

Submission to the ACCC in response to its guide on collecting societies, by Alex Malik¹

(1) Introduction

I am an academic researcher currently completing a PHD in law at the University of Technology. My research topic is the protection of intellectual property rights in the digital age. I have also written extensively on collecting societies and IP rights protection and have had op-ed pieces included in various publications include The Age, Canberra Times and Sydney Morning Herald. From 2000 to 2002 I was the legal counsel for the Phonographic Performance Company of Australia, the collecting society for the recording industry. From 1998 to 2003 I was involved in the development and implementation of the Australian Recording Industry Association (ARIA) club music chart, which is used by PPCA and APRA to distribute receipts from nightclubs to recording artists and songwriter members, respectively.²

I wish to make a submission in response to the ACCC's draft guide to copyright licensing and collecting societies. I authorise the ACCC to reproduce or quote from this submission if it wishes to do so.

At the outset, the ACCC is to be congratulated for producing this guide. In my experience as a former PPCA legal counsel there is a great deal of confusion by members of the public regarding the roles, functions, authority and activities of collecting societies. Any guide which purports to reduce this level of confusion is a positive development.

The following are my detailed comments on the ACCC's draft guide to copyright licensing and collecting societies (hereafter referred to as "the guide"):

(2) Legal authority to act

The authority of some collecting societies such as APRA and PPCA to undertake their licensing activities can be traced back to a legislative authority provided by the Copyright Act. However, some collecting societies' licensing activities have no legislative basis and are simply based on the contractual rights provided by their members to their collecting societies. The guide should more clearly differentiate between these two types of collecting societies. In particular, where a collecting society relies on the contractual rights provided by their members the guide should clearly indicate that there is no legislative authority for these collecting societies to act in their capacity. Aside from the normal costs and benefits of dealing with collecting societies, under a collective licensing system, consumers should feel that they are not under any particular legal obligation to deal with a collecting society with no statutory right to act with respect to particular IP rights.

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² See http://www.ariacharts.com.au/pages/charts_display.asp?chart=1L50.

(3) Distributions to members

An important role for collecting societies is to distribute collections to their members. The guide provides an insufficient explanation for the method or methods used by collecting societies to distribute collections to members.

For example, PPCA on its website publishes a list of the most broadcast sound recordings each year.³ In 2006 Bernard Fanning's "Wish You Well" was the most broadcast recording, followed by Daniel Powter's "Bad Day". Yet there is insufficient transparency how these lists are arrived at. How many times was Fanning's recording broadcast? Where was it broadcast? How many more times was Fanning's recording broadcast compared to Powter's recording? Are these calculations independently verified? If so, by who? Presumably PPCA uses a sample of radio station logs in arriving at this calculations. How many logs does PPCA use? What is the margin for error with respect to these logs? Finally, if we accept PPCA's assertion that Fanning's track was the most broadcast sound recording of the year followed by Powter's track, what are the implications of this result. How much more in royalty payments does Fanning (or Fanning's record company) receive compared to Powter (or Fanning's record company)?

These issues should be addressed by the guide because they directly impact on the decision by sound recording producers and other rights owners to sign up or become members of collecting societies.

(4) Executive income, financial benefits and commercial arrangements

Collecting societies are correctly described as non profit organisations. For example, CAL describe themselves as a "not-for-profit, member-based company".⁴ Screenrights describe themselves as "a non-profit copyright collecting society for producers, distributors, rightsholders in scripts, music, sound recordings of music and artistic works and other copyright owners in film and television programs".⁵

Implicit in this suggestion is that collecting societies are run for the benefit of their members. Yet, some collecting societies pay staff members and key executives substantial salaries. Some executives may have commission based commercial arrangements with staff members. There is nothing inherently inappropriate in collecting societies engaging staff in such a manner. However, in the interests of transparency collecting societies should reveal and the guide should publish details of the commercial arrangements collecting societies have in place with key executives, including salaries and other benefits paid to key executives and their associated companies.

Key executives should also reveal what other commercial arrangements they have in place with other parties, including other consultancy agreements and employment arrangements. These disclosures should also be included in the guide, because it is important for would be licensors and licensees to make an assessment as to whether or not they wish to deal with a collecting society. Is the collecting society truly acting in the interests of its members? Do collecting society executives have the interests of members as their primary concern? Are key executives being enriched excessively from license revenues? Have collecting society executives actively avoided conflicts

³ See for example http://www.pcca.com.au/most_broadcast_recordings2006.htm.

