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Our ref: AA1000433  
Contact officer: Tessa Cramond  
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20 March 2019

Kate Haddock  
Partner  
Banki Haddock Fiora

**By email:** [haddock@bhf.com.au](mailto:haddock@bhf.com.au)

Dear Ms Haddock

**Authorisation AA1000433 submitted by Australasian Performing Right Association (APRA) – request for information**

I refer to APRA's application for re-authorisation (revocation and substitution) lodged with the Australian Competition and Consumer Commission (the **ACCC**) on 24 December 2018.

To help us further assess the application, we seek from APRA the information set out at **Attachment A** to this letter. We seek the information as soon as possible and in any case by **5 April 2019**. The information can be emailed to [adjudication@accc.gov.au](mailto:adjudication@accc.gov.au)

Public submissions about APRA's application for re-authorisation are available on the ACCC's [public register](#). If you wish to provide a response to submissions received please also provide this response by **5 April 2019**.

I note that some of the information requested at Attachment A is likely to be confidential to APRA and/or individual members and licensees. Under section 89 of the *Competition and Consumer Act 2010*, the ACCC may exclude documents or information from its public register by reason of the confidential nature of any of the matters contained in the document. If APRA wishes to request exclusion from the register for any document or information provided in response to the ACCC's request, we ask that you or they please clearly indicate this and provide brief reasons for the request when providing the documents.

Subject to our consideration of any request for exclusion from the public register, a public version of the response with confidential information redacted will be placed on the ACCC's public register.

A copy of this letter will also be placed on the public register, subject to our consideration of any request for any of the information at Attachment A to be excluded from the public register. Accordingly, when providing a response to the information request at Attachment A please also advise whether APRA requests that any of the information at Attachment A be excluded from the public register.

If you wish to discuss any aspect of this matter, please contact Tessa Cramond on (03) 9658 6516 or at [tessa.cramond@accc.gov.au](mailto:tessa.cramond@accc.gov.au).

Yours sincerely

A handwritten signature in blue ink, appearing to read 'D Jones', with a stylized flourish above the name.

David Jones  
General Manager  
Adjudication

## Attachment A – ACCC Information Request

### *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.

The ACCC notes that APRA obtains rights from its members on an exclusive basis (subject to resignation, opt-out and licence back provisions), whereas the PPCA obtains rights from its members on a non-exclusive basis. The ACCC understands that one consequence of this is that there is more direct dealing between PPCA members and users in relation to licences for public performance of sound recordings than there is between APRA members and users in relation to licences for public performance of musical works.

2. Please confirm that adjustments to fees will occur if the user does not require both licences, irrespective of whether a PPCA licence is not required because: the user does not use relevant sound recordings; or because the user has negotiated a sound recording licence or licences directly at source.
3. With respect to appropriate and transparent adjustments to licence fees for users who do not require both licences, under OneMusic, will the licensing fees for public performance in musical works and sound recordings be quoted separately at the time licences are being negotiated and itemised separately once licences are entered into? If they will not be itemised separately, how will transparency around appropriate adjustments when the user does not require both licences through OneMusic be achieved?
4. All else being equal, will users acquiring a licence covering both musical works and sound recordings through OneMusic receive a discount compared to the prices that would be charged through OneMusic for each licence separately? For example, assume three otherwise equivalent users:
  - one user only requires a licence covering musical works
  - a second user only requires a licence covering sound recordings, and
  - a third user requires a licence covering both musical works and sound recordings.

