

The General Manager  
Adjudication Branch  
Australian Competition & Consumer Commission  
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For the attention of the General Manager:

Dear Dr Chadwick,

This submission is in response to the draft determination issued by the Australian Competition and Consumer Commission (ACCC) on the 15<sup>th</sup> of October. Nightlife Music Video Pty Ltd (Nightlife) welcomes the opportunity to provide input into this process. There are 2 points from Nightlife's previous submission that we would like to provide further feedback on at this stage:

**(1) APRA's royalty distribution model should provide greater detail.**

Nightlife maintains that any claim on administration costs should be aligned with distribution accuracy to create realistic Key Performance Indicators (KPI's). We also hope the proposed advances in accuracy by APRA continue beyond the authorisation process, and into the future. The ACCC's comments on encouraging APRA to continue to improve accuracy through technology are particularly re-assuring in this context:

*Para 208: The ACCC notes that APRA appears to have a thorough process for allocating royalties, and in **some** categories does so based almost exactly on the actual songs played (for example, in the case of broadcast radio and television). The ACCC notes that APRA continues to improve its mechanisms for collecting performance data, particularly as technology improves. The ACCC encourages APRA to continue to do so, particularly in light of the possibilities opened up by developments in music recognition and other technology, to better reflect what music is actually being played.<sup>1</sup>*

Introducing technology solutions in the public performance sector will increase distribution accuracy and reduce transactional costs. Specific to this point are Application Programming Interfaces (API's), that have become the industry standard for filtering large amounts of valuable information on consumer devices in circumstances like the library of APRA works.<sup>2</sup> The intention of this recommendation is to further stimulate the value of competition in the marketplace, without infringing APRA's exclusive rights, to enable more collaborative licensing options between APRA and businesses like Nightlife. This would also fall within the guiding principles of the Global Repertoire Database (GRD), of which APRA is a founding member.<sup>3</sup>

<sup>1</sup> <http://transition.accc.gov.au/content/index.phtml/itemId/1111601/fromItemId/278039/display/submission>

<sup>2</sup> Krish Krishnan "Data Warehousing in the Age of Big Data" Newnes, 2013.

<sup>3</sup> <http://www.globalrepertoiredatabase.com/index.php/background-to-the-grd>

**(2) Authorisation should be limited to a three year period.**

Nightlife agrees with the ACCC that 3 years is an appropriate length of authorisation at this stage. Nightlife also agrees that an interim authorisation should continue until all conditions for the anticipated authorisation are met, and satisfy interested parties to an extent that is considered reasonable enough by the ACCC to reduce any perceived detriment.

**Condition C3 – Transparency of licence fees:**

- publish a single document outlining license fees in plain English within 6 months.

The transparency of license fees has long been a concern for many of our clients, and this condition implemented correctly, should provide relief and ultimately reduce APRA's burden in the context of complaints and/or disputes and their administration. The only concern we have is the complicated and subjective nature of what, and who exactly determines 'Plain English'. While these conditions stem from APRA's further submission that describes how they intend to address the recent critique from members and licensees alike<sup>4</sup>, it would be beneficial if the content of these new documents was moderated independent of all parties involved. Hence, we propose the finer details of this condition be subject to independent and external critique before being presented to stakeholders for feedback and further input. Annual Re-assessment forms should also benefit from a 'Plain English' approach, and should include clear information on license costs. Having an independent body moderate the level of linguistic complexity will work to avoid issues like the 'garden path effect'<sup>5</sup>, where lexical ambiguity leads the laymen into terms that would otherwise not be appropriate.

**Condition C4 – Comprehensive plain English guide and education campaign for the opt out and licence back provisions:**

- this must be done both by email and published on the APRA website within 3 months.

Nightlife supports this condition of authorisation.

**Condition C5 – Alternative Dispute Resolution:**

- a completely revised 3 tier Dispute Resolution Process that **may** also be accompanied by plain English marketing.

Nightlife welcomes any potential revision to the ADR process, and can foresee that the more independent this process is, the more effective it will become for licensees with complaints and/or disputes, and APRA respectively. An important principle is continuing to reflect the value of direct licensing through the new revisions. Amending the 'Expert Determination' process under the conditions b) through k) is genuinely positive from the information available, although some clarification of the following points may provide useful:

- b) it is difficult to understand if this position will be recruited, or the current complaints officer will continue to act in this capacity;
- e) industry experience is inferred and may be interpreted as 'Music Industry' or 'Copyright', but this does not necessarily qualify someone to understand the working public performance environment; therefore leaving a potential imbalance.

<sup>4</sup> <http://transition.accc.gov.au/content/trimFile.phtml?trimFileTitle=D13+111566.pdf&trimFileFromVersionId=1127471&trimFileName=D13+111566.pdf>

<sup>5</sup> <http://www.bcs.rochester.edu/courses/crsinf/261/ARCHIVES/S06/Gibson2004.pdf>

Beyond this, Nightlife sees that the following statements by the ACCC adds weight to the proposed changes and demonstrates a compelling basis for change:

**APRA's dealings with its licensees (Para 225 – 243)**

*243. The success of these changes, in addition to any further efforts by APRA to alleviate licensee concerns, will be relevant to the ACCC's consideration of any future application for re-authorisation.*

Nightlife also finds the following proposals by the ACCC as a sensible way of maintaining balance into the future:

**APRA's dealings with its members (Para 244 – 252)**

*252. The ACCC does not propose to impose a condition of re-authorisation in relation to APRA's dealings with its members at this time. However the ACCC may require APRA to demonstrate improvements in this area in any future application for re-authorisation. The ACCC also seeks feedback from APRA and interested parties, particularly small APRA members, in relation to this issue.*

**Representation on APRA's Board (Para 341 – 346)**

*346. The ACCC notes the interested party concerns raised and considers that APRA should look into addressing these concerns. This could include the addition of a board member appointed to represent the interests of independent and niche writers/composers/producers. The ACCC will take account of any improvements in this area in any future application for re-authorisation.*

Nightlife hopes you find our comments useful, and are more than happy to provide further input as required.

Yours sincerely,

Mark Brownlee  
Managing Director | Nightlife Music