

APRA Reply to Creative Commons ACCC submission.

APRA disagrees with the statement that Creative Commons licensing is a significant development. Although the CC website contains a large warning notice that APRA members should contact APRA before licensing through CC, no more than 10 APRA members have made inquiries with APRA regarding Creative Commons.

No members have been granted (or refused) a licence back or opt out for the purpose of entering into a CC licence.

Creative Commons comes out of the open source software movement. It is not a means of “self administration” – creators are required to grant perpetual licences to any licensed user of the Creative Commons.

APRA has met with representatives of Creative Commons on a number of occasions to discuss how the Creative Commons licence might be adapted to accommodate the fact that most songwriters in Australia are members of APRA. The plain fact is that if the Creative Commons licence is for “non commercial” use, the vast majority of Creative Commons licensees will not require performing right licences – the concept of performance in public excludes for all practical purposes performances in a domestic context. Any other performances are commercial in character, and require an APRA licence. Accordingly, by simply excluding the APRA rights from the licence, the Creative Commons agreement could easily sit with APRA membership. One of the principal difficulties that APRA has with the Creative Commons model is the uncertainty of the term “commercial” – which is not a term defined in the Copyright Act. APRA suggests that many users of the Creative Commons system may be confused by the term, and that the licences may be the subject of litigation in the future when copyright owners and users disagree over the extent of the licence.

APRA notes that the terms of the Creative Commons licence would also be contrary to the terms of most publishing agreements throughout the world.

In relation to the figures given for use of the Creative Commons licence, APRA notes that Creative Commons provides free access to copyright material other than music, including text and digital images, and the figures given are no indication of a level of music licensing.

The Creative Commons model seeks to implement a system that is completely different to the APRA model – it provides free access on terms. APRA ensures that copyright owners are paid for commercial uses of their music.

A copyright owner who wishes to use the Creative Commons system must “retain all rights to their work, in order to effectively license and exploit those works” (CC submission, p 7). APRA also must retain the limited copyrights it acquires in order to effectively license and exploit those rights. As the system presently stands, copyright owners must choose – Creative Commons offers an alternative model that may appeal to some copyright owners. No APRA member has sought to resign from APRA in order to license through Creative Commons, and APRA is likely to waive the 6 month notice requirement should that occur.

13 October 2005