



Copyright and the Digital Economy

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Contact

Bethwyn Serow
Executive Director

bethwyns@ampag.com.au

Tel: 02 9253 5350

AMPAG—who we are

AMPAG, as the representative body of Australia's 28 major performing arts companies, gives its member companies a national voice and presence. It was formed in 1999 because the companies saw a critical need to work together on policy issues across their art forms including addressing issues which affect artistic quality and cost/revenue dynamics. A list of AMPAG members can be found in the accompanying appendix.

AMPAG's mission is to promote awareness of the contribution of major performing arts to the community and to ensure that these companies are adequately supported by the government. By doing so, AMPAG helps guarantee their long-term success and their accessibility to all Australians.

Recommendations: Summary

AMPAG companies' employment and commissioning of artists to interpret and extend existing creative works as well as to develop original creative works for live performance is a core part of their existence. The ongoing evolution of digital technology offers creative tools for use in live performances and facilitates new types of creative collaboration. It also provides a complimentary environment to the live space in which live performing arts companies seek to extend their audience reach and deepen the engagement of audiences and students they work with as part of their education outreach.

AMPAG fully supports the recommendations made in the submissions to this enquiry by both the Australian Law Centre of Australia (ALCA) and the Australian Copyright Council (ACC). AMPAG recognises that copyright law is an important element of the Australian government's arts policy- providing artists and arts organisations the means to determine how best their creative works are accessed and distributed. Copyright law is one way to instil recognition of the value and origin of a creative work.

Any change to copyright laws should be backed by clear policy intent that fully considers the needs and rights of the owner of creative content and the moral rights of the artist.

We know the digital environment will continue to change both in terms of technological capability and peoples' engagement with it. It is preferable for copyright law reform to avoid short term reactionary approaches to the digital challenges we currently face. Many challenges can be addressed through licencing solutions.

AMPAG supports retention of moral rights without exception. Regardless of the status of economic infringement of rights, a creator should always be able to assert their moral rights and seek removal from the internet of derivative works considered to violate these rights.

AMPAG Companies clearance and creation of copyright

The purpose of AMPAG's submission is to illustrate where and how copyright material is created and cleared for use by performing arts companies. Use can be related to actual live performances and/or to activities designed to extend the company or artists' audience reach, both paying and free, through new digital platforms.

AMPAG companies are a specified group of not-for-profit organisations that attract a proportion of their funding through a negotiated State and Federal Government triennial funding agreement. This agreement places performance criteria on the companies. This criteria includes:

- fostering a vibrant and sustainable cultural sector, including building the sector's economic and artistic potential through collaborations with small to medium performing arts companies on the development and/or presentation of works;
- demonstrating a leadership role in the development of performing arts: encompassing the development of artists, a commitment to the creation of professional development opportunities for young and emerging artists, artists in multicultural communities and Indigenous and artists with disabilities;
- demonstrating a leadership role in the development of audiences including: young and disadvantaged audiences, multicultural audiences and more equal access for people with a disability;
- strong financial management which includes: a mix of strong reserves, working capital and operating margin.
- making ongoing improvements to its business which strengthens sustainability and reduces reliance on government subsidy over time including through: productivity gains and establishing a broad income base comprising strong box office, sponsorship and philanthropy; and
- demonstrated commitment to engaging with audiences in regional communities;
- being governed by a responsible board that plans future activities in accordance with best practice governance guidelines and with respect to the company's financial capacity.

Put simply, AMPAG companies are required to take a leadership role in developing the art form and artists, while simultaneously extending audience access and strengthening the business models that support them in ways that reduce reliance on government subsidy.

The ability of artists and arts organisations to manage the way their creativity is shared and developed is a vital part of their arts practice and business. Copyright laws instil recognition of the artists' creative property, our moral obligations to recognise the creative integrity that lies within a creative work and the right for economic rewards to be leveraged through negotiated use of these rights. These laws do not prevent artists and arts companies from choosing to make their creative works freely available.

