



Our ref: AA1000661
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19 February 2024

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Dear Interested Party

Australasian Performing Right Association Ltd – application for revocation of authorisation AA1000433 and substitution of new authorisation AA1000661 – interested party consultation

On 6 February 2024, the Australian Competition and Consumer Commission (the **ACCC**) received an application for authorisation from the Australasian Performing Right Association Ltd (**APRA**). This letter is to invite you to comment. You are welcome to pass this letter on to others who may wish to make submissions.

The application for authorisation relates to APRA's proposed arrangements for the acquisition and licensing of the performing rights in its music repertoire. The proposed arrangements cover:

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

A full copy of the application is available on the ACCC's [authorisations public register](#).

Interim authorisation

APRA has also requested interim authorisation to enable it to continue with the arrangements (as described above) in the event the ACCC is still considering the application after 4 August 2024, being the expiry of authorisation AA1000433.

Background

The ACCC previously granted conditional authorisation to APRA on 13 July 2020 for a period of 4 years, until 4 August 2024.

The conditions of this authorisation required APRA to:

- Publish a comprehensive plain English guide that outlines all of the licence categories individually and includes other specified information. (Condition C1)
- Publish its methodology for calculating its licence rates for each licence category. The conditions also provide that if the ACCC is not satisfied that the information published by APRA about how it sets its licence rates is sufficiently clear and detailed, the ACCC can require APRA to appoint an independent person to prepare an independent report explaining APRA's methodologies. The independent report was completed in February 2023 and is available on [APRA's website](#). APRA was also required to publish an explanation of the matters it has taken into account any time it increases a licence rate by more than the rate of growth in the CPI. (Conditions C1 and C5)
- Publish details of accounting and distribution of licence revenue and report on how it monitors music played (including the technology used) and how APRA uses this data for the purpose of determining royalty distributions. APRA was also required to report on the distribution of royalties among its members. (Condition C2)
- Take certain steps to increase awareness of the licence back and opt out provisions provided by APRA, including publishing a plain English guide and maintaining relevant information on its website. (Condition C3)
- Publish an annual transparency report which includes information on rights revenue, APRA's operating costs, distributions to members and amounts received from and paid to overseas collecting societies. (Condition C4)
- Maintain the alternative dispute resolution (ADR) scheme to be managed by an independent facilitator. The scheme must offer informal resolution, mediation, expert opinion and binding determination to APRA licensees and members. The ADR scheme must incorporate a consultative committee, with an independent chair, to provide feedback and other advisory input to APRA and to the facilitator, and to review any complaints about the facilitator or the scheme. APRA was required to take steps to better publicise the availability of the scheme. APRA was also required to arrange an independent review of the ADR scheme after it had been in operation for three years. The final report of the independent review of the ADR scheme is due to be completed in March 2024. (Condition C6)

A copy of the ACCC's 2020 determination granting conditional authorisation is available [here](#).

Making a submission

The ACCC invites you to make a submission on the application for interim authorisation and the substantive authorisation. In making your submission, please provide information, evidence and views about the likely effect on competition and any likely public benefit or detriment, from the proposed arrangements.

Further, the ACCC invites you to outline your experience of the arrangements in place from 13 July 2020 to 4 August 2024 under the previous conditional authorisation. The ACCC would also welcome your views on the public benefits and detriments you consider have actually resulted from the arrangements during the previous authorisation period and the effectiveness of the conditions of authorisation imposed by the ACCC.

Attachment A contains a list of specific questions for APRA's members and licensees (music users) on which the ACCC invites submissions.

If you intend to provide a submission, please do so by **Monday, 11 March 2024**. If you wish to request an extension, please contact us on the details below as early as possible. Submissions after the due date (or after any extension granted) may not be taken into account.

Submissions should be lodged via this [web form](#). Alternatively, if you would like to provide comments orally, please contact Tanya Hobbs or Andrew Ng via the details at the end of this letter to arrange a time.

Your submission is published on the ACCC's Authorisations Public Register unless you have made a request (with reasons) for us to exclude part or all of the submission from the public register – see [Guidelines for Excluding Information from the Public Register](#) for further information about these processes.

Timetable

The ACCC will progress its assessment of the application in a timely manner. An indicative timetable is set out below for your information, and an up-to-date version (including any changes) will be posted on the public register.

Indicative date	Stage in assessment process
6 February 2024	Lodgement of application and supporting submission.
19 February 2024	Public consultation process begins.
11 March 2024	Closing date for submissions from interested parties.
April 2024	Applicant responds to issues raised in the public consultation process.
May/June 2024	Draft determination.
June/July 2024	Public consultation on draft determination including any conference if called.
August/September 2024	Final determination.

This letter has been placed on the ACCC's public register.

If you have any questions or wish to discuss any aspect of this matter, please contact Tanya Hobbs on (02) 6243 1029, Andrew Ng on (03) 9290 1414, or exemptions@acc.gov.au.

Yours sincerely



Tess Macrae
Director
Competition Exemptions

Attachment A

This attachment provides a list of specific questions for APRA's members and licensees on which the ACCC invites submissions.

The ACCC also invites comments on any other issues you consider relevant to the ACCC's assessment of this matter.

