



Australian Competition & Consumer Commission

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Our Ref: A90818 – A90925
Contact Officer: Susan Sullivan
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4 June 2004

Dear

**Application for Authorisation Nos A90918 – A90925
lodged by Australasian Performing Right Association Limited**

The Australian Competition and Consumer Commission ('the Commission') has received a number of applications from the Australasian Performing Right Association Limited ('APRA') seeking re-authorisation of its standard arrangements for the acquisition and licensing of the performing rights in the APRA music repertoire.

As the APRA arrangements may breach the *Trade Practices Act 1974* (the Act), APRA has sought authorisation from the Commission. If granted, re-authorisation will provide APRA with immunity to continue to give effect to its input, output, distribution and overseas arrangements. The APRA arrangements were previously authorised by the Australian Competition Tribunal in July 2000, although the Tribunal authorisation granted by the Tribunal is due to expire on 30 June 2004. As such APRA has requested that the Commission grant 're-authorisation' to enable it to continue to engage in the acquisition and licensing arrangements.

I am writing to you as we consider that you may be a party with an interest in these applications, and we would like to take this opportunity to invite you to comment upon them.

The APRA arrangements broadly cover:

- input arrangements – being the assignment of performing rights by members to APRA and the terms upon which membership of APRA is granted;
- output arrangements – being the licensing arrangements between APRA and the users of musical works;



- distribution arrangements – being the arrangements pursuant to which APRA distributes to its members the fees that it has collected from licensees/users; and
- overseas arrangements – being the reciprocal arrangements between APRA and overseas collecting societies pursuant to which each grants the other the right to licence works in their repertoires.

The Commission's role

By way of background, the Commission is the Commonwealth agency responsible for administering the Act. A key objective of the Act is to prevent anti-competitive conduct, thereby encouraging competition and efficiency in business, resulting in a greater choice for consumers in price, quality and service.

The Act, however, recognises that the public interest may not always be met by the operation of competitive markets. The authorisation process in the Act addresses this eventuality by allowing the Commission to grant immunity from the application of many of the restrictive trade practices provisions of the Act in certain circumstances. In order to grant authorisation the Commission must be satisfied that the public benefit arising from the particular conduct outweighs any anticompetitive detriment arising from the conduct. Further information regarding the authorisation process is available from the Commission's website (www.accc.gov.au).

In assessing the public benefits and detriments of an authorisation application, the Commission undertakes a public consultation process seeking comments on the application from interested parties such as yourself. Following an initial consultation process, the Commission will issue a draft decision for comment.

Overview of APRA's submissions – public benefit and effect on competition

APRA has submitted that, while there have been changes in the market since authorisation was granted in 2000, none of the changes in its view alter the balance of benefits and detriments and accordingly re-authorisation should be granted by the Commission.

In relation to the particulars of the APRA arrangements it has been submitted that:

- the input arrangements provide:
 - (a) certainty of repertoire;
 - (b) avoidance of duplication of licences;
 - (c) countervailing market power for composers;
 - (d) the availability of the widest range of copyright musical works;
 - (e) efficiencies in the protection and enforcement of performing rights; and
 - (f) ensuring that Australia receives export earnings which would otherwise be irrecoverable.

APRA considers that the input arrangements deliver:

- (a) the ability to offer a series of comprehensive blanket licences (with all the benefits inherent in blanket licences and other licence schemes as the circumstances demand);
- (b) at a low cost (whether judged by international or local standards);
- (c) a reasonable return to composers;
- (d) the Australian listening public with access to the widest possible range of music; and
- (e) a system under which there is no scope for any of the participants in the market (whether composers, APRA or music users) to take advantage of any market power they might possess.

It is APRA's view that no other system of input arrangements would be likely to generate such benefits with so little, if any, anti-competitive detriment.

