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5 September 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).

To help us further assess the application, we seek from APRA the information set out at **Attachment A** to this letter as soon as possible and in any case by **20 September 2019**. The information can be emailed to [adjudication@accc.gov.au](mailto:adjudication@accc.gov.au).

I note that some of the information requested at Attachment A may be confidential to APRA. As you know, 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, please clearly indicate this and provide brief reasons for the request.

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.

As discussed with you, we will be in contact shortly to organise a meeting between APRA and the ACCC. The ACCC is still considering submission provided in response to the draft determination, including options to address the very significant concerns expressed by numerous licensees and industry associations about APRA's licence fees, generally and under OneMusic. One option the ACCC is considering, for discussion at the meeting, is a condition of authorisation requiring an independent review to be undertaken of APRA's licence schemes.

If you wish to discuss any aspect of this matter, please contact Gavin Jones on (03) 9290 1475 or at [gavin.jones@accc.gov.au](mailto:gavin.jones@accc.gov.au)

Yours sincerely



David Jones  
General Manager  
Adjudication

## Attachment A – ACCC Information Request

### *Transparency of licence fees*

At the pre-decision conference (**PDC**), the Australian Hotels Association (**AHA**) submitted that to facilitate greater transparency about the licence fees businesses are paying, including why seemingly comparable venues pay different licence fees, industry associations (such as the AHA) should be provided with details about the licence fees venues in their industry pay.

1. Please provide a view about this proposal.

In its submission dated 5 July 2019, Free TV submits that the ACCC's proposed transparency conditions relating to the methodology used by APRA to determine its licence fees should be extended to apply to all licensees, rather than only specific 'licence categories.' In particular, Free TV submits that APRA should be required to provide an explanation of matters taken into consideration in determining its proposed licence fee each time it commences negotiations with a prospective or current licensee.

2. Please provide a view about Free TV's proposal for a transparency condition of this type to apply with respect to all licensees.

### *Licence fee reductions where non-APRA works are performed*

In response to a concern raised at the PDC by Strawberry Fields Music Festival about works performed that are not controlled by APRA, APRA's 9 August 2019 submission states that:

*The relevant scheme under which Strawberry Fields was licensed includes a provision that if the licensee has a reasonable belief that certain performed works are not represented by APRA and provides relevant information (for example the song titles and composer details) and these are verified by APRA, a reduction will apply to the total licence fee. No such request has been made.*

The ACCC notes that APRA's Festival Licence, provided to the ACCC with APRA's application for re-authorisation, provides for a reduction in the licence fee where works performed at the festival are not APRA works.

Clause 2.1(c) of the Festival Licence requires licensees to provide APRA with a list, in a form reasonably required by APRA from time to time, of each musical work performed, including the name of the composer and the duration of the work (Music Use Report).

Clause 5.1 states that if the Applicant has a reasonable belief that certain works which have been performed at a Festival are not APRA works, the Applicant must notify APRA in accordance with clause 2.1(c), including providing the requisite information in accordance with clause 2.5.

Clause 2.5 states that in the event that the Applicant notifies APRA that it reasonably believes that certain works performed at the Festival are not APRA works, then the Applicant must provide APRA, along with such notification with: (a) the names and durations of all works performed at the Festival; and (b) the names and durations of any works that the Applicant considers are not APRA works performed at the Festival.

3. The ACCC notes that the festival licence fee is payable in respect of the performance in public of APRA's works. In this context, please explain why, having provided APRA with the requisite information required by clause 2.1(c), the onus is on the licensee to establish which works APRA does not have a right to charge for, rather than on APRA to establish which works it does have a right to charge for?

4. Please also explain whether APRA automatically applies a reduction to the licence fee if it becomes aware, through the information provided in accordance with clause 2.1(3) that non-APRA works have been performed, and if not, why not?

#### *Local council licence fees*

Some interested parties have raised concerns about licensing arrangements for local councils under OneMusic. In particular, concerns have been raised that the proposed base fee for councils under OneMusic, a flat per person fee based on each council's resident population (with separate rates for rural and urban councils), does not have any regard to actual use of music, which can differ significantly between councils due to factors other than population.

5. Please provide a view about the concerns raised about the licence scheme applied to local councils.

#### *OneMusic – APRA and the PPCA's repertoires*

In response to concerns about discrepancies between PPCA's and APRA's repertoires licenced under OneMusic, APRA's 5 July 2019 submission states that APRA and the PPCA are developing a statement regarding the PPCA's repertoire, to be displayed on the OneMusic Australia website. APRA's submission states that a copy will be provided to the ACCC shortly.

6. Please provide a copy of this statement, or alternatively, advise when it is likely to be available.

#### *OneMusic tariff harmonisation*

APRA has submitted, most recently in its 9 August 2019 submission, that the OneMusic tariff harmonisation scheme is intended to be revenue neutral.

7. Please confirm whether APRA means that the OneMusic tariff harmonisation scheme is intended to be:
  - a. revenue neutral just for APRA or
  - b. revenue neutral for both APRA and the PPCA (and therefore, in aggregate, licensees will not be paying more, assuming customers who were not previously appropriately licenced are excluded)?

