

# The Effects of Globalisation on Music in Five Contrasting Countries: Australia, Germany, Nigeria, the Philippines and Uruguay

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## INTRODUCTION

The ManyMusics program of the International Music Council is concerned with fostering musical diversity across the planet.

There is not a lack of musical diversity. Every one of thousands of cultures has music that is distinctive and an important aspect of its identity.

The ManyMusics program would not have been undertaken were there not a perceived threat to this diversity. The perceived threat comes from “globalisation” in its current manifestation.

This study looks at the effects of globalisation on local musics. It especially examines the potential effects of free trade treaties that could deprive governments of the right to give special support to the cultural sector.

Globalisation has been with us for centuries and in hindsight, we can see that musical cultures have been strengthened, altered, extinguished as military or commercial victors exerted their influence or more benignly, simply as one culture came into contact with another.

The urgency felt in this present phase of globalisation probably results from its pace and pervasiveness. In music it is there for (nearly) all to hear in the market and share-of-mind dominance of international popular music promoted across the globe mainly by five transnational record companies based in Europe, the USA and Japan. This music is seen to spread at the cost of local musics -- although there are additional causes for a weakening of local musics perhaps not so directly attributable to globalisation.

This is an enormous subject. What actually are the effects of globalisation on local musics? Despite the obvious fact that the effect of globalisation is the subject of this investigation, the Investigators volunteered relatively little evidence in their respective countries. Given the intensity of the concern, it is surprisingly difficult to produce clear examples. For instance, a lot of change results from urbanisation, and the most evident causes of urbanisation might appear to be local rather than global.

This small project seeks to shed some light by looking at circumstances in five contrasting countries – not so much in order to compare them, but rather to see to what extent globalisation works differently in differing circumstances.

Because it had to be allowed that musical life in such differing countries could itself be very different, it was thought wise not to force the investigation of each country into the mould of the structures of musical life as they are known in the country of the Principal Investigator (Australia). Investigators were engaged in each of the five countries and asked to answer general questions about the structures of musical life in their countries, the role of governments, international trade and exchange of music, and the effects of globalisation with special regard to the actual or potential effects of trade liberalisation treaties. A draft version of the Australian report was sent to the Investigators early in the process to give some indication of the type of information they might seek, but they were not asked to emulate it.

The reports are very different from each other and show the aptness of the approach. As might be expected, we do not have a tidy set of comparable statistics from the participating countries. Were the resources available, this could have been a study to equip us to decide the research questions for a subsequent, more thorough inquiry. Such an inquiry could specify exactly the information and data we wish to collect. However, even then there are limitations because of varying capacity to collect statistics. The wealthier countries are more likely to have the resources to produce statistical data. A glance at the World Culture Report of UNESCO quickly demonstrates the absence of statistical data from many developing countries.

So the study is a mixture of statistical data, as available, and factual and impressionistic information. Accepted in those terms, I believe it throws some interesting light on the effects of globalisation on music in the extraordinarily differing circumstances of these countries.

I acknowledge that I bring bias to this study. While I accept that there are benefits of trade liberalisation and support free cultural exchange between countries, I believe that culture should be exempted from free trade agreements and that governments should retain all rights to support and assist local culture.

The Investigators for the five participating countries were

Australia: Dr Jock Given and Dr Richard Letts

Germany: Hannes Gmelin

Nigeria: O’Dyke Nzewi

Philippines: Elmar Ingles

Uruguay: Gustavo Goldman

I am grateful to them for their efforts in producing the country reports and their willingness to respond to a long series of follow-up questions. In some instances, they faced great difficulties in securing data or in making do without data. Thanks, to each one.

Richard Letts  
Principal Investigator

## CONTRASTING COUNTRIES

To establish briefly that these are indeed contrasting countries, here are some basic data.

COUNTRY	LOCATION	POPULATION Millions	AREA Sq kms	GDP US\$	GDP/CAP US\$	CULTURE
AUSTRALIA	South Pacific	20	7,670,000	528bn	27,000	Anglo + multicultural + indigenous
GERMANY	Europe	82	350,000	2,184bn	26,600	European/German
NIGERIA	Africa	133	924,000	114bn	875	African tribal + English
PHILIPPINES	SE Asia	85	300,000	356bn	4,200	Filipino + Spanish + American
URUGUAY	S America	3.4	176,000	27bn	7,800	Mestizo

### Current situation

*Australia.* One of the strongest performing economies in the world in recent years. Government interest in culture is modest, although it so far has taken an exemplary position in protecting culture from trade liberalisation.

*Germany.* Reintegration of East and West Germany has brought economic difficulties, with reduced subsidies to cultures one effect. Strong position on protecting culture from trade liberalisation.

*Nigeria.* This year, the first democratic transfer of government. Strongly dependent on oil exports. Difficulties with other sectors of the economy. Cultural policies developed but not adequately implemented.

*Philippines.* Economy growing well and consistently, but high government debt. Continuing insurgency in the south.

*Uruguay.* High levels of education, social spending. Exports to Argentina and Brazil, and affected by their economic difficulties. Collapse of currency in 2002 severely affected economy, cultural activity.

## STRUCTURES OF MUSICAL LIFE

*Australia.* Musical diversity is a reality within Australia. Australians perform and listen to a plethora of musical styles. Participation is numerically greatest in styles promoted by the international popular music industry – e.g. rock music, hip hop, dance/electronica. Other styles include country music, including a stream identified with indigenous musicians; classical music in all its forms; jazz; Australian folk and bush music derived from Anglo-Celtic folk styles; ethnic styles, especially but not exclusively those associated with the cultures of immigrants; including "world music"; traditional indigenous musics; fusion musics that experiment with couplings of any of the above; experimental music/computer-generated music/multimedia.

The structure of the music sector supports the normal progression for creation and dissemination: education system at primary secondary and tertiary levels, composition or other means of creation, performance, live presentation, recording, broadcast or other electronic delivery, retailing of recordings and other physical goods. Delivery is domestic or to a small extent international.

The music world is divided into profit and non-profit sectors. The for-profit music sector produces or imports, and disseminates commercially popular music in the internationally popular styles. It is financially self-sustaining (although the income of many of the musicians is very low); there is some government regulation but little government subsidy. It includes most of the record companies, large or small; all of the commercial radio stations, and also some income from film and television sectors; touring organisations; festivals, and live commercial venues ranging from large entertainment centres to small clubs and pubs. It might also be thought to include unsubsidised activity in all the styles of minority interest, although this would comprise only a small percentage of the total activity and income generated.

The non-profit sector includes professional activities depending on subsidy, such as the large-scale orchestras and opera companies where costs cannot be met from box office, the major festivals (usually multi-arts), the experimental, the best small performing groups in classical music, jazz, ethnic or fusion music, the composers and so on. Each of the styles tends informally to be vertically organised, with its own performers, customary live venues, record labels, broadcasters etc., although there is said to be increasing audience cross-over between styles. Some of the performers are self-presenting. Some depend on contracting their services to venues or to touring organisers.

The non-profit sector also includes, of course, a great mosaic of amateur and community activity. Much of this is private and informal. It also is organised into ensembles, community bands, orchestras, music theatre companies, choirs. In some of these forms/styles, there are state or national associations (e.g. for youth orchestras, community orchestras, brass bands, choirs.) There are music camps, festivals, competitions for amateurs.

The indigenous people of Australia have their own musical traditions which are kept alive in some areas. In recent decades, much indigenous practice has been Western country music or rock music, into which has been injected intentionally or otherwise, various indigenous characteristic of style, tone, or subject matter. There are now indigenous recording studios, record labels and broadcasters.

**Germany.** The funding of the arts in Germany comes primarily from the states (*Länder*) and cities or municipalities. Important musical activity is organised around performing venues funded by the cities; these venues customarily have resident orchestras, opera companies and ballet companies that are highly subsidised. The funding to a single major opera company might compare with the entire subsidy to music by the national government in Australia. Due to the proliferation of opera companies, Germany is known as *the place of opportunity* for emerging opera professionals. As might be expected, some of its opera companies and orchestras are among the greatest in the world.

In popular music, its international standing is modest; few German pop musicians have major international careers. The pop music industry is commercially self-sustaining and largely unsubsidised. Germany is the fourth largest market in the world for recordings; one of the five major transnational record corporations, BMG, is German. There is currently debate about the role of the state in supporting popular music.

**Nigeria.** The life of the average Nigerian is immersed in music. There are five main categories of music, defined especially by the choice of instruments and the language of the sung text.

- *Traditional classical.* Musicians usually have some level of formal traditional training. Instruments are indigenous and local. Language is the local dialect or vernacular. The musical structures and forms fitting the musical understanding of each area. Usually music for an event, or a music event, sacred or secular. The musicians are usually known to the local audience, the audience is made up from all age groups, and performances take place in the village square or an event area.
- *Traditional popular.* Commercially motivated music. Indigenous instruments, local language, sacred or secular, but the music is recorded and sold on the market. Performance engagements result from the popularity of the recordings. Most of the clientele share a common background with the musicians, but because the recordings are sold openly, there is also the opportunity for others also to purchase them.
- *Traditional-contemporary popular.* Influenced a lot by Western music. The musicians are usually without formal training. They learn by copying. Instruments used are Western (rock band), the language is vernacular but could be English. Again, sacred or secular. Recorded for the open market; there can be associated live performances. Audience is broader, not so much bound to a particular location or ethnic group. The musicians are commercially motivated by sale of recordings and performance fees. The music is made popular by radio or TV airplay.
- *Contemporary popular.* The performers closely imitate foreign popular music, using state of the art modern equipment, singing in English, imitating European and American fashion. They sometimes add a little of the local Pidgin English. They also can sing in the vernacular. The audience is mostly teenagers and young adults. The musicians rarely give live performances but do many radio and TV shows.
- *Foreign popular.* Music from within and outside Africa. The musicians usually are not resident in Nigeria. The music is available through purchase of CDs and through cable/satellite TV shows.

The clash between modernisation (westernisation) and traditional cultural values “could not have been avoided. The traditional cultures have been more or less left to local initiatives.” Nigerian federalism, in the process of creating a unified state and national identity from the 250 ethnic communities, has tried to combine the achievements of modern Western democracy and the local cultural traditions. The results are reflected in the cultural productions, institutions and industries as they continually evolve.

As reported above, the influence of Western music is felt through adoption by some Nigerian musicians of Western elements into traditional music or through outright copying and reproduction of Western popular styles. There is now also direct access to Western popular music through satellite TV broadcasts.

Whereas the traditional music was in locally based forms played in live performance on locally built instruments, now most categories of musicians seek to earn a living and to find audiences through sale of recordings and in some cases, through direct broadcasts. Such cultural industries, employing the mass media and/or new technologies, are very much influencing cultural life even though traditions continue strongly and are still overall the most popular, especially in rural areas. Local musics become more popular, especially for ritual events. The traditions are, however, weakening somewhat in urban areas, where the new western and hybrid forms are strongest.

Interest in global popular music is great among young adults, who largely prefer it. It is available through satellite TV, the internet, video rental shops – and pirated recordings which, of course, are more affordable. But these influences did not begin with hip hop etc; older people also liked foreign music such as jazz, blues, reggae, classical.

Nigerian musicians such as Fela Kuti have been favoured by globalisation. Their international success has the consequence that they are also more famous at home and their recordings sell more.

**Philippines.** The history of musical life in the Philippines evolves from pre-historic forms associated with animistic rituals which persist still in some rural areas. Indigenous groups each have their own set of chanted epics. Indigenous song is known for its melismatic qualities. Traditional musicians still use indigenous instruments, which vary greatly from region to region depending upon materials commonly available and on surrounding cultural influences which include trade contacts with India, China and Indonesia.

Philippine music began to assimilate Western liturgical and secular traditions from the time of Magellan's landing in 1521. Spanish melodies and Christian images and lyrics were integrated into the indigenous concepts of worship. Folk songs and lullabies, likewise, became a hybrid wherein the lyrics were of indigenous origin while the melodies were that of the Western syllabic style of one note per syllable.

After the Spanish-American War of 1898 came the introduction of Anglo-American forms of music, and in due course the radio, jukebox, and phonograph. Around this time, many academic institutions and music conservatories in the country started to operate producing virtuosos in European styled classical compositions. During the early stages of the 20<sup>th</sup> Century, trends in music were patterned to that of the American stream. The birth of jazz was almost simultaneous between the two countries; in its day, it dominated the lounges and cabarets in the cities. But despite the American presence, remnants of the Spanish traditions still flourished as exemplified in e.g. the *zarzuelas*.

The advent of the recording industry and commercial popular music saw the further preservation of *Kundiman* and folk ethnic songs, along with jazz and ballroom music. Villar Records was established in 1950 and released *kundiman* and folk song albums interpreted by popular singers and bands, and Visayan songs with Cebuano lyrics. Visayan music produced a recording industry parallel to that of the mainstream operation in the capital city.

The global revolution in the global music industry in the late 50s, with rock and roll, saw birth of a Filipino variant, Pinoy Rock. This was followed through in the 1960s and the 1970s by the Philippine music industry with music patterned after the mainstream music of the west such as jazz, rock, and pop rock, but containing sounds that are distinctly Filipino, thus, coined the terms "Pinoy rock", "Pinoy jazz", and the "Manila sound."

Performances. Local possibilities are of concert engagements, appearances in radio/film/television shows and special events, and commercial product endorsement. Internationally, possibilities include international concert series and overseas job placement for long-term music engagements. Artists use the services of talent managers and/or job placement agencies, which charge service fees and commissions from either the talent or the employer or both. International arrangements are government-regulated.

Professional and Industry Organisations. There is an extensive array of organisations established to foster professionalism and promote sectoral interests. These are listed and described in the Philippines Report. They include organisations for the recording industry, royalty collections, broadcasters, composers, musicians, singers, and an anti-piracy coalition. Others exist to support diverse sub-disciplines of music such as music teachers, bamboo music enthusiasts, orchestras, choirs, bands etc.

There are thousands of instrument based groups (rondellas), choirs and popular bands, professional and amateur, based in schools and communities.

There are many problems facing musicians and composers. Among them: absence of standardized compensation and wages for various categories of artists; absence of health and life insurance and other benefits owing to non-classification of music as a regular profession; prohibitive cost of musical instruments and accessories; lack of suitable venues for music performances; lack of local job opportunities for music artists; absence of a monitoring agency for use of local music for commercial purposes resulting in violation of intellectual property rights; and misrepresentation and/or misappropriation of indigenous music materials for contemporary performances.

**Uruguay.** The structure is basically Western, with composers, performers, record industry, venues, broadcasters etc. The local perception of musical genres divides between "cultivated music" – classical, academic, electroacoustic etc, and "popular music", which includes a large number of Uruguayan and South American styles.

When asked to name their three favourite styles of music, Uruguayans preferred traditional folkloric (41%), and "tropical" music such as salsa and cumbia (36%), to popular (33%), and rock or pop (27%). Western classical music has a good following (24%). Other South American styles follow, and the musics on this list with lowest preference are jazz or blues, and religious music, both at 8%.

While sales of legitimate recordings have fallen dramatically in recent years, box office for live performances has been maintained at least up to 2001. However, figures have not been provided for the crisis year of 2002 and beyond. Receipts as reported for 2001 were US\$5.4m. To these would be added the value of subsidies to orchestras, bands etc.

There are government or municipally supported orchestras and bands in Montevideo and other centres throughout the country. It is a condition of FONAM funding to these entities that they must include a minimum of 30% of works by Uruguayan composers. But the quotas are neither met nor are there any controls to secure their fulfillment.

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It would appear that the two countries most similar in their musical structures are Australia and Germany. However, the level of subsidy to the arts in Germany enables a much greater intensity of provision in the classical music area. On the other hand,

the Australian commercial music sector does have international impact greater than that of Germany, with a succession of Australian artists registering on the global hit parade.

Among the five countries, Australia is the largest recipient of immigrants, and their numbers over the last half century have transformed it from an English monoculture to a multiculture. While, as everywhere, the most popular music is international pop and its variants, there is an incursion from other styles including those of the immigrants, and there are structures that support them.

Whereas indigenous music in Australia in its traditional forms has little impact beyond the indigenous community, indigenous music seems to be the core of musical life in Nigeria, especially in the rural areas. This music appears to be commercially self-supporting. Western popular music has a growing audience especially among younger urban people. There seems to be a similar situation in the Philippines, perhaps with older and greater integration of western popular music. Indigenous music grew out of particular communal circumstances and when these are removed the basis for the music is weakened. It is to be expected that it will be strongest when it continues as a part of traditional life, and it is in the countryside of Nigeria and the Philippines that this life is probably most undisturbed. When its adherents move to the cities, some traditional customs are at best practised out of their original context. Many listeners must be more open to different musics and musical preferences change. Urbanisation is a consequence of changing technologies which come to developing countries mostly from richer countries, and that might be seen as a consequence of globalisation, although it seems to this writer not to be as direct as the intentional promotion of the global hit parade.

In Uruguay it appears that musical life is very much invested in local forms of Latin American popular music. In addition, it includes the subsidised performances of a number of western classical orchestras and bands. The Philippines also includes in its musical life the western classical traditions

## **RECORDING INDUSTRY**

*Australia.* The Australian recording industry is owned by local branches of the five major transnationals plus News Limited, and by a much larger number of small “independent” labels. The majors have absorbed the mid-sized companies. By and large, the independents are the talent scouts. When artists are successful locally, some form of contract may be made with a major label for international promotion and release. Units sold and value of sales are in decline, as with the rest of the world, victims in part of file swapping, and piracy of physical recordings although the latter is still relatively low. In 2000, according to one authority, Australian acts took about 28% of the market. It may be less than this. As in the Philippines, the record companies are organised into two groups: those belonging to the Australian Record Industry Association (ARIA), controlled by the majors, and small independent companies belonging to the Association of Independent Record Companies (AIR).

*Germany.* The five transnationals have 80% of the market. (One of them, BMG, is German.) The number of units sold, and especially value of sales has been declining since 1997. CDR sales have quadrupled from 1999 to 2002. The market share of German domestic popular music recordings increased from 30% in 1993 to 40% in 2003. However, some of these were foreign musicians contracted to German record companies and the number therefore is less. Most of the German recordings were of music in the international pop style; only 1.2% or pop titles were sung in German!

*Nigeria.* Nigeria is a very interesting case. The Nigerian market used to be dominated by the five majors, with a 90% market share. However, physical piracy grew so large (est. 45% in 1995) that in the mid 1990s, all the majors closed their Nigerian operations. Unit sales had dropped from 20.2m in 1993 to 8m in 1996, when it was no longer possible to collect IFPI data. It is estimated that at the moment only 15% of the total value of sales comes from legitimate copies of recordings. With the departure of the majors, business moved to many small operators, often with scant knowledge of or concern for copyright or the other formalities of contractual arrangements etc. There are moves to introduce technological fixes to combat piracy but no system is yet in place. The UNESCO World Culture Report shows that in 1996, 65% of records sold were by Nigerian artists. One could theorise that the departure of the majors meant some severance of the Nigerian market from the international one and possibly a greater emphasis on Nigerian artists – although we have been offered no evidence since no data is collected. On the other hand, there is a complaint that Nigerian artists are presented on the international market without benefit of proper contracts. Whether this means that they are in a worse position than if properly contracted to a major company is a matter for exploration.

*Philippines.* There are 39 companies affiliated with the Philippine Association of Recording Companies (PARI) and another dozen or so small companies who refuse to join because of a perception of shady dealings by some PARI members. The only data are collected by PARI from its members, only 60-80% of whom respond. These show peak sales of 11.8m units in 1997, declining to 6.7m in 2002. No figure has been offered showing market share by local artists. It seems that international pop dominates but there are strong Filipino variants that would account for much of the recording activity by Filipino musicians. Piracy is rampant, conducted by shadowy foreign organisations as well as locals. It has hardly been slowed by a vigorous campaign from PARI. New legislation has been introduced but has yet to take effect.

Mass media music from the west held a 60% market share in 1996, and much of the locally generated 35% was music imitative of or derived from the international Top 40.

Filipino labels and musicians begin to have a presence on the internet through websites and online distribution and sales. Record piracy, some of it internationally controlled, has entered the market in a big way and local companies are suffering.

*Uruguay.* Units sold by companies affiliated with the Chamber of the Disc peaked at 1.1m in 1998 and dropped to around 200,000 in 2002 (excluding pirated recordings). Piracy is estimated to take more than 50% of the market. Only about 11% of the market is held by local companies. Recordings of local music are estimated to have a 19% market share – the lowest percentage among seven South American countries cited by our Investigator. For comparison, the highest was Brazil (65%) followed by Argentina (52%) and Mexico (47%).

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Plainly, the recording industry is very much affected by globalisation.

- It is dominated by five giant transnational corporations which prescribe the musical diet of the majority of the population of countries they reach. (The countries they do not reach have been, by and large, left out of the loop because they are too poor to offer profitable markets.)
- The five majors presumably have been formed in part because of the greater ease of money movements and communications in a globalised world.
- It is also recordings that carry international pop music across the globe, changing audience tastes and motivating musicians to emulate the style, or vary it, in many cases setting aside local traditions.
- It is through recordings, whether played on a reproduction device or heard through broadcast, that music of one culture is most often heard in another. They have never been so diverse or available in such abundance. They make the experience of musical diversity available to billions of people.
- For a small number of artists in countries other than those in which the majors are domiciled, and including artists in developing countries, the majors have provided a means of access to the international market – although, without adequate legal oversight, the artists can be exploited without appropriate financial reward.
- The recording industry can be a significant factor in economic development in developing countries, as an element of domestic and then, possibly, international trade; Jamaica with its reggae music is an example.
- Until the recording industry in a developing country is financially viable, that country may not be of interest to the majors; when it becomes viable, it may attract the interest of the majors, with active marketing of the international repertoire and possible take-overs of local companies.
- The internet is becoming a means by which individual musicians and music groups can reach a global audience directly. Musicians practising in styles of minority interest can build a niche market beyond the borders of their own countries and perhaps gain viability not previously possible.
- Piracy with physical recordings is afflicting the record industry. While some piracy is of local artists for local markets, it is also a global phenomenon. International organised crime is on the scene. Pirated copies are manufactured in some countries for sale in others. Recordings by the most popular international artists are the logical major targets for piracy since they promise the largest sales.
- Internet piracy (file swapping) is a global phenomenon, essentially without borders. It damages the majors and also local companies and artists. It may cause a major restructuring of the record industry. It is changing the character of intellectual property regulation and ownership.

The most foreground concern about the homogenising effects of globalisation comes from perceptions of the stylistic impact of global popular music. This chart shows the share of market held by domestic and imported record sales in a number of countries. From our five countries, Australia and Germany are represented. The market share for Nigerian musicians as shown in the preceding UNESCO report was 65%. Our Uruguayan Investigator informs us that the estimate for Uruguay is 19%. We have no estimate for the Philippines.

## Domestic and imported record sales: selected countries: 2000

Country	Proportion of record sales (%)		
	Domestic	International	Classical
<b>United States</b>	92	5	3
<b>Canada</b>	12	82	6
<b>Brazil</b>	75	24	1
<b>Mexico</b>	46	52	2
<b>France</b>	51	42	7
<b>Germany</b>	40	52	8
<b>UK</b>	51	41	8
<b>China</b>	47	53	-
<b>Japan</b>	78	22	-
<b>Indonesia</b>	53	47	-
<b>Australia</b>	28	68	4
<b>South Africa</b>	23	74	3
<b>World</b>	68	28	4

**Source:** Calculated from International Federation of Phonographic Industries (IFPI) data. Prepared by David Throsby for the *UNESCO World Culture Report 2000*.

Note that the fact that a recording is produced domestically is no guarantee that it embodies performances by local musicians. Our German Investigator points out that the figures are based on contracts signed in the respective countries, whether with nationals or foreigners. Some portion of Germany's 40% would certainly be recordings of non-Germans, because of the situation of the German record industry. This scenario may be less likely in the four other countries. Also, even the recordings of local artists may be of performances of international pop or a local variant. That certainly is overwhelmingly the case in Australia, and possibly the Philippines.

These percentages have been growing, not falling. Some conjecture that this represents an assertion of local identity in response to the ever more intrusive globalisation. The largest growth is in Asia.

## Trends in share of domestic repertoire in record sales: by region<sup>(a)</sup>: 1991 to 2000 (per cent)

	1991	1996	2000
<b>North America</b>	83.6	85.0	89.2
<b>Latin America</b>	52.3	54.2	53.7
<b>Europe</b>	n.a.	n.a.	40.4
<b>Mid-East</b>	72.9	57.8	65.1
<b>Asia</b>	67.6	70.5	75.2
<b>Australasia</b>	23.4	11.6	24.8
<b>World average</b>	58.3	62.4	68.2

**Note:** <sup>(a)</sup> Limited numbers of countries included in some regions; see further in *The Recording Industry in Numbers* (London: International Federation of Phonographic Industries Secretariat)

**Source:** Calculated by David Throsby from IFPI data.

As noted, piracy, both with physical recordings and via the internet, is undermining the present structures of the recording industry. Sales of legitimate recordings have been in decline in recent years. Some observers believe that the majors may be

put out of business; others believe they will find some new, viable business model that takes in online trade. There are opportunities for artists and small companies to find new ways of meeting the market.

Inasmuch as there seems to be little government intervention per se in the recording industry, it does not seem to present a target for trade liberalisation. Governments are less likely to be asked to cease intervening than to intervene actively in the fight against piracy and in strengthening IP laws. However, should developing countries seek to assist the growth of the domestic recording industry, they may need the support of a general cultural exemption from free trade treaties.

## BROADCASTING AND LOCAL CONTENT QUOTAS

While obviously music is an element of television broadcasts, radio is the principal medium for broadcasting music as the primary focus of attention. All five countries have both government and privately owned radio stations.

All countries excepting Germany have legislation or regulations requiring that some minimum percentage of time devoted to broadcast of music, or minimum number of tracks per hour, should be devoted to performances by local musicians. These are the requirements:

*Australia:* For commercial radio, the requirement is tiered, with the maximum requirement being 25% (for the most popular styles) down to 5% (for jazz, which is in any case not broadcast commercially), and with a requirement for 25% of that quota to be filled by recordings issued within the previous 12 months. For community owned radio stations, the requirement is 25% except for jazz or ethnic music, 10%. Government owned stations do not have a specific requirement but are answerable to Parliament to meet their Charters requiring support to Australian culture; in practice they match or exceed the quotas for commercial stations. The system is required by the government but is called self-regulatory. Sanctions on commercial stations for violations are cautions, fines, cancellation of a licence or possible re-regulation of the system.

Traditionally, the broadcast sector has been robustly opposed to the quota system, with the record companies the protagonists. However, 60 years after it was first introduced, the broadcasters seem to be deciding that they may as well make the best of a bad thing: they are joining with the record companies to promote some Australian artists.

*Germany:* There are no local content quotas. The federal government considered but rejected the possibilities in 2001. The industry is lobbying for a 50% quota for new releases, with 50% of that songs being sung in German. The share of German-language popular music record releases at the moment is 1.2%.

*Nigeria:* According to our informant, the local content quota is 80%. His impression is that it is met by the government stations but not the private stations. We have no statistical or factual evidence about compliance or enforcement, possibly because it is not recorded.

*Philippines.* The current requirement is that all radio stations with a music format should play a minimum of 4 original Filipino compositions per clock hour. The requirement is ignored and violated because of the lack of monitoring capacity of the National Telecommunications Commission; no prosecution has even been filed. Radio stations prefer foreign materials or their similar-sounding local equivalent. Payola is rampant and works against the interests of local music. There are two new bills before the Senate, one proposing to continue the current requirement for radio and adding strong requirements for television and for music in public places, the other proposing a radio quota of 60% of airtime. The first bill would penalise three-time violators with loss of the broadcast licence; the second imposes a 20,000 pesos fine for each violation. Of course, the law can be effective only if enforced.

*Uruguay.* There is a requirement that broadcasters include 30% Uruguayan music in the programming. Also, there are reductions in rates paid by broadcasters that devote 20% or more of their daily programming to Uruguayan music, and an obligation on state entities to prefer such stations in placing their advertising business. But none of the quotas are met and there is no enforcement. It is perhaps noteworthy that local music's share of the record market is the lowest in South America and that the local record industry is near to collapse.

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The first thing to note here is that four of the five countries have local content quotas, whether or not enforced. What has engendered the perceived need for these quotas? Presumably, a dearth of local music in broadcast music programs. By definition, local music either never had a strong presence or has been displaced by foreign music. Which foreign music? The Investigators for Australia, Germany even though it does not have a quota, Nigeria, and the Philippines suggest that essentially it is the international top 40. The Uruguayan Investigator is not clear on this, although Uruguay's foreign royalty exports mainly go to the usual suspects; but probably, some proportion of the foreign music comes from its near neighbours.

And of the local music broadcast, much is comprised of performances by local musicians in the popular international style or variants thereof. Quotas may not do much to broaden the listeners' experience of musical diversity. That certainly is the case in e.g. Australia, where none of the commercial stations broadcasts any but the most popular styles: no ethnic or world music, no classical, no jazz, no folk, almost no country, not even some of the less popular, popular styles.

So support for local content quotas becomes support for local participation in the international styles. Perhaps that should be regarded as an intermediate step towards something more broadly embracing.

The quota requirements for these countries are in the area of 25-30%. The 80% requirement in Nigeria is exceptional. Some other countries have higher quotas: e.g. France, 40%, Canada up to 35%. The situation in the Philippines and Uruguay shows that legislation or regulation is an empty gesture unless there is active implementation and enforcement. In Australia, enforcement has largely given way to self-regulation and there is some scepticism in the music community about the effectiveness of that method.

The Philippines statement on the purpose of quotas is concise and encompassing: they ensure that the public has access to local musical performances; they are intended to build record sales of local music and thereby create cause for increased production. In Australia, the government's policy in this and similar instances is also intended to support the development of local culture and national identity.

The link between airplay and record sales is intuitively clear. For instance, we might observe the expenditure of record company funds on payola in the United States and the Philippines. The Music Council of Australia is conducting a study to explore in a more general way the link between the imposition of quotas and consequent record production and sales. Such a study cannot easily show direct causality (as in one billiard ball hitting another and causing it to move) but rather, a parallel between trends for airplay, production and sales. This methodology allows for assertion of other possible causes, especially by those such as the broadcasters opposed to the hypothesis being advanced. However, there does seem to be clear enough evidence. Similar evidence comes from France, where content quotas have engendered a considerable increase in record sales of French music. (When complete, this paper will be available on the Music Council of Australia website [www.mca.org.au](http://www.mca.org.au).)

Quotas are important in the context of this inquiry, because they are the target of trade liberalisation advocates, notably the United States. While the US interest in television broadcast quotas is clear, it is not yet apparent whether it also wishes to see music quotas dismantled. In principle, an interest in one should extend to interest in the other. The free trade argument against quotas is that they exclude foreign suppliers from designated broadcast time and so give an unfair trading advantage to local suppliers. They do not give national treatment to all suppliers.

Germany is in a special situation compared to the other countries because in terms of demands to free trade in culture, it can shelter in the European Union which has its own content quotas in various contexts.

The premise of local content quotas is based on the fact that governments are in charge of allocating a scarce resource, the broadcasting spectrum, and can set conditions for those who are assigned frequencies. One such condition can be that the broadcasters meet these quotas. However, scarcity of spectrum disappears when broadcasts or narrowcasts are made over the internet. It is difficult to see how local content quotas can be imposed on web or satellite radio emanating from another territory. For online music on demand (as opposed to streaming), perhaps a government can require that service providers domiciled in its territory should give a certain amount of "shelf-space" to local music productions, although of course this does nothing more than make them *available* to audiences. Again, it seems unlikely that a government could make such a requirement of providers beyond its borders, although their products are just as accessible to the home audience.

## GOVERNMENT INTERVENTIONS

**Australia.** Australia's federal, state and local governments maintain measures of various kinds to support the production, dissemination, and archiving of musical work. The mechanisms used include subsidies to individuals and organisations; the ownership and operation of certain institutions; and laws about industry structure, trade and media content.

