

FILE No:
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**Share, Remix, Reuse — Legally**

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17 May 2010

Dr Richard Chadwick  
General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission  
GPO Box 3131  
Canberra ACT 2601

Dear Dr Chadwick

**RE AUSTRALASIAN PERFORMING RIGHT ASSOCIATION LTD – APPLICATION FOR  
REVOCATION AND SUBSTITUTION OF AUTHORISATIONS A91187 TO A91194 and A91211 –  
FINAL DETERMINATION**

We are writing to express our support for the Australian Competition and Consumer Commission's (ACCC) 16 April 2010 determination in respect of the Australasian Performing Right Association Ltd's (APRA) application for re-authorisation. Creative Commons Australia (ccAustralia) agrees that APRA plays a valuable role in Australia's music industry and provides many important services to musicians and music users alike.

As indicated in our response to the draft determination released in February, ccAustralia endorses the ACCC's commentary (at paras 4.58-4.67) on the desirability of non-exclusive input arrangements for APRA and other collecting societies and agrees that APRA should be encouraged to explore reasonable alternatives to its current assignment membership model. However, acknowledging the complexities of introducing such a system at this time, ccAustralia welcomes APRA's statement (reported at para 4.195) that it does not wish to constrain its members from entering into direct licensing agreements. ccAustralia also welcomes APRA's proposed changes to its licence back mechanism (as outlined at paras 4.181-4.187) designed to increase the ability of APRA's members to regain control of their performance and communication rights for the purpose of such agreements.

As per its 23 March submission, ccAustralia believes that, save for their limitation to Australia, these amendments would appear to address our main concerns regarding

the ability of APRA members to use Creative Commons licences and to distribute their material online. ccAustralia in particular commends APRA's undertaking to:

- clarify that for a general sub-licence members need only provide the terms of the sub-licence, rather than details about times and dates;
- in respect of broadcast and online communications, only require information regarding the territory where the member has granted the sub-licence, and not further details regarding the geographical location and venue; and
- reduce the prescribed notice periods for different categories of licence back – although we maintain that for online transactions APRA should be encouraged to explore options for automated systems which do not impose a waiting period.

With respect to the continued limitation of the licence back provision to Australia, ccAustralia remains concerned that this effectively renders the mechanism void in the digital environment and leaves APRA's members unable to legally distribute their own music online. However, we acknowledge APRA's statements (reported at paras 4.207-4.211) regarding the difficulty of resolving this issue in light of its reciprocal arrangements with international collecting societies. ccAustralia echoes the ACCC's call (at para 4.213) for APRA and its overseas counterparts to explore options to overcome this significant barrier to the operation of direct licensing over the internet. Furthermore, ccAustralia undertakes to work with APRA to clarify the impact of this limitation on APRA's members and to facilitate any international discussions necessary to allow musicians to make full use of online business models with legal certainty.

Finally, and most importantly, ccAustralia strongly supports the following undertaking by the ACCC (at para 4.322):

Given that online applications represent and/or are driving much of the business growth and innovation in the use of musical works and performing rights, the ACCC will continue to review the issue of online applications, including the possible development of licence schemes for these users, in any future assessments of APRA's arrangements.

ccAustralia urges the ACCC to monitor the impact of APRA's practices on direct licensing of musical works in the digital environment over the coming years, and in particular the outcomes of APRA's current reviews of its licensing schemes for music portals and user generated content sites (see para 4.320). We also suggest that, as part of its promised clarification of its input and output arrangements and its policies with respect to online activities (reported at para 4.186) APRA should be encouraged to publicly clarify its policies with respect to Creative Commons licensing and the use of commons-based revenue-sharing sites such as Jamendo and Beatpick.

We commend the ACCC on a thorough reauthorisation process and look forward to continuing our work with APRA and the ACCC over the next three years to ensure best practice licensing of Australian music in the online and offline environments. If you have any questions regarding the issues discussed above, please feel free to contact us on ph: 07 3138 8301 or at email: [info@creativecommons.org.au](mailto:info@creativecommons.org.au).

Yours sincerely



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