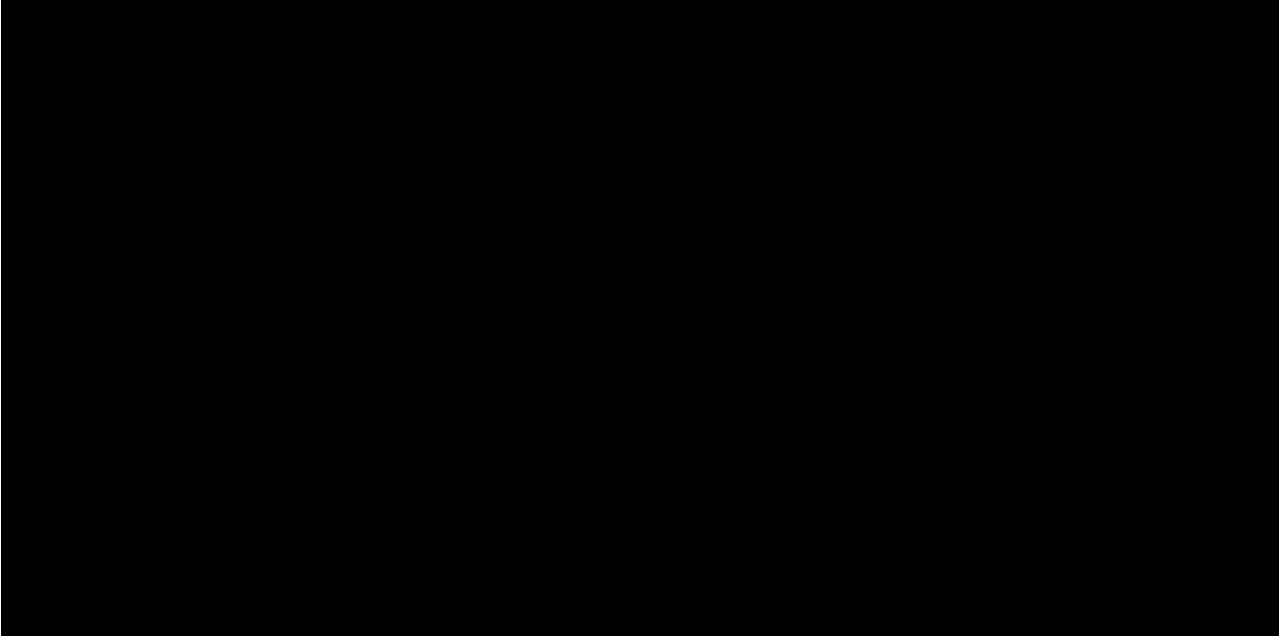
Will the price charged to the third user under OneMusic be the same as the combined prices charged to the first and second users, or will they receive a discount because they have acquired a licence covering both musical works and sound recordings through OneMusic?

We note that APRA is seeking re-authorisation for, amongst other things, its output arrangements – that is, APRA’s licensing arrangements, in particular its blanket licensing schemes.

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.

Paragraph 2 of APRA’s submission describes APRA’s output arrangements the subject of its application for re-authorisation as follows: APRA grants licences in whatever form is most appropriate for users to perform or communicate any of the works in its repertoire.

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.



*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.
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?
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 licence fees*

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.
16. Please also provide any analyses/studies APRA has prepared or obtained during the last 5 years that compares prices charged by APRA to overseas collections societies.

*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).

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. Please provide further information about what information APRA has made available to licensees about which fees under licence schemes are negotiable, and in what categories.

#### *Financial data*

We note that the overall expense to revenue ratio reported on APRA AMCOS' website, and in its 'Year In Review' publications, is for the APRA AMCOS group. We also note that APRA and AMCOS publish individual financial reports on APRA AMCOS' website.

19. For financial years 2015/16, 2016/17 and 2017/18, please provide:

- (a) the expense to revenue ratio for APRA as a standalone entity, and
- (b) an explanation (which includes relevant financial information) of how APRA's expense to revenue ratio has been calculated

#### *Non-commercial licence back*

We note that APRA provides a "non-commercial licence back" option as part of its broader licensing arrangements. Some interested parties have submitted that "non-commercial purposes", as defined in APRA's Articles of Association, is narrow and restrictive such that it does not capture some uses and users that would generally be considered non-commercial. As a result, some of these submissions argue, the non-commercial licence back option cannot be used to license member music to individuals or to organisations that receive public or institutional funding but are not for profit, such as schools and charities. Some interested parties have also expressed concern that the current provision is limited to "purposes online" as, they submit, this does not permit licensing back for broadcast or performance.

20. Please provide further information about:

- (a) APRA's considerations behind the definition of "non-commercial purposes" as defined in Article 17(j) of APRA's Articles of Association

- (b) the circumstances in which APRA envisages the licence back for non-commercial purposes will apply, and
- (c) for the period of 1 January 2014 to 30 December 2018, the total number of times ARPA's Non-Commercial Licence Back has been used by APRA members, in each calendar year.

*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.

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.

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.

We note APRA's submission and confidential attachments 17 and 17A in relation to CLEF.

24. Please provide further details on the implementation phases of CLEF, including:

- (a) when CLEF 1.0 will be made available to users
- (b) when future phases of CLEF will be implemented
- (c) that features that will be included in each implementation phase and how these features will operate
- (d) when the entire CLEF system will be online and accessible to users, and
- (e) the additional expenditure required to facilitate the full implementation of CLEF.

25. We note that APRA submits that CLEF will facilitate more active use of the opt out provision. Please provide more information about how this will occur.

26. Please provide further information on how CLEF will improve distribution processing.

*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.
28. Please explain how this technology impacts (i) the nature and quantum of transaction costs incurred by APRA, original rights holders and users under APRA's current licensing arrangements and (ii) the efficiency and effectiveness of APRA's monitoring and enforcement of compliance with performance rights in Australia.