



**Australian
Competition &
Consumer
Commission**

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Our Ref: C2004/763-07
Contact Officer: Gavin Jones
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13 January 2006

Ms Kate Haddock
Partner
Banki Haddock Fiora

BY EMAIL

Dear Ms Haddock

Re: Australasian Performing Right Association (APRA) applications for authorisation

I refer to APRA's submission in respect of the above listed applications for authorisation dated 11 November 2005. In order to assist the Australian Competition and Consumer Commission (ACCC) in its assessment of APRA's arrangements, I would be grateful if you could provide the following additional information in relation to this submission.

Paragraphs 90 to 100 of the submission, under the heading "APRA's proposed modifications to input arrangements" state that APRA will modify the formal conditions of its licence back arrangements as follows.

Timing of notice

APRA will only require 1 months notice, rather than the 2 months presently required.

Identity of persons

APRA will only formally require specification of such details as are necessary reasonably to identify whether a particular user has been granted a licence, rather than the "identity of persons to whom the member intends to grant a sub-licence" as presently required.

APRA submits that the intent of this change is to make it clear that there may not be any need to specify the precise names of users, and that it will be sufficient to identify users by reference to a class of persons such that, for example, it may be sufficient for the notice to specify "all commercial radio stations in NSW."



Date

APRA will only formally require specification of the date or dates of performances, or the period of the sub licence, as appropriate for the circumstances of the case, rather than the “date or dates on which the performance under the proposed sub-licence is to take place” as presently required.

APRA submits that this change will make it clear that precise dates of performance may not be necessary.

Geographical area

APRA will only formally require specification of such details as are necessary reasonably to identify whether the licence extends to a particular area and venue, rather than the “geographic location of the performance, and the venue of the performance” as presently required.

APRA submits that this change will make it clear that there may be no need to specify the precise areas and venues, and that it may be sufficient to identify by reference to classes of venue or broad areas.

Please confirm whether these changes to APRA’s licence back conditions have been made, and if so, whether APRA intends to amend its application for re-authorisation of its input arrangements accordingly. If these changes have not been made, please advise when it is anticipated that they will be made.

In the event that APRA does wish to amend its application for re-authorisation of its input arrangements to accommodate these changes, I do not consider that this would necessitate the ACCC engaging in a further round of public consultation in respect of the proposed arrangements, nor would it delay the ACCC’s consideration of this matter. In this regard I note that the proposed changes as detailed in your submission, in addition to being made available at the pre decision conference, have been made available to interested parties and placed on the public register for some time.

With respect to its output arrangements, paragraph 10 of APRA’s submission of 11 November 2005 states:

APRA takes very seriously the ACCC’s encouragement of the generation of alternatives to the blanket licence, and proposes to actively explore possible arrangements with interested user groups. It proposes also to modify its present application before the Copyright Tribunal in relation to the licence fee for cinematic exhibition, for the purpose of seeking a determination as to the reasonable terms for a modified blanket licence scheme.

Please confirm whether APRA has modified its present application to the Copyright Tribunal as envisaged. To the extent that this information is publicly available, please also provide details of the amended application. If the proposed modification to the application has not yet been made, please confirm whether it is still APRA’s intention to do so and when this is likely to occur.

Consistent with APRA's submission that it proposes to actively explore possible alternatives to blanket licences with interested user groups, I note the comments of Mr Brett Cottle, Chief Executive of APRA, at the pre-decision conference in respect of APRA's applications for re-authorisation held on 13 October 2005. Mr Cottle stated that, with respect to its licensing arrangements with Free TV Australia (Free TV), APRA was exploring potential alternative licensing schemes and that when its existing agreement expires in 2006, several alternatives would be offered to Free TV.

In the event that negotiations over new licensing arrangements with Free TV have commenced, are you able to provide details of alternative license schemes being considered. I appreciate that the details of such negotiations may be commercially sensitive, however, any information you are able to provide, either on the public record, or on a confidential basis, would be of assistance.

The ACCC is in the final stages of its consideration of APRA's applications for re-authorisation. In order to expedite the ACCC's consideration of this matter, it would be appreciated if you could provide the requested information by Friday 27 January 2005.

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 Gavin Jones on 03 9290 1475.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Scott Gregson', with a large, sweeping flourish extending to the right.

Scott Gregson
General Manager
Adjudication Branch