

**Australian Competition  
&  
Consumer Commission**

**PRE-DECISION CONFERENCE**

**Minutes**

**Authorisation AA1000433  
lodged by Australasian Performing Right Association Ltd**

**19 July 2019**

The information and submissions contained in this minute are not intended to be a verbatim record of the pre-determination conference but a summary of the matters raised. A copy of this document will be placed on the ACCC's public register.

# Pre-Decision Conference: Authorisation AA1000433 lodged by Australasian Performing Right Association Ltd

19 July 2019  
Cliftons Sydney  
Level 13, 60 Margaret Street Sydney NSW 2000

## Attendees

### **Australian Competition and Consumer Commission**

- Sarah Court, Commissioner (conference Chair)
- Stephen Ridgeway, Commissioner
- David Jones, General Manager, Adjudication
- Gavin Jones, Director, Adjudication
- Tessa Cramond, Senior Analyst
- Victoria Christie, Analyst
- Kathryn Gordon, Merger and Authorisation Law Unit

### **Applicant**

#### ***Australasian Performing Right Association Ltd***

- Jonathan Carter, Head of Legal
- Kate Haddock, Partner, Banki Haddock Fiora

### **Interested Parties**

#### ***Council of Small Business Organisations Australia***

- Peter Strong, CEO
- Tara Hight, Policy and Project Coordinator

#### ***Australian Hotels Association***

- Stephen Ferguson, CEO

#### ***Australian Venues Association***

- Maslyn Salt, Director

#### ***Background Providers of Music Association Ltd (BPM)***

- Dean Cherny, Chair
- Stuart Watters, Executive
- David O'Rourke, CEO, Nightlife
- Mark Brownlee, Managing Director, Nightlife

### ***Electronic Music Conference***

- Jane Slings, Director

### ***Free TV Australia***

- Bridget Fair, CEO
- Sarah Waladan, Head of Legal and Regulatory Affairs
- Stephen Peach, Advisor

### ***Independent Cinemas Australia***

- Scott Seddon, President

### ***Live Nation Australia***

- Ewen Craig, Head Tour Accounting

### ***Resolution Pathways***

- Shirli Kirschner, Resolution Facilitator

### ***Restaurant and Catering Industry Association***

- Wes Lambert, CEO

### ***Strawberry fields Music festival***

- Tara Benney, Director

### ***Universities Australia***

- Liz Stanton, Policy Director, Copyright
- Miguel Velez

Conference commenced: 9:30am AEST

## Introduction

**Commissioner Court** welcomed attendees, made some introductory remarks outlining the purpose of the conference, declared the pre-decision conference open and invited the party that called the conference, the Council of Small Business Organisations Australia (COSBOA) to make an opening statement.

### *Opening Statements*

**Peter Strong**, CEO of COSBOA, noted that COSBOA has not been involved to date in the process for considering APRA's application for re-authorisation. Mr Strong said that APRA is considered a powerful organisation by small business, and that small businesses often have concerns about APRA that they are not prepared to express publicly, but which they have relayed to COSBOA.

Mr Strong raised the following points:

- Australia has the highest performing rights licence fees in the world. There is a big difference between the fees charged by APRA and those charged by collecting societies in other countries. High fees discourage people from playing music and can make it too expensive for businesses to use background music or put on live music.
- APRA's licensing arrangements are complex and small businesses struggle to understand the numerous licence categories. APRA should look to how other collecting societies explain their licence categories to licensees. Canada has a one page document outlining its retail, service and dining licence category, which is easier to understand than the many pages that APRA produces.
- APRA cannot accurately pay artists for use of their music because often APRA does not know what music has been played.
- COSBOA supports the ACCC's proposed conditions but APRA should be required to apply them within 12 months, and the ACCC should reassess APRA's progress after this period.

**Commissioner Court** asked whether, in COSBOA's view, these issues could be addressed by APRA taking non-exclusive assignment of its members' rights. **Mr Strong** said that the current exclusive nature of APRA's arrangements prevent people from being able to use disruptive technology and make it difficult for artists to control their music. Removing exclusivity might facilitate the creation of alternative licensing arrangements that would give more money to members.