The Commonwealth Government is the major government provider of funds supporting musical performance, broadcasting and archives, and the main regulator of the music business. Local and state governments are the major government providers of funds for performance venues.

Support for music has two dimensions: *support for local* cultural expression, and *openness to international* cultural exchange. The main policy objects are the *composition* of new work by Australians; the *performance* by Australians of music from around the world; and the connection of *audiences* to high quality work composed and performed by Australians and others. Substantial funding goes to organisations, particularly orchestras and opera companies, which perform extensive repertoires of work composed mainly by non-Australians and include overseas artists in many of their performances. The emphasis here is artistic quality or excellence.

Local government's contribution to music is mainly through provision of performing venues.

Australian governments spent US\$135m on performing arts, including music, and nearly \$100 million on performing arts venues in 2000/01. The Commonwealth contributed nearly half that total. Total subsidy to music was US\$50m, although more music would have been funded as part of community cultural development. State governments are the major supporters of performing arts venues, contributing nearly two-thirds of that total. If multi-purpose public halls and civic centres are included, local governments are by far the most important government funder of venues. The major cultural recipient of Commonwealth funds was radio, at US\$530m.

**Germany.** The German Constitutional Court established the principle of Germany as a "cultural state" – a principle that ranks equally among other constitutional basics like justice. It obliges the federal government to guarantee the freedom of these areas and to preserve cultural heritage and even to support the arts actively. Similar passages can be found in the constitutions of all German states and in the Treaty of the European Union.

In the German federal system, culture has been mainly the responsibility of the states and local authorities rather than the national government. 90% of funding (about US\$7.14 billion in 2000) comes from the former, split between them about equally. (That expenditure includes churches, scientific libraries, broadcasting – not strictly culture...) A federal authority for culture was created only in 1998. It now has a budget of about US\$1 billion, although that includes some science expenditures. It has a role in representing German interests internationally, more necessary as the EU develops cultural policies affecting its member countries, and a number of national objectives such as creating a complementary policy for the new German states.

Music subsidies go mainly to classical music, although there is now a debate about whether more support should be given to other forms of music including popular music. Estimated governmental expenditures for music and theatre in 2000 were about US\$3.1 billion (Sept 2003 exchange rate). We have no figure for music alone. Public support is channelled through two foundations, shortly to be merged. The foundations offer their services to projects with national and international scope regardless of the nationality of the artists or institutions!

The foundations provide subsidies to organisations which themselves offer grants. Music organisations receiving these funds include the German Music Council, the German Federation of Rock and Pop Musicians and the Working Group of the Folk Music Federation. These organisations, however, provide support only to Germans.

**Nigeria.** There are clear cultural policy objectives established nationally and by Nigerian states. These include

- analysis and understanding of Nigerian cultural life, values, needs and expectations
- affirmation of authentic cultural values and heritage
- building national cultural identity and parallel affirmation of cultural identities of different ethnic groups
- development of cultural infrastructure and introduction of new technologies in cultural activities
- establishment of links between culture and cultural industries and education.

According to our Investigator, the policies have not been implemented: there is no general development plan for culture; planning does not go beyond project planning.

There is a Federal Ministry of Culture and Social Welfare and, under it, a Department of Culture and a National Council for Arts and Culture. Ministries of Education and Information also have cultural responsibilities. But the promotion and development of culture is the responsibility of each state, with national financial and administrative support. Various cultural organisations operate through registration with the authorities, and others work as small private enterprises.

There is considerable emphasis on support to cultural heritage from both levels of government. However, there is a need for more documentation and more systematic restoration and preservation.

Performing arts are supported to some extent through investment in cultural infrastructure such as venues.

**Philippines.** The 1987 Philippine Constitution provides under Article XIV Section 14 that “Arts and letters shall enjoy the patronage of the State. The State shall conserve, promote, and popularize the nation’s historical heritage and resources as well as artistic creations.”

Among the official network of government agencies directly responsible for the protection, promotion, regulation and development of music are as follows:

- National Commission for Culture and the Arts (NCCA). Its role is to formulate policies for the development of culture and the arts; implement these policies in coordination with affiliated cultural agencies; administer the national Endowment Fund for Culture and the Arts (NEFCA); encourage artistic creation within a climate of artistic freedom; develop and promote the Filipino national culture and arts; and preserve Filipino cultural heritage. NCCA has a National Committee on Music composed of volunteer music experts from the academe, commercial music industry, practitioners, and artists.

Other government agencies belonging to the NCCA network whose mandates have direct bearing on culture and the arts are the Cultural Center of the Philippines; the National Library (its Copyrights Office is particularly relevant to the music sector); the Records Management and Archive Office; and the National Museum.

- Department of Education (DepEd). Tasked to implement programs on the development and delivery of the basic education system and services in the Philippines, the DepEd mandates training on culture, arts and its various expressions – including music – in its prescribed elementary and secondary school curriculum through its MAKABAYAN (Nationalist) subject areas in formal education.
- Commission on Higher Education (CHED) CHED’s mandate is similar to that of DepEd but limited to tertiary level education.
- Cultural Center of the Philippines (CCP) It was founded by Imelda Marcos to showcase what many perceived to be elitist art. Since the People’s Power Revolution of 1986, however, the CCP has reinvented itself to address diverse cultural expressions including that of the marginalized and the peripheral through its many outreach and community-based programs. Its cultural work has since evolved into an empowering brand of artistic development that features outstanding global art side by side with the best of Philippine culture.

- Department of Interiors and Local Government (DILG). Through a Memorandum Circular issued by the DILG Secretary, local government units with existing capacities are required to establish a Local Arts and Culture Council composed of local government, business, community, education and youth representatives tasked to formulate policies and programs pertaining to local cultural development as part of the governance process.
- Department of Tourism (DOT) The current dispensation has adopted the theme of *Culture of Tourism* in its tourism program development efforts, a widely-questioned approach that many critics say tends to commodify and commercialize culture to serve tourism development. However, DOT's WOW Philippines Festival, a yearlong program that showcases the best of regional tourism through performances and commercial bazaars (but only in Manila), has generated consciousness on issues of regional cultural identity and heritage among local and foreign visitors. However, it is criticised due to the perceived uprooting and displacement of local cultures, tending to relegate them as mere showcase pieces rather than living and locally-contextualized traditions.

**Uruguay** Subsidies to culture come from the national government, the departmental (provincial) governments, the Municipality of Montevideo, the National Fund for Music (FONAM) which receives its funds from copyrights held by public entities and other sources, and the Capital Fund of the Municipality of Montevideo which supports cultural production, not so much capital projects. There is also funding from the Ministry of Education and Culture directed mainly to culture in the provinces. There is subsidy from all levels of government for orchestras and bands.

This funding has been hit by the current economic difficulties. The total of funds available from FONAM was \$229m in 2000, but probably only \$19m in 2003. National support of orchestras and venues in 2000 was US\$6.9.

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All five countries have cultural policies of lesser or greater complexity. In Germany and the Philippines, governmental responsibility is specified in the constitution, in the other countries in the laws and regulations. Germany goes so far as to pronounce itself a "cultural state". This of course is in one sense inevitably true of every country, but in Germany it is carried into the fundamental identity of the country as embodied in its government. Compare this with, for instance, the USA, where the minute funding to the National Endowment for the Arts and, indeed, the very existence of the federal government's only authority with a specific and exclusive commitment to the arts, is regularly challenged.

In the cultural area, it is the interventions by governments giving preference to nationals over foreigners that are the main subject of challenge under trade liberalisation procedures. It is beyond the capabilities of this study to look at the detail of the interventions by each of the five governments. And which of those interventions would be challenged in any particular negotiation will depend on the interests of the negotiating partner(s). In the final section of this paper, we will deal at some greater length with this issue.

## **INTELLECTUAL PROPERTY**

All five countries appear to have signed the major international intellectual property conventions, although the Uruguayan Investigator has not specifically confirmed this. Nigeria and the Philippines have not signed the Convention for the Protection of Producers of Phonograms against Unauthorised Duplication of Their Phonograms, which may link to the runaway piracy in their territories. There is in any case an issue around the vigour with which the conventions are implemented in each country. There has been criticism in Australia about an inadequate level of enforcement. The Nigerian Investigator notes the lack of enforcement of performance rights. Apparently even government broadcasters are not paying royalties for use of music.

The Philippines enacted the Intellectual Property Code of the Philippines in 1998. Although it has been praised by international IP experts as one of the most comprehensive IPR laws to be passed anywhere in the world. Nevertheless, the USA finds fault in the law and has upgraded the Philippines to its "Priority Watch List", a pressure instrument applied to countries it deems as not exerting enough effort to protect IPR and consequently prejudicing US trade interests. The Philippines is apparently shaping up to challenge any untoward sanctions by the USA and is convenor a group of WTO members that seeks to ensure that public policy will prevail over private interests, especially monopolistic and anti-competitive private interests.

Australia expects a number of IPR requests from the USA in its negotiation of an Australian/US free trade agreement. So far as the cultural sector has anticipated these requests, it sees them as strengthening IPR and does not object to them. They also include concerns about the vigour of enforcement.

## **POLICIES FOR MULTICULTURALISM**

The movement in support of musical diversity is interested in protecting cultural diversity as between countries by ensuring that each country has the right to foster its own culture and not have it overtaken by foreign cultures. This has been the initial motivation for advocacy for an International Instrument for Cultural Diversity.

But this movement also advocates the appropriate support of cultural diversity within each country's borders. This is more difficult territory, since some governments do not wish to support cultures associated with tribes or religions other than their own, or may have serious concerns about unifying their countries in the face of assertions of competing cultures and interest groups which could tear them apart.

The distinct cultures within a culture may be associated with indigenous peoples or with the relatively recent influx of immigrant peoples.

*Australia.* Australia's indigenous people account for only 2% of the population. Taken as a whole, their circumstances are appalling. They have been the victims of malevolent or uncaring actions by some, and benevolent but ineffectual support by governments. One of the brightest achievements has been in the creation of a powerful stream of arts production, especially in the visual arts but also in music, dance and theatre. This has had government support.

There has been an official policy to assist or encourage immigration since shortly after the Second World War. 25% of the Australian population was born elsewhere. Initially the cultural policy was for assimilation into the prevailing culture, but for more than two decades this has been displaced by a policy in support of multiculturalism as governments moved to address the interests of what had become a substantial portion of the voting constituency. In the arts, multiculturalism is encouraged through subsidies to "multicultural" arts, especially the arts of non-English speaking peoples.

*Germany.* The population is 91.5% German. The largest immigrant group comes from Turkey (2.4%) with the others coming mainly from an array of European countries. Ethnic issues have been mostly a matter of local concern in the cities and there has been little policy interest at state or federal levels.

*Nigeria.* Cultural policy affirms the cultural identities of the 250 indigenous ethnic groups that make up the popular. National cultural policy seeks to promote national identity and unity. The affirmation and development of particular indigenous cultures is a role for the 36 states.

From this tiny sample, we could form the hypothesis that multiculturalist policy is formulated in situations where political circumstances demand or invite it.

### SOME OTHER EFFECTS OF TECHNOLOGY

*Internet.* Then internet has been taken up in all five countries. According to the *World Factbook* ([www.cia.gov](http://www.cia.gov)), these are the percentages of the population using the internet: Australia, 58%; Germany 39%; Nigeria, less than 1%; Philippines, 6%; Uruguay, 12%. (In Australia, 93% of those under 20 years are users!) Clearly there is a serious "north/south divide". The potential for the global reception and distribution of music has been noted. Ordinary musicians have the potential to find a personal international following. File sharing on the internet is bringing dramatic change and possibly extinctions in the record industry,

*Digital production of music.* Digitally produced music is changing musical tastes (dance music, electronica). It is putting live musicians out of work; film scores are often produced digitally with no or minimal input from live performers; pub and club performers, even buskers, now provide themselves with a digital accompaniment and dispense with the band. Although digital processes are mainly used locally for local purposes, the technologies are mainly developed in the affluent countries and transferred to the less affluent elsewhere.

*Movement of peoples.* There is unprecedented ease of movement of people around the globe, whether intentionally as tourists or migrants or unwillingly or unwittingly as refugees. When people move, they carry and to greater or lesser extent transmit their cultures with them, and they absorb elements of the cultures newly experienced. When they move in large enough numbers to a particular location, its culture is bound to change.

### INTERNATIONAL CULTURAL TRADE AND COOPERATION

*Australia* The activity most significant financially is the export and import of recorded music – shown mainly as trade in royalties. While there is a significant international music trade deficit for Australia, the increase in exports is 148% over the period 1995-2001 – from US\$19m to \$48m. Imports rose from \$113m to \$156m. The export of local artists on sound recordings largely depends on the transnational record companies, with the smaller independent companies serving as talent scouts, releasing new artists onto the domestic market.

Excepting for hand-made instruments and Maton guitars, Australia imports nearly all of its musical instruments. In 2001 the retail value of instrument imports was US\$310m. Compared to the previous year there was a 3% increase in value of imports, but a 5% decrease in number of units (70,000). The decrease was strongest in the instruments with which children traditionally begin their musical experiences.

Music tours into and out of Australia. Australian popular artists tour in support of their CD releases. Artists in other musical styles tour, sometimes with government assistance, either to attempt to establish themselves on the international market or in support of government trade or diplomatic promotion. Since for the most part they have not been taken up by transnational record companies, the tours may not be intended to promote CD sales.

A specific category of visa applies to overseas entertainment industry workers, including musicians and their crews, who visit Australia temporarily to work. Australia's policy 'seeks to facilitate the Australian community's access to a wide range of social and cultural events and activities without jeopardising the employment of Australians in the industry'. Incoming entertainers need to satisfy a 'net employment benefit' test, which, for touring musicians, is generally satisfied by the inclusion of an Australian support act in their concerts.

There are artist exchanges with other countries, funded by governments. However, they are not as formal as those in many countries in, for instance, Asia.

Ownership of the media is regulated to prevent too great a concentration of ownership. There are specific limitations on foreign investments of television, although these do not apply to radio.

**Germany.** Since Germany's inclusion in the European Union in 1992, cultural cooperation has become a new EU competency. The EU has its own cultural policies and budget (about US\$190m) to build European culture through greater cultural cooperation between people in the member countries. The policy is for unity and diversity.

In 2001, the German royalty collecting society GEMA had receipts of US\$916m, of which \$181 came from other countries. In 1998, Germany exported physical sound recordings to the value of US\$2.5bn, with imports to an almost exactly similar value. As noted, these recordings contained both German and non-German content, but in proportions unknown.

Concerning international movement of artists and musicians, Germany has introduced a simplified and relatively unexacting tax regime for performances by foreign artists in Germany. The intention is to enhance artistic exchange and signal the cultural openness of Germany.

The Foreign Ministry funds international touring of German artists with a budget of nearly US\$15m. These activities are conceived as cultural exchange rather than export. A music export office will be established by the end of 2003, funded both by industry and the government. Music companies can apply for assistance in presenting at international trade fairs, along with applicants from other sectors of the economy.

Ownership of the media is regulated in Germany to prevent domination by any single owner. The international dimension becomes increasingly important, although it is not clear whether special regulation of foreign ownership will be introduced.

**Nigeria.** Cultural cooperation with other countries is on the basis of signed agreements, bilateral or multilateral.

Cooperation in Africa is motivated by the need to emancipate African cultures. Where formerly the distinct cultures were a basis to keep peoples apart, now their family resemblance is used to bring peoples together. "We" was the tribe; now it is Africa. "They" is non-Africa.

Cooperation with the west is mostly based on presentation of Nigerian arts to western audiences and on the transfer of cultural institutions and activities from the west. It is hardly an equal two-way traffic. The Nigerian government backs cultural exchange of artists, exhibitions etc on a reciprocal basis. Cooperation with UNESCO is of special interest.

Nigerian music is exported to countries in Europe, America and Africa, but not through licensing agreements with foreign companies. Rather, pirated physical recordings are exported and Nigerian copyright owners do not benefit.

**Philippines.** ASEAN, of which the Philippines is an important member, is removing cultural barriers between its eleven member-countries. It has facilitated cultural exchanges in all arts and media sectors and launched flagship programs in the areas of training, production, and dissemination.

International promotion of Philippine artists is undertaken by private companies and agencies, under supervision from the government designed to protect nationals in such situations, especially in long-term engagements of 6 months or more.

**Uruguay.** While total copyright royalties from internal sources, from *all art forms*, fell from a peak \$63.9m uruguayos in 1999 to 44.4m in 2002 (a deterioration especially marked in music compared to other forms), royalties from exports grew from 2.1m in 1998 to 4.1m in 2002. No figures were provided for 2003, but the collapse of the local currency might have further aided export income.

Of music royalties earned, \$8m went to foreign copyright owners.

## ACTUAL OR POTENTIAL EFFECTS OF INTERNATIONAL TRADE LIBERALISATION AGREEMENTS

**Australia.** The Australian government has stated in international trade fora its intention to retain its prerogatives to support local culture. It has given a very satisfactory definition of what it means by culture in the recently signed Australia/Singapore Free Trade Agreement. In one of a number of important statements, its representatives have said:

*Market forces alone are rarely sufficient to allow cultural organisations and individuals to be fully self-supporting. This is true for the cultural sector worldwide, but in Australia's demographic and geographic circumstances it is particularly the case... The important mix of subsidy, regulation and tax concessions ... (is) a necessary subvention in the national interest to sustain Australian creative resources...*

In its Singapore agreement, in its offer to GATS and its offer to the USA in a bilateral treaty now under negotiation, Australia has exempted culture totally.

The cultural community is nervous about the pressure the US will bring in these negotiations, and expects that the US will ask for "standstill" in current broadcast quotas and possibly other cultural support. Standstill locks in current supports; they can be changed only to reduce them. In a rapidly evolving world, current technologies, the means of cultural production and delivery can change radically and if they are to have government support, the support needs to change accordingly. Governments need total flexibility in deciding the most effective policies and support mechanisms. These need to be protected by a notion of

“technological neutrality”: the right to support cultural content continues regardless of the technological means by which it is created or brought before audiences.

The US is expected also to press vigorously for complete liberalisation of e-commerce, which by the US definition in its free trade agreement with Chile includes all items digitally encoded or transmitted. Any country accepting that formula would forego its right to support any cultural activity involving digitisation. That would take in a great swathe of music creation, production and dissemination.

Recently, the US has adopted a new negotiating tactic for e-commerce. It has proposed a principle of applying “the most liberalizing aspects of the existing agreements to products being traded electronically”. The intention is to be able to bring e-commerce under both GATS and the General Agreement on Tariffs and Trade, GATT, heretofore regarded as the agreement for trade in goods as opposed to services. The point here is that under GATT, there is an absolute prohibition on any form of content quota (except for that allowed for cinema-screen quotas). The EU has opposed this proposal as representing an attempt to pick and choose those parts of the agreements that best suit your interest. It also argues that e-commerce should largely be regarded as a service.

The Australian cultural sector has not been especially concerned with intellectual property issues in the context of free trade agreements or the TRIPS (Trade-Related Aspects of Intellectual Property) negotiations under the WTO. Essentially, this is because no advantage is sought for Australian IP owners over foreign owners under domestic law. The objective rather is international harmonisation of IP law.

**Germany.** The German government has come out strongly in support of the proposed international instrument on cultural diversity, which would give legal support to the rights of countries to support their cultural sectors untroubled by free trade agreements. This level of awareness at policy level appears to be fairly recent.

But in any case, France and some smaller members of the EU have set standards of cultural exemption in Europe which are being picked up by the European Parliament and the European Commission. The EU’s position can provide a buffer for its individual members against new trade concessions involving culture. Because aspects of cultural policy are integrated in the EU, requests under GATS will have to be made to all EU member states and especially vis-à-vis the US, their own bargaining position is thus reinforced.

It has been noted that the foundations that channel subsidies to artists and arts organisations do not require that recipients are German. Germany appears therefore to be a rare country whose arts subsidies offer “national treatment” to all applicants. If this is the case, its subsidies should not be under challenge by free traders.

**Nigeria.** The government, noting that extreme regulation of trade through tariffs, licensing etc have not brought the desired accelerated economic growth, and is therefore committed to a trade liberalisation agenda. The main objective is to bring about easier penetration of foreign markets for Nigerian exports. It is pursuing this agenda multilaterally and bilaterally, multilaterally through UNCTAD, South Commission, ECOWAS and GATT, and bilaterally within Africa and elsewhere. There is a special emphasis on intra-African trade as a counter to worsening terms of trade with the industrialised countries.

Nigeria has signed several agreements that involve culture: with the World Tourism Organisation, and with Trinidad and Tobago, Cuba, Morocco, Brazil, China, Namibia, and Iran.

Our informant has not provided information on Nigeria’s policy with regard to free trade and culture.

### **Philippines.**

World Trade Organization. Membership in the WTO has qualitatively contributed to overall economic reforms in the Philippines, which have had consequential profound effects on Philippine trade and industrial structure and performance. Nevertheless, there is widespread hostility to globalisation and to the WTO – due, the government believes, to ignorance.

The Philippines has strength as a service exporter, lying mainly in its human talent. Our informant states that there need to be concerted efforts to mobilize service sectors that capitalize on this, such as film and animation, music and entertainment, information technology, among others. This suggests a push by the Philippines for liberalization in other countries. But it will be equally important to assess which industries, in return, the Philippines will be able to open to foreign competition in the ongoing negotiations.

The Philippines is an important member of ASEAN. The ASEAN Vision 2020 promulgated by the heads of government in 1997, charts a new direction for ASEAN towards the year 2020. In economic terms, it portrays ASEAN as one stable, prosperous and highly competitive Economic Region in which there is a free flow of goods, services and investments, a freer flow of capital, equitable economic development and reduced poverty and socio-economic disparities.

A six-year action plan lays down specific steps and measures to be taken during the years 1999-2004. While the manufacturing sector stands to benefit more from the agreement, investors from other sectors such as communications and entertainment – including music – are beginning to explore the business environment in the hope of benefiting from privileges such as income tax exemption, full foreign equity ownership, duty-free imports of capital goods, domestic market access and at least 30-year long-term lease for industrial land.

Beyond trade in goods, ASEAN is bringing down cultural barriers between its eleven member-countries. It has facilitated cultural exchanges in all arts and media sectors and launched flagship programs in the areas of training, production, and dissemination.

By most standards, the Philippines remains an open economy perceived as being able to stay the course of openness and liberalization. It may even be said that what the Philippines lack in infrastructure and other basics features for attracting investment in the short-term, it attempts to neutralize through competition-driven efficiency gains.

The competition posed by the Philippine market access commitments in WTO (and more so in AFTA, and the parallel unilateral tariff reforms), nevertheless, present a serious challenge not only to Philippine industries but also to the sustainability and protection of its national heritage and cultural identity. The Philippine cultural sector views these developments with alarm as it braces and fortifies itself for greater challenges in this rapidly modernizing and globalizing world order.

**Uruguay.** There is some awareness of the threat to local culture from free trade agreements and especially from the position of the USA, but so far the Uruguayan Investigator knows of no government policy on this matter. The issue is scheduled for discussion by the intergovernmental Area of Free Trade of the Americas (ALCA), which is dominated by the USA.

Uruguay has signed a number of trade agreements including Mercosur, the agreement between Mercosur and the EU, ALCA, WTO. Mercosur includes possibilities for cultural interchange and integration through Parcum (Cultural Parliament of the Mercosur)

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The current emphasis in trade treaties is to “trade liberalisation”, that is, to free international trade from “trade-distorting” interventions by governments that favour local over foreign providers.

Some common examples of such interventions:

- subsidies, or limits on the access to subsidies by foreigners
- mandatory local content quotas e.g. on radio or television
- reserving broadcast spectrum on special terms for national or community broadcasters
- limitations on foreign ownership of local cultural entities e.g. broadcasting systems, press, film distributors
- government ownership of local entities such as e.g. broadcasting systems
- co-production treaties with particular foreign countries (film); these give national treatment to those countries but not to any others
- screen quotas in cinemas, setting a minimum quota for local films
- government procurement practices favouring local providers over foreign providers
- immigration treaties or visa regulations to ensure some preference to local artists
- tax credit systems that favour local over foreign artists or entities.

It is mainly such government interventions that become the target in free trade negotiations.

But usually, the viability of cultural activity depends on such support (to overcome “market failure”) and its removal may imperil the culture.

As we have seen, all five countries practise such interventions. All subsidise cultural activity. Four of the five have local content quotas for broadcasters; although in three countries they are not enforced, the existence of the legislation or regulations indicates agreement with the policy. At least two countries have some regulation of foreign ownership of the media. All have government broadcasting systems. It would be reasonable to suspect that in commissioning programs, those systems may give preference to local producers. Australia has visa regulations for visiting productions requiring the inclusion of local musicians and Uruguay has special tax provisions on foreign productions to transfer benefit to local artists.

There are strong government policies in at least the Philippines, Nigeria and Australia in support of the expansion of free trade. Nigeria looks back to a history of trade restrictions and the damage they have caused. The Philippines has experienced very positive development in its economy as it adopted WTO reforms. The Australian economy twenty years ago was highly protected; it sees its current resilience as resulting from removal of tariffs, the floating of the currency and other such measures. One of Australia’s difficulties in free trade negotiations is that its economy is now very open and it has relatively little that it can concede.

Our Philippines Investigator notes the opportunity for the Philippines to expand its exports of cultural services and implies that success depends not only on initiatives by Philippine artists and arts organisations, but on the openness of its trading partners to receiving the services. It should be noted that such openness is not inconsistent with ensuring that a portion of the market is secured for local production. The remainder can be completely open to local and foreign producers on equal terms.

All five countries are members of the WTO and therefore have the opportunity to make offers and consider requests in the cultural area, especially under the General Agreement on Trade in Services GATS, and Trade Related Aspects of Intellectual

Property TRIPS. All are parties to regional agreements: for instance, Uruguay in Mercosur and the American Free Trade Agreement AFTA; the Philippines in ASEAN; Nigeria in the Economic Community Of West African States ECOWAS; Germany to the trade aspects of the EU; Australia to APEC. All presumably are also signatories to bilateral agreements, although we do not have any specifics for Germany. In every agreement lies both risk and opportunity for culture.

Judging by our Investigators' reports, there are varying levels of consciousness in our five countries about the implications of free trade agreements for local cultures. They are on the agenda in Germany because of the activity of the EU in establishing cultural policies. Germany has become a vocal supporter of the proposed international instrument for cultural diversity now being discussed by UNESCO. Australia's current negotiation of an agreement with the USA so threatens the cultural sector, especially the small local film industry, that cultural protection has become a public issue. The perils of bilateral agreements were already forced to Australia's attention as a result of a damaging court case following on its agreement with New Zealand; a loophole in the agreement has allowed New Zealand television productions to qualify as Australian under the Australian content quotas for television.

The position in the other three countries is less clear. We have a statement from a municipal official in Montevideo recognising the importance of these issues but no indication of the national government's position. From our information, any recognition of the issues is found in the cultural sectors but not in the governments of Nigeria and the Philippines.

An important concept underlying the push for trade liberalisation is the doctrine of comparative advantage: that those countries which are the most efficient producers of a commodity will, and should, dominate the market. This justifies, for instance, international dominance by the US film industry. However, the consequence of that dominance is that film making in other countries can die out. Cultural diversity is lost, cultural homogeneity wins.

Many governments argue that the economic justification of the doctrine of comparative advantage is inappropriate to culture, that "culture is not a commodity like any other", that every country has a right to sustain its own culture by intervening in the market if necessary, and that culture should be removed from the negotiation table in international trade agreements (the "cultural exemption", "cultural exception", "cultural carve-out").

Trade negotiations potentially involving culture are taking place under the General Agreement on Trade in Services (GATS) of the WTO, and in bilateral or regional negotiations between governments. The contention is between the countries that seek to include culture in these trade-liberalising agreements, including the United States of America and India, and those that seek to exclude it – a rather long list of countries, in which France and Canada are leaders.

A proposal has been put to UNESCO by a network of national cultural ministers to draw up and auspice an international agreement in support of cultural diversity, as a "standard-setting instrument" in the context of international free trade negotiations. The General Conference will vote on this in October 2003.

#### **FOOTNOTE: Globalisation as the Effect of Private or Corporate Activity**

Most of the most noticeable effects are a consequence of technological change.

Technological change includes the availability of new technologies such as those for the more efficient transportation of people, sound recording, internal dissemination through electronic transmissions. Although developed by advanced Western countries, these may not necessarily present as an intrusion by another country so much as simply new, more advanced methods to achieve local objectives.

However, they are causing major changes to the social structures that support musical activity – e.g. the village that watches television instead of making music, urbanisation that replaces traditional rural musics with new urban musics.

Some of the more overt and direct effects of private or corporate activity include:

- The formation of very large transnational record companies
- Take-over of ownership of local record companies by transnational companies
- Increasing domination of the local recorded music market by the music promoted by the transnational companies: homogeneous in style, performed by foreign musicians to a mass international market
- Emulation of the international style by local musicians
- As a reaction to the homogenisation of mass media music, an increased assertion of local musics
- Increased movement of people, voluntarily through cheaper international transport, or involuntarily as refugees, all carrying their musical traditions to the new country as audience or performers.
- For some countries, because of immigration, greater diversity in the live music available within a country
- Cheaper technologies for the digital creation and recording of music, giving musicians the option of self-sufficiency in producing recordings
- The internet allows for individual or cooperative global marketing of recordings directly by musicians – and by corporations; it provides online access in the living room to music of all places and time – a direct experience of musical diversity.

The benefits are more available to wealthy countries. Developing countries are more vulnerable to some of the negative effects.

## CONCLUSIONS

The five countries surveyed in this study are located on five different continents. Their populations range from 3.4m to 133m people, areas from 176,000sq.kms. to 7,760,000sq.kms., GDP per capita from US\$875 to 27,000. The western culture now dominant is at the heart of or has influenced all countries, but the cultures of indigenous or multicultural populations are an important aspect of four out of the five. An indigenous non-western musical culture still prevails in Nigeria.

As presented by our informants in each of the five countries, there is great contrast in the musical life although all are affected by international pop music as promoted especially by the five major transnational record companies. In Uruguay, the popular music is comprised of various forms of local and South American styles, themselves often influenced by international pop. For centuries in the Philippines, local musics have combined with the musics of colonisers; now there are indigenous forms found more in the countryside, while international pop translated into local variants is dominant financially. There is also activity with western classical music. In Nigeria, the musics associated with the 250 ethnic groups are still extremely important, especially in rural areas but also in cities. However, there are many musicians presenting outright reproductions of western hits, or variants in which Nigerian musical styles are incorporated. German pop musicians have adopted international pop and attempt to blend by singing almost exclusively in English. Germany is of course extremely strong in classical music. In Australia, international pop reigns financially, but there is an enormous breadth of performance styles resulting in part from its active immigration policy over the last half century.

Beyond these differences, there are broad commonalities. In all countries, the recording and broadcast industries are extremely important to music. Broadcasting in all five countries includes both government and private radio stations. In all cases except Germany, local content quotas are prescribed for radio, whether or not enforced. All have signed the major international copyright conventions, although at least two have not signed the convention that might help protect against piracy and there are issues around the strength of enforcement.

Only two informants, from Australia and Nigeria, report government policies in support of multiculturalism, one motivated by diversity among immigrants, the other by diversity among indigenes. Uptake of the internet varies greatly with wealth and circumstances, ranging from 58% in Australia to less than 1% in Nigeria. Given the importance of the internet to transmission, and potentially, trade in music, the north-south divide is a problem to be addressed.

It seems that all five countries are committed to the expansion of free international trade, for varying reasons arising from their own history and circumstances. It might perhaps be seen as a paradox that many countries with such a commitment seek nevertheless to resist extending it to the cultural sector. But "Culture is not a good or service to be traded like any other", is the rallying cry. They argue for a complete "cultural exemption" from trade agreements. It is through our culture that we find and express and values and identity. The survival of a culture should not be decided on economic criteria.

