

This submission to the ACCC is from a group of APRA Writer Members, APRA Publisher Members and Managers of Writer Members, specifically writers of dance music, which is relevant to the distribution of the “Recorded Dance Music Use” pool and the distribution of this pool by APRA to its members in May 2013.

In March 2011, APRA published a new feature on its website which stated:

“APRA is currently trialling Music Recognition Technology (MRT) in several nightclubs around Australia. Over 800 venues nationally are either dedicated nightclubs or multi purpose premises – such as hotels, clubs, restaurants and bars that have areas that meet the definition of Nightclub. The MRT will enable APRA to more accurately track recorded music used for the purpose of Dance Use in these venues.

The trial is in its early stages and we will provide a further update next Antenna.”

On May 13, 2013, APRA paid its P1304 distribution to its Writer Members and on the same day sent an email to its Writer Members which stated:

“This distribution also represents a significant advance in our treatment and payment of music used in Nightclubs. For the first time, in co-operation with the PCCA (Phonographic Performance Company of Australia), we have adopted fingerprint technology to detect and report on music used in these venues. We are now relying on MRT (Music Recognition Technology) as the principle basis of our distributions.

Importantly, the above newly introduced distribution schemes rely on sampling methods for both cost and efficiency reasons, as an interim measure.”

In May and June this year, a number of us sent enquiries to APRA requesting further information regarding the MRT use in nightclubs as a principle basis of APRA’s nightclub distributions. They key areas of concern raised in our enquiries were:

1. **Functionality of the MRT** – what the product used is called and how it worked, so as Writer Members we could be assured of the accurate capture of works performed in nightclubs around Australia.
2. **The MRT database** – information on the database these MRT units have so as Writer Members, we knew if our works were on this database and if the works weren’t, how we could ensure our works could be added to the MRT database. Further, how the MRT database is able to accurately identify works used in “DJ Edits” or “Mashups”. (It is very common for DJs to create their own unique edits of a work that may not be their own, to create a unique version of a work that will be complimentary to their dance music style and the genres they play. These are commonly referred to as “DJ Edits”. Similarly, a “Mashup” is the combination of two or more works to create a unique track. Again, these are commonly created by DJs and regularly played in a high number of DJ sets)
3. **Venue placement of the MRT units** – information on how many venues the MRT units were installed in Australia-wide, to have an insight into the sample number and if it was a true representation of the works being performed in nightclubs nationally. Further, what the selection process is for determining

which nightclubs would be selected to capture the data, which would be used for APRA to make distribution of the dance music pool. And finally, in the case of nightclubs with multiple rooms playing music, if the MRT units captured data from one room or all rooms. (In multiple room nightclubs different styles and genres of dance music are played from room to room, and usually there is a limited style of dance music played in “main rooms” of nightclubs.)

4. **Percentages of distribution according to the MRT units data capture** – firstly was any income in the current (P1304) distribution made according to the MRT units data capture, and if so what percentage of the dance music pool was made according to the MRT units data capture. And further, how these percentages were determined.

1. FUNCTIONALITY OF THE MRT units

In relation to the number of enquiries from our group, we received different responses from different APRA Writer Services Representatives.

In the first week of June, a Writer Services Rep from the Melbourne APRA office advised in an email to one of the Writer Members in this group:

“APRA have introduced digital recording devices (DJ Pads) in a sample of major clubs around Australia (Sydney, Melbourne, Brisbane, Adelaide and Perth) in order to improve the quality of our distributions in this area.

The DJ Pads have been programmed to automatically turn on and off as DJ performances commence and finish. Those recordings are streamed to Amsterdam (Holland) where the MRT company, specialising in dance music, fingerprints the digitally recorded works and compares them against their database of several million works.

The reports are then provided to APRA to be included and paid in the subsequent nightclub distribution.”

On May 28th, a Writer Services Rep from the Sydney APRA office advised in an email to one of the managers of Writer Members in this group:

“Unfortunately, at this stage, there is currently a Non-disclosure agreement in place with the MRT provider. We will however, be soon releasing information to the membership about the specifics of the service which we are utilising.”

When queried by the manager on when this information would be released to its members, the same Writer Services Rep advised in an email on May 29th:

“ In response to your questions, I'm unsure of when this information will be released, but I have been advised that it is currently an APRA priority.”

