPCA for example, you would seek a provision that just says 'to the extent that any license is required, it is hereby granted.' And at a practical level, that's actually never been an issue because I think that everyone accepts that it's not the exercise of a right, it is probably a reproduction, it's probably a copy, but it's also been covered by the exception so it's not really licensable. And everyone knows that what you're paying for is the right to stream it. Whether that's the same on the works side, I don't know, but they've probably taken a slightly stronger view on there being the exercise of two different rights, but I guess they would say—and I think history has certainly shown us—that it's more when they do that they're doing more of an internal apportionment between those who are entitled to streaming revenue and those who are entitled to reproduction revenue, rather than using it as a mechanism to effectively double up on the licence fees. (Peach 2014)

As to whether a new on-demand service could bypass the requirement to license a reproduction right directly from rights holders if the Copyright Act were to implement an exemption for the ephemeral copy, Peach suggests there would need to be significant change in the current royalty collection landscape:

Look, anything is possible. It would require one of two things to happen for that to occur. First is that the labels are convinced by PPCA or others that that would be a sensible commercial decision for them to take and that they voluntarily agree to extend PPCA's rights to include such services. That's one route. The other way is that the law, just using Australia as an example, that the law was changed so that it is perhaps more like the DMCA in the US where you create a statutory right and create as we currently have in Australia in the case of some other rights, you create the right and then you also create the mechanism for collecting in respect of that right, which is to cause the establishment of another collecting society—or to give the right to that collection to an existing collecting society. You essentially create a mechanism whereby there is compulsory licensing and a single point of administration and there is precedent obviously for that in Australia... That's what you'd need—one of those two things to happen. (*ibid*)

While this seems like a potential method to simplify the existing system, Peach suggests that record labels would need a significant change of heart for this to occur.

It's absolutely within the power of people to take a different view and to do it, but up to this point it seems very clear that the labels continue to be of the view, and that's big and small, continue to be of the view that the best and most efficient way of licensing the global services is to do that by direct negotiation. And I suspect principally because they can do global deals, whereas collecting societies can't. It's much harder to do that through a collecting society" (*ibid*).

At a broader level, Michael Smellie opposes a number of the ALRC recommendations, arguing that the system needs to be approached holistically from an economic perspective.

I've read the draft report, but I don't think it addresses the fundamental issues. I don't think it's forward looking, it's looking at the situation today—and one thing I know is that whatever's here today won't be here next week ... We want to be a content creator for the world. So how do we put in licensing and various kinds of things that facilitate that. That to me is much more important than the sort of pedantic approach, which I think is the ALRC approach. (Smellie 2013)

It appears that there is a general feeling through the industries, and indeed the legal community, that this particular aspect of copyright law is capable of considerable simplification. It seems universally acknowledged that the role of government in this aspect of economic activity seems to be disproportionately influential. It remains to ask whether legislative reform will have a significant impact on the activity of firms and the availability of products to households in Australia.

#### 5.7v Will Legislative Reform Expedite the Launch of New Music Businesses in Australia?

All in all, it seems unlikely that wholesale changes to the Australian Copyright Act are feasible in the foreseeable future. While there are some within the Australian recorded music industries that suggest our current copyright system is a hindrance to the profitability of the industries and the establishment of new recorded music businesses in this territory, it is fair to suggest we are unlikely to see the establishment of a Rights Clearinghouse or the Right to Commercially Exploit built into our legislation any time soon. In the absence of significant lobbying pressure from local industries, we are very unlikely to see a government act autonomously in the overhaul of existing copyright law. Along with shifting international trade practices, developing international law and changing consumer needs, copyright law in Australia has been amended only as a response to significant



changes and overhauls in technology like the VCR, the blank cassette, the Compact Disc, the MP3 player, and now the business of music on the Internet.

Notwithstanding, if amendments to legislation are to occur it is most likely that they will emanate from the recent ALRC recommendations. Though it remains to be seen in practice, if the ephemeral copy is deemed by legislation to be exempt from copyright protection, it follows logically that the licensing, and therefore launch, of new recorded music businesses in Australia, and streaming music services in particular, would be simplified and thus expedited.

