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**From:**  
**Sent:** Monday, 28 January 2019 11:13 AM  
**To:** Jones, Gavin; Macrae, Tess; Channing, Darrell; Adjudication  
**Subject:** A commentary on APRA / Submissions for ACCC's public register

The ACCC: Its mandate is to protect consumer rights, business rights and obligations, perform industry regulation and price monitoring and prevent illegal anti-competitive behaviour.

If the ACCC refused to issue APRA a license, users of content and artists would be forced to use ASCAP/BMI or other international structures APRA is already in partnership with, if law would allow? More than most of the revenues collected by APRA potentially go abroad. Its stated by the ACCC that the benefits of APRA outweigh the costs. Where is the ACCC's research to show this? Or even an unbiased view?

Landscape under APRA.

APRA has had the same system in place since 1926, in 1926 no internet or computer was here though, it was not possible for people to publish music without much of an effect without a publisher. More than most members of APRA are not signed with a publisher. & Artists not with APRA perform in a context controlled by APRA. The result is that artists not with a publisher both online and in a live situation are in many instances paying the platform or venue for the public to hear what they create.

Recently EMI & Sony music merged, in some territories the organisation controls up to 70 percent of popular published music content. For every 500 dollars that an artist or publisher collects, the APRA constitution gives that person or company an extra vote. This means that if someone on APRA's board would behave in way not suitable to Sony music's board of directors, the company would have a good chance of voting that member off the board.

Although APRA is regulated by the ACCC, the ACCC is not able democratise the structure. Laws written for publishers in 1926 support APRA's commercial interests and structure. Commercial interests influence both government & public opinion on the value of copyright. APRA's current structure puts the price of well published music content at the same cost as content with little or no economic significance. This creates unnecessary costs for non-commercial structures using content created in a non-commercial context.

APRA gives out grants to artists and has music awards, to some extent it could be said that APRA has an impact on how music & print culture is moulded, yet they are not a democratic organisation. The Australian

people do not vote for the board of APRA. APRA answers to a couple of large publishing houses, and their corresponding artists. Decisions that impact the way royalties are collected are made in the interest of content created before the internet and the personal computer.

## APRA landscape compared to ASCAP/BMI

Artists in the US, are not bound by exclusive conditions. Rather than looking at the potential hurdles that would involve APRA changing to a system like the US. Why not just look at how much more productive the US music business is than the Australian one. Artists in Australia are able to join ASCAP, yet APRA holds a lot of influence over the distribution of content in Australia, even ABC music is on the board of APRA. Joining ASCAP as an artist based in Australia, would give little benefit, as the system does not allow for free or direct licensing.

ASCAP bill of rights state. "We have the right to choose when and where our creative works may be used for free."

Australian artists joined to APRA are locked up in a different rights management system, music art created in Australia is not so attractive to the US market place. In the US mechanical rights are able to be bought out-right from the artist, this means the works can be pressed and broadcast as a part of the product by the distributor. This is one small example I know of. The Australian artist who creates equally good art, to his US counterpart might find it difficult to gain access to the US market place, because of her/his contract with APRA/AMCOS.

Most of the purely commercial content broadcast to the world arrives from the US. As I understand it, in Australia certain moral rights are granted to everyone, these rights make APRA a part of the negotiating process. In the US every part of the copyright can be negotiated.

Incomes through ASCAP and BMI are less per person in the US to that of Australia, even though far more content is created in the US. In the US, rights organisations are competing with each other, as well as with content licensed freely or directly. Contracts between the artist and APRA are under exclusive conditions, for this reason the emphasis is on the venue to prove that the content they perform is not within their catalog. Its complicated for an Australian artists to license freely or directly to any performance space, or broadcast mechanism. Even when the artist is not with APRA. Bands not of much commercial significance in the US are encouraged to deal directly with the venue. In the US Artists can directly license their works with a local radio station or even on the venues website. People show up with less effort to the show in the US, because of a flexible copyright situation. It's a human right to express yourself freely where you choose, APRA put limitations on this basic right.

How to change the landscape?

With new technology available, APRA/AMCOS has the ability for artists to be able to upload/register content within their system, so that the artist has more licensing choices. Content could be uploaded as open content, non-exclusive content or exclusive content. By giving artists these choices, Australian artists would be able to work with artists and content distributors in the US more openly, and potentially attract creators from abroad to join APRA. This would open a plethora of licensing choices for artists both online and in a live situation. Changes in technology demand creators have a better pulse on the market and understand where they can fit in, it's an ever changing digital market place. Artists leaving their copyright in the hands of APRA/AMCOS's publishers, with less and less physical product to sell, has to be a limitation on them. Having no alternative or the means to create an alternative, is a perpetual Brexit for the artist.

