

Ms Tessa Cramond
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

By email: adjudication@acc.gov.au

26 February 2019



Dear Ms Cramond

Re: AA1000433 Australasian Performing Right Association Limited (APRA) - interested party consultation submission

1. Introduction

- 1.1 This submission is made by the Western Australian Nightclubs Association (**WANA**) in response to the application for re-authorisation (AA1000433) for five years made by the Australasian Performing Rights Association Ltd (**APRA**).
- 1.2 WANA's membership encompasses all holders of a nightclub licence across Western Australia.
- 1.3 WANA members recognise the value of music to their businesses and wish to have access to a music copyright licensing scheme that is fair, equitable and relevant to their businesses. They fundamentally adhere to the view that they should pay copyright owners a reasonable sum for the right to use their music. Further, they recognise the convenience of contracting through the collecting societies, APRA, Australian Mechanical Copyright Owners Society (**AMCOS**) and Phonographic Performance Company of Australia (**PPCA**), to secure those rights.
- 1.4 That said, there are significant and fundamental issues associated with the current model under which APRA operates including:
 - (a) licensing fees which have not adjusted to reflect contemporary conditions, are disproportionate in comparison to equivalent international licence schemes and which are also disproportionate in comparison to other key business inputs;
 - (b) a lack of transparency and a profound information imbalance between APRA and licensees;
 - (c) market distortions and playing field imbalances as a result of unequal treatment of businesses using music in a functionally equivalent way and smaller venues being subjected to financial pressures that are not proportionate to the pressures large venues are required to meet;
 - (d) lack of oversight that is accessible, bearing in mind the imbalance in financial resources and access to information; and
 - (e) a corresponding lack of any incentive for APRA to engage in any meaningful form of negotiation with applicants for licenses.
- 1.5 These issues are likely to be exacerbated by the implementation of the proposed joint initiative between APRA and PPCA known as OneMusic by which the small scope that exists for the industry to compare and contrast the impact of the differing licence regimes will be removed.

1.6 WANA is of the view that, if the ACCC were to re-authorise APRA for a period of five years, then the monopoly structure under which APRA currently operates will cause further detriment to the natural function of (and competitive activity in) Western Australian markets in which WANA's members operate.

2. **APRA re-authorisation**

2.1 Collecting societies are currently structured to manage a single type of copyright for which each society has obtained an exclusive licence from copyright holders. Specifically:

- (a) APRA licenses rights associated with the public communication or performance (including on radio, television, online, live gigs in pubs and clubs etc) of musical works created by its members;
- (b) APRA also manages the business of AMCOS which licenses rights associated with the reproduction or copying and storage of music in different formats; and
- (c) PPCA licenses the broadcast or public performance of sound recordings and music videos.

2.2 As such, collecting societies are monopolies.

2.3 WANA considers that the measures introduced by the conditions to the existing authorisation have been ineffective to constrain APRA's exercise of its monopoly power.

2.4 There are administrative advantages associated with the current model. However, in WANA's view, some of the claimed advantages are more in the nature of private benefits than something that is of value to the community generally, or a contribution to the aims pursued by society or the achievement of efficiency and progress. In particular, claimed advantages in respect of monitoring and enforcement efficiencies and transaction costs that do not appear to have been passed on to licensees.

2.5 Rather, the scheme imposed by APRA has coincided with artificially high costs for licence holders when compared with other countries in relation to the very same music that is subject to licences in Australia.

2.6 As the figures¹ in the following table demonstrate, there is a significant difference in the equivalent rate between Australia and other countries:

COUNTRY	COMPOSER FEES (1)	RECORD Co's. (2)	CURRENCY	FEES (1)	FEES (2)	TOTAL	CONVERTED TO AUD
U. K.	PRS	PPL	GBP	6,793.49	12,119.64	18,913.15	33,947.28
IRELAND	IMRO	PPI	EURO	6,594.12	13,722.26	20,316.38	31,862.35
U.S.A	ASCAR	BMI	USD	3,064.00	2,780.00	5,844.00	8,084.36
CANADA	SOCAN	RE:SOUND	CAD	1,336.65	453.52	1,790.17	1,875.76

¹ Calculations made from online information published by licensing bodies in each jurisdiction.

