

8 July 2019

Mr Gavin Jones
Director, Adjudication
Australian Competition & Consumer Commission (ACCC)
GPO Box 3131
CANBERRA ACT 2601

via email: adjudication@acc.gov.au

Dear Mr Jones,

**Submission in response to the ACCC's draft determination
Australasian Performing Rights Association Ltd (APRA) application for revocation of authorisations
A91367 – A91375 and substitution of new authorisation A1000433**

Live Performance Australia (LPA) is pleased to submit this submission in response to the ACCC's draft determination of APRA's application for revocation and re-authorisation.

In short, LPA supports the proposed conditions placed on APRA as part of receiving authorisation to continue its arrangements for the acquisition and licensing of performing rights of musical works. However, LPA does have concerns about the length of the authorisation period.

1. ABOUT LPA

LPA is the peak body for Australia's live performance industry. We represent licensees who use music in public performances, such as during live music concerts and festivals and in musical theatre, theatre, comedy, dance, opera, cabaret, and circus/physical theatre. Our members include producers, music promoters, music festivals, venues, performing arts companies and festivals that collectively contribute a significant portion of royalty review collected for the public performance of music.¹

2. KEY ISSUES

a. Length of authorisation

The ACCC proposes to grant authorisation for five years. LPA submits that authorisation for three years is more appropriate, so as to address, as soon as possible, any issues related to APRA's market power or implementation of the proposed conditions. Otherwise, any problems that may arise will not be addressed by the ACCC until 2024.

Some of our Members have raised concerns that the establishment of OneMusic Australia will increase APRA's market power, as it will have access to more information to price discriminate and increase licence fees. LPA believes a shorter authorisation period is required to monitor this arrangement.

¹ In 2017-18, public performance revenue contributed 20.4% (\$85.8m) of APRA AMCOS total revenue. Source: APRA AMCOS Year in Review 2017-18 (digital report), accessed at: http://apraamcos.com.au/media/YIR/2018/APRA_AMCOS_Year_in_Review_2018.pdf

b. Condition C1 - Transparency of licence fees

LPA supports the conditions to improve transparency about licence fees.

In addition to the conditions set out in C1.6, LPA believes that APRA must consult with relevant stakeholders prior to any adjustments over and above CPI to licence fees. Licensees should be provided with an opportunity to input into any proposed changes to licence fees and the way in which they are calculated. Consistent with views expressed in our earlier submission (dated 22 February 2019), **LPA would like a formal undertaking that, when APRA is considering changes to licensing definitions or fees, licensees are consulted early in the process.** The publication on APRA's website of an explanation of matters taken into consideration to determine the increase in licence fees should be seen as a last step in the process.

LPA also believes **the plain English guides should include information about the ability for licensees to request an analysis of whether music used in public performances is in/out of copyright or in/out of APRA's remit** to ensure that licensees are not being overcharged.

LPA believes the plain English guides will be particularly important for implementing the new OneMusic licences, so that licensees understand how the new licence works and the differences between the old and new licensing regimes. LPA is happy to review and provide feedback on relevant guides to ensure they are user-friendly.

c. Condition C2 – Transparency of distribution arrangements

LPA supports the conditions to improve transparency about distribution arrangements. LPA Members have, in the past, queried whether the licence fees they pay are distributed in a timely manner to copyright owners.

Given the substantial licence fees paid to APRA from live music events, LPA also believes that expired undistributed funds should be reinvested back into the live music industry.

d. Condition C3 - Plain English guide for opt out and licence back provisions

LPA supports the conditions to improve transparency about opt out and licence back provisions. However, LPA also calls for the removal of barriers (such as the licence back/opt out fees and notice period requirements) to improve uptake of these arrangements, which is currently very low.

As the ACCC acknowledges "it does not appear that the conditions of the 2014 authorisation relating to increasing awareness and understanding of APRA's opt out and licence back provisions have increased the utilisation of the provisions in any material way." (paragraph 4.215) Hence, LPA calls for additional measures to improve uptake and incentives for licensees and copyright owners to enter into these arrangements.

APRA must continue to offer discounts on blanket licences where the licensee has a direct deal with the copyright owner.

e. Condition C4 – Annual Transparency Report

LPA supports the conditions to improve transparency through the annual publication of a Transparency Report.

f. Condition C5 - Alternative Dispute Resolution

LPA supports the continuation of the ADR scheme so that licensees have access to a cost-effective option to resolve licensing disputes.

In our submission, dated 22 February 2019, we indicated that the ADR scheme had not yet been tested within the live performance context. Since then, one matter has been reviewed through this scheme, using the non-binding expert opinion option. The parties involved in the dispute were a licensee and APRA and the matter related to the interpretation of Dramatic Context. Feedback from the licensee was that the dispute resolution process was beneficial, providing a supportive process to gain clarity of understanding. It also offered external and impartial analysis of the situation and a swift resolution to a complicated challenge.

LPA continues to maintain the ADR scheme will not be appropriate for all disputes within the live performance industry context, particularly where time is of the essence.

LPA is not opposed to the scope of the ADR scheme being extended to cover member-to-member disputes, as long as the direct costs associated with resolving these disputes are not passed on or subsidised by licensees.

Thank you for the opportunity to provide feedback on the draft determination. We are happy for our submission to be placed on the public register. Please contact us if you have any queries or require clarification on any matters raised in our submission.

Yours sincerely,



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ABOUT LPA

LPA is the peak body for Australia's live performance industry. Established 100 years ago in 1917 and registered as an employers' organisation under the *Fair Work (Registered Organisations) Act 2009*, LPA has over 400 Members nationally. We represent commercial producers, music promoters, major performing arts companies, small to medium companies, independent producers, major performing arts centres, metropolitan and regional venues, commercial theatres, stadiums and arenas, arts festivals, music festivals, and service providers such as ticketing companies and technical suppliers. Our membership spans from small-medium and not-for-profit organisations to large commercial entities.

LPA has a clear mandate to advocate for and support policy decisions that benefit the sustainability and growth of the live performance industry in Australia.

LPA EXECUTIVE COUNCIL

Richard Evans (President)
Australian Chamber Orchestra

John Kotzas (Vice-President)
Queensland Performing Arts Centre

Maria O'Connor (Vice-President)
Ticketmaster Australia & New Zealand

Torben Brookman
GWB Entertainment

Alex Budd
Opera Australia

Lisa Campbell
Luckiest Productions

Michael Coppel AM
Live Nation Australasia

Sue Donnelly
Belvoir St Theatre

Douglas Gautier AM
Adelaide Festival Centre

Shirley McGrath
Gordon Frost Organisation

Patrick McIntyre
Sydney Theatre Company

Liza McLean
Tinderbox Productions

Rod Pilbeam
AEG Ogden

Melanie Smith
Arts Centre Melbourne

Judy Vince
Crown Perth

Fiona Winning
Sydney Opera House

Louise Withers
Louise Withers & Associates

Observers
Cameron Hoy Ticketek
Tim McGregor TEG Live
Paula McKinnon Disney Theatricals