

In Relation to the Re-Authorisation of APRA AMCOS and PPCA

To whom it may concern,

I've recently published an article on APRA/AMCOS/OneMusic Australia(OMA). The article has been well received, and I'd like to lodge it as a submission to the Authorisation Inquiry by the ACCC. In addition to the article, as a long-time member and supporter of Australian music and the work that collecting societies do, I'd like to offer the following recommendations.

I support re-authorisation for APRA for 5 years, subject to the following conditions:

(a) Greater transparency by OMA on tariff calculations - it is unclear what they are based on and how they are worked out - OMA should explain the basis for all of their tariff calculations and justify any future tariff increases;

(b) It's tough economically, and OMA are earning substantial revenues, so there should be a 3 year freeze on all tariff increases;

(c) No high pressure tactics such as aggressive letters should be employed by OMA, there should be no letters threatening legal action, or letters threatening to refer matters to their "legal team";

(c) People get confused by OMA powers, so a clear disclaimer on all OMA letters, the website and correspondence should be included: "OneMusic Australia is not any way affiliated with the Australian Government, the ACCC or Australian Taxation Office";

(d) A declaration should be by OMA that they will no longer licence businesses to use Spotify, Apple Music, Deezer, Tidal and YouTube and other personal music services for public performance - these types of licences raise very little money and cheat Australian music artists out of what is rightfully theirs and expose Australian business to substantial litigation from rights holders. Existing personal services licences should be immediately terminated; and

(e) OMA should devote 20% of their revenue in the next 3 years to better improving their information collection in relation to music publicly performed/communicated, so revenue is better distributed to the creators of music whose music are actually being communicated/publicly performed, rather than overseas multinationals.

I don't object to you adding this to the ACCC website and I am available to provide additional information.

For your convenience, I have included the article detail here in my submission. The original article can be viewed: <https://link.medium.com/1zKZ8OKma1>

Regards,

Ross Woodhams



The Music Licensing Elephant in the room that nobody wants to talk about.

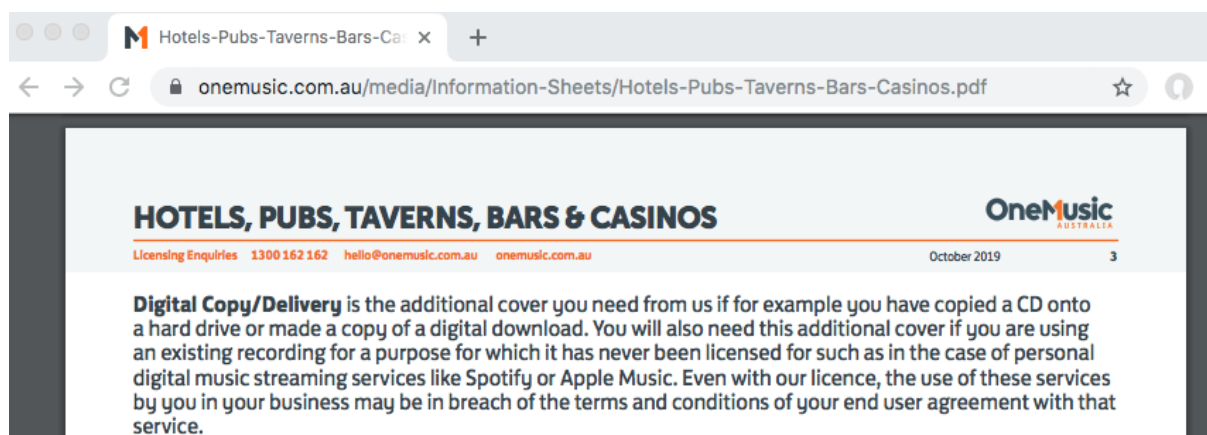
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I was full of joy and hope when I heard of the pending merger of APRA and PCCA. I thought an era of enlightened enforcement would begin. A veritable golden age of music licensing for business would be upon us.

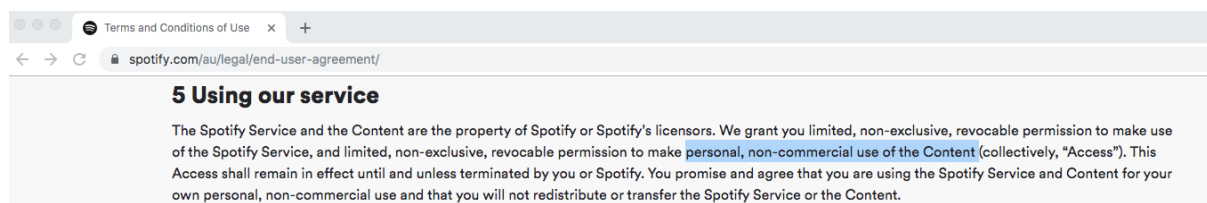
Not in this universe.

In OneMusic's "Hotels, Pubs, Taverns, Bars & Casinos" Information sheet under Digital Copy/Delivery OneMusic say this:

"You will also need this additional cover if you are using an existing recording for a purpose for which it has never been licensed for such as in the case of personal digital music streaming services like Spotify or Apple Music. Even with our licence, the use of these services by you in your business may be in breach of the terms and conditions of your end user agreement with that service."



May be in breach? What's this "may be in breach" business? Between the lines, what OneMusic are really saying is "We know personal services like Spotify and Apple Music are not licensed for this use, but we'll take the money anyway". What?, suddenly they don't know that Spotify and Apple Music are consumer services?