AMPAG companies are content creators. Rooted in live performance, they are extending their reach and meeting audience needs and expectations through creation of complimentary digital content offerings. At this stage copyright infringement in the digital domain has had little measurable impact on AMPAG companies. The bulk of live performance organisations' revenue comes from ticket sales, philanthropy and government grants. However, just as revenue models in other sectors are changing, the live performance sector can be positively or adversely impacted by the way in which creative works that they own or licence are protected in the digital environment.

As producing companies we are responsible for clearing the use of designers', directors', actors', writers', composers' and musicians' artistic work. We must be able to provide assurances when clearing such rights of our ability to protect and comply with the uses cleared. It is in our long term interest that adequate protection and opportunities for financial earnings are retained so that we in turn can support the ongoing sustainability of our organisations' arts practice and support artists' through royalties. Artist royalties in turn contribute to retention of artists and their pursuit of professional artistic practice in the sector.

AMPAG companies are not uniformly creating linear recordings of all their work although many have simulcast some performances and others have chosen to record a select number of works. While only one AMPAG company currently collects royalties through Screenrights, half of AMPAG's members are registered and are collecting royalties through CAL, (primarily related to their education content). These collecting agencies are both efficient and effective in their operation and application of the law.

The earnings from collecting agencies to AMPAG companies though volatile from one year to the next are valued. The financial return does not reflect the total value of these rights. Some AMPAG companies choose to give content away for education purposes whereas others seek proportion return on content use to support ongoing creation of further resources in this area. It is appropriate that the owner of rights makes the decision on how their rights will be exploited.

AMPAG companies often make digital material freely available through the broadcast of live events and online with special content offerings. While content may be available for free to the user that does not mean it has no commercial

value. Supply of free content is a deliberate act by a performing arts company – it may be done to help build audiences, develop art form awareness or to support a company's education objectives. It may occur in association with a special event, as a limited sneak preview to build audience interest, as a way to grow targeted access in collaboration with a sponsor or as a reward to loyal patrons.

AMPAG does not support any legislative extension of users' rights on content that is freely available. AMPAG does not believe there is just need. **The law should preserve the extent to which content can be freely distributed by third parties to existing exemptions.**

AMPAG makes particular note of Screenrights' position in relation to audio visual material that may be freely available on the internet (p.86-88) ;

'Screenrights is aware that some within the education sector have called for a new free exception to allow educational institutions to copy material that is freely available on the internet. Although the correspondence we have seen does not seek to amend Part VA, Screenrights is very concerned about this proposal for two reasons:

- firstly, the proposal completely misunderstands the basis upon which most copyright owners agree to make material "freely" available online; and,
- secondly, the proposal would potentially cover non-broadcast audio-visual material and / or broadcast material not made available by a free to air broadcaster which would undermine Part VA of the Act.

The misunderstanding inherent in this proposal is that the material "freely" available on the internet is not valued by the copyright owner.'....

- 'material "freely" available on the internet is very like material broadcast "freely" on television. When an educational institution copies a free to air broadcast it is required to compensate the copyright owners via the Part VA scheme that Screenrights administers. In principle, Screenrights can see no difference with content made available online for free. There may very well be a debate about the value of the content and the price of the compensation, but the principle is the same.'

While public understanding of copyright law is mixed and some private digital content practices may disregard the underlying value of the artist work, copyright law should be shaped to address the underlying purpose. There are other areas where private activity on the web (unrelated to copyright) are causing public concern, even alarm – but we would not expect laws to change to provide leniency simply because the behaviour is gaining momentum in the digital environment. AMPAG agrees with ALCA 'that it is not appropriate to respond to the wrongful use of copyright material in the digital environment by allowing 'free use' exemptions for

consumer practices that permit uses that should otherwise be within the exclusive control of the creator or rights holder’.

At a time when over \$40 billion is being spent to develop the fast broadband infrastructure for the nation there is, in relative terms, minuscule funds being directed to develop Australian creative cultural content to be delivered on that infrastructure. For example, in the last three years, the Australia Council spend on digital development across all art form, (performing arts, visual arts and literature) amounts to \$2,826,000ⁱ which represents a per annum average spend on the arts sector of \$942,000.