#### 5.8 Is a Multinational Licence (and therefore a Global Launch) Possible?

Ideally, a new recorded music business service would obtain all requisite licenses quickly and easily and effect a global rollout of a new revenue-generating platform, creating revenues for rights owners and exploiters alike. From an economic geography perspective, this would de-cluster the operation of the recorded music business, allowing it a truly globalised operation. Were it possible to avoid the time consuming and prohibitively expensive process of negotiating separate and distinct licenses in every territory, and to obtain a single multinational licence from each content owner, this would be feasible. If a service is able to license the catalogue of a publisher or record label, it follows that they should be able to license that catalogue for all territories in which that catalogue is owned or controlled. While it is acknowledged that even the larger record companies and publishers don't control rights for all their works in every territory, it is conceivable, at least, that a licence could be granted for all territories in which the content is controlled. Is it conceivable to think that concurrent multinational launches of new services is a possibility?

Stephen Peach suggests that not only is there “definitely scope” (Peach 2014) for the multinational launch of a new recorded music business, but it is becoming increasingly critical.

Increasingly, the labels themselves are starting to look at a lot of these services in a more global way, which I think is a real step forward. That doesn't necessarily deal with all of the issues, because you'll find that copyright is still a very territorially based structure. Even globally, a recording by one artist can be on Universal in most of the world, but might be on Warners or some independent label in Australia...With a global deal and a major label, you can probably cover a big chunk of what's going on but you will still have local negotiations to do. The independent sector, in the last 4 or 5 years, have really started to get their act together on that as well and you have organisations like Merlin – and they really do provide a great service to the independent sector – you can effectively, if you've got a

global rollout, you can really negotiate a global deal. You're more likely to be able to do it now than you were 5 years ago. That's where the market is really starting to come around to the fact that these services, if they're going to succeed, they're probably going to need to be global services. They'll need a global solution. In some ways, it brings it down to the realm of that sort of local copyright law and local collection society negotiations. (Peach 2014)

Michael Smellie similarly foresees a future where the bulk of licence agreements are negotiated on a global basis:

Given the territoriality issues, it's very difficult to do global deals. Although I do think, to be frank, that there is an increasing tendency towards that and I think you can't imagine a future in which that's not the case. It's gone from a decade ago there being no such thing as a global deal, to probably 10% of deals done today are global deals. I can't imagine that at some point in time that won't be 20, 30, 40, 50% - up and up. I just can't get my head around that not increasing. The question is only how rapidly that ramps up. (Smellie 2013)

As the trend toward multinational licensing grows, Smellie anticipates it will be regional blocks that begin to group together:

There is some being done now, and I think the answer is watch this space. I think Europe will be the lead and I think once you see pan-European licensing, people are going to start saying maybe it will be part of the North American Free Trade Agreement. Why can't I do Canada, the US and Mexico? I think the territoriality issue, bit by bit by bit, again it's not going to happen in the next year or 2, will gradually go away. (*ibid*)

Mark Callaghan also sees a future where new platforms are rolled out internationally. "Do I think there'll be multi-territory licenses? Yes I do. It's efficiency" (Callaghan 2013). However, Callaghan warns of the potential complications of such a set up, highlighting the role of international Performance Rights Organisations or collection societies.

Look, I don't think it's going to be as simple as that, because of course you'll have to do deals with, on the publishing side, you would need to be doing the deals essentially with the collection societies. That's because they can offer all of the repertoire. If you go to EMI or Sony and do a deal for all their published works, what that will get you—it won't get you every song on every album. Half a song might be written by a Universal writer, or it's unpublished. But all those writers are members of the collection society. So yes, you can do that. (*ibid*)

Across the board, respondents suggest that concurrent multi-territory launches are both desirable and inevitable. Firms, both legacy and next-generation alike, appear to *want* to establish new services in multiple territories simultaneously while households, once products are made available and the requisite resources are in place, are eager to exploit these products. It appears that factors including government and public bodies may in fact be interfering with the wishes of firms and households in the realisation of these aspirations. The most influential public body in this sphere is without doubt the Territorial Performance Rights Organisation who has traditionally held territorial division and separation to be exceptionally important.