⁴ http://www.copyright.com.au/about_cal.htm.

⁵ <http://www.screen.org/factsheets/DP0205.pdf>.

of interest? There should also be a mechanism – perhaps through the ACCC website for collecting societies and their executives to regularly update this information.

(5) Administrative expenses and other commercial arrangements

Collecting societies pay significant amounts of money to third parties in commercial arrangements. However, it is unknown precisely how much collecting societies pay to third parties in these commercial arrangements. Yet, these payments represent money that is unavailable to be distributed to collecting society members. These payments also represent money that is collected from parties through higher tariffs, so these payments are very important to both of these groups. As a result, these payments should be transparent and disclosed on a register that is freely able to be perused by members of the public.

Aside from these third party arrangements, collecting societies should also reveal details of all of their key expenses, especially their administrative expenses.

This is because most collecting societies such as the PPCA report that they distribute “net licence income to Licensors, Artists” and (in the case of the PPCA) “to the PPCA Performers’ Trust foundation”. On their website, PPCA states:

After each financial year, the amount available to be distributed to licensors and registered artists, less administration costs, is calculated. These amounts are distributed in December of each year. The funds available for distribution are allocated on a track-by-track basis.

Although they use the terms in their information dissemination, what are the net income levels of collecting societies, and how are they calculated? How do these amounts compare to gross income? What expenses are deducted from gross income to arrive at net income? What proportion of gross income is dissipated in administrative expenses?

To their credit, some collecting societies reveal this type of information. For example, in its 2006 annual report Screenrights wrote:

*This year the distributable amount payable to copyright owners under the Part VA Australian Educational Service was \$17.0 million, an increase of 10.4% on the same figure for last year. The Part VA ratio of administrative expenses to collections was 16.0% with the retransmission case expenses, and on a comparative basis without retransmission, the ratio was 15.8%. For all income generating services, including our voluntary services, total trust operations resulted in an overall distributable amount of \$19.0 million. The income generating services are the Australian Educational Service, the New Zealand Educational Service and the International Collections Service. The Retransmission Service and the Government Copying Service do not currently generate significant income. The ratio of administrative expenses to total collections was 16.9% including the retransmission expenses, and 16.8% without these expenses.*⁶

However, other collecting societies do not reveal this information. This type of information should be published by the ACCC in the guide for all collecting societies. This information can be used by would-be licensors and licensees to determine how efficient these collecting societies are, and how efficient they are in comparison to international collecting societies. Of course if a given Australian collecting society is

⁶ <http://www.screen.org/annualreport/2006ar.pdf>.

not very efficient compared to international collecting societies, would-be licensors and licensees may not wish to deal with that collecting society. The society itself may wish to introduce more efficient processes and procedures. However, consumers and other interested parties may not make judgements on these issues unless this information is publicly available in a clear and concise form.

(6) Lobbying activities

Some collecting societies appear to be engaged in lobbying activities. The guide should reflect whether or not “non profit” collecting societies are devoting members’ funds to lobbying activities because again this impacts on tariff levels and member payments. Further, any service agreements with lobbyists should be made public along with other third party consultancy agreements, as discussed above.

(7) Information on non exclusive licenses

Most of the licenses issued by collecting societies are non exclusive licenses. Put simply, individuals and companies who wish to license intellectual property rights from content owners have two choices – either they can seek to take out licenses from collecting societies, or they can approach rights owners directly in an endeavour to take out licenses. These two groups of licenses purport to be in competition with each other as a source of licenses, and purport to compete with each other with respect to the terms and conditions attached to the issue of licenses.

However, a major problem facing would-be license holders is that they are often unable to identify intellectual property rights owners, and collecting societies appear unwilling to provide this type of information on individual intellectual property rights owners. Given that individual intellectual property rights owners typically have a relationship with collecting societies – and are often the owners of collecting societies, collecting societies should provide information to would-be license holders on individual intellectual property rights owners. This could be done in a simple manner – for example if a would-be licensor contacted the PPCA to license a series of tracks by Robbie Williams for public performance, PPCA could simply indicate there are two choices available to the user – either attempt to procure a license from the PPCA, or contact EMI who is Robbie Williams’ record company directly at the following address (insert address), and attempt to procure a license from EMI through the direct contact with the rights owner.

This activity would be done in the interest of maximising competition between these two groups and providing would-be license holders with a genuine choice between two competing alternatives.