Despite this fiscal disparity between current hardware investment and content development strategic funding has supported some very interesting innovative digital work across the sector some, of which are detailed below (see page 7).

As an excerpt from the Australia Council's Digital Arts content for the Digital era (2009) states;

‘Artists are employing new technologies that invite audiences to move beyond passively viewing, watching or listening to arts content, instead encouraging them to try wearing, stepping inside and contributing to its creation. Many artists, especially those from more traditional art mediums, are grappling with these new arts practices, content forms and new artist/audience relationships. Because of this, many artists are looking for assistance to navigate these new domains.’ ... ‘Increasingly, artists are developing work that will end up on a screen of some kind... ’

Performing arts companies’ potential to grow different audiences and deepen existing audience’s engagement through digital content is still developing. We do know our currency of trade is content, it is not technical services and it is not the infrastructure or the box on top of the mantel piece. We also know that the public’s great interest in accessing audio visual content is a significant driver for consumers to seek connectivity. While there are copyright tensions, as digital connectivity gives rise to new ways of accessing and sharing content, there is no long term value in relieving this tension with laws that weaken protection of creative content rights (by dilution through further exemptions) within Australia’s copyright law.

AMPAG companies are not litigious. By their nature and cultural remit they are generous. This is demonstrated through the way in which AMPAG companies make a significant selection of their content freely available. However, it is imperative that rights creators are provided the legal protection to determine when and how such access is given. The law should assist enabling fair and efficient mechanisms for specific areas of use where direct artist /user licensing may be problematic, such as those administered by CAL and Screenrights.

Developing Public Recognition of Copyright

AMPAG members have a strong remit to grow and deepen engagement with their audiences. This engagement includes developing audiences, and the philanthropists among them, to understand the value of the creative works produced and the relationship between audience support and the capacity for the artists and arts companies to grow and foster new creative offerings. This compliments ALRC's recommendation that addressing copyright issues in the digital environment should include identifying and fostering mechanisms and approaches for engaging consumers of copyrighted works. Education about the role of copyright in the creation of works, underpinning a vital element of cultural life, is crucial." (ALRC Page 5)

The development of new ways to encourage philanthropic support for the arts is another critical part of building public understanding and engagement. AMPAG has a keen interest in the Government's response to the Mitchell Review into Public Giving and the Arts. Stimulus to encourage greater public giving to the arts will also build public ownership and value of the works supported.

AMPAG companies' digital activities

Provided below is evidence in response to Q1 of the Issues paper on how Australia's copyright law is affecting participation in the digital economy Q1 (a) - (d)

Major performing arts companies work to support the creation of vibrant creative content in the traditional stage setting, in education settings, community settings and through digital distribution. Digital innovation contributes to the development of new ways to generate cultural and economic value from performing arts companies' cultural works. This can also contribute to the company's ongoing engagement and sustainability. The companies' ability to clear rights for use in the digital environment is supported by the perceived protection the law can provide to deter unauthorised access and dissemination of that content by third parties.

Major Performing Arts companies as creators and disseminators of original copyright material and associated earnings

Australia's major performing arts companies are not-for-profit organisations. Their purpose is broad—to produce art at the highest level, to deliver that art to the broadest possible audience, to inspire young people to participate either as producers or consumers, and to initiate new work that reflects Australian society. AMPAG companies create original works and interpret existing works in new ways. They draw on creative material that is both in and out of copyright and they clear associated rights for performance and often for digital dissemination. Performing arts companies also commission artists to create new works with agreed levels of use.

In 2011 the major performing arts companies presented 6,000 works—new, old and reinterpreted. The companies are major producers of new Australian works (103 in 2011) and interpreters of classics and new productions of work (273 in 2011). In the three years to 2011, they produced over 380 new and new Australian works (Australian and other), and 389 new productions.

