

**NZ On Air and the New Zealand Sync Licensing Sector - 2020 / 2021**

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**Author Note**

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## Introduction

NZ On Air is a Crown Entity formed as the Broadcasting Commission under the Broadcasting Act 1989. NZ On Air's core purpose is to connect and reflect New Zealand culture and identity through investments in local content for a wide range of New Zealand audiences. Investments are made across screen, spoken-word audio and music content through the NZ Media Fund which is split into four streams of funding: Scripted; Factual; Music; and Platforms.

The NZ Media Fund is the overarching name for the content funding activities that NZ On Air undertakes and was launched as a more platform-neutral reshaping of NZ On Air's funding activities in 2017. NZ On Air has been investing in local content since 1989/90.

The stated aim of the NZ Media Fund is to "support local content so that great New Zealand content is valued and enjoyed by many New Zealand audiences".

The NZ Media Fund strategy has three goals:

1. **Quality content:** New Zealand audiences enjoy well-made local content that matters.
2. **Diverse content:** New Zealand audiences value local content made for a range of communities.
3. **Discoverable content:** New Zealand audiences can find and appreciate local content.

While NZ On Air is mandated to invest in local stories and songs for our screens and speakers, it is specifically prevented from having any editorial control over the content that is funded. Section 42 of the Broadcasting Act states:

Nothing in this Act or the Crown Entities Act 2004 authorises the Commission to give a direction to any person to whom the Commission has made funds available under section 36, in respect of the editorial content of a particular programme.

<https://www.legislation.govt.nz/act/public/1989/0025/latest/whole.html>

This directive extends to the use of music in funded screen content. While from the outside it would seem to make sense that NZ On Air funded screen content would be expected to utilise local music for sync licensing, Section 42 prevents this kind of directive from the agency to screen production companies. Therefore, music synchronisation use in NZ On Air funded screen content is left entirely to local screen producers with no directive or incentive to use local music in their productions, even though NZ On Air heavily invests in the production of local music.

This study investigates what barriers may currently exist to prevent local screen content creators from opting to use New Zealand music in their productions and seeks to provide advice to NZ On Air on what initiatives may be implemented to encourage more use of local music in funded screen productions, while remaining mindful of the directive in Section 42 of the Broadcasting Act.

For the purposes of this study, I have concentrated on screen content generally outside of film-focussed content – so, linear television productions and online/on-demand screen productions. With a few exceptions, NZ On Air does not fund feature films and this area of the sector was considered out of scope for this study.

## Executive Summary

The representation of diversity is a key aspect of all NZ On Air funding. Hearing ourselves and our songs embedded in the stories we choose to document is a key mechanism for representing that diversity.

### Overview

#### ***Sync Licensing in New Zealand***

A music *synchronisation licence* is required where a piece of recorded music is reproduced with a visual image, for example in a film, game, television programme or advertisement. Often abbreviated as 'sync right'.

Both the *publishing copyright (Publishing)* and the *sound recording copyright (Master)* need to be licensed for the use of an existing recording.

The use of synchronised music in television screen content also creates secondary, passive revenue streams for rights holders via *performance income*. For the purposes of this proposal, we are only concerned with *performance income from broadcast*. Both the Master and the Publishing copyrights generate performance income, which is calculated on the duration of music use.

Performance income, in many instances, can surpass the original synchronisation or composer fees, especially when the programme is broadcast overseas with multiple repeats.

#### ***Sync Licensing in Practice***

##### **The Problems**

1. There is a disconnect between music budgets for television and the actual costs of *sync licensing*. Reduced fees have a knock-on effect in the wider sector, lowering expectations of licensing costs.

2. Many *screen content creators* find the process of music licensing difficult to navigate, time consuming and confusing in regard to the rights required and the mechanisms for clearances. This confusion, alongside inappropriate budgets, negatively impacts all parties.

3. Currently there is a distinct lack of detail regarding music use in the *final cost reports* provided to NZ On Air at the conclusion of a project which makes it difficult to engage in any real analysis of the scale of synchronised New Zealand music in NZ On Air funded screen content, or to track it as *broadcast outcome*: e.g. actual songs used; durations; individual licensing costs. The 'Special Songs and Music' line is currently collated as a total spend rather than itemised across the actual songs/music used.

4. Within the industry there have been discussions about how screen content creators could be incentivised to increase their sync use of local content within local productions. NZ On Air features in much of this discussion as it is both a funder of music content and screen content. Incentivised use is problematic for a number of reasons, the main one being that under Section 42 of the Broadcasting Act 1989, NZ On Air is prohibited “to give a direction to any person to whom the Commission has made funds available under section 36, in respect of the editorial content of a particular programme.”

<https://www.legislation.govt.nz/act/public/1989/0025/latest/whole.html#DLM158014>

However, the primary functions set out in Section 36 are to “reflect and develop New Zealand identity and culture by promoting programmes about New Zealand and New Zealand interests.”

### **The Solutions**

This paper proposes that the solutions are not to incentivise or contractually require increased local sync uses but instead, *encourage* uses, to:

- *Streamline*, for all parties, the process in regard to synchronisation approvals;
- *Improve* access to discoverable and diverse local content, both contemporary and historical;
- *Enable* screen content creators to more accurately forecast a realistic music budget at the outset of their production.

Furthermore, the provision of detailed reporting would allow access to vital information about music use/synchronisations and important analytical data in regard to how music is being used in New Zealand screen productions, i.e. cue sheets for durations and

cost breakdowns for value. This would also enable NZ On Air to track the use of synchronised music in NZ On Air funded screen content as a broadcast outcome.

Effectively, a model that makes the use of local music easier and more attractive so that “great New Zealand content is valued and enjoyed by many New Zealand audiences.”

<https://www.nzonair.govt.nz/about/our-funding-strategy/>

### **Sector Review**

A review of the sync licensing sector was undertaken, engaging with key players on both sides of the negotiation space: screen producers; composers; record labels; publishers; music supervisors; music licensing experts; industry bodies; and independent artists.

### **Recommendations**

Nine recommendations are made in this report.

- 1.** Sync licensing of New Zealand music in screen content should be classified as a *broadcast outcome* and be included in NZ On Air's *music outcomes*.
- 2.** A strong recommendation for NZ On Air to collect more detailed information in the producer / *final cost reports* for funded screen productions, including: cue sheets; durations; featured/theme/background use; fees. This should also include a distinction between Master and Publishing costs in the cost line and an extraction of music supervision fees outside of the overall music licensing budget, i.e., not include all as one line item. This should be part of the completion requirements for a funded screen production.
- 3.** A *music licensing specialist* should, ideally, be engaged to review the budget at the proposal stage. The music-to-budget analysis of several funded projects revealed that the healthiest music spend was on projects that had music supervision from the outset. Perhaps this is a stipulation for projects applying for funding over a certain threshold.

Alternatively, this could be an in-house function provided by NZ On Air or an ancillary funding scheme.

**4.** Provision by NZ On Air of an online resource: a 'Music Licensing 101' overview that can be provided to NZ On Air clients. Could potentially include a list of approved music licensing specialists and publishing companies.

**5.** NZ On Air should look for opportunities to host or enable seminars, presentations, meet-ups, or other knowledge presentation and sharing opportunities for the screen and publishing sector.

**6.** Music focused productions, such as music documentaries, should have their own funding stream recognising their own specific needs.

**7.** A strong recommendation to commission a separate specific report regarding screen composition (which sits outside the scope of this study which focuses on sync licensing only).

**8.** Develop a music budget forecasting tool to enable producers to better estimate their required music licensing needs, and spend, from proposal stage onwards.

**9.** Investigate further options to upgrade the searchability of NZ On Air's existing Newtracks.co.nz archive of New Zealand music.



