

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

Dear Dr Chadwick

**Australasian Performing Right Association Ltd application for re-authorisation**

I refer to the recent email from Dr Michael Schaper inviting submissions on the Australasian Performing Right Association application for re-authorisation.

Given that the APRA has the monopoly role for administering licences for broadcasting music in business premises, with approximately 59,000 annual licences covering about 82,000 businesses, the vast majority being small users – the concerns raised in submissions from the Australian Hotels Association, the Restaurant & Catering Industry Association and others would, if substantiated by the ACCC, result in significant losses to small businesses across Australia.

I am concerned about allegations by small businesses against APRA of a culture of aggression and intimidation, unfairness, lack of transparency in pricing and terms of licences and inadequate complaints handling and dispute resolution processes. Small businesses like cafes, restaurants, hotels, retail shops, nightclubs and fitness centres should not be exploited by a monopoly provider of music broadcasting rights.

The ACCC should only grant interim authorisation for 6-12 months to allow sufficient time for the ACCC to investigate the allegations by small businesses against APRA and ensure that the detriments from any authorisation are minimised.

As an immediate measure to address concerns about complaints handling and dispute resolution, I submit that any party should be able to refer a dispute with APRA to any of the Small Business Commissioners within Australia for independent, low cost and effective dispute resolution. For example, my office currently provides dispute resolution services for a wide range of commercial disputes between small businesses, large businesses and government.

If the completed ACCC investigation substantiates the allegations against APRA, there will be strong justification for greater regulatory intervention by the Federal Government.

As noted in the speech by ACCC Commissioner Ed Willett on 24 May 2007 *Copyright collecting societies, the Copyright Tribunal and the ACCC – a new dynamic*:

*...the ACCC considers that the anti-competitive detriment from a collecting society's arrangements will be more limited where:*

- *....Licence fees and conditions for use of copyright are clear and readily available to users; and*
- *The arrangements allow for alternative dispute resolution processes where appropriate.*

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I suggest that the ACCC and the Federal Government should review the following:

- Whether the current APRA framework is appropriate and effective in achieving its objectives.
- Whether the voluntary Code of Conduct for Copyright Collecting Societies should be strengthened with penalties and sanctions for non-compliance such as compensation or redress for affected licensees. Further, a mandatory code of conduct prescribed under the *Competition and Consumer Act 2010* and enforced by the ACCC may be necessary to ensure compliance with the Code's objectives.
- Whether the standards of service that licensees can expect to receive from APRA under the Code of Conduct for Copyright Collecting Societies are being met including access to efficient, fair and low cost procedures of handling of complaints and resolution of disputes.
- Whether the annual Code Review is working effectively. For example, should there be a Code Review Committee comprising at least three members with specialist expertise in administrative law, copyright law and licensing practices respectively. There is a perception from some stakeholders that past reviews were conducted by a single legal expert who may not have sufficient expertise in licensing practices from a best practice customer service perspective.
- Whether the complaints handling and dispute resolution processes with the Copyright Tribunal are working effectively to provide quick, low cost resolution of disputes for licensees.
- Whether the ACCC should exercise its powers under the *Copyright Act 1912* and issue guidelines on matters it considers to be relevant to determination of reasonable remuneration and other licence conditions by the Copyright Tribunal. This mechanism should be utilised by the ACCC to provide clear guidance on appropriate prices for each licence type, given concerns that APRA may be exercising market power or unfairly exploiting its position against smaller parties.

In addition, the ACCC should investigate allegations from stakeholder submissions of contraventions of the *Competition and Consumer Act* and concerns about fairness and effectiveness of the APRA regime under the existing authorisation arrangements including:

- Allegations of misleading conduct with respect to contractual negotiations and misleading customers that APRA's tariffs are prescribed by law.
- Lack of transparency on the pricing structure for licences, perceived exploitation of nightclub licences fees and allegations of double dipping against businesses.
- Licence application forms to have a fairer payment reconciliation clause.
- Whether APRA's disclosure of information to licensees is appropriate. This includes:
  - General lack of understanding or confusion about licence types, fees and terms.
  - APRA Operation Statements may be misleading or ambiguous e.g. definition of a public performance.
- Improving customer service in response to allegations that APRA members are inflexible and do not explain issues to customers and there is a culture of aggression and intimidation.
- The dispute resolution process with the Copyright Tribunal is too legalistic and expensive.

Following such a review, the ACCC will be in a better position to determine the appropriate conditions for the grant of any authorisation and whether further regulatory intervention is justified.

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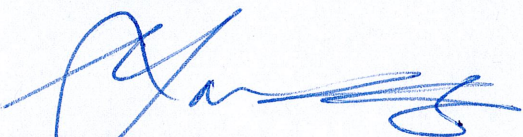


Allegations of excessive pricing, inadequate information disclosure, poor customer service and ineffective dispute resolution could be addressed, respectively, by the following:

- ACCC to review the pricing structure to ensure that prices are cost-based and equitable between licence classes and encourage take up by low value, high volume users. Developing more flexible options where venues may use two or more types of licences from time to time (e.g. hotel, nightclub).
- Requiring APRA to develop a better package of customer friendly information that is tailored for small businesses including a list of all the available pricing options and terms so licensees can easily understand and compare the different licences.
- Implementing customer service training for APRA staff to meet customer service standards and/or adopt Australian Standard for customer service such as ISO 9000 and ISO 14000.
- The Copyright Tribunal adopting a small claims procedure for claims less than \$20,000.

Thank you for giving me the opportunity to comment on APRA's application for authorisation. Should you wish to discuss any of the issues raised in this submission please contact John Hin, Principal Advisor, Advocacy on (02) 8222 4835.

Yours sincerely



Yasmin King  
NSW Small Business Commissioner  
21 June 2013