#### 5.8i Territorial Performance Rights Organisations

In Australia, royalties generated for the public performance of music and lyrics are collected by the Australian Performing Rights Association (APRA) while royalties generated for the public performance of sound recordings are collected by the Phonographic Performance Company of Australia Ltd (PPCA). While some countries have banded together under a grouped organisation, (APRA collects royalties for Australia, New Zealand and a group of nations in the South Pacific,) it is common for each significant music-creating nation to have its own Performance Rights Organisation (“PRO”) to administer these rights at a territorial level. If works are performed outside of national boundaries, reciprocal arrangements exist between PROs to allow royalties to be collected in external territories. As discussed earlier, it is immediately apparent that the rights exploited by new recorded music businesses necessitate licences being forged with PROs for both sound recordings and music and lyrics.

Apart from their significant service to copyright owners in both sound recordings and music and lyrics, it has been widely argued across decades that territorial collection societies play a central role in the protection and promotion of national cultures across the world (Simpson 1995). However, the territory-based nature and practices of these organisations have proven restrictive in the multi-territory launch of new music business services. A curated radio service, for example, need only obtain licences for public performance, yet separate and distinct licences of this type must be obtained in every territory containing a PRO, in order to negotiate and establish royalties payable to copyright owners within its repertoire.

To further complicate matters, if a territorial PRO has a reciprocal arrangement with another overseas, it may not license its own native repertoire on a global basis. For example, if a new curated radio service approached APRA and wished to obtain a license to stream the catalogue of Paul Kelly, a prominent Australian singer-songwriter, on a global scale, APRA is unable to grant such a licence. Though Kelly is an Australian native with his works listed with APRA in the first instance, the nature of the reciprocal arrangements APRA holds with other collection societies (such as GEMA in Germany, SACEM in France, among a plethora of others) restrict it from licensing anywhere outside its own territory. If the service wishes to avail itself to German users, it must negotiate a licence for Kelly's catalogue, along with all native German works in Germany, through GEMA.

In Europe, this poses a problem worthy of consideration. Though geographically separated by small distances, each PRO in Europe holds separate and distinct repertoires of native works along with reciprocal collection agreements with each other PRO, and thus negotiations must be held individually with every European PRO for a pan-European service to be established, "in spite of the borderless nature of Web-based environments" (Mazziotti 2011). Pointedly, across the European Union (E.U.), though a very significant retail music market, online music services and music stores are still relatively few in number and certainly not present in all territories. "The unbearable complexity of online rights clearance processes is a major problem for commercial users wishing to develop and launch pan-European online content services and to take advantage of the E.U. cultural sector as a whole" (Mazziotti 2011). At present, "this seems an almost unbearable task" (Mazziotti 2011).

In 2005, the E.U. recognised that existing "copyright management gave rise to licensing practices that segmented the so-called 'Internal Market' [of the E.U.] on a strictly in-territorial basis" (Mazziotti 2011). Subsequently, in November 2012 the E.U. issued a Directive on "the collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market" (European Commission 2012). In short, the Directive suggests that existing licensing processes are time consuming and prohibitively expensive to smaller operators (Braxton 2013-2014). Moreover, it recommends that there should be greater control over and transparency of collection societies, allowing the E.U. to become "one aggregate market that will simplify transactions [and] require fewer licences to be negotiated" (ibid). While these issues are yet to see resolution, it is apparent that the E.U. is acutely aware of the potential hindrances posed by territorial collection societies in the establishment of new businesses and of the potential benefits of the simplification of the existing licensing process (Greeley 2013).

However, Mark Callaghan highlights the potential issues faced by European PROs in the push to have them operate as a more unified entity:

Well, the E.U. have said that they've got to do it. They've got to get their act together so they're just going to have to. Ostensibly, it's human nature. Nobody really wants to vote themselves out of existence. And I think there'll always be a role because remember that the collection societies of a particular country do fulfil somewhat of a cultural role. Certainly SACEM in France is not going to want to vote themselves out of existence and see their French language music decimated by pop imports from America. Likewise Germany and Belgium, so they have to balance things up then. (Callaghan 2013)

Understandably, PROs are particularly hesitant to give up their role as the custodian and guardian of performance royalties. According to the most recent National Music Publishers Association (USA) International Survey of Music Publishing Revenues, 46% of international publishing royalty income collected by all PROs was for exploitation of the performance right (National Music Publishers Association 2001). That amounts to over \$3 billion dollars. The survey was conducted in 2001, well before the proliferation of streaming services, a-la-carte download services and curated radio services began bolstering the revenue streams mentioned above. Due to the disparate and predominantly unreported activity of music publishers around the world, more current data is unavailable.