In an email to the Writer Member’s manager on June 29th, the same Writer Services Rep advised:

*“The technology utilised is very advanced. **The DJ Monitor DJ pads** are plugged into DJ desks by means of XLR cables. The units record both in line and the*

ambient music. The digitally recorded data is 'synchronised' (streamed) weekly to Amsterdam where the DJ Monitor creates digital fingerprints for the works and compares those fingerprints against the fingerprints and accompanying metadata in their database of several million works. DJ Monitor has a proprietary database containing several million fingerprinted works, specialising in dance music."

2. THE MRT (DJ Monitor) DATABASE

Given that the DJ Monitor database and the subsequent reporting from DJ Monitor to APRA would now be a "principle basis for distribution" we asked how we could be assured that our works were on the DJ Monitor database. Those that received responses to this query, received this same response from their respective APRA representative:

"APRA is currently researching ways in which writers can upload their works to our MRT provider's databases. Once we have identified the easiest and most effective way to do this, we will inform the membership."

On June 24th, the APRA Membership Administration Member offered a further response to this query:

"APRA has been in discussions with DJM to enable access for members to an upload facility to their data base. At the same time, we are also exploring other system options which would ensure our members works are included in all MRT services companies globally (including Tunesat, Shazam, Bmat, Gracenote, Ya Cast, Soundaware and Nielsen). By doing so, we will ensure that our members works can be readily identified by our sister organisations internationally who, increasingly, are using such services for their own domestic distribution purposes. Ideally, we are hoping to be able to offer members a single upload interface which would serve both DJM and other MRT purposes. We are currently researching the most effective offering for members and hope to make an announcement in the coming weeks."

A number of us researched the company DJ Monitor online, to see if there was any further information on the DJ Monitor website. The following information is published on DJ Monitor website regarding the upload of works to the DJ Monitor database:

"It's Your Right(s)!"

- *PROs collect money from rights users.*
- *Rights owners are entitled to this money.*
- *How do PROs know how to remunerate composers & artists if their work is played?*

Through DJ Monitor!

Please ask your PRO if they use the DJ Monitor system, so that you receive what's rightfully yours; If you get played, you get paid. It's your right(s)!

Music rights owners can upload their music to our database absolutely free. We will then fingerprint the audio and store it in our music database together with the label copy so we can report next time your music is played to the appropriate PRO. We currently monitor over a hundred European radio stations and thousands of events and venues. In addition to uploading your music, you can take a subscription to our SongTracker service and we'll report in real-time where, when and by who your song is played, including an e-mail/sms alert option.

How does it work ?

How do Rights Holders submit their music?

Rights holders can submit music in various ways, we prefer mp3, the quality thereby is to no importance to us, so it can be from 32kbps up to 320kbps.

Besides the MP3's we also require the metadata of the tracks. You can download an example of our import template here:

http://www.mediafire.com/file/ukjlpbq4y9lci/Djmonitor_Import_Template.xls

The easiest way to submit music is by dropping it directly in our dropbox down here, together with the import template.”

A number of us emailed DJ Monitor to ask for confirmation regarding whether our works were already on their database, as APRA had not been able to answer our queries regarding this. Of those that received a response, a number of us were informed that some of our works were on the DJ Monitor database, but not all of our works. Further, it was found that in a number of cases, the original versions of the works were on the DJ Monitor database, but not the remix versions of the works. This is a big concern, as remixes are written and produced specifically for play and live performance in nightclubs, so the remix versions of our works are specific to the dance music pool. If the remixed versions of the works are not on the DJ Monitor database, they will not be captured by the MRT units and therefore not reported to APRA.

We request that ACCC assist in ensuring that APRA will prioritise the issue of its member's works being included on the DJ Monitor database, and that all of our works as submitted to APRA's database, are mirrored to DJ Monitor's database.

Further, we do not know how APRA will be able to fulfil the DJ Monitor database upload requirements of supplying a mp3 of the work, as well as metadata information required by DJ Monitor. The member requirements to date and as advised by APRA, are to ensure your works listing is up to date on the APRA database, which we have access to via our individual Content Management System logins. This is also inline with the published information on APRA's website, which advises, that to become an APRA member,

“All you have to do is...