FRANCE	SPRE	SPRE	AUD	@AUD 30	per head	spend	30,888.00
SPAIN	SGAE	SGAE	EURO	>>>	>>>	16,457.64	25,810.66
N. ZEALAND	ONEMUSIC	ONEMUSIC	NZD	>>>	>>>	3,979.56	3,711.40
AUSTRALIA	APRA						<u>138,896.16</u>
	O-M/night	PPCA	AUD	55,904.16	82,992.00	138,896.16	<u>129,480.00</u>
	O-M/PP						<u>157,248.00</u>

Note: all cases assume premises capacity of 400 patrons opening three nights per week for five hours of recorded dance music.

- 2.7 By way of example, Australian nightclubs are charged many multiples of the rate for equivalent venues playing the same music in New Zealand which is a jurisdiction bearing the closest similarity to Australia.
- 2.8 We note that APRA is a joint participant in the equivalent OneMusic initiative in New Zealand. Through its response to consultation regarding the OneMusic initiatives², APRA has acknowledged the gross imbalance in equivalent rates between Australia and other countries but offered neither substantiation or explanation. APRA has simply sought to justify the higher Australian licensing rates on the self-serving basis that there are differences in the historical bases of the licensing schemes in Australia and New Zealand and aligning rates would imply that the value of music to nightclubs in Australia has decreased³.
- 2.9 Even if it were true to say that the *historical* bases of the licensing schemes in Australia and New Zealand are different, this simply underscores the inability or unwillingness of APRA to embrace flexibility and change in the extremely dynamic and global market for music that now exists.
- 2.10 There have been fundamental changes over the last decade in the way music is recorded, replicated and consumed, and the price that consumers are prepared to pay for music. For example, by way of the introduction of streaming subscription services. WANA is concerned that these changes have not been reflected in the fees charged for music usage in venues or in the manner in which licensing fees are calculated or negotiated.
- 2.11 Nor, in WANA's view, has a proper account been taken of the fundamental contribution made to the creation and promotion of music by connecting audiences to artists in the licensing fees charged for music usage.
- 2.12 WANA believes that there is no reason why licensees should be required to pay such significantly higher rates for the same music as are paid by equivalent venues in other jurisdictions.
- 2.13 Licensing fees charged by APRA are also often grossly disproportionate to the cost of other key business inputs such as rent and liquor licence fees.

² 1 November 2018 <http://www.onemusic.com.au/wp-content/uploads/2017/03/RMFD-181031-1.pdf> at page 4.

