



AUSTRALIAN  
COPYRIGHT  
COUNCIL



*Response to*

**Australian Competition and Consumer  
Commission**

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*Interested Party Consultation*

**Australian Performing Rights Association Ltd**

*Applications for revocation and substitution  
(A91187 to A91194)*

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*November 2009*

## 1. About the Australian Copyright Council

The Australian Copyright Council is a non-profit company that:

- provides information about copyright via its publications, training and website
- provides free legal advice about copyright
- represents the interests of creators and other copyright owners in policy submissions.
- conducts research on copyright-related issues

The Copyright Council receives substantial funding from the Australia Council, the Australian Government's primary arts funding and advisory body.

The Copyright Council provides its services to a range of people with an interest in copyright, including creators, publishers and users of copyright material. In relation to music, the creators include songwriters and composers; the users include educational institutions, church groups, choirs, occupiers of premises where music is played, and community broadcasters. Advice given by the Copyright Council's staff lawyers to songwriters and composers includes detailed advice about publishing contracts and other contracts dealing with copyright.

There are currently 23 industry organisations affiliated with the Copyright Council, including APRA and other copyright collecting societies.

## 2. Copyright Council's Experience in Relation to APRA

Many of the people who contact the Copyright Council regarding public performance or broadcast of music are using music on a relatively small scale. In our experience, the relative ease with which an APRA licence can be obtained encourages authorised use of music.

By contrast, our experience in relation to other areas is that if a clearance is difficult to obtain, the material is not used at all or is used without permission. In other words, the person either does not have the benefit of the use of the material or infringes copyright. In either case, the copyright owner receives no benefit.

In our experience from advising composers, in particular in relation to music publishing contracts and contracts commissioning new music, it is very beneficial for a songwriter to be a member of APRA prior to signing a contract.

Membership of APRA also provides an income stream that is separate to any royalties payable under a contract with a music publisher, and may not be used by a music publisher to recoup an advance against future royalties made to the songwriter. Our understanding is that APRA's policy is to distribute direct to the composer a minimum of 50 per cent of the money collected in respect of a composition.

### **3. Review of APRA's Compliance with its Code of Conduct (2007/08)**

In relation to APRA's conduct in the day-to-day use of its authorisations, we note the following comments by the Hon J.C.S. Burchett, QC, in his *Report of Review of Copyright Collecting Societies' with their Code of Conduct for 1 July 2007 to 30 June 2008* (24.11.08):

“An analysis of APRA's complaints records shows how far its conduct is from revealing any tendency to overlook the concerns of its members or its licensees, or to deal with them insensitively. On a number of occasions it has chosen to waive a right rather than allow a dispute to develop that would have been disproportionate to the value of the right. On a number of occasions, too, it has apologised where it could have maintained there was nothing in its actions to apologise for.” [p. 12]

“A relatively small proportion of the complaints recorded by APRA in the period under report raised issues under the Code, and these were dealt with in an appropriate manner.” [p.14]

### **4. Conclusion**

Considering the benefits to copyright creators of APRA's services, as well as the appropriate manner in which APRA has been found to conduct its day-to-day business, the Copyright Council takes the view that any lessening in competition that may be caused by the authorisations APRA is seeking will be significantly outweighed by the likely public benefits. We therefore support APRA's applications for revocation and substitution (A91187 to A91194).

*Mary Anne Reid  
Chief Executive  
9 November 2009*