## **Part A: Background to the Sync Licensing Sector in New Zealand**

### **Key Concepts and Terminology**

#### ***Explanation of Sync Licensing***

A music *synchronisation licence* is required where a piece of recorded music is reproduced with a visual image, for example in a film, game, television programme or advertisement. This is often abbreviated as 'sync right'.

Both the *publishing copyright (Publishing)* and the *sound recording copyright (Master)* need to be licensed for the use of an existing recording. The cost of each license is negotiated on a *most favoured nations* basis.

#### ***Rights Holders***

Some artists vest their Publishing, or song-writing copyright, with a *Publisher* and their Master, or final recording copyright, with a *record label (Label)* who are then charged with the rights management of those copyrights. Where an artist is unrepresented by either a Publisher or a Label the copyrights remain vested with the individuals. *Rights holders* are, and will always remain, permutations of these relationships.

#### ***Most Favoured Nations (MFN)***

This simply means that whatever amount you agree to pay the Publisher, you also agree to pay the Master owner and vice versa. If the Publisher ends up charging more than the Master owner, you must increase the fee for the Master so they are equal amounts on both sides. Similarly, where there are more than one rights holder, e.g. multiple Songwriters/Publishers, the same calculation applies.

#### ***Screen Content Creator (SCC)***

Producers and production companies creating screen content in New Zealand, focused in this study on screen productions subsidised by NZ On Air funding through the NZ Media Fund.

#### ***Performance Income***

The use of synchronised music in television screen content also creates secondary, passive revenue streams for *rights holders via performance income*. For the purposes of this

proposal we are only concerned with *performance income from broadcast*. Both the Master and the Publishing copyrights generate *performance income* which is calculated on the duration of music use.

*Performance income*, in many instances, can surpass the original synchronisation or composer fees, especially when the programme is broadcast overseas with multiple repeats.

## Sync Licensing in Practice

The *screen content creator* needs to seek a clearance/approval of each use and obtain a license for both the Master and Publishing with the various *rights holders*.

Sometimes the screen content creator's producers negotiate these clearances and licenses directly with the rights holders or they engage/employ a Music Supervisor.

### **Licensing**

Sync licensing negotiations are freshly negotiated in each new production instance as the cost to license a copyrighted song can vary widely dependant primarily upon its status in culture. The negotiation and licensing are primarily driven by the publishing sector in regard to fee structures, with the Master *rights holders* agreeing to an *MFN* situation.

An example of the information requested by rights holders to consider a license to use music in a screen production:

*Work:*

*Writer:*

*Publisher:*

*Recording:*

*Name:*

*Type:* [television series / telefeature]

*Production Company:*

*Media:* [all media excluding theatrical and out of context trailers]

*Duration:* [xxx seconds only]

*Territory:* [world / region]

*Term:* In Perpetuity

*Lyric Change:* None

*Scene Description:*

*Synopsis:*

Screen content creators (SCCs) are locked into this repetitive process primarily to negotiate cost and because writer approval is always required. It is also to catch any

variations in the rights required, which is the general area of negotiation to reduce fees. This area can become problematic when the SCC is already contracted to NZ On Air to provide specific licensing requirements via the 'Standard Funding Agreement for Scripted and Factual Content':

XX plays for XX years for free-to-air and Video on Demand for all of the Main Content.

(a) six transmissions in New Zealand, by a free-to-air broadcaster other than the Primary Platform Owner; and

(b) unlimited streaming on:

(i) the nzonscreen.com website; and

(ii) any other free access, New Zealand website.

<https://www.nzonair.govt.nz/funding/resources-producers/>

The entire licensing process, especially in regard to published artists, is largely administered offshore – because a large amount of works are administered by offshore publishing companies: e.g. Mushroom; Universal; Sony; Kobalt; et al – and this can be time consuming for all parties. In many instances, it can also be unsuccessful if the use, when it is finally considered, is denied. The right of refusal ultimately rests with the author and the Publisher and Master rights holders also need to navigate the economic imperative of maintaining the value of their copyrights in a competitive market; the budget available may not cover the rights required for the requested piece of music.

### **Value**

Value is a cornerstone of the sync licensing sector. Different songs have different economic and cultural value afforded to their, or the artist's, status. Obvious examples would be that highly recognisable and well-loved songs like 'Don't Dream It's Over', 'Royals', 'Loyal', and 'Supalonely' will command far higher licensing costs than emerging artists or songs from more niche genres. These more highly regarded compositions are sometimes referred to as 'blue chip' copyrights. The analogy of a car yard that stocks everything from

Ferraris to Toyota Corollas serves to illustrate - they are all cars but differ greatly in prestige, quality and pricing. This question of value is one of the realities that can sometimes make forecasting music budgets difficult and requires a level of expertise to navigate.

The reality of sync licensing in the domestic industry is that years of negotiations between NZ On Air funded screen content creators and music rights holders, it could be argued, have effectively generated standard form contracts and a market expectation of costs for the rights and terms required i.e., NZ On Air's Standard Funding Agreement for Scripted and Factual Content stipulates certain *platform rights* attempting consistency across an ostensibly diverse range of programming.

[https://www.nzonair.govt.nz/documents/77/Standard\\_Funding\\_Agreement\\_2022.pdf](https://www.nzonair.govt.nz/documents/77/Standard_Funding_Agreement_2022.pdf)

However, because there is no transparent rate card it is difficult, if not impossible, to accurately forecast the expenditure to secure music sync rights for NZ On Air funded productions. In practice, we see the negotiation for those rights happening after the fact, at the tail end of the production. The impact is generally a shortfall in the budget forecasts to effectively secure the rights required.

## The Problems

1. There is a disconnect between music budgets for television/screen content and the actual costs of sync licensing.

2. Many screen content creators find the process of music licensing difficult to navigate, time consuming and confusing in regard to the rights required and the mechanisms for clearances. This confusion alongside inappropriate budgets negatively impacts on all parties.

3. Currently there is a distinct lack of detail in regard to music use in the *final cost reports* delivered to NZ On Air which makes it difficult to engage in any real analysis of the scale of synchronised New Zealand music in NZ On Air funded screen content, or to track it as a *broadcast outcome*, e.g.: actual songs used; durations; individual licensing costs.

4. Within the industry there have been discussions about how screen content creators could be incentivised to increase their sync use of local content within local productions. NZ On Air features in much of this discussion as it is both a funder of music content and screen content. Incentivised use is problematic for a number of reasons, the main one being that under Section 42 of the Broadcasting Act 1989, NZ On Air is prohibited “to give a direction to any person to whom the Commission has made funds available under section 36, in respect of the editorial content of a particular programme.”

However, the primary functions set out in Section 36 are to “reflect and develop New Zealand identity and culture by promoting programmes about New Zealand and New Zealand interests”.

## The Solutions

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- *Streamline*, for all parties, the process in regard to synchronisation approvals;
- *Improve* access to discoverable and diverse local content, both contemporary and historical;
- *Enable* screen content creators to more accurately forecast a realistic music budget at the outset of their production.

Furthermore, the provision of detailed reporting would allow access to vital information about music use/synchronisations and important analytical data in regard to how music is being used in New Zealand screen productions, i.e. cue sheets for durations and cost breakdowns for value. This would also enable NZ On Air to track the use of synchronised music in NZ On Air funded screen content as a separately reported *broadcast outcome*.

Effectively, a model that makes the use of local music easier and more attractive so that “great New Zealand content is valued and enjoyed by many New Zealand audiences.”

<https://www.nzonair.govt.nz/about/our-funding-strategy/>

## Part B: Funded Screen Content Budget Analysis

### Key Findings: Music Use in NZ On Air Funded Screen Productions

#### **General**

A detailed analysis of *synchronised music licenses* is not currently available as the *final cost reports* only provide a collated 'music' line with no breakdown of itemised costs across Publishing and Master expenses. Similarly, no *cue sheets* are attached which would specify the song choices and durations of those synchronised music uses.