³ *Ibid.*

- 2.14 WANA has concerns that larger associations of licensees have been able to secure more advantageous terms through APRA's subjective identification of areas in respect of which licences or classes of licence are required. In some cases, hotels play music as loudly as in nightclubs, in an area designed for dancing (most notably with a dance floor, but also with features such as club lighting) with the intention of patrons dancing, but are classed under different categories with significantly lower rates (such as under the "Featured Recorded Music" scheme where the rates are as little as 10% of the equivalent nightclub rate).
- 2.15 WANA is concerned under the current model that, in assessing which music licensing scheme is applicable to individual venues, APRA has no incentive to ensure a level music licensing playing field exists between different categories of venues. And, in Western Australia in particular, these categories of licence are defined, under law, by the Liquor Act. In particular, WANA is concerned that the current model allows APRA to take the approach of seeking fees under the 'Recorded Music for The Purpose of Dancing' scheme only from venues licensed as Nightclubs in Western Australia.
- 2.16 WANA's request to be provided with a list of venues licensed under the current 'Recorded Music for The Purpose of Dancing' schemes was declined but WANA received confirmation that there are currently forty three (43) Western Australian venues licensed under the APRA AMCOS GFN tariff, and thirty four (34) venues licensed under the PPCA E1 tariff.
- 2.17 Similarly, WANA's request to provide a list of licensees under the current Featured Recorded Music schemes was declined but it has been confirmed to WANA that there are currently one hundred and sixty seven (167) WA venues licensed under the APRA AMCOS GFR tariff, and on hundred and four (104) venues licensed under the PPCA E3 tariff.
- 2.18 Nightclub is a specific category of liquor licence in Western Australia of which there are forty three (43) currently operating in the state. WANA contends that there are many premises in Western Australia, not licensed as 'Nightclubs', that would meet the criteria for 'Recorded Music for The Purpose of Dancing' music licensing that are instead currently operating with 'Featured Recorded Music' licenses. The differential of fees payable respectively under 'Recorded Music for The Purpose of Dancing' schemes and 'Featured Recorded Music' schemes is substantial.
- 2.19 WANA also understands that APRA has entered into a collective arrangement with the Australian Hotels Association to license their members' venues under the more favourable 'Featured Recorded Music' schemes, even though some of those venues meet the criteria for licensing under 'Recorded Music for The Purpose of Dancing' schemes thereby creating a fundamental inequity in APRA's application of their licensing schemes between different categories of licensed premises across the industry.
- 2.20 WANA considers that market distortions and playing field imbalances of this nature arise from a lack of transparency and profound information imbalance between APRA and licensees and because APRA is at liberty to act without reference to market pressures.
- 2.21 Whilst APRA has opt-out and license back arrangements, those arrangements are unworkable for participants in the nightclub sector who need to perform and play a wide range of music. For that reason, those arrangements do not have any moderating influence on the exercise of APRA's market power.
- 2.22 Nor is APRA's market power moderated, in any practical sense, by the possibility of action before the Copyright Tribunal especially in its dealings with small users, or over small matters. This is because the cost of presenting such a dispute to the Copyright Tribunal, in most cases, is likely to be much higher than the amount of the licence fees in dispute and the licence holder does not have access to key information. The high cost and information asymmetry are major barriers to action before the Copyright Tribunal.
- 2.23 Effective presentation of a dispute to the Tribunal is also dependent on parties having sufficient financial wherewithal to engage expert legal representation and generate the type of sophisticated economic and comparative evidence needed to enable the Tribunal to make informed decisions. It is significant that a full range of evidence and data on key topics has

been lacking in past determinations including, relevantly, the determination made in respect of APRA's own licensing scheme (on which APRA continues to place great weight) where the Tribunal noted that no one had placed *any* evidence before the Tribunal in opposition to APRA's application and to counter the evidence adduced by APRA⁴.

2.24 Recognition of these difficulties appears to be the reason for the inclusion of the ADR mechanism in the conditions to the existing authorisation. Anecdotally, WANA understands that ADR has, to date, been used to resolve disputes regarding the designation of areas within venues as "dancefloors" or areas for dancing. However, this willingness to "tweak around the edges" appears to have had little to no effect on APRA's conduct on fundamental issues such as the quantum of licensing fees. These ad hoc deals are also further evidence of APRA's policy of not applying its "rules" consistently across licences. APRA appears unwilling to depart in any meaningful way from the licensing scheme considered by the Copyright Tribunal nearly 12 years ago despite the significant changes in the global music industry since that time.

2.25 In WANA's experience, APRA has maintained a rigid adherence to a blanket licence rather than a direct negotiation model and is resistant to *ad hoc* negotiation of licensing arrangements. In those circumstances and given:

- (a) the Australia-wide implications of the international disparity in rates;
- (b) the concentration of information and resources in the hands of APRA; and
- (c) the unwillingness to be transparent about this information and these resources,

the ADR process is ill-equipped to act as any constraint on APRA's exercise of market power in relation to licences.

2.26 The end result for participants in the nightclub sector is a 'take it or leave it' proposition where participants remain at the mercy of APRA.

3. **OneMusic Initiative**

3.1 These issues are likely to be exacerbated by the implementation of the APRA and PCCA joint initiative known as OneMusic by which the small scope that exists for the industry to compare and contrast the impact of the differing licence schemes is intended to be removed.

