

THE CURIOUS CASE OF AUSTRALIAN SESSION MUSICIANS AND THEIR UNFORTUNATE LICENSING RIGHTS

by Pete Thoms*

[This article appeared on Music Industry Inside Out: Australia's Leading Online Music Industry Professional Development Resource on May 28, 2018, and can be read there at this link <https://musicindustryinsideout.com.au/session-muso-tips/>. Pete Thoms wrote the following piece to help educate the session muso scene in Australia, and to start up some conversations around improved licensing rights for session musicians.]



Are you a session musician? You really gotta read this...

As I have been active as a session musician in the UK for over 30 years and at the Musicians Union for 15 years I can give you a perspective from here and other countries I have recorded in.

In London, there has always been a tradition of freelance session players contributing to adverts, films, TV shows, library music and records. The UK is heavily unionised, with the British Musicians Union's 30,000 members creating a powerful bloc to ensure fees and rights are respected.

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The Union negotiates with various industry bodies such as the advertisers (IPA), the record labels (BPI), the film companies (PACT) and TV companies including the BBC and ITV. The agreements set fees, conditions and rights. When a player is booked for a session he or she works under the terms of those agreements. Most players will be engaged under these minimum rates but specialist players and in-demand players often charge significantly more.

Although there have been several recording studio closures over the past 15 years, the big studios remain. Abbey Road, Air Lyndhurst and Angel Studios are the most prominent. On-line remote sessions and smaller producer-owned premises do good business.

Music contractors (or fixers), who are registered with the British Musicians Union, book session musicians on behalf of the producers, ensuring they are the most suitable for the job and fit the orchestration that has been prepared for the recording. Getting into that contractor's black book is the aim of any emerging session musician!

As contractors take their new player recommendations from their regulars, breaking into the inner circle of session work will be a matter of getting your reputation established. Producers and artists will often book individual players directly, especially if they have an ongoing relationship with them, but the majority will go through contractors.



Pete Thoms (above) says the rights that musicians have retained in the UK enable a number of other income streams to be available beyond the basic session fee...

An established London session player will typically be registered with a diary service that accepts bookings on behalf of the player and the player just turns up at the studio ready to play. There is rarely any rehearsal and the first take may well be the master. The busiest players need excellent technical ability, sight reading skills, flexibility to cover many styles and approaches, punctuality and a good helpful attitude.

Good rhythm section players who read music as well as covering contemporary styles can often charge higher rates based on their expertise and efficiency. Players of ethnic and unusual instruments also have increased bargaining power. More players, including brass sections, guitarists, bass players and string sections have set up their own studios to take advantage of the online remote recording option.

The biggest source of employment is feature films, with orchestras of up to 100 freelance players hired for the big franchises. Established orchestras such as the London Symphony Orchestra and Philharmonia also participate in this area. Films such as *Black Panther*, *Mission Impossible*, *Avengers -Infinity War*, *Solo: A Star Wars Story*; *Jurassic World: Fallen Kingdom* and *Three Billboards Outside Ebbing, Missouri* were all recorded here and provided plenty of employment.

Record sessions for not only UK based labels but international artists take advantage of the excellent studios and players. Andre Bocelli, Stevie Wonder and many other international artists have recorded here.

The rights that musicians have retained here in the UK enable a number of other income streams to be available beyond the basic session fee.

One is synchronisation rights, so that if a song they've played on is used in a film or advert additional fees become due from the ad agency or film producer. Here the MU collects these. In addition, music videos or TV backing tracks generate other monies.

Australian session players are expected to surrender these rights by the record labels for no additional payment.

A big difference, in comparison to Australia, for a UK player is that under European legislation enacted into UK law, they share in the broadcasting royalty pot collected from the broadcasters – currently over £200m per annum. Every time a song is broadcast on the radio there is benefit to both the publishers (for the composition) and to the record label and performers as collected by PPL.