- *Join APRA/AMCOS*
- *Tell us the details of your songs*
- *Let us know if you're played live*
- *Let us know if your contact details change*
- *We'll do the rest ! “*

It seems that this new “principle basis for distribution” will require a lot more than logging our works into the APRA database, and we request that the ACCC to assist in requesting clear information outlining the process that will be followed by APRA to ensure that our works are on the DJ Monitor database and that our works will therefore will be accurately identified by the MRT units installed in nightclubs in Australia.

One of us also queried DJ Monitor directly on how “DJ Edits” or “Mashups” will be identified according to the DJ Monitor database. This was the response received from a representative of DJ Monitor :

“In regards to the special (unreleased) edits, this can be difficult in some cases, but usually we're able to identify at least the base of the track, or the most similar version we have in our database and with mashups we usually recognise the most dominant track or both tracks, or we would have the mashup in our database, then we'd report the mashup to the rights society. It's then up to them to make sure the right copyrights owners get paid.”

This is a big concern for us as copyright owners of dance music. We request that the ACCC assist in ensuring that APRA explore a better method than DJ Monitor of identifying (unreleased) DJ Edits or Mashups. The above email response from DJ Monitor indicates to us that the DJ Monitor database will have difficulty in correctly identifying the works in the case of DJ Edits and Mashups, which are very common in DJ sets.

3. VENUE PLACEMENT OF THE MRT UNITS

Currently, there are close to 800 nightclubs operating in Australia. Specifically, as APRA advises:

“Consequently, MRT is now used to distribute APRA's 'Recorded Music for Dance Use' pool, with currently 747 venues across Australia being subject to this tariff.”

From club to club, the styles and genres of music played vary greatly. Such is the nature of dance music - it is a style of music made up of a wide variety of specific genres and sub-genres. This Wikipedia link is a basic reference to give the ACCC a basic insight into the many different genres that are classified as dance music:

http://en.wikipedia.org/wiki/List_of_electronic_music_genres

In Australia, different nightclubs and club nights at venues focus on different genres and styles that fall under the general description of dance music. Further to this, many nightclub venues contain multiple rooms, and each of these rooms will have a different style or styles of dance music being performed. Usually, the larger nightclub venues will have what is commonly known as a “main room” and generally, there is a

consistency in the kind of dance music that is played in the main rooms of the larger nightclub venues in Australia. Beyond the kind of music played in the main rooms of larger nightclubs in Australia, there are endless smaller nightclubs and smaller rooms in larger nightclubs that have a vast array of genres and styles performed there.

With this in mind, the issue of the selection of which venues to install the MRT (DJ Monitor) units in is a serious consideration, to ensure that the data capture is representative not only of the kind of music performed in main rooms, but to accurately capture the wide variety of styles and genres being performed in all of the 747 nightclubs in Australia subject to the “Recorded Dance Music Use” tariff which APRA and PPCA charge to their operators.

This led a number of us to enquire with APRA regarding what kind of venues the MRT (DJ Monitor) units were and would be installed in, how these venues were and would be selected, how many of the units were currently in place across how many venues, and if the sample was small, how often the units would be rotated amongst other venues. To these questions, we received the following responses from APRA via email:

What kind of venues / how selection of venues was and is determined:

Email from APRA Writer Services Rep on June 19th:

“A representative sample of venues was obtained using 40 of the largest clubs across Australia. Parameters utilised in obtaining this sample were payable license fee and location and, with the assistance of an independent statistician, 20 venues were selected.”

Email from Membership Administration Manager on June 24th:

“Our statistician identified and selected clubs in Sydney, Melbourne, Brisbane, Adelaide and Perth with the highest joint APRA and PPCA licence fees. The statistician selected a pool of 40, from which we are installing units in 20.”

We do not believe that basing the selection of venues on the highest joint APRA and PPCA licence fees paid by the venues operators is a fair way to represent the different kinds of dance music played in different types of nightclub venues, including large venues and small venues. We request that the ACCC to assist in ensuring that a variety of nightclubs is included in the sample, not just the large nightclubs that pay the highest licence fees to APRA and PPCA. The current placement will deliver a strong skew to a certain style of dance music and will not accurately record all the dance music works performed at nightclubs around the country. It will give an unfair representation of the different styles and genres of dance music currently performed in all of the nightclubs around Australia, and will therefore risk having a lot of dance music writers not have their works, which are performed in nightclubs recorded.