Copyright as an incentive to create and disseminate original copyright material

Theatre companies commissioning new works in Australia will generally negotiate a first right to produce the show as part of the commissioning process. If the company then decides to produce the work the company enters into an agreement with the writer and pays a royalty for the use of the play. In Australia a royalty of around 10 per cent of box office is negotiated which may also include use of recorded excerpts for promotional use. The work may be cleared for exclusive or non-exclusive use nationally or internationally for a period of time, for example, two years. The playwright will also negotiate levels of access to the production process and may have a right to authorise and own any script changes that take place in the process. A theatre company producing a new or reinterpreted work may also seek to lend the work to other theatre companies. In this case a royalty fee based on lender's box office of between 0.5 and 1 per cent of box office would be payable to creative contributors—that is, directors, set designers, costumer designers and music composers.

An alternative approach is to buy out the various creative rights with a lump sum additional payment at the time of contracting the work. The company then retains earnings from lending the work (including permission to copy set or costume designs). This revenue is then reinvested into the company's future works.

In both of these scenarios additional rights payments must be negotiated on top to clear any digital recording of the work. Patterns of digital dissemination not only impact the returns during the life of the digital agreement, they can also impact the perceived value of the work for live performance lending or relicensing for years to come.

Numerous major performing arts companies have negotiated a broadcast licence agreement with national broadcasters ABC and SBS to record and broadcast their live performances for radio and television. They have developed additional digital content for cinema screenings and live digital simulcasts around regional Australia, often with extra content and behind-the-scenes interview downloads on the internet. They may also offer sale of tracks via iTunes, with creative contributor rights cleared using royalty payments, buy-out fees or other mutually acceptable arrangements.

For example, Opera Australia committed to a comprehensive recording and broadcasting program, with productions of *The Marriage of Figaro*, *The Mikado*, *Der*

Rosenkavalier, *Lakmé*, *Don Giovanni* and *La Bohème* telecast nationally on ABC1 and ABC2 in 2011–12 with more to follow. The company recorded nine main stage productions for cinema release, both in Australia and internationally in 2011–12 and has also entered into a distribution agreement for the national and international distribution of Australian Opera DVD and CD recordings. In addition audio recordings of many of its productions are available for download on iTunes.

A recent Boston Consulting Group report predicts online media will boom. The national and international audience for online content is rapidly evolving—for example, at least a fifth of Opera Australia's audiences are now online.

The Australian Opera's current approach to its creation of digital content is to retain full ownership and control of its digital recordings which it subsequently licences specified uses to broadcasters and distributors as needed. The investment has been substantial as the company is positioning itself to maximise its flexibility to respond to future digital opportunities both in relation to engaging audiences and/or developing new revenue streams. As such The Australian Opera depends on the ongoing copyright protection of its work in the digital domain.

AMPAG companies are also using and exploring digital media in new non-linear interactive ways, for example:

- Musica Viva has developed a world-first interactive music education software. The company has cleared the necessary copyright and is now working to generate sales across art forms to ensure ongoing development of this innovative education service.
- Circus Oz has created a dynamic online performing arts archive of videos stretching back more than 30 years. It includes control levels to enable access to certain types of content depending on your relationship to that content. For example, it has the potential to allow artist-directors to access and arrange clips according to their own needs (not dissimilar to a mash-up) to help in the process of developing new creative works.
- The Australian Chamber Orchestra (ACO) will soon launch a world-first fully interactive 3D orchestral experience. One use may include installation of the 3D orchestra for free access in regional centres for a limited time. It is envisaged this complex work will initially be distributed on a USB stick and later through fast broadband. The fact that this experience, high in educational value, might be offered for free under certain circumstances does not mean ACO is willing to forfeit rights to determine when and where such access will be given. ACO has an in-principle agreement with its development partner to share commercial returns should either partner identify additional complementary licensing opportunities.

- Bell Shakespeare's new digital education programs, developed in partnership with the Sydney Opera House, have not only received booking requests from regional Australia but also from schools in Asia. These services are currently delivered live for a nominal fee and any recording of these activities would need the protection of copyright law.