The PPL royalties are split 50/50 with the labels and performers. A featured artist, who will be contracted to the label, gets a bigger performer share but session players also share in this revenue. Players who have been active on many recordings receive significant amounts annually. This helps make session playing as a vocation more viable and is a fair recognition of their contribution. If the figures I've seen online recently are correct then around \$100 per hour will be the basic charge for these players.

In Australia legislation superficially gives all performers on a record "ownership" of the rights in the recording. However, this was deemed "assignable" so that the record

company can demand of session players & singers that as a condition of playing on a record they waive their rights to any royalties.

In the absence of a union agreement or a negotiating body to protect Australian session musicians there is no leverage and if you want the work then you must accept these conditions. In the USA the AFM protects musicians; in the UK it's the BMU. The closest equivalent organisation in Australia is MEAA, who so far seem to lack the collective bargaining muscle to change the status quo. In addition, colleges and music conservatories are churning out expertly trained and talented musicians every year, anxious to take whatever work is available. If a session player resists the "buyout" nature of the session contract then this pool will provide a less "troublesome" replacement.

In Australia the collecting society PCCA pay the record labels an ex-gratia sum derived from the TV and radio broadcasters to Australian featured artists. No session players, non-featured artists or orchestral musicians receive any reward from this income at all.

The view of Australian record companies is that the basic session fees should cover everything including broadcasting royalties. They feel the session players should not be entitled to additional payments. As the board of the PCCA is dominated by record company representatives nothing is going to change soon from that position.

In the UK however, a share of this revenue for the backing musicians enables session work to be a financially recognised role. Most other countries paying out broadcast royalties give a share to the non-featured artists under the legal framework from the Treaty of Rome. These countries include UK, France, Germany, Denmark, Spain, Holland, Sweden, Norway, Finland, in fact most of Europe. As well as Brazil, Canada and Japan. In the USA they have a "special payments" system that session players benefit from based on sales of the records they play on.

Ironically, few of the musicians referred to in the report *The Economic Contribution of Australia's Copyright Industries 1996-7 to 2010-11* benefit from Australian copyright legislation in the way their UK and European colleagues do.

I can only encourage Australian session players to write to their MP or to the Australian Copyright Council asking for parity with their overseas colleagues. UK musicians and artists having their repertoire broadcast in Australia will not entitle them to reward under PCCA rules. The recordings I have played on, including Kylie Minogue tracks and Midnight Oil's *Power and the Passion* for which I receive PPL royalties in the UK, do not count in Australia. Now PPL have lost patience with PCCA and no longer pay for Australian recordings broadcast in the UK. For over ten years PPL has been paying Australian artists and session players who had the wit to register with them, but that has stopped. As no reciprocal payment has ever been received for the broadcast of UK recordings in Australia you can understand their point.

Australia did sign the original Treaty of Rome that committed them to pay broadcast royalties, but have interpreted it to favour the record companies. This has discouraged myself and other expatriate Australian musicians from returning, and I for one am much better off with the system here. The Australian government's

interpretation does not recognise any system of reward for the non-featured player on a successful record, and works against the sustainability of session work as a vocation in Australia.



A drummer on a John Farnham (pictured above) recording broadcast in the Netherlands or Belgium will be eligible for broadcast royalties. In Australia he (or she) would be eligible for nothing...

Australian orchestras suffer from the same situation. At present they don't qualify for any royalties at all unless their repertoire is broadcast outside Australia, and now UK royalties have been put on hold. UK and European Orchestra receive these royalties which can make a difference to their overall income and the sustainability of their career.

One minor positive for all Australian performers is that they can join PPL and claim all their non-Australian, non-UK income. In other words, if the record they played on was broadcast in Europe where there is yet to be a block because of the non-reciprocal nature of the relationship, and PPL has a reciprocal agreement, PPL could collect it and pass it on to them. That is least some compensation for the unfair situation they find themselves in, regarded as a less important contributor to a record than they would be if they lived in most other Western countries.

A drummer on a John Farnham recording broadcast in the Netherlands or Belgium will be eligible for broadcast royalties. In Australia he (or she) would be eligible for nothing.

This needs to change.