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27 January 2006

Mr Scott Gregson
General Manager
Adjudication Branch
Australian Competition & Consumer Commission
470 Northbourne Avenue
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BY EMAIL

Dear Mr Gregson

AUSTRALASIAN PERFORMING RIGHT ASSOCIATION (APRA) APPLICATIONS FOR AUTHORISATION

Thank you for your letter dated 13 January 2006 requesting additional information in relation to APRA's applications. We are instructed to respond as follows:

- 1. Proposed modifications to input arrangements**
 - 1.1 APRA has proposed that it modify the formal conditions of its licence back arrangements. The details of the proposed modifications are set out in APRA's submission dated 11 November 2005 and in your letter of 13 January.
 - 1.2 To change formally the conditions of the licence back regime requires a special resolution of a general meeting of the Company, amending Article 17 of the Constitution. APRA's last AGM was held on 17 November 2005, and notice of the meeting had been given by the time APRA formulated the proposed changes. APRA was also not aware whether any determination would be made conditional on such changes being made. Accordingly, APRA has not made the changes.
 - 1.3 The changes that would need to be made to APRA's Constitution are set out in annexure A.
 - 1.4 As is set out in APRA's November submission, APRA already adopts a flexible approach in relation to licence back applications. In particular, it has never enforced the requirement that two months' notice be given. Details of licences back can be provided on a confidential basis if required.
 - 1.5 APRA confirms that it wishes to amend its application for authorisation so as to substitute the attached description of the licence back arrangements, noting that

in practice it is prepared to adopt this policy should members so require. Please let me know if the ACCC requires a more formal amendment.

- 1.6 APRA will make the changes to Article 17 as soon as reasonably possible, and in the meantime will continue to act as though the changes have been made, should any member so require.

2. **Modification of application to Copyright Tribunal licence scheme for cinemas**

- 2.1 Shortly after the pre decision conference in October 2005, APRA again met with representatives of the cinema industry to discuss licensing arrangements for the public performance of music in APRA's repertoire in the course of exhibiting films.

- 2.2 In the course of those discussions, APRA and the cinema operators reached agreement as to a new rate under the licence scheme. APRA had discussed with the cinema operators alternatives to a blanket licence on a confidential and without prejudice basis. The licence scheme that has been agreed is a blanket licence.

- 2.3 APRA intends to withdraw its reference to the Copyright Tribunal. In those circumstances, it was considered inappropriate to file an amended reference in the Tribunal when it would immediately be withdrawn.

- 2.4 APRA has terminated its licences with the cinema industry effective 30 June 2006, and is currently negotiating the remaining terms (other than the rate) of the licence scheme.

- 2.5 Should any cinema operator wish to be licensed on terms that take into account any licence back or opt out arrangements in respect of particular musical works, APRA will formulate such a scheme and negotiate its terms, and will submit the scheme to the Copyright Tribunal if agreement cannot be reached.

3. **Licensing arrangements with Free TV Australia**

- 3.1 APRA's current licence agreement with Australian commercial television broadcasters expires on 30 June 2006.

- 3.2 APRA has not yet met with representatives of the commercial television industry to discuss the terms of the licensing arrangements to apply from 1 July 2006.

- 3.3 As APRA has not had even initial discussions with representatives of the commercial television industry, it is simply too early to anticipate the direction that those discussions might take. However, APRA will be offering to commercial television broadcasters both a blanket licence and a licence scheme under which licence fees are related to use of music by taking account of any licence back or opt out arrangements in respect of particular musical works.

- 3.4 APRA respectfully repeats the submissions set out at paragraphs 16 and 17 of its 11 November submissions. For the reasons set out in those paragraphs:

- (a) the Copyright Tribunal is the appropriate body to determine the reasonableness of APRA's licence schemes, and so it is inappropriate

for authorisation to be conditional on the formulation of a particular form of licence scheme; and

- (b) it is also inappropriate for authorisation to be conditional on a general requirement that APRA offer alternatives to the blanket licence schemes.

We trust this provides the information that you require. If however you would like further information please do not hesitate to contact me.

Yours sincerely



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17....

- (g) Subject to Article 17(h) any member may require the Association to grant to the member a non-exclusive licence to permit the member to license in Australia all or part of the Performing Right in respect of any particular work or works where the Performing Right has been assigned to the Association, or where an authority has been granted pending assignment under Article 17(f), by the member as the composer, author, publisher or proprietor of it.
- (h) In this Article, "Television Broadcast" includes retransmission or simulcast of television broadcast material on-line. It is a pre-condition of the grant of a licence pursuant to Article 17(g) that:
- (i) the purpose of the licence is to enable the member to grant a sub-licence of the Performing Right;
 - (ii) the member provides the Association with a notice (in a form reasonably determined by the Board from time to time) not less than one month prior to the date on which the proposed sub-licence takes effect;
 - ~~(a) in the case of a performance other than by a Television Broadcast, not less than two months prior to the date of the first performance under the proposed sub-licence; and~~
 - ~~(b) in the case of a performance by a Television Broadcast, not less than one month prior to the date on which the proposed sub-licence takes effect;~~
 - (iii) the notice referred to in Article 17(h)(ii):
 - (a) specifies the title/s of the relevant work or works;
 - (b) specifies such details as are reasonably necessary to identify whether a particular person has been granted a sub-licence; the identity of all persons to whom the member intends to grant a sub-licence;
 - (c) specifies such details regarding the date or dates of the performance as are reasonably necessary to identify the performances to which the sub-licence relates;
 - ~~(i) in the case of a performance other than by a Television Broadcast the date or dates on which the performances under the proposed sub-licence are to take place; and~~
 - ~~(ii) in the case of a performance by a Television Broadcast the date on which the proposed sub-licence is to take effect, the period in respect of which the proposed sub-licence will operate, and any performance dates which are known to the member at the time of entering into the proposed sub-licence;~~
 - (d) specifies such details regarding the geographic location and venue of the performance as are reasonably necessary to identify whether the sub-licence extends to a particular area and venue s or if a performance other than by a Television Broadcast, the venue of the performance;
 - (e) in the case of a performance by a Television Broadcast, specifies the broadcasting or on-line service and the program or content segment in respect of which the proposed sub-licence will be granted;
 - (f) contains a signed consent to the proposed sub-licence and release and indemnity in a form reasonably required by the Board from time to time from all Interested Persons; and
 - (g) is accompanied by
 - (i) an undertaking to pay reasonable costs to the Association, in accordance with the Board's predetermined and published schedule of costs (if any), prior to the date of the first performance or (in

the case of performances by a Television Broadcast)
the date on which the proposed sub-licence is to take
effect; and

(ii) an undertaking to pay to the Association such further
reasonable costs which may be incurred by the
Association in connection with and/or arising out of
the granting of the licence back to the member;

(iv) the sub-licence must be in writing and if practical, signed by all parties.