The major performing arts companies provide free outdoor performances independently and within major city festivals, they offer special free-ticket performance days for the unwaged and free live remote telecasts of mainstage performances. One challenge for the state theatre company of Western Australia, Black Swan State Theatre Company, is working out how to reach regional populations, given the sheer geographical size of the state. The company has decided to provide an annual free multiple screen simulcast of one of its performances across the state. While the performance is free to the regional audience it involves additional costs for the company, not only in the actual filming of the performance but also in the payment to actors for the recording of their performance. Performance rights are cleared for a one-off screening use with the expectation that the theatre company as producer will use its best endeavours to protect any unauthorised copying or distribution of that work.

Performing arts companies on occasion provide audio visual material to third parties to help promote their art work, artist or company—for example, The Australian Ballet provides clips to Fairfax TV.com and the Melbourne Symphony Orchestra is distributing for free an iPhone educational application through iTunes. Titled *MSO Learn*, it has achieved 20 000+ downloads since it was launched in June 2011 and is featured in the iTunes stores of more than 50 countries around the world. It boasts a four-and-a-half star rating in the App Store and has been ranked the number one App in the Education New and Noteworthy section of the Australian iTunes store. It is clear there is demand and so it is reasonable to conclude there is a potential market MSO has chosen to give this application away for strategic reasons and the environment in which that transaction takes place is an important part of positioning MSO.

All these uses require copyright clearances of performing artists, designers, directors, musicians, composers and playwrights. Some of these activities have the potential to drive revenue directly; others build awareness, encourage ticket sales or enrich and ignite cultural participation and education at no cost to the participant. The cost for providing free content is often underpinned by other philanthropic or government support or is supported by the company in anticipation of growing their audience in the longer term. Often the rights are cleared for specific use and outcomes.

Given many AMPAG companies do provide free content, it is essential that they do so in an environment where they can determine the extent to which free use shall be extended. Their decisions must consider the willingness of rights holders to participate, and the companies' own priorities in areas such as maintaining financial sustainability, building audience access and company brand, and stimulating or deepening cultural engagement.

Employment

AMPAG companies employ roughly 60 per cent of all creative artists in the performing arts sector. We recognise that the creative artists we contract, employ, commission and collaborate with require payment for their artistic works. Companies also hire their productions out to other presenters. It is one way to earn further income from a creative work and contributes to the companies' sustainability and ongoing ability to employ artists and/or for artists to share in the returns of further use.

All AMPAG companies are not-for-profit entities, three are state government entities and all but one are registered charities. They are driven by artistic and cultural values and a commitment to art form excellence. Income returned to the company is used to enhance the company's positive cultural output and impact. It remains critical, both artistically and economically, that the companies retain their ability to make choices over where and how material created and cleared for use by the company is made available.

Access, use and interaction with content to advance education, research and culture

Culture

Live entertainment remained strong in 2011 when 17.5 million people paid to attend live shows. This represents a healthy improvement on the figures recorded for 2008 and 2009, and continues the upward trend of 2010. ABS figures for performing arts found there were 9.14 million attendees in 2009–10. This compares favourably to sports attendance of 7.6 million and galleries and museums attendance of 9.0 million.

Our members' emphasis on the live performing arts does not exclude them from cultural interaction via complementary platforms offstage. Nor does it shield companies from the increased competition for audiences being driven internationally by cultural forces such as the New York Metropolitan Opera (the Met). The Met's 2009–10 season sold 2.4 million tickets across nine broadcasts and grossed \$48 million with a net profit of \$8 million. The Met also offers online access to its library via a monthly subscription package

Clearly there are economic opportunities for the performing arts companies to generate revenue through exploitation of copyright in their recorded performances. For example:

- Opera Australia has extended its digital content to include creation of feature-length digital recordings of performances which are screened in cinemas here and overseas. While it is early days there is a sense that creating audio-visual assets will enable the company to build new audiences on complementary platforms here and overseas.
- Given The Australian Ballet dancers are working to full capacity and are unable to add more performance to their schedule the company is extending its reach through digital engagement. A recent live stream of *Bodytorque* reached an audience 20 times those in the theatre both here and overseas.
- The Sydney Symphony provides orchestral performances that are recorded and edited by ABC and then streamed online by Telstra outside its own pay wall. Here rights are shared rather than monetised resulting in targeted gains for the three partners involved.