**Commissioner Court** asked Jonathan Carter, on behalf of the applicant, APRA, if he wished to address the conference.

**Jonathan Carter**, Head of Legal began with an apology from APRA's CEO, Dean Ormston, who is unable to attend the conference.

Mr Carter raised the following points:

- There has been a cultural shift in APRA's organisation in the last 10 years. APRA has invested significantly in its alternative dispute resolution scheme, published plain English Guides to address the complexity of its licence categories and facilitated more direct

dealing between its members and music users. That is not to say that more could not be done and APRA acknowledges that changing its arrangements is an ongoing process.

- APRA agrees with COSBOA that the majority of APRA's stakeholders are small businesses. Many small businesses do not have a detailed understanding of the complexities of music copyright law. Many of the issues small businesses have raised reflect concerns that APRA has not adequately explained these complexities rather than underlying issues with APRA's arrangements per se.
- In his own role at APRA, Mr Carter is responsible for complaints handling and disputes, which provides him with a good idea of where stakeholders are unhappy. The ACCC's authorisation process and the Code of Conduct for Copyright Collection Societies are integral to how APRA operates. The theme of transparency running through the ACCC's Draft Determination is important and APRA is committed to doing better in this area.
- APRA has reviewed all the submissions in response to the ACCC's Draft Determination placed on the public register in the last few days. APRA is not in a position to respond to these submission today but will do so in writing over the next week or so.

#### *OneMusic Australia (OneMusic)*

- A number of submissions raise concerns about OneMusic and in particular, the consultation process APRA conducted about its introduction. APRA consulted with 27 industry associations about OneMusic and attempted to reflect feedback from this process into its licence schemes. APRA had a number of constructive engagements with industry associations, including the Australian Hotels Association and Clubs NSW. In these engagements, both sides made concessions in a bona fide attempt to achieve a good outcome.
- APRA acknowledges that it could have done better in this consultation process. For example, APRA likely relied too heavily on putting consultation papers on its website and inviting feedback, and they could have travelled more to meet with stakeholders face to face. However, it was a good faith attempt to roll out the program and the process involved lots of constructive discussions with stakeholders.
- APRA is confident OneMusic will overall be beneficial for small businesses. Businesses will only need a single licence, each category of licence will have its own plain English guide and all licensees will have access to the Resolution Pathways alternative dispute resolution scheme.

#### *Distribution practices*

- A number of submissions have called upon APRA to be more transparent about its distribution practices. Getting the distribution of licence fees right is at the core of what APRA does. However, it would be unfair to require small businesses to report on 100 percent of the music played; this level of accuracy in reporting requires resources that many small businesses do not have. It is therefore necessary to balance the tensions between accurate distribution and burdensome reporting, though APRA can do more to improve transparency of its distribution practices.
- APRA acknowledges there are some unhappy licensees and members, but overall there is a high level of satisfaction amongst members about APRA's operations. In a survey of 5,000 writer members conducted by APRA, APRA received an 88 percent overall satisfaction rating, and 80 percent of survey respondents were satisfied with APRA's distribution practices.
- APRA's process for distributing royalties to its members is highly complex and involves processing many millions of lines of data per quarter. There is a misconception that APRA bases its distributions primarily on commercial radio airplay logs. This is not the case; APRA collects play data from many different sources. For example, for all major events, distribution is based on set lists provided by event organisers. For smaller

events, APRA has an app that encourages self-reporting. For nightclubs, distribution is based on music-recording data (45 percent), club charts (45 percent) and commercial radio logs (10 percent). Where background music suppliers agree to provide their data, this data is used.

- A number of interested parties have pointed to music recognition technology as a solution. Music recognition technology improves the accuracy of reporting music played. However, it is expensive and venues do not always agree to have it on their premises. APRA has, and continues to, adopt these technologies. However, they involve a trade-off between cost and accuracy of reporting.
- APRA welcomes the conditions of authorisation proposed by the ACCC to improve transparency of its distribution arrangements.

