

Editors' Note

What makes a great song?

In the opening bars of this special music edition of the CLB, we dive into the world of music licensing where we see major labels focussing their attention on social media advertising and the antics of influencers. **John Fairbairn** and **Sheenal Singh** (MinterEllison) cover this issue in their article *Not in Sync* and **Chris Johnson** (APRA AMCOS) shares his insights on licensing obligations in a streaming environment. **Anita Cade**, **Ted Talas** and **Helen Wei** (Ashurst) look into the recent Roblox case and the use of music in new digital user platforms. We round out the first verse with a note **Ash Fehrenbach** and the team at RPC have written on the UK's *Tunein v Warner* case and the global challenge of protecting copyright works in a digital world.

Moving to the chorus – well, there's nothing catchier than copyright infringement. **Kosta Hountalas** (HSF) reminds us that love isn't always in the air with his in-depth review of the Federal Court's decision on whether an American music duo infringed the 1977 Strictly Ballroom theme song. **HSF** also look at where Clive Palmer went wrong in his re-write of Twisted Sister's 1984 hit "We're not going to take it".

Verse two is where we start to push the boundaries. The team from **Davies Collison Cave** ask us to question the legal status of viral sea shanties and **Ellen Anderson** (Addisons) gives us the latest on the Taylor Swift v Scooter saga. Will they get back together? From the sounds of things, never ever.

A good tune should always teach the listener something. Through the efforts of the Young Lawyers Committee, CAMLA presented two 101 webinars. **Nick Perkins** (Ashurst) and **Antonia Rosen** (News Corp) moderated a discussion with **Sue Chrysanthou SC** (153 Phillip Barristers) and **Dauid Sibtain** (Level 22 Chambers) on the tort of injurious falsehood. And **Belyndy Rowe** (Sainty Law) reports on the Sports Law 101 webinar on 22 September with a fantastic line up of speakers: **Tim Fuller** (Gadens), **Simon Merritt** (Lander & Rogers), **Calli Tshipidis** (Foxtel Group and YL Committee Chair). We have also recently hosted webinars on AdTech, the Telecommunications Ombudsman, and Sports Broadcasting, on which we will report in the next edition. Thanks to all who were able to attend and we look forward to bringing you more of these events in the coming months!

Finally, a great song will tell a story. To that end, we are delighted to bring you an exciting line up of interviews with giants in the Australian music and legal industry including **Dan Rosen**, **Damian Rinaldi**, **Brett Oaten** and **Mark Holden** who each share their own story and passion for music.

We hope you enjoy reading this edition as much as we did putting it together. Thank you to all our brilliant contributors.

Eli and Ash

can be licensed on a "blanket" basis for all musical works that may be used in any performances on their stages, which would include the vast majority of the world's commercially available music. Whatever the song being performed at a licensed venue, it is usually covered under a blanket APRA AMCOS licence, and the fees distributed to the owners of those musical works and sound recordings. Recently, both APRA AMCOS and PPCA have granted those rights to venues and events via a joint licensing initiative, OneMusic Australia.

However, as soon as an artist, a venue or a promoter decides to live stream or video record their performance for use online, the arrangements that have been a staple for the public performance of live music for generations are quickly upended.

So, here's a quick guide to what's required for those that want to live stream or record commercial music for the purposes of streaming those performances online.

1. Is it being live streamed or recorded?

First, live streaming.

In Australia, the right to use musical works with visual images - what's known as the synchronisation right – is highly valued and tightly held by the owners of that right – the writers and music publishers. This is also the case for record companies and the synchronisation of their recordings. The use of music in films, TV shows, concert films and advertisements has been a reasonably lucrative source of income for songwriters, musicians, publishers and record companies for many years. However, recently, there has been a level of uncertainty and consternation globally over the question of whether an audio-visual live stream of a live performance activates the synchronisation right, such that it requires a synchronisation licence from the owners of that right. An audio-visual live stream, in its purest form, is a real-time communication of audio-visual material online. As it's "real time" there is some question as to

whether or not the reproduction or copying right, and therefore the synchronisation right, has been exercised. This is a discussion (or debate) that will, no doubt, continue as live streaming matures.

In any case, what the producers of the live stream will definitely need is a communication to the public right for the musical works that are included in the live stream and, if used, for any sound recordings that have been used. In many cases, the streaming platform will hold a licence that will allow for the communication of music via that platform, particularly if delivered over an established service such as YouTube or Facebook (Meta). However, live streaming on an unlicensed platform (for example, a musician's own website) will require a communication licence for, at least, the musical works from APRA AMCOS.

The fact is that pure, live and real time streaming is unusual, as often there's a strong desire to capture the performance for replay later. This