

## APRA RESPONSE TO INFORMATION REQUEST 1 – 6

### OneMusic

Paragraphs 102 to 105 of APRA's submission in support of the application for re- authorisation state, amongst other things that:

- **OneMusic Australia is a joint licensing initiative between APRA, AMCOS and PPCA, the aim of which is to provide a single source of music licences for businesses in Australia.**
- **APRA, trading as OneMusic Australia, will act as agent for PPCA in licensing PPCA's public performance rights. OneMusic Australia will manage licensing, customer service, invoicing, payment collection, enforcement, the OneMusic website, eCommerce and continuing compliance with the Code of Conduct for Copyright Collecting Societies.**

For those music users who do not require both licences, the licence fees will be appropriately and transparently adjusted.

1. **Please confirm, with respect to users who do require both licences, whether these users will still be able to obtain licences separate from each of APRA and the PPCA or whether licences will only be available from a single source through OneMusic.**

OneMusic is a trading name of APRA. PPCA is a non exclusive licensee of the rights it licenses, and will appoint APRA as its exclusive agent for licensing services. Accordingly, licences currently administered by APRA and PPCA respectively will in future only be available from APRA under the OneMusic brand. However, licences will be available from OneMusic for only the APRA rights and only the PPCA rights, if that is what is required. Licences for the rights currently administered by PPCA (on a collective basis) will also continue to be available directly from record companies (on an individual basis).

The majority of music users who use commercially available recorded music require licences from both APRA and PPCA. The most obvious instances where this is not the case are users who perform only live music (that is, no recorded music) and users who have sourced sound recording licences from record companies direct, or from re-recording services such as Les Mills for fitness classes. A PPCA licence is also not required if the only source of music to be performed in public is radio or television. It is significantly more likely that where a user requires a licence for only one set of rights, it will be for the APRA rights rather than for the PPCA rights.

**The ACCC notes that APRA obtains rights from its members on an exclusive basis (subject to resignation, opt-out and licence back provisions), whereas the PPCA obtains rights from its members on a non-exclusive basis. The ACCC understands that one consequence of this is that there is more direct dealing between PPCA members and users in relation to licences for public performance of sound recordings than there is between APRA members and users in relation to licences for public performance of musical works.**

2. **Please confirm that adjustments to fees will occur if the user does not require both licences, irrespective of whether a PPCA licence is not required because: the user does not use relevant sound recordings; or because the user has negotiated a sound recording licence or licences directly at source.**

This is correct: regardless of the reason that a user does not require a PPCA licence, there will be an adjustment to the licence fees.

**3. With respect to appropriate and transparent adjustments to licence fees for users who do not require both licences, under OneMusic, will the licensing fees for public performance in musical works and sound recordings be quoted separately at the time licences are being negotiated and itemised separately once licences are entered into? If they will not be itemised separately, how will transparency around appropriate adjustments when the user does not require both licences through OneMusic be achieved?**

In the majority of OneMusic licence schemes, licence fees will be quoted as a single harmonised fee for each use required (for example, karaoke, featured recorded music, background music, music on hold). APRA will provide an example of a OneMusic licence agreement and its associated Plain English Guide in due course. In all licence schemes, the adjustment will be clearly disclosed in writing in the licence fee section of the licence documents before the licence is entered into. In most cases the amount of the adjustment will be 48.25% regardless of whether it is the APRA rights of the PPCA rights that are not required.

The exceptions to this will be:

- live music, where a PPCA licence fee will never be included;
- music events, where APRA and PPCA licence fees will be listed separately;
- nightclubs (recorded music for dancing, karaoke, and featured recorded music) where APRA and PPCA licence fees will be listed separately in the interim while industry negotiations continue;
- dining, where in the first year of the scheme the discount for no PPCA rights will be 65% and for no APRA rights will be 35%, due to the significant discrepancy between licence fees under the two existing APRA and PPCA licence schemes.

**4. All else being equal, will users acquiring a licence covering both musical works and sound recordings through OneMusic receive a discount compared to the prices that would be charged through OneMusic for each licence separately? For example, assume three otherwise equivalent users:**

- one user only requires a licence covering musical works
- a second user only requires a licence covering sound recordings, and
- a third user requires a licence covering both musical works and sound recordings.

**Will the price charged to the third user under OneMusic be the same as the combined prices charged to the first and second users, or will they receive a discount because they have acquired a licence covering both musical works and sound recordings through OneMusic?**

Yes, all things being equal, the third user will receive a discount on the combined prices of the licence for the APRA only rights and the licence for the PPCA only rights. This is because in most cases the price of each standalone licence covering musical works or sound recordings will be 51.75% of the price of the joint OneMusic licence.

The exceptions to this will be those licence schemes listed above where the fee for the APRA licence and the PPCA licence will be listed separately (and discounted at that rate where not required), and the dining licence scheme where the discounts in the first licence year will be greater for no PPCA rights than for no APRA rights.

**We note that APRA is seeking re-authorisation for, amongst other things, its output arrangements – that is, APRA’s licensing arrangements, in particular its blanket licensing schemes.**

**5. Please confirm that APRA is not seeking authorisation for any agreement between APRA, AMCOS and the PPCA pertaining to the OneMusic joint licensing initiative.**

APRA is not seeking authorisation of the agreement between APRA and PPCA related to OneMusic.

**Paragraph 2 of APRA's submission describes APRA's output arrangements the subject of its application for re-authorisation as follows: APRA grants licences in whatever form is most appropriate for users to perform or communicate any of the works in its repertoire.**

**6. Please confirm that APRA is not seeking authorisation:**

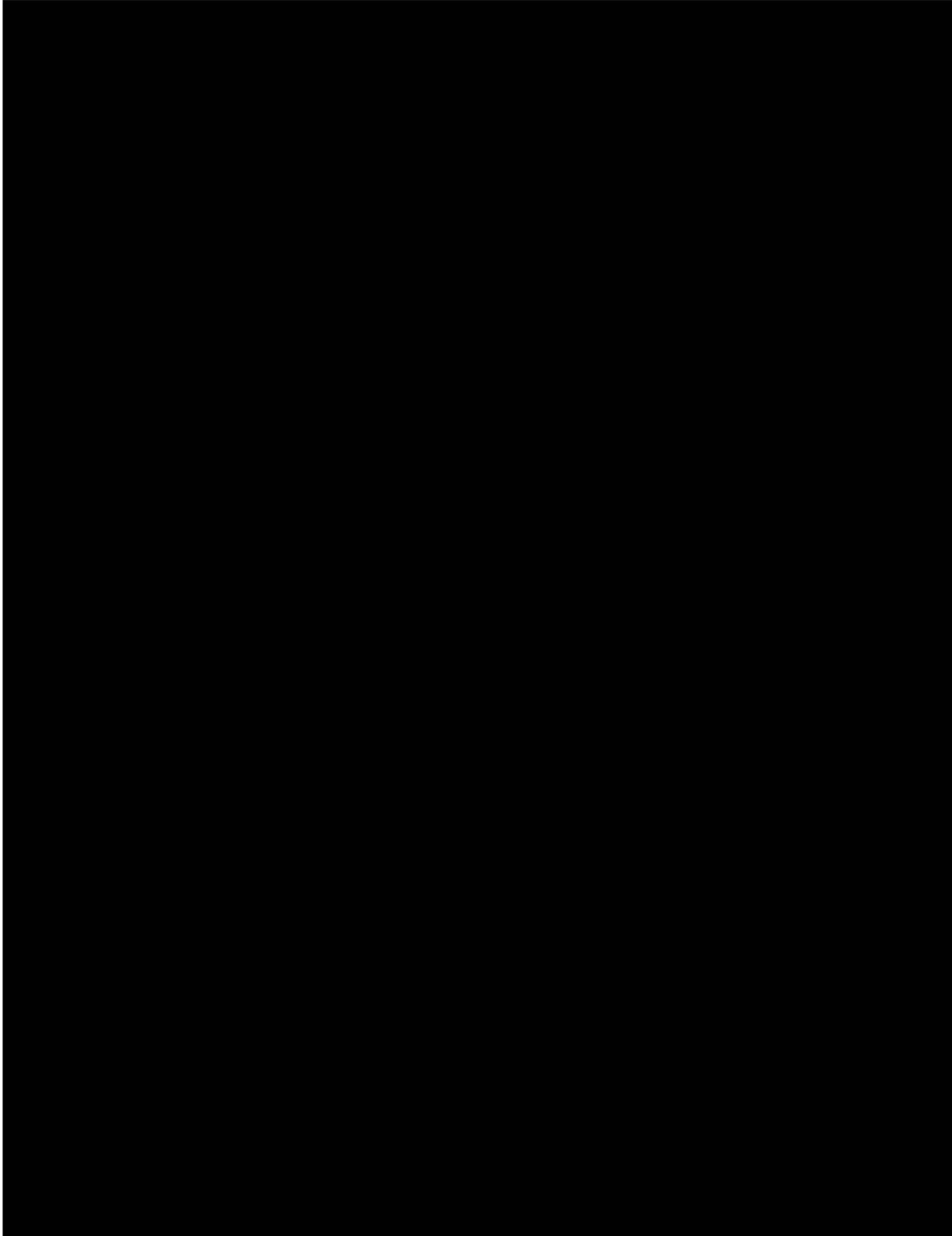
- **to grant licences in relation to any of the works in the PPCA's repertoire (i.e. public performance of sound recordings), or**
- **for any other conduct APRA may engage in acting as agent for the PPCA in licensing public performance for the PPCA's repertoire.**