The proposed budgets and final cost reports do allow the facility to calculate music-to-budget ratios and a comparison of the proposed budgets vis-a-vis actual spends.

#### **Scripted**

In regard to music-to-budget ratios, the *final cost reports* show that only two of the scripted productions in this study had a music budget in excess of 3% and in both instances were significantly in excess of their original forecasted music spend.

One of the productions had an experienced music licensing specialist attached. The proposed budget was comparable with previous productions by the same company. The increase was a directorial/writer choice to include a music heavy scene. Given the absolute precision of all of the other series in the canon this is very much an anomaly and did not affect the overall production, which actually came in under budget.

The music supervision of the second production was handled by the composer, who had limited-to-no previous music supervision experience. This would explain why the forecasted budget was not in line with the ambitions of the completed series.

The other productions that went over budget had no licensing specialist listed and their proposed budgets speak very clearly to this, with many calculating their music costs below a 1% threshold.

In each instance of overspend, the additional costs were significantly higher than the proposed budgets and had an impact on the proposed *composer fees*. This points to a real requirement for reliable forecasting, which would seem to require an experienced licensing specialist with a real knowledge of market rates. Inaccurate forecasts seem to have an



immediate and substantial effect on composer fees in the first instance; a cannibalisation of the overall music budget.

In each instance of a production exceeding its initial music spend, it is noted the overall productions still came in on overall target.

Of the *final cost reports* analysed, the most consistent productions in regard to proposed budget and actual spend illustrated a median music spend of roughly 1-2% of total budget. This indicates that this is what current budgets can sustain.

In each instance of underspend from the proposed budget, the variance was primarily to do with composer fees diminishing. Two other instances stood out: one which is outlined below as a deferred payment; the other was a scripted drama that significantly over-budgeted on their music spend. Concerns around this would be in regard to the proposal over-promising on a factor that may have influenced its funding approval. The final cost report illustrates that the actual spend was very much in line with previous series spends and that the proposal was overly ambitious in regard to its forecasted music spend, at almost double previous series'.

### ***International Comparison***

In the United States and United Kingdom, a *music supervisor* generally calculates the music budget of a screen production at 10% of the overall film / television production budget.

“When using music in a film, part of the overall budget has to be set aside for clearing the music rights. You have to start somewhere and it is the generally received wisdom that, in the absence of anything else to use as a base for making calculations, you default to the overall film budget.

There’s a consensus that 10-15% is a good starting point figure to have in mind for music. It has to be stressed that the **10-15% is a guideline only** and not set in stone. It’s just a way of arriving at an initial figure which you then have to adjust depending on many other factors.” ([Budgeting Consideration When Using Music in Films](#) [original emphasis], 2018)

<https://www.raindance.org/5-tips-on-clearing-music-for-your-film/>

“To be safe, filmmakers should set aside five to six percent of the film’s budget for the score, and up to ten percent if the filmmaker intends to hire a music supervisor and license pre-recorded music.” ([Perez](#), 2020)

### ***Factual***

In regard to factual productions, two of the key budgets supplied for this study were for music documentaries made by the same company, one a series and one feature length production. In both instances the initiative was taken to set up a pre-cleared, tiered system of licensing to enable reliable forecasting. It was wonderful to see the level of publishing and label consultation ahead of production.

As you would expect, both were in excess of 20% music-to-budget ratio spends, including the deferred lines. Both came in close to budget and the variances are attributable to deferred payments and directorial choices.

The series was all-in-all a very good production in regard to a more detailed understanding for the value and negotiation of use of musical copyrights.

The feature length documentary concerned one band and included a significant deferred payment which skews the percentages somewhat but was obviously motivated by budget constraints and the band’s desire to see the project completed. Both are great examples of how a tiered licensing system is available to forecast a fairly accurate budget. They could provide great templates for future music documentaries.

### ***Production Music***

The majority of budgets included a *production music* cost line. In each instance, it was given an incorrect title such as: ‘Blanket License’; ‘Misc. Music’; ‘Copyright’; or most commonly, ‘Library Music’.

*Production Music* (PM) is music that is created specifically for sync in media (TV programmes, ads, corporate) where tracks are licensed on a non-exclusive basis and are made available to the user pre-cleared for immediate use. PM is also commonly referred to as “stock music” or “library music”. PM tracks are created for immediate use and cover both

the sound recording and musical work copyrights. Production music offers a convenient and cost-effective solution for music licensing needs.

The production music market is dominated by offshore libraries affiliated with the large record and publishing companies.

*Universal Music Publishing Group library music has the music libraries of Chappell Recording Music Library, Bruton, Atmosphere, and others such as Killer Tracks; Concord Music, which owns Imagem Production Music, formerly Boosey & Hawkes Production Music, which includes the Cavendish, Abaco and Strip Sounds labels; Sony Music Publishing owns KPM Music and Extreme Music; BMG Rights Management runs its own production music division; and Warner Chappell Music owns Warner/Chappell Production Music. ([Wikipedia](#), 2021)*

German based Sonoton is the largest independent production music library. Other independent libraries include Vanacore Music (US) and West One Music Group (UK).

This means that, in the vast majority of cases, the performance income generated by production music used in New Zealand is heading offshore, rather than being retained locally, and nameless/faceless music does nothing to promote New Zealand identity.

In territories where mechanical right societies exist (ANZ, UK, Europe etc.), PM suppliers often choose to assign the right to licence their repertoires to those territories' societies. In NZ for example, AMCOS administers the reproduction/sync licensing of 20+ PM suppliers encompassing over 1 million tracks (in the same way that MCPS does in the UK, or GEMA in Germany). Tracks from all suppliers' repertoires are licensed at the same fee via a standard rate card or as part of wider "blanket" arrangements with businesses who use a considerable amount (e.g. TV broadcasters who agree to flat-fee sums for all uses rather than apply for each licence on a case by case basis). Independent TV productions generally licence PM via a per episode rate for either domestic or international clearance. All licences are granted in perpetuity.

The Australasian Mechanical Copyright Owners Society (AMCOS) offer a rate card on their website which is calculated on 30 second blocks, or as a flat fee for 30 / 60 / 90

minute episode durations, or as a directly negotiable fee for a series. An *online licensing* facility is also available via the registration of a *Production Music Client Number (PMCN)*.

- <https://assets.apraamcos.co.nz/images/PDFs/Production-Music/2021-pm-rate-cardnz.pdf>

PM suppliers themselves take an active role in the market promoting their own repertoires, providing their own creative supervision and grant users full access to listen, try, test and download their tracks. AMCOS only administers the licence once the user knows what tracks they wish to use. Once the user has made their selection, they contact AMCOS to get a licence on the terms outlined above. PM composers retain their performance rights for ongoing broadcast or digital royalties.

There are also PM suppliers operating in the market that do not choose to assign their rights to mechanical right societies. While the composers would still retain their performance right and recoup ongoing broadcast royalties via their local performing rights organisation (PRO), the PM supplier licenses the reproduction/sync rights to their repertoires directly to the user.

Production music is often licensed alongside composition and traditional sync licensing to cover background uses. In some instances, it is the only music licensed for a show.

All production music is licensed *in perpetuity*.

## Key Points

Productions that had experienced *music licensing specialists* attached generally came in on budget. Ones without this expertise did not. This is primarily an error in the forecasting / budget proposal stage.

In practice, most NZ On Air-funded screen productions reviewed in this study are showing a *music budget* of 1-2%.

None of the *final cost reports* include a detailed breakdown on music spend, merely a collated cost.

Cue sheets are similarly not included in the reporting, even though they are required by the broadcaster and, ultimately, Australasian Performing Right Association and the Australasian Mechanical Copyright Owners Society (APRA AMCOS).

Under-forecasted budgets are likely to cause issues in music clearances with publishers and labels who bear the brunt of the situation with the receipt of unrealistic requests. Ultimately, this affects the writers and performers whose work is being undervalued.