- the output arrangements provide a number of benefits, including:
 - (a) guaranteed, easy, efficient and cost effective access by the music user to virtually all music publicly performed in Australia;
 - (b) the supervision by the Copyright Tribunal and the distribution rules of APRA ensure that reasonable and fair compensation to the composer and reasonable and fair charges to music users;
 - (c) music is compensated on the basis of frequency of use and is paid for by the performer of the music (and in this sense the music user only pays for what is used);
 - (d) they eliminate significant burdens for the music user, the cost of various negotiations with individual music owners, the need to obtain new or different licences when the performance is varied from what was planned (the arrangements give great flexibility to the music user to change its performances);
 - (e) they eliminate the threat and likelihood of infringement actions against the music user; and
 - (f) they provide protection from exploitation of music owners by major music users who, to a substantial degree, have monopoly power in the negotiation of licensing fees.
- the distribution arrangements provide a number of benefits, including:
 - (a) the promotion of the use and recognition of music written or controlled by APRA members – through the deduction of 1.25% of distributable revenue; and
 - (b) the entitlement to participate in a distribution in relation to a particular work is in accordance with the 'shares' to which each member is entitled to in respect of that work. The distribution rules provide that, notwithstanding any individual contractual variations, the shares of the composer and the lyricist (as well as any other party involved in the process of creation) must not total less than 50% of the distributable revenue. That is, the publisher can never receive more than 50% of the distribution in relation to a work.

APRA considers that the distribution rules result in distributions to members that reflect substantially, and in direct proportion, the demand for each member's works by music users in relation to each distribution pool. APRA considers that this in turn reflects the popularity of, or demand for, the work of members among the listening and viewing public.

For your information a copy of the submission provided by APRA in support of its applications is available from the Commission's website (<http://www.accc.gov.au/content/index.phtml/itemId/347229/fromItemId/314462>). Alternatively, please contact Susan Sullivan (02 6243 1354) to request that a hard copy be sent to you.

Request for submissions on application for authorisation

To assist the Commission in its consideration of APRA's applications you are invited to make a written submission to the Commission regarding the likely public benefits and effects on competition of the arrangements for which authorisation is sought. Please note, the Commission recommends that you access a copy of APRA's supporting submission before making a submission.

If you intend to provide a submission in relation to APRA's application for authorisation, I would be grateful if you could do so by **2 July 2004**.

Request for submissions on request for interim authorisation

APRA has also requested that the Commission grant interim authorisation, enabling the acquisition and licensing arrangements to continue to be protected from action under the Act. Interim authorisation will have the effect of suspending the expiration of the July 2000 authorisation while the Commission considers the merits of the substantive applications for authorisation.

Interim authorisation will only be granted by the Commission in exceptional circumstances. The Commission is not required to assess the merits of the application for authorisation in reaching its decision on a request for interim authorisation, but would look at factors such as the urgent need for exemption of the arrangement and harm likely to result to the applicant and interested parties should interim authorisation be granted/denied.

A copy of APRA's submission in support of its request for interim authorisation has been enclosed for your information.

I note that the Commission intends to respond to APRA's request for interim authorisation *before 30 June 2004*. As such if you wish to provide a submission in relation to the request for interim authorisation it would be appreciated if this could be provided to the Commission by **15 June 2004**.

Providing submissions to the Commission

The Commission asks for submissions to be in writing so they can be made publicly available. Submissions are placed on a public register and may be also placed on the Commission's website located at <http://www.accc.gov.au>. The Commission may, where it is

considered appropriate, supplement written submissions with discussions with relevant parties on a mutually convenient basis.

Should you lodge a submission with the Commission you may request that information included in the submission be treated as confidential and not placed on the public register or website. The Commission may take confidential information into account during its assessment of an authorisation application. Guidelines for seeking confidentiality are attached for your information.

If you wish to lodge a submission would you please address it to:

The General Manager
Adjudication Branch
Australian Competition & Consumer Commission
P O Box 1199
DICKSON ACT 2602

Submissions can also be lodged by e-mail to adjudication@accc.gov.au or by fax on (02) 6243 1211.

Should you have any queries or if you wish to discuss any aspect of this matter please contact Susan Sullivan on (02) 6243 1354.