3.2 The OneMusic proposal has been characterised by the following conduct which WANA considers shows APRA is operating in a market unconstrained by competitive pressures:

- (a) a consultation process which has been completely dismissive of sector concerns and where the OneMusic proponents appear to be marching towards a predetermined destination;
- (b) a proposed licence fee scheme which would deliver substantial fee increases for many licensees⁵;
- (c) a move to a capacity based scheme⁶ which is predicated on the convenient but unwarranted assumption that nightclubs trade to, or close to, capacity on each night they operate;

⁴ See, eg, *Reference by Australasian Performing Right Association Ltd* [2006] ACopyT 3 at [111].

⁵ When this concern was raised with APRA/OneMusic during the consultation process, APRA/OneMusic dismissed it out of hand and asserted, without substantiation, that any increase suffered would be a product of non-compliance with the existing regime, rather than its proposed tariff structure.

⁶ A capacity based scheme is already used by PCCA.

- (d) a proposed licence fee scheme which has adverse and unfair impact on venues with capacity at the lower of designated capacity tiers;
- (e) fee proposals which continue to be grossly disproportionate to those levied in comparable overseas markets such as New Zealand and the UK; and
- (f) the OneMusic parties signalling an even stronger intention to refrain from negotiating licensing arrangements on an *ad hoc* basis in the future.

3.3 The OneMusic proponents claim that the OneMusic proposal will not involve any further concentration of market power because they do not compete against each other⁷.

3.4 However, there does not appear to be any permanent and immovable impediment to collecting societies (ie, each of APRA, AMCOS and PPCA) competing against each other to obtain a non-exclusive licence to the different types of copyright from copyright holders and in the provision of licences to music consumers.

3.5 Viewed objectively, it could be argued that the model adopted by collecting societies is simply a form of market sharing by *potential* competitors⁸.

3.6 By way of further elucidation of WANA's concerns, WANA's feedback to the OneMusic proponents on the OneMusic proposal is **attached**.

4. **Conclusion**

4.1 In the circumstances, WANA considers that the present scheme fails to deliver public benefits that outweigh the harm to competition arising from APRA's conduct. WANA submits that re-authorisation should be subject to the following additional conditions:

- (a) when proposing new or increased licence fees, APRA should be required to provide evidence to the ACCC to demonstrate that the copyright guidelines were used to determine a fair market price and that the fee proposed reflects market value of the copyright material;
- (b) prior to the implementation of any rate increase, whether pursuant to CPI or otherwise, APRA should supply evidence to the ACCC that the licensing rates have been benchmarked against comparable rates in international markets. Should the ACCC not be satisfied that the rates have been appropriately benchmarked, no increase (CPI or otherwise) should be permitted;
- (c) APRA publish lists of venues by licence class on its website and the schemes/categories under which they are licensed; and
- (d) a non-discrimination obligation.

WANA is grateful to the ACCC for the opportunity to make submissions in relation to APRA's re-authorisation application.

Yours sincerely,



⁷ 1 November 2018 <http://www.onemusic.com.au/wp-content/uploads/2017/03/RMFD-181031-1.pdf> at page 7.

⁸ It should be noted that in the Competition and Consumer Act 2010 (Cth), competitors for the purposes of determining breaches of the Act can be either actual or potential competitors (see, for example, s 45AD(4) (cartel conduct), s 45(3), and s 47(13)(b)).



Western Australian Nightclubs Association Inc. (WANA)

Feedback to;

Recorded Music For The Purpose Of Dancing Music Licensing Consultation

Introduction

The West Australian Nightclubs Association is an administrative body that informs and supports nightclubs in Western Australia. All nightclubs in Western Australia are members of the Association and benefit from the work that they do. WANA has no affiliation with the Australian Hotels Association(AHA).

WANA members recognise the value of music to our businesses and wish to have access to a music copyright licensing scheme that is fair, equitable and relevant to our businesses.