How many venues the MRT units are installed in:

A number of us received this response from our respective APRA reps:

“The sample was created in accordance with our standard practice and, in consultation with an independent statistician. Our most recent payment included data from 10 clubs across the country. We are aiming to increase this number to 20 by the end of June. “

Email from APRA Writer Services Rep on June 19th:

“17 MRT units are currently installed in nightclubs around Adelaide, Brisbane, Melbourne, Perth and Sydney with the view of increasing this number to 20 by the end of June, and further if conditions allow. Confidentiality and data integrity prohibits APRA from releasing information on the clubs partaking in MRT, however since the implementation; APRA has distributed royalties on several thousand more works including performances of non-dance music, that is, music not listed in the ARIA Club Charts, the process previously utilised. “

Email from APRA Membership Administration Manager on June 24th:

“The initial roll-out was to include 10 units. At the time of making P1304, data was used from 8 units. The second phase of the scheme will rely on 20 units, 17 of which have already been installed.”

We request that ACCC assist to ensure that APRA communicate accurate and correct information regarding the number of units installed currently, and currently being used for the distribution of the dance music pool. The above emails give different numbers of units in venues. One email notes 8 units in 8 venues used for distribution P1304. Another notes 10 units in 10 venues used for distribution in P1304. This is an important consideration in terms of the accuracy of a sample that is intended to be the “principle basis for distribution” and therefore intended to be an accurate representation of the 747 nightclubs in Australia currently subject to the nightclub tariff charged by APRA and PPCA. Whether it was 8 or 10 units, out of 747 nightclubs this is a very small sample percentage of between 1.07% and 1.33% of the total number of nightclubs subject to the nightclub tariff charged by APRA and PPCA. We do not believe that this is a big enough sample to use as a “principle basis for distribution” and until such a time as there is a more significant sample, we do not believe it is fair to base the majority of distribution on such a small sample. We request that the ACCC to assist in getting APRA to explore a more relevant mix of distribution methods, until such a time as they can provide evidence that the sample they have obtained via DJ Monitor is a fair representation of all the dance music works performed in nightclubs, over a greater sample than a maximum of 1.33% of the nightclubs being charged the nightclub tariff by APRA and PPCA.

How often the units will be rotated:

Email from Membership Administration Manager on June 24th:

“Clubs have agreed to host the DJ Pads for one year. It is intended that we shall review the scheme after the first year to assess both the number and mix of clubs participating in the scheme. That assessment will be undertaken in consultation with our appointed statistician.”

Given the information we received from APRA which advised that under 20 venues have been selected based on the highest combined licence fees paid to APRA and PPCA, we believe that if the placement of these units and venue selection is not assessed until after the first year, that this will provide a great disadvantage to a number of writers who's dance music works are performed in nightclubs in Australia. Therefore we request that ACCC assist to ensure that there is a greater frequency of the rotation of the DJ Monitor units across a better variety of nightclubs to provide a more accurate representation of the different styles and genres of dance music being performed in the 747 nightclubs in Australia that are subject to the nightclub tariffs charged by APRA and PPCA.

Further to this, we request that ACCC assist to ensure that APRA agree to frequently rotating the DJ Monitor units from room to room in the case of multiple room venues. We request that ACCC assist to get APRA to agree to an even rotation of the units in the rooms in multiple room venues, to ensure that the positioning of the units is even between rooms in multiple rooms. This will guarantee a fair capture of the works performed within each multiple room venue, as opposed to recording data from only one room playing only one style of dance music. As APRA advised in an email on this matter:

“The DJ Monitor DJ pads are plugged into DJ desks by means of XLR cables.”

If the DJ Monitor DJ pads are simply plugged into the DJ desks by means of XLR cables, it will be very easy to rotate the DJ pads from room to room within multiple room venues.