General:

1. In relation to the ADR scheme which is available for members and licensees to resolve disputes with APRA, please indicate:
 - a. whether you were aware of the existence of the scheme, including the resolution options available to you and the potential costs involved;
 - b. the factors you take into account when considering whether or not to try to resolve a dispute through the scheme; and
 - c. if you decided to try to resolve a dispute through the scheme, whether you were satisfied with the handling and outcome of your matter.
2. The ACCC imposed multiple conditions in its 2020 authorisation that were aimed at improving transparency, including in relation to transparency of licence fees (Condition C1) and distribution of fee income (Condition C2), and clarity regarding resignation, opt out and licence back provisions (Condition C3). In addition, the ACCC required APRA to publish an annual Transparency Report (Condition C4) and could require APRA to provide an independent report about its methodologies for determining licence fees (condition C5). Please explain:
 - a. To what extent have these conditions:
 - i. helped you to make better-informed decisions about your dealings with APRA;
 - ii. improved your ability to negotiate with APRA; or
 - iii. improved APRA's accountability?
 - b. To the extent that the aims of these conditions have not been achieved, what alternative or additional condition/s could be imposed to address this?
3. In 2018, the APRA AMCOS membership voted to change members' voting entitlements in board elections and annual general meetings. Please explain:
 - a. the impact of this change on the composition of APRA's board since 2018;
 - b. whether the current composition of APRA's board (as of the date of this letter) is representative of all APRA members; and
 - c. any suggested further changes to voting entitlements which would improve the representation of smaller, independent members to APRA's board.
4. Have the public benefits of the conduct authorised in 2020 (such as transaction cost savings in negotiation of rights, avoiding costs of having to make changes to APRA

systems, and efficiencies in enforcement and compliance monitoring) changed in recent years, especially given the technological changes in the last 4 years?

5. How do you consider technological changes have impacted on the ability of competitors to APRA to enter the Australian industry? For example:
 - a. Has technological changes lowered barriers to entry for a collecting society operating with a similar or different business model to APRA's?
 - b. Do you consider that the sunk costs to establish specialised knowledge and systems have been lowered, given new technologies available?
 - c. Do you consider that economies of scale and scope, and network effects, have become lower, perhaps for new innovative business models for the granting of copyright licenses in return for royalties paid to owners of the musical works? This could also include a business model that facilitates direct dealing between users and owners of the musical works.
6. Please comment on any other issues you consider relevant to the ACCC's assessment of this matter.

APRA members:

7. In 2020, the ACCC imposed conditions of authorisation requiring APRA to provide transparency about its distribution arrangements (these conditions are summarised in the background section of this letter). This was intended to assist in making APRA accountable to its members, making it more likely that APRA members are remunerated in proportion to the value of actual performance of their works. Please explain:
 - a. to what extent do you think the conditions achieved this objective;
 - b. whether you are better able to understand the relationship between distribution and the value of the performance of your work; and
 - c. any specific information that APRA should provide members to enable them to better understand APRA's distribution arrangements.
8. In relation to the opt out, licence back and resignation arrangements which are available to facilitate direct dealings between APRA members and licensees, please indicate:
 - a. whether you were aware of the availability of these arrangements;
 - b. if applicable, your experience withdrawing your rights through these arrangements; and
 - c. any limitations of the arrangements which may deter or impede your ability to withdraw your rights and engage in direct dealing, including suggested changes which could be implemented to address the concerns.
9. Considering direct dealing as an alternative to obtaining licenses from APRA:
 - a. If you have used APRA's opt out and license back provisions since 2020 to facilitate direct dealing, please indicate the main factors that made direct dealing in those cases a better alternative than obtaining licenses from APRA.

- b. How do you consider technological advances in this area since 2020 impact on the desirability or feasibility of direct dealing as an alternative to obtaining licenses from APRA, e.g. lowering transaction costs of direct dealing?

Licensees:

10. Describe your experience when negotiating and obtaining a music licence(s) from OneMusic, including:
 - a. whether APRA provided a reasonable explanation for the terms and conditions and fees associated with your licence;
 - b. any material changes to the terms and conditions and fees of your licence since OneMusic was introduced and, if so, whether OneMusic provided a reasonable explanation for that change and the outcome of any further negotiations; and
 - c. any issues arising from OneMusic offering a bundled performing rights licence (for example, inadvertent infringement as a result of the discrepancies between APRA's and the PPCA's respective repertoires of performing rights).
11. In 2020, the ACCC imposed conditions of authorisation aimed at requiring APRA to provide transparency about its licensing arrangements (these conditions are summarised in the background section of this letter). Please explain:
 - a. the extent to which the conditions of authorisation have provided greater transparency about APRA's licences and the underlying methodology it uses when setting its licence fees; and
 - b. to the extent the conditions have not improved transparency in this regard, what alternative or additional condition/s could be imposed to address this, including (for example) any further specific information that APRA should provide licensees to enable them to better understand APRA's licensing arrangements.
12. Considering direct dealing as an alternative to obtaining licenses from APRA:
 - a. If you have chosen direct dealing since 2020, what key factors have driven this decision, e.g. specific usages that require access to only a small repertoire of music, ability to negotiate terms and conditions, and/or lower fees paid than going through APRA?
 - b. If you have not chosen direct dealing since 2020, what key factors have driven this decision, e.g. requiring access to a large repertoire of music and/or higher transaction costs than going through APRA?
 - c. How has technological advances in this area since 2020 changed your consideration of direct dealing, e.g. lowering costs of direct dealing making it more desirable or feasible?