

Adjudication Branch: Attention Mr Gavin Jones

Australian Competition and Consumer Commission (ACCC)

By email: [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au)

5 July 2019

Dear Mr Jones,

Submission in response to Australian Performing Right Association Limited (APRA) substitution of new authorisation A1000433—draft determination.

We are an alliance of organisations, businesses and individuals in the music industry representing artist managers, festivals, live music venues and promoters, and we thank the ACCC for the opportunity to submit a response in relation to the APRA Interim authorisation decision and Draft Determination.

Since APRA's last authorisation in June 2014, the music industry has experienced a period of huge disruption and change. The significant rise in tech and streaming; a data rich landscape; and a music industry that now relies on transparency of data as an essential need to inform commercial decisions and strategies.

In addition to these huge changes, the live music sector has also experienced an upheaval of the regulatory framework for music venues, festivals and events since APRA's last authorisation in 2014. Changes to the liquor licensing have occurred in QLD and NSW - where the "lockout laws" still exist today. These legislative changes have unquestionably had a significant impact on thousands of venues trading hours, operating and compliance costs. In addition to the impacts that venues are still dealing with today, hundreds of music venues have closed their doors since 2014 resulting in a reduction in income earning opportunities for artists, contractors and workers alike.

In late 2018, the NSW Government announced a new festival licensing scheme that has resulted in a significant increase in police, safety and medical costs to numerous music festival promoters. Already the impact of this new licensing scheme on the music festivals sector is evident – a number of established and highly-attended festivals have announced their cancellation in 2019, citing the costs for compliance are financially unmanageable.

The consumer mindset and music consumption habits have also changed a lot since 2014. Streaming services such as Spotify and Apple Music have completely altered the way people discover music. There are also in-home products and streaming services such as Netflix and Sonos, which make nights in much more appealing than five years ago. Naturally services and products like these would impact the consumer decision to go out and enjoy music at a venue, or not. There are also online dating services such as Tinder that now influence people's choices in going-

out activities – and whether their dates will comprise dining, taking in a live show or dancing – and which venues and nightclubs will suit their date.

Since 2014, APRA has increased its licensing fees, citing international industry standard increases as a reason. APRA's joint venture partner in OneMusic (PPCA) has also increased its licensing fees during this period. While this has resulted in an increase in revenue for both APRA and PPCA, the benefits of those increases does not always filter down to their members.

Whilst music is very powerful and has a lot of meaning to Australians, we would be naïve not to acknowledge these dramatic changes since 2014 and how this impacts the value of music and the industry needs from 2019 – 2023 to ensure sustainability of the entire music ecology.

Our music industry is part of our cultural identity and a significant contributor to the national economy. The increased transparency conditions proposed in the Draft Determination will help ensure sustainability of our music industry for the benefit of Australian cultural experience and represents an opportunity to increase the public benefits of authorisation. The proposed conditions will be highly effective if the outcome delivered is a level of transparency sufficient for members and licensees to hold APRA accountable on the basis of evidence. Evidence-based accountability can be achieved by requiring APRA to disclose the details of which music users have played specific works, and how the revenue this generates is distributed.

APRA are positioned to provide the following breakdowns of data given their authorisation and industry ties:

- A breakdown of the percentage of venues using Music Recognition Technology (MRT) in venues paying nightclub or festival tariffs measured against the percentage of play data associated with the distribution of that revenue
- The percentage of play data used across other license verticals and the value of those verticals
- The percentage of revenue collected across license verticals being paid to Australian artists
- A searchable list of all songs being played across verticals where license revenue is distributed

OneMusic Australia (OMA) represents a significant portion of APRA's operations (everything except radio, TV and live). It is in the public interest that:

- The new OMA scheme is excluded from the authorisation, given that the scheme is not completed and a number of sectors have not had any consultation with OneMusic
- The new OMA scheme is completed before a final determination is provided by the ACCC
- In consideration of the fact that OMA is a joint venture between APRA and PPCA, it is acknowledged that these organisations are permitted to operate

as monopolies, and this currently enables APRA and PCCA to set tariff pricing without a balanced consideration of the impacts the tariffs have on related industries.

