



Australian Competition and Consumer Commission
23 Marcus Clarke Street Canberra
ACT Australia

11 March 2024
Heart Music Group Pty Ltd
28 Logan Street Upper Hutt

ACCC PORTAL SUBMISSION:

OPPOSITION TO AUTHORISATION FOR APRA MONOPOLY

HEART MUSIC GROUP is a social enterprise and advocate for the rights of independent creators of music. Our mission is to improve the industry conditions for creatives releasing independent music. Please find below our submission to the ACCC regarding the authorisation of APRAS monopoly.

FIRST ACCC TOPIC FOR FEEDBACK:

Input Arrangements: APRA requires its members to assign to it the performing rights in all the works owned and controlled by the member, subject to the resignation, opt-out and licence back provisions of APRA's Constitution.

Licensing Back

HEART MUSIC GROUP strongly opposes that APRA should be able to require its members to assign their rights subject to licensing back and opt out provisions. We have experienced that licensing back and opt out provisions which are meant to counterbalance the assignment of rights, do not work in reality.

Here's an example which shows how. X radio station is playing local artists song regularly. Artist is an APRA member. Artist approaches radio station directly to attempt to use license back function and charge a license fee directly to radio station.

Radio station has already paid a ONE MUSIC license to APRA which covers the radio station for **all** the music they play (including the artist). Radio station threatens to remove the artist music from playlist if artist insist on being paid directly.

The commercial reality is that even if the artist uses "licensing back" or "opt out" provisions they are blocked out of the market due to APRA already having negotiated licenses with virtually everyone who uses music commercially. The music user would be double paying if



they were to license directly to the artist. APRA uses “opt out” and “licensing” back to appear as if there is an alternative licensing route for the writer. The reality is this exists only on paper except in some very limited circumstances.

Other tangible examples of this failure of APRAS license back provisions can be supplied with evidence at the ACCC request, these include attempting to license directly after our repertoire was played by radio stations, streaming platforms and restaurants bars and other background music users.

Assignment v Non Exclusive License

There has been some discussion in the past by the ACCC about whether the input agreements should require an assignment of rights by the writer to APRA, or to be a lesser non-exclusive license. The reality is that due to APRA having such a dominant market power, neither legal functions protect the writer.

If the assignment of rights is looked at purely from an ethical perspective, as opposed to a functional perspective, it is a completely an unnecessary encumbrance on the writer’s property rights for APRA to require a full assignment of rights to join APRA. APRA input contracts require assignment for future and past works for the entire world. For such a onerous transfer of rights by the writer, it would be reasonable to expect commercially favourable terms from APRA to the writer. This is not the case.

Non Negotiable Unfair Contracts

The input contracts that APRA uses to input new writers into their membership are fully nonnegotiable. They are online tick box, standard form contracts and give no room for the creator to negotiate the terms of the use of their art. There is no option for the writer to negotiate an upfront license fee, or any parameters around how their songs will be used.

Example: Artist is not a member of APRA. Artist is fully independent and has not signed any music contracts. Artist incurs \$10,000 of expenses to record and release original song. Song is popular and generates the interest of radio stations. It receives 100,000 streams on streaming services. Upon the artist approaching the radio station and streaming platform, both believe they have already paid a royalty license fee to APRA for the song. Artist then approaches APRA who offers an online tik box contract that is non-negotiable and requires artist to assign all of his/her music composition rights to APRA for past and future, for the whole world. The contract only requires APRA to pay artist from time to time at APRAS discretion.



This example reveals the current industry standard conditions which face successful self-releasing creators of music.

The non-negotiability of the input agreement with APRA strips the artist of the ability to benefit from the popularity and success of the music. The success was achieved due to the artist's investment into themselves. It is a complete erosion of copyright. If the artist does not agree to APRA's terms and conditions, the result is that the artist does not get paid composition royalties at all. If they do agree to the contract, they accept the exploitative payment provision. This leads to a fraction of a cent royalty payment from APRA to the writer despite outward signs of a song's success. For example, charting in the TOP 40.

What would be "fair" in this situation is for the artist to set a monthly license fee which would be payable to the artist, in return for them assigning their music rights to APRA. These fair negotiations do not take place at any time.