These territorially restrictive agreements [between songwriter/artist and collective rights organisations] have no place in the licensing of online music where digital transmissions are not limited by national boundaries. The present licensing system is inefficient, costly, and hinders the development of online music providers' ability to distribute music to consumers. (Conley 2007)

At a local level, the roles of PROs are hotly debated, particularly their role in a new and developing online environment. Stephen Peach suggests that confusion arises as to which rights are being exploited in any given circumstance and who is responsible for both monetizing and collecting revenues on rights exploitation.

If you go back historically, the line between collecting societies and the rights that they administered versus the rights that the record label administered was pretty clear cut. It was record companies made records and they sold them into retail and that was the primary function. They marketed them, they got them on to radio, they did all those sorts of things, but they made physical pieces of plastic

that went out to retail and got sold to people and got put on record players and cd players and things. And what PPCA and its counterpart organisations around the world do is then take the more public use and commercial use of recordings in these more small business contexts or media organisations where it was just a huge array of recordings being used in all sorts of different ways from different catalogues all at the one time. And you had these very clear lines being drawn. You come to the digital age, of course, and is a streaming service more like radio, which something like PPCA would license, or is it more like selling a CD? The answer is, it's a bit of both. So you have this grey area between what the record companies do... and the bits that collecting societies do. That's becoming very blurred now. It gets very blurred in the online space and I think that it's just a function of everyone trying to work out what's the right balance in the online world where all of these uses are now starting to merge and it's very hard to draw a distinction between whether it's primary, and what used to be regarded as primary use and secondary use. (Peach 2014)

The various copyrights attached to a work may be owned or controlled by different publishers or labels in different territories. Notwithstanding, if a deal is made with any given publisher or label worldwide, it is arguable that there should not need to be separate and individual deals made with every PRO in every territory in the world. Michael Smellie sees a developing trend where rights holders are increasingly looking to license their catalogues directly to exploiters of works, cutting out the role of the PRO altogether.

I think there has been a general trend over the years for particularly the major companies to want to license direct. I can understand that to some extent. In the most simple sense, if I'm listening to a radio station and you play my song, then because I'm a name and I attract viewers, I'm intrinsically more valuable than new artist A or X. So, I want to have the right to leverage the value of my songs – it shouldn't be worth the same as a stream from somebody nobody has ever heard of that doesn't necessarily attract viewers or listeners to the station. (Smellie 2013)

Smellie acknowledges, however, that this may complicate procedures for businesses looking to license works in the recorded music industries by multiplying the potential number of licensing partners with whom they will need to make deals. Ultimately, however, he sees a technological solution that replaces the role of PROs and simplifies the licensing process.

I think technology will resolve this. Everything's got metadata in it now. Rights issues because of territoriality are still problematic, but I'm aware of people working on technological solutions to that. They're not going to all appear in the next 12 months, but if you ask me to take a 5-10 year view, I think that technology will increasingly assist and if you want to go and license something, you'll go online and it will be a 50c license, or a Paypal transaction. There'll be easier licensing for everybody. I

think I could even see it turn around the other way, where people like YouTube will send you a note saying 'we know you've used this and we'll be taking it down, or we'll be charging your credit card for 99c.' It will do the licensing for you. (Smellie 2013)

At a technological level, the territorial nature of PROs is challenged further by the borderless environment of the internet. Consumers throughout the world have demonstrated time and again that they will not be blocked by IP restrictions on a service's availability. International proxy servers, VPNs, Virtual IP addresses and the like have amply demonstrated that "when streaming stops at a country's IP address, consumers will find a way" (Braxton 2013-2014).

It is clear that the traditional role of the PRO is being challenged by a new business environment, an environment that was unforeseen at the time of the establishment of our current royalty collection system. Further, it appears that while public bodies in this equation are supported and propped up by governmental instruments, indeed most are legislated into existence, significant tension exists between firms and the public bodies in this equation. Firms, both heritage and next-generation, acknowledge the role of these public bodies as important cultural custodians, but feel they are stretching beyond this function in a manner that hampers the international potential of the digital music business. As Burkart noted, "the patchwork of national licensing systems across the world renders even the most global of the vendors' catalogs, such as iTunes, incomplete." (Burkart 2014) Further, it has been observed that the firms themselves could better serve the PRO function of royalty collection and distribution. For a global rollout of a new recorded music business to be effected, an ideal result from a business perspective, it is clear that the traditional role of the PRO needs to be revisited and potentially revised.

