



AUSTRALIAN HOTELS ASSOCIATION

24 Brisbane Avenue Barton ACT 2600 • PO Box 4286 Manuka ACT 2603 • Australia
email: aha@aha.org.au • Facsimile: (02) 6273 4011 • Telephone: (02) 6273 4007
Web: www.aha.org.au

21 August 2013

Dr R Chadwick
General Manager – Adjudication Branch
Australian Competition and Consumer Commission
Via Email: adjudication@acc.gov.au

Dear Dr Chadwick

Re: APRA application for revocation and substitution

We have had an opportunity to peruse APRA's reply and proposal and make the following comments.

1. The AHA is improving its understanding of music licensing and the 2013 authorisation process by APRA has allowed the AHA to more robustly consider the application and question music license processes.
2. Prior to this authorisation the AHA had commenced an investigation into the tariff setting regime of APRA which, due to its lack of transparency, is poorly understood by AHA members. At the request of the AHA, APRA provided some material to AHA clarifying current tariff history. Accordingly, APRA should not be surprised by the AHA allegations on the lack of transparency in tariff setting.
3. The draft memorandum of understanding was only forwarded to the AHA National office three weeks after APRA applied for the authorisation. Dealing with submissions to the authorisation has been the priority of the AHA to date. The denial responses from APRA relating to allegations made by AHA branches indicate that the parties are well off from reaching any agreement.
4. The AHA re-iterates that the authorisation of a price fixing cartel allows copyright holders to pool their resources to such an extent that APRA has an inequitable advantage over users in relation to access to legal resources and funding copyright litigation. Accordingly, the authorisation ensures that APRA can continue to intimidate users from seeking redress pursuant to the Copyright Tribunal.
5. The proposal from APRA does not deal with the systemic coercive and bullying culture that currently permeates APRA and its staff. Unless this is addressed in a meaningful way many of the unfair APRA practices detrimental to users will continue.
6. APRA does not know why more disputes are not referred to determination or the Copyright Tribunal and argues that the users are generally satisfied with APRA's licenses. The AHA reiterates that given APRA's position of financial strength granted through the authorisation many users would loathe to pursue disputes with the well resourced and otherwise indemnified APRA.
7. The AHA has not seen Proposal 1 or Proposal 7.
8. The AHA supports the more prominent links as set out in Proposal 2. This will need to be supported by staff advising and directing enquiring users to these links and APRA actively using the dispute mechanisms as intended by the authorisations..
9. The AHA supports Proposal 3 which will set out all options for users to consider.
10. The AHA supports Proposal 4 relating to the development of plain English guides. These guides will need to be negotiated with the industry to ensure that there are equitable interpretations of licence fee calculation. Plain English guides should not be

just a regurgitation of interpretations disputed by the users. The ACCC should ensure the guides are developed with industry.

11. The AHA supports Proposal 5 with regard to the opt out and licence back information. However, the cost impediment for musicians to manage their work directly will make it difficult for them to get their work out of APRA's control.
12. APRA refers to proposals for licence negotiation. The proposal contained in the memorandum of understanding is not a protocol of negotiation. It is a protocol of notifying industry bodies of a unilateral decision made by APRA. APRA should be required to enter into proper collective bargaining of the licence schemes. The draft memorandum of understanding does not afford the ability for an independent assessment of tariffs. It appears to continue with the general APRA approach of consulting only after it has made a decision which effectively means that the tariff setting is not negotiated.
13. Any draft memorandum of understanding will need to comply with collective bargaining laws and authorisations.
14. Whilst APRA advises industry bodies on changes and occasionally receives feedback it does not allow users to negotiate or bargain for new licence scheme tariffs (including increases or decreases).
15. With respect to Proposal 8 relating to the ADR, any ADR condition needs to be a condition of the authorisation and negotiated with a majority of support from the current interested parties. Where the escalation of complaints is managed by APRA there will always be controversy and bias. Accordingly these complaints need to be dealt with and escalated by a third party and be affordable to the user.
16. All proposals accepted by ACCC should be conditions of the authorisation.
17. The ACCC needs to ensure before granting any authorisation that appropriate conditions prevent the abuse of power of APRA that has previously been complained of.

The AHA understands that this submission will be placed on the ACCC Public Register.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Des Crowe', written in a cursive style.

Des Crowe
National Chief Executive Officer
crowe@aha.org.au