In regard to music documentaries, with a clear understanding of music needs, the initiative to engage with *music rights holders* to establish tiered rates for music choices ahead of production fostered a streamlined licensing process that allowed a level of precision in forecasting.

Music supervision and publishing clearances require a detailed level of knowledge; this is indicated in the discrepancies between productions that employ specialists and those that do not.

### **Part C: Sector Feedback**

A review of the sync licensing sector was undertaken, engaging with key players on both sides of the negotiation space: screen producers; composers; record labels; publishers; music supervisors; music licensing experts; industry bodies; and independent artists.

Each participant was asked to discuss their thoughts and experiences on the sync licensing sector and how it might be improved with the intention of benefiting and improving opportunities for all parties.

Alongside this industry engagement, a selection of budget proposals and *final cost reports* were supplied by NZ On Air for review and comment. These were productions that had received significant funding. Music-to-budget ratios were calculated and the reporting mechanisms themselves examined.

#### **Sector Feedback**

In this study I interviewed a variety of participants in the music and screen sectors: publishers; record labels; screen producers; music supervisors; independent artists; composers; and industry bodies.

### ***Key Points from a Publisher / Label Point of View in the Television / Sync Licensing Sector***

The primary frustration is production companies not allocating enough money in their budget forcing a situation where they try to reduce the *per 30 second* rate. The example was given of one production where there had been an initial forecast of *per 30 second* rates provided by the publisher for a documentary. The producer then shopped around music supervisors to see if they could reduce that *per 30* rate.

NB: Most, if not all, publishers and record labels who represent local music copyrights quote in *per 30 second* rates as it is understood that screen content creators are unable to confirm the durations of uses required until the picture is locked off. A frustration of this approach is that a duration in excess of 30 seconds may cost double - e.g., if 30 seconds is \$500, then 32 seconds is \$1,000. The frustration is understandable from a screen content creator perspective.

Many production companies are forthcoming about their overall budgets when prompted, though some do 'plead poverty'. An example was given where one company did that very thing, but a quick look at NZ On Air's published funding revealed the production had received substantial multi-million-dollar funding. It is understood that the financial realities of bringing something from script to screen are considerable but that should be a further motivation to accurately forecast the budget of music expenditure in the initial planning stages.

Another frustration is altering terms. This is especially frustrating when a screen content creator underestimates the rights they will need in their initial quote request. It is difficult for a publisher to increase media and decrease a quote once it is in play: artist approval; etc. Rights generally move to accommodate fees. This indicates that a catch-all media provision is the best approach, as long as the fees available can justify it.

There is a feeling that many productions leave their approval/licensing process to the last minute, which is frustrating, not only for the wait times around approvals where multiple parties are involved, but also for actually locking-off the costs involved/budgeting

appropriately. This last-minute approach puts pressure on resources. Publishers/labels are not just working on one project. The feeling is that music licensing is often “an afterthought”.

“A real strength would lie in the general small community, and an ‘artist first’ mentality. Inflexibility is more apparent with overseas rights holders. ”

Lastly, publishers often face challenges when the production / content creator goes to the writer, manager, or APRA AMCOS directly with requests first. As one publisher noted:

“Sometimes it's due to an existing relationship but sometimes it's producers / supervisors going directly because they feel like they can get a better deal if they circumvent the rights holder. It can be very difficult to negotiate better terms/fees once a writer is already engaged with the idea of a job and they worry that if the publisher/label advocate further on their behalf and push for better terms/fees this will cause them to lose the job. Publishers can be perceived as being obstructive when we're really just trying to protect the writer's interests. Reduced fees have a knock-on effect in the wider sector: lowering expectations of licensing costs.”

It is important to understand APRA AMCOS's historical role in domestic sync licensing. Historically, published commercial songs were not used in advertising - perhaps because there were no publishers or clear sync licensing processes. AMCOS started facilitating licensing processes as a result and the advertising sync market grew as a result. Interestingly AMCOS used to do it for the record labels too as they didn't have the staff or the inclination to do it. AMCOS was never a music supervisor, but simply just facilitated the negotiation, licensing, contracting payment and distribution. AMCOS never found or chose works. AMCOS was simply recognized as the music licensing experts who could connect the clients with the publishers who were generally in another country. AMCOS did not often licence music in TV series, it was generally higher end advertising syncs.

AMCOS still offers sync licensing assistance when requested to do so by a publisher, however publishers are generally more present in the NZ licensing market and now elect to



handle enquires directly. More often than not, AMCOS will simply research a work and forward publisher contacts on to clients when enquires are received. Similarly AMCOS still, in certain circumstances, negotiate blanket licences for a music rich TV show - such as *Dancing with the Stars* - although publishers are choosing to deal direct with producers more.

A primary issue in the licensing sector is the devaluation of copyright fostered by low fees which can significantly affect the ecosystem and perception of economic worth in regard to Publishing and Master rights.

**Reasons for Requested Uses to be Denied.** Cost is the primary reason. As stated, different songs have different economic values based on their standing in culture, their prestige, and their recognisability.

Uses can be denied based on negative connotations – violence/drug/alcohol use and if the artist doesn't think the use suits their brand. Uses can fall over because of tight time frames, which don't take into consideration the time it takes to receive writer approvals. It was also noted that there a great deal of works 'in dispute' here in New Zealand, i.e., it is unclear as to how the rights are split amongst the interested parties making clearing the songs 'a nightmare'.

**Fee Structures.** The lowest fee is, generally, \$250 per 30 seconds for *all media / in perpetuity*. Though one notable production had a tiered pre-cleared library with a lower \$200 baseline but that particular show used a lot of music so there was an argument for 'bulk purchasing', i.e. \$200, \$300, \$400.

### ***Key Points from an Independent Music Supervisor Point of View in the Television / Sync Licensing Sector***

**Music Supervision vis-a-vis Music Clearances.** Music supervision in New Zealand is, in practice, more focussed on the process of obtaining clearances and approvals for music choices made by the directors, writers, music editors and producers on a show. Occasionally there is a request for additional music options. This is at odds with the international understanding of the role.

**Music Supervision Internationally.** Internationally, the role of a *Music Supervisor* is more akin to the head of the music department on a production. The Guild of Music Supervisors (US, established 2010) defines the role in a much more comprehensive way as:

“A qualified professional who oversees all music related aspects of film, television, advertising, video games and any other existing or emerging visual media platforms as required.”

In addition:

*“The Music Supervisor must possess a comprehensive knowledge of how music impacts the visual medium. The Music Supervisor works with the key decision makers and/or designated creative team to collectively determine the musical vision, tone and style that best suits the project.*

*The Music Supervisor provides professional quality service that combines creative, technical and management expertise with relevant proven experience. This specialized combination of diversified knowledge and unique skills is integrated into all stages of development, pre-production, production, post-production, delivery and strategic marketing of the project with regard to all music related elements.*

*Music Supervisor Responsibilities include but are not limited to:*

- 1. Identify, secure, and collaborate with any and all music related talent, which includes composers, songwriters, recording artists, on-camera performers, musicians, orchestrators, arrangers, copyists, contractors, music producers,*

*engineers, etc.: liaise and negotiate with talent representation, including legal, label, talent management, agency, business management, etc.*

*2. Liaise and effectively communicate with other related and involved professionals & support staff, i.e. directorial, production, editorial, sound (production & post), camera, choreography, studio & network executives, advertising agencies, clients, label executives, game designers, distributors and cross-promotional marketing partners.*

*3. Possess an accurate knowledge of all costs associated with delivery of music elements. Determine and advise on financial needs of project and generate realistic budget with respect to all music related costs. Deliver all required music elements within the established budgetary parameters.*

*4. Advise on feasibility of schedule based on release, broadcast, campaign or product delivery. Deliver all music elements consistent with specific technical requirements. Manage and/or secure legal rights of new and existing recordings, clearances of Synchronization and Master use licenses of pre-existing music, credits, cue sheets, etc. within scheduling parameters.” ([Guild of Music Supervisors](#), 2019)*

In the United States, a *Music Supervisor* generally calculates the music budget of a screen production at 10% of overall film/television production budget and/or by script breakdown of how many songs needed and type of music (known/indie, etc.) considered with typical fees for said songs. A music heavy production may need to go over a typical percentage.