4. PERCENTAGES OF DISTRIBUTION

Given that APRA had advised its members in the email on May 13th:

“This distribution also represents a significant advance in our treatment and payment of music used in Nightclubs. For the first time, in co-operation with the PPCA (Phonographic Performance Company of Australia), we have adopted fingerprint technology to detect and report on music used in these venues. We are now relying on MRT (Music Recognition Technology) as the principle basis of our distributions.”

We therefore made enquiries regarding the percentage of the payment of this distribution, relevant to the MRT (DJ Monitor) units. Slightly conflicting information was given to different members of this group, with a Writer Services Rep from the Sydney APRA office advising:

“ In regards to the P1304 distribution, the board approved that we paid approximately 83% of the dance music pool to the works captured across all MRT technology, and 17% to the ARIA Dance Music charts.”

Whereas a Writer Services Rep from the Melbourne APRA office advising:

“The Nightclub revenue is allocated to the DJ Monitor MRT reports and to the ARIA

Club Charts, in direct proportion to the number of unique works contained in each, and is paid out from two discrete revenue pools. Indicatively, the revenue split in Distribution P1304 (December Quarter 2012) was 87% to the DJ Monitor reports, 13% to the ARIA Club chart works.”

As members, and in accordance with clause 2.4 (a) (i) of the Code of Conduct for Copyright Collecting Societies, we have a right to receive accurate and up to date information regarding distribution methods and policies. We request that ACCC assist in ensuring that APRA provide correct and accurate information to its members, and that this information is made prior to revenue being split and distributed to its members.

Further, and more importantly on this issue, we do not believe that 83% or 87% is a fair percentage for the distribution of this pool, given that the sample from which the works were recorded represents a maximum of 1.33% of the 747 nightclubs subject to the nightclub tariff charged by APRA and PPCA.

When queried on how this percentage was reached, APRA advised:

“It is the ratio of the number of unique works contained in the ARIA Club chart for the December quarter against the number of unique works reported by DJ Monitor. We ran a test of the number of works reported in the ARIA Club chart as against the number of works reported by DJM. The result was a ratio of 87:13. This then enabled us, with confidence, to allocate 87% of the revenue to 87% of the works and, equally, 13% of the revenue was shared amongst 13% of the works. The point of determining the ratio is important to a) ensure an equal royalty value per work and b) ensure that no member is disadvantaged. By applying the ratio, it means that works share equally irrespective of the source of the performance ie either ARIA club chart or DJM.”

We believe that the percentage of distribution should not be based only on a percentage of works in the DJ Monitor database versus the works reported via the ARIA Club Chart data. We believe that the size of the sample of the venues, which have the DJ Monitor DJ pads, (1.33%) and the representation of the type of dance music played in the venues where the DJ Monitor DJ pads are installed, must be considered when determining the percentage of the revenue split according to the DJ Monitor reports. We request that ACCC assist in ensuring that a fairer percentage is applied to the distribution of the dance music pool, following an assessment which takes the above factors into consideration. Further, we request that ACCC assist in ensuring that APRA do a formal assessment on the works reported from DJ Monitor, set lists and the ARIA Club Charts, and reports to its members on the findings, and the subsequent percentage of distribution moving forward.

Further, we request that ACCC request a recall and re-assessment of distribution P1304 given that 87% of the dance music pool was distributed according to a sample of no more than 1.33% of the 747 nightclubs subject to the nightclub tariff charged by APRA and PPCA. It has already been proven that a number of us do not have all of our works on the DJ Monitor database, and therefore the P1304 is inaccurate as it is based on reporting from a database that does not include all of the APRA Writer Members works.

It should also be noted that on June 11th, the Distribution Practices published on APRA's website state as follows:

“The ARIA Club Chart has been used as a basis for APRA's dance music distribution since 1999. The ARIA chart is compiled from the reports of approximately 160 DJ's from around the country, who report weekly their most played dance tracks. Each DJ's music style (whether, House, Breaks, Trance, Urban, Electro, Drum 'N Bass or Progressive), as well as the location of the DJ, is taken into account in ARIA's analysis.

The data used for the distribution of the retro/commercial music is taken from the playlists of selected radio stations and the Video Hits TV programme.

