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Australia Council
for the Arts

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AUSTRALIA COUNCIL
372 Elizabeth Street, Surry Hills
Sydney NSW 2010 Australia
Postal Address
PO Box 788
Strawberry Hills NSW 2012
Telephone 61-02-9215-9000
Toll-free (1800) 22 6912
Fax 61-02-9215-9111
ABN 38 392 626 187

28 June 2004

Mr Tim Grimwade
General Manager, Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
Dickson ACT 2602

Dear Mr Grimwade

**Application for Authorisation Nos A90918 – A90925
lodged by the Australasian Performing Right Association Limited ('APRA')**

Thank you for your letter inviting the Australia Council to make a submission regarding APRA's standard arrangements for the acquisition and licensing of performance and communication rights in music. We understand that APRA has applied to the Australian Competition and Consumer Commission ('ACCC') seeking re-authorisation of these arrangements.

The Australia Council supports APRA's applications for re-authorisation. We note that the ACCC granted its existing authorisations for APRA's activities on the basis that the public benefits flowing from APRA's collective administration of rights in music outweigh any anti-competitive detriments. The Australia Council submits that APRA's operations continue to provide benefits to the arts sector, and the public generally, that exceed any negative consequences resulting from its monopoly market position.

The collective administration system offered by APRA enables licences for the use or performance of musical works to be easily obtained through negotiation with a single body. In contrast, if the market was opened up to a number of players, it would be necessary to approach several different organisations, and to determine which of them held the relevant rights, before a licence could be obtained.

APRA's centralised administration system benefits both the general public and the music industry. It benefits the public because it is much less time-consuming and resource intensive to negotiate with a single body. It benefits composers and songwriters because the relative ease and efficiency with which an APRA licence can be obtained encourages music users to comply with the appropriate copyright licencing procedures. This minimises copyright infringements and ensures that composers are remunerated for their creative work.

APRA's current input and distribution arrangements perform an important role in guaranteeing income to composers and songwriters and, thereby, supporting the Australian music sector. By requiring that composers assign certain rights to APRA, the input arrangements provide a safeguard against composers being pressured into assigning these

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rights to a music publisher or commissioning agent on terms that are disadvantageous to the composer. Similarly, APRA's distribution arrangements provide that composers will receive at least 50% of the royalties generated by their musical works and prevent publishers, and other interests, from appropriating these royalties. We consider that, although these input and distribution arrangements may have anti-competitive effects, they operate to the overall advantage of composers, songwriters and the music sector. These benefits flow on to the general public, as a strong music industry enriches Australian cultural life.

The Australia Council notes that the ACCC is reviewing its original authorisations of APRA's conduct in the light of technological changes in the relevant market. We agree that it is extremely important to evaluate the impact of technological developments. Nonetheless, we do not believe that the technological changes that have occurred since APRA's existing authorisations were granted have been sufficiently significant to undermine the public benefit arising from its current licensing arrangements. The online environment is perhaps facilitating an increased number of direct dealings between copyright users and owners, but such technology has not evolved to the degree where it could provide an effective substitute for the licensing services provided by APRA. Artists generally lack the resources and expertise to carry out copyright licensing in relation to their musical works themselves, and technological developments have not altered this situation.

Any organisation that is granted a monopoly market position should be subjected to the level scrutiny necessary to ensure that it does not abuse this position. APRA is no exception and the Australia Council supports APRA's applications for re-authorisation of its current arrangements on the basis that the organisation's activities will continue to be closely monitored. We consider that there is presently effective regulation of APRA's operations through the ACCC, the Copyright Tribunal and the Code of Conduct for Australian Collecting Societies.

Thank you for the opportunity to comment on APRA's applications to the ACCC and their impact on the arts sector. If you have any questions, or would like to discuss further any of the issues raised in this submission, please contact Tamara Pallos, Policy Officer, on (02) 9215 9168.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Lisa Colley', with a long horizontal flourish extending to the right.

Lisa Colley
Executive Director
Policy Communication Research