There is no alternative service to APRA in NZ or Australia. Such over-burdensome contracts may be acceptable in a market where the writer can choose to go elsewhere upon non-acceptance of the obviously unfair terms. In AU or NZ, there is no such alternative. Therefore, the fact that the contracts offer no upfront fee to the artist and are non-negotiable is textbook legal definition of an "unfair contract". The contract allows the writer to cancel at any time, however, the reality is that cancellation of the membership will only result in the writer not being paid at all due to their being no competitors or alternative collection societies. This results in the music being played anyway and leaves the artist needing to raise a legal dispute in order to be paid.

It is a fundamental right of copyright that the creator of the work is able to define the parameters of the use of that work in public. This right exists upon creation of the composition. The current industry circumstances require an independent writer to go to court if they want this right recognised either against APRA, or against the end music user. This puts the writer between a rock and a hard place.

In light of these conditions, it is repugnant to see ONE MUSIC, which is a trading name for APRA, advertising publicly that they are the organisation that looks after artists and ensures that they are being paid.

Lack of legal options to enforce

The enforcement options around copyright are very limited for writers. I will reserve my opinion on this matter but would be happy to provide at the ACCCs request.



Public Detriment

The outcome of this situation is that creatives in the music industry are the most underpaid of professions. Common sayings like “starving artist” or the expectation to “sing for your supper’ are common place. Not only this, but depression and mental health issues are disproportionately much higher in this industry than any other.

Lack of enforcement options around copyright mean that artists are left feeling like they fall outside of any judicial system that will help them. This is an erosion of property law and common decency standards. This inhibits creativity and creates a system where artists property can essentially be stolen from them without remedy. This has negative social impacts.

The system also takes advantage of musicians not understanding the fine print and encourages musicians to accept what they are given, rather than encouraging a fair bargain. This is ethically wrong.

Lack of Accountability

APRA have a very small number of writer members who are nominated to represent a voice for the writers interests. The membership which has hundreds of thousands of members, is too large for one, or two writer members to advocate for all. The writer member is also at a direct conflict of interest due to being paid by APRA. As such there is a disincentive for these representing members to rock the boat due to receiving royalties through APRA. Though Heart Music Group admires the art of some of these creators, systematically having one or two writers, who do not have any legal background, represent all writers copyrights (multiple millions) is not sufficient to create an actual representation of the membership voice.

APRA though it puts itself forward as a not for profit, is benefiting from this system not being fair. The senior staff at APRA who receive full time salaries which are deducted from the hundreds of millions of royalties payments they receive, enjoy a predictable income which is not afforded to the writer members.

In summary, assignments, should not be allowed in the APRA input agreements. If it is to be allowed, it should only be allowed if there are tangible benefits offered back to the writer for the assignment such as a predictable license fee, and consultation. Licensing back and opt out provisions are not effective. An inquiry into whether APRAs input agreements are “unfair contracts” is recommended.



SECOND ACCC TOPIC FOR FEEDBACK

Reciprocal Terms: APRA’s reciprocal arrangements with overseas collecting societies by which, in large part, the collecting societies grant each other the exclusive right to license works they respectively control.

I have no comment on this point other than that if the writers music becomes successful overseas there should be a mechanism for them to leverage good terms and conditions for the use of their music and they should be consulted on this before deals are made.

THIRD ACCC TOPIC FOR FEEDBACK

Blanket Licenses: APRA grants licences for users to perform in public or communicate to the public any of the works in its repertoire.

Blanket licensing, without counterbalances, has created a system where music users expect and unlimited supply, without considering that there is significant cost and expense on music creators to produce broadcast ready music.

The purpose of offering a blanket license is so that commercial music users can play a broad selection of music and not be concerned with having to approach individual rightsholders directly. If the public benefit is that retailers are covered to play everything and avoid administrative inefficiencies, we have to balance this against the detriment of the hundreds of thousands of writers whose past and future music is bundled into a one bulk bought catalogue, without a fair negotiation of payment.