The APRA licence fees are split between the ARIA information on the one hand, and selected radio station playlists and equally to Music Max and Channel V music TV logs on the other, in the ratio 55.7:44.3 The breakdown between the dance and retro/commercial music was determined by a survey of approximately 200 dance clubs and discos in 2005. The survey was conducted using methodology designed by ACNielsen, and included dance clubs and discos of all sizes in all Australian states. The retro/commercial amount is split 67% to selected radio playlists, 16.7% to Music Max and

16.6% to Channel V.

ARIA maintains a chart of the Top 100 works played in clubs, and provides APRA with collated data every six months. This data allocates 1 point for position 100, 2 points for position 99 etc., up to 100 points for position number 1, on a week by week basis. These points are aggregated for each work for each six month period and credited as 'performances' in the APRA distribution.”

A full copy of the Distribution Practices downloaded from APRA's website on June 11th is included with this submission. Verification of the date it was downloaded can be obtained by checking the file information, detailing the date the file was created. The above information is detailed on page 39 of the attached Distribution Practices, downloaded from the APRA website on June 11th.

Given that APRA made the P1304 distribution on May 13th, and given that as at June 11th, the above Distribution Practices was the only detailed distribution information made available to its members, we believe that APRA has a responsibility to distribute income according to the Distribution Practices information made available to its members prior to the distribution being made. We therefore request that the ACCC assist to ensure that APRA do a recall of distribution P1304 and redo this distribution, according to the Distribution Practices informed to its members at the time of the distribution, not after.

Sometime after June 11th, APRA amended its Distribution Practices and published them on the APRA website. An artist manager within our enquired with APRA as to the date that the Distribution Practices were amended and published on the website. The APRA Membership Administration Manager advised:

“The new APRA Distribution Practices document was published on the 7th June. It contained several other important updates, which were completed and published together with the change to our Nightclub distribution.”

Another member of this group enquired with his respective Writer Services Rep regarding the date the Distribution Practices were updated on the APRA website, and similarly, he was also informed:

“The new Distribution Practices document was published on the 7th. June. It contained several other important updates, which were completed and published together with the change to our Nightclub distribution.”

The artist manager responded asking for the APRA Membership Administration Manager to reconfirm the date of June 7th, bringing attention to the copy of the Distribution Practices downloaded on June 11th. In response, the APRA Membership Administration Manager responded with:

“My apologies for the incorrect date; the revised APRA distribution practices document was initially updated on Tuesday 11th June and there were other minor amendments updated on Friday 14th June.”

We request that the ACCC assist in determining the correct date that APRA published this information, so that we have a correct date that the members had the important detailed information regarding new Distribution Practices made available to them. We also request that ACCC ensure that APRA’s new distribution methods only be applied to income collected by APRA after this date. We believe that this is fair to both APRA Writer Members and the 747 nightclubs subject to paying the nightclubs tariff charged by APRA and PPCA. We believe this is in accordance with Article 93 (d) of the APRA Constitution, which states:

“Any method of entitlement fixed by the Board shall comply with the terms and conditions of any agreement in force from time to time between the Association and any member or affiliated society.”

Furthermore, should PPCA, in co-operation with APRA on the installation of the MRT units, plan to follow similar distribution methods, we request that ACCC request that PPCA apply such new distribution methods only to income collected by PPCA after the date that they advise its members of such a change in their Distribution Policies.

In summary, the issues we request ACCC assist in addressing are:

1. The lack of transparency around the distribution of the dance music pool.
2. The lack of information communicated to APRA members prior to the distribution of the dance music pool. The lack of information made available to APRA members following numerous enquiries. The lack of information made available prior to June 2013, which was well after the MRT units were installed and well after reporting from DJ Monitor to APRA for the P1304 distribution made in May.
3. The lack of information regarding the functionality of the MRT units and their placement in venues that ensure an accurate recording of the different kinds of dance music played in the 747 nightclubs currently charged the nightclubs tariff.

4. The DJ Monitor recognition system being in some areas flawed in terms of the recognition of works.
5. The lack of information and process to ensure the accuracy of the DJ Monitor database, which is intended to be the “principle basis for distribution” now and moving forward.
6. The lack of consultation to specialists in the area of dance music to determine the best mix of distribution practices to ensure a fair and true representation of the dance music works being performed in the 747 nightclubs that are subject to the nightclub tariff charged by APRA and PPCA.

We look forward to receiving updates following ACCC’s investigation into these matters.

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