Often the engagement of a Music Supervisor is in the preproduction stage, especially if there are any ‘on cameras’ (visual vocals).

**Music Supervision Domestically.** Generally, this would be more accurately described as a domain of ‘Music Licensing Specialists’. As an independent licensing specialist working in New Zealand, it is generally ‘the norm’ to be brought into a project after production has commenced, sometimes at the ‘11th hour’ to help with a situation where the

music has been under-budgeted and their skills and relationships are required to fix the problems. As one such specialist offered:

“On films, it’s pretty much 50/50 in regard to engagement ahead of/during production and sometimes that is to replace another music supervisor who may have been on the film prior to production. Without a doubt, in all music capacities and discussions, bringing a music supervisor/licensing specialist on early would be helpful. Attaching a music specialist to a project in the initial budgeting stages would ensure a realistic forecast of music spend. Taking into account: main title theme; the score; on-camera performances; ‘big song’ selections.”

In either circumstance, the actual workload always ramps up in the latter stages of post-production, as that is when final decisions get made and some approvals are withheld or the first choice of music is unavailable.

Without knowing the music requirements, it is very difficult to forecast the cost; every project has its own specific needs which impacts primarily on the time involved. In many instances, one particular music supervision company has written off music supervision fees, which is primarily the time spent in finding music solutions. They have been able to do this as they cross collateralise their wider business of sound design attached to the same project. It was reported that if the time spent were to be divided by the fee available it would be less than minimum wage. One leading Music Supervisor summed it up thus:

“I feel like music supervision is undervalued at every level by screen content creators.”

There is an observation that the parochial nature of many New Zealand productions means that the *performance income* generated is relatively low, compared to shows that garner an international audience. One effect of this is that ongoing *performance income* is not a realistic bargaining tool, so the upfront fees are effectively the only income source for the composers and music rights licensors. An increased focus on shows with international potential would be of benefit.

N.B. “New Zealand audiences” are the primary focus of NZ On Air funding.

**Perceived Strengths and Weaknesses of the Sector.** When discussing strengths and weaknesses from a music supervisor/specialist perspective, the following points were made:

Most of the time music is viewed as a commodity by the screen content creators and most producers don’t understand the mechanics of music licensing: the rights involved; and the requirements around approvals. They think it’s “like ordering a pizza” and “the music supervisor is the Uber delivery driver.”

N.B. This frustration is with the screen content producers, not the publishers.

It is noted that most overspends in music are more to do with song choices, rather than durations.

It is felt that the role of the Music Supervisor is undervalued/under-appreciated and it feels like there is no recognition. The feeling is that the very task is seen as an annoyance: a ‘why are we paying for this?’ One supervisor suggested that this behaviour was specific to more established screen content creators and the suggestion was made that NZ On Air should look to fund more up-and-coming screen content creators/producers as the feeling was that “the newer breed” are more sympathetic to music and its “true value”. Perhaps this also recognises that practices and value preconceptions around music licensing are not so entrenched in less established screen content creators.

There is a general feeling that screen content producers have unrealistic expectations around the music licensing process. There are also concerns around a Music Supervisor’s personal reputation being ‘cheap on clearances’. As one remarked:

“My job is to get the producers the best deal possible, and I do, but it’s not fair. New Zealand is way worse than the States on budgeting for licensing songs and all things music. I am not sure what the ratio should be. It should be based on how much music you want to use. I can tell you that so many publishers and labels get mad at me because they see the published budget of the series, and how much they got from

NZ On Air, and they can't understand why we don't have more money. If you want well known New Zealand songs, and you have a decent budget, you should budget for at least \$5,000 per song, not per episode, for a 5-year ANZ License."

One supervisor noted the '30 second quotes' as employed by many of the local publishers and labels. They explained that this can be troublesome when budgeting in pre-production because it is unclear how long the scene will need the song for:

"Some songs don't deserve extra money (double) for an additional 05 seconds, or it's important to the scene that the song goes on longer. I would say I have passed on a dozen songs when a label and / or publisher does this. It is not common in the US."

It was felt that US Publishers and labels are more flexible on ways to get the song licensed:

"Publishers and labels with up-and-coming/unknown or 'has-been' acts need to be more realistic with their prices on low budget projects and/or very incidental music. Why would I go to them when the libraries have such better deals to put a small song playing for 05 seconds as a car drives by, etc."

Effectively, music supervisors are caught in the middle between: screen content producers, who they feel do not understand the intricacies and actual costs of music licensing; and publishers/record labels who are, because of that lack of understanding's impact on budgets, being asked to license music at lower fees than they demand.

As a further frustration there was a feeling that major labels and publishers are sometimes not presenting offers directly to approval parties and turning around quotes in a timely manner.

As a general strength, it was noted the general community "is populated by good people." It is ignorance, not malice, that is causing adversarial scenarios. Better communication between labels, publishers, rights holders, and supervisors would improve the situation.

It was noted that, currently, if a screen content creator, either directly or via a music supervisor, wants to engage a work that is in 'control' (i.e., unpublished), then APRA

AMCOS is generally the first line of first inquiry to locate the relevant rights holders. APRA AMCOS also takes on a facilitation role and charges a 5-10% commission.

“AMCOS is the mechanical right society for NZ and issues licences to businesses when works are copied (including being copied for the purposes of sync in some instances).

Offering our unpublished members sync licensing services, when they may have little or no means to do so by themselves, has been valued by our membership over the years. Again, the unpublished writer can choose to deal directly.”

APRA AMCOS have also completed a significant update to their website making work searches a very easy process. The new site is a wonderful improvement.

One strength of the local sector is, “having all the production music libraries in the world, which unfortunately have no New Zealand music, go under easy-to-clear rates through APRA AMCOS that are so much less expensive than overseas.”

However, the obvious downside to this is use of these libraries means a likelihood of less New Zealand music used in productions.

**Conclusions.** One final note here, is the internal criticism of supervisors and music licensing specialists themselves. The criticism is that by pushing through reduced clearance rates they are damaging the economic viability of the sector and actively encouraging the problematic engagement of music licensing in the screen sector.

The main issues raised from a Music Supervision perspective are:

- Lack of knowledge by producers of what the full job of the music supervisor entails and the pricing of music copyrights.
- Major labels and publishers not presenting offers directly to approval parties and turning around quotes in a timely manner.

- Pricing/quotes based on production budgets, which are often inaccurate at the proposal stage.



***Key Points from Screen Content Creators' Point of View in the Television / Sync Licensing Sector***

**Context.** In practice, many screen content producers engage music licensing specialists to look for music and to clear the associated rights within a prescribed budget. Sometimes this is an in-house position, sometimes a third-party-independent, and sometimes they are not engaged at all - with the producer or production manager themselves engaging in rights clearances.

**Producers.** It seems that a key issue for producers is an overall lack of understanding between the parties, which creates an adversarial relationship. It is recognised that up-skilling is required in the New Zealand screen industry around music licensing, which may help to improve these relationships. It is reported that the Screen Production and Development Association of New Zealand (SPADA) have trialled some internal initiatives in this regard, as have Script to Screen. The knowledge gap is recognised and is a key area that NZ On Air could step in to assist with.

NB: Not all producers and directors in New Zealand are members of SPADA.

Some producers admitted to not realising that music supervision was a service they could engage, with the responsibility of clearances falling to production managers who have little or no understanding of the sector.

There is a desire for a music licensing service to be provided by networks, or via discretionary funding from NZ On Air, to help accurately forecast music budgets at the pre-production proposal stage. It is recognised that New Zealand producers are under pressure to provide low budgets to compete for the contestable funding that NZ On Air provides.