Comments on the current APRA AMCOS and PPCA schemes

Onemusic Australia declined WANAs request to provide a list of venues licensed under the current Recorded Music for The Purpose of Dancing schemes but has confirmed that there are currently 43 WA venues licensed under the APRA AMCOS GFN tariff, and 34 venues licensed under the PPCA E1 tariff.

OneMusic Australia similarly declined WANAs request to provide a list of licensees under the current Featured Recorded Music schemes but has confirmed that there are currently 167 WA venues licensed under the

APRA AMCOS GFR tariff, and 104 venues licensed under the PPCA E3 tariff.

Nightclub is a specific category of liquor licence in Western Australia of which there are 43 currently operating in the state. WANA contends that there are many premises in Western Australia, not licensed as 'Nightclubs, that would meet the criteria for Recorded Music for The Purpose of Dancing music licensing that are instead currently operating with Featured Recorded Music licenses.

It appears to WANA that APRA AMCOS and PPCA have taken the approach of picking the low hanging fruit and only sought Recorded Music for The Purpose of Dancing from venues licensed as Nightclubs in Western Australia. WANA further contends that APRA AMCOS and PPCA have not made sufficient endeavours to ensure a level music licensing playing field between different categories of venues in assessing which music licensing scheme is applicable to individual venues.

The differential of fees payable respectively under Recorded Music for The Purpose of Dancing schemes and Featured Recorded Music schemes are substantial as highlighted later.

WANA believes APRA AMCOS and PPCA have entered into a collective arrangement with the Australian Hotels Association (AHA) to license their members' venues under the more favourable Featured Recorded Music schemes, even though some of those venues meet the criteria for licensing under Recorded Music for The Purpose of Dancing schemes thereby knowingly creating a fundamental inequity in their application of their licensing schemes between different categories of licensed premises across the industry.

WANA has no confidence that these fundamental inequities will be resolved under OneMusic Australia.

Comments on OneMusic initiative

WANA welcomes the amalgamation of APRA AMCOS and PPCA as WANA believes the collection societies have never operated independently and OneMusic removes the necessity for the respective entities to maintain the charade of independence and the assertion that some kind of 'Chinese Wall' exists between them.

Comments on the proposed scheme

The amalgamation of APRA/AMCOS with PPCA represents an opportunity for OneMusic Australia to leverage synergies between the businesses to reduce their combined costs of operation. There is no doubt that the scheme proposed by OneMusic Australia will be simpler and cheaper to administer for the collection societies. None of these cost savings though, are being passed on to OneMusic customers, the licensees.

OneMusic Australia says it is 'keenly aware' of issues facing nightclubs currently, including but not limited to liquor licensing restrictions and lock-out laws, yet this awareness has not translated into a reduction of fees. Instead, OneMusic Australia has combined the current APRA/AMCOS and PPCA rates, added a CPI increase and removed the ability for a licensee to report an attendance less than capacity in respect of the APRA/AMCOS component of the fee. To compensate for the ability to pay on attendance (equal to or less than capacity) rather than capacity, OneMusic Australia offers a paltry discount of 10c (or 4.5%) per person for a venue operating two nights per week. In OneMusic Australia's example of a nightclub paying a gross licensing fee of \$55,100 per annum this represents a "saving" of \$2080.

OneMusic Australia is making the assumption that the 200 person venue in their example will enjoy an average attendance of 191 patrons every night of the year it operates. This assumption is false and does not represent the way venues operate in the real world, especially in a climate of liquor licensing restrictions and lock-out laws, where some nights are busy and others are quiet. If this example venue only has an attendance of 100 patrons (or half it's capacity) on ten of it's 'full venue' operating nights over a year it will need to attract capacity crowds for the remaining 94 nights or it would be paying more than it would under the current scheme.

It is somewhat disingenuous to use a very small venue as an example, well below the average capacity of a nightclub in Western Australia. The discrepancy is magnified when a larger venue is considered, as larger venues are less likely to trade to capacity regularly. The comparison cited by OneMusic Australia, which claims the same venue would pay \$1250 more under the current scheme is equally disingenuous as it assumes the venue currently trades to capacity every night it is open.

