



Australian Government



Australian
**Small Business and
Family Enterprise**
Ombudsman

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Mr David Jones

General Manager, Adjudication

Australian Competition & Consumer Commission

Adjudication Branch

GPO Box 3131

CANBERRA ACT 2601

By email: david.jones@acc.gov.au

David

Dear Mr Jones

Australasian Performing Right Association Limited (APRA) competition matters

Thank you for the opportunity to provide further comment on competition matters in the monopoly (or near-monopoly) operations of APRA.

We have serious concerns about the re-authorisation of APRA's operations given:

- a. The current lack of transparency in fundamental APRA operations that includes its payment of royalties, administration of grants and licence coverage; and
- b. Australian small business artists whose airplay is beyond commercial radio not receiving royalties that should properly be due and represent real airplay of their copyrighted material.

Since ACCC re-authorisation would permit the continuance of activities that would otherwise breach Australian Competition Law and restrict any practical alternative to APRA, we believe that a number of conditions should apply to any re-authorisation (see below). The conditions are designed to ensure that the reduction in competition due to re-authorisation can be viewed as valid and, for any future re-authorisation, the ACCC can more easily take into account a broader range of considerations. These conditions become more critical due to the impending commencement of OneMusic Australia that will consolidate the process of acquiring relevant licences and further limit the opportunity for new technological methods of aggregation to emerge.

We propose that the following conditions be placed on any re-authorisation to produce transparency, fairness, and payment of appropriate royalties to all artists represented by APRA:

1. *Comprehensive electronic reporting that is used by commercial radio stations must be extended by APRA to community radio stations and other relevant broadcasters*

Currently, royalties are largely determined by commercial radio airplay. Although non-electronic data is sporadically collected for airplay beyond commercial stations, this is necessarily patchy in terms of its coverage and commonly relies on accurate transcribing and then re-keying of hand-written returns. Further, we understand that the hand-written returns from community radio stations are regularly not re-keyed due to the time and expense that this would entail.

Collection and use of airplay information needs to be extended properly and fully to community radio (including extension to those stations on temporary licences where information is not currently collected at all), background music, internet radio and other relevant broadcasters.

This could be achieved (in part) through APRA extending at its own cost the electronic reporting mechanisms that are already provided by APRA to the commercial broadcasters. This would

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mean that the airplay of emerging and other Australian artists that occurs beyond commercial radio is able to convert into payment of appropriate royalties.

2. APRA must ensure that licence fees provided to venues are tailored for actual use

We understand that licence fees for venues are based on maximum capacity regardless of actual use. This is problematic for the business owners when, say, a nightclub opens during the week and operates part of the venue or is filled to partial capacity only. The problem is similarly present where a club or other venue makes available space for say a community group. In these instances the licence fees remain the same regardless of actual use and this will commonly mean that the APRA fees charged become prohibitive.

3. APRA grants should be administered by an independent third party

On the assumption that the artists who are members of APRA agree to the use of funds for grant purposes that could otherwise comprise royalties, there should be appropriate governance and transparency around the criteria and expenditure of these funds. Ideally, this would take the form of the amounts being paid by APRA to an independent third party to transparently administer. Failing that, clear guidelines and criteria for grant eligibility and detail of the actual payments that flow should be made readily available on the APRA website.

4. APRA must make clear the coverage of the licences that it provides

APRA must urgently, and before the commencement of One Music Australia, increase transparency when it grants a licence for airplay. In particular, it must be made clear that APRA does not represent all artists that may be, say, streamed through services such as Spotify and Apple Music. It must be clearly noted to the licence holder that the licence is necessarily partial and that separate royalties potentially remain due to non-APRA copyright holders. It is also appropriate for APRA to provide details of background music and other providers who can supply assurance of complete coverage of their playlists. This will become an even more significant issue upon commencement of OneMusic Australia since the Phonographic Performance Company of Australia Limited covers a narrower range of artists that are likely to be streamed.

5. APRA must immediately adopt the key recommendations of the BCAR review

Further conditions on the re-authorisation must be imposed to ensure that recommendations from the Bureau of Communications and Arts Research's (BCAR's) recent Review of the Code of Conduct for Australian Copyright Collecting Societies are immediately adopted by APRA, particularly:


- a. Royalty calculation and distribution transparency;
- b. Comprehensive reporting of Code of Conduct breaches; and
- c. A fully specified Alternative Dispute Resolution (ADR) process where either disputing party can require that both parties engage in ADR.

6. APRA must simplify and publicise the ability to licence-back works

APRA must create a clear and accessible path for artists to licence-back work; for example to promote their own gigs or to provide a licence directly to background music providers. The ability of copyright holders to join together and package their works should also be facilitated. In particular, there is review needed of the current practice for an artist who promotes and publicly performs their own copyrighted works of having to first pay a licence to perform and then file a return to re-claim royalties from that performance (less an amount retained by APRA).

We would appreciate the opportunity to further discuss these conditions as you progress your processes. For this purpose and any further matters, please contact Ms Alexandra Hordern on 02 6121 5404 or at alexandra.hordern@asbfeo.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kate Carnell', written in a cursive style.

Kate Carnell AO
Australian Small Business and Family Enterprise Ombudsman