Among these five countries, it seems from information provided that only the Australian and German governments are committed to the cultural exemption. In the other three countries, it is not clear whether the governments have taken a position or even are yet aware of the issue. In October 2003, all UNESCO members will be asked to vote on whether UNESCO should formulate a binding international agreement in support of cultural diversity and essentially, the cultural exemption. At that time, the three countries will have the opportunity to take a public policy position.

What is vulnerable to free trade agreements is a government's right to intervene in the market to support its own culture over foreign cultures. A list of a government's preferential interventions in culture is a list of the activities that are potentially vulnerable to free trade agreements. Assuming that these interventions are well targeted, their loss could mean the loss of the cultural activities they support, which are unable to survive at a satisfactory level if dependent on market forces alone.

The governments of all of our five countries support through one means or another their cultural sectors. All provide subsidies. All except Germany have local music content quotas on radio, although it appears that only in Australia are these complied with. At this time, the quotas are in the line of fire in trade negotiations. If governments are not now in a position to enforce their quotas, it will not be too difficult for them to abandon them as a concession. It has to be understood that once such a concession has been signed off in an agreement, there is virtually no way back. New Zealand gave up its right to quotas under GATS in 1994. The current (new) government wants to introduce quotas but the terms of the agreement make this impossibly expensive.

The next big battle will be in the area of e-commerce. Under the US formulation, e-commerce is defined in part as trade in anything that is digitally encoded or transmitted – therefore including virtually the entire business of the music industry and increasingly the broadcast industry. The US is looking to a future where e-commerce is ubiquitous. Governments that do not comprehend the ramifications of trade agreements as they affect culture may not understand this threat because it is about a world that is not yet quite with us. Again, there is no practical way back from a concession, even when made in ignorance.

To foster a country's cultural sector is not to reject cultural exchange and trade with other countries. It is simply to ensure that in this context of free exchange, a local culture survives – that culture can be sent out as well as brought in.

When so much of the weight now lies with the economic agendas of the WTO, IMF and the World Bank, it could be an advantage to have a countervailing understanding or set of standards or better, and enforceable agreement for the position of

culture in the global environment. UNESCO in 2001 issued a non-binding Universal Declaration for Cultural Diversity. This sets out principles and policies but no obligations. It is easily ignored. UNESCO itself saw it as possibly a step towards a binding agreement. A movement has grown up around a network of cultural ministers, the International Network for Cultural Policy, and two international NGOs, the International Network for Cultural Diversity and the Coalition for Cultural Diversity. The effect has been a considerable consciousness raising, with some countries now serving as energetic activists for an international agreement. As noted, this has led to consideration by UNESCO of the proposition that it should take responsibility for a binding agreement.

It is in the interests of IMC members that their governments should be free to support music and culture of their own countries. Whether or how governments choose to exercise the right is not in question – excepting that it would be expected that they observe the normal human rights and freedoms and are open to cultural exchange with other countries. It would be appropriate for IMC to take an appropriate advocacy role internationally in support of this right and of musical diversity between and within countries. The IMC also has a role in advising member organisations so that they are better equipped to undertake an advocacy role in their own spheres of influence.

It is suggested that IMC explore the possibility of establishing a means of providing developing countries with highly skilled advice to support development and implementation of music policies and music industries. The purpose would be to assist them in clarifying and realising their objectives for musical development and reducing some of the "north-south" disparities hinted at by this study. IMC has long shown its interest in special projects for developing countries. Such an initiative could constitute a more strategic approach to such assistance.

## APPENDICES

1. Music in Australia
2. Music in Germany
3. Music in Nigeria
4. Music in Philippines
5. Music in Uruguay
6. IFPI Piracy Report 2003
7. ARIA report on file-sharing and CD burning
- 8. The Investigators**

## APPENDIX 1

# Music in Australia

*A report for the ManyMusics Project of the International Music Council, October 2003*

*Richard Letts and Jock Given*

## 1. THE AUSTRALIAN MUSIC SECTOR

### *A musically diverse society*

Musical diversity is a reality within Australia. Australians perform and listen to a plethora of musical styles.

Participation is numerically greatest in styles promoted by the international popular music industry – e.g. rock music, hip hop, dance/electronica.

Other styles include:

- Country and western, including a stream identified with indigenous musicians
- Classical music in all its forms
- Jazz
- Australian folk and bush music derived from Anglo-Celtic folk styles
- Ethnic styles, especially but not exclusively those associated with the cultures of immigrants; including "world music"
- Traditional indigenous musics
- Fusion musics that experiment with couplings of any of the above.
- Experimental music/computer-generated music/multimedia.

### *The structure of the music sector*

a) *The production sequence.* One way of looking at the music sector is to follow the production sequence of music through.

Musicians and audiences are prepared both through informal exposure to music and through a music education system comprising music instruction at primary, secondary and tertiary levels, and non-systemic instruction from private music teachers and non-systemic music schools.

Music is created by art music composers, served by a national resource and promotional organisation, the Australian Music Centre, or by songwriters in much larger numbers, for the most part performing their own music in all manner of popular bands. Their music is presented in live performances, on sound recordings, in film and television scores and advertising jingles, broadcasts, and online.

Performers are presented live in concert halls, theatres, community centres, pubs, clubs, tours and festivals. In live performance, a few musicians are very well recompensed but most are paid very modestly.

Music is also recorded and broadcast. Most of the activity is domestic, but there is some international exposure for Australian musicians, whether through recordings or on tour. Recorded music product is available for purchase through music retailers, supermarkets, and online.

b) *Profit and non-profit sectors.* The for-profit music sector produces or imports, and disseminates commercially popular music in the internationally popular styles. It is financially self-sustaining (although the income of many of the musicians is very low); there is some government regulation but little government subsidy. It includes most of the record companies, large or small; all of the commercial radio stations, and also some income from film and television sectors; touring organisations; festivals, and live commercial venues ranging from large entertainment centres to small clubs and pubs. It might also be thought to include unsubsidised activity in all the styles of minority interest, although this would comprise only a small percentage of the total activity and income generated.

The non-profit sector includes professional activities depending on subsidy, such as the large-scale orchestras and opera companies where costs cannot be met from box office, the major festivals (usually multi-arts), the experimental, the best small performing groups in classical music, jazz, ethnic or fusion music, the composers and so on. Each of the styles tends informally to be vertically organised, with its own performers, customary live venues, record labels, broadcasters etc., although there is said to be increasing audience cross-over between styles. Some of the performers are self-presenting – e.g. the large companies. Some depend on contracting their services to venues or to touring entities such as Musica Viva Australia, a chamber music presenter.

The non-profit sector also includes, of course, a great mosaic of amateur and community activity. Much of this is private and informal. It also is organised into ensembles, community bands, orchestras, music theatre companies, choirs. In some of these forms/styles, there are state or national associations (e.g. for youth orchestras, community orchestras, brass bands, choirs.) There are music camps, festivals, competitions for amateurs. A book could be written...

### **Indigenous music**

The indigenous people of Australia have been living here for at least 40,000 years. They make up about 2% of the Australian population. They have their own musical traditions which are kept alive in some areas. In recent decades, an extremely successful indigenous painting and visual arts practice has developed, strongly based on traditional practices of body painting,

bark painting and drawing in the sand. In music, by contrast, the starting point for much indigenous practice has been Western country music or rock music, into which has been injected intentionally or otherwise, various indigenous characteristic of style, tone, or subject matter. There are now indigenous recording studios, record labels and broadcasters, especially in the centre and north of the country, and some performers have had good success in the larger community. There is official government support through, in particular, the Aboriginal and Torres Strait Islander Board of the national arts funding body, the Australia Council.

### **Music education**

While there are individual schools with strong and successful music programs, overall the provision of music education in schools is inadequate, in the view of the music sector. At the primary school level, it is in the hands of classroom teachers who are deeply undertrained in music. There is better provision in secondary schools. About 6% of high school graduates take music as a graduating subject. More than thirty universities offer music, although for a good number the curriculum is small and directed mainly to teacher training. There is increasing diversity between these institutions, especially in their emphases on the traditional classical training vs training in popular music. Almost all are government owned and funded. Many vocational colleges offer instruction in music and especially music business.

### **Audiences for live music**

In 1999, the most recent year for which data is available, one in four Australians attended a popular music venue at least once during the year. One in six attended a musical or opera, and one in eleven went to a classical music concert. This compared with the two-thirds of all people who went to the cinema at least once in the year. Popular music venues are most popular with 18-24 year-olds, 42% of whom attended at least one in 1999. Musicals and opera were most popular with 45-54 year-olds and classical music events were most popular with 45-54's and 55-64's. Musicals and opera were much more popular with women than with men, and classical music somewhat more so.

Most of those who went to any popular or classical music events went at least twice each year. But passionate music concert-goers were not as common as passionate cinephiles: where nearly half of those who visited the cinema went at least five times a year, only 17% of those who went to popular or classical music events went five or more times. Between 1991 and 1999, the proportion of people attending popular music venues and opera/musicals declined, while the proportion attending classical music venues increased slightly.

### **Attendance at selected cultural venues, 1991-99**

#### **(% of population attending venue)**

Venue	1991	1995	1999
<i><b>Popular music</b></i>			
All households	28.6	26.9	25.4
Capital cities	29.2	27.6	25.6
Rest of state	27.5	25.8	25.0
<i><b>Classical music</b></i>			
All households	8.2	7.7	8.8
Capital cities	9.6	8.8	10.3
Rest of state	5.6	5.8	6.2
<i><b>Opera or musical</b></i>			
All households	20.1	19.3	16.3
Capital cities	22.5	22.1	19.4
Rest of state	15.7	14.8	11.2
<i><b>Cinema</b></i>			
All households	na	62.1	67.0
Capital cities	na	67.0	71.2
Rest of state	na	54.1	59.9

Source: Parmenter, C. and Muir, J. 'What Australians are spending on culture', Communications Research Forum, Canberra, October 2002.

[Household spending on music: data from household expenditure survey: consumer spending on music]

## *Broadcasting*

There are four sectors of Australian radio broadcasting:

- commercial: profit-making, privately-owned stations which earn most of their revenue from advertising. There are over 280 licensed commercial stations, most of which are parts of large networks of commonly-owned stations. Commercial radio broadcasts virtually exclusively the high rating styles of popular music. Imported music is dominant. Australian exponents of these styles are collectively guaranteed radio exposure through a self-regulatory quota system ("Australian content standards" – see below), requiring that up to 25% of music broadcast time should be devoted to Australian music;
- national public: publicly-controlled stations operated by the two national public broadcasters, the ABC and the SBS, and funded by the federal government. The ABC operates five national radio networks, including the youth-oriented Triple J (discussed in more detail in the next section) and ABC Classic FM (which plays classical, jazz and new music), and the international Radio Australia. The SBS transmits a national radio service in English and 67 other languages to all state capital cities and many regional centres. SBS is a manifestation of the official national policy of support to multiculturalism;
- community: non-profit, community-controlled or special interest services funded by station subscribers, sponsorship and small amounts of government funding, and staffed primarily by volunteers. There are over 300 licensed community stations with widely different formats; some have been created to serve particular ethnic communities and broadcast in languages other than English;
- narrowcast: services targeted to narrowly-defined special interest groups or very limited areas.

Audiences generally choose commercial stations over the national public and community stations, although the extent of the preference varies greatly in different places, particularly reflecting the number of services available. In the largest two cities, Sydney and Melbourne, around 70% of radio listening is to commercial stations, with a little under 20% for the national public stations. In the national capital Canberra, around 55% of radio listening is to commercial stations, with around 35% for the national public stations.

Australians spend about 80 minutes each day listening to the radio or playing CD's, tapes or records. Mostly, they are doing something else while they listen. They spend more time listening as they get older. Men spend a little more time listening than women, and people living alone listen a lot more than people living with others.

Australia's 258 commercial radio stations earned a little over \$A730 million in 2001/02, a small decrease on the previous year.

## *Recording*

The Australian recording industry is owned by local branches of the five major transnational companies plus News Ltd, and by a much larger number of small companies. The mid-size local companies have been bought by the transnationals. In recent years, the transnationals have mostly withdrawn from release of local artists performing other than the most popular styles. The only outlets for these artists are the small independent companies or, increasingly, self-release.

Sales of recorded music in Australia totaled \$A610 million in 2002, a fall of 6% on the previous year. Sales of CD albums and singles, which comprised 93% of the market, fell by 9%, while sales of DVD albums and music video, which comprised the rest, increased by 77%. Various reasons are advanced for the decline in CD sales in Australia and world-wide; suffice to note that it seems generally accepted that we are seeing the beginning of a longer term trend.

Local musicians' share of the Australian record market is relatively low by international comparisons. In 2000, Australian acts took less than a third of total sales, considerably higher than in Canada, but well behind the figures in Germany, France and the UK.

## **Domestic and imported record sales:**

### **% of total record sales, selected countries, 2000**

Country	Domestic	International	Classical
Australia	28	68	4
Brazil	75	24	1
Canada	12	82	6
China	47	53	-
France	51	42	7
Germany	40	52	8
Indonesia	53	47	-
Japan	78	22	-
Mexico	46	52	2
South Africa	23	74	3
United Kingdom	51	41	8
United States	92	5	3
<b>World</b>	<b>68</b>	<b>28</b>	<b>4</b>

Source: Table 3 in Throsby, D. 'The Music Industry in the New Millennium: Global and Local Perspectives', UNESCO, Paris, October 2002.

Although Australian record sales fell in 2002, collecting society revenues increased. The society administering the rights of public performance and communication to the public for Australian and New Zealand composers and music publishers, APRA, collected \$A101 million in 2001/02 from radio, broadcast and pay TV stations, venues playing music and on-line businesses using music in some form. This was an increase of 4% on the previous year. Of the total, 62% came from Australian and NZ broadcasters and 16% came from overseas. APRA also manages the reproduction rights licensing business of another music collecting society, AMCOS. Together, their revenues totaled \$121 million in 2001/02, and have increased by an average of 6% compound for the last four years.

### *International activity*

The activity most significant financially is the export and import of recorded music – shown mainly as trade in intellectual property rather than physical goods. The transactions therefore are payments of royalties. While there is a significant international trade deficit for Australia, the increase in exports is 148% over the period.

### **Royalty income from music 1995 – 2001 \$A**

	Value of exports	Value of imports
1995	\$29m	\$166m
1996	35	165
1997	40	203
1998	42	167
1999	46	171
2000	57	209
2001	71	229

Source: ABS Balance of payments and international investment position

As is the case in many countries, the export of local artists on sound recordings largely depends on the transnational record companies, with the smaller independent companies serving as talent scouts, releasing new artists onto the domestic market.

Excepting for hand-made instruments and Maton guitars, Australia imports nearly all of its musical instruments. In 2001 the retail value of instrument imports was \$A455 million. Compared to the previous year there was a 3% increase in value of imports, but a 5% decrease in number of units (70,000). The decrease was strongest in the instruments with which children traditionally begin their musical experiences.

Music tours into and out of Australia. Australian popular artists tour in support of their CD releases. Artists in other musical styles tour, sometimes with government assistance, either to attempt to establish themselves on the international market or in support of government trade or diplomatic promotion. Since for the most part they have not been taken up by transnational record companies, the tours may not be intended to promote CD sales.

## **2. GOVERNMENT MEASURES AND WHY THEY MATTER**

Australia's federal, state and local governments maintain measures of various kinds to support the production, dissemination, and archiving of musical work. The mechanisms used include subsidies to individuals and organisations; the ownership and operation of certain institutions; and laws about industry structure, trade and media content. Key aspects of the main measures in place are:

- The Commonwealth Government is the major government provider of funds supporting musical performance, broadcasting and archives, and the main regulator of the music business. Local and state governments are the major government providers of funds for performance venues.
- Support for music has two dimensions: *support for local* cultural expression, and *openness to international* cultural exchange. The main policy objects are the *composition* of new work by Australians; the *performance* by Australians of music from around the world; and the connection of *audiences* to high quality work composed and performed by Australians and others. Substantial funding goes to organisations, particularly orchestras and opera companies, which perform extensive repertoires of work composed by non-Australians and include overseas artists in many of their performances. The emphasis here is artistic quality or excellence.
- Most of the subsidies which relate wholly to music are directed to performance and broadcasting organisations, rather than individuals or particular projects.
- Radio broadcasting is subject to more liberal rules than television about foreign ownership, and less onerous obligations about local content.

Activity	Measure	Cwlth	State	Local
<b><i>Creation</i></b>				
Composition, instruments; musical practices	Subsidy	**	*	
<b><i>Performance</i></b>				
Venues	Ownership and operation Subsidy		**	**
Organisations	Subsidy	**	*	
Domestic touring by musicians	Subsidy	*	*	
International movement of people	Law	**		
<b><i>Broadcast</i></b>				
Public broadcasters	'Ownership' and operation	**		
Allocation of spectrum:	Law	**		
• Sectoral diversity				
• Free of charge				
Content requirements	Law and self-regulation	**		
<b><i>Industry structure</i></b>				
Intellectual property	Law	**		
Competition	Law – not industry specific	**		
Foreign ownership	Law – not industry specific	**		
<b><i>Export</i></b>				
	Subsidy	*		
<b><i>Archives</i></b>				
Organisations	Ownership and operation Subsidy	**		
<b><i>Education</i></b>				
Organisations	Ownership and operation Subsidy	*	**	

\*\* Major contribution

\* Some contribution

Little or no contribution

#### *Creation*

The federal government's arts support and promotion agency, the Australia Council provides smaller grants and funding for special initiatives to support 'the highest quality work across the broad range of Australian music practice' – meaning work that has demonstrated excellence and work that is developmental or has demonstrated potential. It spent \$3.8 million on this in 2000/01. Support can be provided to all forms of music - including dance music, rock, country, pop, world music, folk, jazz, blues, improvised music, classical, contemporary classical, sound art, electronic, early music, Indigenous, non-Western traditional and classical, and music which crosses cultural boundaries and musical genres – and to different music practices - such as work by established or emerging artists, work by and for young people, practices that assist communities to participate in and have quality musical experiences, instrument-making and sound-building, experimental and emerging art practices, and the work of organisations servicing music artists.

## *Performance*

Australian governments spent \$A201 million on performing arts, including music, and nearly \$150 million on performing arts venues in 2000/01. The Commonwealth is the major provider of funds for performing arts, particularly music, contributing nearly half that total. State governments are the major supporters of performing arts venues, contributing nearly two-thirds of that total. If multi-purpose public halls and civic centres are included, local governments are by far the most important government funder of venues. The contributions of all levels of government to performing arts and performing arts venues are dwarfed by the predominantly Commonwealth contribution to broadcasting, including radio broadcasting.

### **Government cultural funding 2000/01**

(selected categories, \$m)

Activity	Cwlth	State/Territory	Local	Total
Performing arts	95.9	76.2	28.6	200.8
<i>Of which music</i>	<i>54.9</i>	<i>17.8</i>	<i>NA</i>	<i>NA</i>
Performing arts venues	5.5	93.5	48.8	147.8
Public halls and civic centres	-	1.1	132.5	133.6
Broadcasting and film	853.0	47.1	2.2	902.3
<i>Of which radio and TV services</i>	<i>777.2</i>	<i>0.2</i>	<i>NA</i>	<i>NA</i>
Community cultural activities	53.3	21.3	17.8	92.4

Source: *Cultural Funding by Government 2000/01, ABS cat no 4183.0 (August 2002)*.

**Music performance organisations:** The bulk of the funds provided by the federal government for music goes to major organisations, and is administered by the Major Performing Arts Board of the government's arts support and promotion agency, the Australia Council. These organisations include companies specialising in dance, music, opera, theatre (including circus) companies or hybrids of these forms, where they demonstrate high artistic standards, an ongoing commitment to the development of the artform and artists, a sizeable and increasing audience base and financial viability. In 2000/01, most of the \$68.9 million spent on major performing arts organisations went to symphony orchestras based in each State capital city, the national opera and ballet companies and their orchestra, some state-based opera and ballet companies, the Australian Chamber Orchestra and Musica Viva Australia, an organisation that tours chamber music and presents performances in schools.

**Domestic touring** of individual musical acts is also supported by grants or guarantees against loss.

**International movement of people:** A specific category of visa applies to overseas entertainment industry workers, including musicians and their crews, who visit Australia temporarily to work. Australia's policy 'seeks to facilitate the Australian community's access to a wide range of social and cultural events and activities without jeopardising the employment of Australians in the industry'. Incoming entertainers need to satisfy a 'net employment benefit' test, which, for touring musicians, is generally satisfied by the inclusion of an Australian support act in their concerts. More liberal rules apply to musicians performing in major festivals. Industrial agreements covering local orchestras require vacancies to be filled first by suitably qualified Australian musicians.

## *Broadcast*

Under the Australian Constitution, communications is a federal responsibility. The federal government intervenes in broadcast markets in four main ways which affect music and the music industry.

- It funds two national, public broadcasters which operate radio, TV and online networks;
- it allocates radio frequency spectrum free of charge to them and to non-profit community broadcasters;
- it provides some subsidies to community broadcasters; and
- it oversees 'light touch' regulatory arrangements which set targets for Australian music broadcast.

## *National public broadcasters*

The ABC operates six national radio networks and the international Radio Australia. Three of the national networks have a major emphasis on music: the youth-oriented Triple J, which emphasizes new, especially new Australian music; ABC Classic FM, which plays classical, jazz and new music; and the recently-established Internet and digital radio station DIG. The spoken

word network Radio National has some specialist music programs, and the network of local talk radio stations plays some music.

The SBS transmits an AM and an FM radio station in Sydney and Melbourne, and a single national radio service to all state capital cities and many regional centres. It broadcasts in English and 67 other languages, with a different language each hour. An hour-long alternative music program, 'Alchemy', broadcasts to young Australians each night, except Fridays, with a range of international music broadcast overnight.

Of particular interest is the ABC's national youth-oriented FM radio network 'Triple J'. It began broadcasting as a Sydney AM station in 1975, moving to FM in 1980. It expanded its coverage first to other capital cities, and, since 1995, to dozens of regional centres and country towns. This expansion has occurred alongside the introduction and expansion of commercial and community FM radio stations, particularly in country areas. Triple J 'strives to be an entertaining, innovative and accessible voice for young Australians, forging a broad musical identity and giving emphasis to new and emerging music and artists'. It emphasises:

- 'New' music, with a particular emphasis on 'Australian'...  
"New music is Triple J's trademark... Our motto...is fresh, and most of all, Australian."
- Local live music – with a weekly 'Live at the Wireless' show broadcast from different venues around the country.
- Local new talent – 'Unearthed' is the latest in long line of similar projects, which began soon after the station launched in the mid-1970s, to discover, record commercially (on the ABC's record label) and broadcast the work of previously unknown Australian musicians. Similar projects are undertaken by community and some commercial stations and the SBS: the SBS's Alchemy program is currently running a 'Sonic Allsorts' project, inviting musicians and bands under 25 making modern music featuring a language other than English, to submit material for professional recording, national airplay and additional media exposure (eg. on SBS Television). Example genres include: Global Hip-Hop, Afro-Beat, Indian Fusion, Raga, Reggae, Dub, experimental electronica, and 'hybrid allsorts'.
- Triple J's website provides extensive information about the local music scene.
- Integration of music and other aspects of youth culture:

'Leading and contributing to the expansion of youth culture is the main objective, as well as encouraging freedom of opinion and artistic endeavour, and presenting independent and accurate news and challenging information in a global context.'

The station has its own independent newsroom within the ABC, and a dedicated youth reporter in Federal Parliamentary Press Gallery.

Triple J has provided an alternative to commercial radio for young adults - an opportunity to hear new and different music and to connect with other young Australians around the country. It has been particularly popular in smaller markets outside the major cities which have fewer radio stations. A new metropolitan commercial FM network established by the UK-based Daily Mail Group in recent years has taken a lot of Triple J's audience in the capital cities, but Triple J's audience remains very strong in its target demographic in country areas. Over half of its 117 transmission sites are 'self-help' re-transmission facilities established by local communities themselves to provide access to the service.

### ***Reservation of spectrum for non-commercial broadcasting***

Australia's broadcasting laws allow the Minister for Communications, Information Technology and the Arts to reserve frequencies in the 'broadcasting services bands' (MF/AM, VHF/FM, UHF) for the national and community broadcasting sectors. The concept of 'sectoral diversity' in Australian broadcasting, achieved through the balancing of opportunities for each sector to establish stations in different parts of the country, is a key part of the government's approach to encouraging diversity in broadcast content. These non-commercial broadcasters are not required to pay the annual licence fees charged to commercial broadcasters for their frequencies. These fees totaled \$15.6 million in 2000/01. Nor are they required to bid for new frequencies at auction, like commercial broadcasters. In recent years, successful bids for new commercial FM frequencies have ranged from \$13.5 million for Gosford on the NSW Central Coast, and \$67 million for Brisbane, to \$155 million for Sydney.

These arrangements for providing spectrum for non-commercial purposes thus involve a large implicit subsidy to national and community broadcasters. They also infringe the principle of open 'market access' in trade agreements. Frequencies reserved for national services are not available at all to entities other than national broadcasters. Frequencies reserved for community services are allocated through competitive, merit-based selection processes, but the competing entities are expected to be controlled by people residing within the service area. Thus, overseas entities are effectively excluded from access to these frequencies. The arrangements were criticised by the Productivity Commission, which reviewed Australia's broadcasting laws in 1999-2000. It recommended that the value of spectrum reserved for non-commercial broadcasting services should be estimated and reported publicly.

The role of national public broadcasters has been discussed above. Community broadcasters with a special focus on music or particular musical genres have been important in broadening the range of music available to Australian audiences, and the opportunities available to local musicians to find audiences for their music. They include the MBS network of 'fine music'

stations; independent music and information stations like Brisbane's 4ZZZ and Melbourne's 3RRR; and Aboriginal and ethnic stations.

### **Subsidy**

In addition to reserving spectrum for community broadcasters, the Commonwealth government provides some direct subsidy to the sector through the Community Broadcasting Foundation. In recent years, the community radio sector has also been assisted by an Australian Music Radio Airplay Project (AMRAP), established as part of the government's changes to intellectual property laws to allow the parallel importation of sound recordings. AMRAP is a community radio initiative that works with musicians and community broadcasters to create increased radio airplay opportunities for contemporary Australian music. It offers services to help Australian musicians get their new releases to community radio stations and support for community radio stations for activities that help promote Australian music.

### **Local music quotas**

There are no directly binding minimum requirements for the amount of Australian music broadcast on Australian radio stations. However, the commercial, national public and community stations adhere to 'codes of practice' which require:

- Commercial stations: varying proportions of Australian music (music performed by Australians) depending on the station format – from 25% for mainstream, album-oriented rock, 'Top 40' stations, or alternative stations; through 15% for 'Hits & Memories', 'Classic Hits' and News Talk/Sports Talk formats; to 5% for nostalgia and jazz stations. Within those amounts, there are sub-targets for 'new' Australian music, meaning recordings released within the last 12 months.
- National stations: the ABC sets its own targets for Australian music performance on its radio networks. In 200/01, Triple J played 40% Australian music (target 30%), ABC Classic FM 34%, Radio National 28% and Local Radio 33% (targets 25%) and the international service Radio Australia 90% (target 90%).
- Community stations: 25% of the total number of musical items broadcast on most community stations to be composed or performed by Australian citizens or ordinary residents, and 10% of the music on classical and ethnic stations.

There are several important features of these arrangements. First, different local content targets are set for different station formats. Second, the concept of 'Australian content' is about the nationality and place of residence of the performers, not the composers. (Before 1992, there was a sub-quota for Australian composition as well.)

Third, the consequences of failure to comply with the codes varies for different sectors of the radio industry. Further, the consequences for commercial and community stations are less severe than those which flow from failure to comply with the requirements for Australian content on television. The codes applying to commercial and community stations need to be registered with the broadcasting regulator, the Australian Broadcasting Authority. They are intended to satisfy, for licensed radio stations, one of the policy objects of the Authority, which is 'to promote the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity'. Only minimal sanctions may be imposed, initially, where codes are breached. However, if there are repeated breaches which suggest that the code is failing, the regulator may determine a program standard, or make compliance with the code a condition of a particular station's licence. Fines may be imposed where a licensee breaches a program standard or licence condition. In extreme cases, a licence may be suspended or revoked. The regulatory arrangements for Australian music on licensed radio stations are less interventionist ('co-regulatory' rather than directly 'regulatory' in the first instance) than those applying to Australian programs on licensed television services, which are the subject of program standards. This reflects the 'lighter touch' regulation of radio compared with television since 1992 (see 'Industry Structure' below). However, the sanctions which may ultimately be imposed by the state still mean the regulatory arrangements for Australian music on radio satisfy the definition of 'measures' in the General Agreement on Trade in Services.

The national public broadcasters, the ABC and SBS, are accountable under their legislation primarily to the Parliament rather than to the broadcasting regulator, and no direct sanctions can be imposed where they fail to meet their self-imposed Australian music targets.

### **Industry structure**

Many general laws apply to the music industry. However, the most important are laws about intellectual property and ownership of media and other enterprises.

**Intellectual property:** Australia is a member of most of the major international intellectual property treaties and agreements, including the *Berne Convention for the Protection of Literary and Artistic Works* (Berne Convention); the *World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPS Agreement); the *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations* (Rome Convention); and the *Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms* (Geneva Phonograms Convention). It has not yet acceded to the 1996 World Intellectual Property Organisation conventions, although it has indicated its intention to do so once the necessary domestic legislation is passed.

The incorporation of the provisions of these international agreements into domestic law provides the basic legal protection of music compositions, performances and recordings which underpins the commercial activities of musicians and the music industry. They balance the rights of composers, performers, record companies and others to control and trade their output, with those of users.

**Competition and ownership:** General competition laws outlaw a range of anti-competitive practices, including mergers resulting in ‘a substantial lessening of competition in a market’. Specific laws about the ownership of broadcasting enterprises prevent one operator controlling or holding a substantial stake in more than two commercial radio stations in a market (“two-to-a-market”), or more than one of the major media forms (commercial television, commercial radio, major newspapers) in a market (‘cross-media’ rules). General foreign ownership laws allow the federal Treasurer to block acquisitions of Australian assets by non-Australian residents. Specific laws which prevented substantial foreign ownership or control of Australian commercial radio stations were repealed in 1992, although they were retained for commercial television stations.

### *Export*

The Commonwealth government makes modest financial assistance available to musicians and their managers and to record companies to assist in establishing a presence internationally. The funding passes through the arts funding body, the Australia Council, or the international trade promotion agency, Austrade. Most of these funds go to popular music groups. Other funds come from the Department of Foreign Affairs to assist in foreign touring or a presence at the Australian booth at international trade fairs. Often these tours are intended more to show the flag in the diplomatic context than as trade initiatives.

### *Archives*

The Commonwealth Government funds a National Screen and Sound Archive, Screensound, to collect, store, preserve and make available screen and sound material relevant to Australia’s culture. It has offices in all state capital cities and a head office in the national capital Canberra. It received \$A40.9 million from the Commonwealth in 2001/02. The majority of this money is spent on film and television material. From 1 July 2003, the archive was integrated with the Australian Film Commission.

### *Education*

Expert music instruction is by and large not available in Australian government primary schools – a great weakness of the system. There are specialist music teachers in most government-run high schools. The music provision is strongest in privately owned “independent” schools, some of which have elaborate programs and magnificent facilities. There are about 35 conservatoires and university music departments offering degrees in music or in which music can be an elective, and many more tertiary vocational schools also offer music as a subject.

### **Multicultural policy**

Australian governments have policies to encourage multiculturalism. For example, the Australia Council, the Commonwealth Government’s arts funding and advisory body, has made special provision to foster multiculturalism in the arts since early in the 1980s. The current statement of the policy, Arts for a Multicultural Australia, states as its objective:

The Australia Council values the traditions and capacity for innovation that exist in Australian multicultural and Aboriginal and Torres Strait Islander society and encourages the creativity and artistic expression resulting from this diversity.

