

CLAYTON UTZ

# Copyright - the NBN and TV

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# Overview

- The challenge - *protecting rights holders without stifling innovation and availability of content*
- Three main topics:
  - Protection (subsistence) - are there gaps
  - Enforcement - what role for ISPs
  - Licensing - is copyright inhibiting access to content

# Protection - are there gaps?

- Copyright subsists in television broadcasts made under a BSA licence
- BSA excludes:
  - "point-to-point" transmission; and
  - services that make programs available "using the Internet"
- Should Internet transmissions be given analogous protection to "broadcasts"?

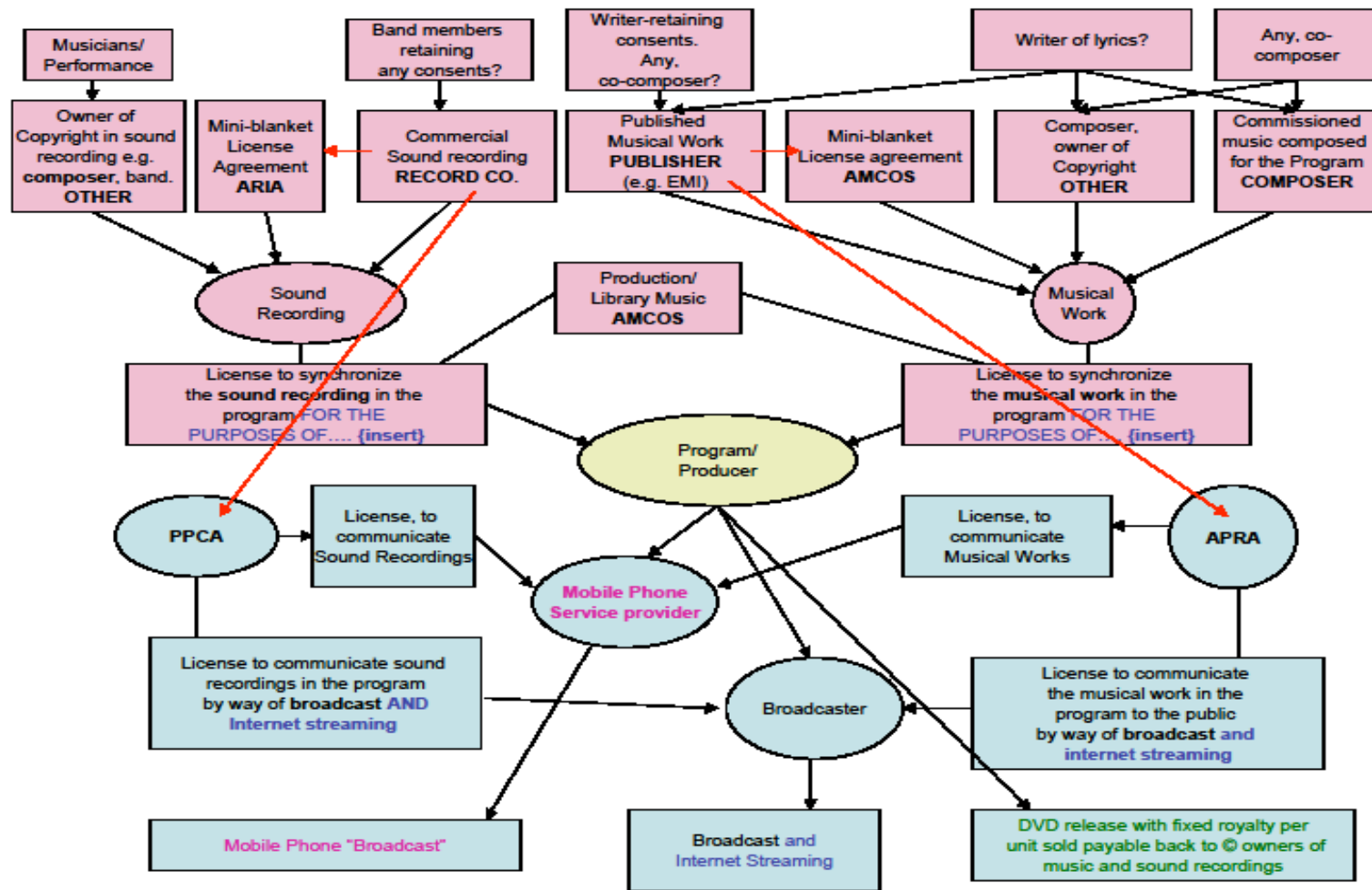
# Enforcement

- NBN will increase the power of P2P networks
- Tension between:
  - Express acknowledgement of importance of safe harbours and ISPs; and
  - Making ISPs the focus of anti-piracy campaign
- iiNet litigation; HADOPI; NZ legislation; filtering
- What role (if any) should ISPs play
- Alternatives - licensing (APRA|AMCOS proposal)

# Licensing

Copyright	Description	Likely owner/controller (subject to assignment)
Broadcast	Copyright in the signal that is broadcast to the public	Broadcaster
Film	Copyright in pre-recorded images and the associated soundtrack included in the broadcast	The maker of the film and the director
Literary or dramatic works	Copyright in any scripts for the program, the lyrics in any pre-recorded music	The author of the work
Sound recordings	Copyright in the recordings of performances of musical works used in the production. This could be:	
	<ul style="list-style-type: none"> <li>library (or production)</li> </ul>	AMCOS or the relevant production company if it is not an AMCOS member
	<ul style="list-style-type: none"> <li>commercial recordings</li> </ul>	ARIA, PPCA or the relevant recording company
	<ul style="list-style-type: none"> <li>commissioned music</li> </ul>	The maker of the recording and, in the case of live performances, the performers
Musical works	Copyright in the underlying music performed to create the sound recording	APRA AMCOS (except the synchronisation right, which remains controlled by the author or publisher) or publisher or composer

# Example



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## Licensing (cont.)

- The problem for historical/archived material
- Part VC statutory licence - minimises transactional clearance and administration costs
- Limited to free-to-air broadcasts and excludes retransmissions "over the Internet"
- Should it be expanded to cover a broader range of content e.g. archived broadcasts?

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