That's like the Police licensing you a semi-automatic rifle and saying "That rifle is illegal, but we will give you a licence, but it may be in breach of federal government legislation with regards to semi-automatic firearms."

Ridiculous.

More so, OneMusic isn't even authorised to licence "sound recordings" delivered by these services for commercial use because THATS the job of ARIA and/or the labels. I'd vehemently claim that

Spotify and Apple Music do not provide APRA or PPCA with a quarterly list of businesses that are using their service. Why are these services exempt from that requirement when legitimate Commercial Music Services are required too? That's inconsistent with OneMusic/APRA/PPCA et.all ACCC handed "Virtual Monopoly" requirements.

I'm not a gambling man, but I'd wager, that Spotify and Apple Music do not even pay fees for APRA's Business Blanket Licence – Which, even if they did, wouldn't fix the problem anyway. Again, why is Spotify and Apple Music exempt from these Blanket Licence Fees when legitimate commercial services are required to do so? Also, if they did, Spotify and Apple would have to meet some pretty significant reporting requirements that come with that Business Blanket Licence.

What does the ACCC say about this behaviour? Maybe we should ask them.

What OneMusic is saying is, we'll licence you for the Mechanical and Performance copyrights in the music you play in your business (even though we have no idea WHAT actual recordings you're playing and irrespective of where you got them).

The other issue here is that the actual "sound recordings" possessed by Apple, Spotify, Deezer, YouTube, et all are not licensed for commercial use – That's the domain of the Content owners or ARIA. So the question to ARIA and the ACCC is why are Apple, Spotify, Deezer et all exempt to licence for commercial use when legitimate commercial services must?

The next question is why does OneMusic attempt to claim that personal digital services can be licensed when they know very very well that these services are not authorised by content licensors and providers (like ARIA, Labels and Artists)?



"Show me the moneeeeeyyyy!"

But here's the rub. Besides the ACCC's negligence of a virtual monopoly issued to APRA/AMCOS and PPCA, If you do use these personal services in your business and you are one of the 140,000 companies out of the million or so Australian companies that pay their OneMusic fee, you need to know that OneMusic has NO WAY of knowing what music you played. That means the money you do pay does not go to the artists you love and enjoy in your business because none of these personal services provides reporting to them. God knows where your money goes. It isn't to the artists you played, that's for sure.

Don't get me wrong; this isn't all OneMusics fault either. I'd suspect the prevailing thought at APRA and PPCA HQ's in this regard is that there is a greater good or general principle.. at least SOMETHING is being paid. But its not the paying that's the issue. It's the distribution of royalties to artists and more specifically the correct distribution.

So does this mean that OneMusic will licence a business that has downloaded music illegally from torrent sites or shady Russian music sites?

By the wording in their information sheet, OneMusic would legitimise your illegally obtained music. Because inferred in their position is that they don't care where you get your content. If you pay the mechanical and performance licences, then from their view, you're golden.

It's reasonable to assume that OneMusic wouldn't allow this. If a business owner applied for a licence and claimed "I pirated the music" OneMusic surely wouldn't issue a licence. Would they? I presume not. You'd think not. But the truth may be stranger than fiction. You see the issue here right?. Hopefully, it's causing some cognitive dissonance. It should, because it's wrong.

Spotify, Deezer, YouTube, Apple Music and Deezer have all been complicit concerning this issue and in this specific instance, they're no different to Ukrainian and Russian download sites where tracks can be obtained for 2cents a piece. Don't think for a moment these guys are ignorant of this truth. They know very well that a very large percentage of their service revenue comes terms of use abuse. Daniel Ek and Oliver Schusser are the new Sean Parkers (Napster Founder). Apple doesn't even seem to publish Apple Music terms of use.

In this use case (use of music in business), there is literally no difference between Spotify, Apple Music and Napster/Limewire.

81% of business use a personal streaming service. At a guess, it's probably \$AUD 144million a year in streaming revenue used commercially that's not correctly representing the value music adds to the business, nor is it adequately reported and nor are the royalties paid appropriately.

But wait, there's more. That estimate of AUD\$ 144M a year equates to billions of song plays that are not getting their Performance or Mechanical royalties paid.

I'll just let that sink in.

Whether a business downloads music illegally or streams it from a personal service, the rationale is the same and OneMusic should not be issuing a licence for personal services in the same way they wouldn't for pirated content.

More importantly, OneMusic is opening businesses up to possible litigation from Artists, Labels and content owners. OneMusic is licensing the mechanical and performance rights of a recording that isn't authorised for that use.

That's the simple truth.

Now how does OneMusic issue licences appropriately? They could avoid implication by simply asking "Where are you obtaining your content from" when issuing a licence. That's not great. A business could say anything but do the opposite.

So the reasonable solution OneMusic could invoke would be as follows: As a business owner, every quarter, you're required to send a report of all the songs you played in your business, and this is the specific format it needs to be. If we don't get your "plays" report in 30 days from the end of the period, your licence is cancelled with no refund.

It solves the issue on a few fronts:

1. It enforces proper reporting, meaning that content owners and artists get paid fairly. That's the reason we pay licence fees to start with, and the sole purpose APRA/AMCOS, PCCA and OneMusic exist.
2. It creates a business problem for the business owner if they are not using a legitimate service; using these personal services might be cheaper. Still, it will cost them more when they realise they can't get a report from Spotify or Apple Music that shows all their plays for the quarter, let alone the ISRC data.

OneMusic, I love you, I really do. But you're breaking my heart with the current approach you have taken. You have a greater responsibility to educate and engage business properly. Handing out licences for business for personal use services is not in the "greater good."

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