

31 May 2013

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

By Email: adjudication@acc.gov.au

Dear Sir,

**RE: Australasian Performing Right Association Ltd (APRA) application for revocation of authorisations A91187-A91194 & A91211 and substitution of new authorisations A91367-A91375 – interested party consultation
Submission by Future Entertainment Pty Ltd**

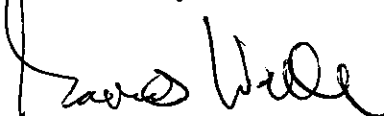
We act on behalf of Future Entertainment Pty Ltd (**FUTURE**).

We have been instructed by **FUTURE**, as an interested party, to file a submission with the Australian Competition and Consumer Commission (the **ACCC**) in relation to the application for re-authorisation (application for revocation and substitution) received from the Australasian Performing Right Association Ltd (**APRA**) on 30 April 2013 (**APRA Application**).

We note that any such submission was to be provided to the ACCC by 24 May 2013. However, it was noted following discussions with Ms Tess Macrae of your office that submissions would be accepted up until close of business today.

Accordingly, please find **enclosed** our client's submission in relation to the APRA Application. We also **enclose** a redacted version of the submission removing any confidential and commercially sensitive information of our client. We request that the ACCC only publish the redacted version of the submission.

Yours faithfully,



Marcus Walkom
Media Arts Lawyers

SUBMISSION

**TO: THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION
(ACCC)**

BY: FUTURE ENTERTAINMENT PTY LTD (FUTURE)

**RE: AUSTRALASIAN PERFORMING RIGHT ASSOCIATION LTD (APRA)
APPLICATION FOR REVOCATION OF AUTHORISATIONS A91187-
A91194 & A91211 AND SUBSTITUTION OF NEW AUTHORISATIONS
A91367-A91375**

DATED: 31 MAY 2013

INTRODUCTION

1. This submission is made by Future Entertainment Pty Ltd (**FUTURE**).
2. This submission is made in response to the Australian Competition and Consumer Commission's (the **ACCC**) consultation process for an application for re-authorisation (application for revocation and substitution) received by the ACCC from the Australasian Performing Right Association Ltd (**APRA**) on 30 April 2013 (**APRA Application**). FUTURE has been provided with a copy of the letter from the ACCC dated 3 May 2013 where the ACCC invited potentially interested parties to comment on the APRA Application.
3. Future, as an interested party, seeks to file this submission with the ACCC in relation to the APRA Application and FUTURE asks that the ACCC, in accordance with section 90 of the CCA, consider this submission in making its determination on the APRA Application.
4. FUTURE has been provided with an advance copy of the submission by Totem Onelove Group Pty Ltd (**TOL**) to the ACCC (**TOL Submission**). Such copy provided to FUTURE was redacted to remove confidentially sensitive information.
5. It is submitted that FUTURE agrees with the points raised by TOL in its submission in relation to the following:
 - (a) The public detriment and effect on competition that has resulted APRA's standard 'output' arrangements for the acquisition and licensing of performing rights in its music repertoire (**APRA Arrangements**) during the previous authorisation period; and
 - (b) The likely public benefits and public detriments associated with APRA's re-authorisation application.
6. As such, FUTURE refers to and repeats those points submitted by TOL in the TOL Submission dealing directly with those points in clause 5(a) and 5(b) above and does not intend to deal with them herein. This submission shall deal solely with the general experience of FUTURE in the previous authorisation period of the APRA Arrangements.
7. Notwithstanding paragraph 6 herein, FUTURE refers to and repeats paragraph 33 of the TOL Submission and wishes to advise the ACCC that an APRA employee verbally abused an employee of FUTURE and threatened to prevent the relevant FUTURE event from going ahead on the basis that FUTURE had not, at that stage, obtained the appropriate licenses. It should be noted that FUTURE and APRA were at the time engaged in commercial discussions regarding the improper categorisation of the license applied by APRA for the event. It is submitted that such incident should be considered in conjunction with paragraph 33 of the TOL Submission.
8. In preparing the submission, consideration was given to the ACCC's primary responsibility of ensuring that individuals and businesses comply with Australian competition, fair trading, and consumer protection laws - in particular the *Competition and Consumer Act 2010 (Cth)* (**CCA**) – and it is noted that the ACCC's focus during the consultation will be on assessing the impact that the APRA re-authorisation may have on both competition and fair trade between industry and consumers.

FUTURE ENTERTAINMENT PTY LTD (FUTURE)

9. FUTURE is a youth focused entertainment company and brand that was founded in 1993 with the objective of presenting annual major music festivals, events, national tours and showcasing world-class entertainment. Having offices in both Melbourne and Sydney and networks of on-the-ground staff in every capital city of Australia and New Zealand, FUTURE is a national company with a wide and experienced perspective. FUTURE has been responsible for bringing some of the largest global artists to Australia along with creating respected, home-grown touring event brands. FUTURE promotes over 100 artist tours per year ranging from the underground electronic artists to some of the world's biggest bands. FUTURE's flagship festivals are 'Summadayze', 'Summafielddayze' and the 'Future Music Festival', each of which are held annually in major capital cities throughout Australia.
10. Since 2010, FUTURE have made payments to APRA [REDACTED] in license fees for various FUTURE events. As such, FUTURE are to be considered a significant client of APRA.