## 6. Discussion and Conclusions

Australia's recorded music industries are in the midst of a generation-spanning crossroads. The era of CD dominance has long passed and the introduction of new and innovative services will hopefully place a decade and a half of wholesale piracy behind us. The economic geography of this situation is as complex and intricately interconnected as could be anticipated from even a surface examination of the parties involved. The rights owners, the new businesses, the consumers, the role of law and legislation, the collection agencies, the internet itself and most significantly the preferences of consumers are all responsible for our current landscape and the eventual picture that will form when the dust settles. New services are mooted, launched and shuttered constantly. The influence of firms, households, governments, private and public institutions and the availability of natural (or

in this case technological) resources through this process are frustratingly interdependent and always shifting.

Accordingly, it is difficult to draw concrete conclusions from the data gathered in this study. The disparate arms of the recorded music industries in Australia as represented here do not align in their beliefs through any of the lines of questioning explored in the semi-structured interviews conducted. There is no area of discussion that produced consensus. Even among representatives of similar facets of industry – representatives of new recorded music businesses or those involved in the record labels – opinions varied as to the influence of the factors cited above.

What is abundantly clear, however, is that the activity of firms in these industries are fundamentally responsible for both the availability of services and the content available within them. While the role of government complicates matters, it appears that the dynamics of relationships between these firms, the publishers and records labels on one hand and the new recorded music services on the other, is potentially destructive to the Australian recorded music industries. In fact, the key theme that resonates from all the data collected is the chasm that exists between these two key players. There are key disagreements on almost all fronts—the place and significance of Australia in the global recorded music industries, the idiosyncrasies of the Australian market and the very reasons behind the delays in launches that form the basis of this thesis.

Some interviewees highlighted a stubbornness, even a belligerence, on the part of major labels to become involved with new services, while the new services themselves see only great potential in this market and are seeking to make deals. It becomes difficult for the labels to claim that they are ready and waiting to make deals while the services themselves speak of three-year negotiation periods ending in stalemates. It could possibly be extrapolated that this inability or refusal to come to terms on licencing terms is in itself a major cause for the delays in launches of new services in Australia.

It appears that record labels no longer set the terms for consumption of their product and their efforts to control the market are providing only frustration for services and households alike. It is possible that this divide in perception exists due to the role of each firm in the equation—one owns the rights that the other is attempting to exploit—though similar divisions do not appear to exist in the commercial areas of physical music retail or in music-focussed visual media like film, television or video games. From the data collected it may be extrapolated that legacy music businesses in



Australia are being dragged, albeit slowly, into a future that they are not readily prepared to accept—a future where the mechanics of distribution are effected by third parties in a fashion unfamiliar to the traditional business models of record labels and publishers. (It is of note that this ‘future’ against which they’re railing began a generation ago with the birth of Napster.) The fissure of perception between firms doubtlessly has wide-reaching implications on the entire economic geography of both this study and these industries, and a potentially disruptive impact on the future of recorded music distribution in Australia. Further investigation would be helpful to establish whether such divisions exist in other territories where new services have already proven themselves profitable and sustainable sources of revenue for legacy businesses.

It is also clear from the data that another factor potentially hindering the launch of new recorded music business models is the activity of government, as manifested by the operation of copyright law. All participants highlighted that the licensing process is complicated, arduous, expensive and time consuming. This is indeed the one area in which consensus is almost achieved. It is clear that reform is necessary and encouraged throughout industry, though how this process is to be undertaken and what the results should be are hotly disputed.

Similarly, the availability of natural (read: technological) resources in this territory is having an impact on both the ability of firms to offer new services and on households’ ability to consume new products. Australians have been shown to be early adopters of technology, though in this instance it is possible that this territory is simply not equipped to take full advantage of new product offerings. Upgrades to existing infrastructure, including projects like the National Broadband Network and the launch of 4G+ mobile networks, will have an impact in this space, though pricing of these services may hinder their widespread adoption.