OneMusic Australia claims that APRA AMCOS licensees have not reported "*fluctuations in attendance to reflect actual variations in the popularity of the venue*" that they expected. From this they have inferred that venues

reporting constant patronage are operating to capacity. While that may be true for some venues, especially small ones, OneMusic Australia also concedes that the current scheme is complex and confusing to licensees.

As such, licensees may not understand that they can report an attendance less than capacity for their slow nights. One of the major flaws with the current APRA AMCOS scheme is that the term 'attendance' is not defined. That so many licensees are currently reporting constant rather than fluctuating attendance indicates that APRA AMCOS has not sufficiently explained the scheme, including defining key terms, to allow licensees to understand their reporting options.

OneMusic Australia should use attendance, capped at capacity as the metric in the new scheme as this more accurately reflects the way venues actually trade and to ensure licensees only pay for what they use, based on how many patrons attend. Of course OneMusic Australia wants venues to pay based on their capacity as this ensures they receive the maximum fee for every night of trade, irrespective of the number of patrons that actually attend. Using capacity as the sole metric creates a scheme that is unfair, inequitable and not relevant to the industry.

A flaw also exists in OneMusic Australia's example reporting of a 200 capacity nightclub. OneMusic Australia suggests the 'Full Venue' should pay at their proposed 'Tier 2' as it operates 104 nights per year whereas the 'Ground Floor Bar' should pay at 'Tier 1' as it operates 52 nights per year. However, the Ground Floor Bar is part of the Full Venue therefore this area actually operates 156 nights per year and should be charged at 'Tier 3' at a capacity of 100 while the 'Upstairs Bar' (the Full Venue minus the Ground Floor Bar), also with a capacity of 100, should be charged at 'Tier 2' for 104 nights of operation. The difference in reporting this way is shown in the table below.

Area Name	Nights /Year	Capacity	Rate	Fee Payable
Upstairs Bar	104	100	\$2.10	104 x 100 x \$2.10 = \$21,840
Ground Floor	156	100	\$2.00	156 x 100 x \$2.00 = \$31,200
				Total = \$53,040

By accurately reporting in this manner the licensee would pay \$2080 less per year than OneMusic Australia calculates. However in real life this theoretical licensee would never submit such a report. Instead they would add one night to both areas which would move both areas down a fee

tier respectively and generate a further cost saving \$2210 as shown in the table below.

Area Name	Nights /Year	Capacity	Rate	Fee Payable
Upstairs Bar	105	100	\$2.00	105 x 100 x \$2.00 = \$21000
Ground Floor	157	100	\$1.90	157 x 100 x \$1.90 = \$29830
				Total = \$50630

If nothing else, the tables above demonstrate that the scheme proposed by OneMusic Australia, with its four tiers and splitting venues into different areas, is neither simple nor easy to understand and is open to different interpretations. The only reason for OneMusic Australia to have included this unnecessary complexity, and show the example calculation as they have, is to attempt to maximize the fees payable by licensees. It would be far simpler for licensees to report the actual attendance at their venues, using the simple and easy to understand metric of attendance capped at capacity, and apply one rate. This would allow the most accurate reporting, based on the actual attendance of patrons and be the fairest, most equitable and relevant solution.

Comparison of the proposed OneMusic Australia scheme with the OneMusic New Zealand scheme.

OneMusic New Zealand has been presented by OneMusic Australia as a successful model for the launch of OneMusic Australia.

On 16 October 2017 WANA sent an email to questions@onemusic.com.au requesting information on the equivalent licence to the proposed 'Recorded Music For The Purpose Of Dancing' licence under OneMusic New Zealand. No reply was received. Consequently we assume there is no equivalent "Recorded music for dance use" licence offered by OneMusic New Zealand. Instead a "Hospitality Music Licence" is used for New Zealand nightclubs.

