

24 March 2010

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**BY EMAIL**

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The General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission  
GPO Box 3131  
CANBERRA ACT 2601

Dear Sir

**Australasian Performing Right Association Limited (APRA) – Application for Revocation and Substitution A91187-A91194**

We refer to the ACCC's letter dated 17 March 2010 inviting further submissions from interested parties following the further submissions provided by Australasian Performing Right Association Limited (APRA).

We act for Village Cinemas Australia Pty Limited, the Greater Union Organisation Pty Limited, Reading Entertainment Australia Pty Limited, Australian Multiplex Cinemas Pty Limited, the Hoyts Corporation Pty Limited and the Independent Cinemas Association of Australia (the **Cinema Operators**).

**Proposed licence back provisions by APRA**

APRA's proposed licence back conditions retain the requirement that the member provide details regarding the geographic location and venue of the performance as reasonably necessary to identify whether the sub-licence extends to a particular area and venue.

The Cinema Operators submit that sub-clause (ii)(4) be amended as follows:

'the territory of the licence, or if the licence is for a public performance (as opposed to a communication) such details ~~regarding the geographic location and venue of the performance~~ as are reasonably necessary to identify whether the sub-licence extends to a particular area and venue'

so as to permit a specification such as for example 'all cinemas [of the licensee] in Australia'.

## **Dispute resolution process**

### *APRA comments in respect of cinemas*

In section 2 of the APRA's submission, dated 12 March 2010, APRA comments that it has concerns regarding whether cinemas would be able to provide relevant information for discounted blanket licences in an accurate and timely manner prior to the release of films in Australia. APRA states that it often does not receive cue sheets for films until well after the release of the film. APRA also states that if a licence scheme is to apply which incorporates a discount from a blanket licence scheme, APRA would require cue sheet information from cinemas as the calculation of any discount will inevitably involve consideration of the particular music not controlled by APRA in comparison with APRA controlled music in a film.

From the information provided in APRA's submissions APRA already obtains cue sheet information for films. An appropriate discounted blanket licence scheme could be structured so that accounting for directly licensed works as may be required for a reduction in blanket licence fees could be done in arrears, after APRA has the cue sheet information available. We note that the Cinema Operators' existing blanket licenses provide for fees calculated six months in arrears based on overall box-office receipts.

### *Expert consideration of direct licensing and discounted blanket licensing*

APRA's proposed wording for the condition requiring the expert to consider issues of direct licensing and discounted blanket licences requires the expert to consider the issues only if the user has obtained any direct licences from APRA members.

This is inappropriate as it precludes consideration of the issues when the licensee may be seeking to negotiate a discounted blanket licence which takes account of any direct licensing in the future. Furthermore, it is restricted to cases in which the user has obtained direct licences from APRA members and does not take account of direct licensing from non-APRA members (for example US copyright holders) of music in the APRA repertoire.

The Cinema Operators submit that the expert should be required to consider the relevant matters (that is, whether APRA offered the user a genuine discount on the user's blanket licence to take into account direct licensing and whether any amendments could be made to the user's licence back so that it provides a genuine and workable alternative to the blanket licence) whenever the issue of direct licensing and discounted licence fee arrangements are matters of dispute between the parties.

## **Length of authorisation**

The Cinemas Operators re-iterate their support for a three year period for the authorisation as an appropriate period which will permit the ACCC to review the working of the proposed conditions of authorisation and monitor progress in facilitation of direct dealing and discounted blanket licences, in the context of continuing rapid changes in the market for performing rights in copyright music.

Yours faithfully

**MINTER ELLISON**

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