Most producers would love to dedicate more of their budgets to music licensing but believe this has the potential to open a can-of-worms across the wider production budget, as many participants, such as editors and camera operators, are also working below market value.

Cost pressures are a real live issue at the moment, given international competition for local crews/production workers due to an increase in international productions within New Zealand, and the impacts of increased inflation across the economy.

One producer noted that relationship building needs to happen on both sides of the licensing equation. It was proposed that this may be founded upon the publishing industry's perception that there is a lack of clear understanding around the music licensing process in the New Zealand screen industry, which leads to frustrations.

There is also a perceived lack of cultural nuance from offshore publishers who control local/domestic copyrights. This is primarily an issue around indigenous waiata.

Engagement with producers has indicated that the choice of music within a scene is usually driven by suitability, not recognisability. Alongside that is a particular desire to focus New Zealand music within the framework of presenting New Zealand stories. They are generally making choices based upon artistic merit not economic imperatives. The desire is to match the lyric and a piece of music that is aesthetically sympathetic to the scene, rather than a piece of music that is independently recognisable. Generally, this curation of song choices falls to the writers and directors' own personal engagement with local repertoire. This points to a lack of a highly searchable database of available New Zealand music for these purposes; that is, there is not currently an archive of New Zealand music searchable by lyric/mood/tone/tempo/genre, etc.

**Music Specific Documentaries.** Music documentaries were singled out as a particular issue, as they understandably require significant music budgets to realise and the task of negotiating and seeking clearances is a huge undertaking. It is widely felt that they should be a standalone funding stream with a bespoke framework of costs.

One producer who was working on a specific documentary indicated that she was "not even aware Music Supervision was a service" she could engage and the task had initially fallen to her production assistant. Because of this, the music budget was heavily under forecasted and a clearance specialist was brought onboard once the issue was recognised. This inability to accurately forecast the music spend set up a false expectation of

costs which then led to tense negotiations. The aftermath is that the same producer now says, "I will never license commercial music again."

**Conclusions.** Key issues in practice for screen content creators include the navigation of multiple rights holders for music clearance.

There was an example of one song that had four writers and two master owners. This can be further complicated with the necessity for management consultancy. All of this is time consuming in a process that is generally happening at the tail end of a project once durations of uses are locked off in the editing phase of post-production. The realities around script development create a dynamic environment where the details of the scene can evolve, requiring the approval process needing to begin again from scratch with all parties.

Publishers and licensing specialists feel that they are being called on at the eleventh hour, but producers are explaining that they can't go for approval until they have picture lock and a confirmed duration. There is a feeling that publishers won't move on prices once durations have been stipulated. Given most publishers quote in *per 30 second* blocks this may be a misunderstanding.

Outside of established publishers and master rights holders, the receipt of complete credit information can also be a time-consuming process.

An additional issue is frustrations around 'out of context' uses. The following are international standard definitions / terms:

- *In context use* - means the music can only be used 'in context', i.e. in the agreed scene for which it has been licensed and not in any other scene or 'out of context use'.
- *Out of context use* - means the music can be used 'out of context' as well as 'in context'. For example, it can be used in a specific scene, as well as in a film trailer or advert, whether or not that trailer / advert features the scene that the music was originally licensed for.

It was suggested that perhaps this definition of *in context use* needs a broader definition, especially in regard to music documentaries. This particular issue speaks to the

level of differing understanding and disconnect around how publishers and labels view and cost uses.

The rights remit of the standard scripted and factual NZ On Air funded requirements are not as extensive as some screen content creators like to contract for. It was widely regarded that an '*all media / in perpetuity / world*' rights approach is the tidiest and would safeguard/futureproof the projects. One example was given of a project that didn't clear international rights and the music needed to be stripped out.

'All media' is a problematic term, and a more specific definition is generally required so as not to inadvertently grant rights beyond the scope of the license.

An issue raised multiple times concerned a conflict between producers and music licensing specialists, where the producer was operating outside of the prescribed budget, illustrating a lack of real understanding from the producer, leading to music budget blow-outs.

Within the screen producer community, there is a strong desire for a highly detailed, searchable online archive of contemporary and historical New Zealand music. The further ambition, to include pre-cleared rates for rights usage, within that archive is also supported as a mechanism that will create an ease of engagement with rights managers and accurate budgeting. Again, engagement with producers has indicated that the choice of music within a scene is driven by suitability, so discoverability is key.

Potential song key tags could be focussed on: theme; tempo; genre; lyrics; vocals; instrumentation; mood (e.g. swagger, anthemic, emotive).

### ***Key Points from the Industry Bodies' Point of View in the Television / Sync Licensing Sector***

**Independent Artists / Composers.** For the purposes of this review, an independent artist will be defined as an artist without publishing or record label support.

A key issue in the independent artist sector is a lack of nuanced understanding in regard to *intellectual property* rights concerning Publishing and Master licenses.

APRA AMCOS are the main representative for unpublished artists / writers / composers.

Recorded Music NZ is the industry's representation, advocacy and licensing organisation for recording artists and their labels.

**APRA AMCOS.** APRA AMCOS consists of the Australasian Performing Right Association (APRA) and the Australasian Mechanical Copyright Owners Society (AMCOS), both copyright management organisations which jointly represent over 100,000 songwriters, composers, and music publishers in Australia and New Zealand. The two organisations work together to license public performances and administer performance, communication, and reproduction rights on behalf of their members, who are creators of musical works, aiming to ensure fair payments to members and to defend their rights.

They are affiliated with similar collecting societies around the world. So, when Australian and New Zealand songs and compositions are performed overseas, Australian and New Zealand writers get paid.

They also advocate on behalf of music creators' rights and the Australasian music industry locally, nationally and internationally.

Broadcast of screen content creates *performance income* for the publishing copyright. This income is generated via advertising spend on the relevant broadcasting platforms and subscription fees. This income is collected and distributed by *performing rights organisations*.

*Performance income* royalties are split into two equal halves at the source: *writer's share* (50%) and *publisher's share* (50%). These are two separate revenue types that

performing rights organisations (PROs) or collective management organizations (CMOs) collect and account for separately. In New Zealand and Australia, this is APRA AMCOS's function.

This distinction is not widely understood, especially in regards to screen composers who are the most affected by it.

**Composers.** For many composers, the upfront fees available for screen composition are low in relation to the level and cost of work required. *Performance income* becomes an important aspect of their business, as it generates a long-tail passive income stream, driven by the broadcast success of the project. Multiple screenings in multiple territories can generate revenue which often surpasses the original composition fee.

For a published composer, the publisher's share of their *performance income* is paid through to their publisher and then through to the composer on an agreed percentage split.

In some instances, where the composer is unpublished, they are contracted on what is referred to as a 'work-for-hire' basis, which effectively means they forfeit all moral and legal rights to the copyrights vested in the compositions and recordings. The works are then registered by the screen content creator through their own publishing entity, entitling them to the publisher's share of any *performance income* that is generated, effectively reducing the composer's revenue by 50%.

This practice is widely engaged internationally as a means of easily ensuring a rights buy-out. The actual cues then form part of that company's own *production music library* for further use, including third party licenses.

As with the synchronised use of pre-existing music, composed music cues do not count towards a *broadcast outcome* for music, even though they too generate *performance income*.

Amongst the composers engaged for this review, two main areas of concern were raised: the perception of value; and the perception of excellence. These two concerns are manifested in proposed composer budgets and in the contracting around rights.

**Recorded Music NZ.** The New Zealand Federation of Phonographic Industry (NZFPI) was established in 1957 to collectively represent copyright licensing on behalf of rights owners. It later changed its name to Phonographic Performances New Zealand (PPNZ), and then PPNZ Music Licensing. In 1972 a new trade body was established called Recording Industry Association of New Zealand (RIANZ). For better administration efficiency, the two companies were merged and renamed to Recorded Music NZ in 2013.