A OneMusic New Zealand Hospitality Licence for featured music presented by DJs charges a maximum rate (for venues 300sqm+) of \$25.12 per day. Based on 156 days (nights) of operation per year this equates to a fee of \$3918.72. ***This is about 7% of the fee proposed to be charged by OneMusic Australia for a similar business in your example.***

Also of interest in the OneMusic New Zealand Hospitality license table is the difference in licence fees between background and featured music. Again, using the rates, a 300sqm+ premises a pub/bar (or nightclub) pays \$1136.57 per year for background music.

Using your example of a venue trading 156 nights a year utilising featured music presented by DJs would pay 3.45 times the background music rate under the OneMusic New Zealand scheme.

Using the OneMusic Australia proposed scheme, the fee for Australian nightclubs is **16.4 times the highest (ie Diamond) level background music package.**

The comparisons between the OneMusic New Zealand and proposed Australian schemes, in our view, demonstrates the unfairly high rate being currently charged to nightclub licensees in Australia by APRA/AMCOS and PPCA.

The launch of OneMusic Australia provides an opportunity to revisit nightclub rates in Australia to bring them into line with those in New Zealand and other jurisdictions and provide much needed relief to nightclub licensees from the unsustainably high level of licence fees currently being imposed by APRA/AMCOS and PPCA.

Comparison of the proposed scheme with the proposed OneMusic Australia Hotels scheme

OneMusic Australia cites amongst its goals for the proposed scheme that the structures should be "fair and equitable across venue types", however all categories of licensed entertainment venues other than nightclubs have available to them a "Featured Music" licence. The definition of 'Featured Music' in the proposed Hotels scheme encompasses the way that music is presented in nightclubs. The Hotels scheme consultation document actually contemplates a hotel main room of 200 person capacity hosting DJ performances on 52 nights per year. In Western Australia premises classified as 'hotels' trade until 2am and 3am and are in direct competition with nightclubs for the majority of the hours that nightclubs trade.

Under OneMusic Australia's proposed Hotels scheme, the example nightclub contemplated by OneMusic Australia and discussed above would pay only \$3120 utilizing a Featured Music license as shown in the table below.

Area Name	Nights/Year	Capacity	Rate	Fee Payable
Upstairs Bar	104	100	\$12.00	104 x \$12.00 = \$1248
Ground Floor	156	100	\$12.00	156 x \$12.00 = \$1872
				Total = \$3120

Actually, these premises, with capacities of exactly 100 in both areas, would pay nothing as it would fall between the capacity tiers of <100 and 101-200 but for the purpose of sensible comparison we will assume that OneMusic Australia intended the lower tier to be <101.

It is *highly* inequitable to be licensing hotels at 12c per patron and nightclubs at \$2.20 per patron, or **more than 18 times the rate**, for presenting the **same music in the same manner**. Hotels can and do charge up to \$40 per ticket for such performances and those ticket prices represent multiples of a standard nightclub entry fee or 'cover charge' so the additional \$2.08 per patron is apparently only to allow dancing. It would be ridiculous to suggest that a hotel would employ a DJ to play 'foreground' music to a room of 200 patrons without expecting any of the patrons to dance. It would be equally ridiculous to suggest that the hotel would somehow prevent dancing from occurring during the DJ performance. A DJ performance without dancing is as difficult to envisage as a nightclub without music.

Impact on WANA members

WANA members were asked to estimate the amount of fees payable under the proposed OneMusic Australia scheme using the example given in the consultation document. Not one member reported a reduction in fees under the proposed scheme and the average increase was 12%.

Conclusion

The proposed scheme by OneMusic Australia is neither fair nor equitable when compared to the licences offered for nightclubs in New Zealand.

The proposed scheme by OneMusic Australia is neither fair nor equitable when compared to the Featured Music licence for hotels proposed by OneMusic Australia.

The proposed scheme by OneMusic Australia is not relevant to the way venues operate and is not attractive to WANA.

The proposed scheme offers no value to WANA members when compared with the schemes currently in place.

WANA proposes that nightclubs in Australia be assessed under the OneMusic Australia 'Hotels' scheme as providing 'Featured Music' or be given the chance to work with OneMusic Australia to devise a scheme that, as your website states produces, "licences that are ***attractive and that reflect fair and equitable fees in all instances***".