Blanket licensing only serves to benefit, ONE MUSIC, APRA, PPCA/RMNZ, and the music users, for example, retail stores, radio stations and streaming platforms. The creator, who should be benefiting the most from this system, is benefiting the least.

The industry has outgrown this blanket licensing system being suitable. When APRA was first established, there was simply less music available. APRAS membership had relatively low writer member numbers, compared to today, such a system would work as the fees collected would have been distributed to a smaller number of members. Today with hundreds of thousands of members, and those members representing millions of recordings, it does not work. The only way for it to work would be to create sufficient protections for the writer when joining, to ensure the deal is fair for them.



Substantial Misrepresentation

ONE MUSIC represent to the public that their blanket licenses cover “essentially all” or “virtually all” commercially released music. As of December 2023 this was advertised on their website and is a crucial part of their offer to the market. However this is simply not true and is a substantial misrepresentation.

There are thousands, if not hundreds of thousands, of artists that choose not to be part of the ONE MUSIC system. APRA advertising that they cover virtually everything means that independents cannot differentiate their copyrights in the market. The result is that if they are played in public the music user believes they have already paid. For an artist who is not a writer member of APRA this means that their intellectual property rights are effectively stolen from them. If their song is played in public, APRA will collect the license fee regardless.

APRA refers to this as “Placeholder Royalties”. In this instance APRA attempts to contact the writer to assist them to join. It is a complete erosion of the independent artists rights. APRA is commercially gatekeeping access to royalties that the artist cannot obtain unless it agrees to APRA's non negotiable terms. No matter how popular the song becomes independently, the artist has to join the APRA system, and agree to the terms to be paid. This system means that all music is treated the same and fixes the market from the music price perspective.

It also does not differentiate between types of music. For example a symphony recorded by 100 experienced orchestral professionals are put to market at the same price as a computer generated song with two chords. It is the equivalent to making a two dollar shop that sells car toys and real Ferraris, and yet selling them at the same price. APRA, the “car yard” benefits from this system because they can charge a flat rate for everything. The music user benefits because they can play everything, but the people creating the product are overlooked. Obviously this example does not translate literally, but it is helpful to address that the blanket licensing system does not account for the differing genres of music and the differing production costs associated.

Infinite Membership

The APRA constitution allows for the membership of APRA to be unlimited, meaning they can take on infinite writer members. The effect of this is they represent a larger and larger market share as time goes by. This makes it easy for them to obtain market power and dictate prices. However, the individual creators distributions are diluted more and more with every new member that joins. APRA constitution therefore makes an inherently unsustainable system for its writer members which it has a contractual and ethical duty to protect.



The excuse that this is common practice in other collection societies is not enough. The reality is that this system does not work and it needs to be re figured should the monopoly be continued.

ACCC TOPIC FOR FEEDBACK

50% rule: As a member of the International Confederation of Societies of Authors and Composers, APRA is required to allocate at least 50% of royalties in relation to any work to the composer/author of the work.

APRA advertises that its running costs are approximately 13% of its overall annual royalty collection. As such the return to the writer should be 87% on average. It should be standard process that when a writers music is used commercially, that writer should be receiving the lions share of the royalties owed. 50% is far short of a just standard and is disgraceful given APRA is supposedly the writers advocate. The obvious question then becomes where is the missing 37% of funds going. APRAs annual turnover is in the hundreds of millions. This is a large discrepancy. APRA should be prohibited from advertising on this topic as it is misleading and untrue. On top of this we should be looking not only at the percentage that goes to writers, but what the average payment is to writers.

Suggested Changes

There needs to be a thorough investigation into how APRA and pays its writer members and how it facilitates writers to benefit commercially from the public use of their work. There has been a major lack of insight into the ONE MUSIC system from the perspective of copyright owners. This system needs to operate to benefit both music users and music makers. I have provided a list of suggested changes which I believe would internally improve the APRA system. These suggestions are not intended to be comprehensive. Each idea would need to be fleshed out.

-Split APRA member writers into smaller genre subgroups of no more than 10,000 writer members. Each group has a representative with the ability to self-negotiate on behalf of their subgroup.

- APRA writer input agreements are assessed to see if they meet the definition of an illegal unfair contract.