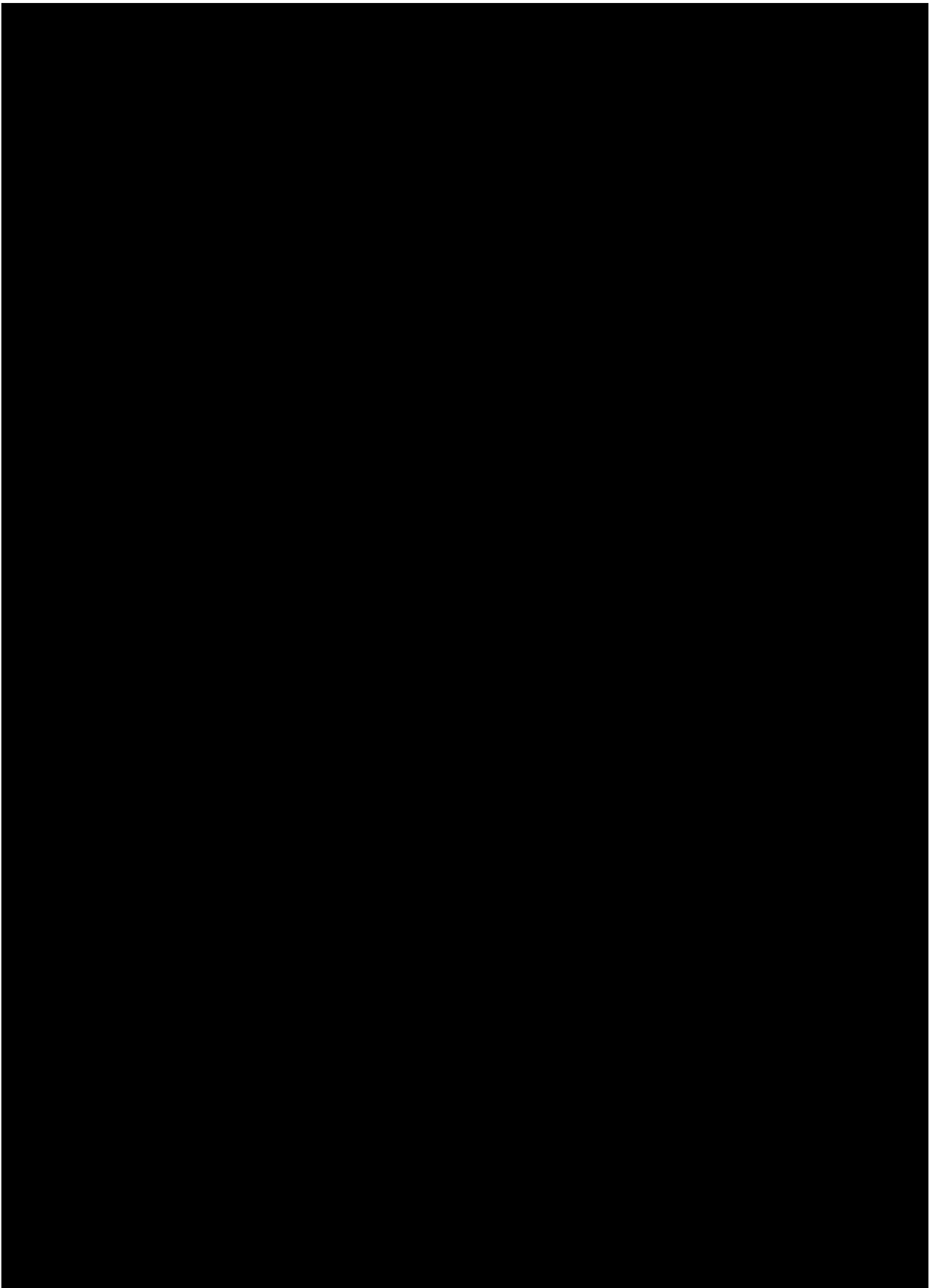
APRA is not seeking authorisation to grant non-exclusive licences to perform PPCA sound recordings in public.

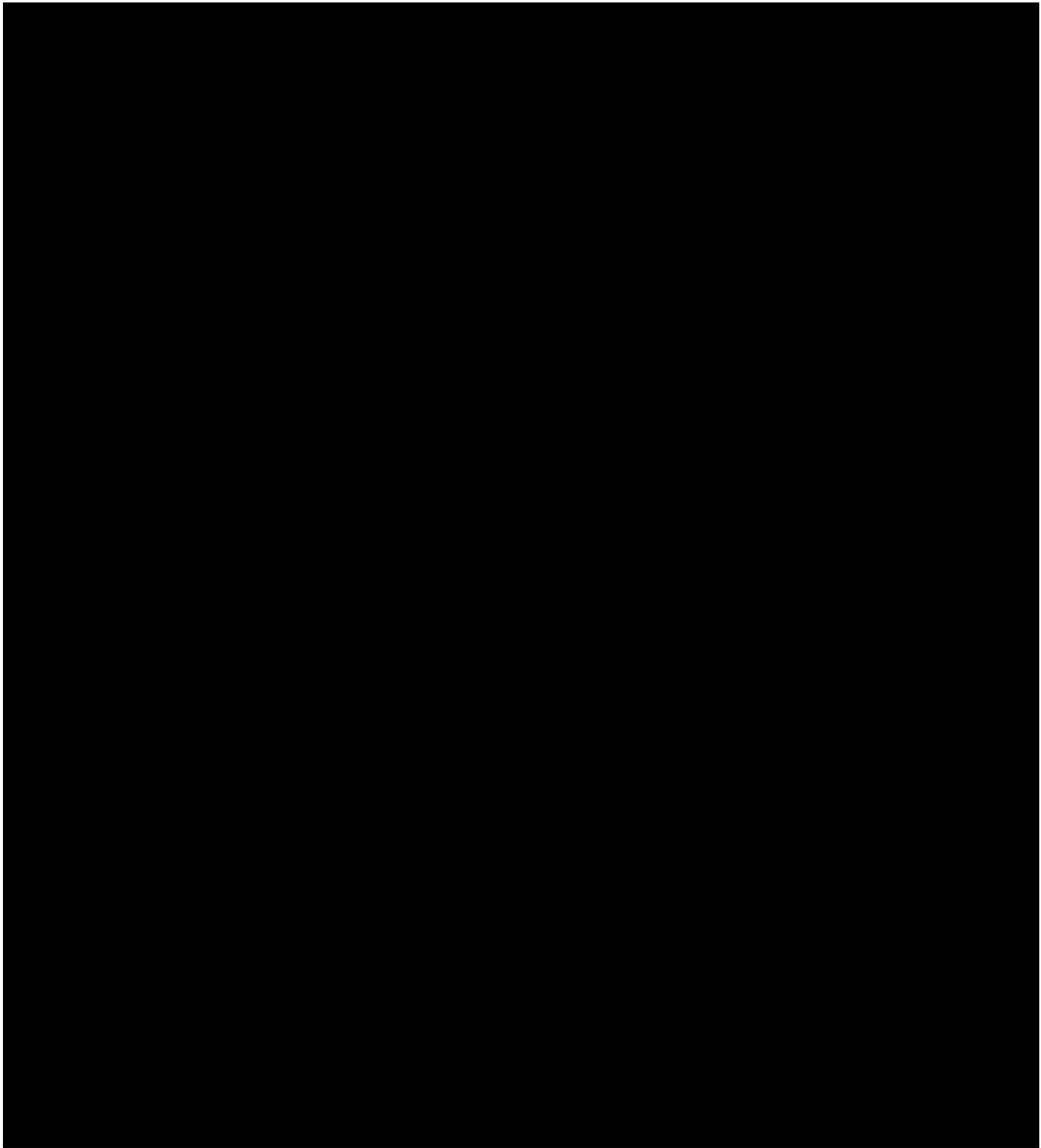
However, to the extent that APRA's licensing conduct the subject of the application from re-authorisation will be under the OneMusic brand, and to the extent that the PPCA rights will not be separated from that conduct, authorisation is sought. For example, all OneMusic licences will be subject to ADR under Resolution Pathways – APRA will not say that disputes relating to the PPCA rights are not able to be referred to ADR. Similarly, the Plain English Guides will be drafted to provide information about the PPCA rights as well as the APRA rights. All such conduct is the conduct of APRA, and as such is the subject of the application for re-authorisation.