Yours sincerely

Tim Grimwade
General Manager
Adjudication Branch

GUIDELINES FOR CONFIDENTIALITY CLAIMS

The process whereby the Commission assesses applications for authorisation is very public, transparent and consultative. The *Trade Practices Act 1974* (the Act) requires the Commission to maintain a public register in respect of authorisation applications.

Applicants and interested parties can request that a submission, or a part of a submission, be excluded from the public register.

The Commission is required under the Act to exclude from the public register upon request details of:

- (i) secret formulae or processes;
- (ii) the cash consideration offered for the acquisition of shares in the capital of a body corporate or assets of a person; or
- (iii) the current manufacturing, producing or marketing costs of goods or services.

The Commission also has the discretion, under s89 of the Act, to exclude material from the public register if it is satisfied that it is desirable to do so, either by reason of the confidential nature of the material or for any other reason. The Commission expects that a party claiming confidentiality on these grounds will present a case for its treatment in this manner.

Under Regulation 24 of the *Trade Practices Regulations*, when a request for confidentiality is made to the Commission:

- (a) where the request is that a whole document be excluded, the words “**Restriction of Publication Claimed**” should appear in red writing near the top of each page; and
- (b) where the request is that part of a document be excluded, the words “**Restriction of Publication of Part Claimed**” should appear in red near the top of the first page of each document, and the part for which confidentiality is claimed should also be marked in red. A submission of more than 5 pages should also include a description of the whereabouts of the parts for which confidentiality is claimed.

However, even if a document does not meet these technical requirements, the Commission may still grant confidentiality where, in the Commission's view, it is desirable to do so.

If the Commission denies a confidentiality request, the requesting party may ask that the material be returned. As a matter of practice, the Commission will specify a period (usually 14 days) in which they can request the return of such material. Upon response, the Commission will return the original material and destroy all associated copies. The Commission will not consider this material when reaching its decision.

If the Commission does not receive a response within the specified period, the original material will be placed on the public register.

	Name	Salutation	Address
	Managing Director	Sir/Madam	2DayFM Level 24 500 Oxford Street Bondi Junction NW 2022
	Mr Peter Opio-Otim Executive Director	Mr Opio-Otim	Aboriginal Co-ordinating Council PO Box 6512 Cairns Mail Centre CAIRNS QLD 4870
	Managing Director	Sir/Madam	Adelaide Central Plaza Rundle Mall Adelaide SA
	The General Manager	Sir/Madam	APN News & Media Level 4, 100 William St Sydney NSW 2011
	Managing Director	Sir/Madam	Armadale Plaza Shopping Centre 193 Jull St Armadale WA
	Ms Robyn Ayres Executive Director	Ms Ayres	Arts Law Centre of Australia The Gunnery, 43-51 Cowper Wharf Road Woolloomooloo NSW 2011
	Managing Director	Sir/Madam	Association of Independent Record Labels Inc PO Box 584 Surry Hills NSW 2012
	Ms Helen Daniels Assistant Secretary	Ms Daniels	Attorney-General's Department Central Office Robert Garran Offices National Circuit BARTON ACT 2600
	Mr Evan McGregor Chairman	Mr McGregor	Ausmusic PO Box 307 Port Melbourne VIC 3207
	Dr Cathy Brown Watt Chief Executive Officer	Dr Brown Watt	Australia Council PO Box 788 Strawberry Hills NSW 2012
	Managing Director	Sir/Madam	Australia Fair Shopping Centre Marine Parade Southport QLD
	Professor David Flint Chairperson	Professor Flint	Australian Broadcasting Authority Level 15, Darling Park 201 Sussex Street, Sydney NSW 2000
	Mr Russell Balding Managing Director	Mr Balding	Australian Broadcasting Corporation

