BPM Ltd

Background Providers of Music Association Ltd ACN: 631 831 831

Dear Gavin

We note the recent Request for Information communication (March 20th 2019) from the ACCC to APRA in relation to their application for authorisation and their subsequent response to that request.

The ACCC's line of inquiry highlights 3 key themes:

1. APRA's relationship to OneMusic and subsequently, PPCA
2. Transactional efficiencies with respect to data and transparency
3. Technological developments and capacity to improve revenue flow

In light of APRA's responses, we thought it prudent to provide the perspective of service providers to assist the ACCC in formulating its own position with respect to the preliminary and final draft determination. BPM is an association of background music service providers and is currently comprised of the following companies:

- Australian Radio Network Pty Ltd ACN 065 986 987
- Marketing Melodies Pty Ltd ACN 058 174 628
- Mood Media Australia Pty Ltd ACN 058 714 177
- Mustard Music Pty Ltd ACN 161 731 675
- Nightlife Music Pty Ltd ACN 052 079 277
- Qsic Pty Ltd ACN 155 394 719
- Satellite Music Australia Pty Ltd (t/a Stingray Business) ACN 072 378 986
- Soundproof Australia Pty Ltd ACN 408 767 669

Our considered responses effectively result in 3 key recommendations for the ACCC:

1. APRA and PPCA are intrinsically linked with the formation of OneMusic Australia and through APRA's own admission, will act as a pseudo authorised entity following any re-authorisation of APRA. For those reasons it is essential that any authorisation of APRA is contingent on the finalisation of *all* of the OneMusic tariffs including the high value Live performance, recorded music for dance, featured music and karaoke tariffs. Any prior authorisation should only be granted on an interim basis to ensure no stakeholders are disadvantaged by a premature authorisation that negates proper and effective consultation on these crucial outstanding tariffs;
2. We agree OneMusic is the ideal solution for the efficient centralisation and distribution of all public performance revenue and on that basis we support re-authorisation (subject to point 1). However, we contend that equally all authorised background music suppliers should be empowered to collect *all* public performance tariffs on OneMusic's behalf for venues they service. Thereby removing the need for business owners to deal with two separate entities to access music. Ensuring efficiency, maximising returns and endorsing licensed service providers to work collaboratively with OneMusic.
3. We acknowledge the proliferation of unlicensed music services into the public performance landscape and OneMusic's right to collect for this use on behalf of its members. Similarly, we are aligned with OneMusic and all other stakeholders that the preferred solution is for user's to access licensed services when they use music in their businesses. Hence we recommend that any re-authorisation of APRA provides conditions that create a pathway for businesses to migrate to licensed background music suppliers over time. Conditions including clearer information in plain English guides about the role of background suppliers and the risks around using a consumer service, to migrating to distributions based on play

data from licensed providers, with the ultimate goal of stemming the demand and availability of unlicensed services in public performance.

The BPM is a thriving example of a responsible and functioning marketplace where competition thrives on a level playing field, supported by appropriate licences. We welcome any further questions you may have pertaining to our submission and look forward to working collaboratively with OneMusic on what proves to be an exciting new phase and opportunity for the Australian music industry.

Kind regards

Dean Cherny
Chair - BPM

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).

RESPONSE TO POINT 1 – It is in the public interest to review the changes that OMA will bring to APRA's market power when considering reauthorisation

- APRA will become the sole and exclusive provider of PPCA general licences under OMA and is the only viable option for users. The alternative suggested by APRA of licensing direct with record labels on an individual basis is too great an administrative burden for businesses using music in public performance contexts. In addition to this, licensing direct reduces the opportunity to develop a quality solution as it cannot compete with a blanket license.
- The background music sector (BMS) have been able to licence sound recordings directly with record labels in Australia for many years and while this can technically continue under OMA, it will no longer be commercially feasible to provide this as a service.
- Currently, the BMS can act as non-exclusive agents to the PPCA. The benefits of this non-exclusive relationship include increased market choice for users, increased revenue for the BMS, accurate play data for the PPCA and transparent and efficient royalty distributions for PPCA members.
- Given APRA will become the sole and exclusive provider of most PPCA licences under OMA, this will remove the benefits delivered by the BMS.
- Effectively by authorising APRA and acknowledging that they become the exclusive provider of PPCA umbrella licenses, a further barrier is instilled that inhibits the practical ability for an end user or a qualified service provider to directly license or represent public performance rights, hence removing their reliance on OneMusic. This further enhances the market power of APRA and in turn OneMusic by reducing competition.
- There is an opportunity for the ACCC to consider these benefits in the public interest during the reauthorisation process. Conditions could be imposed to allow the BMS to act as unrestricted, non-exclusive agents for OMA. This will create efficiencies that will enable OMA

to partner with industry to deliver increased benefits to users and all APRA and PPCA members.

QUESTIONS

- While the OMA venture does not constitute a merger, it will create a monopoly from a rights' perspective given that APRA will act as exclusive agent for PPCA. What level of consideration will the ACCC give to this matter as part of the APRA reauthorisation process and what tests must be satisfied to grant reauthorisation given APRA's increase in market power?