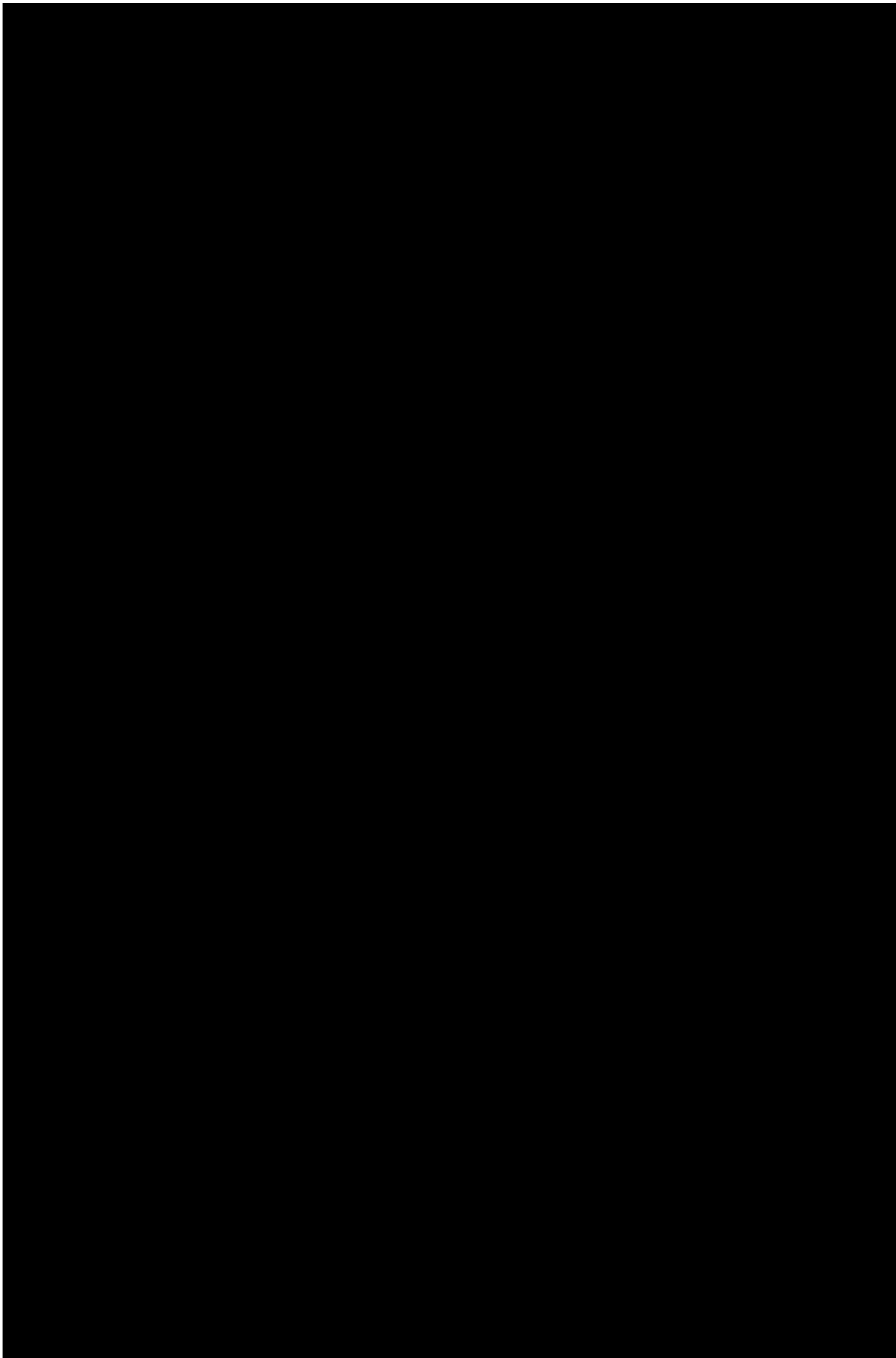
**APRA RESPONSE TO INFORMATION REQUEST 7 – 8**

**[QUESTIONS AND RESPONSES TO BOTH 7 AND 8 ARE CONFIDENTIAL]**









## APRA RESPONSE TO RFI 9 - 11

### Transaction cost savings

**APRA has submitted, and the ACCC has previously concluded, that there are significant transaction cost savings resulting from APRA's licensing arrangements providing instantaneous access to APRA's entire repertoire.**

**We note that, for users, the realisation of these transaction cost savings is dependent, to a large extent, on the comprehensiveness of the repertoire administered by APRA. However, it appears less clear that the realisation of these savings is dependent on members' rights being assigned exclusively to APRA.**

**9. To the extent that APRA considers that the realisation of these transaction cost savings is dependent on it taking exclusive assignment of its members' rights, please explain why.**

If APRA did not take an exclusive assignment of rights from its members and instead was only granted a non-exclusive licence by its members, the transaction costs for members, APRA and users would be increased in a number of ways.

If APRA were to hold rights non-exclusively, its costs would also be increased. First, there would be the costs of divestment of the rights it currently owns back to its members.

Secondly, it would be required to maintain information about works, and to keep that information current, even if it had not granted licences in relation to particular works. Noting the high incidence of split shares in works, this would be a costly exercise.

Thirdly, APRA would also need to maintain information regarding licences granted by its members, should it have that information, so that it did not seek to license the same works again. While APRA owns the rights it licences, it has an incentive to maintain information relating to its rights, and to enforce the rights efficiently.

A user is entitled to know what works are the subject of its licence. Accordingly, APRA would need to identify those works that it was licensing. This process would make each licence transaction more expensive.