Social Networks

AMPAG companies' digital content audience reach has grown exponentially. In 2011 the major performing arts companies reported over 225 000 friends on Facebook, and almost 12 million online visitors.

The Australian Ballet is using its online services to build audience access and to support live performance ticket sales. The company's success with its digital engagement strategy is clearly demonstrated by the massive increase in actual audience engagement via Facebook. In the first six months of 2012, total audience reach increased 893 per cent and the engagement metric of 'people talking about' or sharing content increased 626 per cent over the same period. Content is freely available and visitors are encouraged to respond—however, the Australian Ballet retains strict control over the distribution and use of its footage.

The company's investment in producing regular content for its YouTube channel is a highly successful means of extending audience reach beyond the theatre. From 5644 total views in 2009 to 97 971 views in 2011 (1636 per cent increase), the channel has already received 197 049 views in the first six months of 2012. The content is rich and valuable—both in developing direct customer relationship and in building the ballet brand which in turn brings intrinsic value to their corporate partnerships.

Social network environments are increasingly important areas of content engagement in the digital area. AMPAG companies develop conversations about their work and the art form as well as awareness of their performance programs. It is a space that moves between public and private uses. It is an environment that elevates conversations from private one-on-one to multiple recipients. **AMPAG agrees with ALCA that exemptions on copyrighted works for private or domestic use should exclude the socially networked environment.**

Education

The AMPAG companies toured 381 seasons nationally and regionally in 2011 and frequently conducted workshops and master classes in conjunction with the tour. About 73 000 non-school age people attended workshops, master classes and seminars hosted by major performing arts companies across the country. The companies conducted 137 programs in 2011 to engage with Aboriginal and Torres Strait Islander people, emerging artists, older people, and people from culturally and linguistically diverse backgrounds, people living in regional or remote communities, people with disabilities, and disadvantaged youth and young children.

One in every five Australian school children is reached by major performing arts company education programs each year. The companies work closely with schools and communities to develop the content and work with the curriculum. The major performing arts companies performed to 571 000 children and spent 795 000 hours in schools in 2011.

For AMPAG companies to continue to grow and develop their education offering, it is essential that their services are supported through payment via one of three sources. User pays (that is, per child ticket sales, teacher resource fees or professional development course fees), philanthropic financial support or by direct government grant. If one source of financial support is under pressure the ability to raise funds from the other two sources grows in importance.

Copyright earnings can provide support for future content and future activities. Recent cuts in state education budgets have included cuts to education officers located inside some of our performing arts companies (Qld & NSW). These cuts place further pressure on the companies' ability to service and develop new education resources. Earning revenue from their educational activity (for example: through CAL fees generated by schools copying lesson plans prepared by the AMPAG companies, schools purchasing Musica Viva's digital learning modules or accessing performance recordings through Screenrights Enhance TV) can help reduce the impact of government funding decisions that are outside the companies' immediate control. It can also support the ongoing availability of vibrant, engaging and innovative educational material.

The importance of the digital economy and the opportunities for innovation leading to national economic and cultural development created by the emergence of new digital technologies

AMPAG companies are major Australian brands both in their states, nationally and internationally.

The potential for Australia to build cultural reach and earnings nationally and internationally through performing arts companies deepening their digital actives is exciting and is still relatively new.

Projects described above—such as the ACO 3D orchestra or Musica Viva's education software—will be rolled out to 'market' in early 2013 with Circus Oz's living archive having now completed its beta version, working towards release of version 1.0 by the end of 2013. Each of these companies has a stake in the future. Each company has retained a share of IP in the software that underpins their particular project should other commercial uses or partnering opportunities unfold.

Bell Shakespeare's incursions only began mid-2012. They received encouraging feedback that suggests strong growth. Digital feature length performances streamed to select art houses and cinemas internationally is something being trialled by a number of companies. Whether this activity will ever generate significant revenue streams like those leveraged by the Met is unclear but knowledge and expertise in this area is growing.

