



ARTS LAW CENTRE OF AUSTRALIA

Submission – Draft Determination regarding Application for revocation of A91367 - A91375 and the substitution of authorisation AA1000433

4 July 2019

ABOUT THE ARTS LAW CENTRE

The Arts Law Centre of Australia (**Arts Law**) welcomes the opportunity to respond in respect of the Draft Determination regarding Application for revocation of A91367 - A91375 and the substitution of authorisation AA1000433.

Arts Law is Australia's only community legal centre for the arts sector. Our area of expertise is the provision of legal advice regarding intellectual property (**IP**) matters affecting artists and arts organisations. Arts Law provides business advice, professional development resources, education and advocates on law and policy reform for the benefit of the creative sector.

Artists in the Black (**AITB**) is a specialist program at Arts Law and facilitates legal advice and information about legal issues for Aboriginal and Torres Strait Islander artists and communities. We also advocate on issues relating to cultural appropriation. Our experience is that Indigenous Cultural Intellectual Property (**ICIP**) does not have adequate protection under copyright law and that Indigenous artists are in a sadly unique and vulnerable position in relation to enforcing IP rights in their works which are often of significant cultural and community value.

Arts Law is a non-profit organisation which derives no direct financial benefit from the trade in the works and IP rights of the artists we advise. This positions us to provide independent comment, though clearly with artists' interests foremost in our reasoning.

Our comments:

Arts Law is pleased to comment in relation to the Draft Determination dated 5 June 2019.

Arts Law supports APRA AMCOS being re-authorized based on the below comments.

Our clients include composers, performers and music producers (**music industry creatives**). Regularly, those music industry creatives are members of APRA AMCOS and in most instances, have been referred to us for assistance by APRA AMCOS.

Increasingly, over the last four years, **Arts Law has worked with APRA AMCOS** to deliver workshops to music industry creatives. Last year Arts Law applied for and received APRA AMCOS "core funding" to support the provision of legal workshops for music industry creatives in most states and territories. Arts Law also provides face to face and over the telephone opportunities for APRA AMCOS affiliated music industry creatives in respect of legal issues in relation to their creative practice or business. Commonly, these issues relate to:

1. Unauthorised/unlicensed uses by third parties of our client's copyright materials;
2. The copyright and financial interests of bands or creative collaborations as between the members;

3. Small business compliance advice;
4. Music industry management;
5. Rights ownership and management including the role of collecting societies such as APRA AMCOS and the PPCA; and
6. Music recording, publishing and distribution.

In our experience, APRA AMCOS has been **active in referring legal queries** to Arts Law including disputes between members and non-members. They have, on the occasions we have requested such information, **been efficient and transparent** in providing details about registration of works, royalties accrued and the nature of and basis for calculations of distributions or licences we have enquired about from time to time. They have actively **encouraged their membership to access our services** through their newsletter and have included Arts Law at panel events including their annual Meet the Locals events.

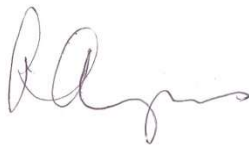
In our experience over the years of providing legal support to emerging music industry creatives, many would lack the financial support, legal negotiation skills, time and willingness to directly licence the rights they have granted to APRA AMCOS. In the event of those licences becoming non-exclusive it is unclear what, if any, benefit would flow to many of our music industry creative clients. It has been our experience that many have signed on to licences for the distribution of their music without clearly understanding their rights and responsibilities under those contracts, with little to no transparency available as to the way in which any entitlements are calculated. Arts Law considers that this continues to point to the ongoing importance of supporting the education and skills sets of music industry creatives so that they can more meaningfully engage in the arts economy. Without a more informed, legally empowered music maker in the picture, our concern is that it is very difficult to predict how a non-exclusive collecting society licence might play out in practice as many of the clients we represent are legally and financially vulnerable.

Our advice to APRA AMCOS members includes, where relevant, the opt out and licence back options currently available, however it has been our experience that in the main, only those music industry creatives with substantial legal and financial means, with more developed business practices opt for this flexibility. We understand that APRA AMCOS continues to refer any music industry creatives with legal queries about how this might affect their rights (including their arrangements with third party distributors) to us or to other legal services to assist those music industry creatives in understanding how this might work from a source external to APRA AMCOS themselves.

We consider that in the event that APRA AMCOS was required to provide further information about the distribution of royalties to its members, and to publish details of accounting and distribution of licence revenue (and, if requested by a licensee, provide detailed information about particular rights payments made pursuant to a licence) that this would enhance the transparency of their licensing and distribution and reduce the likelihood of disputes and complaints in relation to licensing and distribution. It is worth noting, however, that the representation of such complaints in the advice provided by our service are reasonably low in comparison to the music creative member to member disputes (primarily between musicians who are in creative collaborations, for example).

CONCLUSION

Arts Law supports the authorisation of APRA AMCOS and Suzanne Derry, Director, National Partnerships and Programs| Principal Solicitor is happy to discuss this submission at your convenience on (02) 9356 2566.



Robyn Ayres

Chief Executive Officer

Arts Law Centre of Australia



Suzanne Derry

Director, Partnerships and Programs

Arts Law Centre of Australia