- The currently proposed tariffs from both APRA and PCCA are independently reviewed to ensure that they are feasible for the businesses that pay them and reflect the change in the music landscape since 2014
- A review of the tariffs should seriously consider the inherent prejudice of the proposal OMA schemes against electronic, specifically DJ focussed music events.
- If MRT is used to guide distribution of income, that there is sufficient placement of the MRT in a diverse array of venues to ensure the income distribution is not skewed to limited types of music and limited rights holders
- IF MRT is used to guide distribution of income, consideration is given to the significant number of events which book emerging artists – many of which are not members of APRA or PCCA, or many of which perform music by rights holders that are not members of APRA or PCCA. Consideration should be given to some kind of exemption for artist performances where the artists receive no annual benefit from APRA or PCCA. Such exemptions would enable venues and festivals to pay emerging artists better performance fees. This would inturn develop the next wave or emerging artists and foster a healthier and more diverse industry overall.
- The costs associated with the use of MRT is clearly outlined so members can assess the suitability of the technology measured against new developments in technology in the industry and potentially more cost effective options to allow for a broader placement of MRT in a diverse range of venues covering a diverse range of genres. Sample size & data integrity is of the upmost importance and the community, musicians and the industry need to understand the data collection systems and sample size to be able to support the implementation of MRT.
- Evidence-based accountability is introduced now as a condition of authorisation to ensure that the introduction of OMA does not reduce transparency any further
- Conditions are applied to mandate APRA to increase distribution accuracy across each market sector through increased use of play data that can be measured.

More transparent reporting will educate members about use of their music and how that use is managed by APRA on their behalf. Educated members are:

- Better positioned to understand the effect of APRA's operational decisions on the royalties they will receive as members
- More empowered to raise questions, concerns or opportunities regarding how APRA manage their rights
- More able to make informed decisions about which sectors they target commercially to get the best return under blanket licensing arrangements.

APRA continues to prosecute an argument that accuracy cannot be achieved at the expense of administrative efficiencies. In doing so, this creates a conflict between its own members by perpetuating outmoded distribution models that favour more established artists and their publishers over smaller emerging and semi-established artists who should have an equal right to compensation for the exploitation of their copyrights as is highlighted by section 3.8 in the Draft Determination:

*Interested parties, in particular some smaller APRA members, further submit that there is a lack of transparency around how licence fees are distributed, and the system used to ensure that performers receive their rightful royalties. Some smaller members raise concerns that licence fee royalties are distributed disproportionate to larger APRA members, including the three major publishing companies (Sony, Universal and Warner). Some interested parties claim that the distribution of royalties is largely determined by commercial radio airplay, and as a consequence, artists whose airplay is beyond commercial radio do not receive their due royalties. Interested parties have called upon APRA to improve its data collection mechanisms in light of developments in technology, so that royalty payments better reflect music played.*

In effect, it sends a message that it is not in APRA's commercial interests to support its smaller artist members, a position that is controlled by APRA's board as identified in section 2.34 of the Draft Determination:

*APRA's constitution requires APRA, after payment of all expenses incidental to its operations, to allocate and distribute all moneys it receives through the licensing of rights and distributions from affiliate societies (together with any income earned through the investment of such funds) to members and affiliated societies. APRA's Board of Directors has the legal power and responsibility for determining the distribution rules by which APRA's revenue is allocated and distributed.*

It is clear that a more accountable APRA means more informed stakeholders, increased sustainability of local industry and opens the opportunity to consider content quotas that could reflect and reinforce our unique cultural identity.

Regards,

170 Russell (Nightclub and live music venue – Melbourne)

Astral People (Management for Arno Faraji, Basenji, Collarbones, Cosmo's Midnight, Dro Carey, GL, George Nicholas, Milan Ring, Retiree, Roland Tings, Stevan, Wave Racer, Winston Surfshirt)

Australian Festivals Association

Boomtack Pty Ltd T/S Lucy's Love Shack (Nightclub and Live Music venue – Perth)

Combined Entertainment Strategies T/A Jack Rabbit Slims (Nightclub and Live Music venue - Perth)

Division Agency (Days Like This festival)

Electronic Music Conference

Field Day (festival)

Goodbar (Nightclub – Sydney)

Groovin The Moo (festival)

Harbourlife (festival)

Hardware Corporation (Babylon festival, Elrow, Picnik Electronic)

Listen Out (festival)

Medium Rare Recordings

Myriad Mgmt (Management for Benson, Peking Duk)

Oh Boy Management (Management for Oh Boy)

Oxford Art Factory (Live music venue – Sydney)

Powerslide Pty Ltd T/A Boomtack Events (Festival and Event Promoter - Perth)

Section 8 (Live music venue – Melbourne)

Strawberry Fields festival

UNDR Ctrl Mgmt (Management for Bag Raiders, Dena Amy)

Untitled Group (Ability Fest, Beyond the Valley festival, For The Love festival, Grapevine festival, Pitch festival)

Young Strangers (Management for Sampology, Set Mo)

Xelon Entertainment