*The policy includes these goals:*

*To achieve high quality and well profiled artistic practice and content by:*

- Encouraging the development and creation of multicultural work by artists of all backgrounds;
- Supporting artists’ choices about engagement with their cultural heritage;
- Creating conditions for artists to excite audiences and create demand;
- Enabling innovative companies to create and support more new multicultural work;
- Enabling large organisations to develop and profile multicultural arts practice; and
- Promoting artists and their multicultural arts practice.

*To foster attitudinal change promoting inclusiveness in the arts sector by:*

- Recognising the different centres and forms of expression of multicultural Australia in the arts;
- Stimulating critical debate;
- Promoting the achievements and diverse artistic choices within multicultural arts practice; and
- Promoting the Australia Council’s values of equity and access.

*To develop a sustainable infrastructure for multicultural arts practice by:*

- Utilising existing arts and government infrastructures more effectively;
- Employing existing multicultural policy more effectively;
- Developing partnerships; and
- Training leaders.

*The policy can be read at <http://www.ozco.gov.au/resources/ama/object.html>*

*The Australia Council also has a policy to assist the development of indigenous music and arts.*

<http://www.ozco.gov.au/atsia/natsia/pdfs/policy.pdf>

### **3. IMPLICATIONS FOR INTERNATIONAL TRADE AGREEMENTS**

*The objective of international trade agreements in this age of international “trade liberalisation” is to facilitate trade through a greater understanding and harmonisation of trading arrangements between countries and to remove government interventions which favour domestic providers over those of the trading partner. (Such interventions are termed “trade-distorting” or “unfair trading”. All providers should receive “national treatment”.) Regulations that apply equally to domestic and foreign providers may or may not be effective or desirable, but they cannot be challenged on the basis that they are discriminatory.*

*It therefore is the government interventions such as those described in the previous section which may be the main target of countries negotiating a trade agreement.*

*The interventions by Australian governments which in theory could be challenged in the negotiation of free trade agreements include these:*

- Subsidies to music activity which are not equally available to foreigners (i.e. in this case, virtually all music subsidies)
- Government purchases (procurement) of music or music services, where preference is given to local music or local service providers over foreigners – for instance, a government broadcasting organisation’s procurement program to purchase or commission musical works or programs only from local producers
- Local music content quotas required of broadcasters, excluding foreign music from that period of broadcast time
- Free provision of broadcast spectrum to public and community radio stations, whereas commercial broadcasters have to bid at auction for spectrum. Perhaps this is a problem only if foreign bidders do not receive national treatment.
- Obstacles to foreign ownership of media organisations
- Government ownership of television or radio -- could be challenged because the subsidised and owned stations compete with commercial broadcasters
- Taxation concessions in support of local music or culture, e.g. tax deductions for donations to local culture
- Restrictions on the admission of foreign artists to perform in Australia (although most countries have such restrictions).

As shown above, much of that which is most valuable in Australian musical culture depends on these government interventions, and probably would not survive their termination.

It is pleasing to report that the Australian government has stated in international trade fora its intention to retain its prerogatives to support local culture. In such circumstances it is extremely important to define just what is meant in this instance by the extremely flexible term, “culture”. In the recently signed Australia/Singapore Free Trade Agreement, the Australian government stated this definition:

*“Culture” includes the creative arts(1), cultural heritage(2) and other cultural industries, including audio-visual services, entertainment services and libraries, archives, museums and other cultural services;*

*broadcasting and audio-visual services, including measures relating to planning, licensing and spectrum management, and including:*

*services offered in Australia;*

*international services originating from Australia*

- 1) *Creative arts include: the performing arts - including theatre, dance and music - visual arts, craft and design, literature, film, television, video, radio, creative on-line content, indigenous traditional practice and contemporary cultural expression, and digital interactive media and hybrid arts work which uses new technologies to transcend artform divisions.*
- 2) *Cultural heritage includes: ethnological, archaeological, historical, literary, artistic, scientific or technological moveable and built heritage, including the collections which are documented, preserved and exhibited by museums, galleries, libraries, archives and other heritage collecting institutions.*

This definition has the support of the Australian cultural sector.

(It may not necessarily be supported by, for instance, developing countries who see “culture” as extending seamlessly into the practices of everyday life, perhaps including traditional agricultural practices. The French also have argued for the inclusion of agriculture on the basis that it is the basis for the traditional life of the countryside. This, however, means that any attempt to negotiate an exclusion of culture from free trade agreements becomes also an argument for the exclusion of agriculture and one that would be much more problematical.)

The Australian position for the exclusion of culture from agreements under the General Agreement on Trade in Services, GATS, was described in its Intervention on Negotiating Proposal on Audiovisual Services at the CTS Special Session in Geneva, July 2001. Here are some paragraphs from the intervention (not in the original sequential order).

*Australia has long recognised the essential role of creative artists and cultural organisations in reflecting the intrinsic values and characteristics of our society, and is committed to sustaining our cultural policy objectives within the context of multilateral trade negotiations.*

*As reflected in the proposals, there are factors which distinguish cultural goods and services from other goods and services. Cultural activities make a unique contribution to the social, economic and political fabric of any country.*

Market forces alone are rarely sufficient to allow cultural organisations and individuals to be fully self-supporting. This is true for the cultural sector worldwide, but in Australia's demographic and geographic circumstances it is particularly the case... The important mix of subsidy, regulation and tax concessions ...is a necessary subvention in the national interest to sustain Australian creative resources...

Concerning the audiovisual sector, which is of special concern in this arena, Australia stated:

It is essential that Australia's media reflects Australian identity, character and cultural diversity and provides an Australian perspective on local and international events. Measures such as Australian local content regulations and limits on the foreign ownership of broadcasting services have been put in place to ensure this perspective.

*Australia remains committed to preserving our right to regulate audiovisual media to achieve our cultural and social objectives and to maintain the broad matrix of support measures for the audiovisual sector that underpin our cultural policy; including retaining the flexibility to introduce new measures in response to the rapidly changing nature of the sector.*

In the regimes of the World Trade Organisation (WTO), cultural issues fall mostly under GATS. In the current Doha Round of negotiations for GATS, the Australian government, consistently with the position stated above, has declined to make any offers in culture.

Australia recently concluded a Free Trade Agreement (FTA) with Singapore, in which culture as defined above was specifically and totally excluded. Australia is now engaged in negotiation of an FTA with the USA. This is a much more difficult proposition because, firstly, the negotiating partners are so unequal in size and power, and secondly, it is the USA that is the main protagonist for "trade liberalisation" in the cultural area, especially in audiovisual services. The audiovisual sector is the USA's second-largest source of export income. The USA has been aggressive in seeking to remove all barriers to the export of its film and television productions, seeking, for instance, the termination of local TV content quotas. On the same principle, it could also seek the termination of music content quotas.

No statement has yet been issued about US requests of Australia. However, there are some expectations based in part on rumour, and on what has been negotiated recently in FTAs between the US and Chile, and the US and Singapore. It is a known strategy of the US that it seeks in these bilateral agreements to set precedents which move its negotiating boundaries forward for negotiation of subsequent agreements with other countries. It seems also that instead of continuing to mount a direct attack on some cultural protection measures, the US makes some apparently sympathetic concessions -- which will in due course be overtaken and nullified by other change.

An example of the latter is the "standstill" agreement. Australia expects that the US may propose to allow the current local content provisions to continue under a standstill agreement (as it did with Chile), whereby they may not be changed except possibly to be weakened. A standstill agreement would make no allowance for changing technologies or circumstances. So, for instance, Australian broadcasting will change from analogue to digital in the near term, and when it does so, the local content provisions would have to be abandoned.

Note that the Australian government's position provided for "*retaining the flexibility to introduce new measures in response to the rapidly changing nature of the sector.*" This recognises the perils of a standstill agreement. It remains to be seen whether the US will propose standstill and whether the Australian government will have the strength to withstand the pressure to accept. There is, incidentally, a useful concept that applies here: that of "technological neutrality" -- cultural *content* is protected, regardless of the technology used to produce or deliver it.

This concept has application in consideration of e-commerce. Based on communications over the years and on the precedent of the US/Chile FTA, it is expected that the US will attempt to introduce totally free trade in e-commerce. This is another example of looking beyond present circumstances to a likely future where e-commerce is huge.

There is as yet no generally accepted definition of e-commerce. However, in the Chile agreement, the US so defines it as to include all digital content. Virtually all music except live acoustic music would fall under such a definition, since music is now created, produced, recorded and transmitted digitally. If a government agreed to avoid all discriminatory interventions in e-commerce, under the US definition it would be prevented from giving any preference or support to a great range of local music activity. One solution proposed by some members of the Australian cultural sector is that in the area of e-commerce, "content" should be separated from "carriage". There is no objection to negotiation of such things as inter-operability of e-commerce systems. However, on the principle of technological neutrality, cultural content should be excluded from the FTA concerning e-commerce.

Recently, the US has adopted a new negotiating tactic for e-commerce. It has proposed a principle of applying "the most liberalizing aspects of the existing agreements to products being traded electronically". The intention here is to be able to bring e-commerce under both GATS and the General Agreement on Tariffs and Trade, GATT, heretofore regarded as the agreement for trade in goods as opposed to services. The point here is that under GATT, there is an absolute prohibition on any form of content quota (except for that allowed for cinema-screen quotas). The EU has opposed this proposal as representing an attempt

to pick and choose those parts of the agreements that best suit your interest. It also argues that e-commerce should largely be regarded as a service.

## **Intellectual property**

The Australian cultural sector has not been especially concerned with intellectual property issues in the context of free trade agreements or the TRIPS (Trade-Related Aspects of Intellectual Property) negotiations under the WTO. Essentially, this is because no advantage is sought for Australian IP owners over foreign owners under domestic law. The objective rather is international harmonisation of IP law.

The US is expected to ask for some changes in Australian IP law and practice. Inasmuch as it is believed that the changes would strengthen Australian practice, the cultural sector has raised no objections.

## **Finally, a cautionary tale**

Trade negotiations are conducted on the basis of either a “positive list” or “negative list” protocol. A positive list agreement includes only those things specifically added or included; the GATS agreements are based on positive list negotiations. For a negative list negotiation, everything is included unless specifically excluded; GATT and current bilateral negotiations use a negative list approach.

The problem with a negative list approach is that all eventualities have to be envisaged in advance. Also, once these agreements are in place, it is very difficult to reverse them.

Australia signed a negative list agreement with New Zealand. The government assured the Australian audiovisual sector that its concerns had been taken care of. However, years later, some New Zealand television producers brought an action in the Australian courts to have New Zealand productions accepted as Australian under the Australian television local content regulations --and won. To have foreign content accepted under a regulation intended to exclude it is an absurd proposition, but it came about because of a failure to anticipate all of the possible outcomes of a negative list agreement. As it turns out, little New Zealand content has actually been shown. However, imagine the consequences of such an error in an FTA with the USA!

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## APPENDIX 2

# Music in Germany

A report for the ManyMusics Project of the International Music Council, October 2003

Hannes Gmelin

In the federal system of Germany, culture in general is less a matter for the federal state, but the responsibility instead belongs to the individual states' (*Länder*) and local authorities. With further integration into the European Union, an additional layer of policy is added. Nevertheless, policy and legislation of the German state set important general conditions.

The German Constitutional Law (*Grundgesetz*) states that art and science are free (article 5). Taking that as a starting point, the German Constitutional Court (*Bundesverfassungsgericht*) established the principle of Germany as a cultural state (*Kulturstaatsprinzip*). This principle ranks equally among other important constitutional basics like justice or social principles and obliges the federal government not only to guarantee the freedom of these areas but also to preserve the cultural heritage and even to support the arts actively. Similar passages can be found in the constitutions of all German states and even in the Treaty of the European Union of 1992 (article 151).

Of course, all the different political bodies respond differently to this obligation. The purpose of this paper is to present these responses in the current situation as they concern music and to evaluate any threat to them by free trade negotiations. Different aspects of music in Germany will be presented: after a short description of the state of play with special emphasis on public expenditures, broadcasting and the German music industry, we discuss the relevant government measures. It is structured according to actual public debate in Germany, focussing on intellectual property, quotas and the question of so-called high and popular culture.

Please note: all figures presented here are in current/actual prices.

A federal authority for culture was only created in 1998: the State Minister at the Federal Chancellery for Culture and Media (*Beauftragter der Bundesregierung für die Angelegenheiten der Kultur und der Medien BKM*). With that authority, the government attempts to highlight its cultural policy and achieve more influence internationally. The BKM has stated that its main goal is to moderate societal discourse, formulate a consistent order policy, to create a complementary policy for the new German states, and to integrate its policy more into international cultural policy.

In order to realize these tasks, the BKM has a budget of € 885 million per year, as of 2001 (2000: € 854 million, see explanation after Table 1), as well as around 190 employees. The position and the budget of the BKM are not marginal - it really is the spokesperson of the German cultural policy - even though the representative does not have the title of "Minister" and the vast majority (90 %) of cultural expenditures is provided by the individual states and the local authorities.

Total expenditures for culture (in Mio. €)	Total	Federal government	States ( <i>Länder</i> )	Local authorities
<b>1991</b>	4.192,08	703,08	1.554,56	1.935,08
<b>1992</b>	5.210,80	550,18	2.158,97	2.501,91
<b>1993</b>	5.516,02	544,21	2.353,78	2.586,82
<b>1994</b>	5.542,09	401,82	2.585,26	2.554,68
<b>1995</b>	6.454,71	424,76	2.761,38	2.683,51
<b>1996</b>	6.354,56	197,23	3.030,34	3.186,49
<b>1997</b>	6.052,86	214,49	3.165,94	3.196,98
<b>1998</b>	6.125,94	223,15	3.178,89	3.247,98
<b>1999</b>	6.258,05	390,94	3.289,80	3.316,82
<b>2000</b>	6.300,34	346,10	3.295,23	3.115,92

**Table 1 Culture expenditures in Germany**

Note: "Culture" comprises the expenditures for theatres, maintenance of musical life, non-scientific libraries and museums, heritage and historical monuments, other cultural maintenance as well as the cultural bureaucracy.

Source: Statistisches Bundesamt [Ed.] (2001, p. 23)

In October 2003, 1 Euro = approx US\$1.13

(This Table is a good example of the difficulties of statistics in the cultural domain. Firstly, the area of expenditures is named "culture" but there is another category in the budget entitled "close to culture" comprising broadcasting, foreign cultural affairs, churches, scientific libraries and museums as well as some schools. This category accounts for roughly € 2,8 billion, counting for culture yes or no (officially: rather no?). Secondly, this may lead to confusion with the budget of the BKM. For 2000, it is given with € 854 million but the Table only shows € 346,1 million. Both figures are correct, knowing the difference between the two positions "Culture" and "close to Culture". A large proportion of the federal expenditures goes to the Foundation of Prussian Cultural Heritage (*Stiftung Preußischer Kulturbesitz*) that is deemed scientific and thus not cultural. Thirdly, the figures from the Federal Statistical Office of Germany are cleared of the payments between the individual budgets. Thus the "Total" equals public cultural consumption whereas the budgets of the individual bodies may include money which is passed on to another body. For both of them it is an expenditure (appearing in two columns), certainly, but the consumption occurs only once. For that reason the total is not the sum of the expenditures of the individual branch bodies - but in fact a little less.)

These expenditures for culture have to be measured and evaluated against the total turnover of the cultural sector. Compiled with data from the Statistical Office of Germany, the following figures are given for 1999:

Total Value of the German Cultural Sector grouped by branches (in Mio. €)	1996	1999	Change in %
A1. Music	5.217,4	5.664,1	9
Composers	183,6	254,0	38
Publishers, Music Industry	5.033,9	5.410,1	7
A2. Books	14.178,4	15.680,5	11
Authors	950,0	1.219,6	28
Publishers	13.228,5	14.460,9	9
A3. Arts	1.372,8	1.448,2	5
Artists	719,3	807,2	12
Exhibitions etc.	653,5	641,0	-2
A4. Film	6.997,0	10.090,8	44
Artists	462,7	602,3	30
Production, Exhibition	6.534,3	9.488,5	45
A5. Performing Arts	1.841,4	2.648,9	44
Artists	499,5	639,2	28
Theaters, Dance etc.	1.341,8	2.009,6	50
A6. Broadcasters	5.415,1	7.125,9	32
<b>A Cultural Sector (narrow sense)</b>	<b>33.649,9</b>	<b>40.796,2</b>	<b>21</b>
B1. Other Printing	21.281,0	25.380,7	19
B2. Other Retailers	2.310,7	2.626,3	14
B3. Other Companies	1.651,6	1.769,0	7
<b>B Other Culturally Relevant Branches</b>	<b>25.243,3</b>	<b>29.776,0</b>	<b>18</b>
<b>Total Cultural Sector A+B</b>	<b>58.893,2</b>	<b>70.572,2</b>	<b>20</b>

Table 2 Total value of the German cultural sector

Note: Some artists are counted more than once, however, they figure only once in Total A

Source: Söndermann 2002, p. 15

In October 2003, 1 Euro = approx US\$1.13

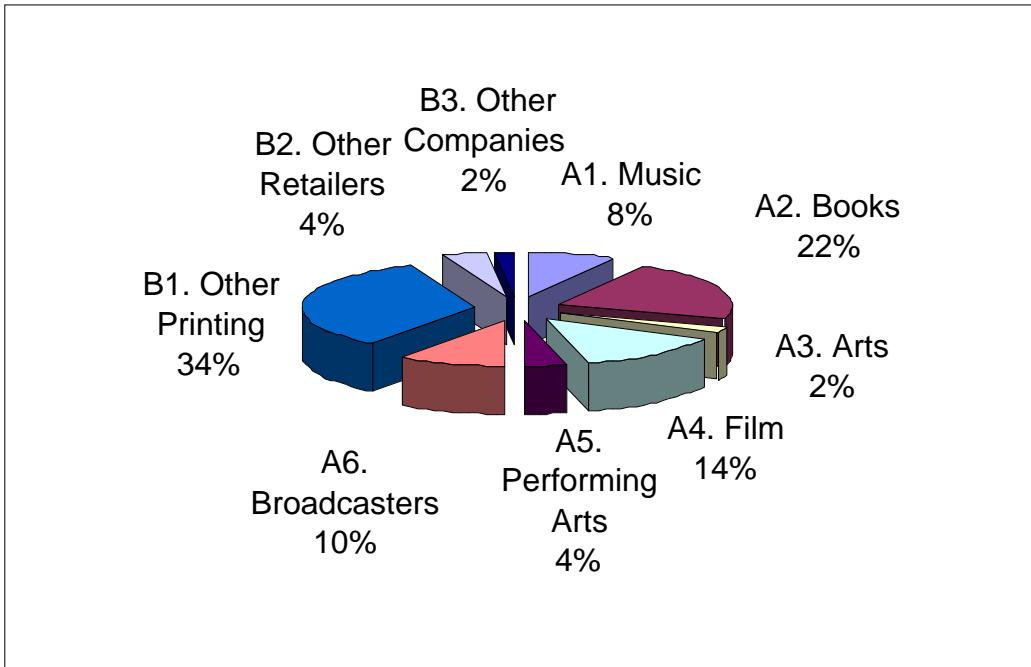


Figure 1 Distribution of the total value of the German cultural sector by branches

Note: Some artists are counted more than once

Source: Söndermann 2002, p. 13

### **State of Play**

Musical life in Germany is very rich and varied. Due to historical developments, the existing federal system and a population spread rather evenly over the whole territory, there are hundreds of orchestras, theaters, opera houses and the like. For reasons like attraction regional attractiveness and reputation it has for many years been a joy and a privilege for local politicians to generously support culture. In times of budget constraints, however, the high costs of sustaining this infrastructure moves to the forefront, even more so when considering the spending of leisure time where theaters and concerts only achieve rather low attendance figures.

Spending of leisure time of people older than 14 in 2003: percentage of each group participating in the activity

Activities	More than once a week						
	Total	Men	Women	14-19	20-39	40-59	60+
Reading newspapers	81,7	82,5	80,9	54,8	74,2	87,9	89,4
Reading magazines	38,5	37,8	39,1	34,7	32,2	39,3	44,9
Reading books	36,9	27,7	45,5	32,6	35,5	36,4	40,1
Watching TV	89,9	88,9	90,9	90,1	84,2	89,6	96,1
Listening to the radio	82,5	81,9	83,0	77,0	80,8	85,3	82,6
Listening to music (cds etc.)	43,0	44,8	41,3	78,2	57,5	39,4	23,1
Watching video	7,5	8,4	6,7	13,3	9,0	6,4	5,7
Going to the cinema	0,4	0,5	0,3	1,6	0,6	0,1	0,1
Going to theater, concert	0,3	0,3	0,3	0,4	0,4	0,3	0,3
Doing handicraft	21,4	21,7	21,1	9,0	17,6	21,8	29,9
Doing sports	38,1	40,2	36,2	65,5	39,0	34,1	34,6
Going out (bars etc.)	10,3	13,2	7,7	30,2	15,0	6,3	4,8

Table 2 Spending of leisure time in 2003

Source: [http://www.ard.de/intern/index\\_view.phtml?k2=4&k3=4&k4=2](http://www.ard.de/intern/index_view.phtml?k2=4&k3=4&k4=2)

As in many Western countries, the use of mass media, especially TV and radio, is continually rising (see Table 3). However, the consumption of sound recordings is still at least on the same level as the consumption of movies in cinemas. Following the statistics of the International Federation of the Phonographic Industry (IFPI) the Germans buy around 3 CDs per capita a year compared to 2,5 in France and around 4 in GB and USA. Concerning cinema, people in Germany thus prefer music to the movies because they only go to the cinema twice a year compared to almost three times in France and more than five times in the USA (Observatoire Européen de l'Audiovisuel 2001, pp. 11). The highly subsidized concert venues or theaters are attractive only to a small part of the population. Even though the widening of access has been a topic for quite some time, so-called high culture is still only frequented by a well-educated minority but funded by all the tax payers alike. But due to the constitutionally fixed principle of Germany as a cultural state (*Kulturstaaatsprinzip*) and the inherent long-term engagement of the local authorities, support for opera houses and the like is only slowly decreasing - and still on a very high level. The future developments will be more affected by available funds and changing attitudes than by free trade negotiations. Nevertheless, it is worth noting the fragility of these arrangements even in rich European countries that could be observed very clearly this summer. In France, a very small adaptation of the seasonal workers' regime - canceling two months' payments out of the artists' social security system - led to a strike which in the end led to the cancellation of numerous theater and music festivals (e.g. Avignon).

### Broadcasting

Within the different audiovisual media, a closer look at the amount of time spent for different media reveals that TV is by far the most important. Radio ranks second and sound recordings third. Music is thus important because of its generally high proportion of the total radio airtime - although there are very different radio stations and formats - and because of its use as content on sound recording - although more than 15 % of all sales children's product or other content, e.g. literature.

Time spent on audiovisual media (in minutes per day)	1996	1999	2000	2001	2002	2003
<b>Radio total</b>	169	179	209	203	202	196
Men	161	171	217	209	207	201
Women	176	187	202	198	197	191
14-19	121	125	144	127	127	113
20-39	178	180	230	221	215	204
40-59	180	195	233	228	232	227
60+	157	174	173	173	171	172
<b>TV total</b>	179	182	187	193	198	199
Men	177	176	179	185	190	189
Women	181	188	193	201	207	209
14-19	146	142	162	166	172	173
20-39	147	149	157	168	168	170
40-59	180	180	182	188	194	194
60+	227	234	234	236	243	243
<b>Video total</b>	4	4	2	2	2	3
Men	4	6	2	2	2	3
Women	3	3	2	2	2	2
14-19	9	13	4	4	6	5
20-39	6	6	4	3	4	4
40-59	3	3	2	1	2	2
60+	2	2	1	1	1	1
<b>Sound recording total</b>	14	18	22	21	23	24
Men	15	19	23	21	24	24
Women	12	17	21	20	21	23
14-19	41	46	50	51	53	60
20-39	22	29	37	32	37	39
40-59	9	12	17	16	17	18
60+	4	6	7	7	8	8
<b>AV media total</b>	363	382	425	427	439	442
Men	356	370	431	431	444	448
Women	370	393	420	423	434	436
14-19	312	323	367	361	379	376
20-39	350	361	438	437	444	448
40-59	369	387	436	442	462	465
60+	386	414	412	415	422	439

Table 3 Time spent for audiovisual media

Source: [http://www.ard.de/intern/index\\_view.phtml?k2=4&k3=4&k4=1](http://www.ard.de/intern/index_view.phtml?k2=4&k3=4&k4=1)

However, with more than 3 hours a day, radio broadcasting remains a very important area. Following the latest media analysis, there are 199 private radio stations in Germany as well as 63 public stations. According to the

federal system, these public stations broadcast only regionally but with live streams via Internet and broadband cable technology normally comprising all regional public channels, these borders are becoming more and more irrelevant. Most of the public radio stations are part of the working group of German broadcasters (*Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland ARD*) and together, they capture a market share of 53,6 %. Interestingly, perhaps due to the war in Iraq and German soldiers in Afghanistan, 7,3 % of every German older than 14 listened to one of the purely cultural or informational programs in the last six month.

#### Domestic music industry

The German music industry is dominated by the five major transnational record companies accounting for a market share of over 80 %. After years of rising sales, the German market now has to cope with the fifth consecutive year of declining figures.

Recorded music sales	total units (Mio.)	% of world market	retail value (Mio. US \$)	retail value (Mio. €)
<b>1991</b>	230,2	7,96	2.687,6	2.175,6
<b>1992</b>	214,7	7,27	2.923,6	2.272,3
<b>1993</b>	237,7	7,80	2.988,7	2.585,1
<b>1994</b>	242,8	7,32	3.206,8	2.705,7
<b>1995</b>	251,0	7,47	3.660,8	2.802,1
<b>1996</b>	253,8	7,20	3.518,7	2.772,3
<b>1997</b>	257,0	7,37	3.106,9	2.748,2
<b>1998</b>	252,7	7,30	3.012,1	2.710,1
<b>1999</b>	251,9	7,18	2.832,5	2.658,7
<b>2000</b>	245,0	7,09	2.420,6	2.627,3
<b>2001</b>	242,0	7,00	2.128,6	2.378,7

Table 4 Recorded music sales in Germany. All are in current prices.

Source: IFPI 2001, p. 46; Bundesverband der Phonographischen Wirtschaft 2003, p. 16, 32

After a sharp decline by 11,3 % in 2002, the sales for the first month of this year show no turnaround of this trend. Even if this is a worldwide development, Germany seems to be particularly affected by different facts. For the industry, the dramatically rising sales of blank CDs from 127,7 million in 1999 to 486,3 Mio. in 2002 offer the main explanation. According to a recent study, around 55 % of blank CDs are used to copy music. For sure, the PC hardware and access to the Internet are widely available in Germany and the relation of one copy with musical data for every sold sound recording is alarming but comparable circumstances can be found in other European countries, too. In Germany, there is a number of additional explanations: the overall economic conditions, the range of substitute products and the tendency of the youth to spend much money on mobile telecommunication, only few German newcomers with long-term perspectives developed in the last years, concentration on the marketing of international stars as well as a marked inability of the companies to adapt their business model from selling sound carriers to providing different musical services. Up to date, for example, there still is no official alternative to the file-sharing services where customers can select their music, pay online and download music digitally. Of course, there already exist download platforms (Musicstore, OD2 etc.), but they offer no real alternative: payment may be limited to US residents or to credit cards which are judged as insecure; the portals may not offer a German-language version and most important, the existing online-stores may only have a very limited repertoire (e.g. <http://www.popfile.de>).

#### International Trade

Due to a lack of political interest in the music industry, there are only very few statistics on music and international trade. The last annual report of the German music rights and collecting society GEMA records an income of 810,5

Mio. € in 2001. Of these, 160 Mio. € (or 20 %) came from other countries (collecting rights from licensing for sound carriers and performance, exhibition, broadcasting and communication rights combined).

In their latest statistics on the international flow of cultural goods the UNESCO reports the following figures for physical sound recordings from Germany and France:

Value of ex- and imported sound recordings (in Mio. €)	GER	F, Monaco
Value of exports		
<b>1995</b>	<b>1.638,32</b>	<b>808,09</b>
<b>1996</b>	<b>1.967,09</b>	<b>827,48</b>
<b>1997</b>	<b>1.840,44</b>	<b>922,74</b>
<b>1998</b>	<b>2.242,78</b>	<b>831,17</b>
Value of imports		
<b>1995</b>	<b>2.103,36</b>	<b>1.346,49</b>
<b>1996</b>	<b>2.099,92</b>	<b>1.370,63</b>
<b>1997</b>	<b>1.964,34</b>	<b>1.479,47</b>
<b>1998</b>	<b>2.259,98</b>	<b>1.585,09</b>
Balance		
<b>1995</b>	<b>-465,04</b>	<b>-538,40</b>
<b>1996</b>	<b>-132,83</b>	<b>-543,15</b>
<b>1997</b>	<b>-123,90</b>	<b>-556,73</b>
<b>1998</b>	<b>-17,20</b>	<b>-753,92</b>

Table 5 Import and export of physical sound recordings

Note: Important CD fabrication in Germany, the figures do not reflect the flow of royalties etc.

Source: UNESCO 2000, p. 32

But these figures are to be handled with care because they do not at all reflect the payments of royalties, they only account for the shipments of physical sound carriers - regardless of their German or non-German content. Thus it is impossible to deduce a statement about the cultural situation of the German music industry from them.

## GOVERNMENT MEASURES

The politico-cultural debate about the economic importance of music is relatively new in Germany. A public debate following a report by the federal government concerning the situation of Pop and Rock music in 2001 showed first and foremost that neither the data situation nor the political concept is satisfactory. In Germany, so-called high culture is heavily subsidized whereas popular music is only supported a small amount, even financially. This is even more astonishing when considering the massive political interest in the film industry which receives far greater public attention and support than the music sector (diverse initiatives for the cinematographic industry and funding amounting to over € 100 million per year. Certainly, the respective industry structures differ; there is no musical counterpart to the famous "Hollywoodization" (perceived dominance of exclusively US-American firms) and movies are said to have much more suggestive power than music - but economically, the music industry achieves higher sales.)

In Germany, political interventions in the cultural sector are problematic for historical reasons. When France could restrict the inflow of US-American movies after World War II, this option was not available for Germany. Furthermore, even the Germans were suspicious of their own cultural products in the post-war period after the bad experiences they had made with the propagandistic production between 1933 and 45.

Only during the last years has the issue of cultural diversity received wider consideration. Especially in the big western German cities as well as in Berlin there is a high number of ethnic groups of other cultures. On the local level, there are already numerous associations that work for understanding and co-operation. On state and federal level, however, cultural diversity has not yet been an issue of great importance.. If cultural diversity comes up at all, it is seen externally, i.e. the choice between German and US-American products. Internally - the consequences of the federal system are believed sufficient.

Since its inclusion in 1992 in the Treaty on the European Union, cultural cooperation has become a new community competency. In this context, the five-year "Culture 2000" programme (2000-2004) aims to encourage creativity and mobility of artists, public access to culture, the dissemination of art and culture, inter-cultural dialogue and knowledge of the history and cultural heritage of the peoples of Europe. Its general objective is to create a shared cultural area bringing people together while preserving their national and regional diversity. "Culture 2000" is equipped with a budget of € 167 million and supports projects with collaborators from at least three countries with sums between € 50.000 and € 150.000. The program is open for third parties like the European Council or UNESCO. Concerning the regulatory policy, freedom of movement for professionals in the cultural sector, freedom of establishment as well as free movement of goods and services within the European Union are seen as crucial.

