

Farquhar Corporation Pty Ltd
As trustee for the Farquhar Trust
ABN 68 449 516 672

24 May 2013

Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

Dear Sir/Madam,

Re: Australasian Performing Right Association Ltd application for revocation of authorizations A99187-A91211 and substitution of new authorizations A91367-A91375 – interested party consultation.

I have been invited by the ACCC to comment on the above application.

I do have the complete application in front of me, but without the means, time and legal expertise I find it, like much of what APRA propose, very confusing.

So as an individual licensee, owner/operator I would like to make a few observations.

The last piece of correspondence we received from APRA best exemplifies their attitude towards small business and the bullying and deceptive manners in which they deal with any issues that are in contradiction to their related mission (enclosed).

The second paragraph is a complete fabrication as I have a close working/social relationship with Mr Justin O'Connor, CEO of QHA, and he denies any such advice.

Also in the final paragraph of the letter where the Caxton is given 14 days to comply, as well as the threat of legal action in the earlier part of the letter, exemplifies the bullying nature of APRA.

This letter came less than two (2) months after we had paid, in advance, our future fees which were accepted and banked by APRA.

I have enclosed relevant receipts and copies of previous annual accounts displaying the escalating fees we have paid over the past ten (10) years.

Their continuing attempts to change the 'playing field' are a constant source of frustration. The best example is their current change in the definition of a 'Nightclub'.

The Caxton has traded as a Hotel for almost 130 years. We are well known for our Steak Restaurant and, dare I say, famous as one of Brisbane's great sporting pubs. The Caxton is not a nightclub!

I have put down in point form the major issues I see as APRA's abuse of its monopoly position when it comes to assessing and collecting licensing fees:

1. Poor assistance with the assessment of licensing needs. It's based on a self-assessment process that is difficult to comprehend.
2. The one-size-fits-all assessment and application for is confusing and leads to applications signing up to licenses that are not applicable.
3. APRA is deceptive in the manner in which 'sound sources' are described and categorized – the best example of this is television monitors which show a picture of sport or other activity but which do not put out any sound – the sound coming from another amplified source or speaker, if at all, but under the APRA form these are counted as a source of music and inflate the copyright license fee.
4. The aggressive and demanding nature of correspondence and personal contact from APRA driven by the fact that many of their employees are commission-based staff who have a vested interest in maximizing returns from licensees rather than giving licensees fair and unbiased advice.
5. The rapidly rising cost of copyright licenses when the actual value of music to our venues is reducing due to the many new types of entertainment which bring patrons to our venue including live sport, replay sport, live music, gaming, wagering, and food.

If I can be of any further assistance please do not hesitate to call on (07) 3369 5544.

Assuring you of my best intentions at all times.

Ross Farquhar
Director



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Petrie Terrace QLD

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www.caxton.com.au
www.mycaxtonmoment.com.au

ALG1/1237317

February 28 2013

The Director
Mr Ross Farquhar
Farquhar Investments Pty Ltd
Caxton Hotel
38 Caxton Street
Petrie Terrace 4000



Dear Ross

We refer to our previous correspondence and telephone calls with your Hotel Administrator Ms Kathleen Sabine regarding the use of "Recorded Music for Dance Use in Nightclubs".

We have been advised that Mr Justin O'Connor CEO of the QHA has spoken to you in relation to this matter and advised you that APRA requires your venue to hold the above stated licence pursuant to the fact that recorded music for dance use is happening on a regular basis at your venue.

Further, our compliance department has attended your venue on numerous Friday and/or Saturday nights and has confirmed there are recorded music for dance use performances occurring, i.e. you provide an area for dancing (dance floor) a DJ and disco style lighting.

Perhaps you are not familiar with the terminology of the licence, therefore we offer the following :-

Nightclub means a *licensed venue* (including but not limited to a **hotel**, club, bar or restaurant) that:
(a) is used for *providing music for dancing*; and
(b) uses *recorded APRA Works as the primary form of music for dancing*; and
(c) has a *dance floor or other area for dancing* or charges an entry fee (even if the fee is not charged to all patrons)

As we have **not** received a satisfactory response, we would like to remind you that:

1. Music is protected under the Australian Copyright Act.
2. The copyright owners' permission must be obtained when copyright music is either performed in public or communicated through a telecommunication system to callers on hold.
3. Performances of music are considered to be in "public" when they occur outside the domestic or family circle.
4. A communication of music can occur by radio, CD, tape or other storage mechanism when operated by way of audio device on a telecommunications system as music on hold.

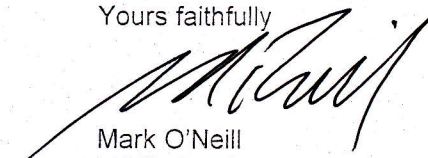
We would also like to remind you that performing or communicating copyright music in public without an APRA licence may constitute an infringement of copyright. APRA is entitled to take legal action if the copyright in its repertoire is infringed. We would prefer to resolve this matter by granting your business the appropriate licence as soon as possible.

If there has been a misunderstanding, or you are finding it difficult to complete the form, please contact us immediately to rectify the problem.

If you would like to discuss any of the above please feel free to contact the writer on 07-32501601 (direct).

We genuinely wish to avoid referring the matter to our solicitors but unless you comply with this final request within **14 days**, we will have no other option.

Yours faithfully


Mark O'Neill
LICENSING MANAGER QLD/Northern NSW
Encl GFN Flyer