



31 March 2014

Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601
Attention: Tess Macrae

By email: adjudication@acc.gov.au

A91367-A91375 – Australasian Performing Right Association Ltd – submission

Thank you for your invitation to the Arts Law Centre of Australia (**Arts Law**) to provide supplementary submissions on the proposed alternative dispute resolution (ADR) model for the Australasian Performing Rights Association (APRA). This submission concerns the proposal to establish an ADR Committee comprised of APRA members and licensees, with an independent Chair, to oversee the Scheme. Once formed, the ADR Committee could undertake tasks relevant to the oversight of the successful operation and independence of the Scheme.

As a preliminary matter, we refer to our previous submission and our further discussions with Ms Macrae confirming that it is the intention of APRA to expand the new ADR model to 'member' disputes more generally once tested on licensee disputes. We're delighted that is the case but observe that there are some fundamental differences in such disputes and in our view the model will need further review and consideration in order to be adapted to operate to operate effectively in member or licensor disputes. We would welcome the opportunity to make further submissions at that time.

We understand that in those circumstances the establishment of the ADR Committee is particularly important as it is anticipated that the same committee would have

responsibility for the 'expanded' ADR system operating for both licensee and other member disputes.

We apologise that we have not been able to prepare a detailed response or give detailed consideration to how the proposed committee would operate in the context of licensor disputes given that Arts Law only received clarification as to the ACCC's and APRA's intentions in relation to the future expansion of this ADR model to member disputes last week and the minutes of the recent conference have only become available in the last few days. We reiterate our view that licensor disputes are often fundamentally different and the model would need substantial adjustment to deal effectively with licensor disputes. The following comments are made on that basis.

Do you support the introduction of an ADR Committee?

In principle, Arts Law is supportive of an oversight mechanism which is seen to be independent of APRA and representative of the broad membership of the industry in which disputes arise. We suggest consideration be given to a structure that allows for two sub-committees – one appropriate to the disputants the target of the first stage outlined in Ms Kirschner's paper and one appropriate for what will be 'stage two'.

Obviously, in any construction of the Committee there must be, at best, equal representation of licensors to licensees.

The independence, actual and perceived, of the Committee is crucial. There needs to be transparent guidelines established around appointment and tenure – which should be for a fixed period.

How should the ADR Committee be funded?

The ADR Committee should be funded from within APRA's existing administration costs. We would oppose any model which resulted in lower royalties to members.

What should be the responsibilities of the ADR Committee?

We would expect the Committee to oversee the appointment of a facilitator, be responsible for seeking feedback from APRA licensees and members and other stakeholders about their experience of the operation of the Scheme, and securing periodic independent analysis of the effectiveness and efficacy of the Scheme. In the context of member disputes (stage 2), we would expect the Committee (or sub-committee) to be responsible for setting and administering guidelines for access to low cost or pro bono legal support for financially disadvantaged members engaged in the ADR process. The ADR Committee should be responsible for managing a clear process for dealing with complaints and appeals.

Further consultation with Arts Law and its stakeholders

Please contact me if you would like us to expand on any aspect of this submission, verbally or in writing. We are also pleased to be of any assistance in meeting with you prior to, or during the preparation of the final report.

Yours faithfully

A handwritten signature in blue ink, appearing to read "Delwyn Everard".

Delwyn Everard

Deputy Director

Arts Law Centre of Australia

