

# AUSTRALASIAN PERFORMING RIGHT ASSOCIATION LIMITED

## AUTHORISATION NOS A91187 – A91194 and A91211

### REPORT UNDER CONDITION C2

30 APRIL 2014

PERIOD 1 April 2013 – 31 March 2014

Under condition C2 of its existing authorisations A91187 – A91194 and A91211 (**Authorisation**), on an annual basis for the duration of the Authorisation, APRA is required to provide the ACCC with a report about disputes notified to APRA under its alternative dispute resolution process for the previous calendar year (**Report**).

This is the fourth Report since APRA's Authorisation, and concerns disputes for the period commencing 1 April 2013 and ending 31 March 2014.

APRA has prepared two versions of the Report – one containing confidential information and one for publication on the public register.

APRA offers its ADR facility to all licensees and potential licensees. Information about the facility is contained on the APRA website, and a reference to the facility is included in APRA's standard legal correspondence.

For the purposes of this Report, APRA has categorised disputes as being “compliance disputes” or “commercial disputes”.

“Compliance disputes” are disputes with general performance licensees or potential licensees – these are matters where users of music in APRA's repertoire have declined to enter into licence agreements with APRA after requests from APRA that they do so, and have been referred to APRA's lawyers for action. APRA does not consider that these disputes are of the kind intended to be included in the Report, but has included statistical information regarding the number of such “disputes” for completeness. This is consistent with APRA's treatment of these matters in relation to its Code of Conduct compliance, where each matter might also be considered to be a “complaint”. APRA is happy to provide details of the matters referred to if requested.

Generally, “compliance disputes” are resolved without legal proceedings being commenced. Correspondence from APRA and its lawyers in such cases invites licensees/potential licensees to refer disputes to alternative dispute resolution.

“Commercial disputes” are disputes that have arisen with groups of similar licensees, or with larger licensees during the course of existing business relationships, regarding the terms of APRA's various licence schemes. APRA has included in the Report the information set out in C2 paragraph 2, in respect of each dispute where a licensee has requested that the matter be referred to alternative dispute resolution during the period.

Attachment A is the version of the Report for publication. Attachment B, marked confidential, is the version of the Report that is confidential to members of the ACCC and is not for publication. It contains information that is confidential to APRA and its licensees.

## ATTACHMENT A ADR REPORT

### DISPUTE REPORT 1:

Licensee	CONFIDENTIAL
Licence Category	Recorded Music Service – Video on Demand
State	NSW
Dispute commenced	July 2011
Dispute resolved	August 2013

**(i) Description of the issue the subject of the dispute**

In the course of negotiating a licence with an online service provider for its video on demand service, APRA and the online service provider were in dispute regarding the proposed rate at which licence fees would be calculated.

The online service provider also disputed the revenue base to which the proposed licence rate would apply because its video on demand service was only offered as part of a bundled service that also included the supply of a number of physical DVDs each month.

APRA was concerned that the concessions sought by the online service provider may give it a competitive advantage over similar video on demand services.

In mid-2013, APRA proposed expert determination as a way to resolve the impasse and provided the online service provider with detailed information on the process.

**(ii) Outcome sought by the parties to the dispute**

The online service provider sought a graduated phase-in of APRA's proposed rate and a significant reduction to the revenue base to which the rate would apply on account of the bundled nature of its service.

APRA sought to apply its full proposed rate from the commencement date of the licence and a lesser reduction in the revenue base to which the rate would apply on account of the bundled nature of the service.

**(iii) Whether the dispute has been resolved or not**

Yes. The dispute was resolved by continued negotiation without the need to refer the matter to expert determination.

The online service provider agreed to the proposed licence rate and both parties reached a mutually satisfactory agreement on a formula to calculate the minimum assessable revenue in relation to bundled DVD and video on demand packages.

**(iv) A copy of the expert's report to APRA under condition C1 where such a report was produced**

N/A

**(v) Time taken to conduct the expert determination**

N/A

**(vi) Costs associated with conducting the expert determination and the apportionment of the costs to the parties to the dispute**

N/A

**DISPUTE REPORT 2:**

Licensee	CONFIDENTIAL
Licence Category	Broadcast and Online Services – Commercial Radio Licence
State	NSW
Dispute commenced	January 2013
Dispute resolved	March 2014

**(i) Description of the issue the subject of the dispute**

The commercial radio broadcaster claimed that it was entitled, on its reading of the commercial radio licence scheme, to reduce the website advertising revenue it reports to APRA under the licence scheme, on the basis that certain website revenue should be excluded given the nature of the content made available on its websites.

**(ii) Outcome sought by the parties to the dispute**

The commercial radio broadcaster requested a refund of allegedly overpaid licence fees over the previous three years and advised that in future it would only report the reduced website revenue figures to APRA.

APRA disputed the commercial radio broadcaster interpretation of the agreement and argued that the proposed reduction in website revenue figures was inconsistent with the terms of the licence scheme.

Following extended correspondence attempting to resolve the dispute, the parties agreed to refer the dispute to expert determination.

**(iii) Whether the dispute has been resolved or not**

Yes. The parties were able to reach agreement by way of commercial negotiation and achieve a confidential settlement of the dispute prior to the expert determination hearing.

**(iv) A copy of the expert's report to APRA under condition C1 where such a report was produced**

N/A

**(v) Time taken to conduct the expert determination**

N/A

**(vi) Costs associated with conducting the expert determination and the apportionment of the costs to the parties to the dispute**

N/A