Recorded Music NZ collects and distributes *neighbouring rights income* to recording artists and labels.

**Neighbouring Rights.** The term ‘neighbouring rights’ is used in some countries to refer to the public performance, broadcast, communication, and reproduction rights of sound recordings. Literally, *neighbouring rights* sit beside, or ‘neighbour’ the composition copyright of a work.

Public performance rights – similar to broadcast, communication or reproduction rights – are controlled by the entity that owns copyright in the master recording.

Under New Zealand law, the default position is that the owner of copyright in a sound recording is the person who made the “arrangements necessary for the making of the recording”, usually the person who paid for the studio time and other costs associated with making the recording. This could be a record company or a self-releasing artist. The default position can be changed by written agreement, for example two artists in a band might agree in writing that they jointly own copyright in the recording even if only one of them paid the studio costs. Recorded Music NZ refers to this copyright owner as the Master Rights Holder.

[\(https://www.recordedmusic.co.nz/portfolio/understanding-neighbouring-rights/\)](https://www.recordedmusic.co.nz/portfolio/understanding-neighbouring-rights/)

A primary source of *neighbouring rights income* is the public performance of music via broadcast media: television; radio; digital; and online; etc. This is another long tail, passive form of income generated through the synchronisation of music into screen productions. Master Rights Holders must be registered members to receive this income.

Both APRA / AMCOS and Recorded Music NZ have detailed resources on their websites explaining the rights involved in music clearances and licensing.

**Independent Artists and Labels.** It is recognised that the main barrier to entry in the sync market is discoverability. Independent artists and labels generally do not have the resources or contacts to proactively engage and present music that is easily discoverable for sync consideration outside playlist submission. Publishers will supply music options that they control based on a brief supplied by the screen content producer or music supervisor. The latter will also have their own selections, driven by the writer or director of the show, but in the instance of first choices being unavailable options need to be presented.

Supervisors then supply collated song lists to the screen content creators for consideration, with an indication of costings based on similar previous uses.

Playlist submission is a fairly passive method of sharing song selections and there have been recent technological developments to aid the curation and cataloguing of song selections within the sync licensing sector, e.g., DISCO - a music copyright management and discovery tool.

**The New Zealand Music Commission.** The Music Commission recognise the value of sync to the local music scene and are actively involved in exploring initiatives to promote the use of New Zealand music into offshore television productions.

The Music Commission hosted an event in October 2019 at the New Zealand Official Residence in Brentwood, Los Angeles, as part of an ongoing initiative targeting Los Angeles-based music supervisors to increase the usage of New Zealand music in international television, film, and advertising. New Zealand Consul-General Maurice Williamson hosted the event in his home, with Aldous Harding performing for select members of the Los Angeles music, television, and film communities.

In discussion, it was agreed and supported that a centralised New Zealand music archive would offer a range of opportunities to curate and present New Zealand music for offshore consideration in the film and television music licensing industries.



There is an obvious opportunity for NZ On Air to work proactively with the New Zealand Music Commission here.

**NZ On Air.** NZ On Air is a key investor in local music content and promotion and has a separate set of music funding schemes under the NZ Media Fund. NZ On Air invests in an array of contemporary popular music content in seven key genre areas targeted at broadcast and online media including streaming services. The broad genre priorities are: Alternative/Indie; Dance/Electronic; Folk/Country; Hip Hop/R&B; Pop; Reggae/Roots; and Rock/Metal.

NZ On Air Music staff are sometimes queried about why there isn't more New Zealand music featured in funded local screen content, and this has been an issue that has been prominent for many years.

## Initiatives in the Sync Licensing Sector

### ***Pre-Cleared Libraries***

A 'pre-cleared library' is an industry term referring to a collection of songs and/or instrumental music that is approved for synchronisation uses on both the Master and Publishing sides for specific rights, at a specified cost.

N.B. In this instance we are not referring to 'Production Music Libraries', as previously discussed, but curated song selections where the rights and fees have been negotiated with the rights holders ahead of time.

A good example here are the libraries that Mushroom Music have built, and continue to add to, for their exclusive supply of music to the long running and internationally known Australian television soap operas 'Neighbours' and 'Home & Away'.

**Music Licensing Specialist Point of View.** A key desire amongst music licensing specialists is for a 'login and listen' scenario: a catalogue of recognisable music that is available on a pre-approved basis (Master and Publishing), with tiered rates and full credit information already embedded. *Tiered rates* are based on the status of the song and offered in *in context* and *out of context* uses. All rates are per 30 seconds; per copyright (Publishing and Master). Ease of navigation is increased through robust tagging: genre; mood; bpm; keywords. Searchability leads to enhanced discovery.

Amongst the music supervisors engaged, there were differences of opinion in regard to the merits of pre-cleared libraries of published and unpublished songs. One supervisor was of the opinion that the music NZ On Air currently funds isn't "sync friendly" but, amongst all interviewees, the consensus was that a more searchable online portal would be of benefit and the current New Tracks website is not fit-for-purpose to the level of degree a music supervisor needs.

The main area of concern was on the pre-cleared rates themselves, as one supervisor stated:

"I am concerned about having different prices laid out because then I may miss a cool song that could have done something great for the show and for the artist.

Bands need exposure. Artists/writers need to learn how to negotiate for themselves. So they can get their work in projects and not miss opportunities and decide what is worth it.”

That said, there was also the following proviso in regard to production music libraries:

“I love it when I can go to a person at a library and say I have this much money for this type of scene and I’m looking for this, please submit/upload to my DISCO upload link and then I can just put them in a bucket for the editor to use.”

It is understood that, even in the existence of a pre-cleared library, the capacity to negotiate the fees separately can still occur and that, as songs are only be pre-cleared for certain rights, uses outside of those rights would necessitate specific negotiation.

All interviewees agreed that there needs to be an extensive level of metadata for ease of curation in any archive. It was suggested that for archives of multiple rights holders, the inclusion of direct access to writer contacts would have value; this could ultimately be the rights holders’ choice.

**Publisher and Label Point of View.** When questioned about ‘pre-cleared libraries’, feedback was:

*Pros:* Ease of access; encourages use.

*Cons:* No creative control over use; generally low rates; potential devaluing of tracks by way of repeat use (this only really applies for uses outside of scripted and factual content); lots of upfront work to clear.

There was strong support from one of the key publishers, who control an extensive catalogue of New Zealand music spanning multiple decades: “We would love to work with you on the idea of an NZ On Air pre-cleared archive, which we think would have massive benefits to the New Zealand music and screen sectors.”

The feeling was that a great deal of their catalogue is dormant and a streamlined discovery tool that had the option of pre-cleared rates for defined media would be of great benefit in creating passive income for their writers and artists.

N.B. One all-New Zealand repertoire publishing company in the market, Songbroker, declined to be interviewed for this report.

## Part D: Recommendations

### Recommendations

1. Sync licensing of New Zealand music in screen content should be classified as a *broadcast outcome* and be included in NZ On Air's *music outcomes*.
2. A strong recommendation for NZ On Air to collect more detailed information in the producer / *final cost reports* for funded screen productions, including: cue sheets; durations; fees. This should also include a distinction between Master and Publishing costs in the cost line and an extraction of music supervision fees outside of the overall music licensing budget, i.e., not include all as one line item.
3. A *music licensing specialist* should, ideally, be engaged to review the budget at the proposal stage. The music-to-budget analysis revealed that the healthiest music spend was on projects that had music supervision from the outset. Perhaps this is a stipulation for projects applying for funding over a certain threshold. Alternatively, this could be an in-house function provided by NZ On Air or an ancillary funding scheme.
4. Provision by NZ On Air of an online resource: a 'Music Licensing 101' overview that can be provided to NZ On Air clients. Could potentially include a list of approved music licensing specialists and publishing companies.
5. NZ On Air should look for opportunities to host or enable seminars, presentations, meet-ups, or other knowledge presentation and sharing opportunities for the screen and publishing sector.
6. Music focused productions, such as music documentaries, should have their own funding stream recognising their own specific needs.