### Creation

There are numerous support measures for artists and musicians. Besides a large number of privately funded initiatives which are granted tax reductions and small financial aid (new legislation passed in 2000), the public support is mainly channeled through two foundations which will be fused in the near future: the *Kulturstiftung der Länder* (Cultural Foundation of the States, existing since 1987/88, <http://www.kulturstiftung.de>) and the *Bundeskulturstiftung* (Cultural Foundation of the Federal State, founded in 2002, <http://www.bundeskulturstiftung.de>). These two offer their services to projects with national and international scope regardless of the nationality of the artists or even institutions. Financial help for the purchase of lost artistic works, projects like the edition of historical German journals as well as help with expositions like the *Documenta* are examples of their activity. Furthermore, they fund certain institutions that are themselves donors of grants and the like, e.g. the German Music Council, the German Federation of Rock & Pop Musicians or the Working group of the Folk Music Federations.

For the year 2000, the Federal Statistical Office estimates the public expenditures for music and theaters as €2,75 billion, that is € 33,5 per capita. There are no better figures for the music sector (whether creation or performance) and even these are to be viewed critically (see explanation to Table 1)

### Performance

In addition to the aforementioned institutions, there is a multitude of state or regional organizations that contribute in various forms to the artistic landscape in Germany. Through the German Music Council, the federal BKM contributes to various competitions for young instrumentalists, singers and conductors. Contemporary classical music is fostered through a special concert series as well as the CD edition "Contemporary Music". But due to financial turbulence of the Council, the future developments are hard to predict.

Whether performance organization or domestic touring is concerned, the support of these institutions is centered on German artists. But at least some of the mechanisms are open to all citizens of a member-state of the EU.

### International movement of people

The rules applying to the movement of international artists and musicians have been changed recently. Since the 1<sup>st</sup> of January 2003, performances of foreign artists are taxed by a simplified rate of 20 % (before: 25 % and diverse exceptions), income of less than 1000 € is taxed 15 % and sums less than 250 € aren't taxed at all. It is believed by the authorities that these adjustments not only lead to a harmonization between the fiscal situation of domestic and international artists but also enhance the artistic exchange and provide a signal for the openness of Germany.

International touring of German artists is funded by the Foreign Ministry. In 2000, the financial support amounted to € 13 million, mostly administered by arm-length's bodies like the Goethe-Institute, the DAAD (German Academic Exchange Service) or the German Music Council. These activities are not conceived as "export" but as cultural exchange. Nevertheless, they could be vulnerable to free trade agreements.

### Broadcast

Public broadcasting in Germany consists of two nationwide public TV channels (ARD and ZDF), a handful of regional TV stations, three nationwide radio programs (*Deutschlandfunk*, *DeutschlandRadio* and *Deutsche Welle*) as well as over 60 regional public broadcasters. With one exception, they are funded through an obligatory fee of all owners of radio or TV sets (amounting to around 16 € per month). Their tasks are fixed in Interstate Treaties of Broadcasting (*Rundfunkstaatsverträge*) and although the politicians at the state level (*Länder*) do exercise indirect control through boards and by giving certain objectives, these stations are not owned by the respective governments.

The only service funded by the federal government is the *Deutsche Welle*, the international broadcaster which provides DW-tv (in German, English and Spanish), DW-radio in 29 languages as well as DW-online. One of its main goals is to present an adequate picture of Germany throughout the world but a redefinition of its objectives is still under way by summer 2003. In general, none of these public broadcasters pursues a formulated policy towards music from Germany (see next section).

### Local music quotas

Quotas are not a common mechanism in the German cultural sector. Even if some forms of quotas exist, e.g. as resulting out of the EU Directive "Television without frontiers" (1989/97), the proposals are not applied. Until now (August 2003) there is no quota for German-language songs or "national product" on the radio. Yet in the past there already were several discussions of introducing radio quotas for German-language songs. In 2001, the German government decided once again not to promote the idea of a quota, fully aware of the French situation where an extensive system of quotas has considerable impact. As reasons for the rejection, the following points were named:

- Rock and Pop have always been international,
- Rock culture and Pop culture are in their origins creative-anarchic,
- music lives from creativity, which lives from exchange,
- the parallel to ideologically-motivated quotas in the former GDR,
- disagreements within the industry regarding such a ruling,
- with the Chanson, France has a distinctive country-specific genre,
- radio stations are the responsibility of the individual states, so legally complicated,
- no legal control with regard to private radio stations,
- economic success of VIVA (German music television) with self-imposed quota,
- already positive development of "national share" in Germany, and
- also international success of German productions like Sarah Connor or Echt.

Of course the rejection is not unanimous, and there are different arguments that range from Top-40 radio stations playing mostly international repertoire, to the easier entry into the market, to the symbolic meaning of a quota. Therefore, the German music industry is currently lobbying for a 50/50 system: 50 % of the air time of public radio stations should be devoted to newcomers of which another 50 % should be German-language songs. A recent study by Media Control (<http://www.media-control.de>) showed that at present, the share of newcomers on the public radio is only 14,3 % and the share of music sung in German only is as low as 1,2 % (see <http://www.ifpi.de>). The phonographic federation argues that these figures are not in line with the educational tasks of public stations (*Bildungsauftrag*). Some individual activists are even considering taking this argument to court. However, only a few months ago (June 2003), the Bavarian parliament decided against imposing any kind of quota on their regional public radio stations.

A look at the statistics of IFPI Germany shows further that also the vast multitude of releases could be a problem for German musicians: they might just not receive enough attention amidst the huge international stars.

Repertoire origin	GER domestic	GER international	GER classical		world - domestic	world -US -J
<b>1991</b>	30,0	60,0	10,0		58,3	38,5
<b>1992</b>	30,0	60,0	10,0		59,9	36,6
<b>1993</b>	30,0	60,0	10,0		62,3	37,9
<b>1994</b>	33,0	57,0	10,0		62,5	39,6
<b>1995</b>	35,0	56,0	9,0		62,3	39,0
<b>1996</b>	40,0	50,0	10,0		62,4	41,6
<b>1997</b>	40,0	50,0	10,0		63,2	41,6
<b>1998</b>	43,0	47,0	10,0		64,4	41,6
<b>1999</b>	43,0	47,0	10,0		66,2	41,9
<b>2000</b>	40,0	52,0	8,0		68,2	43,9
<b>2001</b>	40,0	53,0	7,0		67,5	42,7

Table 6 Repertoire origin of German music sales

Note: Country of origin (according to IFPI definition, i.e. place of artists' contract) of sold sound recordings, calculated by sales value excluding multi-artist products

Source: IFPI 2001, pp. 17, 46 and author's own calculations

Nevertheless, the share of the domestic repertoire is more or less constantly rising despite the discussion of the globalization of tastes etc. But first, German musicians are largely performing in a rather international style and by far not all of them sing in German. And second, the "nationality" of a sound recording is determined by the country where the principal artist(s) has/have a contract (according to IFPI definition). For quite some time, as just one example, N\*SYNC was signed in Germany and thus counted as a German product - blurring the statistics.

Accordingly, it is very difficult to correctly evaluate the situation of the music market in any country. In Germany, local (pseudo-)folkloristic music finds its audience mainly through specialized TV shows - not generating enormous sales of recordings but constituting a profitable market for touring and the like. "Classical" music in all its diversity is of course still marked by an important tradition of Germanic composers. But contemporary popular music presents a different picture. Internationally, only very few German pop/rock acts are known even when only looking to near European neighbors. German music has never been en vogue like French music, for example. On the other hand, the German market still is the fourth largest in the world and offers - together with the German-speaking Austria and Switzerland - a critical mass to generate fame and wealth. And Table 6 shows very clearly that the share of domestic repertoire grew considerably during the 90s - worldwide as well as in Germany. But at this point, another commentary is necessary:

The "national product" share of the world market has increased from just 60 % at the beginning of the 90s to almost 70 % now, according to IFPI statistics. This fact is often cited as an argument for the cultural significance of the recording industry, for the preservation of cultural diversity and the equal chances for artists of all countries.

Besides doubts about this argumentation, the figures in particular must also be critically examined. The national product share of the world market is calculated according to the weighted shares of the individual countries. As a result, the low Canadian value (12 % domestic repertoire) counts less in the calculation than the high share of the USA. Because the two largest music markets in the world, Japan and the USA, show a very high share of "national product" with 80 % and 90 % respectively, the figures can be evaluated incorrectly. If you calculate these two countries out of the world market, the value for the "national product" is only around 40 %, and this presents a less positive picture for cultural diversity.

A still more complicated picture results when also taking the origin of German chart products into consideration.

"Nationality" of Top 100 singles and albums (in %)	national (singles)	international (singles)	national (albums)	international (albums)	compilation (albums)	soundtrack (albums)
<b>1991</b>	22,2	77,8	17,9	64,7	13,7	3,7
<b>1992</b>	22,4	77,6	17,4	67,4	14,2	1,0
<b>1993</b>	27,5	72,5	18,1	59,9	16,7	5,3
<b>1994</b>	38,2	61,8	23,5	52,8	21,2	2,5
<b>1995</b>	41,3	58,7	23,9	51,1	22,7	2,3
<b>1996</b>	42,1	57,9	26,5	45,3	26,3	1,9
<b>1997</b>	48,2	51,8	22,3	45,1	28,7	3,9
<b>1998</b>	42,7	57,3	27,4	37,1	30,0	5,6
<b>1999</b>	46,2	53,8	23,2	42,8	31,2	2,8
<b>2000</b>	44,1	55,9	19,5	48,7	29,4	2,4
<b>2001</b>	35,5	64,5	21,1	47,9	28,5	2,6
<b>2002</b>	42,7	57,3	26,5	44,8	26,4	2,4

Table 7 Origin of chart repertoire

**Source:** Bundesverband der Phonographischen Wirtschaft 2001, pp. 40;  
 Bundesverband der Phonographischen Wirtschaft 2003, pp. 52

Especially among the economically interesting albums the share of German national product only amounts to slightly over 25 %. This figure does not result from a lack of products as there are more than 5.000 national pop releases on CD in the pop genre alone (Bundesverband der Phonographischen Wirtschaft 2003, p. 48). [shows the following table.] It thus seems to be more a problem of marketing and lack of commitment by the transnational companies.

Number of national releases (on CD, genre: pop)	singles	albums	total
<b>1991</b>	2.439	1.691	4.130
<b>1992</b>	2.116	1.894	4.010
<b>1993</b>	1.839	2.104	3.943
<b>1994</b>	1.984	2.684	4.668
<b>1995</b>	2.202	2.649	4.851
<b>1996</b>	2.563	2.744	5.307
<b>1997</b>	1.907	3.212	5.119
<b>1998</b>	1.590	2.960	4.550
<b>1999</b>	1.436	3.696	5.132
<b>2000</b>	1.288	3.193	4.481
<b>2001</b>	1.650	3.741	5.391
<b>2002</b>	1.659	3.870	5.529

Table 8 Number of domestic pop releases in Germany

**Source:** Bundesverband der Phonographischen Wirtschaft 2001, p. 37;  
**Bundesverband der Phonographischen Wirtschaft 2003, p. 48**

#### Industry Structure

In general, there are no special statutory provisions or forms of state support for the cultural industry that set it apart from other sectors of the economy. The most important general laws applying to the music industry and media are rules of intellectual property and ownership.

#### Intellectual property

In the course of the European integration and harmonization new laws for intellectual property are passed in all the member states in the moment. The EU "Directive for the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society", 2001/29/EG, can be broken down into three major blocks:

Articles 2 to 4 concern the rights of authors and related rights. The two WIPO treaties WCT (WIPO Copyright Treaty) and WPPT (WIPO Performances and Phonograms Treaty) are prepared for ratification by the aforementioned Directive. Article 5 harmonizes the existing 130 differing national exemptions from copyright to just 21 different limitations. Finally, the articles 6 to 13 contain supplementary provisions, e.g. legal protection of technical protective measures or information for the administration of rights. Especially important is the legal protection against circumvention of effective technical encryption measures.

The new German legislation to be passed in autumn 2003 clearly incorporates demands made by the German creative industries: "Protecting what can be protected, paying for what cannot be protected." Now, a) copies from illegal sources can never constitute a lawful private copy, b) circumvention of copy protection is forbidden and c) even publicity for programs capable thereof constitutes a crime. The situation of the right-holders is thus substantially strengthened and the right for private copying systematically rendered ineffective: in the near future, every sound recording will be delivered with copy protection - circumvention of these measures now constitutes a crime - thus a once granted right is virtually no more existent. This is judged inadequate for a modern information society by some critics. Following this line of argumentation, creators are to be compensated by lump-sum royalties just like in the analogue world. From this point of view, the long-term debate of the music industry with the BITKOM (federation of the hardware industry) about these lump-sum royalties have been more or less useless. At the moment, the right-holders have more bargaining power if only to save jobs in this area which are constantly declining (in the music industry alone from 36.400 in 1996 to 32.900 in 2002). Another current initiative is the campaign to apply the reduced tax rate (7 % vs. 16 %) on musical products - analogue to e.g. books - on a European level.

The EU Directive 2000/31/EC concerning E-Commerce has already been implemented in the German E-Commerce Act. There are no concessions made as to protective measures for cultural products. The Directive "seeks to contribute to the proper functioning of the internal market by ensuring the free movement of information society services between the Member States." (article 1, 1). The main objective is the so-called "commercial communication" meaning "communication designed to promote, directly or indirectly, the goods, services or image of a company, organisation or person pursuing a commercial, industrial or craft activity or exercising a regulated profession." (article 2) However, culture is exempted because it is expressly stated that the Directive "does not affect measures taken at Community or national level, in the respect of Community law, in order to promote cultural and linguistic diversity and to ensure the defence of pluralism." (article 1, 6)

#### Competition and ownership

The two authorities given responsibility for competition and ownership regulation are the German Federal Cartel Office (<http://www.bundeskartellamt.de>) and the German Commission on Concentration in the Media (*Kommission zur Ermittlung der Konzentration in den Medien KEK*, <http://www.kek-online.de>). Their prime concern is to prevent any one media group from dominating public opinion, a goal which is directly deducted of the Federal Constitutional law. This holds true despite the European integration because the European Commission has up to now failed to harmonize the national media-specific anti-concentration rules. But the current stipulations of the Interstate Treaty in Broadcasting already take into consideration that media concentration is not nationally confined. A demonstrated international trend towards concentration in the television sector suggests that additional international regulation is necessary to ensure effective control of concentration. At present, virtually no regulations exist regarding trans-national cooperation.

Despite a growing concern due to diagonal concentration - holdings in radiobroadcasters by press companies or inter-linkages between television and press companies - the only fixed threshold is that no media group may reach 30 % market share - regardless of its nationality. But this figure is not reached in any market. In 2002, a comparative study of supervisory instruments and regulations of the most important neighbouring and partner states (Great Britain, France, Italy, United States) has been conducted but no consistent approach to concentration was found - neither concerning the ownership of media by foreign companies nor regarding the maintenance of a pluralistic public opinion.

#### Export

Until now there exists no special initiative to support the export of German music. The companies can apply for support of their participation in trade fairs but these measures are open to all sectors. However, after having conducted a comparative study of more than 15 music export offices in 2002 (Block 2002), a music export office is going to be established by the end of 2003. Mainly funded by the industry, the BKM will nevertheless contribute some money.

#### Archives

The federal state offers financial help to various historical sites and archives all over Germany. Most important are the *Deutsche Bibliothek* (German library) - exercising the function of a national library - and the *Bundesarchiv* (Federal Archive) which are both funded by the federal BKM. As examples for other institutions of national scope supported by federal and state authorities, the *Beethovenhaus* in Bonn, the *Bach-Archiv* in Leipzig and the foundation *Weimarer Klassik* can be named. Although the financial contributions are definitely not growing in these times of recession, dramatic cuts are not to be expected.

## Education

Current support for specialist music education institutions - 22 colleges of art and 23 colleges of music, drama and dance - is fully provided by the state authorities and is part of the overall education which is not going to be changed profoundly. Together with the Federal State, they additionally fund four federal academies.

Talented new artists and performers can further profit from the different prizes and competitions as well as from the German Fund for Musical Instruments (*Deutscher Musikinstrumentenfonds* DMIF) which since 1963 lends high-quality instruments to young performers.

## Government Procurement

I do not know about any government purchase directives of music or music services that give preference to local music or local service providers over foreigners.

## IN CONCLUSION

In conclusion, political awareness for these problems is still lacking. Up to now, Germany has profited from a number of factors: its history of multiple cultural centers and of important musicians, its (market) size and its membership in the European Union where especially France and some smaller countries are very aware of the problems arising from cultural domination. These countries have set the standards of cultural exemption in Europe leading for example to the theoretical possibility of quotas in the EU. And the EU also provides a buffer against new trade concessions: these zones of deeper integration offer possible exemptions from WTO's most-favored nation-principle and thus limit the changes to be expected in the near future. Requests under GATS will have to be made to all EU member-states and especially vis-à-vis the US, their own bargaining position is thus enforced. Thus, the Ministry of Economy and Employment (<http://www.bmwi.de>) can claim to envisage no new concessions in the cultural sector in the new round of trade negotiations.

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## APPENDIX 3

# The Effects of Globalization on the Nigerian Music Scene

*A Report for the ManyMusics Project of the International Music Council, October 2003  
O'dyke Nzewi*

### The Nigerian Music Scene

Nigeria is one of the largest (923,768 km<sup>2</sup>) and geographically, socially and culturally most diversified African countries. It is the most populous country of Africa (the population was estimated at 110 million in 1990), and potentially one of the wealthiest. Richly endowed with human and natural resources, benefiting from a large internal market, Nigeria is, however, highly dependent on the external economic sector, particularly oil revenues (93 per cent of exports in 1989). The domestic industry is import dependent. More than 60 per cent of the population is employed in agriculture, which provides the bulk of Nigeria's food and raw materials supply and non-oil exports.

The Nigerian Music scene is quite a dynamic one. In fact it is one of the most dynamic and diverse cultural entities in the world. Nigerian society is very ethnically diverse, with more than 250 identified ethnic groups. Three very large ethno-linguistic entities dominate: the Yoruba, the Ibo and the Hausa-Fulani in the North. The Hausa-Fulani, Yoruba, Ibo, Kanuri, Tiv, Edo, Nupe, Ibibio and Ijaw groups account for almost 80 per cent of the population. The Muslims comprise more than 50 per cent of the population, Christians account for about 35 per cent, while the balance of the population are animists.

The Nigerian people are a very musical people; the life of an average Nigerian is immersed in music. There are different categories of musicians in Nigeria, namely the traditional classical musicians, the traditional popular musicians, the traditional contemporary musicians, the contemporary popular musicians, and the foreign popular musicians. Not all the practitioners are professionals, many are without formal, modern music education, but all are proficient in their chosen musical genre. The choice of instruments and language of text are the major determinants of what category a music type falls into. In the category of traditional musicians, the choice of language is usually vernacular, although the choice of instrumentation may now include western instruments. Below is a run down of the different categories and the determining factors.

*Traditional classical:* These are musicians in tradition, who have had some level of 'formal' music education in the traditional respect. The musicians usually learn by rote from other musicians as members of a music group, and as the master-musicians grow old and/or die, the apprentices (who by then are proficient) step into their shoes. The musical instruments are usually indigenous, and are a product of the direct resources in the immediate environment. The language for the music text is usually the local dialect or vernacular of the region. The compositions are based on inherent/identifiable musical structural devices, as well as recognizable musical forms, which reflect an understanding of "what is music" in each culture area. In most cases, the music made is either an event-music, or distinctly a music event. In most cases, the musicians are known personally to the audience, and they often do not require any form of modern amplification for their public performances. The performance venue is usually the village square, or an event arena, and the audience cuts across the entire age and gender groups in the society. The music could be for secular or sacred occasions.

*Traditional popular:* These are musicians who have had a? little influence from modernization. Their music is made strictly for commercial purposes. The choice of instruments is still indigenous, and the language still the local dialect or vernacular, but they make music for marketing their talent. They would usually go to music studios to make recordings, which are pushed into the open competitive market. They also take on public engagements, but are engaged mainly because of their popularity deriving from the popularity of audio cassette sales and media promotion. The clientele is mainly people who have the same cultural background as the musicians, but because music is recorded and sold in the open market, people of different cultural backgrounds could buy and listen because of the cross cultural interaction between the peoples of Nigeria. The music could be either sacred or secular.

*Traditional-contemporary popular:* These categories of musicians have been influenced a lot by western music. The practitioners usually do not have any form of formal modern music education, and learn music by copying. The choice of instrumentation is usually western (guitars, keyboard, kit drum, horns etc), but the language is usually vernacular. They make use of modern equipment and public address system. The music is made in the studio, for the open market, although they could also be engaged for public performances. The language of the text could be vernacular, or English. The clientele base is broader, since most people could listen to the music because of the instrumentation, even when they don't understand the language of the text of the music. The age and gender of the audience is not limited. The musicians also play strictly for the commercial remuneration deriving from the sale of audio tapes or video tapes or fees from public engagements. In most cases, the music is made popular by radio and television promotion. The music could be either sacred or secular.

*Contemporary popular:* The musicians and their music have been heavily influenced by the foreign music scene. The choice of instruments is usually the state of the art modern equipment. They usually sing in English, and in most cases, try to imitate European and American styles in vogue. The music is so heavily influenced by the European and American satellite music channels that the performers even mimic foreign dance styles, vocal intonation and dress style. In some cases, they may add a little Pidgin English (which developed from the Portuguese English used for trading along the West African coast in the early 16th century, and is now the lingua franca for the unschooled as much as modern educated Nigerians). The musicians could also sing in the vernacular. The clientele are mostly the teenagers and young adults. The musicians rarely engage in public performances, but do lots of television and radio shows.

*The Foreign Popular:* This genre comprises recorded music imported from within and outside Africa. The musicians most times are not resident in Nigeria, but their music sells in large numbers on CD's and is very popular on cable/satellite TV shows such as MTV or Channel 'O'.

### **Copyright Laws**

The Nigerian Copyright Commission was established under the Copyright Act and inaugurated in August 1989, with the statutory mandate *inter alia*, to:

- a) Be responsible for all matters affecting copyright in Nigeria as provided for in the Act;
- b) Monitor and supervise Nigeria's position in relation to international conventions and advise Government therein;
- c) Advise and regulate conditions for the conclusion of bilateral and multilateral agreements between Nigeria and any other country
- d) Enlighten and inform the public on matters relating to copyright;
- e) Maintain an effective data bank on authors and their works.

In the discharge of its duties, the Nigerian Copyright Commission has pursued the objectives of the law with a view to ensuring greater compliance with its provision and the elevation of the copyright culture to meet prevailing international standards. The Commission assists copyright owners in the enforcement of their rights and through its public enlightenment programmes, creates awareness about the copyright system as a whole. Its main anti-piracy programme was launched in 1991 under the rubric: National Action against Piracy. This programme has tried to curb the excesses of pirates and reduce the incidence of piracy in the country. Through its public enlightenment programmes, the Commission organizes seminars, workshops and specialized training, thereby creating awareness about the copyright system throughout the country. Copyright owners and those who use their works, administrators, law enforcement agencies and the general public are now increasingly aware of the role which the copyright system must play in enhancing the welfare of the author in particular and national development in general.

### **Harmonization with Copyright Regimes Globally**

In acceding to relevant international instruments, Nigeria has been guided by the central thrust of its foreign and cultural policies. Its national interest, within the framework of common developmental concerns, has always been paramount. So far, the country has ratified the foremost copyright treaties. The copyright related conventions to which Nigeria is signatory and the dates of her membership include:

- i) The Universal Copyright Convention (UCC) (comprising 97 States); February 14, 1962
- ii) The Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) (comprising 134 States); September 14, 1993
- iii) the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention) (comprising 58 States); October 29, 1993.
- iv) The Convention Establishing the World Intellectual Property Organization (WIPO Convention) (comprising 171 States); April 9, 1995.
- v) The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) within the frame-work of GATT. In addition, Nigeria in December 1996 initialed the WIPO Performance and Phonograms Treaty and the WIPO Copyright Treaty.

There are still other instruments in the field of copyright and neighboring rights which Nigeria has not ratified. Most of these are considered not to be of priority interest to the country at this point in time. They include:

- i) The Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms.
- ii) The Convention relating to the Distribution of Program-Carrying Signals Transmitted by Satellite.
- iii) The Treaty on the International Registration of Audiovisual Works
- iv) The Treaty on Intellectual Property in Respect of Integrated Circuits.

The present Copyright Act was promulgated in 1988, as the copyright Decree (No 47) of that year. With revision of all existing Federal legislation, the Decree was redesignated the Copyright Act, and is contained in Chapter 68 of Laws of Nigeria 1990. The Act has since been amended by the copyright (amendment) Decree (No 98) of 1992, and copyright (amendment) Decree (No 42) of 1999.

#### **Subsidiary Legislation**

- i) Copyright (Collecting Societies) Regulations, 1993
- ii) Copyright (Video Rentals) Regulation 1999 (commencement, 7th Sept. 1999)
- iii) Copyright (Security Devices) Regulation, 1999

Nigeria does not give preference to local copyright owners over foreign copyright owners because it is part of the country's obligation under the international copyright instruments to observe certain principles in copyright protection. One of them is National Treatment; by this principle, Nigeria is obliged to give same level of protection to works emanating from countries who are party to these conventions, as is given to Nigerian works.

Another is the Most Favored Nation Principle; this envisages that "the same level of protection is granted to nationals of countries that subscribe to the same conventions".

#### **COLLECTING SOCIETIES**

The collecting society in Nigeria is the Performing and Mechanical Rights Society of Nigeria (PMRS). It was set up in 1995 with the responsibility for collecting royalties on the use of music and musical materials in Nigeria for the artists. The Nigerian users of music, i.e. radio and television stations, hotels, and other users of music commercially, take it as a tradition that music is to be used free of charge; efforts are underway to educate most of them that music is the intellectual property of composers and its use has to be paid for. Right now, the percentages of those that pay royalties are less than 0.5% of users of music. In fact, only one radio station, the Lagos State Broadcasting Cooperation (LSBC), has been paying royalties, and then only since 2001. It was given a blanket license that covers all the music it plays. A log sheet is collected at the end of every month to show whose music was played, so that royalties can be paid.

The Nigerian collecting society PMRS is as of now unaware of the international agreement by collecting societies globally to deduct up to 10% of total royalty income to be used in support of local composers. There are however, plans to set aside some percentage of the royalties collected, to further the progress of local musicians and up and coming/aged composers, to sustain their livelihood.

#### **PIRACY**

One of the greatest problems that have faced the Nigerian Music industry is the issue of piracy. Over the years, the scourge of piracy has so increased that it is almost impossible for label owners to get a good return on their investments. Due to the heavy rate of piracy, the sales value of original music products is not more than 15% of the total sales, which the industry is combating vigorously. Ignorance on the part of the copyright owners is a major part of the problem. Artistes used to believe that the activities of these pirates helped make them more popular, and thus allowed them. There is a strong awareness campaign now, which enlightens the copyright owners to the dangers of having their works pirated and the possible consequence that very little of their original products will be sold. This sensitization has put most artistes on the alert, and to quickly notify the authorities if they suspect any one of selling pirated copies of their work. But the awakening is a bit late, as the pirates have established themselves both within and outside the country. Most times, it is difficult even to find the original copies of certain works in the open market. That is probably because there are still instruments in the field of copyright and neighboring rights which Nigeria has not ratified, such as the Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms

#### **IFPI**

For some seven years now, the Nigerian National Group of IFPI – the International Federation of Phonographic Industries -- has had problems with obtaining credible statistics on the recording industry. Some few years ago, it was possible to get good and reliable statistics, which formed part of the IFPI global records every year. During that period, members of IFPI controlled almost 90% of the total production output in recording industries in Nigeria. Despite the effort of the IFPI over the years, piracy, which was a continuous problem, eventually got out of hand and returns on investment went down. This led to all the multinational recording corporations (like EMI, PolyGram etc) to divest from Nigerian companies and leave the country.

At that particular point in time, the development that was witnessed in the country was that those who were responsible for marketing the music; the dealers and distributors, who usually had one small shop with one or two attendants, would approach artistes, lure them with money, and get them to release their records to them for a fee of about one million naira. In those days, getting such money in bulk meant a lot to the musicians, so they were willing to get into such deals without proper legal agreements. And because most of the dealers are not enlightened, they only cared about the business implication of what they were doing.

This became a big hindrance to the gathering of information for the IFPI, because those dealers were not willing to share with the artistes the true situation as regards the sales of the music albums. It was also in their interest for tax evasion purposes not to allow the government to know how much they had made. So there were no figures for the IFPI to work with.

There were big time artistes who used to be IFPI members, but many of them have been bought over by these dealers, and have been lured away from the companies that used to produce them. Some of these dealers have become labels now.

As noted, this kind of business did not allow for proper gathering of information. Initially IFPI tried to work with estimations, but that was not credible, given that the statistics were for international documentation. IFPI tried a couple of measures to check piracy, and collect genuine information. These include the use of the Bandar roll system, to identify fake products. Every musical product was supposed to bear the Bandar roll. Then the IFPI changed to the use of holograms for every music album released into the market. There was the need to make it a compulsory law that every musical product in the country must bear the mark. This was made law in 1999. It was also required that all recorded material sold in the country must either pass through the factory or through the ports. i.e. either they are manufactured or imported.

Unfortunately, some people who realize that the scheme will expose their nefarious activities, kicked against it (the matter is in court at the moment). If that had been operational, there would have been credible statistics to work with. However, the statistics on ground dates between 1991-1996 (see table below)

#### **Music Market 1996**

Per Capita sales:	0.1 US\$
	0.1 albums
CD as % of total units:	0.1%
World ranking:	60
1995 piracy level (units):	45%
Sales tax:	5.0%

#### **CD Hardware Ownership**

Penetration	2%
Saturation	1%

#### **NATIONAL DATA**

Population:	114.4m
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#### **PRE-RECORDED MUSIC SALES (Figures in millions)**

	UNITS					RETAIL VALUE		MARKET TRENDS				
	Singles	LPs	MCs	CDs	Total	Local Currency	US\$	Unit Growth	CD Growth	LCValue Growth	Inflation	Real Growth
1991	0.05	0.5	8.0	0.04	8.6	184.0	18.6	-	-	-	13.0%	-
1992	0.02	0.4	15.0	0.1	15.5	482.3	30.8	81%	38%	162%	44.6%	81%
1993	-	0.2	20.0	0.1	20.2	835.0	27.2	31%	27%	73%	57.2%	10%
1994	-	-	15.0	0.01	15.0	681.0	31.0	-26%	-86%	-18%	57.0%	-48%
1995	-	-	12.0	0.05	12.1	1,170.0	14.6	-20%	400%	72%	72.8%	-196%
1996	-	-	8.0	0.01	8.0	773.0	9.7	-34%	-80%	34%	29.2%	-49%

% of population under 25yrs 66%

Per capita GDP: US\$250

Economic growth: 3.3%

Currency: 1 naira = 100 Kobo

140 nairi = US\$1

Principal spoken language: English

#### **Nigerian Music Exports**

Nigerian music is constantly being exported to Europe, America and other countries in Africa. There should be licensing agreements between foreign companies and Nigerian copyright owners/record companies to cover the release of Nigerian products abroad. We don't have that happening; instead we have parallel importation; the buying of finished cassettes here in Nigeria for sale abroad, and in the majority of cases, the exported materials are pirated works.

In the West African sub region, there is a lot of commerce going on between Nigeria and other countries. There are several bilateral agreements that Nigeria has signed, with several countries, and it is possible to subsume the question of music under any of them. It is a matter of trade, not only of culture. Nigeria has signed many agreements that it has not effectively utilized.

IFPI has done a lot of lobbying to sustain the rights of the artiste in music industry in Nigeria. At this point in time, many of the IFPI members are just struggling to survive, and that has an impact on their influence. If the IFPI members were stronger, they would be better able to address the strong need to invoke some of these agreements to protect the copyright of artistes in Nigeria.

## Cultural Policy

### General Directions of Cultural Policy

The rights and various attempts of the people of Nigeria to develop their culture have been supported by both the civilian and military governments and have been given consideration in the Nigerian Constitution. However, neither the systematized cultural policy, nor the set of main aims of cultural policies within the states have been implemented. Some of the clearly set directions of cultural policies are:

- analysis and understanding of Nigerian cultural life, cultural values and cultural needs and expectations of the people;
- affirmation of authentic cultural values and cultural heritage;
- building up of a national cultural identity and parallel affirmation of cultural identities of different ethnic groups;
- development of cultural infrastructure and introduction of new technologies in cultural activities;
- establishment of links between culture and education, as well as between education and different cultural industries, particularly mass media.