APRA's 16 April 2019 submission states that under OneMusic, if a user does not require both APRA rights and PPCA rights, (in most cases) their OneMusic licence fee will be 51.75% of the fee that would apply if both sets of rights were required, regardless of whether it is the APRA rights or PPCA rights that are not required. The ACCC assumes that the level of adjustment reflects APRA/OneMusic's view that where both a musical work and a sound recording are publicly performed, they should have equal value.<sup>1</sup> APRA's submission states that one of the exceptions to this practice will be 'dining', where in the first year of the OneMusic scheme, the discount for no PPCA rights will be 65% and for no APRA rights will be 35%, due to the significant discrepancy between the licence fees under the two existing APRA and PPCA licence schemes.

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<sup>1</sup> For example, OneMusic Australia's events consultation paper, page 8, available [here](#), which cites the Australian Competition Tribunal's 'nightclubs decision':

8. The ACCC notes that for other schemes where there were discrepancies, achieving revenue neutrality would appear to require the OneMusic licence fee to be the sum of the licence fees under the two existing APRA and PPCA licence schemes.

- a) Please advise whether this is the case.

- b) If this is not the case, how was revenue neutrality achieved?

#### *Community radio distribution practices*

APRA's 9 August submission states that:

*APRA has acknowledged that it needs to review its Community Radio distribution practices and has undertaken to the sector that it will consult and amend the practices prior to 30 June 2020. This has been a long term project for APRA and it has been in discussions for a number of years with the CBAA and AMRAP to that end.*

9. Please provide further information about this review, including:
  - a. about the scope of the review, and
  - b. the reasons why APRA has formed the view that its Community Radio distribution practices need to be reviewed (including any concerns APRA has with its current distribution practices, and the discussions between APRA and the CBAA and AMRAP)

#### *CLEF*

APRA's 9 August submission states that:

*APRA acknowledges that of course the detail and granularity of its distribution statements could be improved and will be improved with the implementation of the new CLEF platform. However, most limitations in detail in APRA's distribution statements arise from the limited detail in reporting received from its overseas affiliate societies.*

We note that APRA has provided some information about CLEF in previous submissions.

10. Please provide further information about how CLEF will improve the detail and granularity of APRA member's distribution statements.
11. Please provide an update on when APRA anticipates these features of CLEF will be implemented.

#### *Surveys of APRA members and APRA member stakeholder groups*

APRA's 9 August 2019 submission states that APRA periodically conducts comprehensive surveys of its members and member stakeholder groups.

12. Please provided a full copy of the results of the most recently completed member survey referred to in the submission.

13. If not included in the information provided in response to question 12, please also provide a full copy of the most recently completed survey of member stakeholder groups.
14. Please also provide details of the methodology by which the survey or surveys referred to above were conducted.

### *Resolution Pathways*

APRA's 5 July 2019 submission states that it will immediately make information about Resolutions Pathway, including contact information, prominently available on the APRA website and the OneMusic website.

We note that a Resolutions Pathway page is included on the OneMusic website. However, when viewed by ACCC staff on 28 August 2019, the Resolution Pathways page is only available via the 'Alternative Dispute Resolution' link contained in the menu at the bottom of each page of the website and a link in the 'Find Out More' section at the bottom of the 'About' OneMusic page.

The ACCC does not consider that this would satisfy the proposed condition C5.20 of the ACCC's draft determination: *APRA must establish and maintain a link to information about available dispute resolution processes, including the Scheme, in a prominent location on the homepage of its own website.*

Specifically, the ACCC does not consider that these links are in prominent locations. Nor are they included on the pages on the OneMusic website where licensees would be most likely to look for this type of information, such as the FAQ and contact sections of the website.

The ACCC considers that a prominent location would include, for example, a location that is visible on the homepage without having to scroll down the page.

When viewed by ACCC staff on 28 August 2019, the APRA AMCOS homepage displayed no information about Resolution Pathways. The only place information about Resolution Pathways appears to be available is on the feedback centre page. Albeit, the information is prominently displayed on this page.

15. As noted, the ACCC has proposed a condition of authorisation requiring the display of this information in a prominent location on the homepage of APRA's website. No such condition is currently in place. However, given APRA's statement in its 5 July 2019 submission that it will immediately make information about Resolutions Pathway, including contact information, prominently available on both the APRA AMCOS and OneMusic websites, please advise what steps APRA proposes to take to more prominently display this information.

APRA's 5 July 2019 submission explains that in the interest of maintaining the independence of Resolutions Pathways, APRA has not addressed matters in the ACCC's draft determination relating to the operation of Resolution Pathways.

16. The ACCC understands this position. However, the ACCC would welcome any views APRA considers it appropriate to express in relation to two matters concerning the funding of Resolution Pathways. These are:
  - a. APRA committing a fixed annual amount to funding Resolutions Pathways (block funding), and

- b. funding being provided by APRA for the Resolutions Pathways Governance Committee to meet face-to-face annually.