

26 May 2023

Naomi Lizak  
Contact Officer  
Competition Exemptions  
Australian Competition & Consumer Commission

**BY EMAIL - [exemptions@accc.gov.au](mailto:exemptions@accc.gov.au)**

Dear Ms Lizak

**APPLICATION FOR AUTHORISATION AA1000637 LODGED BY AUSTRALIAN ENTERTAINMENT INDUSTRY ASSOCIATION (AEIA)**

We act for Australasian Performing Right Association Limited (**APRA**) and are instructed to respond to the ACCC's Draft Determination and interim authorisation dated 10 May 2023. We apologise for the delay.

APRA reiterates that it does not object to the authorisation of the proposed conduct. However, there are a number of inaccuracies in the draft determination that APRA wishes to respectfully address.

1. It is not the case that there are limited alternatives for LPA Members to obtain licences in APRA Works or PPCA Sound Recordings [DD2.5]. APRA members are able to grant licences directly to LPA Members using APRA's opt out or licence back facilities. Of greater relevance to the present circumstances, however, is the fact that PPCA holds rights to the Sound Recordings its licensors control non-exclusively. As a result, PPCA Licensors can, and regularly do, grant direct licences to LPA Members.
2. APRA does not agree that the "future without the Proposed Conduct" is as stated in [DD 5.5]. As noted below, APRA will not be able to negotiate the terms of a licence scheme with LPA. APRA is obliged to broadly consult with "classes" of users in respect of its licensing terms for that class. APRA understands that the authorisation of the proposed conduct will enable LPA to freely discuss licence terms with its own members. That may put LPA in a better position to represent the interests of its members in any consultation with APRA, and if that is the case, APRA will be grateful for the improved input. However, the authorisation of the proposed conduct will not change the way that APRA deals with LPA. LPA will remain a valued stakeholder with which APRA will consult as it has done for many years.
3. Further, APRA maintains that the potential efficiencies of the AEIA authorisation have been overstated, including because:
  - (a) OneMusic develops its joint licence schemes in consultation with relevant stakeholders, and seeks to ensure that those schemes are available to "classes" of licensees. The "class" of licensee is determined by the nature of the music use, rather than by external factors such as membership of a particular industry body. Thus, LPA

Members may not all belong to the same class of licensee, and may require different licence schemes depending on the events they are promoting.

- (b) Even if APRA conducts a consultation with the AEIA that results in “agreed” licence scheme terms, APRA will still, pursuant to the *Copyright Societies Code of Conduct*, be required to consult with non-LPA Member stakeholders. They may have commercial interests which do not align with the interests of those LPA Members driving the AEIA consultations. That is, non-LPA Members may not agree that licence scheme terms advocated for by LPA are an improvement [DD5.15].
4. APRA agrees that many LPA Members have not entered into licences on the terms of the 2023 OneMusic licence scheme. However, all relevant LPA Members have entered into licensing arrangements with APRA for the exercise of APRA rights at events they are promoting. A number of LPA Members have refused to enter into the offered terms with respect to PPCA rights, and APRA assumes have instead obtained relevant licences directly from PPCA Licensors.

In summary, APRA is concerned to ensure that the proposed authorisation does not heighten expectations of a negotiated outcome between APRA and the LPA. APRA does not wish to become embroiled in a semantic debate, but notes that its obligation under the *Collecting Societies Code of Conduct* is to *consult* with relevant stakeholders. While APRA accepts that the consultation process is likely to be somewhat streamlined if conducted via an industry representative body, APRA will still be required to consult with other parties whose interests may be different to those of LPA Members. Further, it has already consulted with the LPA for many years. APRA sees the primary efficiency arising from the proposed conduct as being an increased ability on the part of LPA to represent its members’ considered views shared between them.

Finally, APRA notes that where there is a dispute in respect of licensing terms that arise as a result of APRA’s (or OneMusic’s) licence schemes, music users would have access to APRA’s ADR process and may also refer the scheme to the Copyright Tribunal of Australia to determine the reasonableness or otherwise of the scheme’s terms.

Yours sincerely



Kate Haddock  
Partner