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Australasian Performing Right Association Ltd application for revocation of authorisations A91367 – A91375 and substitution of new authorisation A1000433—interested party consultation

AMPAL

The Australasian Music Publishers' Association Limited (**AMPAL**) welcomes the opportunity to provide this submission to the Australian Competition & Consumer Commission's (**ACCC**) consultation on the application for re-authorisation of the Australasian Performing Right Association Limited (**APRA**).

AMPAL is the industry association for music publishers in Australia and New Zealand. Our members include large multi-national companies as well as many small businesses. AMPAL's members represent the overwhelming majority of economically significant musical works enjoyed by Australians.

Music publishers invest in songwriters across all genres of music. They play a critical role in nurturing and commercially exploiting their writers' musical works and providing returns to songwriters. AMPAL and our members also recognise the immense cultural and artistic significance of the works that music publishers represent.

AMPAL members are also members of APRA and the Australasian Mechanical Copyright Owners Society (AMCOS), and so AMPAL is an interested party in the re-authorisation application.

We note that the application for re-authorisation relates to APRA's arrangements for the acquisition and licensing of the performing rights in its music repertoire. The ACCC has invited submissions on APRA's application and the proposed arrangements. We set out our comments below.

Comments on the Application for Re-Authorisation

AMPAL submits that copyright collecting agencies such as APRA AMCOS play a central role in reducing transaction costs, and providing enforcement and monitoring efficiencies, leading to significant public benefits. AMPAL welcomes any opportunity to improve the practices of APRA AMCOS, however it is submitted that APRA AMCOS already operates transparently, efficiently and at best practice. AMPAL also highlights that APRA AMCOS is subject to rightfully significant independent scrutiny from the Copyright Tribunal, and under the Code of Conduct for Australian Copyright Collecting Societies, aside from the ACCC.

AMPAL notes that APRA voluntarily submits its arrangements to the ACCC for review every five years, above and beyond its regulatory obligations. AMPAL endorses the ACCC's determination in 2014 that APRA's membership, licensing, distribution and international arrangements be authorised for a further five years. It is AMPAL's submission that developments since then only further support a determination by the ACCC in its current review that a re-authorisation of APRA's arrangements be granted. In its last review in 2014, the ACCC recognised 'APRA's willingness to discuss issues and engage with interested parties during the re-authorisation process',¹ and stated that the re-

¹ ACCC Determination Application for revocation and substitution of authorisations A91187-A91194 and A91211, 6 June 2014 at paragraph 446.

authorisation term was appropriate 'in light of the amount of work undertaken to develop a new ADR scheme, the progress already made to address interested party concerns (including development of plain English guides), and to allow time for the new ADR scheme to become fully operational'.² AMPAL supports these findings, and submits that APRA's ADR scheme has been well received and is meeting its purpose. It provides an efficient, fair and low-cost dispute resolution mechanism for members and licensees.

The essential role that the Copyright Tribunal holds should also be noted, whereby any licensee or potential licensee may request a determination by the Copyright Tribunal on the terms of any licence. The Copyright Tribunal must take into consideration any competition issues, and also has the power to make the ACCC a party to any proceedings. Therefore collecting societies are prevented from unreasonably refusing or imposing terms of a licence.

In addition, AMPAL notes that the Department of Communications and Arts commenced a review of the efficacy of the Code of Conduct for Australian Copyright Collecting Societies in 2017. AMPAL has made submissions to that review, and we understand that an updated Code will be released in 2019. In AMPAL's submission, the Code is meeting its original purpose to ensure collecting societies operate efficiently, effectively and equitably, and the comprehensive consultation process that was undertaken to review the Code, with input from all stakeholders, will result in an updated and strengthened Code that is fit for purpose.

AMPAL also recognises the immense and clear information that APRA AMCOS makes available to licensees on available licences and how fees are determined, including its plain-English guides. APRA AMCOS has comprehensively demonstrated a willingness to enter into fair and flexible music licensing arrangements. The ACCC would also be aware of the joint venture of APRA and PPCA called One Music Australia, due to launch in 2019, which aims to further simplify the process of acquiring a public performance music licence. AMPAL is supportive of this initiative, which will lead to considerable public benefits.

Regarding transparency and governance, AMPAL notes that distribution rules and practices of APRA and AMCOS are determined by its boards of directors and are publicly available. Directors of collecting societies generally have a legal duty to act in the best interests of their respective members. AMPAL is satisfied with these arrangements.

AMPAL therefore submits that the conduct and arrangements for which APRA now seeks re-authorisation, being input arrangements, output arrangements, distribution arrangements, and overseas arrangements, will be likely to result in a public benefit that will far outweigh any public detriment (which are of course already mitigated by resignation, opt-out and licence back provisions of APRA's constitution).

Conclusion

AMPAL thanks the ACCC for the opportunity to make this submission. AMPAL supports APRA's application for re-authorisation and reiterates its confidence in the governance, transparency and accountability of APRA AMCOS' operations. AMPAL respectfully submits that the ACCC should determine that authorisation of APRA's conduct and arrangements should again be granted for a period of five years.

Please contact me if we can be of any further assistance.

Matthew O'Sullivan
General Manager

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² Id at iv.