



28 May 2013

Dr Richard Chadwick
General Manager Adjudication Branch
Australian Competition & Consumer Commission

Dear Mr Chadwick

Re Australasian Performing Right Association Ltd – Interested Party Submission

We are predominantly a concert music venue and have a license with APRA. As a member of the Association of Liquor Licensees Melbourne, we endorse this body and its views.

We have limited communication with APRA, but when we do, it is usually in an environment where they have the upper hand. They are inflexible when dealing with Licensees due to their monopoly status and the dominant position they enjoy. It is a Master-Servant relationship. Any business operating in a competitive market would need to exercise flexibility to maintain good business relationships. To act in any other way would result in a loss of business.

Recently, by way of example, a quarterly instalment plan was withdrawn because the second instalment payment was paid late. This particular instalment, for the April-June 2013 period, was due for payment by April by 15th. It was paid late due to an oversight, but it was paid immediately following a reminder call from APRA. The second instalment was paid on 6 May 2013, well within the quarter.

Not long after, an invoice was received for the July-December 2013 period, the remaining two quarters for 2013, for an amount totalling \$15,590.40. There was no prior notification or explanation attached so I telephoned APRA on 13 May 2013 to query this matter and spoke to [REDACTED], a Client Services Team Leader. I advised [REDACTED] that this course of action was unreasonable and that if our payment terms were not reinstated, I would like the matter referred to Dispute Resolution. An email response was received on the same day from [REDACTED]. [REDACTED] response was that *'quarterly invoicing automatically revokes in our Client Management System, generating an invoice for any amounts outstanding for the licence year'*. Therefore it was left to a computer to make the decision.

The email also advised me that [REDACTED] from their Finance Credit Team would be contacting me about other payment options available to me. I have yet to be contacted at the time of writing this submission by APRA. The new invoice was due to be paid on 20 May. I am unsure of the consequences now that the due date of payment has passed.

Another matter that I queried with APRA was their policy in relation to balancing actual charges against estimated provisional fees. I needed to find out why short paid provisional fees (where actual costs



exceeded the estimates paid) needed to be paid to APRA within 14 days but overpayments were, at the discretion of APRA, to be either refunded or credited against the following year's provisional payments, thereby delaying and spreading the refund owing to Licensees over a twelve month period. The response from APRA was *'Where the provisional fee paid exceeds the actuals provided at Reassessment, APRA will, as its standard option (as per point 6.5 of your licence agreement) credit the client account rather than refund monies for the Reassessed period'*. This is a clear indication that everything is tipped in their favour and application of rules to suit the dominant party.

We are also concerned with the current tariff levels, which were not discussed with us, or our industry, prior to implementation. They just happened. Queries sent by email remained unanswered. My theory is that it was an exercise in revenue raising, as their foremost objective, according to their own literature, is to 'Increase royalty distributions to members', but at the expense of their licensees. This course of action, from a monopoly organisation represents unconscionable conduct and should not be permitted. A business in a competitive market would not survive if they implemented price increases, starting at 400%, and increasing to 800%, over a 5 year period. We had no choice but to pay.

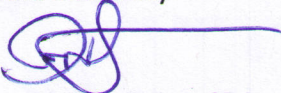
The fact that our license fees could be the same as the level of wages for an event, or the weekly rent, is an indication of the extremity of the fees. Whilst the ACCC can't comment of fee levels, it should ensure that any price increases, as a result of market domination should not be permitted. It should also direct APRA to refund the difference in fees from their authorised level to the unauthorised increases over the past 5 years. The fact that APRA can charge many multiples (600% more than PRS in the UK & 1,000% more than BMI in the USA) than that of their overseas affiliated organisations for the same song, is a scandal.

It is not in the public interest that these extreme fee increases are causing businesses financial hardship. It results in having to employ less staff, which is not in the public interest. The lack of transparency to whom APRA distribute their payments to owners of copyright and how they calculate these payments is also not in the public interest, neither is the anecdotal widespread belief that APRA repatriates the majority of their revenue to overseas copyright owners. Where is the justice to Australians (businesses and consumers who pay more to cover these costs) by charging local businesses many multiples more than what their overseas affiliated organisations charge their local businesses. I just don't get it.

APRA's application to seek a 6 year term is strongly opposed. We do not support any application, from any monopoly organisation, for any period of time, if it causes the type of hardship experienced by us and other licensees for reasons detailed above.

I look forward to the day when deregulation allows local businesses to shop anywhere in the world to get a fair price for copyright music.

Yours Sincerely



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