Connecting artists to one another and to students and teachers via digital links is collapsing the distance that once prevented direct interaction. AMPAG companies have not witnessed any areas where copyright laws, as they currently stand, restrict the growth of this dynamic interaction.

There is however increased competition for access to quality content to support other business/service model outcomes, including development of library services, development of third party educational services and , retention of customers to telecommunications through bundling services with content. Digital content used by any of these services should include fair compensation to content owners. Real costs are associated with developing content and retaining creative individuals to the arts. Therefore it should follow that free use of such content should not be determined by legislation but through licencing negotiations.

Both state and federal funding sources expect major performing arts companies to develop business models that enable artist development within a stable financial environment. A contributor to performing arts companies' financial stability is the ability to grow earnings through selling digital copies of their work or through strategic placing of digital recordings of their work to build audience awareness

and engagement,—all of which supports their main objectives including: seeking high artistic standards in performances, ongoing commitment to the nurturing and development of their art form and of their artists, and building access and engagement across the community.

Does copyright imposes unnecessary costs or inefficiencies on creators or those wanting to access or make use of copyright material?

AMPAG companies, while often choosing to disseminate some works for free, value the current protection provided by Australian's copyright laws. Access to education institutions and other broadcast services through the statutory licence schemes administer by Screenrights and CAL are efficient, extensive and adaptable. The direct revenue to individual companies from these education and retransmission uses is highly variable (\$1,000- \$150,000). Though hard to predict the returns are valued as all income generated by not for profit companies is reinvested into future cultural work and/or associated support programs. The companies also value the way rights on the content they create can assist the companies' brand management and audience relationship. This has intrinsic value that is not easily measured by direct financial returns.

Orchestra's generate IP in recordings of their concerts and achieve modest returns— or in the case of Tasmanian Symphony Orchestra, who licences the recording rights to Australian Broadcasting Commission (ABC), achieve profile and reputation for themselves while generating earns for ABC, which supports the ongoing creation of high quality digital works.

The copyright term extension enacted under the 2005 Australia/US Free Trade Agreement has had a significant cost impact on symphony orchestras' ability to clear certain works for concert performances.

While AMPAG does not seek relief on this trade agreement it must be recognised that extension of copyright on older works created in the pre digital era should be met with robust protection of creators' rights in the digital age.

Appendix

List of AMPAG Member Companies & their location

| | |
|--|-------------------|
| Adelaide Symphony Orchestra | South Australia |
| Australian Brandenburg Orchestra | New South Wales |
| Australian Chamber Orchestra | New South Wales |
| Bangarra Dance Theatre | New South Wales |
| Bell Shakespeare | New South Wales |
| Belvoir | New South Wales |
| Black Swan State Theatre Company | Western Australia |
| Circus Oz | Victoria |
| Malthouse Theatre | Victoria |
| Melbourne Symphony Orchestra | Victoria |
| Melbourne Theatre Company | Victoria |
| Musica Viva Australia | New South Wales |
| Opera Australia | New South Wales |
| Opera Queensland | Queensland |
| Orchestra Victoria | Victoria |
| Queensland Ballet | Queensland |
| Queensland Symphony Orchestra | Queensland |
| Queensland Theatre Company | Queensland |
| State Opera South Australia | South Australia |
| State Theatre Company of South Australia | South Australia |
| Sydney Dance Company | New South Wales |
| Sydney Symphony | New South Wales |
| Sydney Theatre Company | New South Wales |
| The Australian Ballet | Victoria |
| Tasmanian Symphony Orchestra | Tasmania |
| West Australian Ballet | Western Australia |
| West Australian Opera | Western Australia |
| West Australian Symphony Orchestra | Western Australia |

ⁱ Notes: Australia Council spend on Digital Initiatives across all arts forms

| \$'000s | 2011_12 | 2010_11 | 2009_10 |
|-------------------------------|---------|---------|---------|
| Australia Council expenditure | 926 | 1,023 | 877 |