-APRA required to license at a fixed monthly license fee for any writers that obtain fixed industry benchmarks, for example TOP 40/Hot rising singles, or X amount of streams.



-The APRA constitution be amended so that sustainability of its lowest earning writer members is a factor that must be worked towards on a constitutional level.

-Require APRA to provide ACCC and the public the average and median royalty payments that go out to writer members each year in NZ and in Australia for transparency.

- Limits on executive salaries.

- A detailed inquiry into how licensing back works in practice. Require APRA to reduce their license fee by any amount that the individual artist negotiates directly with the music user to allow the artist to always have the option to go directly to the source of who is using the music without incurring negative treatment.

-Require APRA to implement a licensing feature where the music user can tick an online form box to nominate a specific artist or set of artists that they would like a portion of their royalty payments to go to directly. Rather than into the distribution pool of millions of songs.

-Establish a license local feature within APRA where a set portion of royalties go direct to independent local artists living in the local community

-Abolish administrative payments charged to the writer for licensing back. Currently APRA may charge up to \$200 if an artist wishes to license back. This is more than the majority of artists earn through APRA in any given quarter.

-APRA being able to advertise that they represent virtually all or essentially all music should be abolished unless extensive work is done to ensure that the mechanism within their system to allow direct licensing. To do so without this, effectively steals copyright from unsigned writers.

-Artists should have an option to charge a reasonable licensing fee to APRA in return for inclusion in the ONE MUSIC scheme.

-APRA NZ should not be able to advertise that it has a dispute resolution function available when it does not.

-APRA should be required to have an internal legal advocate to represent individual writer members interest whose role is to advocate on behalf of its writer members against APRA



executive interests. This person's salary should be funded by an external government party to avoid bias.

-APRA and ONE MUSIC staff and representatives should not be allowed to be on external music funding panels to avoid member disputes against APRA effecting external funding opportunities.

-APRA and PPCA/RMNZ should be limited on how many members they can represent. Such limitation would allow competition to start and would allow artist to shop around their music rights and decide which organisation to join.

-There must be accountability to ensure that what is happening “on paper”, i.e what APRA presents to the ACCC is happening in reality. Especially around provisions that go against APRAS immediate interests. Mystery shopping type functions around licensing back to keep accountability.

Thankyou for considering our submission. It is our belief that the industry standards for independent artists are far below acceptable and that a primary reason for this is the existence of the APRA monopoly and lack of effective regulation of this monopoly. We can make ourselves available for any clarifications on any of the submissions contained within at a time of our mutual convenience.

Marty Bryant

Heart Music Group Managing Director



SINGLES

ALBUMS

HOT SINGLES

HOT NZ SINGLES

NZ SINGLES

NZ ALBUMS

TE REO SINGLES

CATALOGUE

CATALOGUE

CATALOGUE

CATALOGUE

HOT 20 NZ SINGLES

WAIATA TAKITAHU, WERA RAWA 20 O AOTEAROA



<p>1 COOL IT DOWN Coleraine</p>	<p>2 REAL ONE 8 (QUIX REMIX) L.A.B. And Kings</p>	<p>3 STAY THE SAME Niko Walters</p>	<p>4 18 Sam Heselwood</p>	<p>5 KELZ GARAGE SWMDT feat. Lomez Brown</p>
<p>6 EVERGREEN The Heart of Katherine</p>	<p>7 DIFFERENT SKIES Harper Finn</p>	<p>8 SLIPPING AWAY Pirapus And 33 Below</p>	<p>9 DOMINION ROAD (DUMPLIN...) DARTZ</p>	<p>10 TE AROHA MAUROA MOHI</p>
<p>11 TOO FAR GONE Sly Chaos And Ella Monney</p>	<p>12 TTYL imugi</p>	<p>13 NGŌ IMI E (LIVE) Creative Natives</p>	<p>14 PUT D'ANGELO ON Bailey Wiley feat. Noah Slee</p>	<p>15 NO FOLLOW THROUGH Win Donna</p>
<p>16 SOMETHING ELSE Odds & Ends</p>	<p>17 IT'S SO REAL The Black Seeds</p>	<p>18 BREAKDOWN IN DALLAS Sin City</p>	<p>19 LITTLE SIEVE T.G. Shand</p>	<p>20 SOUL BURDENED SOLDIER Sam Bartells</p>