#### *Term of authorisation*

- Five years is an appropriate term of authorisation but it will not take five years for APRA to adopt and implement the conditions proposed by the ACCC. Some will be adopted immediately and others in the timeframes prescribed by the ACCC, for example, within three months. There will be consequences for APRA if the conditions are not complied with.

**Commissioner Court** opened the conference for discussion and asked each other party in attendance if they wished to address the conference.

**Peter Strong** (COSBOA), explained that he wished to make one further point which he had not made in his opening statement. He would be meeting with Senators to talk about holding a senate enquiry into APRA/AMCOS.

**Stephen Ferguson**, President of the Australian Hotels Association (**AHA**), raised the following points:

- The OneMusic consultation process was difficult but APRA gave the AHA every opportunity to provide input into the proposed scheme. Both APRA and AHA made concessions and ultimately reached an agreement. APRA listened and they worked through their issues together.
- AHA's issues with APRA are not so much around the exclusivity of its arrangements. APRA serves a purpose, and the AHA considers it is necessary to have a centralised body to collect licence fees. Even if AHA members could deal with APRA members directly, in practice, with APRA having 100,000 members AHA members would still need to go to APRA for performing rights licences.
- For AHA, the core issue is APRA's market power and the significant information asymmetry that exists between APRA and its licensees. APRA holds all the information and all the power in negotiations and there is no alternative to APRA.
- APRA does not provide licensees with enough information about how their licence schemes work and how licence fees are determined. On the information APRA currently provides, it is difficult to understand why two comparable venues are paying different licence fees.
- APRA's arrangements do generate a net public benefit and the AHA agrees that authorisation should be granted. However, the proposed conditions aimed at introducing greater transparency to APRA's arrangements do not go far enough and will not adequately enable AHA to assist its members to determine whether they are paying too much. APRA should be required to produce and maintain a spreadsheet with details of what every venue is paying. This information will enable AHA to perform the necessary checks and balances to ensure their members are being treated fairly and equitably.
- Mr Ferguson sits on the Resolution Pathways governance panel and considers that Resolution Pathways is doing a good job. However, there will likely be a significant

increase in the number of disputes referred to the scheme with the introduction of OneMusic. There needs to be as little input as possible from APRA into the operation of the scheme to minimise the risk of conflict of interests.

- **Commissioner Court** asked whether AHA member's' concerns would be resolved if members had access to information about how much each venue is paying to allow the AHA to perform checks and balances. Mr Ferguson replied that it would; the AHA wants as much information as possible to assist its members.

**Maslyn Salt**, Director of the Australian Venues Association (**AVA**), raised the following points:

- The AVA predominantly agrees with the points raised by the AHA. The AVA has members who are facing substantial increases to their licence fees under OneMusic. OneMusic was introduced without adequate consultation; AVA was offered one consultation meeting but its requests for further meetings were ignored.
- There is no equity in the way APRA determines its licence fees and there are inconsistencies between the fee metrics APRA uses to determine licence fees in each licence category (for example nightclubs and pubs). APRA's licensing arrangements are complex and it is extremely difficult for licensees to understand and negotiate licence fees.

**Commissioner Court** asked how many members the AVA has. **Mr Salt** replied AVA has 130 venue members and has been operating for around one and a half years. Members are a mixture of independent venues, small bars, clubs and nightclubs.

**Commissioner Court** asked if it was possible to be a member of both the AVA and AHA. **Mr Salt** said it was.

**Commissioner Court** asked whether the AVA's main concern was that its members were experiencing increases to their licence fees with the introduction of OneMusic. **Mr Salt** replied that the AVA has two main issues: the magnitude of the fees and the way the fees are applied. APRA claims that OneMusic will result in efficiencies, but efficiencies are not being passed on to venues in the form of reduced licence fees. Instead, fees are increasing.