- 7.** A strong recommendation to commission a separate specific report regarding screen composition (which sits outside the scope of this study which focuses on sync licensing only).
  
- 8.** Develop a music budget forecasting tool to enable producers to better estimate their required music licensing needs, and spend, from proposal stage onwards.
  
- 9.** Investigate further options to upgrade the searchability of NZ On Air's existing Newtracks.co.nz archive of New Zealand music.

## **Further Analysis**

### ***NewTracks.co.nz***

New Tracks is a monthly compilation of new songs from New Zealand artists that NZ On Air distributes to radio stations and other broadcast/online media throughout Aotearoa as well as with some outlets in Australia.

NZ On Air run and distribute New Tracks to get more New Zealand music played on radio and featured on online platforms. New Tracks is distributed digitally at the beginning of each month. This digital service replaced the original servicing of a physical disc, previously the Kiwi Hit Disc. The Kiwi Hit Disc service was first established in 1993.

The service has, to date, released over 250 New Tracks / Kiwi Hit Disc compilations collecting and serviced over 5,000 new release New Zealand singles to local broadcasters and other media. Over the years, NZ On Air has released additional series of compilations including: AC Hit Disc; Indie Hit Disc; Iwi Hit Disc; and Kiwi Gold Disc collections.

It should be noted that the music included on New Tracks does not need to be funded by NZ On Air - both funded and non-funded songs are included each month.

Currently, the New Tracks site only allows searches based on genre, release date and song/artist. Effectively, you can only find something if you already know what song you are looking for.

### ***Discovery is Key***

One of NZ On Air's core goals in funding music is:

“Helping New Zealanders to easily discover and enjoy a wide range of quality New Zealand songs that reflect and develop New Zealand identity and culture”.

[https://www.nzonair.govt.nz/documents/4/2016\\_New\\_Music\\_Funding\\_Strategy\\_Update\\_UB2UwPz.pdf](https://www.nzonair.govt.nz/documents/4/2016_New_Music_Funding_Strategy_Update_UB2UwPz.pdf)

The key to upgrading and improving the NewTracks archive would be to enable it as a discovery tool for screen content creators. The creation of a highly searchable archive of local music, accessible to all NZ On Air-funded scripted and factual content creators, that

would encourage local sync uses while also ensuring that a larger portion of the *performance income* generated by broadcast remains in New Zealand.

Discoverability is achieved by loading each song with as much metadata as possible, including: genre; instrumentation; BPM; moods; etc. A heavily detailed collection of metadata would also provide streamlined navigation of rights management.

After a robust discussion with NZ On Air Music and stakeholders in the publishing industry, the consensus is that the NewTracks website, as it currently exists, would, in fact, not be fit for purpose as a detailed searchable archive. However, it would be a solid foundation of rights information for material and contacts that had received NZ On Air assistance, not confined to funding.

The current metadata provisions required for inclusion on New Tracks are as follows:

*Artist | Song Title | Applicant Contact Details | Primary Genre | Secondary Genre | Release Info | Writers | Publisher | Record Company | Distribution Company | Explicit Lyrics Y/N | Audio Release Date | Video Release Date | YouTube Link | Facebook URL | Instagram URL | Spotify URL | Link to Purchase Song*

As previously outlined, none of this metadata has any useful function in regards the specific search requirements of screen content creators, e.g.: song theme; tempo; genre; lyrics; vocals; instrumentation; tags that might appear in briefs, such as 'swagger', 'anthemic', 'emotive', etc.

In practice, many of these fields in NewTracks are blank and the current metadata is not geared towards discovery. In fact, most information for music released prior to 2013 is incomplete.

Therefore, a new online service would likely be required to achieve the goals of an easily searchable, all-New Zealand music platform that could be accessed by music supervisors and screen content creators.

If NZ On Air were so motivated, they could investigate the costs of expanding the NewTracks functionality to make the service for purpose, but this is likely to be a cost-prohibitive option and will have many flaws, including back-filling data for previous



compilations. NZ On Air would have to ask themselves: is this part of their role and would it be worth the significant investment required?

***Online Resource Tool / 'Music Licensing 101'.***

APRA AMCOS and Recorded Music New Zealand already host a wealth of information that could be collated into a single document as a shared inter-agency initiative.

***Creation of Legal Documents / Publishing and Master License Templates.***

The NZ Music Commission offers free legal service. Perhaps the creation of simple license agreements could be a shared cost.

## **Estimated Efficacy Analysis of Proposed Recommendations**

### ***Music Licensing Specialist Stipulation***

Continue budget proposal/*final cost report* analysis to ascertain quality of music budget forecasting and music-to-budget ratio spends. Extra detail requested in reporting to give greater detail to analytics.

### ***'Music Licensing 101'***

Follow this up with surveys to SPADA and Script to Screen conference/workshop attendees.

### ***Discovery Archive***

An upgrade or complete overhaul of the ***NewTracks.co.nz*** archive or other option.

### ***Broadcast Outcomes***

Working with APRA AMCOS to monitor New Zealand music rights holder *performance income* generated via screen.

## **Recommendations for Governance and Maintenance**

NZ On Air has its own board of trustees, currently the membership does not include a representative from the music industry.

If the decision is made for these recommendations to be managed by the creation of a third party organisation, then a governance body should also be created, comprising members from each facet of the sector:

*Independent Artist | Music Supervisor | Music Licensing | Label |*

*Publishers / AMPAL Representative | APRA AMCOS | Recorded Music NZ |*

*NZ Music Commission | SPADA | Script to Screen*

## Part E: Conclusion

While NZ On Air cannot prescribe synchronisation uses of local music within their screen funding initiatives, they can *promote* and *encourage* their use via the process of *streamlining*, *improving* and *enabling* the existing sync sector.

### **Broadcast Outcomes for Music**

Currently, synchronised music uses in NZ On Air funded screen content are not recognised as *broadcast outcomes*. The current level of reporting from screen content creators does not meet the standard to support this recognition or reporting, but could be easily remedied by a requirement to, at least, attach cue sheets to the *final cost reports* that are submitted.

### **Key Issue: Discovery of Music**

Upgrading and improving the NewTracks archive to enable it as a discovery tool for SCCs. The creation of a highly searchable archive of local music, accessible to all NZ On Air funded scripted and factual content creators, that would encourage local sync uses. NewTracks is not currently viewed as anywhere near fit for this purpose.

### **Key Issue: Screen Sector Up-Skilling**

A more comprehensive understanding of music licensing is required across the screen sector. Incorrect production budget forecasts can create a situation where there are insufficient funds allocated for music licensing and producers have to default to generic library music and/or cannibalise composer and contingency lines. It also has the ongoing potential to sour relationships in the sector, making them feel adversarial. This impacts on the overall quality of productions, in regard to international competition for local viewers.

### **Key Issue: The Protection of Value**

As the primary funder of content creation, NZ On Air has a responsibility to safeguard the economic integrity of the value vested in both composition and music licensing in screen production. NZ On Air cannot be seen to actively, passively, or tacitly engage in practices

that devalue the economic, and by proxy, cultural value of music in the entertainment sector:

“NZ On Air’s funding strategy is founded on core public media principles. These include enriching the New Zealand cultural experience, improving diversity of media content in many forms, ensuring content is accessible, strengthening community life, and promoting informed debate. Our publicly-funded content may entertain and it will add cultural value.”

[https://www.nzonair.govt.nz/documents/37/General\\_Guidelines\\_KHF7qBi\\_IdUTK2m.pdf](https://www.nzonair.govt.nz/documents/37/General_Guidelines_KHF7qBi_IdUTK2m.pdf)