National cultural policy is generally regarded as an instrument of promotion of national identity and Nigerian unity, as well as of communication and cooperation among different Nigerian or African cultures, while the federal states' cultural policies stand for the affirmation and development of particular (ethnic) cultures.

## Administrative and Institutional Structures

### *Public or Semi-public Bodies*

The Ministry of Culture and Social Welfare has two departments responsible for administering and implementing cultural policies. The Federal Department of Culture is responsible for the formulation and execution of the national cultural policies, for the financing and promotion of all national cultural organizations and for international cultural relations. The National Council for Arts and Culture encourages and develops all aspects of Nigerian cultures and interacts with private or public organizations.

Other federal bodies partly involved in cultural life and policies are the Ministry of Information and the Ministry of Education.

Different cultural sectors are covered by statutory bodies at the federal level, such as the following: National Commission for Museums and Monuments, National Library of Nigeria, Center for Black and African Arts and Civilization, National Gallery of Modern Art, Federal Radio Corporation of Nigeria, Nigerian Television Authority, Film Corporation of Nigeria.

The Federal Ministry of Culture and Social Welfare is in charge of cooperation and coordination among various bodies at the national, state and local government levels.

The promotion and development of culture is the exclusive responsibility of each Nigerian state, although the Federal Government finances and offers administrative support for culture to each state. State or provincial authorities have all established State Art Councils set up by law. These art councils have the responsibility to develop, administer and promote state cultural policies.

### *Non-governmental cultural institutions*

Cultural organizations at both federal and local levels, artistic associations, specialized institutions, agencies, etc., operate through registration with the authorities. Organized cultural centers usually function within the local communities or at the universities. They are self-organized and sometimes supported for specialized, particular activities only. Some may also operate as small private enterprises, which is the case of small performing groups, small publishers, etc.

## **Instruments of Cultural Policy**

### *Financing and planning of cultural activities*

Functioning of public and semi-public bodies dealing with culture, as well as the main inputs in cultural infrastructure such as building of museums, theaters, establishment of libraries *etc.* are mainly covered from the federal budget. This also stands for the organization of large events such as national or literary festivals organized by federal or state agencies of culture.

Planning of cultural activities or of the establishment of cultural infrastructure is provided for in the annual national budget. But then there is the problem of implementation. It hardly goes beyond an action or project planning. A general development plan of the country may provide for the construction of cultural infrastructure or for major cultural events.. The project planning is restricted to either the local level, or, in the case of international cultural cooperation, fully complies with the provisions of the donor organization.

Spending for culture depends on the interests and possibilities of the public at large, particularly in the case of pop music, smaller performing groups, artisans, *etc.*

## **Sectoral Policies**

### *Cultural Heritage*

Cultural heritage is widely recognized as the most important input in defining the national and ethnic cultures in Nigeria. Nigeria inherits great cultures of the Benin plateau, but also an impressive body of plastic, music and literary arts. All Nigerian governments, notwithstanding their political backgrounds and developmental orientations, proclaim their intention to preserve cultural heritage and allow for its full recognition. The National Archives, the National Museum, the National Library and all the existing universities have taken over the task to work on research, restoration and preservation of the cultural heritage. Both federal and a few state agencies working in this field are fully supported from the federal funds.

Although a lot of work has been done in research, systematization and preservation of cultural heritage, there is a need for well established documentation on cultural heritage, as well as a need for a well organized service for its restoration and preservation.

### *Artistic and literary creation*

Artistic and literary creation depends mostly on the individual initiatives or on the local support. The federal Fund for the Assistance to Arts and Drama offers assistance to artists in the provision of fellowships, study grants for travels and purchase of the needed materials. Other types of support available to artists or writers depend on cultural industries that are directly involved or influence artistic and literary creation.

Performing arts are to a certain extent supported through investments in cultural infrastructure, such as building of theaters, stadiums hosting large festivals, *etc*

## **Cultural Industries**

### *Publishing and Reading*

Publishing and reading are estimated to be underdeveloped in Nigeria. The first printing outfit was established in Calabar in 1846. Newspapers, political and religious literature constituted the bulk of publishing activity in Nigeria for nearly a century. It is estimated that Nigeria now has over 500 publishers and there are about 50 registered member-firms in the Nigerian Publishers Association. They are expected to serve about half a million of Nigerian students and general public.

Inconsistent fiscal and education policies in Nigeria and the heavy dependence on government patronage were not in favor of improving rather weak publishing infrastructures. However, the publishing industry relies mostly on the enormous needs for school books and teaching materials. Over 95 per cent of books used in the primary and junior secondary schools are locally printed (and written, edited and illustrated by the Nigerians). Nigerian publishers are now going into the senior secondary school sector and into the technical, professional and tertiary sectors of textbook production. The estimates made in the mid-eighties showed that a minimum of 285 million textbooks per annum at all levels of education would be needed.

The main problems encountered by the publishing industry are the following: printing equipment is rather obsolete and scarce; there are constant shortages of paper; the publishing personnel is not always well trained. The linguistic problem is also important, as most indigenous languages do not have developed orthographies. The inconsistent educational policies, unreliable authorities supposed to support some publishers, piracy and poor promotion and distribution are also mentioned as problems.

Large internal markets and ever greater needs linked to the fast spreading education and reading culture support strongly the development of publishing industry.

### *Broadcasting*

Mass media/radio and television broadcasting industries have been spreading very well, motivated by two main factors: politics and education. Technical and technological reasons should be added as these enabled a very fast proliferation of radio and TV stations in Nigeria during the last about thirty years.

TV transmission began in Western Nigeria in 1959, and a year later the Eastern Nigeria TV Service and Radio TV Kaduna Service were established. The Federal government established the Nigerian Television Service (NTS) in Lagos in 1962. The development of television broadcasting reflected the regional versus federal politics and aspirations. Each of the 21 Nigerian states opted for its own radio and TV station, as well as for university, colleges, hospitals, *etc.* 34 TV stations had been established in Nigeria over 25 years, at a rate of 1.5 stations a year. Nigeria has the fourth largest TV network in the world, with constantly growing staff and the number of imported programmes going constantly down. There is an ever increased choice of TV channels, and the oil revenues helped to increase the number of TV sets. In the mid-seventies about 87 per cent of population had access to TV programmes.

Educational television began broadcasting to schools in 1959 and soon became a very important input in development of TV. The merits of TV for the development of education in Nigeria are also enormous both in the processes of formal and informal education.

There were efforts to coordinate the growth of TV. The military government introduced in 1976 the Nigerian TV Authority (NTA), that took over the 10 then existing TV stations and created 9 more. However, in 1979 the Constitution gave the Nigerian president the mandate to allow state governments, organizations and individuals to establish and operate TV stations. In 1984 the military government nationalized all TV stations and established a state monopoly over television broadcasting. Proliferation of TV and radio stations proved to be a very powerful means for the emancipation of ethnic cultures and values.

The Nigerian "local content quota" for the electronic media is 80% in favor of indigenous music, and 20% foreign music. It would appear that the government-owned stations would meet this target but it is not clear that the private stations do so.

#### *Film*

Film production seems to be the least developed among the Nigerian mass communications industries. The local production of films is encouraged neither financially nor through some cultural policy. The poor distribution networks operated mostly by foreigners and dependent on Indian and American production do not support the production of domestic films. The state censorship also prevents production and distribution of domestic films. Some authors claim that the restructuring of the film industry through the nationalization of film production and distribution would be welcome. The need to set up laboratories and train professionals is also emphasized.

#### Cultural Development

Neither in the sphere of economics, nor in the sphere of politics have Nigerian authorities and Nigerian intellectuals ever denied culture its very important role. The need to integrate cultural activities and values in all spheres of life has been very loudly pronounced in the post-independence development of Nigeria. General ideas on Nigerian development were linked to the authentic cultural values.

However, the clash between modernization (westernization) on one, and traditional cultural values on the other side could not have been avoided. The traditional cultures have been more or less left to the local initiatives. In the context of rather radical developmental changes, they have generated different types of pop-cultures: pop-music based on the strong authentic traditions; pop-literature (market literature) produced for the barely literate audience and expressing the general popular concerns; performing arts and groups inheriting the status of traditional performers (like for instance popular theater performances by more than 100 Yoruba professional popular ambulant groups), *etc.* Cultural industries and new technologies have very much influenced such developments by enabling fast communication and creation of internal (music, literature, *etc.*) markets.

The most important issue of cultural development is certainly the issue of creation of either national Nigerian, or affirmation of ethnic cultural identity. This is also an important political issue, as the Nigerian federalism tried to put together the achievements of the modern democratic West European state and the local cultural traditions. The whole process of restructuration and adjustment is in fact the process of defining the identity of Nigerian peoples and individuals.

Development of education, establishment and growth of cultural institutions and cultural industries all reflect the constant processes of change in Nigerian life and Nigerian cultures. It is impossible to quantify these processes, but it is evident even now that the cultural growth is reflected in the new type of Nigerian culture and identity. It is not based on the merging of different cultural traditions, but it implies a certain selection of values that would define a modern cultural identity of Nigeria.

#### *Recent evolution of cultural life*

The local cultural milieu of Nigeria is extremely diversified, and depends not only on the ethnic cultural values and habits, but also on religious habits and obligations. There are also major differences between rural and urban cultural life, and rural and urban habits and norms.

Generally speaking, the cultural life in Nigeria is to the large extent marked by tradition, and traditional forms of cultural events are most popular: festivals, exhibitions, performing, playing music and dancing in the open. This can be illustrated by citing the actions planned to be implemented in cooperation with UNESCO: National Festival of Children's Toys, Rhymes and

Games; or, National Exhibition of the Craftsmanship of the Nigerian People; or, Developing Educational Activities for Children and the Youth in Nigerian Museums, *etc.*

On the other side, the cultural life is very much influenced, and defined, by the cultural industries, particularly mass media. Cultural industries bring into the Nigerian cultural life new civilizational and technological standards that are easily accepted by the majority of population.

The recent evolution of cultural life in Nigeria is thus strongly marked by the traditional and religious habits, and by mass media and easily spreading cultural industries. Most people who live in the villages hold strongly to their traditional cultures, but Christianity has shaken and destroyed a lot of their belief. They do not necessarily live happily together but try to contain each other. It is a different case in the cities where traditions have weakened.

### International Cultural Cooperation

Cultural cooperation of Nigeria is carried on the basis of the signed agreements, either bilateral or multilateral. The coordinating agency for cultural cooperation is the Federal Department of Culture.

Regional African cooperation is mostly based on the common developmental experience and some similar characteristics of African cultures. It is motivated by the need to work on the emancipation of African cultures. The Black African arts and civilizations try to establish mutual links and exchange, which is not very easy as the authentic values and types of communication do not normally bring them closely together. Pan-African festivals offer an occasion for overall presentation of arts and crafts, and the Nigerian government has hosted such manifestations (e.g. in 1977.). The distinct cultures which in the past kept people apart are now being used to bring them together. The greater distinction now being made is not between tribal cultures, but between Africa and non-Africa.

Cooperation with western countries is mostly based on the presentation of Nigerian arts and crafts or Nigerian music to western audiences, and on the transfer of knowledge on cultural institutions and activities from the West. Nigerian cultures are very much in contact with the western cultural production and mass media, while the information on Nigerian cultures is very scarce in the West. A balance can hardly be reached.

The Nigerian government backs cultural exchange through exchange of artists, exhibitions, information materials, *etc.* on a reciprocal basis.

Cooperation with UN, and particularly UNESCO, is of special concern. Apart from support for festivals, exhibitions, *etc.*, UNESCO pays particular attention to relevant cultural issues, such as copyright information management and enforcement, collection, analysis and documentation of the oral traditions, restoration and conservation of national monuments, creative writing, education, training in cultural development, establishment of a specialized National Institute for Cultural Orientation, *etc.* It is also through this organization that the Nigerian cultural institutions or associations join specialized international associations and organizations.

### GLOBAL POPULAR MUSIC

Global popular music in Nigeria has witnessed some increase in interest over the years. Nigeria has always had imported music, from the time of gramophones to these days of digitally produced music. The mass media has also been paramount in the dissemination of global popular music. Technology has now brought popular music to the finger tips of the average Nigerian. Satellite technology has made the availability of global popular music most easily accessible.

Interest in global popular music is an age and class issue in Nigeria. Most young adults favor popular music from Europe and America (the percentage of the population under 25 years of age being 66%), because that is the music that appeals to people of their age world wide. They have come in close contact with the pop music through the satellite TV stations and music channels. Programs like the UK and US top ten chart shows keep them abreast of the latest developments in music as they are released into the market. The internet also allows young adults to listen to the latest releases as they come out, and the advent of Cyber Cafés has made it possible for people to get online and surf the web at very cheap rates. Amongst the undergraduates and the young adults living in the cities, even to some extent those in the rural areas, the popular trend in global music appeal is on the increase. In another vein, there are lots of video rental outfits where one can easily acquire videos or video CD's of global popular music currently in the market. The high rate of piracy also allows for affordability of the music CDs once they are released into the market. Some Nigerians would travel out of the country, purchase the originals of the music albums that are released, bring them back here, and start making illegal copies for sale in the Nigerian market.

The desire to "belong" also drives a lot of young adults into making sure that they are aware of the latest release of most global pop musicians as soon as they are in the market. So it can be safe to say that among young adults, popular global music (hip-hop, rap, reggae, blues, sentimental, and in very few cases heavy metal etc.), has been increasingly popular over the years. Among the older generations, jazz, classical, reggae, the blues and sentimental music are also quite trendy.

There has not been any decrease in the interest in local music despite the increase in global popular music. The generation and class of people that have favored the local music still do appreciate it. So even with the increased interest in global popular music, the interest in local music has not been affected. There is more or less a balance in the interest in global popular and local music types.

The interest in local music has been getting stronger over the years. This is due mostly to the fact that in public performance situations such as burials, weeding ceremonies, naming ceremonies, launchings, hotels etc., the most popular choice is usually the local musicians (minstrels), who are quite well known in their direct environments. The advent of these popular minstrels who sing praise songs has made it imperative that in any gathering there must be musicians that will sing the praises of the host and some of his esteemed guests. The vogue on most occasions in Nigeria is to have the musicians sing of one's exploits (even if one has none) while the person in question 'sprays' Naira (the Nigerian currency) on the forehead of and around the singer, in a deliberate exhibit of wealth and affluence. When these praise songs are recorded on tape and sold in the market, there is a regular clientele base for the music, especially when the artist is selling in the same geographical/ethnic location that he comes from. In some cases, people from a particular ethnic group who are outside their ethnic location usually prefer to listen to more music from their ethnicity in order to exhibit some level of cultural identity. This is commonplace in Nigeria, where as was noted earlier, there are over two hundred and fifty different ethnic groups and languages.

### **Effects of Globalization on Nigerian Artistes**

Some of the local artistes in Nigeria have been greatly favoured by globalization. Some of them have been able to transcend the borders of the country and the continent, to have their music made popular in Europe and America. In most cases, the mass media in the form of satellite TV stations make it possible for these local musicians to have their music viewed globally. These musicians have achieved international fame due to the effect of globalization. Some of these artistes like Fela Kuti, Prince Nico Mbarga, King Sunny Ade, to mention a few, have had their music exported through live concerts, satellite TV shows and the sale of their music in most music shops around the globe. They have achieved not only international fame, but wealth also, because the money they earn is usually in foreign currency, and they have better chances for more concert bookings abroad. Once it is known that a particular music is making waves abroad, it automatically raises the status of the musician, and increases his music sales output.

There are some local musicians who perform international styles. They are influenced by the European and American musicians, whose music videos they watch on video CDs and satellite TV channels. They try to imitate these musicians in their music style, rhythm, dressing, speech intonation, dance style and musical videos. These local artistes usually don't engage in public functions like burials, weddings etc. but rather would prefer to have their music produced and sold on CDs or cassette tapes. Sometimes, they are favoured for promotional shows that target young adults in universities and big cities, where their musics are more popular. They are successful in their music, which is why more people are getting into that musical style.

### **International Trade**

#### **Deregulation of Liberalization of Trade**

Government has observed that since colonial era, extreme regulation of trade through tariff regimes, absolute prohibition and licensing have not brought the desired accelerated economic growth. Therefore, in order to enhance the promotion and development of domestic and international trade, government will pursue policies that will de-emphasize prior approvals and emphasize simplification of documentation in the export and import of goods and services.

#### **Promotion of Nigeria's Bilateral and Multilateral Trade Interest**

The ultimate objective of Nigeria's commerce policy with particular reference to external trade is to create avenues for easier penetration of international markets for Nigerian goods and services. It is the expectation of government that the Nigerian trading community will take full advantage of the opportunities and concessions available to Nigeria through membership of several multilateral trade organizations.

On the bilateral level, the policy objective is to improve the country's performance in reversing the adverse balance of trade and eliminate payment difficulties, increase Nigeria's exports to countries with which Nigeria has bilateral trade agreements, as well as conclude agreements with countries with potential markets for Nigeria's goods and services.

#### **Bilateral Trade**

Nigeria maintains bilateral trade arrangements with a number of countries. This approach will continue to be intensified with particular regard to trade relations with African, and other friendly countries.

#### **Multilateral Trade Agreements**

Nigeria has acceded to multilateral trade agreements concluded under the auspices of International Organizations such as United Nations Conference on Trade and Development (UNCTAD), South Commission, ECOWAS and the General Agreement on Tariffs and Trade (GATT) among others. This has been necessitated by the imperatives of global trade

liberalization and domestic needs for resource flow towards the industrialization and diversification of the economy. Government is determined to ensure that the Nigerian trading community and enterprises reap maximum benefits from Nigeria's active membership of these organizations especially in areas of expanded market access.

## **Intra-African Trade Relations**

One of the main objectives of Nigeria's Trade Policy is to give new impetus to the development of Intra-African Trade as a positive counter measure to the worsening terms of our trade with the industrialized countries. The Nigerian Government shall therefore continue to encourage and participate actively in all African regional and sub-regional economic groupings, aimed at developing Intra-African Trade.

Over the years, Nigeria has signed several agreements that involve culture.

Nigeria is signatory to the World Tourism Organization (WTO) in Spain. Currently, the WTO is helping the Nigerian Government, develop a Tourism Master Plan.

In the year 2000, the country signed protocol agreements and memorandums of understanding, including cultural content, with the following countries:

- a      Trinidad and Tobago in July 2000 at Port Spain.
- b      Havana Cuba, in July 2000
- c      Morocco, in July 2000
- d      Brazil, November 2000 in Brasilia
- e      China, November 2000 in Peking
- f      Namibia, November 2000 in Abuja (Nigeria)

The country has, in line with Cultural Agreement signed with Iran, hosted an Iranian film week, from the 2nd to 8th of March 2000, in Abuja Nigeria.

The country was presented with a Cultural House by the state of Bahir in Brazil in 2002.

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# Convergence and Confluence: Philippine Music in the Era of Globalization

**A Report for the ManyMusics Program of the International Music Council, October 2003**

Elmar Beltran Ingles, Executive Director, Organisasyon ng Pilipinong Mang-aawit

## I. Overview of Philippine Musical Traditions

The approximately 80 million Filipinos today are endowed with sensibility and adeptness in music as mirrored on the people's diversity of musical traditions. The diversity spells out a rich musical history that looks far back from the indigenous and folk traditions in music to the Western influences from American and Spanish colonizers, forging a confluence of what can be defined today as Philippine music.

With more than 80 languages subdivided into more than 500 dialects, and spoken by more than a hundred indigenous and ethno-linguistic groups, the diversity in itself suggests a well-developed culture, which includes a multi-faceted inclination towards music among the groups.

**Early forms.** Pre-historic musical forms evolved from the animistic rituals of worship of *anitos* or spirits. Community rituals led by priests and priestesses called the *babaylan*, *mabunong*, *katalonan* and many other names were performed using chants and to the beats of indigenous instruments. Such rituals implored the spirits to mediate between the living and the spirit world. Despite colonization and conversion into the Christian, Islam and other religions, many of the animistic rituals persist especially in the Philippine rural areas.

**Musical instruments.** Evidences of music diversity can be seen on the indigenous musical instruments that are still being used today by the indigenous groups, where there exists a clear distinction between the instruments of the northern mountainous communities of Northern Luzon and the lowlands of Mindanao, including the islands of Sulu, Palawan and the nearby small group of islands. The Northern Luzon groups residing in small geo-political divisions in the Cordillera Mountain Range such as the *Ifugaos*, *Kalinga*, *Kankan-ay*, *Ibaloi*, *Gaddang*, *Bontok*, *Apayao*, and *Itneg* all use a flat gong known as *gangsa*, which is played solo or as an ensemble. On the other hand, the Southern groups such as the *T'boli*, *B'laan*, *Manobo*, and *Tagbanua*; as well as the Muslim groups *Maranao*, *Yakan*, *Sama*, *Tausug* and *Jama Mapun* use varieties of bossed-gongs such as the *agong* and *kulintang*, instruments that are similar to the *gamelan* gongs of Indonesia.

Aside from the gongs, there is also a considerable variety of musical instruments that clearly implies the people's proficiency in utilizing available resources for the use of music-making. The Cordillera peoples have an array of instruments that are made of bamboo and wood, like bamboo buzzers (*balimbang*), *Kalinga* nose flutes (*tongali*), quill-shaped tubes (*pateteg*), Ifugao mouth flute (*unghiyong*), bamboo clappers (*bungkaka*), bamboo zithers (*kulitong*) and *Kalinga* lip-valley flutes (*paldong*) to name a few.

The Southern islands of Palawan and Mindanao likewise boast of well-crafted and sophisticated instruments such as *kulintang*, a set of small bossed-gongs laid in a row, found in most Muslim groups in Mindanao. The *agong*, a suspended wide rimmed gong can be seen on almost all the groups.

*Melisma*, or multiple notes in one syllable is a distinct quality of indigenous chants and songs. Almost all the indigenous groups, numbering more than a hundred, have their own set of chanted epics, among them are *Hudhud* from the Ifugaos, *Kudaman* from the Palaw'ans, *Darangen* from the Maranaos, and *Tudbulu* from the T'bolis.

**Influences.** Trade contacts with its Asian neighbors, particularly India, China and Indonesia, have enriched early Philippine cultural traditions. In music, instruments such as *kudyapi* (boat lute) and *suling* (flute)

The year 1521 marked the onset of western assimilation in Philippine music when Portuguese navigator Ferdinand Magellan reached the Philippine shores. For more than 300 years, the marriage of folk and indigenous traditions was a gradual success as the Spaniards anchored on the people's traditional culture to introduce the Spanish westernized ways. Music then was harnessed for liturgical and secular use. Spanish melodies and Christian images and lyrics were integrated into the indigenous concepts of worship such as the chanting and religious processions; an example of which is the *Pasyon*, a chanted verse about the passion and death of Christ which showcased the melismatic quality of the indigenous vocal traditions. Folk songs and

lullabies, likewise, became a hybrid of the indigenous and the western; wherein the lyrics were of indigenous origin while the melodies were that of the Western syllabic style of one note per syllable.

The Spaniards saw that the Filipinos were musical people, thus, they were quick to learn the Western musical traditions. Gregorian chants were sung in Catholic masses, and immediately, local choirs were assembled in every local church in the country. People from the lowlands, especially those from Luzon Island and the Visayas learned and patterned their dances and their music from the European steps and musical pieces such as the *valse* (waltz), *polka*, *mazurka*. Yet the quality of the folk and indigenous remained with the presence of bamboo materials as evident in the *tinikling*, a physical dance involving a man and a woman who seem to be chasing each other while jumping away from two rapidly colliding bamboo poles; and in the communal atmosphere when the dances are celebrated and cheered upon by the whole community rather than performed in an isolated stage.

In the secular field, music popularized included love songs such as *kundiman*, and the Visayan *balitaw*, as well as the war song *kumintang*.

After the Spanish-American War of 1898, the transition of colonial influences from Spain and the United States was easy, given the western precedent provided by the Spanish conquest. Education and militarization provided the media that introduced Anglo-American forms of music, along with new forms of media such as the radio, jukebox, and phonograph that were significant transmitters of American music.

**Development of other music genres.** Around this time, many academic institutions and music conservatories in the country started to operate producing virtuosos in European styled classical compositions. During the early stages of the 20<sup>th</sup> Century, trends in music were patterned to that of the American stream. The birth of Jazz, an Afro-American genre that evolved from the work songs, ragtime, and blues tunes of African slaves that came to America was almost simultaneous between the two countries mainly due to the American troops that came to the country and the Thomasites, one of the first groups of American educators that came to establish the public school system in the Philippines. Jukebox and bands playing jazz, as well as the Swing, fox trot and cakewalk dominated the lounges and cabarets in the cities.

**Music and other media.** Theater also became a medium in popularizing Western genres, as seen on *bodabil* (vaudeville shows), a dance and song stage presentation featuring the country's famed theater actors sing and dance to the tunes of the swing.

Despite the American presence, remnants of the Spanish traditions still flourished as exemplified in the *zarzuelas*, stage shows featuring classical pieces of the *kundiman* and *kumintang*, sung by hugely popular artists who would, later on, to shine on in the new medium of cinema.

Before the Second World War, film became a widely popular medium that sent out the arts to the people, and music was an important ingredient of all successful movies of that time.

**The advent of commercial popular music.** *Kundiman* and folk ethnic songs were further preserved, along with the continued popularity of jazz and ballroom music and their market proliferated with the advent of the recording industry. Villar Records was one of the first widely successful recording company established in 1950. It released *kundiman* and folk song albums interpreted by popular singers and bands. Visayan songs with Cebuano lyrics also joined the mainstream. For quite sometime, Visayan music produced a re4coding industry parallel to that of the mainstream operation in the capital city.

The late 1950's saw a revolution in the global music industry with a new sound known as *rock and roll*, and with Western inclinations, the Filipinos were quick to follow and recreate rock and roll into a more Filipino sound, thus, the beginnings of Pinoy Rock. At first, the Filipinos patterned their *rock and roll* artists with their foreign counterparts, as exemplified by look-alikes assuming the style and character of such Western artists as Elvis Presley. Bands started to grow in number, and were known as "combos". The Beatles, like in any other country exposed to media like radio and the television, became a huge influence in transforming the musical atmosphere of that time.

**Evolution of "Original Pilipino Music".** During the decades of 1960s and the 1970s, the mainstream Philippine music industry saw the need to create sounds that, while patterned after the mainstream music of the west such as jazz, rock, and pop rock, still contain sounds that are distinctly Filipino, thus, coined the terms "Pinoy rock", "Pinoy jazz", and the "Manila sound." True to their names, these distinct genres succeeded in revolutionizing the Filipino music mainstream.

The awareness and newfound sense of responsibility among Filipino musicians and composers to keep alive the Filipino sound vis-à-vis tough competition from foreign markets spurred productive moves. One of them is the pioneering Metro Manila Pop Music Festival established in the late 1970's and persists to the present. The competition is open to amateur and professional music artists, providing a venue for creation of new and inspiring Filipino pop works. The most successful product of the competition's first edition remains unequalled to date in terms of popularity, commercial sales and universal appeal: Freddie Aguilar's song "*Anak*" which went on to become a huge international hit in Asia and Europe.

**Professional and Industry Organizations.** In an effort to practice self-regulation, institutionalize professionalism and promote sectoral interests, several non-government organizations have been formed. While professional associations and music foundations catering to skills development and standards-setting concerns exist in almost every music sub-discipline, among the most active groups active in the mainstream music industry are as follows:

1. Philippine Association of the Recording Industry (PARI)

Currently listing 37 music recording companies, independent producers and record distributors, PARI was established to promote the development of the music market in the Philippines. It is involved in anti-piracy campaigns and holds distribution and licensing control over the market for local and foreign music in the Philippines.

2. Filipino Society of Composers, Authors and Publishers (FILSCAP)

FILSCAP acts as the royalty-collecting society for composers, authors and music publishers. Member-artists assign their collecting rights to FILSCAP who represents them in the defense of intellectual property rights.

Kapisanan ng mga Brodkasters sa Pilipinas, (KBP)  
(*Association of Broadcasters in the Philippines*)

An organization of television and radio network producers, KBP is a self-regulatory organization that polices the ranks of member-networks in accordance with the rules of the defunct Print and Media Council of the Philippines.

3. KATHA – Organization of Filipino Composers

KATHA's primary concern is the development of standards of professionalism and skills among Filipino composers and lyricists. Members of this organization are the people behind FILSCAP, which handles the royalty collection work of composers and lyricists.

5. League of Filipino Composers (LFC)

LFC is an older group which counts more established and professionally-trained composers as its members. Many of its members are focused in music education based in universities and conservatories but quite a few are not actively involved in the mainstream commercial music recording industry.

6. Asosasyon ng Musikong Pilipino (AMP)  
(*Association of Filipino Musicians*)

AMP functions as a union catering to the defense of rights, welfare and professional development needs of its member-musicians who are mostly music instrumentalists. The organization was founded in response to the sorry of plight of instrumentalists who are perceived to be the most economically aggrieved sector in the music industry.

7. Organisasyon ng Pilipinong Mang-aawit (OPM)  
(*Organization of Filipino Singers*)

Basically an organization of singers and performers, OPM stands out as one of the biggest and most organized groups catering to a diverse program focus not limited to the needs and concerns of singers and performers alone. It counts among its concerns encompassing advocacies on anti-piracy; rationalization of taxation measures on the arts and artists; general artists' rights, artists' equity; promotion of Filipino arts and culture; and payment of artists' royalties. It has spearheaded the formation of other artists groups, such as the Performers Rights Society of the Philippines, toward defense of artists' rights.

8. Performers Rights Society of the Philippines (PRSP)

PRSP is a broad coalition of Filipino performing artists that embraces those working in the music, television, cinema and theater sectors. It acts as the royalty collection arm of the performers' sector as it envisions a Center for the Protection of Filipino Artists.

9. Phonogram Producers and Performers Society of the Philippines Inc. (PPSP)

PPSP is an organization of independent music record producers who are also involved in performing and music production.

10. IP/Anti-Piracy Coalition

Working with the Intellectual Property Office under the Office of the President, this broad coalition bands together most of the professional organizations of record producers, artists and the business sector through various chambers of commerce in a common fight against music record and film piracy in the country. It has launched education and information campaigns and maintains consultative partnership relations with government agencies directly tasked with anti-piracy campaigns.

In addition, professional leagues and groups of musical artists in the diverse sub-disciplines of music abound including those of piano teachers, bamboo music enthusiasts, orchestras, choirs, and bands. It is said that there must be thousands of rondallas (instrument-based groups), choirs and popular bands based in schools and communities on professional and amateur status.

**Dynamics of the Philippine Commercial Music Industry.** The country's commercial music industry mainly refers to the production/recording, sales and distribution, and mobilization and deployment of talents and resources for music and the various forms of enterprise that such processes entail or spawn.

Music production and recording are mainly undertaken by established recording companies, or labels as they are commonly called. In the Philippines, there are over 50 such labels mostly affiliated with the Philippine Association of Recording Companies (PARI) and non-member independent or alternative labels formed by cooperatives or groups of artists, businessmen and arts managers. PARI has 39 member-companies in its roster which leaves some two dozens of independent labels unaccounted for in terms of regulation and standard-setting. Non-member labels purposely shy away from PARI membership owing to its perception as a self-serving cartel that, in certain instances, work against the interest of artists. Much of the complaints stem from the alleged under-declaration or dubious reporting of music record sales to the detriment of the royalty scheme for artists.