**Dean Cherny**, Chair of the Background Providers of Music Association, read out a prepared statement (**attached**).

**David O'Rourke**, member of BPM and CEO of Nightlife, then made the following points:

- APRA's copying licence is applied to consumer digital services which exposes businesses to the risk of inadvertent unlicensed use of recorded music when a commercial streaming service is used in a commercial context. There should be equity in the terms of licenses offered by APRA to background music suppliers and these types of businesses.
- BPM's understand that it is difficult to improve the accuracy of distribution, but APRA has to try. When venues use consumer-streaming services, there is not accurate data available on what music that business plays. Spotify data is not useful in this context because music played in a business is different to music played for personal use. BPM's can provide data that directly identifies each song played by the business using a BPM.
- Authorised background music suppliers should be permitted to collect public performance tariffs on behalf of OneMusic for venues they service and provide play data to APRA that is tied to revenue collected at the end-user level. Background music suppliers don't have to rely on the venue writing down the music played because they have technology which records this information. APRA should use this play data to improve the accuracy of its distributions to members.

- **Commissioner Court** asked if they have suggested any specific additional conditions. **Mr O'Rourke** replied yes, outlined in our recent submission.

**Bridget Fair**, CEO, Free TV Australia made the following points:

- Free TV Australia has a generally positive relationship with APRA. However, APRA is a monopoly provider of an essential service for television networks. Free TV Australia members are unable to walk away from the negotiating table, as every piece of broadcast content has music embedded within it. Free TV Australia would like to see conditions of authorisation imposed to address this.
- There is a lack of constraint on how APRA approaches negotiations. Free TV Australia members' fees have continued to increase, irrespective of market conditions. In other markets, prices reflect market conditions and capacity to pay. APRA should be required to take into account market conditions when negotiating licence fees.
- Free TV Australia supports the calls for greater transparency, but considers that the transparency conditions should also apply to big businesses, not just small businesses that fit within one of APRA's licence categories. However, this transparency is likely to be of limited utility; other constraints on APRA are needed.
- Adoption of the ACCC's Copyright Tribunal guidelines in negotiations could operate as a constraint on APRA when negotiating licence fees. Currently, the guidelines are used in the context of a dispute in the Copyright Tribunal. However, Free TV Australia believes the Copyright Tribunal is prohibitively expensive, and that APRA should be required to have regard to the Copyright Guidelines in negotiating with licensees.

**Jane Slingo**, Director, Electronic Music Conference (**EMC**), made the following points:

- The EMC agrees with a lot of the points made by others about OneMusic. There has not been enough consultation about OneMusic with the electronic music sector.
- The EMC hosted consultation in both 2018 and 2019 with artists, artist managers and venue owners that included questions about OneMusic. Results varied by city (Sydney, Melbourne and Brisbane) but in 2018 in the vicinity of 70 percent to 80 percent of respondents did not know about OneMusic. In 2019 around 60 percent did not know about it. This is despite the consultation in some cities (Sydney and Queensland) occurring after OneMusic had launched.
- Until APRA has properly consulted about OneMusic it should not be included in any authorisation.
- Ms Slingo has discussed APRA with many other artist managers and two issues are always raised:
  - Lack of data in royalty statements –royalty statements should enable artists to review their APRA payments. However, the information currently provided in APRA's statements does not permit artists to do this. APRA's statements only disclose the total royalty payments and so artists are not able to pick up any discrepancies in their payments. It should be a condition of authorisation that such data is provided to artists.
  - Licence fees – licence fees should be reviewed as they are currently at unsustainable levels for some smaller businesses. As a condition of playing, some major festivals are requiring artists to directly license performing rights to



the festival. Some artists are opting to 'self-ticket' rather than be paid a fee by venues. There are cases where the licence fee for the venue is more than the artist is getting paid. APRA's fees for venues and festivals are higher than the fees charged by overseas collection societies, which undermines the viability of these operations.

- The EMC supports the proposed conditions around transparency. It would be great to have key performance indicators (KPIs) around the data provided.