This information on individual intellectual property rights owners could be provided on the websites of the relevant collecting societies, with the links to be included in the guide. Would-be users of content could even access the collecting societies’ database listing all content, with the links to the database appearing in the guide. Such an approach would certainly increase competition between collecting societies and rights owners and would be in the best interests of consumers of licensed product.

(8) Tariffs and license fees

Recently some collecting societies have been the subject of criticism over the calculation of their tariffs and license fees. For example, the PPCA has been criticised over proposed increases in fees for music used in gyms. An example of a

recent article is included in Annexure A – recent media. These criticisms are not new – for example a few years ago PPCA were criticised over proposed nightclub tariff increases.⁷

This submission does not suggest that some or all collecting society tariffs and license fees are excessive. In fact, some tariffs may be too low or insufficient; however a problem facing would-be licensors and licensees is a lack of transparency over how collecting society tariffs and license fees are calculated. For example, Fitness Queensland recently wrote:

Over the past 12 months, the Phonographic Performance Company of Australia (PPCA) has been progressing its review of Tariff "V" as it applies to the use of protected sound recordings in fitness classes. The current rate for Tariff "V" is 94.6 cents per fitness class with a maximum annual fee of \$2,570.04. The PPCA have proposed that the new rate be increased to \$31.67 per fitness class (an increase of 3,248%) and that the maximum annual fee be abolished.

Similarly, APRA recently announced the introduction of new background music rates for retail and general business. APRA included a detailed explanation on their website, which is included in Annexure B.⁸

While APRA's explanation is detailed, it does not explain how the new tariffs are calculated. For example, the "Tier 1" rate from 1 January 2007 to 31 December 2007 ranges from \$54.12 to \$68.79. Why \$54.12 ... why not \$54.50, \$54, \$53.50 or some other amount? How did APRA arrive at these amounts? Were they calculated on the basis of a specific formula? If so, what was this formula? If the formula exists, was it calculated by an economist to take into account the true value of music? Were the new tariffs calculated by an independent third party, or privately by APRA? Is this mode of calculation available to members of the public including businesses subject to the tariff?

A great deal of industry confusion would be removed if the ACCC in its guide included a list of relevant tariffs, or links to the relevant collecting society websites which explained *how* tariffs were calculated, and in particular, how license fees increases were determined.

Businesses require this information so that they can make an informed decision regarding their prospective use of licensed content. Using the example of popular music, businesses need to consider the mode of calculation of tariffs so they can determine if they would be in a superior financial position by using as an alternative (for example) public domain music which does not require a collecting society license.

Considering the PPCA gym tariff example discussed above, does the proposed tariff increase reflect an increase in the value of music? Does the tariff increase reflect a cost of living adjustment? Does the tariff increase reflect some increase in productivity? Or is the increase simply a reflection that the earlier fee unrepresented the value of music to the fitness industry and had not been adjusted for many years. In any event, a clear explanation of how tariffs are calculated would alleviate a great deal of public confusion with respect to this matter.

⁷ See for example "Fee will bring down the house, club owners fear" which appeared in the Sydney Morning Herald: <http://www.smh.com.au/articles/2004/06/04/1086203623804.html>.

⁸ <http://www.apra.com.au/music-users/news/061115-NewBackgroundMusicRates.asp>.

(9) Lack of certainty on the need for licenses

There is some confusion as to whether or not particular groups of individuals actually require licenses from collecting societies. For example, some nightclub and mobile deejays believe they require licenses from the PPCA, while others do not. Some deejays actually advertise on their websites that they have PPCA licenses,⁹ while other deejays rely on venues obtaining licenses from the PPCA and do not obtain licenses themselves. This uncertainty results in inconsistency, with some deejays obtaining PPCA licenses, while others do not. Aside from the lack of certainty, this inconsistency results in an inequitable position with some businesses and individuals being subject to an additional expense, while others who are in competition with the license holders are not subject to this additional expense.

In some instances a PPCA licensed deejay may appear at a PPCA licensed venue. Does this mean the PPCA is receiving a “double” license payment? In these circumstances is the deejay or venue entitled to a refund? What would be the process of obtaining such a refund?

The guide should expressly indicate the circumstances in which deejays and other parties need to obtain licenses from collecting societies or intellectual property rights owners.

(10) Unpaid amounts

Collecting societies do not pay all entitlements to members. Some amounts remain unclaimed; other amounts are unable to be paid because members “go missing”. Again, this is relevant for would-be licensors and licensees – high amounts of unclaimed payments may be indicative of corporate inefficiency within the society. All collecting societies should declare in the guide what proportion of payments remain unclaimed, and what, if any steps are being undertaken to locate the fund recipients.