SINGLES

ALBUMS

HOT SINGLES

HOT NZ SINGLES

NZ SINGLES

NZ ALBUMS

TE REO SINGLES

CATALOGUE

CATALOGUE

CATALOGUE

CATALOGUE

HOT 20 NZ SINGLES

WAIATA TAKITAHU, WERA RAWA 20 O AOTEAROA



1 PRAY FOR MORE MELODOWNZ feat. Lisi An...	2 REAL ONES L.A.B. And Kings	3 ANSWER Flowidus feat. Muruki	4 KELZ GARAGE SWiDT feat. Lomez Brown	5 APATHY Judah Kelley
6 BLIPPING AWAY Pirapus And 33 Below	7 HYPNOTISE ME Space Waltz	8 I DON'T THINK IT'S ME Lévyne	9 STAY THE SAME Niko Walters	10 EVERGREEN The Heart Of Katherine
11 CAN'T MAKE IT RIGHT Jackson Owens	12 VIC Asta Rangu	13 NO FOLLOW THROUGH Wiri Dannis	14 PENRHYN FREE STYLE Brandt Shiraz	15 HURRICANES AND NOVACANE Midwave Breaks
16 DELICATELY POISED Capital Theatre	17 LET IT GO Tazman Jack	18 WAITING Sam Bambery	19 NEGATIVITY, NO MORE Fin Rah Zel	20 WHEN I'M ALONE (TSEBA R... BAYNK

Martin Paul BRYANT | IP name no. 00734426741 Member 791073

APRA	Report date	Distribution	Total earnings	View Royalties
New Zealand	Aug 2022	P2207N	NZ \$514.82	Download Distribution Overview (PDF) Download Distribution Summary (XLS)

●  EVERGREEN	NZ \$1.44
●  OUT OF SIGHT OUT OF MIND	NZ \$0.09

EARNINGS BY CATEGORY





APRA New Zealand Limited
 IRD 92607740
 Address: Unit 13, Zone 23, 21-23 Edwin Street, Mt Eden, Auckland, New Zealand
 Post: 6315 Victoria Street West Auckland 1142
 Phone: +64 9 623 2173
 Email: kaora@apra.co.nz
 Web: apraamcos.com.nz

Assignment of Rights

Please note: This agreement took effect when you were formally elected as an APRA member.

This assignment is made between:

The Member [REDACTED]
 of [REDACTED]
 and
 APRA NEW ZEALAND LIMITED
 IRD 92 601 740 (APRA NZ)
 of
 UNIT 13, ZONE 23, 21-23 EDWIN STREET, MT EDEN, AUCKLAND, NEW ZEALAND

SIGNED BY ME [REDACTED]
 Document signed on [REDACTED]

1. DEFINITIONS

Where commencing with a capital letter:

Act means the Copyright Act 1968;

Ballet means a choreographic work having a story, plot or abstract idea, devised or used for the purpose of interpretation by dancing or miming, but not country or folk dancing, tap dancing or precision dancing sequences;

Cinematograph Film has the same meaning as in the Act;

Copyright Work means:

- a. [REDACTED] **musical work** whether existing before or after the date of this agreement;
- b. any adaptation of any musical work; and
- c. any song, lyric or other literary or dramatic work which has been written for the purpose of accompanying or being associated with any musical work;

Dramatic context means the performance of musical works:

- a. in conjunction with a presentation on the live stage that has:
 - i. a storyline; and
 - ii. one or more narrators or characters; or
- b. as a ballet;

Dramatic-musical Work means words and music written expressly for an opera, operetta, musical play, revue or pantomime.

