



27 May 2013

The General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission

Dear Sir/Madam

**Supplied without prejudice:**

**Re: Australasian Performing Rights Association (APRA) application for revocation of authorisations A91187 - A91194 & A91211 and substitution of new authorisations A91367 & A91375 - interested party consultation**

I wish to express my concerns in regard to APRA's request for revocation and substitution of its authorisation under the ACCC, to act as a monopoly.

My company, Dockvest Pty Ltd trading as Zap Fitness, is in the process of opening 34 gyms throughout Victoria and Tasmania. I have experienced first hand, a number of issues with APRA, their licensing representatives, and their conduct.

As an owner of a budget gym chain, I wish to be compliant and attempted to license my music use through APRA. I had done my own calculations and found that I would be liable for approximately \$14,000 per year.

After submitting my application form, the APRA licensing agent, [REDACTED], responded by email, advising me that all displays on my cardio equipment must be counted as televisions. I wasn't aware that APRA were able to claim for TV screens in this manner, especially when they don't play sound. I re-calculated what my fees would be and found that by accepting APRA's advice, I would be liable for around \$80,000 per year to play music.

[REDACTED] in [REDACTED] email of 15 April 2013, gave me four days notice to complete this application under threat of litigation, and I took this to mean the Copyright Tribunal. Without knowing who to turn to, I contacted my music supplier.



Confident of my position, I again contacted [REDACTED] from APRA via telephone which disintegrated when [REDACTED] became 'hysterical' and made continued threats about legal action, insisting I declare who was advising me on these matters.

I sent a final letter detailing that APRA cannot claim both the background music tariff and additional screens that are not synced to the background music source. In addition, there is no tariff for using a personal device in a commercial environment (i.e devices utilising headphones). To date, I have had no further correspondence, and still no licence. I am in a difficult position. I wish to be compliant, but I have no certainty around running my business.

If APRA is to be authorised to continue in this manner, I propose that businesses like us are either offered some form of protection through conditions or independent bodies that limit APRA's further misuse of power.

**Robert Cheek**  
**Managing Director**