

23 March 2010

Mr Gavin Jones
Director
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

By email: adjudication@accc.gov.au

Dear Mr Jones

RE AUSTRALASIAN PERFORMING RIGHT ASSOCIATION LTD – APPLICATIONS FOR REVOCATION AND SUBSTITUTION (A91187 TO A91194 and A91211) – INTERESTED PARTY CONSULTATION

We are writing in response to your 17 March 2010 invitation to comment on the further submissions by Australasian Performing Right Association Ltd (APRA) to the Australian Competition and Consumer Commission (ACCC) regarding APRA's current application for re-authorisation. In particular, we wish to comment on the changes proposed by APRA to its licence-back arrangements.

Creative Commons Australia (ccAustralia) welcomes APRA's proposed changes to its Article 17(f)-(g) licence-back provision, contained in Attachment 2 of APRA's 12 March submission. ccAustralia notes that these amendments would appear to address its main concerns regarding the ability of APRA members to distribute their material online with legal certainty. In particular, by extending the scope of the licence-back to cover all rights controlled by APRA (including public performance and communication), the proposed amendments would appear to grant APRA members broad rights to directly license their material in both the online and offline environment, for commercial and non-commercial purposes.

From ccAustralia's reading, these amendments (if approved at the APRA AGM) would provide APRA members with a legal mechanism they do not currently have, that would allow them to:

- distribute their works via popular commercial social networking services, such as MySpace, YouTube and Facebook;
- make use of the business model opportunities made available by emerging revenue-sharing services such as iTunes, Jamendo and Beatpick; and
- have the choice to make their material available under the full suite of Creative Commons licences, including those that allow commercial use.

We further note that, in addition to the proposed Article 17(g) amendments provided in Attachment 2 of its submission, we presume APRA will also remove the language in Article 17(f) which currently limits the operation of this licence-back mechanism to Australia. Such a step would be a logical and necessary part of its extension of this licence-back provision to online communication, which is by its very nature international. This would be in line with statements in the 16 March letter from Ms Haddock to Mr Rouw.

ccAustralia also welcomes and supports APRA's proposals to:

- simplify the administrative requirements for its licence-back provision and reduce required notice periods to at most two weeks – however, we still hold concerns regarding the charging of unspecified fees for artists to regain their own rights and the practicality of imposing a prior notification period (even of only one week) in the digital environment;
- provide improved information for its members and licensors on the legal implications of APRA's input and output arrangements and its policies with respect to common online activities – in particular, ccAustralia would like to see greater clarification of APRA's policies towards its members' use of Creative Commons licences and commons-based revenue sharing services; and
- make its licence-back forms accessible to non-members on the APRA website and include comprehensive information about licence-back in its membership educational programs.

ccAustralia is impressed by APRA's willingness to respond to comments put forward by the ACCC and interested parties during the re-authorisation process and we look forward to working with APRA to ensure the implementation of these amendments are effective to allow musicians and music users alike to make full (and legal) use of new distribution, licensing and business models enabled by the digital revolution.

Please feel free to contact Jessica Coates on 07 3138 8301 or at jessica@creativecommons.org.au if you wish to discuss these matters further.

Yours sincerely



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