31 July 2013

The Executive Director

Australian Law Reform Commission

GPO Box 3708

SYDNEY NSW 2001

Email: copyright@alrc.gov.au

Dear Executive Director,

**Re: ALRC Copyright and the Digital Economy Discussion Paper**

I have made a career in the music industry, particularly as a singer, multi-instrumentalist, songwriter, performer, producer, composer and author. My work on vocals and guitar with ARIA award-winning Karma County over more than 15 years has included the production of 6 albums and world tours. I have also produced and played on recordings for international and local superstars like David Bowie and the late Jimmy Little. In addition, I am involved in the development of young local musicians’ careers, including through my teaching roles at Ultimo TAFE, Bondi WAVE and the Australian Institute of Music, my role as an APRA Ambassador, and through my authorship of one of the leading guitar instructional texts *The Open Tuning Chord Book For Guitar*.

In my experience, particularly of being a musician in a digital environment, I have come to the conclusion that strong copyright protection is an essential component to music production. The questions that must be asked by anyone undertaking a review of copyright laws is whether music truly matters, and whether music truly has a value worth protecting. I sometimes get the sense from others that the value of music in an analogue environment was taken for granted in a way that music in a digital environment, with modern technological means of consumption, simply is not – but this approach is misconceived. Considering the viability of the music industry with a long-term view – which is something that individuals who have made a career in music are well-positioned to do, but also something that I observe my students are having to contemplate – I am struck by the realisation that if creative people do not have faith that they will be rewarded for what they do then the net result will be fewer creative works. If creative people are not looked after properly and rewarded, then the industry will struggle – and that affects all of us.

To be absolutely clear, I do not hope for music to remain in an analogue environment. Personally, I currently share my music with fans online. I offer streaming, and occasional downloads as a promotional exercise. My work is available on various commercial digital music services such as CD Baby, SoundCloud and YouTube. My work is also played to visitors of my webpage. But, while I consider the legal protections currently in place to be satisfactory, I do not consider that protecting my copyright in the online environment to always be feasible in a practical sense.

I also do not consider that the copyright protection available to my work has stifled innovation in the digital environment. While I accept that certain laws might be tweaked to allow for certain appropriate consumer practices to be accommodated in the digital environment, I still think that authors and musicians should be protected to ensure that everyone still gets a slice of the pie. I understand that there has been some suggestion about amending the laws so that someone could use a substantial part of my song as a sample in their song, without asking my permission first. As someone who has relied on the music industry to earn a livelihood over 3 decades, I find it impossible to support such a proposal. I would think that if there were some way that the process of approving or negotiating those things could be made much easier or if there were better access, then that would be better for everybody. But as a rule of thumb, I think it would not be a positive development for someone to use a large piece of my work without my knowing about it.

I am of that opinion in relation to professional reproductions of my work, but also in relation to amateur reproductions, such as on YouTube. This is particularly the case where the new work demeans my original work or the original work is being reproduced inappropriately. For example, I would have real concerns if my work were being used as the backing track to a video that contained gratuitous violence or sex scenes. I would want oversight on how my creation is being used. But even if the work were being used more appropriately than that, if someone else is making some money from the use of my song then I should be making some money at the same time.

I also disagree with any proposal that suggests that technology companies, such as Apple and Google, might no longer need licences to make reproductions of my works on their servers and networks in the cloud, simply because the reproduction is mainly just to facilitate the use of my songs by consumers. It would be a serious injustice to those who derive their income from their musical creations if those companies could make those reproductions for free.

I also have a concern about the suggestion that the education industry, which currently needs a licence to make most uses of my songs, might be suddenly able to use my songs for free under a fair use exception. To be clear, all uses that are currently permitted are fair and I can live with them. But particularly if the use of music is part of an educational institution’s business model and education is a service that people pay for, it would be inappropriate for an author’s song to be a part of that institution’s business model without the author being paid for his or her contribution.

Please accept these submissions from a person who has worked in the music industry for over 30 years, with a thorough understanding of most aspects of its inner workings. This enquiry is not just a philosophical exercise, but a very real one that affects my ability, and the abilities of the many people with whom I interact every day, to earn a livelihood.

Yours faithfully,

Brendan Gallagher