**Scott Seddon**, President, Independent Cinemas Australia made the following points:

- The most frequent question ICA members ask about APRA is why their fees are so expensive compared to overseas collection societies. Mr Seddon said that the equivalent fee in New Zealand is a fraction of that charged by APRA and asked why a cinema in Sydney should be charged more than a cinema in Christchurch.
- Mr Seddon questioned whether it is in consumers' interests to continue to let APRA operate as a monopoly. Mr Seddon stated that competition generally leads to efficiencies but that APRA is not becoming more efficient, and cinema operators are not seeing reductions in fees charged by APRA. Mr Seddon asked whether, in the long run, it would be better to create an environment where others were able to compete with APRA in licensing performing rights.
- Mr Seddon stated that the way performing rights licensing operates in the cinema industry needs to be further looked at. Cinema operators are charged a fixed percentage which they pass on in the ticket price. However, around 50 percent of the price of a cinema ticket goes to the film studios. Therefore, for cinema operators to receive one dollar from ticket sales, they need to collect two dollars. If the fees charged by APRA increase so does the payment by the cinema to the studio.
- Mr Seddon said that there had been talk of the industry creating its own licensing body because in the cinema industry, data about music played is easy to monitor and collect. There is a global push for this to occur and at the end of the day, if it does occur this will probably deliver better returns for artists.

**Ewen Craig**, Head Tour Accounting, Live Nation Australia made the following comments:

- Live Nation Australia is a multibillion dollar, multinational, company. Out of all the countries in which Live Nation operates, Australia is one of the most competitive markets for contracting artists for live performances.
- In dealing with APRA there is no competitive constraint, licensees are told the rate they have to pay. When the rate increased by 50% in five years there was consultation but the rate increased still went ahead. There is also a lack of transparency as to where that money goes.
- If Live Nation Australia, a major promoter, has such little traction in its dealings with APRA, how are small businesses supposed to have any traction?

**Dean Cherny (BPM)**, asked whether the introduction of OneMusic increased APRA's market power and thereby the balance of public benefits and detriments of its arrangements.

**Commissioner Court** responded that it may. Previously there were two monopolies (APRA and the Phonographic Performance Company of Australia (the **PPCA**)) and users had to deal with both. However, they are not competitors because they license different things.

Under OneMusic, APRA collects licence fees on behalf of the PPCA. Whether that increases APRA's market power is something the ACCC has to consider, as is any conditions that may address this issue in the event that it does.

**Wes Lambert**, CEO, Restaurant & Catering Industry Association said that he agreed with the AHA's comments and made the following additional points:

- The Restaurant and Catering Industry Association represents 47,000 venues and is probably the largest group of licensees in Australia. Despite this, there have been no complaints about APRA from restaurants, cafes and caterers using APRA's complaints tools. One reason for this is fear of APRA.
- Fee structures need to be simplified and more transparency is needed. A database would help businesses better understand why they are paying the fees they are paying.
- It is important that APRA members are paid the royalties they are due, and this needs to be calculated fairly.

**Tara Benney**, Director, Strawberry Fields Music Festival, said that Strawberry Fields Music Festival agreed with what had been said already at the conference and made the following additional points:

- Increases in licence fees under OneMusic will reduce the amount of music played at festivals.
- Strawberry Fields Music Festival does not support re-authorisation. One organisation exclusively licensing performing rights is not healthy and alternatives to APRA are needed.

**Liz Stanton**, Policy Director, Copyright, Universities Australia said that Universities Australia is agnostic to the outcome of this authorisation process. Universities Australia has attended the Pre-Decision Conference as it is currently in a negotiation with APRA on behalf of a group of universities.

**Shirli Kirschner**, Resolution Facilitator, Resolution Pathways, made the following comments:

#### *Background*

- In the ACCC's 2014 assessment of APRA, the ACCC required APRA to establish an external dispute resolution scheme which serves two purposes: it provides access to an external process for dispute resolution and it allows trends to be picked up.
- From a dispute resolution perspective, one advantage of being a monopoly is that it is easier to pick up trends in disputes.
- Resolution Pathways is yet to see a large volume of disputes. Ms Kirschner noted that it will take time for these numbers to increase as awareness of the process and confidence in it grows. Resolution Pathways needs to prepare for the likely increase in disputes referred to it as a result of the introduction of OneMusic.