THE GENERAL EXPERIENCE OF FUTURE IN THE PREVIOUS THREE-YEAR AUTHORISATION PERIOD

11. During the previous authorisation period, FUTURE has approached APRA directly on between 100 and 200 separate occasions in order to obtain a license to perform in public various works controlled by APRA at FUTURE events. On several of those occasions, FUTURE has had cause to dispute the license scheme applied by APRA on the basis that:
 - (a) APRA has improperly categorised the event; and
 - (b) APRA has treated FUTURE prejudicially to many of its competitors in the music festival arena.
12. FUTURE refers to paragraph 10 of the TOL Submission and agrees with TOL's submission that APRA has significant difficulty categorising license schemes for particular events. It is submitted by FUTURE that APRA has, on at least six (6) occasions since 2010, improperly categorised FUTURE events as being a "dance party" and therefore improperly sought to issue a license to FUTURE pursuant to the Dance Party license scheme.
13. As noted in paragraph 11 of the TOL Submission, pursuant to the APRA Dance Party license scheme, a "dance party" is defined as "any one-off or occasional event charging an entry fee and playing APRA Works for *dancing as the primary form of entertainment* at the event" (emphasis added). It is noted in the TOL Submission that APRA has stated that the most influential factor in determining when an event is to be licensed under the Dance Party license scheme is whether the music played at such event is recorded music for dancing. FUTURE advises that the following events of FUTURE have been improperly categorised by APRA as a "dance party" during the previous authorisation period:
 - Summadayze 2010
 - Summadayze 2011
 - Summafielddayze 2011

Summadayze 2012
Summafielldayze 2012
Skrillex

14. It is submitted that dancing is not the primary form of entertainment at 'Summadayze' or 'Summafielldayze' any more than it is at other major music events such as the 'Big Day Out', 'Splendour In The Grass' and 'Falls Festival'. 'Summadayze' and 'Summafielldayze' are daytime events that are universally classified by the broader music and legislative community as "music festivals" and are equivalent and substitute events to the 'Big Day Out', 'Splendour In The Grass' and 'Falls Festival'.
15. We refer to paragraph 14 of the TOL Submission and submit that the primary form of entertainment at 'Summadayze' and 'Summafielldayze' is listening to new international and national music and performers and these FUTURE events also contain a mixture of live bands, electronic music DJ's, food, bars, stalls, side shows, performers and other entertainment. As with some events operated by TOL, no other authority (including the police, councils and other licensing bodies) categorise either 'Summadayze' or 'Summafielldayze' as a dance party and these events have in all other instances since 2010 been classified as live music events.
16. FUTURE has reviewed the statement by [REDACTED] as set out in paragraph 15 of the TOL Submission and submits that such statement demonstrates APRA's inability to adequately deal with the continual evolution and change in the live and DJ environment. Such strict interpretation by APRA to categorise a constantly evolving and changing musical environment demonstrates an inequitable use of its monopolistic power to settle license terms in its favour.
17. It is submitted that, in light of FUTURE's extensive experience in touring both major international "live" and "non-live/DJ" performers, there is a significantly blurred distinction between "live" and "non-live/DJ" performers and FUTURE agrees with the analysis of the current musical environment as submitted by TOL in paragraph 16 of the TOL Submission.
18. FUTURE submits that, notwithstanding APRA's improper method of categorisation of events involving electronic performers, categorisation for any major music festival event such as 'Summadayze' and 'Summafielldayze' should be made on the basis that a performer who is top billing at such events is performing "live" whether they be a DJ or a performer with live vocals or live instrumentation. Such performer is appearing in person and are likely to be at the very least MC'ing over songs, using synthesisers to create songs and manipulate sounds live and it is submitted that most importantly, if any other person other than the performer were to play the exact same music, there would not be anyone in attendance as the patrons are coming to see them "live".
19. At various FUTURE events such as 'Summadayze' and 'Summafielldayze', it is advised there are often local DJ's performing on peripheral stages to provide "filler" music between the main performers. Such DJ's are performing in the more traditional role as a DJ and are in fact playing recorded music. On the basis of these DJ's performing at the FUTURE events, APRA has on several occasions used this as evidence in support of their improper categorisation of these events as a "dance party". FUTURE submits that it has estimated that at least 90% of patrons in attendance at these events are there to see the live feature performers and not the peripheral stage DJ's and submits it is inappropriate to classify an event as "dance party" because FUTURE of these DJ's playing on the peripheral stages. It is again submitted that such categorisation is a further demonstration of APRA's inequitable use of its monopolistic power to settle license terms in its favour.

20. The categorisation of FUTURE's events such as 'Summadayze' and 'Summafieldayze' as "dance parties" whilst categorising those clearly equivalent and substitute events like the 'Big Day Out' as Featured Music Events, is clearly prejudicial towards FUTURE. FUTURE fundamentally disagrees with the differing categorisation methods applied by APRA and with the different rates that are currently being applied to dance music compared to non-dance music in relation to the APRA Arrangements.
21. It is submitted, in conjunction with the TOL Submission, that the contradictory and prejudicial categorisation by APRA during the previous authorisation period demonstrates the ability of APRA to take advantage of its market power when categorising license schemes for events. FUTURE refers to and repeats paragraphs 19, 20 and 21 of the TOL Submission.
22. Of paramount concern to FUTURE, as of paramount concern to TOL in the TOL Submission, is the following:
 - (a) The certainty of the license classification and therefore the fee payable to APRA by FUTURE for each of FUTURE's events; and
 - (b) The parity of any such fees with other comparable music festivals held throughout Australia.
23. FUTURE refers to and repeats paragraph's 23 and 24 of the TOL Submission.

CONCLUSION

24. FUTURE submits that the current APRA Arrangement, and the proposed APRA Application do not adequately deal with FUTURE's concerns expressed above. As such, FUTURE request that the ACCC consider the APRA Application in light of FUTURE's submission and, should it grant the APRA Application, the ACCC implement such appropriate conditions of authorisation to alleviate the issues consistently encountered by FUTURE.