

B # Music Management



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12 March 2014

ACCC
Adjudication Branch
Lvl 35, 360 Elizabeth St.
Melbourne

RE: A91367-A91375 – Australasian Performing Right Association Ltd – submission

Dear Adjudication Branch,

My name is Robert Crain and I am a member of the Australian Performing Rights Association. I have previously made a submission to ACCC in regards to the abovementioned matter and I have been contacted by the ACCC to provide a further submission in respect to;

- Alternative Dispute Resolution System and
- The proposed appointment Resolve Advisors as Independent Facilitator

My submission in relation to both items is below.

ALTERNATIVE DISPUTE RESOLUTION SYSTEM (ADR) –

The correspondence from the ACCC seeks submitter's views on several issues which were bullet-pointed in their email of 14 February 2014 and I believe they are appropriate issues to seek the views of the membership and submitters on. Mine are below laid out in accordance with the bullet points in the email.

- No, the revised system does not address my concerns as it does not allow for:
 - The inclusion of an independent musician/writer member at large to be included in any dispute resolution panel. The interest of the musician writer can not be adequately understood by an outsider or music industry panel member/arbitrator/mediator they could not possibly understand the intricacies, the emotional involvement and connection with one's work.
 - The system as designed is skewed in favour of APRA and the Major Music Industry Corporations whose interests APRA seeks to protect at all costs.
- I am in favour of the options provided for in the Second Bullet Point, save for non-binding arbitration it is either binding arbitration or a negotiated settlement.
- I am against any fee being paid by a Writer or Musician Member of APRA, APRA's income is derived on behalf to the membership and on that basis the income belongs to the membership in general and all reasonable costs of any Dispute Resolution should be borne by the membership in general and therefore paid directly by APRA. There is no cause or history to indicate that there is a need to protect against frivolous claims being lodged by charging an application fee.

- I agree that there should be a listing or pool of trained dispute resolution mediators available to the parties of any dispute to choose from. I do not agree that there should be a pool of “industry experts” as that can not be defined. The Music Industry produces far too many “experts” and the very name “Music Industry Expert” would indicate that as a music industry person their expertise would likely stem from the business of making profits off of artists and music creators. To have a Music Industry Expert acting as independent in a dispute resolution would be tantamount to allowing the fox in the hen house. Dispute resolution by direct negotiation should allow for each party to the dispute to be accompanied by 1 advisor or expert of their own choosing. Dispute resolution by mediation should be attended by listed Mediator agreed by the parties and a suitable panel consisting of an independent writer/musician/member from the same general area of music central to the dispute (i.e. song writing rights, jingles, T.V. or Movie credits) and an industry person with credible knowledge and experience in the area of the dispute. Where an agreement for binding arbitration is entered into between the parties the person or panel to hear the dispute should be negotiated between the parties and the information or expert advice/testimony that can be offered should be agreed prior to the commencement of the arbitration process.
- Assurance of independence can only be assured by a panel as noted above being convened to resolve disputes...no one person is independent in their thought processes or views.
- Any person/company who is dissatisfied with the process or speed at which the process is running has the option to seek redress in the courts or should have clarified the timing of the process prior to the commencement of the process.
- Yes binding decisions should be published and made known to the members for future reference. All dispute resolutions which have an effect on the members should be noted and discussed in correspondence to the members...names, details ect can be omitted as necessary.
- Yes, this is important to avoid future disputes over the same or closely related issues and the members should be able to make themselves aware of decisions affecting their livelihood. The outcomes of dispute resolutions should be compiled by APRA as the body representing the members and that information should be provided to the members via correspondence or at their request. The membership would be much better served by having this information emailed to them on a regular basis rather than information about another APRA High Profile big money industry event to which most members are not concerned.

The Proposed Appointment of Resolve Advisors as Independent Facilitator –

Whilst the work of Resolve Advisors and their Principal Ms Kirschner in respect to the ADR has been admirable and of a high quality, I do not support the further appointment of them as an Independent Facilitator. For the simple reason that they can not be independent from the System which they have written and put in place and at all times will be enslaved in their interpretation of the ADR System as designed and written. Further as they have been engaged by APRA to undertake the review of the system they can no longer be considered “independent” especially if they were to remain on a retainer with APRA, they would always be in a position of profiting directly from the members of APRA but at the direction of APRA Management. This would be unacceptable, if a full time or retained Facilitator is required to maintain the functionality of the system that person should be employed solely for the purpose of maintaining the system not in the position of an arbitrator, mediator, or facilitator.

Regards

Robert Crain
Writer Member of APRA