Summary of Comments on APRA ASSINGMENT OF RIGHTS.pdf

Page: 1

Number: 1

Author: xKayli Subject: Highlight Date: 27/09/2023 8:49:27 AM

Number: 2

Author: xKayli Subject: Highlight Date: 27/09/2023 8:49:32 AM

Number: 3

Author: xKayli Subject: Highlight Date: 27/09/2023 8:49:38 AM

Number: 4

Author: xKayli Subject: Highlight Date: 27/09/2023 8:49:44 AM

Number: 5

Author: xKayli Subject: Sticky Note Date: 27/09/2023 9:20:58 AM

Very wide coverage. Does not specify a particular composition or lyric. This means if the song is already a hit song, it will be included under the same terms and conditions of this contract as if the song was not known by anyone. If the creator, has has invested money or time into promoting the lyrics or composition it is not taken into account, it is all lumped into this one definition.

Number: 6

Author: xKayli Subject: Highlight Date: 27/09/2023 9:17:04 AM

Performing Rights means, subject to sub-paragraphs (i) to (iv) below, the rights, **1** the world, in relation to a Copyright Work of:

- a) **2** performing in public; and **3**
- b. communicating to the public, including broadcasting but does not include the following classes of works performed and or communicated in the following manner:
 - i. Dramatico-musical Works performed or communicated in their entirety;
 - ii. the performance in public in whole or in part of any musical work in a Dramatic Context
 - iii. the performance or communication to the public of oratorios and large choral works (that is choral works written to exceed 20 minutes duration) in their entirety, or
 - iv. the performance or communication to the public in whole or in part of any music and any associated words composed for a Ballet if accompanied by a visual representation of that Ballet or part of it, unless performed or communicated by means of a Cinematograph Film.

2. ASSIGNMENT

4 Subject to any reservation or assignment under Article 17 of APRA's Constitution, the Member assigns to APRA all Performing Rights in all Copyright Works which have been composed or written by the Member (whether alone or jointly with another composer or writer) at any time whether before or after the date of this Assignment until the Member ceases to be a member of APRA, and all Performing Rights (including parts of, shares of and interests in Performing Rights) in all Copyright Works which are now owned or are acquired or become owned by the Member until the Member ceases to be a member of APRA. **5**

3. PAYMENTS AND GST

3.1 APRA must, from time to time, pay the Member the Member's share (determined in accordance with APRA's Constitution) of:

- a. the moneys collected by APRA and its affiliated societies in respect of the Performing Rights of the Copyright Works of APRA members; and
 - b. income arising from the investment of moneys collected.
- 3.2 If the Member is liable to pay goods and services tax (GST) in respect of this agreement, APRA must, in addition to the amount payable under Clause 3.1, pay the Member an amount equal to the GST within 28 days after receiving the Member's tax invoice and notice under Clause 3.3, or in the case of a recipient generated tax invoice, in accordance with APRA's standard procedures.
- 3.3 The Member must provide APRA with a tax invoice in accordance with GST law, unless APRA is entitled to issue a recipient created tax invoice.

4. NOTIFICATION

The Member agrees to immediately notify APRA on the form required by APRA from time to time, of the title of each musical work of which the Member is the author or owner of the Performing Rights.

5. WARRANTIES

The Member warrants that:

- a. the Member owns the copyright in the Copyright Works and is entitled to assign it in accordance with this agreement;
- b. the works in respect of which the Performing Rights are assigned or purported to be assigned do not or will not, as the case may be, infringe the copyright in any other work; and
- c. the information to be provided by the Member to APRA under this agreement will be complete and correct.

Page: 2

1 Number: 1

Author: xKayli Subject: Highlight Date: 27/09/2023 9:22:53 AM

2 Number: 2

Author: xKayli Subject: Sticky Note Date: 27/09/2023 9:39:53 AM
Hugely broad so that the agreement covers literally everything. This means if the compositions are played in public, in relation to the entire world APRA will claim ownership of them.

3 Number: 3

Author: xKayli Subject: Highlight Date: 27/09/2023 9:21:41 AM

4 Number: 4

Author: xKayli Subject: Sticky Note Date: 27/09/2023 9:53:45 AM
The transfer of rights is an "ASSIGNMENT" as opposed to a "license to use". An assignment is different to a license to use. Assignment transfers ownership, where as a license simply gives some one the right to use something. (similar to renting verses owning property).