A change to a non-exclusive input agreement for artists is only something that could happen gradually. Giving artists the right to license freely or directly, is competition for publishers, and something every publisher that has experienced an always pay for music situation, would be inherently against. Sony music is a major influence on the APRA board. ABC music is on the board of APRA. Artists not with APRA perform in a context controlled by APRA. Often the only cheque an artist might get for her/his musical efforts is from APRA. There is a consensus among APRA artists, that APRA is a union and looks out for their interests.

Currently APRA have it written into their constitution that for every 500 dollars that an artist or publisher collects, they get another vote. If for the next 5 elections for the board of APRA this would drop by this amount by 100 dollars. Artist members and smaller publishers would gradually be better represented. The problem is not the money, yet the influence over the territory, and the prohibition that comes with a monopoly driven by maximum profit.

The Australian public has to come to a consensus as to how non-commercial best be defined. This is something that can't be left up to the legislators, as legislators are influencing how the private and public sector work. APRA see the whole public sector as commercial, a whole commercial sector has evolved out copyrights created with public money. With a consensus as to how the public see non-commercial, artists/creators without commercial intentions could give up these rights.

Creative Commons is a licensing mechanism, allowing creators not affiliated with a publishers to license freely, yet to my mind is only really relevant in a US context for music art at this time. The conditions issued with a creative commons license are for-ever. The creative commons license does not fit in with the way publishers would like to see copyright administered. Publishers essentially would like to control the artists entire musical voice. It's directly in competition with APRA, and operates with no administrative process. Something similar to bitcoin for the banks. For obvious reasons its seen as a disruptive technology by APRA, its not possible for an artist to be with creative commons and license with APRA. However APRA would never ask artists that signed with them, to state that they had never licensed with a creative commons license. Nor would APRA ask for details of works under a creative commons license from a members joining. This in itself would be seen as a hole in their administrative process, and give room for competition. Currently artists that are with APRA, are not able to work with artists that license under creative commons. If any part of a copyright is licensed under creative commons by a group of creators, and

then one artist would join APRA. The whole work would then be under the conditions of APRA, even if as little as 5 percent belonged to that artist.

Final thoughts on current landscape?

New artists with commercial aspirations not affiliated with a publisher connected to the board of APRA, have little chance of their art ever being of much economic significance in the current circumstance of APRA/SONY. For this reason its logical that the self published artists be they with APRA or not, have the right to directly or freely license what they create. If APRA continue to only represent the commercial interests of the publisher, laws need to change so that the creator and publics rights can be more easily exercised. APRA complain about creative commons. & as a result of this competition, have created opt outs, this is a band aid solution to much bigger cultural problem though. No platforms have been created to give exposure to content where the artist has opted out. JJJ, does not have opt out hour. Public journals do not display "opted out" of collection for copyright content. Public libraries do not have an opt out section. Those collecting would be horrified at such an idea, and those collecting the most are on the board of APRA, and sony music as well.

APRA could democratise their structure, giving each member or publisher they let into their organisation just one vote. Although it seems like common sense, that those that make the most money, should have the most say. The problem is not the money, yet the influence over the territory, and the prohibition that comes with a monopoly driven by maximum profit.

More research could be done by state bodies on the effects of APRA. It seems like much of the research created is sponsored by APRA, and done in such a way to present a flourishing export industry.

I asked APRA to answer these questions. However they did not respond to the message. APRA say's on its website that it collected revenues and distributed those revenues to more than 50,000 members.

How many of these 50,000 artists collected more than 500 dollars?

What percentage of these 50,000 artists have or are affiliated with a publisher?

What percentage of royalties collected by APRA were deposited abroad?

What percentage of APRA's revenues paid to "artist members" are paid directly or indirectly from the state? ABC, JJJ, PBS, festivals/venues setup or supported by or as non-profits, subscriptions.

What percentage of total royalty collection goes to publishers?

APRA put big demands on the culture. Public monies seem to be the only form of competition to APRA, yet does the public get a rebate when Sony music signs an artist, that has been made popular on JJJ?

regards,

Jamison Young