Sales and distribution of music records, as well as its licensing, are also done by labels. Commercial record distribution requires prior approval by PARI and no independent producer can release a music album without license to sell. At present, there exists no verifiable data on actual sales figures as the reporting and monitoring process has not been ably performed by any government agency concerned with trade and industry. PARI, however, requires its member-companies to report sales figures in fulfillment of a requirement set forth by the International Federation of Phonographic Industries (IFPI), of which PARI is a member. PARI does not countercheck the veracity of reported figures and admits to receiving inputs from only about 60% to 80% of its general membership. Following is a table reflecting annual sales trend from 1986 to the first half of 2002 as culled from PARI members' reports:

#### REPORTED NATIONAL RETAIL SALES FOR MUSIC RECORDING<sup>1</sup>

(Based on reported sales figures by PARI Member-Companies)

Year	Unit Sold	Total Retail Sales
1986	4,628,779	149,700,000 <sup>2</sup>
1987	4,319,230	200,000,000
1988	5,338,500	285,000,000
1989	5,685,000	373,600,000
1990	5,685,000	450,800,000
1991	7,010,615	599,311,500
1992	7,331,000	690,000,000
1993	8,515,000	775,805,000
1994	9,837,000	1,017,270,000
1995	9,843,000	1,139,430,000
1996	11,031,000	1,319,402,000
1997	11,815,000	1,693,045,000
1998	11,290,000	1,836,125,000
1999	8,816,000	1,652,848,000
2000	9,379,310	1,668,953,940
2001 <sup>3</sup>	4,279,470	854,347,600
2002 <sup>3</sup>	3,328,250	881,413,000 <sup>2</sup>

<sup>1</sup> Includes total amount of sale of music audio-recording on cassette tapes, compact disks, and other phonographic media

<sup>2</sup> In 1986, currency exchange rate was US\$ 1 = 18 Philippine Peso. By the end of 2002, the rate was at a high of US\$1 = 55.50 Philippine Peso

<sup>3</sup> Figures for 2001 and 2002 represent total sales from the period of January to June only. Second half figures for these years are not available.

The figures do not represent sales made by non-member companies.

Mobilization and deployment of talents are done for both local and foreign engagements. Locally, this takes the forms of concert engagements, appearance stints in radio/film/television shows and special events, and commercial product

endorsement. Externally, this is done through international concert series and overseas job placement for long-term music engagements of six months to any number of years. Integral to these engagements are the services of talent managers and/or job placement agencies, which normally charge service fees and commissions from either the talent or the employer or both. The process is regulated by the Philippine Overseas Employment Administration (POEA) and the Technical Education and Skills Development Authority (TESDA), which administers testing and clearance procedures for talents who wish to work abroad, particularly in Japan.

**Issues confronting the music industry.** The multi-faceted issues and problems confronting the mainstream industry that bear on the development of local music and music artists can be summarized according to the following concerns:

1. Music production, licensing, sales and distribution
  - lack of government incentives for music production and distribution;
  - market's perceived preference for foreign music products;
  - the unfair collection of 30% amusement tax on gross proceeds of pop and rock concerts (the local film industry is levied the same tax on net proceeds only); and
  - rampant music piracy resulting in loss of income for music producers.
2. Artists' rights protection and welfare provision
  - unfair income opportunity for non-performing artists (singers gets higher fees than music authors and other production personnel);
  - absence of standardized compensation and wages for various categories of artists e.g., classical music performance rates, recording rates, concert rates, television appearance rates, etc.;
  - increased value-added taxation from 10% to 20% of income;
  - absence of health and life insurance and other benefits owing to non-classification of music as a regular profession;
  - absence of standard compensation rates for non-coverage for prohibitive cost of musical instruments and accessories
  - lack of protection from unscrupulous music producers who cheat on payment of correct royalties;
  - lack of suitable venues for music performances;
  - lack of local job opportunities for music artists;
  - unprofessional industry practice of many music producers who do not issue contracts or violate provisions of signed contracts;
  - wanton violation of artists' intellectual property rights; and
  - absence of a monitoring agency for use of local music for commercial purposes resulting in violation of intellectual property rights; and
  - misrepresentation and/or misappropriation of indigenous music materials for contemporary performances.
3. Music patronage
  - lack of quality and innovative original materials to patronize;
  - high cost of original music compact disks which encourages music patrons to buy counterfeit or pirated products;
  - lack of product diversity in the music market heavily favoring commercially tried-and-tested pop ballads and novelty songs over alternative and/or other music genres;

## II. Government Measures and Support System

The 1987 Philippine Constitution provides under Article XIV Section 14 that "Arts and letters shall enjoy the patronage of the State. The State shall conserve, promote, and popularize the nation's historical heritage and resources as well as artistic creations."

Considering this, every effort should be made in order to encourage, develop, and foster the musical creativity of the Filipino, and to support and protect the promotion and proliferation of the Filipino music here and abroad. However, the economic importance of music is not fully recognized in the Philippines.

**Network of Official Support for Cultural Development.** Among the official network of government agencies directly responsible for the protection, promotion, regulation and development of music are as follows:

### 1. National Commission for Culture and the Arts (NCCA)

Directly under the Office of the President, NCCA was created by Republic Act 7356 enacted into law in 1992 and assigned the following functions:

- formulate policies for the development of culture and the arts;
- implement these policies in coordination with affiliated cultural agencies;
- coordinate the implementation of programs of these affiliated agencies;
- administer the national Endowment Fund for Culture and the Arts (NEFCA);

- encourage artistic creation within a climate of artistic freedom;
- develop and promote the Filipino national culture and arts; and
- preserve Filipino cultural heritage.”

NCCA has a National Committee on Music composed of volunteer music experts from the academe, commercial music industry, practitioners, and artists tasked to identify and develop programs priorities and screen/endorse music-related project proposals for funding consideration of the NCCA.

Other government agencies belonging to the NCCA network whose mandates have direct bearing on culture and the arts are the Cultural Center of the Philippines; the National Library (it's Copyrights Office is particularly relevant to the music sector); the Records Management and Archive Office; and the National Museum.

## 2. Department of Education (DepEd)

Tasked to implement programs on the development and delivery of the basic education system and services in the Philippines, the DepEd mandates training on culture, arts and its various expressions – including music – in its prescribed elementary and secondary school curriculum through its MAKABAYAN (Nationalist) subject areas in formal education.

## 3. Commission on Higher Education (CHED)

CHED's mandate is similar to that of DepEd but limited to tertiary level education. In the area of arts and culture, it ensures that music education is factored in the teaching of the required subject of Humanities or Arts Appreciation in all private and government schools.

## 4. Cultural Center of the Philippines (CCP)

Established by then First Lady Imelda Romualdez Marcos in 1969, CCP was envisioned as the national repository of Philippine Culture and the Arts promoting “the true, the good and the beautiful” and showcasing what many perceived to be elitist art. Since the People’s Power Revolution of 1986, however, the CCP has reinvented itself to address diverse cultural expressions including that of the marginalized and the peripheral through its many outreach and community-based programs. Its cultural work has since evolved into an empowering brand of artistic development that features outstanding global art side by side with the best of Philippine culture. In music, it has featured grassroots community groups, popular/commercial artists, academe-trained artists and alternative artists in its various concerts, musical productions, and training in various parts of the country.

## 5. Department of Interiors and Local Government (DILG)

Primarily concerned with the process of governance in the local government unit levels (municipalities, cities, provinces and regions), DILG has recognized the concept of Culture and Governance as a component of local development framework. Through a Memorandum Circular issued by the DILG Secretary, local government units with existing capacities are required to establish a Local Arts and Culture Council composed of local government, business, community, education and youth representatives tasked top formulate policies and programs pertaining to local cultural development as part of the governance process. Some big cities and municipalities have been encouraged to allocate a certain percentage of its Internal Revenue Allocation (IRA) from the National Government to programs related to culture and the arts including music.

## 6. Department of Tourism (DOT)

DOT is tasked with the development and utilization of the country’s tourism-related resources, particularly in generating revenues to support the flagging economy. The current dispensation has adopted the theme of *Culture of Tourism* in its tourism program development efforts, a widely-questioned approach that many critics say tends to commodify and commercialize culture to serve the haughty means of tourism development. Despite criticisms, however, DOT’s WOW Philippines Festival, a yearlong program that showcases the best of regional tourism through performances and commercial bazaars albeit in a limited concentrated area in Manila, proves to be a success in generating consciousness on issues of regional cultural identity and heritage among local and foreign visitors. Its sustainability and long-term effects on both the tourism and cultural development aspects, however, remain untenable owing to the perceived uprooting and displacement of local cultures, tending to relegate them as mere showcase pieces rather than a living and locally-contextualized tradition.

**Music Education and Competency.** Current support for specialist music education institutions is provided by the government and is part of the overall education that is not going to change profoundly. The New Elementary School Curriculum (NESC), the Secondary Education Development Program (SEDP) and the Revised Basic Education Curriculum, prescribed and instituted in 1982, 1989, and 2001, respectively, constitute a continuum of academic preparation for tertiary education. The inclusion of the subject of music is premised on the aesthetic (musical) and utilitarian (extra-musical) contributions to general

education and the development of national culture. Music instruction in both public and private elementary schools is of the general music type (as distinct from performance classes) commonly used in the United States. The overall aim is to develop basic music literacy.

Talented new artists and performers can further profit from the different awards and competitions. Institutions like NAMCYA Foundation (National Music Competitions for Young Artists), Nayong Filipino Foundation (Banduria, Octavina, Gitara, Atbp. / Rondalla festivals and competitions), GMA Channel 7 (Metropop Song Festival), ABS-CBN Channel 2 (Himig Handog), and others, have contributed to the able training of song makers and performers.

The overall picture of Philippine Music Education is not without problems, i.e. the need to fully implement the Music Law, or Republic Act 4723; quality and development of music educators; dearth of relevant instructional materials; development of instruments for student assessment and evaluation of competencies; funding for curriculum-related music programs, etc. But with the continued support of government institutions like the Department of Education (DepEd), Commission on Higher Education (CHED), National Commission for Culture and the Arts (NCCA), educational institutions, and organizations like the National Music Competition for Young Artists, and Kodaly Society of the Philippines, Filipinos can look forward to Music Education in the continuum of globalization.

*Local Content Standards (Quotas). The government imposes local content standards for all radio broadcasting facilities to ensure that the public has access to local musical performances. This is aimed not only at fostering appreciation of local music but also to build music record sales, and thereby create cause for increased production of recording of performances and works by Filipino musicians and composers. The current law, Executive Order No. 255 Series of 1987, directs all radio stations with musical format to play at least four original Filipino compositions per clock hour.*

Executive Order No. 255 remains largely ignored and violated because of the lack of monitoring capacity of the National Telecommunications Commission, the government agency tasked to supervise and regulate all radio and television broadcasting facilities in the country. To date, no known cases have filed against erring radio stations despite rampant violations.

The reality is that radio networks rely heavily on the use of foreign music for its radio play programming. Despite the proliferation of quality local recording by local artists, KBP members still complain of the lack of local materials to be used for airing. What is not publicly expressed is the network programmers' preference for foreign materials such as those belonging to Billboard Top 40s or their foreign-sounding local equivalent. Still another factor working against Executive Order 255 is the payola system, an open secret in the music industry where music producers, artists and their handlers extend financial and other forms of bribe in exchange for radio airtime to popularize their music recording. Payola system, which was exposed in the 1970s by leading recording artists, work against the interest of local music as those who cannot and will not bribe does not get prioritized in radio airplay. The system is so embedded that it has reported that many radio disc jockeys are in the payroll of some artists of recording companies.

In line with quotas, two pending Senate Bills can be mentioned of importance. The first bill, Senate Bill No. 554, as introduced by Senator Vicente Sotto III, has a provision on local content standards. Section 8 of the bill, entitled Promotion and Popularization of Filipino Music, will require:

- all radio stations to broadcast a minimum of four (4) original Filipino Musical Compositions in every clock hour of a program with a musical format, as stated in Section 1 of Executive Order No. 255.
- all musical / variety / cultural programs in all television stations shall include sixty per cent (60%) Filipino compositions for every clock hour of show time / air time.
- musical scores of Filipino films shall be at least seventy-five per cent (75%) Filipino music.
- all public places (listed are the following: movie houses, parks / plazas, hotel lobbies, shopping malls, public transports, government offices, and schools) shall play sixty per cent (60%) Filipino music for every clock hour.

Senate Bill No. 231, introduced by Senator Sergio Osmeña III, requires radio stations to allot at least sixty per cent (60%) of airtime to Filipino musical compositions, including background music, in every clock hour of a program with a musical format.

The consequences of failure to comply with the codes vary for the two bills.

Section 10 of SB No. 554 states that:

- Any franchise holder or operator / owner of a radio station which fails to broadcast the minimum number of Original Filipino Musical Compositions in every clock hour of a program with a musical format shall be fined in the amount of One Thousand Pesos (Php 1,000.00) for the first offense and Two Thousand Pesos (Php 2,000.00) for the second offense.
- The producer / directors of the TV musical / variety / cultural program which fail to play the required sixty percent (60%) shall pay a fine of Five Thousand Pesos (Php 5,000.00) for the first offense and ten thousand pesos for the second offense.
- After due hearing the National Telecommunications Commission shall cancel the Certificate of Registration and Authority to operate any radio / TV station in the event of three repeated violations.

Section 10 of Senate Bill No. 231 states that:

- Any franchise holder or operator / owner of a radio / TV station which fails to play at least sixty per cent (60%) Original Filipino Music during airtime shall be fined in the amount of Twenty Thousand Pesos (Php 20,000.00) per violation.

**Protection of Intellectual Property Rights.** As a signatory to the World Trade Organization (WTO) Uruguay Round, the Philippines is required to harmonize its laws and regulations in accordance with existing Conventions and Agreements on intellectual property rights (IPR) protection.

By this initiative, the Intellectual Property Code of the Philippines, or Republic Act 8293 authored by Senator Raul Roco, was enacted in 1998, two years in advance of the end of the transitory period for compliance with the Agreement on TRIPS. The law generally improves the legal framework for intellectual property rights (IPR) protection in the Philippines. It provides enhanced copyright, patent, and trademark protection, and increased penalties for infringement and counterfeiting, and relaxes provisions requiring the registration of licensing agreements.

The Code has been praised by international intellectual property rights experts as one of the most comprehensive IPR laws to be passed anywhere in the world. For music artists, the Code provides for rightful claim for payment on replays of their performances, which amounts to five per cent (5%) of the contract amount for the production [Article 12 Section 206].

The Code also strengthened the artists' right over the preservation of their art works. Under the previous law, Presidential Decree No. 49, the term of protection is only 20 years. Section 215 of RA 8293 (Term of Protection for Performers, Producers and Broadcasting Organizations) provides protection:

- For performances not incorporated in recordings, fifty (50) years from the end of the year in which the performance took place; and
- For sound or image and sound recordings and for performances incorporated therein, fifty (50) years from the end of the year in which the recording took place.

Thus, under the Code, artists have the right to object to any distortion, mutilation, or any form of modification of his performances that would be prejudicial to his reputation.

The Philippines also extended rental rights in respect of sound recordings (also with computer programs and cinematographic works).

The Code also provides for the protection of geographical indications that identify a good as originating in the territory of a country, or a region or locality in the territory, where a given quality, reputation, or other characteristics of the good are essentially attributable to its geographical origin and trade secrets.

Nonetheless, the United States finds faults in the law, including the decompilation of software programs as fair use that the law allows; the lack of clear provisions on search and seizure action (*inaudita altera parte*) in civil cases; ambiguous provisions on the rights of copyright holders over broadcast transmissions; and burdensome restrictions affecting licensing contracts. On top of these, resource and personnel limitations plague the proper implementation of the law.

Because of this, the United States, in April 2001, upgraded the Philippines to the Priority Watch List (Special 301), a pressure instrument applied to countries it deems as not exerting enough effort to protect intellectual property rights and, as a result, seriously prejudices United States trading interests. The move could conceivably lead to unilateral trade sanctions, which the Philippine Government is sure to vigorously and resolutely challenge in the WTO, if and when it happens. It remains to be seen whether or not R.A. No. 8293 will eventually be amended to address such criticisms. However, it appears more urgent that the overall thrust of, and specific efforts to fully implement, the law needs to be addressed and supported, especially in terms of the allocation of resources to fund the operations of concerned government authorities, not only in the executive but also in the judicial branch.

The Philippine Government is watching this development closely because, depending on how the debate is resolved, there may have to be a need to make corresponding adjustments in patent laws, among others. In any event, the Philippines is a convenor of the group of countries in WTO that seek to ensure, at the end of the day, that public policy will indisputably prevail over private interests, especially monopolistic and anti-competitive private interests.

**Protection of traditional music.** Under the World Intellectual Property Organization (WIPO) initiatives, the Philippines has taken cognizance of the intellectual property needs of traditional knowledge holders and the urgency to document and assess these needs as well as determine the most appropriate type of protection for these bodies of knowledge. Thus, the Republic Act No. 8371 or the Indigenous Peoples Rights Act (IPRA) took effect in October 1997. The law recognizes the rights of the indigenous peoples to their, among others, cultural integrity such as traditional music.

**Anti-piracy campaign.** On the verge of globalization comes the major problem for the music industry: the unprecedented growth of record piracy in the country. Highly organized international CD piracy syndicates began setting up shops in the country, using sophisticated, technologically up-to-date equipment geared towards mass production. These syndicates flooded the market with pirated CDs costing a mere fraction of the legal product.

In spite of a major campaign launched by the Philippine Association for the Recording Industry (PARI) and other trade and professional organizations, the difficulty of enforcing copyright infringement laws against an underground economy operated by shadowy, guerilla entrepreneurs hardly slowed down the growth of the pirate trade. Raids were conducted, machines confiscated and their foreign operators deported, thousands of CDs seized. But at the end of the day, these actions hardly made a dent in the trade in illegal CDs.

In this light, Senate Bill 2586 was enacted into law early this year. Authored by Senator Teresa Aquino-Oreta, the “Optical Media Act of 2003”, promotes the reorganization of the Videogram Regulatory Board (VRB) created under Presidential Decree No. 1987 into the Optical Media Board (OMB). The strengthened authority of the Intellectual Property Office as stated in this Act is as follows:

- Formulate and implement policies and programs as are necessary for the accomplishment of the purposes of the Act;
- Determine the rights of any entity to engage in the mastering and/or manufacture of optical media;
- Supervise licenses for specific periods, subject to such conditions as it may impose;
- Conduct inspections on entities engaged in the violation of this Act;
- Hear and resolve administrative cases against violators of this Act;
- Levy, assess and collect the rates of fees and charges for the issuance of licenses granted under the Act;
- Create and maintain a database containing the list and activities of licensed optical media and other related establishments;

The Optical Media Board shall adopt a system of source identification (SID) codes that are international in scope, recognition and acceptance. The SID Codes shall be visible and legible and must conform the specifications as prescribed by the OMB. Violators of this Act will face administrative charges. The provisions of Presidential Decree No. 968, or the Probation Law, shall not apply. Any optical media, equipment or materials found to be in violation of this Act will be confiscated and forfeited in favor of the government and shall be disposed in accordance with pertinent laws and regulations.

#### **Other Legal Measures and Remedies.**

1. Consumer Act of the Philippines (Republic Act No. 7394)  
Protects the interest of the consumer, promotes his general welfare and establishes standards of conduct for business and industry
2. Electronic Commerce Act of 2000 (Republic Act No. 8792)  
Provides for the legal recognition and admissibility of electronic data messages, documents and signatures
3. Export Development Act (Republic Act No. 7844)  
Puts export as a focal strategy through incentives to business enterprises in the export industry for a sustainable agri-industrial development
4. Foreign Investment Act (Republic Act No. 8179)  
An amendment to the 1991 Foreign Investments Act to attract, promote and welcome foreign investments in activities which significantly contribute to national industrialization and socio-economic development consistent with the Constitution and relevant laws
5. Foreign Investment List (Executive Order No. 286)  
A list covering investment areas/activities that may be opened to foreign investors and/or reserved for Filipino nationals
6. **Omnibus Investment Code (Executive Order No. 226)**  
Sets the rules and parameters within which foreign investments in the Philippines may be made, with emphasis on the grant of incentives to certain sectors, under conditions that will encourage competition and discourage monopolies
7. **Price Act (Republic Act No. 7581)**  
Protects consumers by stabilizing the price and supply of basic necessities and prime commodities without denying legitimate business a fair return on investment and by prescribing measures against undue price increases especially during the emergency situations and similar occasions
8. **Retail Trade Liberalization Act (Republic Act No. 8762)**  
Provides four major qualifications for a foreign retailer before being allowed to do business in the country
9. **Safeguards Measures Act (Republic Act No. 8800)**  
Sets up measures to protect local manufacturers from trade practices that are considered unfair and eases the adverse effects of sudden increases in imports on domestic industries
10. **Transaction Value Act (Republic Act No. 8181)**  
Shifts the tariff system of imported goods from transaction value (TV) to home consumption value (HCV)

### **III. International Exchanges and Their Effects on Local Music**

Exposure to and participation in multinational global exchanges in culture has greatly enhanced the development of Philippine Music in the area of copyrights protection, heritage preservation, sales and distribution and entry to the information superhighway (the World Wide Web).

**Copyrights protection.** The Philippines has allied itself with the following copyrights-related international conventions and agreements:

#### **1. Berne Convention for the Protection of Literary and Artistic Works**

On August 1, 1951, the Philippines became a signatory to the Berne Convention for the Protection of Literary and Artistic Works. It has since signed two ratifications of the same instrument in 1980 and 1997.

The Berne Convention, last revised in 1971, is the principal treaty protecting authors and composers of music. This treaty provides a list of rights enjoyed by these authors-such as the right to authorize or prohibit reproduction, public communication, or adaptation of these works. It also allows treaty signatories to provide certain exceptions to protection. Some countries also protect producers of sound recordings as "authors" with Berne-type protections.

#### **2. WIPO Copyright Treaties**

On October 4, 2002, the Philippines signed two treaties adopted by the international community in 1996, the WIPO Copyright Treaty (WCT) applicable to authors and the WIPO Performances and Phonograms Treaty (WPPT) applicable to performers and phonogram producers. The two treaties bring copyright protection into the digital age. They update previous treaties by granting rights with respect to distribution activities and computer programs; protecting against unauthorized internet use; and protecting technological measures used on copyright material and rights-management information against hacking, removal or alteration.

#### **3. Rome Convention**

On September 25, 1984, the Philippines became a signing party to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, known as the "Rome Convention." It provides international protection for record producers, as well as performers and broadcasters. Producers in treaty countries are protected against unauthorized copying of their recordings, and have a right to payment for broadcast of their recordings, subject to certain exceptions.

#### **4. WTO – Trade Related Aspects of Intellectual Property Rights (TRIPS)**

On January 1, 1995, the Philippines became a member of the WTO, which automatically assigns to it, among other obligations, the task of protecting intellectual property rights, including sound recordings, under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). This treaty, which applies to the current 146 WTO members, came into effect in 1995 for developed countries. Intellectual-property obligations came into effect for developing countries on 1 January 2000, and will apply from 1 January 2005 for least-developed countries. The TRIPs agreement requires all members to comply with the substantive provisions of the Berne Convention. It mirrors the Rome Convention protections against unauthorized copying of sound recordings, and provides a specific right to authorize or prohibit commercial rental of these works. It also provides a detailed set of requirements relating to the enforcement of rights which, in sum, require remedies and procedures that effectively deter piracy.

As of July 2003, the Philippines has not signed the following treaties:

1. Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, otherwise known as the Phonograms Convention (Geneva, 1971).
2. Universal Copyright Convention, as revised at Paris on 24 July 1971, protecting authors and other copyright proprietors against unauthorized reproduction, public performance and broadcasting, again subject to certain exceptions.

**Heritage preservation.** The Philippines' active participation in the works of the ASEAN Committee on Culture and Information (COCI) has placed it in the mainstream of regional efforts to promote, protect and disseminate the identity and heritage of Southeast Asian forms of cultural expressions including music. Through initiatives in training and research, publication, and people exchange, the Philippines has been instrumental in forging a unified view of the identities of music in the diverse yet related cultures of the region.

**Commercial production, sales and distribution.** The private sector, mainly through PARI's initiatives, has joined the global network of music distribution through membership in the International Federation of Phonographic Industries (IFPI) which

comprises a membership of over 1,500 record producers and distributors in 76 countries. Protecting copyright, fighting piracy and promoting the value to modern economies of a thriving legitimate music industry, are the core activities of IFPI.

**International exposure through relevant information technology.** MP3 is a way of compressing music files so they will be small enough to be downloaded on to home computers by consumers through the Internet. The impact of the MP3 format on the local music is still to be felt, but there seems to be a growing awareness on the part of the local artists that the Web is another arena for promoting --- and perhaps eventually selling --- their music.

Some recording companies are exploring what is fast becoming a standard industry practice of promoting new music on the Internet through label-maintained sites. For their part, a few technologically inclined local artists have begun to maintain their own websites.

A number of independently maintained local music sites have also emerged, including Philmusic.com and MP3Manila.com. The Singapore-based Soundbuzz.com was also locally launched in 2000, providing a platform for local recording music artists to sell their music to the Asian market as downloadable MP3s. Apart from directly soliciting MP3s from Filipino musicians, Soundbuzz entered into agreements with labels such as Viva Records to carry their artists' MP3s.

The advancement of the local music industry in the utilization of the Internet as a potential market for their records needs to be protected. A direct response to this need is the enactment of a milestone in the Philippine legal system, the Republic Act No. 8792 or the E-Commerce Law of the Philippines. The law took effect in July 2000 and has become the basic Philippine decree for the protection of all the transactions in the Internet. It has the following features:

- Secures the recognition, validity and admissibility of all electronic transactions and documents making such legally admissible in the Courts of Justice;
- Penalizes Internet piracy and database hacking; and
- Identifies and defines the punishable acts in the area of IP protection.

#### **IV. Effects of trade agreements on Philippine Music**

The Philippines is a signatory and active participant in the following treaties and trade agreements:

##### **1. World Trade Organization**

The membership of the Philippines in the World Trade Organization (WTO) has qualitatively contributed to overall economic reforms, which in turn have had consequential profound effects on Philippine trade and industrial structure and performance.

Nonetheless, there is widespread skepticism and even outright rejection of the phenomenon broadly known as globalization and the WTO in particular. It does not take much effort to inflame protests and foment violent action against the WTO and other perceived instruments of globalization. The Philippine Government believes that the skepticism stems from the lack of comprehensive information campaign resulting in the public's failure to understand the intricate provisions and working of the WTO.

When the Philippines formally joined the GATT in 1980 as a contracting party, the main market access commitment came in the form of tariff bindings undertaken for about 5% of the total tariff lines (i.e., scope of bindings).

At the end of the Uruguay Round in 1994, some 3,664 tariff lines, or around 65% of the total 5,639 tariff lines of the Philippines, were bound. Of these, 2,859 comprised industrial tariff lines (or around 51% of the total), while agricultural products covered 805 tariff lines (or 14% of the total). For the balance of 1,975 tariff lines, there are no tariff commitments in the WTO.

Music and its products were not specifically identified in the tariff bindings although official sources place it as among the unspecified commercial merchandise lumped with other electronic and consumer products.

While the Philippines committed tariff bindings (and reductions) in the WTO, such commitments were far from prejudicial as some critics have claimed. On balance, the tariff commitments, particularly for industrial products, merely encoded the prevailing market access regime in 1993, largely through the principle of special and differential treatment of developing countries.

Put side by side with other WTO members, the Philippines' commitments compares reasonably with other developing countries, such as those from ASEAN. Another observation is that, in future trade negotiations in the WTO involving tariffs, trading partners will seek to raise the scope of bindings and bring down the level of binding of the Philippines. The Philippines, needless to say, will also seek to accomplish these objectives especially in respect of other developing countries in line with the thrust to promote trade with non-traditional or the so-called emerging markets.

It appears that the present strength of the Philippines as a service exporter mainly lie in human talent. As such, there needs to be concerted efforts to mobilize service sectors or industries that capitalize on this such as film and animation, music and entertainment, information technology, management consulting, hotel and restaurant management, health services and professional services. It will be important to identify which sectors or industries the Philippines will want to push for liberalization in other countries. But it will be equally important to assess which industries, in return, the Philippines will be able to open to foreign competition in the on-going negotiations. This appears to be the more difficult part of the assessment process on account of constitutional and legislative statutes that limit the ability of the Philippines to pursue an increasingly international orientation in the field of services. For example, practice (exercise) of certain professions are limited to Philippine nationals unless mutual recognition agreements (MRAs) exist.

## 2. Asia-Pacific Economic Cooperation (APEC)

Since 1989, APEC's trade and investment liberalization has played a critical role in improving conditions for business in the APEC region. It has helped businesses save time and money, by responding to business calls for less paperwork, simplified procedures and easier access to information. It has improved facilitation by providing internet access to essential market information.

APEC's concrete achievements in trade and investment include, among others: simpler business travel with multiple entry visas, internet visa information and visa-free short-term entry through the APEC Business Travel Card; lower cost of trade in electrical goods such as computers, toasters, televisions, radios and power-tools through a single test for conformity assessments; internet access to information on tariffs, investment, e-commerce, intellectual property, business travel, government procurement, business opportunities through the BizAPEC.com website. Many of these directly or indirectly affect the business of music production in the Philippines.

## 3. ASEAN Free Trade Agreements

The ASEAN Heads of States and Government in Kuala Lumpur on 15 December 1997 have promulgated the ASEAN Vision 2020 charting a new direction for ASEAN through the turn of the century towards the year 2020. That vision is of an outward and forward looking ASEAN, living in peace, stability and prosperity, bonded together in partnership in dynamic development and in a community of caring society. In economic terms, it portrays ASEAN as one stable, prosperous and highly competitive Economic Region in which there is a free flow of goods, services and investments, a freer flow of capital, equitable economic development and reduced poverty and socio-economic disparities.

In moving toward ASEAN 2020, a six-year action plan, called the Hanoi Plan of Action or HPA, was drawn up and adopted by the ASEAN Heads of States and Government in Hanoi in December last year. It lays down specific steps and measures to be taken during the years 1999-2004 in order to strengthen macroeconomic and financial cooperation, advance economic integration and promote social, science & technology and information technology infrastructure as well as human resources development. The Plan is currently being implemented.

Recognizing an immediate need to quickly regain business confidence and hasten economic recovery, the Statement of Bold Measures was announced in Hanoi at the same time as the HPA. The Bold Measures involve an acceleration of the establishment of the ASEAN Free Trade Area or AFTA and ASEAN Investment Area or AIA including the provision of special incentives and privileges to qualified foreign investors for a limited period. To further encourage investment, the leaders agreed to waive the 30% national equity requirement for firms wishing to take advantage of the ASEAN Industrial Cooperation Scheme or AICO. Finally, they agreed on a new round of negotiation in services beginning in the year 1999 and ending in 2001, in all services sectors and all modes of supply. On AFTA, the six original members agree to achieve a minimum of 90% of their total tariff lines with tariffs of 0-5% by the year 2000 and bring forward the implementation of AFTA from 2003 to 2002.

While the manufacturing sector stands to benefit more from the agreement, investors from other sectors such as communications and entertainment – including music – are beginning to explore and test the business environment in the hope of benefiting from privileges such as income tax exemption, full foreign equity ownership, duty-free imports of capital goods, domestic market access and at least 30-year long-term lease for industrial land. Other attractive package that may soon be made available to non-manufacturing sector is the freedom to hire foreign personnel and enjoy speedy customs clearance. These privileges stay for the life of the investment and are additional to incentives each ASEAN country already offers to foreign investors.

Beyond trade in goods, ASEAN is bringing down cultural barriers between its eleven member-countries. It has facilitated cultural exchanges in all arts and media sectors and launched flagship programs in the areas of training, production, and dissemination.

On human resources development and capacity building, ASEAN officials and private sectors have been participating in series of regional workshops and training programs in a wide variety of areas conducted by ASEAN and international experts in their respective fields. This ongoing activity has promoted the sharing of experiences, joint discussion of policy

options and private sector participation. It also provides an opportunity to assist less developed members in their integration into various ASEAN schemes.