Certainly, having to obtain rights from different sources increases costs for users. This is the case even if one source claims to be able to offer a licence for all rights – the mere possibility that a claim might be made by an alternative licensor increases the user's costs, as the user must satisfy itself that the licence it is obtaining is a valid one.

The costs associated with confusion in the market would be high. A music user might be approached by a number of different potential licensors claiming to control the same works. Each licensor would be required to demonstrate its entitlement to issue the relevant licence. A single licensor who had withdrawn its rights from APRA would be in a position to prevent use of a work in which APRA (or another licensor) held some rights, even where that licensor held only partial rights in the work. This would lead to a natural reluctance on the part of users to enter into licensing arrangements, and a consequential increase in infringing use.

Efficient performing right licensing relies on market saturation – the higher the level of non-compliance in the market, the more difficult it becomes to license users generally. This results in a need to litigate to enforce rights, which is expensive and licensing quickly becomes inefficient. Litigating with non-exclusive rights requires the joinder of the copyright owner, which is an additional expense. All copyright litigation requires demonstration of chain of title – the more complex the chain of rights, the more



expensive the litigation. Currently, APRA is required to prove the assignment from a writer to a society, and (if the society is not APRA) from that society to APRA. In a non-exclusive scenario, it would be required to prove the contractual arrangements between the writer and each other party, and also would be required to prove the absence of licence from any other party entitled to grant a licence in the territory. This would make litigation considerably more expensive.

**10. Does APRA consider that if it took non-exclusive assignment of its members' works, some members would be less likely to assign the rights to all the works in their repertoire to APRA, and if so why?**

APRA would firstly like to take this opportunity to clarify some of the legal terminology that is used in this question. Under copyright law, an assignment of copyright must be in writing and involves the transfer of ownership of some or all of the exclusive copyrights vested in musical work. You cannot assign copyright on a non-exclusive basis. If copyright is assigned to more than one party, such that there are multiple owners of the copyright, the permission of all of the assignees would be required in order to deal with the relevant copyright.

A non-exclusive system would require APRA to reassign, in writing, all of its rights back to members. Then if those members chose to do so, they could grant a non-exclusive licence of the rights back to APRA. APRA would need to change its Constitution, and APRA and its members would need to determine new terms on which APRA would accept non-exclusive licences. It is likely that a number of rights would fall out of the repertoire during the process of reassigning the rights back to members and obtaining a non-exclusive licence, and so to that extent at least there would be fewer works controlled by APRA.

It is impossible to predict the reaction of the membership to such a development. APRA's members, which include writers and composers, small independent publishers and large international music publishers, might choose to grant a non-exclusive licence direct to consumers, or to other writers or publishers, to a collecting society, or to some other third party. A party might also choose not to grant such a licence, but to hold the rights exclusively for itself. Unlike APRA, which is subject to the jurisdiction of the Copyright Tribunal, a major publisher could choose to license its works exclusively to certain users and not to others, at whatever price it determined.

**11. Please provide further details about the nature and quantum of any additional administrative costs APRA is likely to incur if it took non-exclusive assignment of its members' works. If possible, please distinguish between any additional administrative costs that APRA may incur to transact with original rights holders and those that that APRA may incur to provide licences to users.**

APRA refers to its earlier clarifying comments in response to Question 10 regarding the legal term "assignment" (which cannot be non-exclusive).

There would be significant initial legal and administrative costs in reassigning the rights back to members, including the costs of the transactions, and the costs of the communications with members. There would also be significant initial legal costs associated with the uncertainty and complexity of the transaction – many publishing contracts involve an assignment or exclusive licence to the publisher of all of the writer's rights "subject to the prior right of APRA." Thus a termination of the APRA assignment may result in exclusive rights of writers in millions of works being returned not to the writers who originally assigned them, but rather to publishers of those works (possibly different publishers for different works of any one writer. that would see the rights being held exclusively by publishers rather than returned to writers). This would result in costs not only to APRA, but also for its members. It is not possible to estimate these costs.

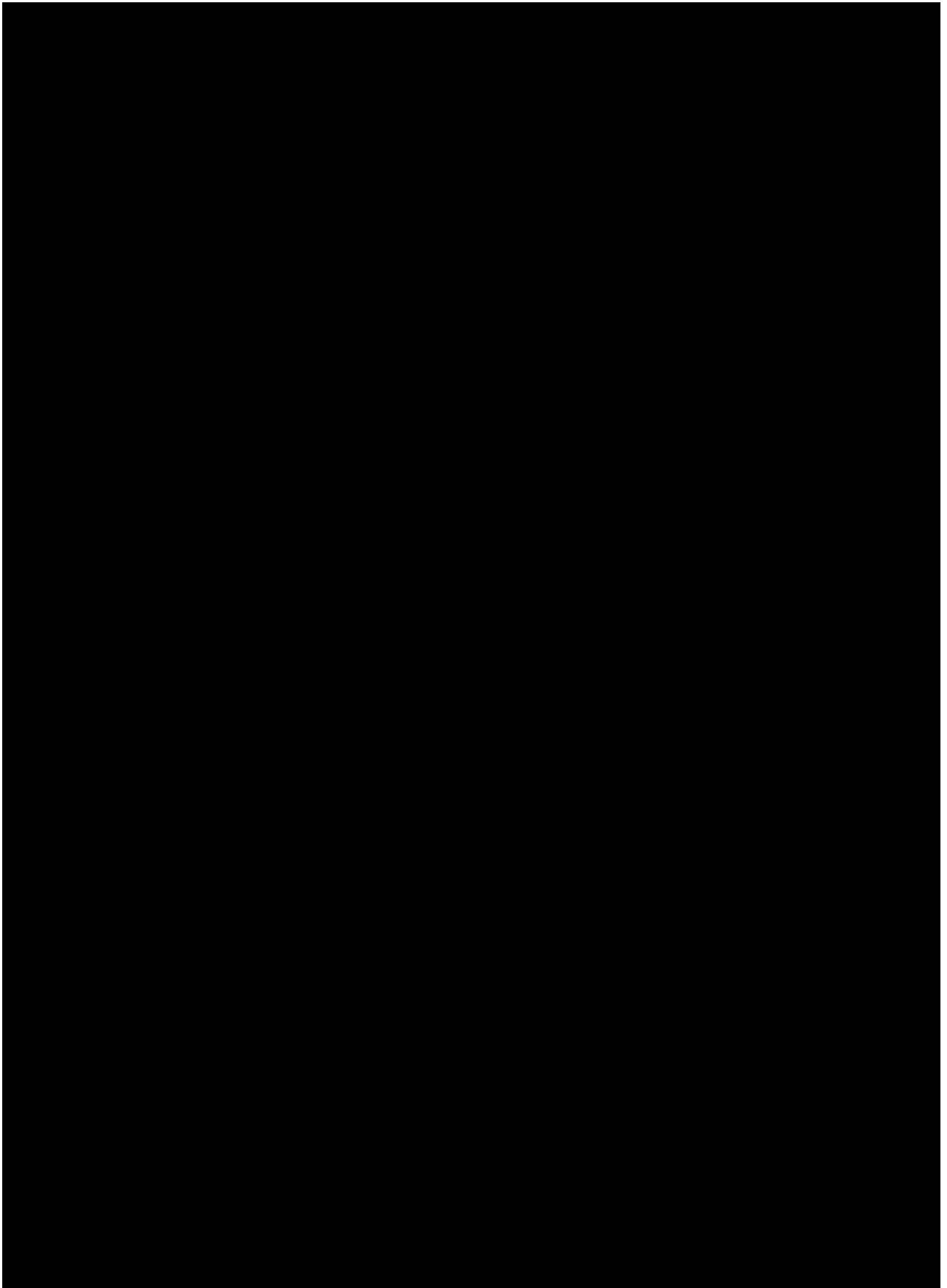
There would be significant initial legal and governance costs in determining to terms on which a non-exclusive system might operate, in changing the Constitution of APRA to accommodate the changes, and in acquiring the non-exclusive rights. It is simply not possible to accurately estimate these costs.

