

Tuesday, 17 November 2009

Mr John Rouw
The Australian Competition & Consumer Commission
GPO Box 520
MELBOURNE VIC 3001

Dear Mr Rouw

Australasian Performing Right Association Ltd – applications for revocation and substitution (A91187 to A91194) – interested party consultation

We refer to the applications for revocation and substitution of authorisations from Australasian Performing Right Association Ltd (**APRA**) and to the ACCC's invitation to make submissions on the likely public benefits and effect on competition, or any other public detriment, from the proposed arrangements. AIMIA welcomes the opportunity to comment on the applications.

Summary

In summary, it is AIMIA's submission that the benefits to the digital media industry under the existing and proposed arrangements significantly outweigh the detriment constituted by any resulting lessening of competition. It is AIMIA's view however, that existing mechanisms (such as the Copyright Tribunal and the publication of licensing schemes) which work to mitigate the detrimental effect on competitive pricing in the market for the sale of musical works, should be supplemented with a program for in depth and ongoing engagement with the digital media industry as new markets, such as the online publication of audio-visual content, emerge and mature.

About AIMIA

AIMIA was founded in 1992 as an industry body for the interactive content and digital media sector in Australia. AIMIA's membership represents the full spectrum of the digital media industry. Our members range from Australia's pre-eminent digital media players, including the ABC, Fairfax Digital, MySpace, Network Ten, News Digital Media, ninemsn, Premier Media Group, SBS, Telstra Media and Yahoo!7, to the country's leading interactive advertising, mobile content, web development, game design and special effects companies.

AIMIA exists to:

- deliver services and initiatives that help AIMIA members grow their businesses in the digital media industry;
- develop and grow the markets for AIMIA members' services and products;
- identify and develop export opportunities in digital media for AIMIA members; and
- represent AIMIA members and the digital media industry nationally and internationally with Government, education, media and the broader business community.

Framework for submission

In making the submissions contained in this letter, AIMIA has consulted a number of its members. However, the submissions are of a general nature and do not necessarily reflect the views of all AIMIA members, some of whom may have made independent submissions. AIMIA's submissions are limited to the effect of the proposed licensing arrangements on the digital media industry.

SUBMISSIONS

Benefits of the proposed arrangements

1. AIMIA submits that the benefits to the digital media industry under the existing and proposed arrangements significantly outweigh the detriment constituted by any resulting lessening of competition.
2. The primary benefit to the digital media industry under the arrangements is the efficiency afforded by dealing with a single licensor offering 'blanket' licences for the performing rights in musical works. In AIMIA's view, the collective administration of music copyrights is the only practical approach to the licensing of such rights to the digital media industry.

Detriment – lack of competitive pricing

3. The primary and perhaps only detriment that flows to the digital media industry from APRA's authorisation is that it precludes competitive pricing for the licensing of musical works. Prospective licensees reap the significant benefit of dealing with a single entity (i.e. APRA) but pay the price of having no choice but to deal with that entity and its requirements as to pricing. Further, there is no mechanism for the objective benchmarking of APRA's licence fees.

4. The Copyright Tribunal is the ultimate answer to redress any disputes with licensees as to pricing. However, recourse to the Tribunal or the dispute resolution mechanisms offered by APRA (as mandated by the Code of Conduct for Copyright Collecting Societies), are not practical or desired avenues for licensees. In particular, referrals to the Copyright Tribunal can be time-consuming and expensive. This is particularly an issue for the digital media industry which is comprised of many start-up operations and prospective licensees stepping into new and untested business models.
5. The experience of AIMIA members is that, for the purpose of pricing, APRA seeks to align new forms of music use with existing forms of use which are most similar. For example, selling ringtones and downloads, so it is said, is analogous to selling records (para 11.2.3 of APRA's submissions in support of its application) and accordingly attracts transactional tariffs (as opposed to revenue percentages). Whilst this approach might serve as a starting point it can only go so far. For instance the sale of a "tethered" download, which is scrambled (i.e. rendered inaccessible) soon after it is downloaded, has characteristics which are particularly unlike a record sale and requires a different approach to pricing.

Industry Engagement

6. In AIMIA's submission, it should be incumbent on APRA to engage closely with the digital media sector, on an ongoing basis, so that APRA is aware of emerging business models and is in a position to adopt a sensitive and sophisticated approach to licence fees and their calculation.
7. Such engagement is crucial in light of the next wave of online music dissemination. AIMIA has stated that the ringtone and digital download markets have been two of APRA's strongest areas of growth (APRA submissions, para 11.1.1). Background music will be the next wave of music use as the volume of on-line "video" or audio-visual content expands. Whilst video on-line has parallels with film and TV in relation to the use of music, there are a number of significant differences (such as the quality of online video delivery, the nascent nature of the online video market, the diverse business and commercial models, competition from overseas publishers, its fragmented audience and the way audiences consume content through their IP-enabled devices as well as particularities as to availability) that demand nuances in approach when music licensing is concerned.

User Generated Content (UGC)

8. AIMIA submits that one area that would particularly benefit from a collaborative approach between APRA and the digital media industry is in relation to UGC. Music in UGC is a major issue for online publishers and it is suggested that there is scope for a mutually beneficial solution on the matter.

Published Licensing Scheme for Online Video

9. AIMIA submits that APRA should, as a matter of some priority, work with the digital media industry to develop a published licensing scheme for the use of music in video on-line. Such a scheme could be provisional until this market matures, but would (as APRA's published schemes have in other areas) provide prospective licensees with some transparency and accountability as well as creating a greater degree of predictability in regard to the quantum of fees to allow for business planning.
10. In AIMIA's view, a published licensing scheme for music in video-online (and indeed APRA's existing licensing schemes) should avoid overly segmenting new technology markets to ensure that the scheme(s) are simple and readily understandable by prospective licensees.

Period of Authorisation

11. The rate of change in the digital media industry is rapid and such change may affect the dynamics of music licensing arrangements. This is reflected in APRA's own online licensing, which is generally restricted to shorter time periods. Whilst AIMIA appreciates the need for any authorisation to run for a reasonable term (for instance, to provide certainty), it is AIMIA's submission that the period of any substituted authorisation should not extend for a period longer than 4 years from expiry of the date of the existing authorisation.

Thank you once again for the opportunity to make this submission.

Yours sincerely



John Butterworth
CEO
AIMIA