#### *Governance*

- Submissions have called for increased independence of Resolution Pathways. There was an independent review of the scheme, as required by the ACCC's conditions of the 2014 authorisation. True "independence" would require the scheme to be taken over by

a third party such as the Copyright Tribunal or the Small Business Commissioner, which would remove some of the scheme's flexibility. What is really important is ensuring the scheme is operated by an external and disinterested party, with checks and balances in place.

- Resolution Pathways would like to see its current stakeholder group maintained but would also like to see a smaller governance committee established to ensure the scheme remains external and transparent. With 16 members, the stakeholder group is expensive to run and decision-making is difficult. Ideally, a smaller governance committee would have an independent chair (who would receive an honorarium) and the committee's role would include reviewing complaints about the scheme or the Resolution Facilitator, and setting KPIs for the scheme.
- The Stakeholder Group should be maintained for communication and consultation between stakeholders and the scheme.

### *Funding*

- Funding provided by APRA should not be tied to individual matters because if APRA does not want a matter to proceed, they can decline to fund it. A block funding arrangement removes this concern.

### *Services*

- Originally, it was envisaged that most disputes would be licensee disputes. In practice however, most disputes so far have been member-to-member, and there have been very few licensee disputes. It will likely take time and increased communication about, and promotion of, the scheme before we see an increase in the number of licensee disputes.
- **Commissioner Court** noted that a number of interested parties have suggested that licensees are scared to raise issues with APRA. **Ms Kirschner** said that most licensees will initially go to their industry group when a problem arises, rather than coming to Resolution Pathways. Ms Kirschner said that Resolution Pathways will be introducing software for providing anonymous feedback about APRA.

### *Fees*

- Intuitively, people want to access Resolution Pathways for free and think APRA should pay the entire cost of resolving the dispute. However, parties often develop an attitude of indifference to the cost of resolving a dispute if they are not required to contribute to the cost of it. A benefit of being required to contribute to the cost of the resolution process is that each party has an incentive to resolve the dispute in an efficient and timely manner.
- At the recommendation of the Stakeholder Group, APRA allows all writer members and licensees 45 minutes with the Resolution Facilitator at no cost. Ms Kirschner encourages artists who contact Resolution Pathways about a dispute, but that are not APRA members, to join APRA in order to access the free dispute resolution service.

**Commissioner Court** then called for any further comments.

**Mark Brownlee**, Managing Director, Nightlife Music, said that APRA's fees have increased because it has remained unchecked as a monopoly. Mr Brownlee said that APRA looks for opportunities to increase tariffs and referred to "tariff creep", whereby tariffs increase steadily over a long period of time. Mr Brownlee said that licence fees are generally not challenged because recourse to the Copyright Tribunal is too expensive.

Mr Brownlee suggested that APRA should move to the non-exclusive acquisition or assignment of members' rights. Single source licensing, such as through APRA, is necessary for certain classes of users (for example television stations) but other users (such as background music providers, concert promoters) could license directly with APRA members. Or, other businesses could aggregate APRA members works into smaller bundles and offer licences to users in competition with APRA.. Under a non-exclusive arrangement, members could exploit their works as they choose. Mr Brownlee said that APRA's current opt out and licence back provisions, which APRA claims facilitate direct dealing, are not effective.

**Commissioner Court** invited Jonathan Carter, on behalf of APRA, to respond to the key issues raised at the conference and to make any closing remarks. **Mr Carter** made the following points:

- APRA is not seeking authorisation for the joint venture between APRA and the PCCA, nor "quasi-authorisation" for the PCCA. However, the conditions of authorisation will apply in respect of licensing under OneMusic.
- Licence fees are not always higher than in other countries; sometimes they are lower. APRA's live performance licence fee is below the global benchmark. Where fees are higher, this can be because of a precedent set by a Copyright Tribunal decision or because of differing market conditions. Music is valued differently in different markets.
- Suggestions that Australian songwriters do not receive royalties when their works are licensed through a blanket model due to inaccuracies in music reporting are incorrect. The new transparency arrangements APRA will be adopting pursuant to the conditions proposed by the ACCC will demonstrate that. APRA will disclose the various data sources that it uses and the amounts distributed to Australian songwriters.