Further, there should be some clarification as to what happens to unpaid amounts. Are they added to collecting society general revenue or are they held in a separate account? What happens to the interest earned on these amounts? How long do artists have to claim these amounts? Ultimately if these amounts remain unclaimed are they retained by the rights owners, or the collecting society, or by some other party?

(11) International relationships

Collecting societies often enter into so-called reciprocal arrangements with foreign collecting societies to collect and distribute local royalties to foreign rights owners and to receive and distribute royalties earned overseas to local rights owners. For example, Viscopy advise:

⁹ For example, Sydney Music Events advises that it “holds a current Phonographic Performance Company of Australia (PPCA) License which permits the public performance of a sound recording under the Copyright Act. In the event that a function requires extra public performance copyright clearance and/or licensing, it is the customers responsibility in all cases to ensure the correct clearance and/or license has been obtained”. Presumably this is the PPCA recommended phrasing. See <http://www.sydneymusicevents.com.au/karaoke.htm>. Similarly, DJ Jimmy V, and JJK Entertainment advises that it holds a current Phonographic Performance Company of Australia (PPCA) License. <http://www.jjkentertainment.com.au/discjockeys.htm>.

Through reciprocal agreements, these agencies and societies agree to administer each other's repertoire in their respective territories for specific or non-specific rights.

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The guide should disclose the existence of these relationships, because they impact on the ability of collecting societies to collect and distribute revenue to members. The existence of these relationships would also disclose the extent to which Australian collecting societies adopt a “global approach” to their activities.

(12) Collecting society information sharing activities

Some collecting societies appear to have close business and financial relationships with other organisations. For example, APRA and AMCOS have a close business and financial relationship, and this is clearly acknowledged on their website. APRA and AMCOS write:

*APRA and AMCOS are separately constituted companies each with their own Board of Directors. However, following an agreement reached on 1 July 1997, APRA manages the affairs of AMCOS and the organisations' staff and offices have been amalgamated.*¹¹

PPCA have a close relationship with the Australian Recording Industry Association (ARIA) and Music Industry Piracy Investigations (MIPI). From a perusal of the PPCA website the only reference to this relationship is contained in the PPCA privacy policy which (in part) states the following:

... we (PPCA) collect personal information from the Australian Record Industry Association (ARIA) for a range of purposes. These include:

- to determine whether persons or organisations may require a licence from PPCA for the public use of sound recordings;*
- to allocate and distribute the revenue PPCA earns from its licensing activities;*
- and*
- to make contact with key people in relevant industry or trade associations.*

and

3.1 Disclosures to ARIA

ARIA is closely affiliated with PPCA. ARIA is the trade association representing major and independent record producers, manufacturers and distributors. It acts as an advocate for the Australian music industry, enforces anti-piracy copyright measures and provides a 'blanket' nonexclusive licensing function for copyright users. ARIA also compiles the weekly ARIAnet music charts and produces the Annual ARIA Music Awards.

Under longstanding arrangements between our organisations:

*certain ARIA staff are able to access our database of artists and recordings, for the purpose of collating the ARIA charts;
PPCA provides ARIA with information about the airplay and other uses of sound recordings*

¹⁰ http://www.viscopy.com/viscopy_whatwedo.php.

¹¹ http://www.apra.com.au/corporate/APRA_AMCOS_Relationship.asp.

(which may include some personal information about artists). ARIA uses this information to allocate and distribute to copyright owners the revenue it collects on their behalf.

PPCA passes on to ARIA certain information we obtain from our licensees. ARIA uses this information to determine whether a licence may be required for the reproduction of sound recordings;

PPCA provides to ARIA on a regular basis its database of public domain contact details for industry and trade associations; and

*PPCA passes on to ARIA the names and details of artists with whom we have lost contact, so that ARIA can attempt to locate them.*¹²

This is a reciprocal arrangement, with ARIA making disclosures to the PPCA.¹³

In effect, what these statements mean is that a member of the public could make a good faith disclosure to PPCA regarding his or her usage of sound recordings for the purposes of broadcast, communication or public performance. This disclosure could be followed by a bona fide attempt to negotiate the terms of a license agreement, and in the advent that the parties were unable to come to an agreement on terms, PPCA could refer the matter to MIPI or its shareholders for the commencement of enforcement proceedings.