			GPO Box 9994 SYDNEY NSW 2001
Mr Peter Kell Chief Executive Officer	Mr Kell		Australian Consumers Association 57 Carrington Road MARRICKVILLE NSW 2204
The General Manager	Sir/Madam		Australian Entertainment Industry Association 8th Floor West Tower 608 St Kilda Road Melbourne VIC 3004
Mr Denny Lawrence Chairman	Mr Lawrence		Australian Film Industry Institute 49 Eastern Rd South Melbourne VIC 3205
The General Manager	Sir/Madam		Australian Guild of Screen Composers 247 Oxford St Paddington NSW 2021
Mr David Elliot National Affairs Manager	Mr Elliot		Australian Hotels Association PO Box 4286 Manuka ACT 2603
Managing Director	Sir/Madam		Australian Institute of Arts Management Level 1/117 Sturt St Southbank VIC 3006
Managing Director	Sir/Madam		Australian Music Association Inc 45 Glenferrie Road Malvern VIC 3144
Managing Director	Sir/Madam		Australian Music Publishers Association Ltd Locked Bag 3456 St Leonards NSW 2065
The General Manager	Sir/Madam		Australian Music Retailers Association MBE 148/45 Glenferrie Rd Malvern VIC 3144
Mr Denis Handlin Chairman	Mr Handlin		Australian Record Industry Association Ltd PO Box Q20 QVB Post Office NSW 1230
Mr Stan Moore CEO	Mr Moore		Australian Retailers Association Level 11, 45 Market Street Sydney NSW 2000
The General Manager	Sir/Madam		Australian Screen Sound Guild Suite 360, 3 Holtermann Street,

			Crows Nest NSW 2065
	The General Manager	Sir/Madam	Australian Subscription Television and Radio Association Wharf 8 Pymont NSW 2009
	Managing Director	Sir/Madam	Bankstown Square Shopping Centre 99 North Terrace Bankstown NSW
	Managing Director	Sir/Madam	Broadway on the Mall Queen St Brisbane City QLD
	Mr Geoff Thorn Director	Mr Thorn	Business Competition Branch New Zealand Commerce Commission PO Box 105-222 Auckland New Zealand
	Ms Carolyn Bond Chair Consumers' Federation of Australia	Ms Bond	c/o Consumer Credit Legal Service (Victoria) 1st Floor, 11-19 Bank Place Melbourne 3000
	Managing Director	Sir/Madam	Canberra Centre Bunda Street Canberra City ACT 2600
	Managing Director	Sir/Madam	Carillon City Shopping Centre Hay & Murray Streets Malls Perth WA
	The General Manager	Sir/Madam	CCL Asia-Pacific Pty. Ltd. P.O. Box 6644 Baulkham Hills Business Centre NSW 2153
	Managing Director	Sir/Madam	Centrepont Shopping Centre Cnr Pitt & Market Street Sydney NSW 2000
	Managing Director	Sir/Madam	Centro Galleria Cnr. Collier & Walter Road Morley WA 6062
	Managing Director	Sir/Madam	Chadstone Shopping Centre 1341 Dandenong Rd Chadstone VIC
	The General Manager	Sir/Madam	CHANNEL [V] GPO Box 5002 Sydney NSW 2001
	Managing Director	Sir/Madam	Channel Nine PO Box 27 Willoughby NSW 2068

	The General Manager	Sir/Madam	Cinema Owners of Australia PO Box 5009 Nowra DC NSW 2541
	Managing Director	Sir/Madam	Clubs NSW 499 Kent St Sydney NSW 2000
	Managing Director	Sir/Madam	Clubs Victoria Lvl 1/ 17 -21 Argyle Pl Sth Carlton VIC 3053
	Mr Neil Pentecost President	Mr Pentecost	COAA Secretariat PO Box 5009 Nowra DC NSW 2541
	Managing Director	Sir/Madam	Commercial Radio Australia Ltd Level 5 88 Foveaux Street Surry Hills NSW 2010
	Ms Julie Flynn Chief Executive Officer	Ms Flynn	Commercial Television Australia 44 Avenue Road MOSMAN NSW 2088
	Managing Director	Sir/Madam	Community Broadcasting Association of Australia Po Box 564 Alexandria NSW 1435
	The General Manager	Sir/Madam	Competition and Consumer Policy Division Department of Treasury Langton Crescent PARKES ACT 2600
	Mr Chris Field Director	Mr Field	Consumer Law Centre Victoria 7/20 Queen Street Melbourne Vic 3000
	The General Manager	Sir/Madam	Copyright Agency Limited Level 19, 157 Liverpool Street Sydney NSW 2000
	Mr Mike Potter Chief Executive Officer	Mr Potter	Council of Small Business Organisations of Australia PO Box E445 Kingston Act 2604
	Managing Director	Sir/Madam	Country Music Association 21 Russell St Watsons Bay NSW 2030
	The General Manager	Sir/Madam	COUNTRY MUSIC CHANNEL Level 2, 7 West Street North Sydney NSW 2060
	Mrs Myra Pincott President	Mrs Pincott	Country Women's Association of Australia

