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From: Kate Haddock [mailto:haddock@bhf.com.au]
Sent: Wednesday, 31 March 2010 10:32 AM
To: Rouw, John
Subject: APRA'S APPLICATIONS FOR AUTHORISATION

Dear Mr Rouw

I refer to our telephone conversation this morning and attach a revised "ADR at APRA" document to be submitted with APRA's applications for authorisation. This document:

(a) replaces \$50,000 with \$100,000 as the amount of annual licence fees above which the costs of the expert should be shared between APRA and the licensee, as submitted in my email of 25 March 2010; and

(b) reinstates the statement (from APRA's original 2009 application) to the effect that parties to APRA licences may negotiate alternative forms of ADR to expert determination.

The attached document is marked up against the ADR document approved by the Competition Tribunal in APRA's original authorisation applications in 2000.

Please let me know if you require anything further.

Regards

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ALTERNATIVE DISPUTE RESOLUTION AT APRA

From time to time, disputes arise between APRA and its licensees, or potential licensees.

The dispute might relate to the terms of the licence, whether a licence is required at all, or how much music is being played at the licensee's premises.

These disputes can nearly always be referred to the Copyright Tribunal or to the Federal Court to be resolved. APRA realises that the Copyright Tribunal and the Federal Court can be expensive and time consuming dispute resolution forums.

APRA has established a procedure to attempt to resolve disputes with licensees or potential licensees, which is cheaper and quicker than the Copyright Tribunal and the Federal Court. The process is called Expert Determination.

If you have a dispute with APRA regarding a licence or a proposed licence, you can refer the dispute to the Expert Determination procedure. The dispute will be determined quickly. If a licensing officer at APRA suggests that a dispute be referred to Expert Determination, you should seriously consider agreeing to the suggestion.

One of the issues which may be determined by the expert is the date from which any APRA licence may apply. The process is not intended to delay any obligation to obtain a licence.

If several licensees have similar substantive issues with APRA, APRA may suggest that the disputes be determined together. If the expert has previously determined a substantive issue and a similar issue arises at a later date, APRA may argue that the dispute resolution process should not apply.

The procedure for Expert Determination is as follows:

1. If during your negotiations with a licensing officer from APRA a dispute arises, either you or the licensing officer may suggest that the dispute be referred to Expert Determination. This should only occur if it seems unlikely that the dispute can be resolved by negotiation. If you are not already a licensee of APRA and you ask to have the dispute determined by an expert, APRA must agree. If you already have an APRA licence, you may be required to have the dispute referred to Expert Determination, under the terms of your licence.
2. Once you have agreed that the dispute should be referred to Expert Determination, APRA's licensing officer will refer the matter to APRA's ADR liaison officer. The liaison officer will take a detailed note of the matters in dispute, and will contact you to make arrangements for the Expert Determination.
3. Disputes will be determined by one of a panel of three independent experts. All members of the panel ~~are former judges~~ will be barristers with expertise in intellectual property matters, who have not been retained to advise APRA or to represent APRA in legal proceedings ~~who have not been retained to advise APRA or to represent APRA in legal proceedings~~. APRA will ask you to choose from three such barristers, and if you cannot choose, APRA will ask the Australian Commercial Disputes Centre to nominate a barrister with these qualifications.

4. On a date which is convenient to you, APRA and the independent expert will be appointed. The dispute will be dealt with at a venue which is as close to your place of business as possible (usually, the capital city in your state).

5. Before the date which has been set down for dealing with the dispute, you and APRA may submit any written statements or other documents which support your arguments relating to the dispute. These should be forwarded to the ADR liaison officer.

6. At the Expert Determination, you will be given an opportunity to present your arguments to the independent expert. APRA will also be given an opportunity to present its arguments. If both parties wish, they may have their solicitors present to assist them. If you agree to have a representation body appear on your behalf, you may.

7. The expert will then make a determination of the dispute. If either you or APRA is dissatisfied with the determination, the dispute may be referred to the Copyright Tribunal or the Federal Court (whichever is the appropriate body).

8. In most cases (including all casual licences), APRA will pay for the costs of the independent expert, including professional fees and travel expenses. Other than under casual licences, if your annual APRA licence fees are more than \$100,000, you and APRA will share the costs of the independent expert equally or as directed by the independent expert. The cost of the venue for the Expert Determination must be shared equally between the parties. You must pay your own costs associated with the determination.

Nothing in this procedure prevents you from negotiating with APRA a different method of dispute resolution, such as mediation, however APRA is not bound to pay the costs of any such procedure.

If you would like any details about the process, please contact [*Person to be nominated by APRA*].