2. **NO COMMENT**
3. **NO COMMENT**
4. **NO COMMENT**
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.

RESPONSE TO POINT 5 – The public interest test should be applied to the increase in market power conferred to APRA under OMA

- APRA's market power will increase under OMA to now include PPCA members and sound recordings and therefore there should be a commensurate increase in accountability via conditions of authorisation.
- It is unclear as to whether the scope of the reauthorisation process is limited to APRA and the functions it performs today, or the intended scope of functions under OMA. If the latter, this may establish an unsanctioned and anti-competitive environment.

QUESTIONS

- Can the ACCC confirm the scope of the reauthorisation process in the context of OMA?
- Given that the nature of the agreement between APRA and PPCA will increase APRA's market power under OMA, does the ACCC require that authorisation is necessary?

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.

RESPONSE TO POINT 6 – Authorisation should be required and only issued on an interim basis until all OMA licence schemes are finalised

- There are numerous cases whereby OMA tariffs have not yet been finalised.

- Consultation has been proactively delayed on tariffs such as Nightclubs, Feature Recorded, Live and Karaoke (as evidenced by APRA's own published communications).
- There have been no communications published by APRA which indicate if and when they intend to finalise these tariffs.
- APRA should provide a position on these tariffs prior to conclusion of the reauthorisation process and any such authorisation should be interim only.
- Previous conditions imposed by the ACCC including ADR and Plain English Guides (PEG) will need to be re-examined to determine applicability to PPCA under OMA.

QUESTIONS

- Can the ACCC authorise conduct of which it is not aware given OMA is yet to be finalised?
- Will there be a requirement to finalise agreement on these tariffs with stakeholders prior to a grant of reauthorisation?
- Will there be a condition imposed on APRA to control tariff prices under OMA in absence of market forces?
- Given APRA is not seeking authorisation with respect to the granting of non-exclusive licenses to perform PPCA sound recordings, yet will tie those rights into APRA's ADR process, will the ADR Resolution Pathways process enable PPCA members to access that service in the same way APRA members are currently able to do so?

7. **NO COMMENT**
8. **NO COMMENT**

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.

RESPONSE TO POINT 9 – Increased efficiency can be achieved through reauthorisation with conditions that encourage industry partnerships

- It is in the public interest that any authorised monopoly can demonstrate capability to operate with efficiency.
- APRA's response above asserts that they cannot operate with efficiency without exclusivity and monopoly.
- It is not in the public interest to use a regulatory mechanism to reauthorise a monopoly that is not efficient and effective in their operations but for reauthorisation.
- APRA stipulate above that non-exclusivity would result in requirements for APRA '…to maintain information about works…and to keep that information current'. APRA's primary role is to efficiently collect and distribute revenue for their members, regardless of their authorisation status, and such information about works is required to achieve this.
- Industry is capable of supporting APRA to achieve increased operational efficiency that is in the broader public interest (for example, accurate distribution of royalties). It is recommended that conditions are applied to reauthorisation which encourage partnership between APRA and industry.
- The ACCC should seek further information from APRA on whether publisher members have opted out of segment arrangements from APRA due to transactional inefficiencies.

QUESTIONS

- Given there is an expectation on the BMS to track, report and pay for exploited copyrights, what conditions can the ACCC place on APRA to ensure they are also upholding best practice standards?

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.

RESPONSE POINT 9 CONTINUED – Partnering with industry to promote licenced services will reduce cost and infringement for users whilst also reducing uncertainty

- APRA state above that 'having to obtain rights from different sources increases costs for users…as the user must satisfy itself that the licence it is obtaining is a valid one… (resulting in) a consequential increase in infringing use'.
- Contrary to this, APRA state on their website that when licensing businesses which use services such as Spotify to perform music in public at their premises, such businesses 'need to check with your supplier if you can pay our fees via them, or you need to obtain a licence directly with us to ensure you are legally using music', 'businesses should refer to the Terms & Conditions of the music service's end user agreement as to whether there are other permissions they require' and if 'you do not receive the proper authorisation you can be held liable for damages'.
- This practice is not in the public interest as it increases infringement and creates confusion in the market place for the end users who are seeking to use music in public performance contexts but are receiving mixed messages from the bodies representing rights owners (who permit use) and consumer service providers (who prohibit use).
- However, it is recognised that in collecting revenue for this use case, APRA are attempting to mitigate an issue of market failure to the benefit of its members where consumer use is ubiquitous in commercial contexts.
- The copying tariff under OMA seeks to extend this position to include PPCA members repertoire which also further compounds market confusion and impact.
- The ACCC needs to compel APRA to create a better practice environment which provides certainty, transparency and efficiency for end users and disincentivises the use of unlicensed services in public performance.

QUESTIONS

- Can conditions to APRAs reauthorisation (and subsequently OMA) be imposed which encourage the use of licensed services in public performance and disincentivise the use of unlicensed services for the long-term benefit of end users?

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.

