



**Australian  
Competition &  
Consumer  
Commission**

GPO Box 520  
Melbourne Vic 3001

Level 35, The Tower  
360 Elizabeth Street  
Melbourne Vic 3000

tel: (03) 9290 1800  
fax: (03) 9663 3699

[www.accc.gov.au](http://www.accc.gov.au)

Our Ref: C2009/1687  
Contact Officer: Gavin Jones  
Contact Phone: 03 9290 1475

8 February 2009

Dear Sir/Madam

**Australasian Performing Right Association Ltd – applications for revocation and substitution A91187 to A91194 and A91211 – draft determination**

The Australian Competition and Consumer Commission (the ACCC) has issued a draft determination in respect of the application for re-authorisation lodged by APRA on 30 September 2009. Attached is a summary of the authorisation process including how to make a submission to the ACCC.

APRA is seeking re-authorisation for its standard arrangements for the acquisition and licensing of performing rights in its music repertoire.

**Draft determination**

A copy of the ACCC's draft determination is attached, including a summary of its reasons. For the reasons set out in its draft determination, the ACCC proposes to grant re-authorisation, subject to conditions, for three years.

The ACCC proposes to re-authorise APRA's arrangements subject to conditions:

- requiring streamlining of APRA's licence back provisions to make it easier for members who want to negotiate licences directly with some users to get permission from APRA to do so
- requiring the independent expert appointed to consider disputes under APRA's alternative dispute resolution process to report whether APRA's has offered genuine discounts on licences to accommodate or reflect direct dealing if requested by the licensee
- requiring APRA to report to the ACCC annually on the outcome of disputes with users considered under the alternative dispute resolution process.

These proposed conditions are summarised in detail on pages 44 to 48 of the draft determination.

The ACCC is seeking the views of APRA and interested parties about these proposed conditions. In particular, the ACCC has deliberately not been prescriptive at this time in drafting the proposed condition about streamlining of APRA's licence back provisions. Rather, the ACCC seeks the views of interested parties about what categories of use this streamlined licence back process should apply to and what information should be required to be provided by members to APRA, to assist in drafting this condition.

The ACCC is also invites interested parties to comment on alternatives to APRA's present system of expert determination for disputes, including whether more comprehensive alternative dispute resolution processes are required. This issues is discussed on pages 38 to 40 of the draft determination.

### **Exclusive dealing notification lodged by APRA**

On 18 January 2010 APRA lodged notification N94448 for exclusive dealing conduct. The notification is in relation to APRA's assignment of rights (membership agreement) and Article 17 of APRA's Constitution. Specifically, the notification concerns conduct whereby APRA acquires rights in its members existing and future musical works subject to a condition that the member does not 'opt out' of the APRA system or 'licence back' any of their works unless they comply with certain condition.

A copy of this notification is available from the ACCC website, [www.accc.gov.au/NotificationsRegister](http://www.accc.gov.au/NotificationsRegister), by following the links to this matter.

Interested parties are also invited to make a submission to the ACCC about this notification.

### **Next steps**

Once the ACCC issues a draft determination, the Applicants or any interested party may request that the ACCC convene a 'pre-decision conference'. A pre-decision conference provides the opportunity for interested parties to make oral submissions in relation to the draft determination. Conferences are conducted informally and while legal or professional advisers are able to attend they are not entitled to participate in the discussion.

If you wish the ACCC to hold a pre-decision conference in relation to the draft determination, you must notify the ACCC in writing by **Monday 22 February 2010**.

Alternatively, you are invited to make a written submission about the conditions proposed by the ACCC, or any other aspect of the draft determination. Submissions should be lodged by **Monday 1 March 2010**.

The ACCC will consider any submissions it receives, including any oral submissions made should a pre-decision conference be called, and will then release a final determination in relation to these applications.

Submissions will be placed on the ACCC's public register subject to any request for exclusion (guidelines are attached).

## Timetable

The ACCC will continue to progress its assessment of the application in a timely manner. An updated indicative timetable is set out below for your information.

<b>30 September 2009</b>	Lodgement of application and supporting submission.
<b>11 November 2009</b>	Closing date for submissions from interested parties on the application.
<b>16 December 2009</b>	Submission received from APRA in response to interested party submissions.
<b>8 February 2010</b>	Draft determination issued.
<b>February/March 2010</b>	Public consultation on draft determination including any conference if called.
<b>March 2010</b>	Final determination.

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 me on 03 9290 1475.

Yours sincerely



Gavin Jones  
Director  
Adjudication Branch

**Sent to the following interested parties**

Albert Music  
Apple Pty Ltd  
APN News and Media Ltd  
Arts Law Centre of Australia  
Attorney-General's Department  
Austar United Communications Ltd  
Austereo Group Ltd  
Australian Ballet  
Australian Broadcasting Corporation  
Australia Council for the Arts  
Australian Communications and Media Authority  
Australian Digital Alliance  
Australian Copyright Council  
Billings Cloak Solicitors  
Choice  
Australian Film Institute  
Australian Guild of Screen Composers  
Australian Hotels Association  
Australian Hotels Association WA  
Australian Independent Record Labels Association  
Australian Interactive Media Industry Association  
Australian Mobile Telecommunications Association  
Australian Multiplex Cinemas  
Australian Music Association Inc  
Australian Music Centre  
Australian Music Publishers Association Ltd  
Australian Music Retailers Association  
Australian Record Industry Association Ltd  
Australian Retailers Association  
Australian Screen Sound Guild  
Australian Subscription Television and Radio Association  
Australian Society of Authors  
BB Retail Capital  
BigPond Music  
Cherry Rock  
Club Embassy  
Clubs NSW  
Clubs Victoria  
Coles Group  
Commercial Radio Australia  
Communications Law Centre  
Copyright Agency Limited  
Copyright Tribunal of Australia  
Council of Small Business Organisations of Australia  
Country Music Association  
Dainty Consolidated Entertainment  
David Jones Ltd  
Competition and Consumer Policy Division  
Department of Broadband, Communications and the Digital Economy  
Disney

DMG Radio Holdings Pty Ltd  
EMI Music Publishing Australia Pty Ltd  
Fairfax Media  
Federation of Australian Radio Broadcasters  
Fitness Australia  
Foxtel  
Free TV Australia  
Frontier Touring Company  
Future Entertainment  
Greater Union  
Hotel, Motel and Accommodation Association of Australia  
Hoyts Cinemas  
Independent Cinemas Association of Australia  
Inflation  
IP Australia  
Jarrah Records  
Leagues Clubs Australia  
Live Performance Australia  
Macquarie Media Group Ltd  
Marriner Theatres  
Melbourne International Film Festival  
Minter Ellison  
MTV Networks Australia Pty Ltd  
Mushroom Music Pty Ltd  
Music Council of Australia  
MySpace Inc  
National Retail Association  
News Corporation  
Nokia Australia  
One Louder Entertainment  
Opera Australia  
Optus Vision Pty Ltd  
Premier Media Group  
QUT Law School  
Restaurant and Catering Australia  
Revolver Upstairs  
Screenrights  
Shopping Centre Council of Australia  
Songwriters, Composers and Lyricists Association  
Sony/ATV Music Publishing  
Southern Star Entertainment  
SBS  
Telstra Multimedia Pty Ltd  
Universal Music Publishing  
Universities Australia  
Village Roadshow  
Vodafone Australia  
Warner/Chappell Music Australia  
XYZNetworks Pty Ltd  
Jamison Young  
YouTube LLC