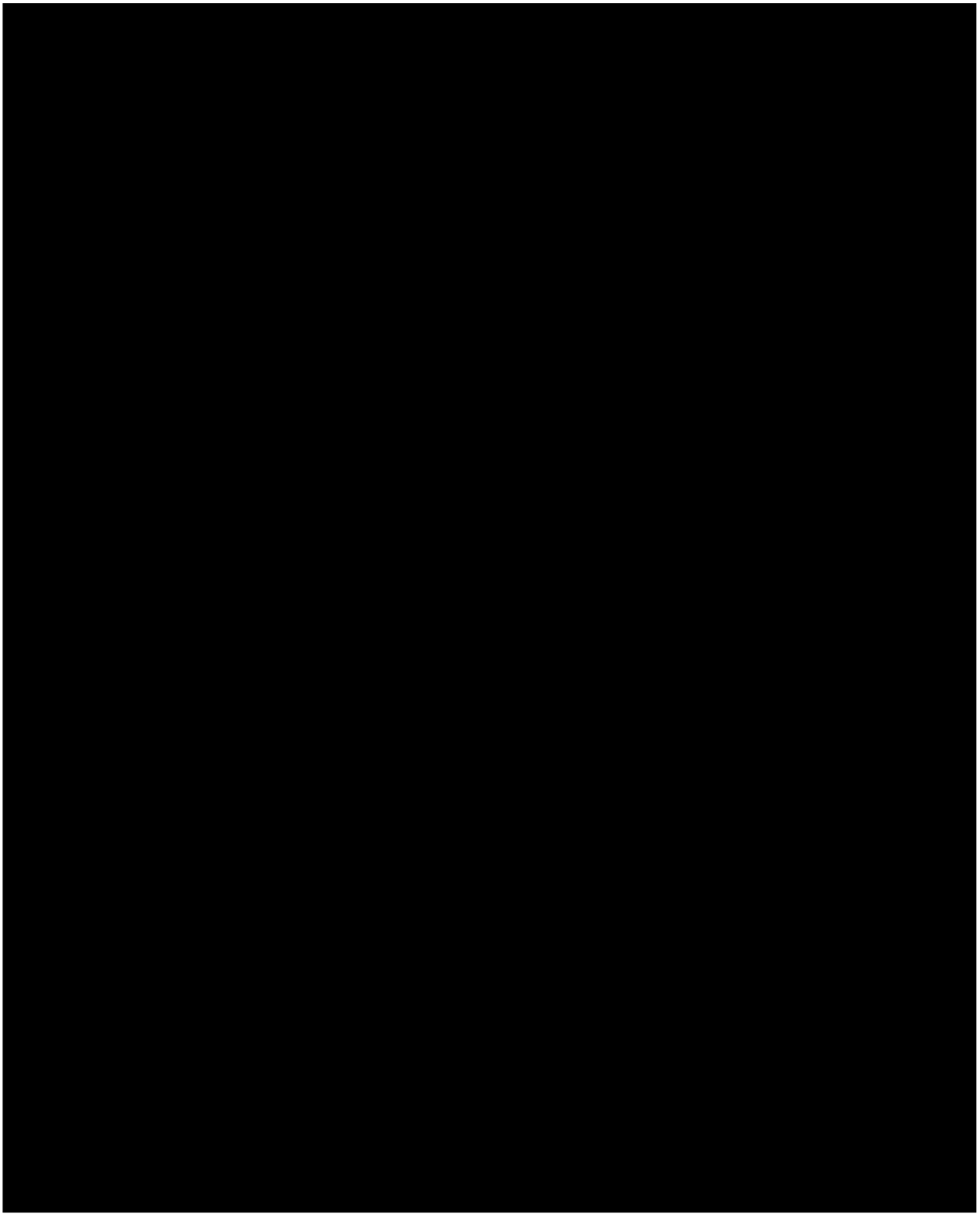
The answer to Question 9 above sets out the nature of the additional licensing costs that would be incurred in a non-exclusive environment. It is likely that licence fees would increase to meet these costs, and the costs of administering non-exclusive rights, including the costs of verifying the absence of licence from another source. APRA could require members to advise it if they had entered into a direct licence, but compliance with such a condition would be a contractual matter between APRA and its member. However, if a user claimed to hold a licence from an APRA member (or third party), for part or all of the rights it required, APRA would need to verify that licence or abandon its own claim.

It is unclear what systems changes there would need to be to accommodate a non-exclusive environment, or what the costs of those changes might be.

APRA RESPONSE TO RFI 12 – 14

[QUESTIONS AND RESPONSES FOR 12 TO 14 ARE CONFIDENTIAL]





## APRA RESPONSES TO RFI 15 – 16

### APRA licence fees

**15. Some interested party submissions have argued that the licence fees charged by APRA are significantly higher than those charged by comparable overseas collection societies. Please provide a response to these concerns.**

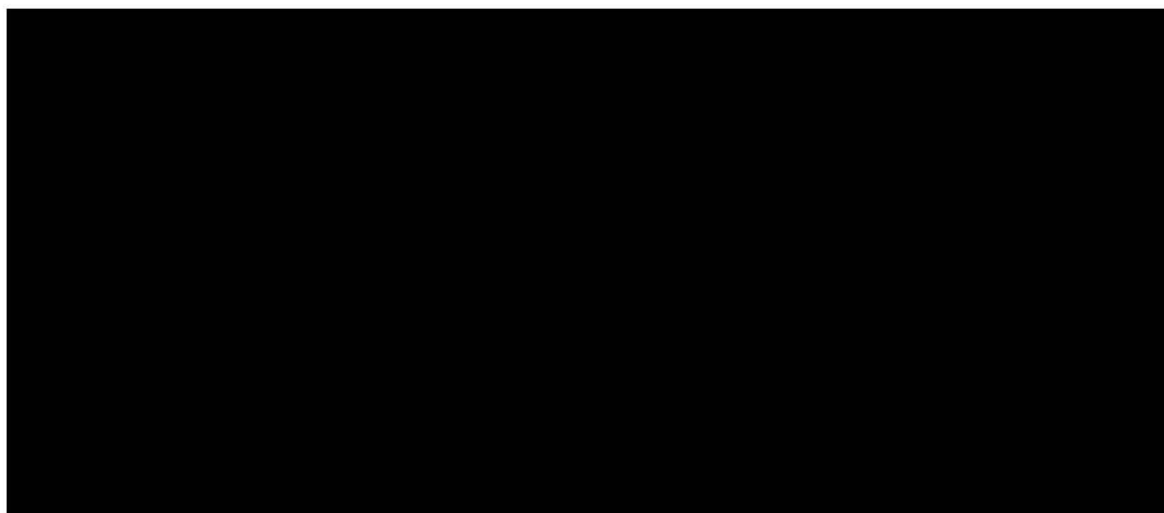
The comparison of licence schemes offered by collective management organisations around the world is complex. In many cases, the licence schemes simply do not stand up to a side by side comparison. Definitions are often different, the schemes are based on local laws, schemes in some territories have the imprimatur of the local rate court, such as the Copyright Tribunal in Australia; others do not. APRA notes that international comparisons, while often put forward in Copyright Tribunal proceedings, are rarely a central feature of the Tribunal's determination. Educated international comparisons can provide an interesting comparator, but APRA's response in general terms is that fees are negotiated or determined in particular markets.