No further comments were made. **Commissioner Court** closed the conference by noting that the deadline for providing further submissions following the pre-decision conference is 5 August 2019. **Commissioner Court** explained that the ACCC would provide participants with a record of the conference, which would also be placed on the ACCC's public register.

Conference closed: 12:30pm

# BPM Ltd

Background Providers of Music Association Ltd ACN: 631 831 831

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

17/07/2019

Dear Mr Jones,

## **Background Providers of Music Opening Statement – APRA Authorisation Pre Decision Conference**

As Chairman of the BPM I would like to start by thanking the ACCC for this opportunity to meet and discuss the reauthorisation of APRA in this forum today.

From the outset it is important to state openly that currently we are opposed to the re-authorisation of APRA without significant extensions to the conditions outlined in the draft determination. Whilst we respect and understand the challenges faced by APRA in the undertaking of their role, we feel that unless more stringent conditions, (backed by realistic KPIs that are tracked) are imposed, that the behaviour of APRA will not change to the benefit of the public interest as demonstrated during the last 5 years and amped up in the last 12 months. Our goal today is to outline the key role we see for the background music providers as the conduit by which the APRA can achieve the transparency targets we hope the ACCC will set, as the only genuine provider of real data that links the use of music to the creator of the content.

We are here for one purpose; to debate the public benefit of authorising APRA for a further term as an effective monopoly for publishing here in Australia. And based on the recently launched One Music Australia as a joint venture between APRA and PCCA, the pseudo authorisation of this new entity, which we now see as an effective monopoly for both sound recordings and publishing rights here in Australia.

As a unified voice for the bulk of Australia's background music companies, we are gravely concerned about the future of our industry. We are a misunderstood segment. The value we deliver is sometimes difficult to measure. But we are a critical cog in the Australian music industry that plays the essential role of linking the user to the creator. And that gives us a unique perspective on the performance of APRA, the perception of One Music and the public benefit through the entire ecosystem of an authorised APRA. Furthermore, we can highlight the massive public detriment should the background music sector implode, which is a realistic concern should APRA's behaviours remain unchecked.

Background music services pick the music that is all around us every day. And whilst some may overlook this role and the difficulty of doing it well, there is no denying that the music we play in your local pub, restaurant, gym, retail outlet, hotel and everything in between has a massive impact on the public every day and has significant Australian cultural and economic impact that reaches far beyond just the music industry. We help people discover music. We get them to stay longer, spend more and create communities based on the rich experiences we create in public places. And we generate the demand and interest in music that introduces people to a personal music service or helps to sell out a live performance. We are data rich and passionate about local artists and want a world where revenue and accuracy are valued in equal measure.

Consumer services, like Spotify and Apple Music, whilst very significant in the personal domain are exactly that, personal services akin to your local book library where the user has access to all the worlds music to play privately. They are not licensed nor intended for the public domain. And when they are used in the public they do so in defiance of their terms of use and without the expertise of a curator to maximise the cultural and economic impact that a background music service provides. Putting at risk the public economic and cultural benefits that music should deliver, primarily for Australians. And of course, used in stealth, provide zero data to OneMusic to enable accurate payments.

APRA exist to license organisations to play, perform, copy, record or make available their members' music, and then distribute the royalties to their members. It is a difficult task and we respect the challenges they face with the explosion of content and rights, born from the streaming industry. However, nowhere in their mandate does it say that their powers should extend to deciding for the public what the best experience is for them or create licenses to financially gain from services never designed for that environment. In fact, to the contrary, their authorisation is purely to maximise the public benefit of music. Unfortunately, APRA appear to have interpreted this as, derive as much revenue as possible for their members at all costs, including accuracy.

