



24<sup>th</sup> May 2013

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

By email [adjudication@accc.gov.au](mailto:adjudication@accc.gov.au)

Cc [tessmacrae@accc.gov.au](mailto:tessmacrae@accc.gov.au)

Dear Sir/Madam,

ALH welcome the opportunity to comment on the application for re-authorisation by the Australasian Performing Rights Association (APRA).

ALH operates 325 licensed venues and over 480 retail liquor outlets across Australia employing more than 16,000 people. These venues offer a diverse hospitality experience including gaming, sports bars, bistros, restaurants, cafes, retail liquor, accommodation, nightclubs and wagering. ALH venues are located in capital cities and urban and regional centres across Australia.

Our primary concerns with APRA are the uncertainty around;

- 1) Fee (Tariff) structure
- 2) Fee (Tariff) application
- 3) Lack of industry consultation and engagement

APRA provides little clarity around how their tariffs relate to the entertainment in our hotels as well as a lack of consistency in how the tariffs are applied. In addition, the design of APRA's tariffs does not cater for the flexibility that has to exist in the various entertainment options we provide in our venues, nor does it cater for changes in technology over time. This inflexibility, ambiguity and inconsistency applies particularly, but not limited to the screen and nightclub tariffs.

#### 1) **Screen Tariffs**

Screen tariffs are excessively ambiguous and there is no clear information on:

- How to define a screen as a sound device, and that APRA can only charge for devices that emit sound
- Why screen fees are exponential, but sound devices are not with multiples in single zones

We believe that screens with no audio should be exempt from license fees and that large screen tariffs should be assessed on actual usage and if there is audible sound.

APRA's screen tariff is based on a fee per screen and it's uncapped, so a hotel pays for as many screens as they've got. This tariff is device based and not user based. Whether the screen is playing any music, or even has any content that's synched to any music is often ignored. Many hotels can have up to 20 plus screens without any of them playing sound.

## 2) **Nightclub Tariff**

The nightclub tariff was intended for dedicated nightclubs and for large multi-purpose venues where they operate a dedicated nightclub.

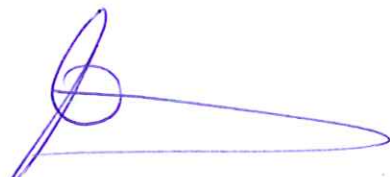
APRA have systematically assessed hotels with small or large dance floors and DJs and opportunistically classified these as nightclubs, where in fact they would be best described as bars with a DJ and a much smaller licencing fee should be applied. The nature of late night hotels is that they take advantage of the fact that they (unlike most Nightclubs) have breakout areas and bars within the venue where patrons can go without having to listen to dance music or DJs. APRA have repeatedly refused to acknowledge this and claim that if a DJ is playing in one bar then the entire venue falls under the Nightclub tariff where in fact the late night entertainment is provided is only a small proportion of the venue's maximum capacity in terms of floor space and allowable patrons numbers.

ALH would contend that the above issues lead to a lack of transparency around both current and future tariffs which could increase or be applied excessively. This provides a climate of uncertainty for ALH and how we operate the entertainment side of our business and what the resultant costs are from one year to the next.

The lack of industry consultation or engagement at board level and below gives us cause for concern in the foreseeable future as APRA fails to properly consider the Users of content in favour of a singular focus on the Copyright Owners.

I consent to this submission being placed on the public register.

Yours sincerely,



**David Curry**  
General Manager  
Government and Corporate Relations