Members of the public should be made aware of the inherent risks attached to their full disclosure of their music usage, and this should be done through the publication of relevant warnings in the guide. This recommendation is not made to encourage copyright infringement by users. Rather, this recommendation is made in the interests of fairness - MIPI who have been described from time to time as "the copyright police"¹⁴ often reportedly act on the basis of information collected by the PPCA, and users should not be penalised because they are in the minority of members of the public who actually approach the rights owners in good faith with the intention of taking out a license.

(13) List of collecting societies

A list of collecting societies is provided on page 11 of the draft guide. The guide does not include ARIA which appears to act in the manner of a collecting society. The following appears on the ARIA website:

Licensing

Music is all around us - in shops, cars, restaurants and on TV. Before making any copies it's important to understand the basic rules surrounding the reproduction (copying) of sound recordings.

ARIA provides licences on behalf of ARIA members to individuals and organisations who wish to make legitimate reproductions of sound recordings for some specific limited purposes (such as commercial background music suppliers). Through our

¹² <http://www.pcca.com.au/privacy.htm>.

¹³ <http://www.aria.com.au/pages/privacy.htm>.

¹⁴ See for example

<http://www.zdnet.com.au/news/business/soa/ Unprecedented Australian music piracy case hits court/0,139023166,139164069,00.htm>.

licensing services you can access a wide range of sound recordings from major record companies and independent labels.

You will almost always need a licence before reproducing any sound recordings, whether they are for a public performance or your own personal use (unless one of the very limited "fair dealing" exceptions in the Copyright Act applies). Copyright applies regardless of the source of the recording - whether you downloaded it from a legitimate internet site or copied it from a commercially available CD that you have purchased.

*For those interested in the reproduction of sound recordings for private home video use, there is now a joint ARIA / AMCOS agreement to cater for this, administered by AMCOS. Please call AMCOS on **(02) 9935-7900** for further information.*

*In this section you will find sound recording reproduction license application forms and answers to frequently asked licensing questions. If you still need further assistance, e-mail the licensing department at licensing.mail@aria.com.au, and we'll be happy to help.*¹⁵

In their FAQs section, ARIA add:

What sort of sound recording reproductions can ARIA license?

ARIA CAN currently license reproductions of it's members' sound recordings for the following types of activities:

Use in jukeboxes/computerised music systems supplied to pubs, clubs, and for dance parties;
Use by commercial premises including in store play at retailers, cafés, restaurants and pubs (e.g. background music compilations, computerised music systems);
Use on aircraft as in-flight audio programs;
Supply to operators of aerobic exercise clubs or classes, studios and gymnasiums, or aerobics instructors;
Use of sound recordings in non-dramatic productions such as sports, documentary, lifestyle and reality television programs - not theme music;
Supply to dance instructors and dance teachers, including line dance instructors. This licence is not applicable to teachers putting together a compilation to provide to students for practice in their own time;
Use as 'Music on Hold' by commercial outlets;
Archiving by radio stations as part of their automation 'Selector' systems;
Use in music therapy (i.e. music used in conjunction with the supply of non-music services);
Retention licenses for TV and radio (including the suppliers of satellite broadcast in-store radio/background music services);
Non-profit theatrical performances - for the ease of running a show (i.e. putting a number of sound recordings onto a cassette tape or compact disc).

...

How does ARIA distribute the licence fees it collects?

Royalties generated from ARIA licences are collected and then distributed to copyright owners (usually the record company) based on the reports that licensees supply.

¹⁵ <http://www.aria.com.au/pages/licensing.htm>.

We require licensees to provide us with information as to artist, track title, record label and record company, and the number of times that each sound recording or music video has been reproduced, so that we can distribute royalties to the respective copyright owner.

ARIA retains a commission to cover the administrative, operational and legal costs of conducting its licensing program.

When should I apply for a licence?

*To avoid infringing copyright a licence should be obtained in advance of undertaking the reproduction of any sound recordings or music videos.*¹⁶

ARIA certainly seems to be acting in the manner of a collecting society. The relationship between ARIA and PPCA even appears to be analogous to the AMCOS and APRA relationship.

APRA licenses broadcast, public performance and communication rights with respect to musical works, while AMCOS licenses reproduction rights with respect to musical works. APRA and AMCOS appear to share information and some administrative functions.

In a similar manner, PPCA licenses broadcast, public performance and communication rights with respect to sound recordings, while ARIA licenses reproduction rights with respect to sound recordings. ARIA and PPCA appear to share information and some administrative functions.

Further, ARIA appears to have a joint agreement with AMCOS. Yet, while AMCOS is classed as a collecting society, and agrees to be bound by the collecting society code of conduct, for some reason ARIA does not appear to be classed as a collecting society. Certainly, ARIA should be included in the guide as a relevant organisation for would-be licensors and licensees.

