



Independent Cinemas
Association of Australia

Dr Richard Chadwick,
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

By email to Tess Macrae - Tess.Macrae@accc.gov.au

Dear Mr Chadwick,

Thank you for giving the Independent Cinema Association of Australia (ICAA) the opportunity to provide a submission concerning the application for reauthorisation of the Australasian Performing Right Association Ltd.

ICAA is the association of record for Australian independent cinemas with a membership ranging from single screens in rural areas through to metropolitan multiplex circuits. ICAA has members in every state and territory in Australia representing nearly 540 screens across 143 cinema locations. Independent cinemas comprise around 30% of the market and ICAA members play a wide diversity of films including art-house and foreign language films at their cinemas.

Independent cinemas hold APRA licences with respect to the public performance of music at their cinema sites including music synchronised with films played on cinema screens to members of the public.

The cost of the APRA licence as presently calculated for each member represents a very significant proportion of the revenue earned by independent cinemas especially in proportion to the profitability of each independent cinema business.

The exclusive capacity of APRA to offer music performance licenses to independent cinemas in Australia remains a matter of concern for ICAA members for the following reasons:

- Many members perceive the APRA license fees
 - to be disproportionately high in relation to the profitability of their businesses; and
 - to be inflexible in circumstances where for example the cinema chooses NOT to play music in their theatres or foyers and only on their cinema screens as this does not result in any reduced licence fee rate or alternate licence despite the marginal profitability of some sites.
- ICAA members are also concerned that there is insufficient transparency in
 - listing the repertoire and the countries covered by APRA to reassure them that the music played in films at their cinemas, especially foreign language films are actually appropriately licensed under the Copyright Act through the APRA arrangements, and
 - insofar as APRA may collect licence fees for music that they do not represent or for music from a country with which they do not have reciprocal rights, transparency regarding what happens to that money .
- ICAA members are also concerned that as the only licensed collection society for these rights there may be insufficient incentive on APRA to maximise its administrative efficiency and restrain costs to ensure that licence fees are not unnecessarily inflated to pay for inefficient

Independent Cinemas Association of Australia
PO Box 20
Eastwood NSW 2122
ABN: 14 546 264 865

P: +612 9858 1179
F: +612 8569 0119
admin@independentcinemas.com.au
www.independentcinemas.com.au



administration and that a greater proportion of licence fees collected are received by the musicians, composers and copyright owners of the music.

Apart from these matters of concern, ICAA has also received some positive feedback from member cinemas regarding their working relationship with APRA and we do not seek to object to the re-authorization of the collecting society.

However we do object to APRA's request to extend the authorisation period from three years to six years for the following reasons:

- The areas of concern expressed above are matters which we consider should be monitored by the ACCC on a regular basis through the authorisation process and a six year gap is too long a period within which any authorised entity including APRA could significantly deteriorate to the detriment of both licence users and presumably APRA members without adequate alternate redress.
- The nature and appropriateness of an exclusive licence is a matter which may change over time in a fast converging and increasingly digital industry and a six year gap is too long a period to lapse without re-considering changes in the technology and business landscape both in Australia and globally.
- We do not agree with APRA's submission that the next six years there are 'unlikely to be any substantial changes in the market or in the technology that alter fundamentally the balance of benefit over detriment inherent in the granting of this authorisation'.
 - The cinema exhibition market over the next six years (likely in the next year) will move from 35mm projection systems to entirely digital projection systems.
 - In the same period the roll out of very fast broadband and increasingly sophisticated cloud storage and data management systems will develop.
 - These developments may impact the capacity or willingness of other parties including international based collecting societies or direct license opportunities to enter the Australian market.

We do not presume to predict what changes to the market will result from this transition or how that will impact the appropriateness or otherwise of exclusive licensing however we strongly submit that significant change will take place and while we do not object to the authorisation of APRA that authorisation should be reviewed in three years not six years.

Thank you for your consideration of this submission and do not hesitate to contact me should you need further information.

Yours faithfully,

Adrienne Pecotic
Chief Executive Officer
Independent Cinemas Association of Australia