

Friday 8 February 2019

Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

By email: adjudication@acc.gov.au
Subject: AA1000433 – APRA – submission

To whom it may concern

Australasian Performing Right Association Ltd application for reauthorisation

The Australian Libraries Copyright Committee (ALCC) welcomes the opportunity to provide a submission to the Australian Competition and Consumer Commission (ACCC) in response to the Australasian Performing Right Association's (APRA) application to revoke an existing authorisation and substitute it with a new authorisation (A1000433) (application for 're-authorisation').

The ALCC is the main consultative body and policy forum for the discussion of copyright issues affecting Australian libraries and archives. It is a cross-sectoral committee with members representing the following organisations:

- Australian Library and Information Association
- National and State Libraries Australia
- Council of Australian University Librarians
- Australian Government Libraries Information Network
- National Archives of Australia
- Australian School Library Association
- Australian Society of Archivists
- Council of Australasian Archives and Records Authorities
- NSW Public Libraries Association

Australia's libraries and archives participate in collective licensing as government bodies and as venues for live and recorded performance, as well as through their connections with educational institutions. Most libraries and archives maintain licences with APRA. As such, we have a strong interest in the operation of their systems, and ensuring that they include best practice governance and regulation.

We have a particular interest in ensuring that APRA's decisions and processes are transparent and accountable. For example, in 2016–2017, APRA began a new practice of requesting that public libraries obtain licences for each of their public access computers, on the basis that people may use them to listen to music. This was in addition to the licences libraries already maintain for public performances at their venues (which we do not dispute). In response, the libraries sector obtained

legal advice clarifying that a single person listening to music on a computer with headphones (as is required by all libraries) does not constitute a public performance. After push-back by the libraries sector and intervention by the ALCC, APRA agreed to stop seeking these additional licences.¹ Although in this case the issue was resolved through negotiation, we are concerned that there was no transparency in APRA's decision making process, nor reason given for the sudden change in policy to require additional licences from entities that were already long-term licensees, and that APRA has reserved the right to reverse this decision at its discretion.

The ALCC therefore supports calls by the Australian Digital Alliance (ADA) for increased transparency and accountability requirements for APRA and the other collecting societies in Australia. The governance regime for collecting societies in Australia is in need of urgent reform – collecting societies are given an inappropriate degree of discretion and there are insufficient measures for effective oversight or sanctions if that discretion is abused.

The ADA provides a comprehensive overview of the reasons why greater oversight that takes into account the public interest is needed. We support their recommendation for wide-reaching reform to build in consistency, accountability, and transparency for the Australian collective licensing regime and their recommendation that the ACCC play an expanded role in overseeing Australian collecting societies as part of this reform.

We also join Creative Commons Australia² (CC Au) and the ADA in calling for reform of direct licensing mechanisms available to APRA members. Both CC Au and the ADA have documented extensively the issues surrounding APRA's direct licensing mechanisms: opt out, license back, the personal website licence and the noncommercial license back. We agree that these mechanisms are inadequate to permit licensing under a Creative Commons licence or the member selling works directly through their own website or third party services.

Yours sincerely



Margaret Allen
Chair
Australian Libraries Copyright Committee

¹ In the interest of disclosure please be aware the ALCC is an Institutional Member of the Creative Commons Global Network (CCGN) and works with the CC Australia Chapter.

² See APRA's statement about the policy change at <http://apraamcos.com.au/about-us/faqs/faqs-for-music-users/>.