(14) ACCC authorisations

According to Footnote 16 of the guide, "The ACCC on 8 March 2006 granted authorisation to APRA for its input, output, distribution and overseas arrangements for four years." From a legal viewpoint, the ACCC authorisations are very important legal documents in the view of would-be licensors and licensees. They are important guides regarding the extent of collecting society powers, functions and activities. Yet some authorisations are not easily available – even from the ACCC website.

As a result, all valid ACCC collecting society authorisations should be included in the guide, as an annexure to the main body of the guide.

Annexure A – recent media

Gyms face the music

By Jim Dickins

<http://www.news.com.au/sundaytelegraph/story/0,22049,21092017-5006009,00.html>

January 21, 2007

¹⁶ <http://www.aria.com.au/pages/licensing-faq.htm>.

GETTING physical could get a lot more expensive if plans to increase copyright charges for songs played during exercise classes by more than 3000 per cent are allowed to proceed.

Fitness Australia fears that planned copyright price hikes will silence many community-based exercise programs and send some small gyms to the wall.

The industry body has advised members of a proposed fee rise from 94.6c a class to \$31.67 - a jump of 3348 per cent.

"This is an issue that has major financial implications for the fitness industry in Australia and must be addressed with some urgency," it said in a letter to members.

The Phonographic Performance Company of Australia (PPCA), a not-for-profit organisation that handles copyright for musicians and record labels, insists a final decision on fee rises is some time away.

Fitness Australia chief executive Lauretta Stace, however, told The Sunday Telegraph that thousands of non-profit community exercise programs were under threat.

"It's just not affordable," Ms Stace said.

Annual copyright costs for a small fitness provider offering 28 classes per week would rise from \$1300 to \$46,000.

Large fitness chains could pass that on to consumers, but subsidised classes - which local councils, clubs and community groups provide - may no longer be viable.

"The danger is it will change the fitness landscape in a very big way ... I think that would be a tragedy," Ms Stace said.

PPCA chief executive Stephen Peach dismissed Ms Stace's concerns as "fear-mongering", saying her figures came from a preliminary economic study that would not necessarily determine the final outcome.

"This is about fairness and equity. The PPCA has to ensure a fair return from people who use music in a commercial way."

The PPCA remains open to discussion about the final rate and would consider variations according to the size and nature of individual providers.

Christina Vegners, who manages the fitness centre at Revesby Workers Club, running about 28 classes a week, said the stoush had community organisations worried.

"It's going to have a huge impact; we have no budget for it," she said.

The PPCA is also seeking an increase in commercial radio copyright fees, currently capped at one per cent of a station's total gross income.

Nightclubs and dance parties are in its sights as well, with a proposed fee hike from 7c per patron to as much as \$5.10.

The final figure for exercise classes will be determined by the Copyright Tribunal, where the PPCA lodged a claim last month.

Annexure B - APRA's new background music rates for Retail and General Businesses

It is common practice today for businesses to invest considerable time and financial resources in their choice of music, and the system through which it is delivered. Furthermore many businesses use music to provide an atmosphere that is ambient, or entertaining, for patrons whilst they dine or shop, to attract customers into their store, to purchase particular products and to entertain those clients that are waiting to be served.

APRA's existing rates for the use of background music in business were introduced in 1978. Since this time the annual licence fee has only increased in accordance with the movements in the Consumer Price Index each year. APRA sought to review its background music scheme to take account of the value of the music, and the variety of contexts in which music is now used by businesses.

How has the review process taken place?

In 2002, APRA commenced a review of its background music licence fees. We consulted with over 35 industry groups and associations, representing small and large businesses, seeking input and feedback on new licence schemes that would apply to all industries, including the hospitality and fitness sectors.

In November 2003, APRA referred a new licence scheme and rate structure for the public performance of background music to the Copyright Tribunal. However, successful negotiations with associations representing the fitness, hotel, club and restaurant sectors, led to APRA implementing new rates for the use of background music by these industry groups throughout 2006.

APRA continued its Copyright Tribunal reference for the background music licence scheme for retail and general business use, and the matter was heard in February 2006. The Copyright Tribunal handed down its determination on 29th September 2006, approving the proposed terms of the new agreement. The new rates are to be phased in over a 3 year period, commencing from 1 January 2007. Under the new licence scheme, APRA's annual rates for background music will vary depending on the premise size of the business and the devices used. The rates are set out below

...