



Australian
Competition &
Consumer
Commission

GPO Box 520J
Melbourne VIC 3001

Level 35 The Tower
360 Elizabeth Street
Melbourne VIC 3000

ph (03) 9290 1800
fax (03) 9663 3699

www.accc.gov.au

Our Ref: C2004/763
Contact Officer: Gavin Jones
Contact Phone: 03 9290 1959

31 August 2005

sent to attached
list of 31/8/05

Dear

**Re: Australasian Performing Rights Association (APRA) applications
for authorisation¹ - draft determination**

The Australian Competition and Consumer Commission (the ACCC) has issued a draft determination in respect of the applications for authorisation lodged by APRA on 2 June 2004 and 23 November 2004.

APRA is seeking authorisation for standard arrangements for the acquisition and licensing of the performing rights in its music repertoire.

A copy of the ACCC's draft determination is attached. For the reasons set out in its draft determination, the ACCC proposes to grant authorisation to APRA's arrangements for four years.

Interim authorisation

On 30 June 2004, the ACCC granted interim authorisation to APRA's input, output and distribution arrangements until the date of its draft determination. The ACCC has decided to extend interim authorisation until the date the ACCC's final determination comes into effect, or if circumstances warrant revocation or amendment of interim authorisation at an earlier stage, until such date as interim authorisation is revoked or amended.

Next steps

Once the ACCC issues a draft determination, the Applicant or any interested party who may be dissatisfied with the ACCC's draft determination may request that the ACCC convene a 'pre-decision conference'. A pre-decision conference provides the opportunity for interested parties to make oral submissions in relation to the draft determination. Under the *Trade Practices Act 1974*, the ACCC must set a date within 14 days of which any pre-decision conference must be requested. Accordingly, if you wish the ACCC to hold a pre-decision

¹ Authorisation application numbers A90918, A90919, A90921, A90922, A90924, A90925, A90944 & A90945.



conference in relation to the draft determination, you must notify the ACCC in writing by **co**
on Friday 16 September 2005. Conferences are conducted informally, without the
participation of legal or other professional advisers. In the event of such a conference taking
place it is likely that it would be held in Sydney in early to mid October.

Alternatively, you are also invited to make a written submission in response to the ACCC's
draft determination. Written submissions should be lodged by **30 September 2005** at the
following address:

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

Submissions can also be lodged by e-mail to adjudication@acc.gov.au or by facsimile on
02 6243 1211.

Any submission you make will be placed on the ACCC's Public Register. You may request
that information you provide in a submission to the ACCC be treated as confidential and not
placed on the Public Register. Information excluded from the Public Register for reasons of
confidentiality will still be considered by the ACCC when reaching its decision. Guidelines
for seeking confidentiality are attached for your information.

The ACCC will consider any submissions it receives, including any oral submissions made
should a pre-determination conference be called, and will then release a final determination in
relation to these applications.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect
of this matter, please do not hesitate to contact me on 03 9290 1959 or Michael Green on
03 9290 1960.

Yours



Gavin Jones
Director
Adjudication Branch

GUIDELINES FOR CONFIDENTIALITY CLAIMS

The process whereby the Commission assesses applications for authorisation or notification 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 and notification applications.

Applicants and interested parties can request that a submission, or 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 process;
- (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.

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.

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.

Applicants, as a matter of course, should remove headers claiming "confidential communication" from all Emails and otherwise, unless they have a particular piece of information that they justify to the Commission deserves exclusion from the public register. If confidentiality is not requested but a header cannot be removed, it should be clearly stated at the beginning of the communication that confidentiality is not requested.

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.

Information or documents granted confidentiality may be used by the Commission pursuant to its powers generally under the *Trade Practices Act*.

	Name	End	Salutation	Address
1	Ms Robyn Ayres Executive Director	sincerely	Ms Ayres	Arts Law Centre of Australia The Gunnery, 43-51 Cowper Wharf Road Woolloomooloo NSW 2011
2	Ms Helen Daniels Assistant Secretary – Copyright Law Branch	sincerely	Ms Daniels	Attorney-General's Department Central Office Robert Garran Offices National Circuit BARTON ACT 2600
3	Mr Stephen Collins General Counsel Head, ABC Legal Services	sincerely	Mr Collins	Australian Broadcasting Corporation GPO Box 9994 SYDNEY NSW 2001
4	Mr Peter Kell Chief Executive Officer	sincerely	Mr Kell	Australian Consumers Association 57 Carrington Road MARRICKVILLE NSW 2204
5	Ms Lisa Colley Executive Director – Policy Communication Research	sincerely	Ms Colley	Australian Council for the Arts PO Box 788 Strawberry Hills NSW 2012
6	Mr Bill Healey Director – National Affairs	sincerely	Mr Healey	Australian Hotels Association PO Box 4286 Manuka ACT 2603
7	Mr Stephen Peach Chief Executive Officer	sincerely	Mr Peach	Australian Record Industry Association Ltd PO Box Q20 QVB Post Office NSW 1230
8	Mr Geoff Thorn Director	sincerely	Mr Thorn	Business Competition Branch New Zealand Commerce Commission PO Box 105-222 Auckland New Zealand
9	Mr Moses Kakaire Manager – Legal & Regulatory	sincerely	Mr Kakaire	Commercial Radio Australia Level 5 88 Foveaux Street Surry Hills NSW 2010
10	Ms Julie Flynn Chief Executive Officer	sincerely	Ms Flynn	Free TV Australia 44 Avenue Road MOSMAN NSW 2088
11	The General Manager	faithfully	Sir/Madam	Competition and Consumer Policy Division Department of Treasury Langton Crescent PARKES ACT 2600
12	Ms Helen Williams AO Secretary	sincerely	Ms Williams	Department of Communications, Information Technology & the Arts

				GPO Box 2154 Canberra ACT 2601
14	Ms Margaret Brown Partner	sincerely	Ms Brown	Minter Ellison PO Box 7844 Waterfront Place QLD 4001
15	Dr Richard Letts Executive Director	sincerely	Dr Letts	Music Council of Australia PO Box 287 Double Bay NSW 2028
16	Ms Gillian Clyde Corporate Counsel	sincerely	Ms Clyde	Screenrights PO Box 1248 Neutral Bay NSW 2089