#### 4. Bilateral trade agreements

The Philippines has entered into 38 bilateral trade agreements and three memorandum of understanding (MOU) with other countries with a view to develop and strengthen direct trade and economic relations between them. The Agreements take into consideration respective development and trade needs and objectives and are made on equitable and mutually beneficial bases. The agreements bind the parties concerned to undertake measures that will promote and expand bilateral and economic relations. The agreements therefore serve as the framework for the conduct of trade relations between the Philippines and other countries.

**Trade Defense Measures.** Anti-dumping and countervailing measures are intended to neutralize the injurious effects caused by imports that are dumped (i.e., export prices are lower than the normal value in the market of the exporter) or are subsidized. They are measures against unfair trade. Safeguard measures, on the other hand, are intended to arrest surges in imports that are neither dumped nor subsidized, but which seriously injure domestic industry.

The modern anti-dumping law was the first among the trade defense measures to be passed in December 1994 (Republic Act No. 7843). This was subsequently amended in 1999 to make it more consistent with the requirements of the WTO (R.A. No. 8752) and along with it the new law on countervailing measures (R.A. No. 8751) was enacted. Furthermore, the safeguards law (R.A. No. 8800) was signed into law in August 2000. These laws were enacted in compliance with the Agreement on Interpretation of Article VI of GATT 1994 (the Agreement on Anti-Dumping Measures), the Agreement on Subsidies and Countervailing Measures, and the Agreement on Safeguards, respectively.

The prospect of trade defense measures forming part of an agenda for any possible new round of multilateral trade negotiations in the WTO is not remote. The Philippines will need to evaluate whether or not the re-opening of these agreements will be in its trading interest.

**The Impact of Trade Liberalization on Culture and Heritage.** By most standards, the Philippines remains an open economy perceived as being able to stay the course of openness and liberalization. It may even be said that what the Philippines lack in infrastructure and other basics features for attracting investment in the short-term, it attempts to neutralize through competition-driven efficiency gains.

The WTO has had a significant impact on the development of trade rules in Philippines, and thus so with the parameters on the way business and trade is conducted.

Since 1995, Congress has put in place several laws that span, among others, the shift in customs valuation to the transaction value system; the trade defense measures (anti-dumping, countervail and safeguards); and intellectual property rights protection. The Government has continued to improve on these with amendatory legislation for, say, customs valuation and anti-dumping. Also recently passed were legislation for the protection of layout designs of integrated circuits. The Congress has also ratified the Patent Cooperation Treaty and deposited the instrument of ratification with the World Intellectual Property Organization in Geneva last in June 2003.

All told, the development of trade rules in WTO have somehow contributed to greater transparency, improved predictability and better governance in Philippine society. Where appropriate, the development of such rules should continue, with or without the WTO, with the end in view of fostering an environment of growth, and competitiveness. and success.

The competition posed by the Philippine market access commitments in WTO (and more so in AFTA, and the parallel unilateral tariff reforms), nevertheless, present a serious challenge not only to Philippine industries but also to the sustainability and protection of its national heritage and cultural identity. The Philippine cultural sector views these developments with alarm as it braces and fortifies itself for greater challenges in this rapidly modernizing and globalizing world order.

## APPENDIX 5

# Music in Uruguay

*Report for the ManyMusics Program of the International Music Council, October 2003-10-08  
Lic. Gustavo Goldman*

### Cultural goods and services

The symbolic productions are changing constructions that are created, reproduced and circulated in various ways in different societies. The different cultural agents: creators, mass media, cultural industries including the music industry, and public and private organizations and institutions, have a decisive role in these processes.

The Uruguay population assigns 4,4% of total expenditures (approximately U\$S 654,8 millions) to cultural services and productions.

Chart 1: Expenditures on cultural services in Uruguay; (U\$S millions) (year 2000)<sup>1</sup>

Direct cultural expenditures	Related fields: stationery, drawings, drinks at events, etc.	Equipment: audio, TV, etc.	TOTAL
373,2	65,9	215,7	654,8

These numbers are general. But they conceal the variations among the various sub-groups within the population, where there are different behaviours according to social status, age, etc.

Chart 2: Main categories of household cultural consumption. 2000 (U\$S millions)<sup>2</sup>

Cultural area	Cultural consumption	Related consumption
Equipment: audio, TV, video, computers, etc..	216:9	
Periodic publications: dailies, magazines.	57:8	3:8
Books, bookshops.	40:4	40:5
<b>Music:</b>	<b>46:8</b>	18:6
- Shows, dance, etc.	23:5	18:6
- Phonograms.	23:3	
Cable television	134:5	
Visual arts: paintings, crafts, etc..	34:1	
Audiovisual arts:	20:8	2:5
- Videoclubs	6:0	1:2
- Cinemas	14:8	1:3
Photography	22:2	
Cultural institutions	6:5	
Acting: theater, carnival, etc..	8:0	0:5
Cultural training	2:1	
<b>TOTAL</b>	<b>588:9</b>	<b>65:9</b>
<b>Total including cultural related consumption</b>	<b>654:8</b>	

The enormous crisis of the year 2002, with the collapse of the exchange rate rule, bank insolvencies, etc, made access to cultural production and consumption much more difficult for Uruguayans.

<sup>1</sup> Stolovich, 2002: 115

<sup>2</sup> Stolovich, 2002: 120

Chart 3: Changes in the exchange rate 1998 -2003

Year	U\$S (in \$ uruguayos)
1998	10,472
1999	11,340
2000	12,106
2001	13,332
2002	21,341
2003	27,750 (value up 24.08.03)

#### **Access to cultural goods and services, year 2002**

Source: Achugar, 2002.

##### **Reading**

Read several books a year: 30% of the national population.

Read a few books a year: 27%

Hardly ever or never read books: 43%

##### **Recitals of poetry**

The 8% of the national population attends recitals of poetry.

##### **Cinema**

Attend less than once per year: 46%

Attend weekly: 3.5%

Attend around once a month: 17%

Never attend the cinema: 7%

##### **Theater**

Attend the theater in the last year: 18.5% ( Montevideo: 22%; rest of the country: 14%)

Never attended the theater: 27%

##### **Dance( modern, ballet and folklore)**

It assisted during the last year: 15%

Never attended dance productions: 48%

##### **Museums, shows or exhibitions**

Attend rarely or never: 81%

Attended in the last year: 29%

**Carnival** (Annual popular festivity celebrated every February for a month and holding artistic competitions)

Attended shows in the last year: 42%

##### **Internet**

Use internet: 33% of the national population

#### **MUSIC IN URUGUAY NOW**

The music that is currently created, produced, consumed , imported and exported in Uruguay presents a wide and varied panorama. Diverse cultural agents: composers, interpreters, recording studios, the recording industry, communications media companies, theatrical managers, the state , etc., all have a share in this musical activity.

Distinctions can be shown with respect to the musical genres and the occupation of musicians; both in the area of classical music (academic music ), and in popular music including traditional music.

- As for the musical genre or language:

1. **Cultivated music( classic, academic, etc.)**

-all the variants( classic, contemporary, electroacoustics, etc.)

2. **Popular musics:** popular music and popular traditional music  
(folklore)

Simplifying but running the risk of lacking rigour, we adopt the distinctions made by the musicians themselves. This covers a wide range: cultivated (academic, classic), tango, folkloric, popular, tropical music (cumbia, merengue, latin pop), jazz, brazilian music, carnival musics ( “parodistas”, “revistas”, “humoristas”, etc.), “candombe”, rock, musical for theater, for cinema or tv , etc.

- As for the activities of the individuals involved in music in Uruguay, there are many and varied occupations:

**1. Cultivated music( classic, academic, etc.):** all the variants.

- composers
- instrument player ( including singers)
- orchestra and choruses conductors
- professors

**2. Popular musics (popular and traditional)**

- composer
- song writer and singer
- arranger
- instrument player
- “payador” (traveling country singer with his guitar, improvising lyrics on a fixed musical pattern)

An as yet unpublished inquiry, directed by Hugo Achugar, asked respondents across Uruguay which three types of music they like most. The results show:

Chart 4: Music style preferences of Uruguayans: the 3 most preferred styles

Folkloric	41%
Tropical music, “salsa”, “cumbia”	36%
Popular music	33%
Rock or Pop	27%
Classical music	24%
Tango	23%
Carnival music	22%
Brazilian music	22%
Jazz or Blues (less than)	8%
Religious music (less than)	8%

Carnival music is “murga” and “candombe” (black Uruguayan music)  
Source: Web page of the Faculty of Humanities of the UDELAR. (Public University)

Historically, there has been discrimination against the black population, which constitutes about 6% of the population. However, the situation is very complex because Uruguayan culture is mixed. Candome, tango and murga are resulting hybrid styles.

**The Uruguayan music market**

In line with Uruguayan cultural production as a whole, music production grew dramatically in the 1990s. Its aggregate value grew more rapidly than that of the national economy. (Stolovich: 2002)

Chart 5: Evolution of musical markets ( in millions of constant dollars of 2000)

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Phonograms	16,9	13,5	16,3	17,7	19,5	19,6	20,7	24,4	18,5	13,2	9,0
Dances	13,4	13,7	14,4	16,6	16,4	16,1	17,6	19,2	20,1	18,6	16,9
Recitals	2,7	2,8	3,3	3,2	4,4	3,2	3,7	4,5	5,3	4,9	5,4
Carnival	2,3	2,2	2,3	2,2	2,0	2,0	2,2	2,4	3,0	3,4	3,0

Source: Stolovich, 2002:162. Note that phonogram sales as reported in Chart 2 were from all sources; sales in Chart 5 are those only from companies affiliated with the Uruguayan Chamber of the Disc.

In the context of the South American countries; Uruguay is a relatively small market; record sales the country represent very small numbers compared with those of other countries, specially Argentine and Brazil which have the largest markets in South America.

Chart 6: Sales of phonograms (total in Uruguay ) in thousand of units.

Year	cassettes	CD
1990	444	0
1991	675	56
1992	489	105
1993	498	233
1994	365	434
1995	286	597
1996	252	634
1997	156	778
1998	162	939
1999	89	747
2000	44	551
2001	18	389
2002		200 (aprox) <sup>3</sup>

Source: Uruguayan Chamber of the Disk.

In Uruguay, the phonograms come from importation, local companies' production and independent productions.

Chart 7: Exports and imports of recorded music (disks, cassettes, CDs, etc.)  
(in millions of dollars)

Year	Importations	Exports
1997	10,7	0,1
1998	11,5	0,5
1999	12,6	1,5
2000	12,8	1,3
2001	9,2	1,4

Source: Stolovich, 2002: 350.

The national recording companies that produce music in Uruguay occupy a small fringe of the market: 11% (Stolovich, 2002b).

Although it is difficult to quantify piracy or illegal reproduction or sale of recordings, it is very considerable, and exceeds 50%. A survey of 210 students of between 12 to 15 years of age at a central secondary school in Montevideo showed that their disc collections contained an average of 62 % illegal copies.<sup>4</sup> While there is action against piracy in Uruguay, it is not effective. In 2003, the recording industry in Uruguay has come close to collapse.

The music market in Uruguay also includes live recitals and concerts. Both in Montevideo and the rest of the country the offer is varied, though with distinctive characteristics in each case.

At the beginning of the 1990s, box office was of the order of US\$ 2 millions; in 1998 they amounted to approximately US\$ 4.860.000 and in 1999, US\$ 5.400.000. This growth turned to decline following the economic crisis. (Stolovich: 2002)

#### **The role of the state**

Both nationally and in the different departments of the country, policies to facilitate, support and promote musical production are very scarce. Gonzalo Carámbula, principal of the Cultural Department of the council of Montevideo, says about this issue: "*Studies carried out on the economic aspects of culture in the eastern bank of the Uruguay river<sup>5</sup> showed that the main sources of financing come from public consumption and, in smaller measure, the national state*". (Carámbula, 2003)

In the year 2000 the panorama of financing of the music sector was the following:

<sup>3</sup> Interview of Rafael Abal (Uruguayan Chamber of the Disk)

<sup>4</sup> Own manufacture.

<sup>5</sup> The complete name of Uruguay is Eastern Republic of Uruguay. (República Oriental del Uruguay)

Chart 8: Source of finance for musical activity, year 2000 ( in millions of dollars)

Sector	Total	Goods and services	<b>Financing</b>	
			Consumers	State
Recording industry	23,3	23,3	23,3	
Musical instruments	4,1	0,0		
Shows, dance, etc.	42,1	23,5	23,5	
Orchestras and music halls	6,9	6,9		6,9

Source: Stolovich, 2002: 165, 166).

Some initiatives (smaller and asymmetric) that tend to the support of national music production stand out.

#### **Economic support**

##### **1.1. National Fund for Music ( FONAM )**

The National Fund of Music is aimed to finance the support and promotion of musical activity in the whole territory of the republic, and is the only fund in our country at present that requires applications. Funds come to FONAM from copyrights held by public entities such as the Ministry of Education and Culture; inheritances, legacies or donations and other income the FONAM obtains.

Article 7º of the law creating of the National Fund for Music establish that: *“All general foreign musical shows must contribute to the Fund 5% of total profit. If the same thing was accompanied by at least a national show, it will contribute to the FONAM 3% of the total profit. In the case of the presentation of foreign show of classical music, the participation of national musical show may be substituted by the inclusion of a work by a national composer.”*

Chart 9: FONAM funding support (two calls for year; in U\$S)

Year	First call	Second call	Totals
1996	8500	29100	37600
1997	18000	32700	50700
1998	20700	42636	63336
1999	73114	100000	173114
2000	120819	108126	228945
2001	141534	84506	226040
2002	18201	18379	36580
2003	19147	-	

As can be observed, after the rupture of the exchange rate in 2002, support fell drastically.

##### **1.2. Fondo Capital**

Other support came from the “Fondo Capital” (Capital Fund) of the municipality of Montevideo; an initiative that lasted some little time and then was suspended. This was intended to support all types of cultural production including music, with an amount reaching U\$S 200.000 annually.

Available equally across the entire country are other types of support to all sorts of musical activity: the ‘Fund of Support to Cultural Departmental Events’ (Fondo de Apoyo a Eventos Culturales) and ‘Culture in Work’ (Cultura en Obra), both of the MEC (Ministry of Education and Culture). Both are bound to lean principally to cultural happenings in the provinces of the country.

#### **Orchestras**

The Uruguayan state administers through the Official Service of Radioeléctric Diffusion (SODRE), a section of the Ministry of Education and Culture, two permanent staffs: the Symphony Orchestra of SODRE and the Ballet of SODRE. Equally within the departments of the interior of the country, there are orchestras and bands that belong to the municipalities, the army, the police, etc. In Montevideo, the Uruguay capital, , the Philharmonic Orchestra of Montevideo and the Municipal Band are supported by the municipality of Montevideo.

The Uruguayan state provides U\$S12 millions annually to music and to drama.(including permanent staffs: Symphony orchestra of the SODRE, Philharmonic Orchestra of Montevideo, Municipal Band, National Comedy, Ballet of the SODRE; maintenance and functioning of auditoriums, etc.) ( Stolovich: 2002)

The law creating the FONAM establishes with respect to the state orchestras: *The musical state “bodies” must include in their programming, at a minimum, 30% of national music.*

However these quotas are not being met and there are no controls to secure their fulfillment.

### **Music Education**

At the level of the state there are various settings for music education. At university level, the University School of Music offers different music careers: composition, choral and orchestra conducting, instrumental performance and musicology. This option is directed almost totally to cultivated music, with little space for popular music.

The university school of music had assigned to it in the year 2000 a budget of U\$S 403.000; and between 1996 and 1999 they graduated 10 students. The state in its entirety spends more than a million dollars in music education: University School of Music, Municipal Music School, schools of primary education and School of the Army. (Stolovich, 2002)

There are other instances such as youth orchestras, offering instruction in the different orchestral instruments to children from a very early age, then integrating them into various orchestral training situations.

The Municipality of Montevideo has agreements with various cultural institutes, such as the “Taller Uruguayo de Música Popular (TUMP) that organises seminars and classes in diverse popular musical styles: such as “murga”, “candombe”, “percusion”, etc.

The state provides approximately U\$S 2 millions annually to cultural education, include the musical through the University of the Republic, the Ministry of Education and Culture and the Departmental Municipalities.

### **Broadcasting**

In Uruguay there are more than 200 broadcasting stations, 94 AM stations and 137 FM stations. 40 are located in Montevideo and the remainder in the interior of the country. ( Stolovich, 2002: 172)

The state participates through three AM stations and one FM station in Montevideo, administered by the Official Service of Radioelectric Diffusion ( SODRE).

There is no national regulation *enforced* explicitly requiring the broadcast of Uruguayan music. This constitutes an important limiting factor in the development of the professional careers of Uruguayan musicians. (Casacuberta – Roche, 2002: 60)

The law and decree of creation and later functioning of the FONAM establishes progressive requirements under “*the National Administration of Telecommunications (ANTEL), for proportional deductions in the rates to be paid by the radio broadcasting companies that devote not less than 20% of daily programming to national music*”.

In turn article 18º of that law establish that “*All the organisms of the state must give preference, when contracting advertising spaces for radio broadcast, to those that broadcast, as minimum, a percentage of the 20% of national music.*”

And the 19º, that “*Radio and television broadcasters must include in their musical programming, as minimum, a 30% of national music*”. However at present these requirements are not effective and there is no type of enforcement, any more in the case of contracts for advertising spaces than in the control of the repertoires of the permanent orchestras: Symphony Orchestra of the SODRE and Philharmonic Orchestra of Montevideo.

Compared to other countries of the region, in Uruguay there is relatively little broadcast of national music. The small size of the market appears to be one of the variables to consider in this matter.

Chart 10: Size of market and diffusion of national music (year 2000, Us dollars)

Country	Population	Per capita GDP	Total GDP	% national music in the record sales
Brazil	168.500.000	3305	556.840:	65
Mexico	97.400.000	4964	483.540:	47
Argentina	36.000.000	7865	283.130:	52
Venezuela	23.700.000	4305	102.040:	37
Colombia	41.600.000	2193	91.230:	30
Chili	15.000.000	4807	72.100:	24
Uruguay	3.300.000	6373	21.030:	19

Source: Stolovich, Louis, 2002b

#### **International cultural agreements**

Uruguay has signed and takes part in different agreements, regional and interregional: Mercosur, the interregional agreement between the European Union and Mercosur, the Area of Free Trade of the Américas (ALCA), World Trade Organization (WTO ), etc.

In this context , the words of Gonzalo Carámbula, Director of the Department of Culture of the Municipality of Montevideo are significant: *The United States has exerted a strong pressure to include culture in the trade agreements, as much the ALCA as in the WTO (...) Some countries such as Canada, France and more recently here, Argentine, believe this carries serious risks for national sovereignty; tying their hands in the possibility of designing cultural policies [independently] from commercial demands. Uruguay does not have an explicit position in this matter [with the worrying consequences that we have not been capable of demanding the exclusion of culture].*

Until now the activities of the Mercosur have centered in commercial matters; however, a favorable environment exists for future interchange and cultural integration, through the Parcum (Cultural Parliament of the Mercosur), meetings of ministers of culture, etc

Because of the enormous crisis of the region and the dependence on the political and economic power, until now there have not been concrete results for regulations, harmonizations, commitments and accords of reciprocity that deal with enormous inequalities caused by the processes of globalization.

The ALCA project that the United States promotes, tries to include cultural goods and services in trade negotiations, treating cultural production in the same way as commercial merchandise, without consideration to the deep inequalities that exist in the economies and in the cultural markets of the region.

#### **Copyright**

The General Association of Authors of the Uruguay administers the copyrights of more than 7.000 Uruguayan authors, composers, dramatists, choreographers, painters and film producers. The income from performances and recording royalties is the major source of revenues of the institution; the average for the period 1998 - 2002 is 58,88% of the total revenues.

As an example, the following numbers correspond to the last two years (2001 and 2002 ).

Chart 11: Revenues of AGADU year 2001 ( in Uruguayan pesos)

Copyrights	Montevideo	Rest of the country	Total
<b>Performances</b>	10.647.400	11.170.663	21.818.063
Plays	3.544.062	1.011.212	4.555.273
Radio	1.597.466	983.542	2.581.009
Rebroadcast	2.474.677	615.299	3.089.976
Visual art	10.048	-	10.048
Printed paper	7.735	-	7.735
<b>Producing phonograms</b>	4.532.512	-	4.532.512
<b>Independent phonograms</b>	6.212.854	2.910	6.215.764
Carnival	1.410.696	56.029	1.466.725
Air TV	1.598.169	344.303	1.942.472
Cable TV	1.225.174	1.222.198	2.447.372
<b>Recitals</b>	3.831.292	2.997.844	6.809.137
Avaloir	272.845	17.247	290.092
Inclusion	912.719	-	912.719
<b>Total copyrights</b>	38.277.648	18.401.247	56.678.895
Related rights	7.801.959	5.882.977	13.684.937
SUA ( Uruguayan Society of Actors)	148.454	-	148.454

Source: AGADU, Balance y memoria 2001

Chart 12: Revenues of AGADU year 2002 ( in uruguayan pesos)

Copyrights	Montevideo	Rest of the country	Total
<b>Performances</b>	10.525.181	10.116.058	20.641.239,40
Plays	2.662.492	848.215	3.510.707,34
Radio	1.422.890	817.907	2.240.796,70
Rebroadcast	2.427.355	430.951	2.858.305,80
Visual art	-	-	
Printed paper	6.352	-	6.352
<b>Producing phonograms</b>	2.541.824	-	2.541.824
<b>Independent phonograms</b>	2.132.471	3.232	2.135.703,27
Carnival	952.573	93.113	1.046.686,00
Air TV	1.388.378	276.430	1.664.807,99
Cable TV	1.269.004	1.114.438	2.383.442,00
<b>Recitals</b>	2.889.169	1.731.963	4.621.132,68
Avaloir	147.167	13.457	160.623,35
Inclusion	618.493	-	618.493,00
<b>Total copyrights</b>	28.984.349	15.445.764	44.430.113,47
Related rights	7.395.975	5.153.838	12.549.813,02
SUA ( Uruguayan Society of Actors)	103.524	-	103.524

Source: Memoria y Balance 2002 AGADU

### Some asymmetries

Chart 13: copyright revenues ( in \$'000 uruguayos)

YEAR	NATIONAL	EXTERIOR
1998	58.875	2.124
1999	63.857	2.476
2000	59.114	2.317
2001	56.679	3.988
2002	44.430	4.131

Source: AGADU, 2002

The notorious fall in the national revenues in the last year 2002 follows on from the crisis of the 2001. The rupture of the exchange rate was a hard blow for Uruguayan musical production. The increase in foreign fees also is accountable for by the rise of the dollar and other foreign currencies.

Chart 14: AGADU: Payments according to revenues ( percentages)

Year	Partners	Foreign societies	Transitory administrations	Public domain	Publishers
1998	37%	49%	1%	5%	8%
1999	31%	47%	1%	6%	15%
2000	29%	46%	1%	7%	17%
2001	46%	37%	1%	4%	12%
2002	55%	35%	1%	2%	7%

Source: Own manufacture in bases to data of AGADU

Let us see in detail how funds were distributed to foreign societies and publishers:

**Publishers (after taxes)**

WARNER	\$ 954.560,82
EMI	\$ 478.287,01
UNIVERSAL	\$ 354.923,06
SONY	\$ 185.446,16
PEER	\$ 73.217,69
DACISA	\$ 58.700,81
OMSA	\$ 51.979,25
INTERNATIONAL CREATIVE	\$ 27.716,05
INTERNATIONAL EDITOR	\$ 15.230,26
PRESENCIA	\$ 12.477,84
VARIOS	\$ 4.562,91
	<b>\$ 2.227.101,86</b>

**Temporary administration**

ELIZABETH MARTON	\$ 182.446,80
CURTIS BROWN	\$ 10.968,40
F&F	\$ 2.736,90
MARION WEISS	\$ 3.303,95
OXFORD UNIVERSITY	\$ 3.142,45
VARIOS	\$ 208,50
	<b>\$ 202.807,00</b>

**Foreign copyright societies**

SADAIC	Argentina	\$ 2.234.823,06
ARGENTORES	Argentina	\$ 1.206.075,89
SGAE	España	\$ 828.966,78
BMI	U.S.A.	\$ 271.938,55
GEMA	Alemania	\$ 246.476,20
PRS	Reino Unido	\$ 225.523,35
ASCAP	U.S.A.	\$ 222.641,90
MCPS	Reino Unido	\$ 104.636,35
SACM	México	\$ 92.920,75

SCD	Chile	\$ 82.660,50
SUISA	Suiza	\$ 47.561,80
SIAE	Italia	\$ 26.935,65
SACEM	Francia	\$ 11.996,70
SADEMBRA	Brasil	\$ 4.997,52
SBAT	Brasil	\$ 2.417,89
		<b>\$ 5,610, 573,xx</b>

AGADU members (Uruguayans) 12.085.819,94  
Ministry of Education 620.514,66

**TOTAL \$20.836.816,34**

In Uruguay the population is distributed more or less equally between Montevideo, the capital, and the remainder of the country. However, the majority of the fees and also of the profits of the music industry are distributed asymmetrically. As for copyright collection, the panorama is the following over the last one five years:

Chart 15: AGADU revenues of copyrights in Montevideo and the remainder of the country

YEAR	CAPITAL	REMAINDER OF THE COUNTRY
1998	40.769.489	18.105.256
1999	43.784.797	20.071.949
2000	39.707.330	19.407.132
2001	38.277.648	18.401.247
2002	28.894.349	15.445.764

Source: AGADU( years 1998 to the 2002)

The asymmetry is major if you compare the Montevideo figures to those for the remainder of the country. In the interior of the country, record production is almost nonexistent, and limited to a few independent labels.

### Archives

In Uruguay a policy of systematization of collecting musical information does not exist; the archives are dispersed and without classification or wrongly classified. They are spread in different public institutes and collections: National Historical Museum, SODRE, National Library, University School of Music, City Council, etc.

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## APPENDIX 6

# IFPI Piracy Report 2003

### Commercial music piracy 2002

#### The key facts

- Global sales of physical pirate recordings totalled \$US4.6 billion in 2002, up 7% on the previous year. This is valued at pirate prices: actual losses to the legitimate recording industry are significantly greater.
- Global sales of pirate CDs more than doubled between 1999 and 2002, from 510 million to 1.1 billion units. They increased 14% in 2002.
- Including cassettes, sales of pirate physical recordings total 1.8 billion units annually - in other words, two in five recordings sold worldwide is a fake.
- Some 50 million pirate music CDs were seized in 2002 by enforcement authorities, aided by the recording industry's anti-piracy teams. This was more than four times the seizures in 2001.
- In 25 countries sales of pirate CDs outnumber sales of legitimate CDs.

#### Copyright and the global recording industry

- Copyright-based industries account for roughly 5% of the GDP of the European Union, according to the European Commission. Intellectual Property accounts for 5.2% of the US economy, worth \$US535 billion, according to the International Intellectual Property Alliance.
- The recording industry invests in local artists. Seven in every ten albums sold worldwide carries local repertoire.
- World sales of recorded music fell by 7% in value and 8% in units in 2002. The global music market was worth \$US32 billion, with total unit sales of 3 billion.
- The international recording industry ploughs a large share of its revenues into developing new talent, and this is undermined by piracy. At least 15% of industry turnover in Europe is invested in artists and repertoire.

#### IFPI representing the recording industry worldwide

- IFPI represents 1500 record companies in 70 countries. Its mission is fighting music piracy; promoting fair market access and good copyright laws; helping develop the legal conditions and technologies for the digital era; promoting the value of music.
- For more information about copyright and the music sector visit [www.pro-music.org](http://www.pro-music.org)

#### Priority territories

IFPI is for the first time publishing a list of ten top priority territories in the global fight against piracy. These markets were scored against a set of criteria designed to assess the extent of the piracy problem in 2002 and trends in the pirate and legitimate markets. The specific criteria were: \$US pirate market value; total legitimate market size; piracy level; pirate unit growth vs. 2001; legitimate unit growth vs. 2001. The following ten markets, based on these criteria, are featured in this report:

Brazil	China
Mexico	Paraguay
Poland	Russia
Spain	Taiwan
Thailand	Ukraine

## APPENDIX 7

# ARIA Report on internet file-sharing and CD burning

A study released by the Australian Record Industry Association (ARIA).

Quantum Market Research focussed on these two common practices. It found:

- Around **3.6 million** Australians illegally burnt a music CD in the 6 month period prior to the research.
- Around **3.4 million** Australians illegally downloaded music files via file sharing services (1.8 million of these have used file sharing services in the one month period prior to the research).
- File-sharing and CD burning is sharply higher in the age groups under 25:
- CD burning: 22% over last six months (general population) vs. 40% (under 25's)
- File sharing: 11% in last month (general population) vs. 26% (under 25's)
- Illegitimate channels account for 10.7% of all music acquired by the general population:
- 31% of all music acquired by those 17 and under; 21% for 18-24's
- 40% of the general population have at some stage received a burnt CD (69% in the 18-24 age group).
- Specifically in relation to file sharing:
- Among file sharers, the average volume downloaded in the last month was 19.6 files (32.4 files in the 18-24 age group)
- 21% are using a broadband connection (ie. significantly over-represented relative to the general population)
- Over 50% of file sharers then burn their music files to CD or transfer to MP3 player

More than 80 % of people who received burnt CDs say that they would ‘rarely’ or ‘never’ buy a copy of a burnt CD they had received. More than 50 % of file sharers tend not to buy music they have downloaded (ie. ‘rarely’ or ‘never’ buy).

Among file sharers, there is a net decrease of 12% in CD purchasing which they identify as being as a direct result of file sharing.

In terms of consumer awareness, two- thirds of the sample group were aware that CD burning/file sharing is illegal, but only 49% of those aged 10-24.

The study showed that 57% of the general population agree that “burning music without paying for it is like stealing” (only 35% of under 25s) while 49% agreed that “downloading music from the internet without permission is like stealing a CD from a record store” (only 33% of under 25s). ..

The music industry recognises that its top priority is to reverse the identified trend and to continue to respond positively to the online environment.

While this is an evolving process, key initiatives being pursued internationally and in Australia include:

- Support and development of legitimate online business models that represent an appealing alternative to consumers (e.g. Apple iTunes).
- Education of consumers (particularly young consumers) about the risks, wrongs and consequences of file sharing and CD burning. It is encouraging to note that amongst those members of the community over 25, the acquisition of music through illegal channels is not very common and that there is also a much higher awareness of the fact that such behaviour is illegal.
- Technological strategies and solutions, such as CD copy control technology.
- Litigation and effective legislation and enforcement activities.

## APPENDIX 8

### *The Investigators*

Australia: **Jock Given** is Research Fellow at Swinburne University in Melbourne and former Director of the Communications Law Centre. Richard Letts is Executive Director of the Music Council of Australia.

Germany: **Hannes Gmeli**n. After his studies in Systematic Musicology, History of Music, Business Administration and Linguistics in Hamburg and Paris, Hannes Gmeli is now living in Berlin, Germany, where he is working on his Ph.D. thesis on "Nationality in Popular Music". Besides his studies, Hannes Gmeli has been working for Bertelsmann (Lycos), for the International Music Council at UNESCO and for PhonoNet, a service provider for the German music industry associated with the German section of IFPI.

Nigeria: **O'Dyke Nzewi** is a Nigerian musician (a modern African classical drummer). He has done a lot of research on various musical cultures in Nigeria. He is currently the Director Operations, at the Ama Dialog Foundation, a centre for the reorientation of Africa's viable cultural heritage ([www.amadialog.org](http://www.amadialog.org)). He is married with two children.

Philippines: **Elmar Ingles** is Executive Director, Organisasyon ng Pilipinong Mang-aawit, whose activities are described in the Philippines report.

Uruguay: Lic. **Gustavo Goldman**: Is a Uruguayan musician (guitarist and popular music composer) and musicologist. He has published various works about afroUruguayan music and culture. He is a member of CGM - Uruguay. (General Council of Music).