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**From:** Dean Cherny  
**Sent:** Wednesday, 20 February 2019 5:57 PM  
**To:** Adjudication  
**Cc:** Moira McKenzie  
**Subject:** AA100433 - APRA - submission

Marketing Melodies has been supplying in-store music to retail clients for over 30 years. In that time, the way music is distributed and consumed has changed dramatically. These changes have meant that background suppliers like us are now competing with non-commercial suppliers like Spotify & Apple Music even though they are not properly licenced to do so.

Over that time, it is our view that APRA-AMCOS has done nothing to help educate the market to understand the differences between commercial & non-commercial services, all the while imposing more stringent and onerous licensing demands on the background music suppliers.

Another example of what we see as the continued market abuse of APRA-AMCOS was their recent increase to the BMS Business Blanket Licence. They have increased the cost of licence fees from a track usage rate of 8% to a \$6 per store per month fee - this results in a 300% increase.

When you add to this the royalties we already pay to the record labels for use of the sound recordings (25% of revenue), you can see that we have no way to compete with non-commercial streaming businesses when our cost of music is **greater than** their subscription cost of (on average) \$11.99 pm.

In our opinion APRA-AMCOS continues to show anti-competitive behaviour by issuing licenses for the use of consumer digital services in the market place that place them in direct competition with the background music sector, while also causing end user businesses to breach their own end user license agreements with the digital service by using these services for commercial purposes.

It is our experience that APRA-AMCOS have continually used their market power to squeeze the background music suppliers in other ways too.

In 2013, APRA-AMCOS dropped the rebates we receive for managing our clients public performance fees from 10% to 5% over 2 years without proper reason or explanation. In a digital era when we are competing against technology giants like Spotify & Apple Music, this apparently arbitrary 5% drop in commission rebates has made it even harder for businesses like mine to survive and remain competitive. At the same time, PPCA have continued to offer a 10% rebate for retail and a 20% rebate for restaurants and café businesses like mine.

It should be noted as part of our sign-up process we push all our clients to be 100% compliant by using a commercial music provider and also paying their public performance fees to APRA and PPCA. We manage the APRA & PPCA licensing for 80% of our clients. Spotify & Apple Music don't help guide commercial clients to pay APRA & PPCA licence fees as they are non-commercial providers and don't deal with clients in the same manner we do.

We have recently been informed that when APRA-AMCOS start managing PPCA under the One Music banner, they plan to further drop the rebates to 2.5% overall. This means that we will be losing 17.5% on the rebates that we currently make, which again will have a detrimental impact on businesses like mine.

It is our view that it isn't fair or reasonable that APRA-AMCOS will have even more market power with the inclusion of PPCA's rights under the One Music banner and that we will then use this to further cut between 7.5-17.5% of our revenue.

This is a complete abuse of market power as we really have no other option than to accept this crippling loss of revenue.

All this leads me to believe the current 'License Back' and 'Opt Out' conditions are not adequate measures under the existing arrangements to facilitate competition in the background music market.

I ask that you please consider the above when reviewing APRA's re-authorisation by the ACCC.

Thank you for the opportunity to submit this feedback. I would be happy to further discuss and/or provide any further information in relation to this feedback any time.

Regards

Dean Cherny  
Founder & CEO  
Marketing Melodies