			PO Box 353 Tolga Queensland 4882
	Managing Director	Sir/Madam	David Jones 65 -77 Market Street Sydney NSW 2000
	Ms Helen Williams AO Secretary	Ms Williams	Department of Communications, Information Technology & the Arts GPO Box 2154 Canberra ACT 2601
	The General Manager	Sir/Madam	EMI Music Publishing Australia Pty Ltd 1 Gurrigal St Mosman NSW 2088
	Mr Robert Steele Associate Secretary	Mr Steele	Federal Association of Teachers of Dancing (Aust) Ltd P.O. Box KL 808 Kings Langley NSW 2147
	The General Manager	Sir/Madam	Federation of Australian Radio Broadcasters Level 5, 88 Foveaux St Surry Hills NSW 2010
	The General Manager	Sir/Madam	Festival Mushroom Group 235 Pymont St Pymont NSW 2009
	Mr Ian Granger Chief Executive Officer	Mr Granger	Fitness Australia PO Box 1311 Crows Nest NSW 1585
	Managing Director	Sir/Madam	FM 104.7 Bellenden Street Gungahlin ACT 2912
	The General Manager	Sir/Madam	Foxtel FOXTEL Television Centre Pymont NSW
	Managing Director	Sir/Madam	Hoyts Cinemas 505 George Street Sydney NSW 2000
	Managing Director	Sir/Madam	Hyperdome Management Office Anketell St Tuggeranong ACT
	Managing Director	Sir/Madam	Maddington Shopping Centre Cnr. Burslem Drive & Attfield St Maddington WA 6109
	Managing Director	Sir/Madam	Mandurah Forum 330 Pinjarra Road Mandurah WA 6210
	The General Manager	Sir/Madam	Media, Entertainment & Arts

			Alliance 245 Chalmers Street Redfern NSW 2016
	Ms Raena Lea-Shannon Solicitor	Ms Lea-Shannon	Michael Frankel & Co Solicitors 268 Devonshire St SURRY HILLS NSW 2010
	The General Manager	Sir/Madam	Michael Gudinski Management 135 Forbes St Woolloomooloo NSW 2011
	Managing Director	Sir/Madam	Mix 94.5 283 Rokeby Road Subiaco WA 6008
	Managing Director	Sir/Madam	Music Council of Australia PO Box 287 Double Bay NSW 2028
	Ms Jennifer Darbyshire Legal Services Manager	Ms Darbyshire	Myer Stores Ltd 800 Toorak Road Tooronga VIC 3146
	Mr Geoff Fry President	Mr Fry	National Band Council of Australia 18 Milton Street Nunawading VIC 3131
	Mr John McAlpine Chief Executive Officer	Mr McAlpine	Network 10 GPO Box 10 SYDNEY NSW
	Managing Director	Sir/Madam	Northlakes Shopping Centre 1 Links Road Marrara NT
	Managing Director	Sir/Madam	NXFM 252 Pacific Highway Charlestown NSW 2290
	The General Manager	Sir/Madam	Owen Trembath & Associates 1 st Floor 10 Ward Avenue Kings Cross NSW 2011
	Mr Stephen Peach Chief Executive Officer	Mr Peach	Phonographic Performance Company of Australia Ltd Box Q20 QVB PO Sydney NSW 1230
	The General Manager	Sir/Madam	Qantas Centre 203 Coward Street MASCOT NSW 2020
	Managing Director	Sir/Madam	Queen Victoria Building 455 George Street Sydney NSW 2000
	Managing Director	Sir/Madam	Radio 2GB Level 1, Building C 33-35 Saunders St Pyrmont NSW 2009