Revenue is important. And yes, APRA have done well in the past 5 years to consistently grow revenue whilst managing the administration costs. But, what have they done to improve transparency and the accuracy of distributions? From our perspective, very little, in fact throughout this authorisation process and the formalisation of One Music they have actually doubled down on the pursuit of revenue at the expense of accuracy highlighted perfectly in the following three cases that directly impact and threaten background music providers:

1. In response to the growing issue of piracy in public places through the incorrect use of Spotify, Apple Music etc. APRA and now One Music opted to create and heavily promote a license to capitalise on the revenue opportunity, knowing that it exposes users to breaches of their end user license agreement and with highly questionable content coverage. And most critically, with full knowledge that they would receive zero play data from the use and hence have no clue who to pay. Generating revenue whilst exposing venues to risk, directly competing with the background music providers they exclusively license and creating no path to any form of accuracy in the royalty distribution. Justified by saying that they have the legal right and the obligation from their board to collect revenue wherever there is a use. Creating no public benefit for anyone other than APRA. Affirming a revenue first mandate.
2. Significantly reducing the incentive and scope of coverage for background music providers to collect public performance revenues on behalf of One Music. During the previous authorisation period, many of the background providers worked with APRA and PPCA to collect monies from a broad range of public performance tariffs on behalf of the societies. It was efficient, much simpler for the venues and crucially came with real play data matched against the collected revenue that empowered APRA and PPCA to be accurate on who they paid and how much. Under One Music this is all but gone. The fee offered to industry for this service means that any supplier continuing to collect on their behalf does so at a loss and for a vastly narrower set of tariffs. Clearly One Music wish to manage licensing directly, cutting the service provider out, increasing the revenue for APRA and PPCA, making it harder for the end user and removing any access to the actual play data in each venue. Again, revenue over accuracy as a distorted way to benefit the public.

3. The BPM want OneMusic to value our play data. We don't want to see APRA issuing royalty payments via analogy and we don't understand why this is the norm in 2019. We don't accept that the admin costs to achieve accuracy make it impossible. We don't think that blending radio plays, charts, personal service use, small pools of background music plays and a few other sources is good enough. We know that music played in public is very different to music played for personal domains. For example, how would the music played in a hotel lobby, spa, high end restaurant, jazz café or countless other highly genre specific domains possibly be paid correctly by balancing analogy of the charts, radio, or a personal streaming service? We have accurate data that can be linked back to individual venues and the tariffs they pay that would let APRA and OneMusic be accurate. And, even if their admin costs went up in the short term, we believe APRA members (particularly Australian artists) would accept this over analogy so that the right person gets paid something rather than the wrong person paid something a bit more. Under OneMusic and in direct background licenses with APRA we cannot see any impetus to use real data. We see huge efforts to widen the scope of collections and increase revenue. And despite repeated attempts, we see no evidence of a genuine attempt to work with us, the ONLY ones who have the data and hence can deliver accuracy, to make this a priority. Rather we see Copying Tariffs, reductions in our scope of collections and no interest in fixing the data problem. Again, a revenue first approach, wrongly assuming that money is the only thing in the public interest.

Finally, we want to make it clear that the BPM and our peers understand the role of performing rights societies and that our expectations on a timeline for accurate distributions are realistic. But to restate our position in order to support re-authorisation we need to see stronger conditions, backed by regularly monitored KPIs as the honourable Trevor Evans suggested, that mandate transparency and accuracy via real play data moving forward. Anything less, in our opinion will not have a significant impact on how APRA conduct their business, nor adjust the current status quo to encourage, even mandate closer ties between technology provider and performing rights societies to use data to redress the imbalance between revenue and accuracy. The background industry is the only bridge that makes transparency possible and we implore APRA and the ACCC to consider the above points through the lens of public benefit and to recognise that the only answer is through collaboration, not short-term revenue hunting.

Thank you I will now hand over to David to address our concerns directly and to ask a few questions to help us assess our role in the future of the music industry and the public benefit to us of a re-authorised APRA and a pseudo authorised OneMusic.