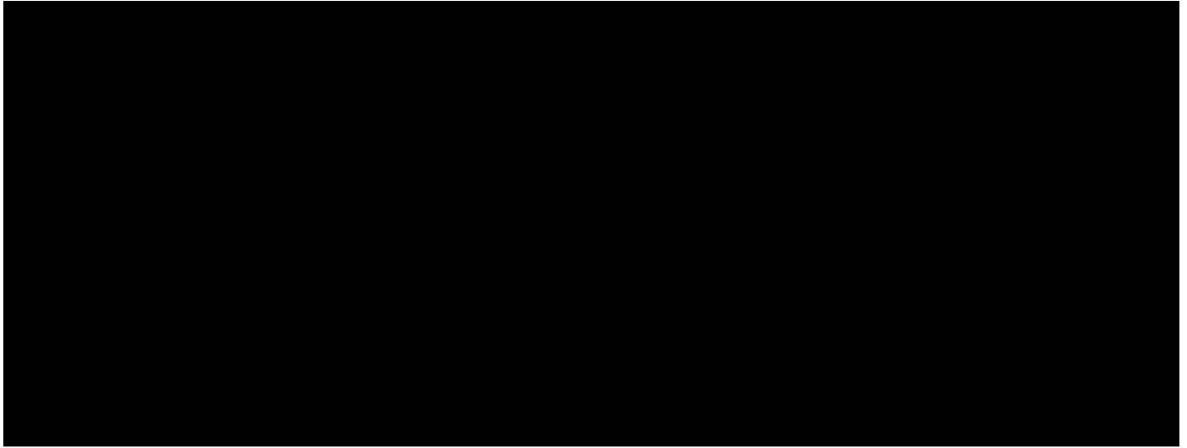
The idea that performing rights should adhere to a global rate overlooks the fact that throughout the world, songwriters and publishers join a single society. Australian publishers and songwriters generally join APRA (they are free to join any society, and most often will join the society in the country where they live, or where their works are played most). It is theoretically possible that each society could administer its repertoire for the world, but it would only have the works of its own members. Thus, a music user who wanted to use more than works written only by SOCAN or PRS writers, would have to obtain licences from more than one collecting society.

Furthermore, the rates for public performance in each territory are not rates for public performance worldwide – they are territorial rates. They take into account local market factors. APRA licenses the world's repertoire of works in the Australian market. Prices in this market are negotiated or determined in this market. There are significantly different economic conditions in each market – for example, Australian businesses operate under different regulatory conditions to businesses in the United States. Other costs, such as rent and salaries, are similarly determined for the local market. Music users in Australia are not competing with music users in other territories.

**16. Please also provide any analyses/studies APRA has prepared or obtained during the last 5 years that compares prices charged by APRA to overseas collections societies.**

Although such a comparison is not the starting point, as part of its usual benchmarking processes, APRA does perform comparisons with licence fees charged by affiliated societies in comparable jurisdictions when it is reviewing its licence schemes. There have been no major licence scheme reviews in the past five years, noting that that the OneMusic Australia project is intended to be revenue neutral on an industry basis.





## APRA RESPONSE TO RFI 17

### Transparency of licence schemes

We note the plain English guides to its licence categories published by APRA in accordance with condition C1 of the authorisation granted by the ACCC in 2014. As required by the condition of authorisation these guides include information about the basis on which fees are determined, and the range of fees payable for each licence and licence category.

While the guides provide transparency about how much licensees will have to pay, the guides do not set out how the tariffs that determine the licence fees are formulated. In this respect, several interested parties have raised concerns about a lack of transparency regarding the methodology by which licence fees are calculated.

The ACCC is considering whether APRA should be required to make available, in the plain English guides or in another form:

- the methodology for calculating the licence fee for each licence category, including relevant data, economic analysis or examination, and
- matters taken into consideration in determining each licence fee.

The ACCC is also considering whether, each time there is an increase in a licence fee, other than an increase in line with CPI, APRA should be required to make available an explanation of the matters taken into consideration in determining each increase.

**17. Please provide a view about APRA making this type of information available to licensees and the form of disclosure preferred by APRA (and why).**

The data and economic analysis is confidential, including because it is confidential information belonging to APRA, its members and licensees. Such information would give a commercial advantage to licensees in circumstances where they could not be compelled outside litigation to share the same information that they had created. Depending on the circumstances of its creation, it is also often the subject of legal professional privilege.

APRA would have no objection to disclosing the basis or rationale for each licence scheme, for example, the schemes that APRA believes to be relevant comparators, the extent of its consultation with industry bodies, alternative bases reasonably considered etc.

APRA does not increase licence fees other than in accordance with CPI, without industry consultation or Copyright Tribunal proceedings. Accordingly APRA would have no objection to disclosing this type of information in connection with any licence fee increase.

The position expressed above is consistent with the conclusions of the Bureau of Communications and Arts Research (**BACR**), part of Department of Communications and the Arts, following its review of the Code of Conduct for Australian Copyright Collecting Societies. APRA notes that the ACCC was heavily involved in this review process. The BACR's Report (published April 2019) concluded that the type of information referred to in this Question 17 should only have to be made available "to the extent that such information is not commercial-in-confidence and does not otherwise directly affect a commercial negotiation between the collecting society and the licensee or potential licensee". (**Recommendation 4**). For more information see:

<https://www.communications.gov.au/documents/review-code-conduct-australian-copyright->

### collecting-societies

The Australian copyright collecting societies are in the process of amending the existing Code of Conduct to give effect to the BACR's recommendations (including as to transparency of licence schemes) and the new Code will come into effect 1 July 2019. APRA submits that the new Code is an appropriate framework to govern this aspect of its conduct and will address a number of concerns raised by interested parties in connection with APRA's application for re-authorisation.

APRA's preference for the form of disclosure of this information would be in a section of its website that clearly explains the background, origins and context of its various licence schemes. In its Plain English Guides, APRA would propose to direct interested licensees or potential licensees to that section of its website.



## APRA RESPONSE TO RFI 18

**Condition C1 of the ACCC's 2014 authorisation required that the guides include guidance on whether fees under each licence scheme are negotiable and if so in what categories.**

**18. Please provide further information about what information APRA has made available to licensees about which fees under licence schemes are negotiable, and in what categories.**

Licence fees are not negotiable by individual licensees once a licence scheme has been determined. The whole point of a licence scheme that triggers the jurisdiction of the Copyright Tribunal under the Copyright Act, is that the terms of the scheme are available to anyone in the class of music user described by the scheme. APRA would be very concerned to avoid placing one licensee at a competitive disadvantage, by negotiating more favourable licence terms than those entered into by its competitors.

Consistent with the provisions of the Copyright Act, if an individual licensee can show that its own circumstances are such that it should reasonably be treated differently to other licensees in the class, APRA will enter into varied licence terms.

Negotiation with individuals can also take place where a person's music use is subjective (for example, where the licensee claims that a certain part of a premises is used for dancing but the licence scheme would suggest the tariff should be applied to the whole area, or when an event does not fall strictly within the classification of any single licence scheme).

Industry negotiation takes place prior to the introduction of a new scheme. APRA negotiates the terms of licence schemes with industry bodies (such as the AHA, and Clubs NSW, and Live Performance Australia), and consults with individual licensees where there is no industry body or the industry body is not representative.

APRA makes information available to licensees about how they can vary their licence fees under particular licence schemes by altering their music use. This is done in the Plain English Guides, by means of worked examples.

See the following worked examples in some popular Plain English Guides:

"Ben's Gym":

[http://apraamcos.com.au/media/Customers/PEG\\_Fitness-Centres-and-Instructors.pdf](http://apraamcos.com.au/media/Customers/PEG_Fitness-Centres-and-Instructors.pdf)

"Lisa's Hotel and Sam's Hotel":

[http://apraamcos.com.au/media/Customers/PEG\\_Hotels-bars-taverns.pdf](http://apraamcos.com.au/media/Customers/PEG_Hotels-bars-taverns.pdf)

"Hank's café":

[http://apraamcos.com.au/media/Customers/PEG\\_Restaurants-Cafe.pdf](http://apraamcos.com.au/media/Customers/PEG_Restaurants-Cafe.pdf)

In its Plain English Guides, APRA also invites licensees to contact APRA to discuss their music use, amongst other things.