	Managing Director	Sir/Madam	Radio 2UE 176 Pacific Highway Greenwich NSW 2065
	The General Manager	Sir/Madam	Radio New Zealand International PO Box 123 Wellington NEW ZEALAND
	The General Manager	Sir/Madam	Radio New Zealand P O Box 123 Wellington NEW ZEALAND
	Managing Director	Sir/Madam	Reading Cinemas Market City Level 3/9 Hay Street Haymarket NSW 2000
	Mr Con Castrisos President	Mr Castrisos	Restaurant and Catering Australia Suite 32 401 Pacific Highway Artarmon NSW 2064
	Managing Director	Sir/Madam	SA FM Level 1 128 Greenhill Road Unley SA 5061
	The General Manager	Sir/Madam	Screenrights PO Box 1248 Neutral Bay NSW 2089
	Managing Director	Sir/Madam	Seven Network Limited Level 13, 1 Pacific Highway North Sydney NSW 2060
	Mr Andrew Scott Chief Executive Officer	Mr Andrew Scott	Shopping Centre Council of Australia Property Council of Australia House Level 1, 11 Barrack Street Sydney NSW 2000
	The General Manager	Sir/Madam	Songseekers International Lvl 1/ 47 Murray St Pymont NSW 2009
	Mr Robert Childs President	Mr Childs	Songwriters, Composers and Lyricists Association PO Box 228 Kensington Park SA 5068
	The General Manager	Sir/Madam	Sony / ATV Music Publishing 11 Hargrave St East Sydney NSW 2010
	Managing Director	Sir/Madam	Sound World Music – Newcastle City Store 182 Hunter Street Newcastle NSW 2300

	The General Manager	Sir/Madam	The Australian Music Association MBE 148/45 Glenferrie Road Malvern VIC 3144
	The General Manager	Sir/Madam	The Australian Music Centre PO Box N690 Grosvenor Place, NSW 1220
	The General Manager	Sir/Madam	The Australian Society of Authors PO Box 1566 Strawberry Hills NSW 2012
	Managing Director	Sir/Madam	The Greater Union Organisation Pty Ltd 49 Market Street Sydney NSW 2000
	Managing Director	Sir/Madam	The Village Shopping Centre Trowse Road (Cnr Bradshaw Tce) Casuarina NT
	Managing Director	Sir/Madam	The Walk Arcade 309-325 Bourke St Melbourne VIC 3000
	Managing Director	Sir/Madam	Triple M Adelaide Ground Floor 128 Greenhill Road Unley SA 5061
	Managing Director	Sir/Madam	Triple M Melbourne Level 1 180 St Kilda Road St Kilda VIC 3182
	Managing Director	Sir/Madam	Triple M Sydney Level 25 500 Oxford Street Bondi Junction NSW 2022
	The General Manager	Sir/Madam	VIRGIN BLUE PO Box 1034 Spring Hill QLD 4004
	The General Manager	Sir/Madam	Warner Chappell Music Australia Pty Ltd 39 Albany St Crows Nest NSW 2065
	Managing Director	Sir/Madam	Westfield Holdings Ltd Level 20, 100 William St East Sydney NSW 2011
	Managing Director	Sir/Madam	Westfield Limited 100 William Street Sydney NSW 2000
	Managing Director	Sir/Madam	Win Television Locked Bag 8800

			South Coast Mail Centre NSW 2521
	Managing Director	Sir/Madam	Woden Plaza Shopping Centre Keltie Street Phillip ACT 2607
	Managing Director	Sir/Madam	Applied Information Management Solutions Pty Ltd PO Box 1274 Upwey Victoria 3158
	Mr Paul Paterson Director - Regulatory	Mr Paterson	Telstra Level 11 231 Elizabeth Street Sydney NSW