The fact that the contract transfers ownership is a complete over extension of market power. The creators, who write and pay for the costs of creating the compositions, have to agree for APRA to own them. (Without any agreement of a set fee for this)

As you can see it is for all past works, and future works.

The Member, can gain their rights back from APRA, by canceling the membership, however, in this instance, the writer cannot license directly to any business using music because those business's believe that they have already paid APRA (Through ONE MUSIC) for "ALL" music. (SEE ONE MUSIC WEBSITE).

As such the option to cancel the agreement is not a reality for the creator because. The commercial reality is that if they do not sign this agreement, the can't access the market at all.

Please see legislation 26 B of the Fair Trading Act prohibits this type of contracting.

<https://www.legislation.govt.nz/act/public/1986/0121/latest/LMS736908.html>

5 Number: 5

Author: xKayli Subject: Highlight Date: 27/09/2023 8:48:57 AM

6 Number: 6

Author: xKayli Subject: Sticky Note Date: 27/09/2023 9:56:10 AM
APRA misleads the public in order to get members to sign with them. This is an unsubstantiated representation .

<https://www.legislation.govt.nz/act/public/1986/0121/latest/DLM6156605.html>

Please see APRA website where APRA advertises to "Manage the rights on the creators behalf". This is a complete misrepresentation, they do not just manage the rights, they OWN the rights as soon as the member registers with them.

Please see here:

<https://www.apraamcos.co.nz/music-creators/membership-explained>

The average musician or writer agreeing to this, would not understand they are effectively giving APRA the rights to their hard earned music without any payment being provided.

Please see ONE MUSIC website which advertises to business that if they PAY a ONE MUSIC license they are covered for essentially ALL music from Famous artists to indie bands.

This creates an industry atmosphere when if Artists arent signed to APRA or RMNZ, business's believe that they have already paid for the use of their music. It creates a exploitation because the music creator who has chosen not to sign to APRA's terms has no options to do anything about this.

7 Number: 7

Author: xKayli Subject: Sticky Note Date: 27/09/2023 9:37:23 AM

From time to time, pay the member's share?

APRA can unilaterally decide what to pay, when to pay, it, without any negotiation with the creator of the work.

Comments from page 2 continued on next page

This is a breach of the Fair Trading Act.

T Number: 8 Author: xKsyjli Subject: Underline Date: 27/09/2023 8:47:32 AM

T Number: 9 Author: xKsyjli Subject: Highlight Date: 27/09/2023 8:47:50 AM

T Number: 10 Author: xKsyjli Subject: Highlight Date: 27/09/2023 8:47:43 AM

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The Member warrants that:

- a. the Member owns the copyright in the Copyright Works and is entitled to assign it in accordance with this agreement;
- b. the works in respect of which the Performing Rights are assigned or purported to be assigned do not or will not, as the case may be, infringe the copyright in any other work; and
- c. the information to be provided by the Member to APRA under this agreement will be complete and correct.

6. INDEMNITY

The Member indemnifies APRA against all damages, losses, costs and expenses incurred by APRA arising out of a breach by the Member of a warranty in Clause 5.

7. FURTHER ASSURANCES

The Member agrees to sign all documents and do all things that APRA from time to time reasonably requests to effect, perfect or complete this agreement.

8. DISPUTE RESOLUTION

The Member agrees that if any dispute arises between:

- a. the Member and APRA
- b. the Member and any other Member of APRA, as to whether:
 - i. a particular arrangement or transcription is sufficiently original to entitle it to be a separate copyright work; or
 - ii. a work claimed by the Member to be an original work is in fact original, the opinion of APRA's Board of Directors, or such person as may be appointed by the Board (whether a member of APRA or not) to determine the question, will be final and conclusive in relation to the allocation of moneys collected by APRA.

9. MISCELLANEOUS

9.1 notice under this agreement must be in writing and may be given to a party by:

- a. delivering it to the address of the party;
- b. sending it by pre-paid post to the address of the party;
- c. sending it by facsimile to the facsimile number of the party;

9.2 A facsimile is deemed to have been received on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the party.

9.3 This agreement must be construed in accordance with the laws in force in the State of New South Wales and the parties agree to submit to the jurisdiction of New South Wales Courts.