Further, the data collected reveals a deep, fluid and complex three-way relationship between households, firms and resources, with a potentially critical role for government to enable this relationship to exist. A number of respondents highlighted the fact that Australians are enthusiastic adopters of new technology, but are unable to do so in this instance due to an absence of awareness of new music services. Even once made aware, their take up and adoption relies on access to the internet, both wired and wireless, with sufficiently rapid data transfer to enable the enjoyment of the service. Thus, firms must not only make product available, but promote it sufficiently to raise awareness across households. Households must also have access to the internet at sufficient speeds and with enough geographic coverage to make new music services a suitable method of music

acquisition, a provision only made possible by the activity of government. At present, this is simply not a possibility for a proportion of Australians living in remote communities or without access to the requisite hardware.

The notion of the global launch of a music service seems not only sought after by all facets of industry, but has been identified as an inevitability. The data demonstrates that global launches are possible, but will require a willingness on the part of firms, along with a careful combination of government and public body cooperation. As it stands, no global launch is possible within the existing strict territoriality of PROs and the system of reciprocal licensing. Given that the existence and structure of many of these organisations is established and maintained through government act, particularly through the operation of international treaties on copyright, it is possible that legislative function will be required to effect any change. This is a very large undertaking and would need to be the subject of significant international negotiations at high levels of government. This in itself would be an interesting area of further research.

One troubling element that remains is the possible misapprehension of the potential of the new business models and the impression that legacy businesses are threatened by their popularity.

I think people don't get the model, or a lot of people that have commented publically don't get the model and haven't really thought it out properly, because, talking personally right now, I see nothing but a lot of upswing and new opportunity. And trust me, as someone that's a really huge, huge, passionate music lover, if I felt like this scenario was detrimental to the music industry in any way, I wouldn't be a part of it and definitely wouldn't be leading one of the businesses. (Blake 2014)

Further, as Mark Callaghan notes, the industries should be supporting the rapid, efficient and easy acquisition of licences for the establishment of new businesses.

Whilst, as I say, nobody deserves a free lunch in setting up a new business, it shouldn't be very difficult. If they're prepared to pay their royalties and they've got a nice idea for a music business, then you've got to back them in. That's how I feel. (Callaghan 2013)

The rapid pace at which this industry has shifted has made lasting conclusions and analyses very difficult. The democratisation of online music distribution has created a miasma of launches, mergers, takeovers, failures and burials, where it was once the domain of 4 major labels, boats, trucks and a select few stores. Even as this thesis was being written, JB Hi-Fi, the largest physical

recorded music retailer in Australia, opened and closed their proprietary streaming music service (Swan 2011, Simpson 2016). Beats Music, a subscription streaming service launched by Dr Dre in 2014 (Heater 2014), was mooted to be launching in Australia as the “2<sup>nd</sup> country in the world” (Eliezer 2014) to gain access to the service – and potentially challenging the fundamental tenets of this thesis – but prior to launch was purchased by Apple and that launch delayed (Apple 2014). Similarly, the entire realm of Social Music (turntable.fm and others like it) that presented so much promise at the outset of writing seems to have fallen by the wayside. Making a lasting statement about the online recorded music industries in the mid-2010s is very, very difficult.

There was considerable risk that data collected from interviews conducted in 2012-2013 would have become entirely irrelevant by 2016. Certainly, data collected in the early 2000s seems absurd in its antiquity now. However, participants’ observations of the launch process, the dynamics of the industry and their observations of the archaic and as yet unchanged structure of Australia’s copyright law remain current. It is clear is that open and better communication is critical between industry firms in order to enable more fluid and constructive licensing processes. Fissures in perspective are at present having a distracting and destructive impact on the launch of new recorded music business models in Australia. Most within the industries agree that new models and new services in the recorded music industries represent an incredible opportunity and one that promises to support the rights holders and creators who support the businesses themselves.

It appears also that we have seen a stabilisation of the market in the time since writing of this thesis began. Spotify and Pandora have established themselves as clear market leaders in their respective fields (IFPI 2016) while others have fallen by the wayside or merged, and iTunes remains the dominant mp3 store even if sales are beginning to fall away (IFPI 2016). Spotify has become the ‘go-to’ for the active and discerning listener and Pandora the destination for the passive listener happy to be served without much interaction. It appears that households have made their preferences known to firms and they are being provided for accordingly. What models are still to come, the availability of global launch and the dates of launch in this country, and especially household adoption of these as yet unknown businesses will be fascinating to watch.

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