



Our Ref: C2004/763-08
Contact Officer: Gavin Jones
Contact Phone: 03 9290 1475

GPO Box 520
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

8 March 2006

<<name>>
<<address>>

Dear <<sal>>

**Re: Australasian Performing Right Association (APRA) applications
for authorisation¹ – final determination**

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

APRA sought authorisation for its standard arrangements for the acquisition and licensing of the performing rights in its musical repertoire.

APRA's 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.

Summary of ACCC considerations

Having considered the application and submissions from APRA and interested parties, the ACCC has decided to grant authorisation for four years.

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



The ACCC considers that APRA's arrangements generate significant public detriment. APRA has a virtual monopoly in respect of performance rights licences in Australia. Its input and overseas arrangements significantly limit any realistic prospect of music composers and users dealing directly in respect of performing rights in most instances. This concentration of members rights exclusively with APRA means that APRA would be able to set prices for access to its repertoire without consideration as to what the economically efficient price of those rights would be.

APRA is constrained, to some extent, in its exercise of its monopoly power by the Australian Copyright Tribunal (Copyright Tribunal) which is empowered to determine the 'reasonableness' of licence terms and conditions. However, for many users the utility of seeking recourse to the Copyright Tribunal, and consequently, the constraint the Copyright Tribunal places on APRA, is limited.

APRA has amended its application since the release of the ACCC's draft determination to introduce greater flexibility to its input arrangements, and indicated a preparedness to explore alternatives to the blanket licenses covering its entire repertoire it generally offers, with interested music users. However, the ACCC considers that the extent of the competitive constraints placed on APRA by these developments is also limited.

However, it is not clear that, absent APRA's arrangements – that is, where a number of collection societies each managed part of APRA's existing repertoire – that the outcome would be prices and/or other licence terms and conditions which more closely accorded with the efficient price for performing rights for each category of user. For users where different bundles of works are not close substitutes (i.e. where a user requires access to a large part of APRA's existing repertoire such that different works are complimentary goods) there would, at best, be limited price competition between collection societies. In contrast, for users where different bundles of works are close substitutes, there may be significant price competition between societies.

Consequently, while the ACCC considers that APRA's arrangements generate significant public detriment, given the uncertainty as to how the market would react if a number of collecting societies each licensed performing rights in respect of limited repertoires of works, the level of public detriment generated by APRA's arrangements relative to the situation which would prevail absent its arrangements is less clear.

The ACCC also considers that APRA's arrangements generate significant public benefits. It is far more efficient for APRA to administer performing rights than it would be for a number of competing societies to do so. Cost to composers in administering performing rights and monitoring use of works are reduced. Similarly, users' costs are reduced as they enjoy unfettered access to virtually any work in the world musical repertoire through a single performing rights licence.

APRA's arrangements also result in significant negotiation cost savings for both its members and the overwhelming majority of users as both members and music users only have to deal with one organisation.

APRA's arrangements, and in particular its grant of blanket licences, also generates significant public benefits through containing enforcement costs, as there would be greater incidents of copyright infringement, and associated costs of enforcing copyright, if different composers rights were administered by different collection societies. By reducing incidents

of infringement of copyright, APRA's arrangements also protect incentives for the creation of new works more effectively than would otherwise be the case.

In addition, significant costs would be incurred in the transition to an alternative system or systems of performing rights administration if APRA was to discontinue its present arrangements.

Overall, given the uncertainty about how the market would react absent APRA's arrangements, the ability of the Copyright Tribunal to constrain APRA's exercise of its monopoly power to some extent, and in particular its ability to facilitate direct dealing between music creators and users in some circumstances under APRA's existing arrangements, and the significant public benefits generated by APRA's arrangements, the ACCC considers that APRA's arrangements are likely to result in a public benefit that will outweigh any public detriment. Accordingly, the ACCC has decided to grant authorisation to APRA's arrangements for four years.

Application for review

Pursuant to section 101 of the *Trade Practices Act 1974*, a person dissatisfied with this determination may apply to the Australian Competition Tribunal for its review. An application for review must be made within 21 days of the date of this determination; that is, on or before 29 March 2006. If no application to review is lodged by this date, the ACCC's determination will come into force on 30 March 2006.

A copy of the determination is available on the ACCC's website at www.accc.gov.au.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter or would like a copy of the determination sent to you, please do not hesitate to contact me on 03 9290 1475.

Yours <<end>>



Gavin Jones
Director
Adjudication Branch

Interested party list
Australian Broadcasting Authority
Australian Guild of Screen Composers
Australian Music Association Inc
Australian Music Publishers Association Ltd
Australian Music Retailers Association
Australian Retailers Association
Australian Screen Sound Guild
Australian Subscription Television and Radio Association
Clubs NSW
Clubs Victoria
ICAA
Community Broadcasting Association of Australia
Copyright Agency Limited
Council of Small Business Organisations of Australia
Country Music Association
David Jones
EMI Music Publishing Australia Pty Ltd
Federation of Australian Radio Broadcasters
Festival Mushroom Records
Coles Myer Ltd
Phonographic Performance Company of Australia Ltd
Restaurant and Catering Australia
Shopping Centre Council of Australia
Songseekers International
Songwriters, Composers and Lyricists Association
The Australian Music Association
The Australian Music Centre
The Australian Society of Authors