RESPONSE TO POINT 10 – A possible reduction in members' assignment is not grounds for exclusivity

- It is in the public interest that artists are free to exercise choice in how they exploit their rights to generate income. Therefore, any possible reduction in member rights assignment is not grounds for exclusivity and should not be given consideration under this reauthorisation process.

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.

RESPONSE TO POINT 11 – The quantum of costs has not been addressed in APRA's response

12. NO COMMENT
13. NO COMMENT
14. NO COMMENT

APRA licence fees

APRA RESPONSES TO RFI 15 -16

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.

RESPONSE TO POINT 15 – The risk of an 'Australia tax' is reduced through competition

- APRA assert that the price of music in Australia is set by 'market conditions'. A similar position was adopted by Apple, Microsoft and Adobe when questioned by Australian authorities in 2013 during an examination into unfair pricing strategies to the disadvantage of Australians.

- APRA are authorised and not subject to market forces (in a traditional sense) and not required to evidence the value of their tariffs. Therefore, the ACCC should not accept this position put forward by APRA.

QUESTIONS:

- Will there be a condition imposed on APRA to control tariff prices under OMA in absence of market forces?

16.NO COMMENT

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://vvww.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.

RESPONSE TO POINT 17 – In absence of market forces, there should be independent assessment of proposed tariff increases (including economic modelling) imposed by reauthorisation conditions

- Tariff prices must be controlled under OMA in absence of market forces. This is particularly pertinent to those tariffs which APRA states will not be finalised prior to reauthorisation.
- It is acceptable for Commercial-in-Confidence information to be protected. However, such information could reasonably be disclosed to an independent governance body to ensure there is a reasonable basis for any increase in price.
- The only mechanism that exists in relation to tariff setting where consultation hasn't been able to achieve an amenable result is the Copyright Tribunal, which is cost prohibitive in many circumstances.

QUESTIONS

- Will there be a condition imposed on APRA to control tariff prices under OMA in absence of market forces?
- Is there scope for the introduction of independent monitoring that can bridge the gap between tariff scheme consultation and the Copyright Tribunal?

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.NO COMMENT

19.NO COMMENT

20.NO COMMENT

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.

RESPONSE TO POINT 22 – Reauthorisation conditions placed on APRA should include efficiency KPIs in the public interest

- The ACCC should look to the implementation of CLEF to date as an example of why conditions need to be set around APRA's efficiency. If such conditions existed, CLEF may not have proceeded in the way it did.

QUESTIONS

- Will the ACCC impose conditions on APRA in the form of KPIs to assist APRA in achieving efficiency?

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 One Music Australia on line 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.

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 04 2019 to 02 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 02 2020 on current projections.

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

RESPONSE TO POINTS 23 and 24 – Partnership with industry will assist APRA in meeting efficiency KPI targets

- The BMS recognises that MRT and AI technologies will provide limited benefits in terms of play reporting accuracy, which aims to be more effective and improve equitability of royalty distribution. However, it does so at significant cost with questionable outcomes that can be better achieved through use of play data and technology already available from the BMS.
- At no stage in 24(c) do APRA articulate their own responsibility to distribute revenue based on use, while simultaneously limiting PPCA's capacity to do so as well when they have previously enjoyed the benefit of non-exclusive agency arrangements that have provided this benefit to its members.

QUESTIONS

- Why are APRA investing in costly offshore MRT and AI technologies when it would be far more cost-effective and efficient to use locally-sourced BMS technologies and play data made available across thousands of venues?
- Given the ready availability of data to support distribution of public performance revenue, how will the ACCC ensure APRA will utilise these sources to improve its distributions practices and accuracy?

25. NO COMMENT

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

RESPONSE TO POINT 26 – CLEF's ability to improve distribution processing is dependent on APRA's ability to partner with industry

- The BMS has been creating technology to distribute music and therefore as a consequence has been gathering the data required by APRA and CLEF to improve their distribution practices.
- This technology is currently used by the PPCA but will cease under OMA by virtue of APRA restricting the scope of tariffs the BMS can collect for.
- This technology provides efficiencies for end users (obtaining all their music requirements from one source) as well as APRA and PPCA (through the provision of data tied to revenue collected at the end-user level).
- This technology could be leveraged under OMA if non-exclusive agency arrangements were permitted across all tariffs.

QUESTIONS

- What can the ACCC do to ensure APRA are proactively seeking to use all available resources across industry to improve distribution processes in a cost-effective manner?

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.

RESPONSE TO POINT 27 – MRT on its own is not the complete solution and requires additional inputs from industry for effective distribution

- The BMS represents approximately 50,000 licensed premises in Australia and captures venue-specific play data daily.
- MRT and other technologies are expensive and have only been trialled in venues that generate significant revenue (such as nightclubs). This music usage is not representative of broader use cases.
- Collectively, license revenue in public performance contexts where MRT is not being employed should utilise those services that are already available.

QUESTIONS

- Why are APRA investing in costly MRT and AI technologies in a handful of venues when it would be far more cost-effective and efficient to use actual BMS play data made available across thousands of venues?
- What can the ACCC do to ensure APRA are proactively seeking to use all available resources across industry to improve distribution processes in a cost-effective manner?

28.NO COMMENT