

20 November 2018

Guy Donald
Assistant Director
Australian Competition and Consumer Commission (ACCC)

Dear Mr. Guy Donald,

LPA Submission to the Draft Copyright Guidelines 2018

Live Performance Australia (LPA) welcomes the opportunity to comment on the draft *ACCC Guidelines to assist the Copyright Tribunal in the determination of copyright remuneration* (Copyright Guidelines).

About LPA

LPA is the peak body for Australia's \$2.5 billion live performance industry. We represent licensees of blanket licences from both the Australasian Performing Right Association (APRA) and the Phonographic Performance Company of Australia (PPCA) for the public performance of musical works in Australia. Our Members include producers, promoters, venues, performing arts companies and festivals that collectively contribute a significant portion of royalty revenue collected for the public performance of music.

LPA Position

1. LPA supports the introduction of the Copyright Guidelines and the requirement under 157A of the Copyright Act 1968 that the Copyright Tribunal have regard to the Guidelines in proceedings concerning licence scheme fees if requested.

As recognised in the Discussion Paper, copyright collecting societies operate with significant market power which can result in the unfair imposition of excessive licence fees that do not accurately reflect market value. Copyright collecting societies have the authority to determine licence fees with no requirement to show the economic modelling underpinning how the fees were determined. Licensees then have limited practical or affordable options for disputing the introduction of new or increased licence fees.

LPA supports the introduction of the ACCC's Copyright Guidelines as an important independent and market-driven tool for determining how copyright material should be priced to reflect market value. The economic approaches included in the Guidelines provide transparent recommendations for both copyright collecting societies and licensees to refer to when considering how the market value of copyright material would be assessed by the Copyright Tribunal.

2. LPA submits that copyright collecting societies should be required to demonstrate consideration of these Guidelines when proposing new or increased licence fees.

While copyright collecting societies are required to consult with licensee representatives before issuing new or increased licence fees, there is no requirement to provide evidence that the fee proposed reflects market value of the copyright material. As a result, licensees are subject to an unbalanced negotiation process that lacks transparency and can result in the imposition of excessive licence fees. To overcome this imbalance in bargaining power, LPA submits that copyright collecting societies should be required to show that the Copyright Guidelines were used to determine a fair market price when proposing new or increased licence fees. This will provide a mechanism for enabling fair negotiated outcomes between copyright collecting societies and licensees.

For example, following negotiations with LPA on a proposed fee increase to the Promoted Music Events Licence (formerly Concert Promoters Licence), APRA introduced phased-in rates to 2.2% (effective 1 January 2018) of gross fees paid for admission (increased from 1.65%). However, had APRA been required to refer to the Copyright Guidelines at the time of negotiation, APRA would have had to benchmark the new rates proposed against comparable rates in more competitive markets. In the US, where a more competitive market for performing rights licenses exists, the highest rate applied by US collecting society ASCAP is 0.80% of gross ticket revenue, significantly lower than what APRA introduced. In this case, the requirement for copyright collecting societies to refer to the Copyright Guidelines when proposing new or increased licence fees could have provided a more balanced and fairer negotiation process and outcome.

The adoption of the Copyright Guidelines is an important step for instilling confidence in a collective licensing system that is fair and balanced for both copyright owners and users.

We thank you for the opportunity to present this submission for consideration.

Yours sincerely,



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