## APRA RESPONSE TO INFORMATION REQUEST 19

### Financial data

We note that the overall expense to revenue ratio reported on APRA AMCOS' website, and in its 'Year In Review' publications, is for the APRA AMCOS group. We also note that APRA and AMCOS publish individual financial reports on APRA AMCOS' website.

19. For financial years 2015/16, 2016/17 and 2017/18, please provide:

**(a) the expense to revenue ratio for APRA as a standalone entity**

The expense ratio below is calculated for the APRA consolidated entity only.

	2018	2017	2016
Television, Radio, Public Performance and Digital revenue	278,595	248,260	218,876
Management services (ii)	9,514	9,554	7,870
Interest from other parties	877	948	1,075
Profit from the sale of non-current assets	---	---	---
Other income	128	100	95
<b>Domestic revenue</b>			
Domestic revenue	289,114	258,862	227,916
Distributions received from affiliated societies	43,747	43,475	38,285
<b>Operating income</b>			
Operating income	332,861	302,337	266,201
<b>Operating expenses for the year (i)</b>			
Operating expenses for the year (i)	-39,987	-34,192	-30,889
System development related expenses (i)	-4,773	-6,315	-6,400
Expenses of administering AMCOS mandate (ii)	-11,489	-9,434	-9,752
<b>Expense to revenue calculation</b>			
Total expenses for the year related to the APRA business	-44,760	-40,507	-37,289
Total deficit/surplus for the year in managing the AMCOS business	-1,975	120	-1,882
Total expenses for the year	-46,735	-40,387	-39,171
<b>Total revenue for the year</b>			
Total revenue for the year	323,347	292,783	258,331
<b>Expense to revenue ratio (Total expenses over total revenue)</b>			
Expense to revenue ratio (Total expenses over total revenue)	14.45%	13.79%	15.16%

**(b) an explanation (which includes relevant financial information) of how APRA's expense to revenue ratio has been calculated**

The above data at 19(a) is taken directly from the 'Results of Operations' section of APRA's annual report in each year.

Items comprising the total expenses related to the APRA business are marked (i) above.

Items comprising the total deficit/surplus in managing the AMCOS business are marked (ii) above.

Total revenue for the year is equal to 'Operating income' stated above, less 'Management services' income.

## Non-commercial licence back

We note that APRA provides a “non-commercial licence back” option as part of its broader licensing arrangements. Some interested parties have submitted that “non-commercial purposes”, as defined in APRA’s Articles of Association, is narrow and restrictive such that it does not capture some uses and users that would generally be considered non-commercial. As a result, some of these submissions argue, the non-commercial licence back option cannot be used to license member music to individuals or to organisations that receive public or institutional funding but are not for profit, such as schools and charities. Some interested parties have also expressed concern that the current provision is limited to “purposes online” as, they submit, this does not permit licensing back for broadcast or performance.

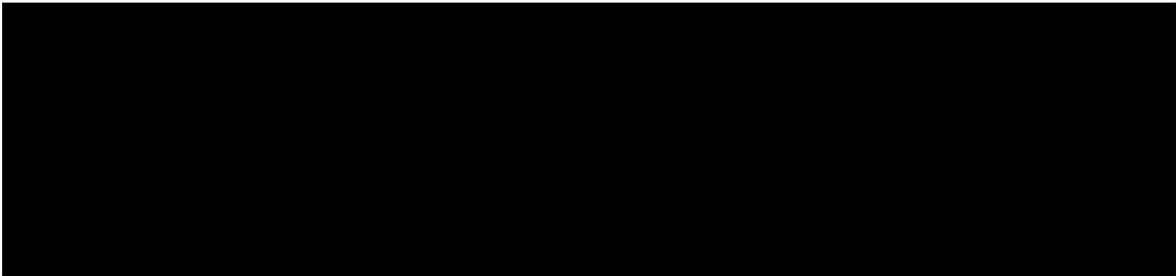
### 20. Please provide further information about:

- (a) **APRA’s considerations behind the definition of “non-commercial purposes” as defined in Article 17(j) of APRA’s Articles of Association the circumstances in which APRA envisages the licence back for non-commercial purposes will apply, and**
- (b) **for the period of 1 January 2014 to 30 December 2018, the total number of times ARPA’s Non-Commercial Licence Back has been used by APRA members, in each calendar year.**

The submissions in relation to non-commercial licence back are somewhat misconceived and mischievous. They are made by entities with significant interests in common, and should really be regarded as a single submission.

The non-commercial licence back was introduced in response to claims that APRA’s input agreements were preventing its members from engaging in non-commercial online conduct. In particular, it was introduced because of the fact that licence back necessarily applies only to conduct within Australia, as APRA’s rights have been alienated by its reciprocal agreements for overseas use. This means that licence back can only be used for online purposes if the online use is confined to Australia.

If an APRA member wished to grant a direct licence overseas where an exclusive reciprocal agreement was in place, APRA would need to negotiate with the relevant copyright owner overseas (the overseas society). This is because the member’s purported direct licence might conflict with the terms of a licence already granted in the overseas territory. This is why opt out is best suited for members who wish to deal directly with their rights outside of Australia.



When the issue about non-commercial online licences was first raised with APRA, APRA considered that the risk of conflict between a non-commercial licence back for global use and a licence granted by an overseas society was low. However, the definition of non-commercial was critical. Not all online conduct that is ostensibly free is non-commercial.

In particular, APRA wanted to ensure two things: first, that there would be little likelihood of a contractual dispute between the overseas society, the APRA member and the overseas licensee, and secondly, that members did not grant licences to multinational social media platforms on the misunderstanding that they were non-commercial. APRA was very aware that social media platforms were generating vast amounts of advertising revenue from the use of copyright material including music, and was negotiating licences to ensure that copyright owners would be paid for the commercial use of their works. At the same time, social media platforms were arguing that they were essentially non-commercial sharing platforms. APRA doubts that the same arguments would be as powerful today. APRA notes that some social media platforms provide significant funding or other support to some of the bodies that have made submissions regarding non-commercial licence back.

Further, it must be acknowledged that there is a vast difference between non-commercial and not for profit.

The examples given above (schools, organisations that receive public funding, charities) operate within Australia. Any APRA member who wishes to enter into direct licences with such entities for public performance, broadcast or communication within Australia, can do so under the current licence back system.

If any APRA member wishes to enter into a worldwide communication licence with a commercial entity that is a school, charity, or publicly funded entity, it has not informed APRA.

Schools already benefit from significant licensing advantages under the Act, including a free licence for public performance in the classroom, and a comprehensive statutory licence for the reproduction and communication of works. APRA grants additional licences to schools for uses not covered by the statutory licence, for which it receives a total of approximately \$1.5m each year.

**There have been no applications for non-commercial licence back in the period.**

**APRA RESPONSE TO INFORMATION REQUEST 21 – 26**

**Copyright Licensing Enterprise Facility (CLEF)**

**We note that section 3.2 of APRA's 2018 annual financial report – Capital Expenditure Commitments – states that APRA has entered into an agreement for the purchase and development of information technology infrastructure.**

**21. Please confirm that this agreement and expenditure is for the CLEF project and if not, please provide details about the project it does relate to.**

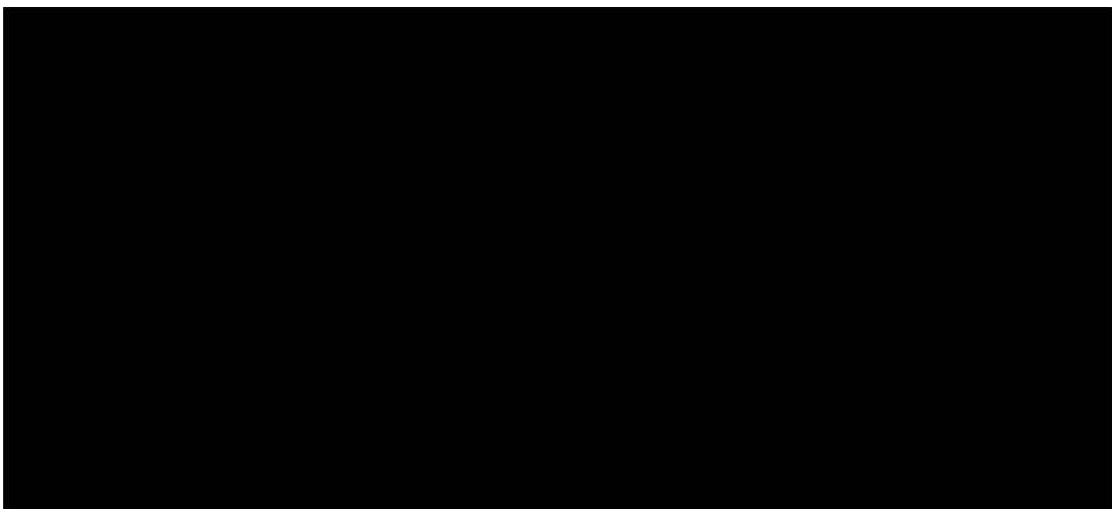
Correct. The agreement and expenditure referred to is for the CLEF project.



