

Adjudication Branch: Attention Mr Gavin Jones
Australian Competition & Consumer Commission (ACCC)
By email: adjudication@acc.gov.au

08/08/2019

Dear Mr Jones,

Thank you for the opportunity to make further comments on the ACCC's decision to reauthorise APRA.

Many small businesses across Australia use music in some shape or form; indeed, a shop would not be the same without music playing in the background. APRA is the only provider of what is arguably an essential service to businesses – therefore, it is important that this service be provided at a reasonable price and that businesses' interactions with the organisation be as smooth and pain free as possible. The majority of APRA members – songwriters, bands, artists – are also small businesses themselves. COSBOA therefore has an interest in the way APRA's activities benefit or negatively impact upon both licencees and copyright holders.

We would like to reiterate that the main problems with APRA that have been communicated to COSBOA by those in small business sector are the affordability of its licence fees, unnecessary complexity, lack of transparency, and inaccurate distribution of royalties to its small business members. These problems result in an overall public detriment and we therefore do not support a full reauthorisation of APRA without conditions.

High fees

As stated in previous submissions, APRA's licence fees are unrealistic and many small businesses cannot afford them. The negative impact this has upon the economy is obvious – instead of paying the fee, businesses either opt not to use music or continue to use music and not obtain a licence. Either way, songwriters end up with less return than they should receive. Many groups have expressed concern to us that APRA is taking opportunities for a "cash grab," or charging the most it thinks it can get away with. Many have also raised concern that the fees in Australia are significantly higher than they are in comparable jurisdictions such as New Zealand.

Since our previous submission, it has been brought to our attention that these fees are also having an adverse effect on Australian small business performers. The venues and events that hire them are increasingly choosing not to do so because the public performance fees for live music set by APRA are unaffordable.

We support the ACCC's proposed condition requiring APRA to provide the market analysis and general economic information that lead to its licence fee prices. Exposing the lack of market analysis behind APRA's licence fees is a step in the right direction that could put pressure on the organisation to lower the fees.

Complexity and lack of transparency

APRA's so-called "plain English guides" are a feeble attempt to explain a complex web of licence schemes only understood by experts. Those in the small business sector simply do not have the time or resources to understand these licence schemes, let alone comply with them.

APRA appears to take advantage of this information asymmetry between its expert staff and its licencees. It words its guides in such a way that leads to licencees paying for more coverage than they need. For example, in the OneMusic Australia guides for retail and service providers, the wording implies that if music played in a shop can be heard from the car park, the business must pay an additional fee. More troubling, it implies that businesses must pay \$2.00 per year per employee for every employee who listens to their private music collection on headphones in the workplace. As this is not a public performance, this money-grab arguably constitutes a scam.

The complexity of the guides also makes self assessment for businesses very difficult. It is important for budgeting and cashflow management for a business to be able to estimate what they will have to pay APRA – however, with the complexity of the OneMusic guides businesses often do not know how much they will pay until they are billed.

Similarly, it has been brought to our attention that royalty cheques from APRA do not contain information on the specific sources of income. It is essential from a business management perspective to know one's sources of income – whether that be radio play, live performances, play in gyms, in shops, etc.

Royalty distribution

Our position on the accuracy of APRA's royalty distribution practices has not changed. COSBOA remains concerned about the economic impact to Australian small business songwriters and composers that permitting businesses to use personal streaming services in commercial contexts could have. We support the claim made by the Background Music Providers that this "constitutes a misuse of OMA's market power and is tantamount to misleading and deceptive conduct to the detriment of small businesses." Please see our previous submission for details.

Recommendations

That APRA only be reauthorized for a year, and that reauthorisation happens on an annual basis.

That a page limit be imposed on the 'plain English guides' and that they be written by an independent body that understands the needs of small business, such as the office of the Australian Small Business and Family Enterprise Ombudsman.

That APRA be required to state clearly in every context that personal streaming services are mentioned (not just in small text at the bottom of a page) that this is likely a breach of contract with the service and that it cannot guarantee accurate distribution of royalties when these services are used in businesses.

That new APRA members assign their rights to APRA on a non-exclusive basis. This is an essential step to allow competition to develop, which would provide APRA a natural incentive to be more efficient at royalty distribution and lower its licence prices.