

Association of Liquor Licensees Melbourne
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20 March 2010

Mr. Gavin Jones
Director
Adjudication Branch
Australian Competition and Consumer Commission
Level 35, The Tower
360 Elizabeth Street
Melbourne, Victoria 3000

Dear Sir,

Australasian Performing Rights Association Ltd – application for revocation and substitution A91187 to A91194 and A91211 – draft determination.

We refer to the above mentioned matter, and we reply to your 17th of March request for further comment.

License Back Arrangements

This type of arrangement is of little benefit to the proprietors of nightclubs and bars as represented by our association: Association of Liquor Licensees Melbourne.

Given the way in which music is broadcast within our members' venues, mostly by a DJ, it is not possible for a proprietor to know in advance whose music a DJ intends to play on any given night of performance; therefore, to ensure complete protection from breach of copyright a proprietor of these types of venues would have to take out hundreds of individual licensing agreements – this requirement that is thrust upon our members by APRA is a nonsense and is not a concession.

The alternative is a 'blanket licence' and this system is flawed. Our previous submission details our claims in this respect which in summary are: the 'blanket system' doesn't allow accountability with respect to what is and isn't APRA registered music and therefore the possibility of our members paying for music that falls outside of APRA's repertoire is very real.

Whether a 'license back' or 'blanket arrangement', our members are offered little respite from the burden of exorbitant and unsustainable licensing fees, fees that are higher than anywhere else globally.

We note APRA's 'carry on' in Point 2 of their 12 March submission and we say that it concerns us that any purported modification to the system currently in place should be met with such resistance. We ask, that instead of telling us what they (APRA) can't do that they instead concentrate on telling us what they can do and to this extent they have told us very little. We are unsure as to why APRA with its large

revenue stream and sophisticated administrative structures are reluctant to embrace change and be more active in offering up suggestions. We note that in 2006 the ACCC asked APRA to modify their 'blanket license' system and four years on from this the only change we have seen is an increase in licensing fees under the system.

Expert Determination

We encourage revision of the APRA expert determination process. Personal experience with this process reveals it to be flawed and in need of massive overhaul.

Obviously, an ADR practitioner is a specialised and professional individual who is empowered with the responsibility of bringing parties together and weighing factual argument. APRA have recommended that the ADR role be facilitated by a barrister and we remain far from convinced that this is an appropriate choice for this type of role. We would rely on a barrister to formulate opinion, as per their training, but not to weigh conflicting opinion as is required by a judge/mediator or someone charged with powers of determination.

Further, the concept of ADR is perhaps lost on APRA in that ADR is about bringing parties together with negotiated and agreed solution; whereas, a barrister, due to the adversarial system in which they commonly operate, is about polarising parties into winners and losers, those who are right and those who are wrong.

This mindset is inapplicable to the dispute resolution process as APRA should be about building long term relations with their clients/licensees through fostering negotiated solution in which all parties are content with the outcomes; instead, they seek to put in place a system in which a final decision is based on a winner and a loser principal due to the mindset of the individual charged with determination. Personal experience has revealed that barristers who profess ability to act as a mediator often conduct such mediation based on the 'adversarial' habits that are firmly entrenched in their psyche from having spent years operating in the legal system.

We note that the 12 March 2010 submission of APRA contains several strange documents detailing corrections and track changes; I am not sure why this was released, other than through administrative blunder, but I do note that in offering up alternatives that a mediator was considered but then ruled out – literally.

We submit that there exists many reputable and professional providers of ADR and that a list of such organisations be generated so as to allow selection by those who wish to engage APRA in such processes.

Additionally, when the 'nightclub tariff' peaks at \$1.05 in the next few years ninety percent of our members will breach the \$50,000.00 per year annual license fee and per the APRA submission members will be required to contribute to any ADR process. We reject this and say: APRA should be required to fund in full any ADR process. We say this because APRA has offered our industry scant assistance and is forcing our members to consider entering into this process as a means of last resort.

We would allege, that APRA is seeking to charge a fee so as to dissuade complainants from moving forward and entering the ADR process.

Finally, we support a three year window between APRA's current review and the next; however, should APRA demonstrate during this period that they are prepared to make concession, engage our members in constructive dialogue, and put in place mechanisms that allow for a fairer and more practical implementation of the 'blanket license system' and subsequent collection of revenue, we will next time around give greater consideration to agreeing to a longer period between reviews should it be requested.

Yours sincerely,

Nicholas Albon || Solicitor
Secretary of the Association of Liquor Licenses Melbourne