**22. In relation to this project, please provide:**

- (a) further information on the “significant risks” that are noted in the 2018 Annual Report, and**
- (b) a copy of reports provided to the Joint Audit and Governance Committee of both APRA and AMCOS about the project for the period 1 January 2014 to 1 January 2019.**

The significant risks referred to in the 2018 Annual Report are the risks that the CLEF system will be delivered after its projected date for completion and/or significantly over budget and/or that the CLEF system may not meet expectations with respect to performance and/or functionality. APRA continues to closely monitor those risks and take appropriate steps to mitigate them.



**Paragraph 5 of APRA's submission states that APRA is investing heavily in technology that is designed to make all aspects of the performing right markets more efficient.**

**23. Please provide details of any other technology APRA is investing**

**in in addition to CLEF.**

In addition to CLEF, APRA is also developing a new OneMusic Australia online portal for licensees and a new membership portal which will interact with a new APRA website. APRA is also investing in upgrading the Resolution Pathways website with a more sophisticated back-end that will allow for automated tracking of referrals.

APRA continues to invest heavily in music recognition technology and automated data matching technology to make its processing of music usage reports as efficient as it is able to within the cost parameters set by the APRA Board and expected by APRA's membership.

APRA will soon commence a trial of AI technology that assists with determining music usage by Australian businesses from data that is publicly available on the world wide web.

**We note APRA's submission and confidential attachments 17 and 17A in relation to CLEF.**

**24. Please provide further details on the implementation phases of CLEF, including:**

**(a) when CLEF 1.0 will be made available to users –**

Estimated to be July 2019 for One Music, which is now CLEF 1.0.

**(b) when future phases of CLEF will be implemented –**

Estimated to be incrementally implemented from Q4 2019 to Q2 2020.

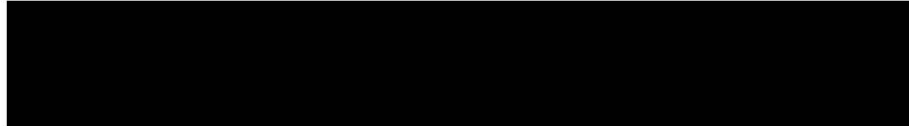
**(c) that features that will be included in each implementation phase and how these features will operate –**

- CLEF itself is an integrated system comprising four main sub-systems. Features are being implemented by business function, not system.
- Initially the first phase release will be a subset of APRA's public performance licensing business aligned with the One Music Australia initiative. This feature set will enable the sale of a license through the new One Music Australia Portal for the combined APRA AMCOS & PPCA licence.
- After that phase, further licensing business areas will be enabled. This phase will support licences aligned with different business sectors which typically require blanket licences from APRA, including broadcasters.
- After that phase, further licensing business areas will be enabled. This phase will support licences aligned with different business sectors where there is a more transactional and fragmented licensing structure, with more direct licensing, including digital services and events.
- The remaining functionality will be released which will enable full CRM functionality across the APRA member base; processing of incoming music usage files; the matching of these; and finally the distribution of funds to local members and international affiliates.

**(d) when the entire CLEF system will be online and accessible to users, and –**

Estimated to be fully implemented by the end of Q2 2020 on current projections.

**(e) the additional expenditure required to facilitate the full implementation of CLEF. –**



**25. We note that APRA submits that CLEF will facilitate more active use of the opt out provision. Please provide more information about how this will occur.**

CLEF will provide a more automated and integrated technical solution to facilitate the withdrawal of rights from APRA's repertoire. For example, works which are subject to Opt Out for a particular type of usage will be automatically excluded from receiving allocations from the relevant distribution pool, rather than the manual adjustment which must currently be performed.

In addition, APRA intends to improve the user experience of requesting an Opt Out or Licence Back through the new membership portals to the new APRA website.



**26. Please provide further information on how CLEF will improve distribution processing.**

The CLEF system has been designed to allocate and distribute to an increased number of multiple sharers in individual works. It will also have the ability to process significantly more data much more quickly. It has been designed to have better automated work matching and search functionality. Of course, as with any new system, there will be room for further development with CLEF.



## Music recognition technology

Paragraphs 149 to 153 of APRA's submission explain APRA's utilisation of music recognition technology (MRT).

### **27. Please provide further information about utilisation of MRT by APRA, including anticipated further developments in this area.**

APRA uses MRT in nightclubs to assist with the identification of emerging music. The primary type of MRT used is DJ Monitor, which involves the installation of a Club Monitor device in the nightclub (with the consent of the licensee). The device records the music played, and sends the stream to the Netherlands, where it is matched against DJ Monitor's database. The database in turn is supported by writers who have the ability to also upload their music to the system. APRA currently has 24 DJ Monitor Club Monitors installed in venues, and has agreed to install a further 6. We expect to have 30 devices installed by 30 June 2019.

APRA also has 5 Pioneer DJ 'KUVO' devices installed in 4 nightclubs around Australia. Unlike MRT, these devices work by directly collecting metadata from the DJ decks used in most nightclubs – something we refer to as Direct Metadata Collection (DMC). DMC is cheaper to operate than MRT. However the data is not as thorough – something that is however improving as the technology evolves. APRA also has agreed to install a further 5 KUVO devices in 3 new nightclubs over the next 2 months.

The data from MRT and DMC in nightclubs is used to supplement proxy data in order to increase the accuracy of distributions. MRT and DMC can also be used to monitor the use of non APRA music for the purpose of pro rating licence fees for individual nightclubs where MRT/DMC is used.

APRA has also employed MRT at electronic and dance music festivals since 2014. This financial year we have used MRT at over 15 events.

APRA also uses MRT in its monitoring of jingle broadcasts. Members embed metadata into jingles as they are created, and this information is able to be reported by broadcasters to enable accurate distribution to rights holders.

APRA continues to explore the use of MRT where it is efficient and reasonable to do so, with the consent of licensees.

### **28. Please explain how this technology impacts (i) the nature and quantum of transaction costs incurred by APRA, original rights holders and users under APRA's current licensing arrangements and (ii) the efficiency and effectiveness of APRA's monitoring and enforcement of compliance with performance rights in Australia.**

The use of MRT has increased APRA's costs in the short term, a cost which is borne by the membership as a whole. APRA has not sought to pass any of these increased costs on to licensees.

At this stage, MRT is not used by APRA in its enforcement or compliance activities. The cost of existing MRT prevents its widespread use, and so its primary use is to provide supplementary data. As the cost of MRT in nightclubs decreases, it would be possible to install devices into more premises and the data from those devices could be used for compliance purposes, with the consent of the affected licensees.

The nature of the MRT is such that it is not currently suited to use for enforcement purposes in any event – the devices require installation, which is a costly exercise that requires the agreement of the music user.