

2 August 2019

The Hon Kevin Lindgren AM, QC
Code Reviewer
Suite 704, 4 Young Street
Neutral Bay NSW 2089

Via email: codereviewer@gmail.com

Dear Dr Lindgren,

Compliance Review of Copyright Collecting Societies Code of Conduct 2019

Live Performance Australia (LPA) welcomes the opportunity to submit to the annual review of the Copyright Collecting Societies Code of Conduct.

ABOUT LPA

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

KEY ISSUES

1. Licensee experiences with APRA

Our Members' experiences dealing with APRA AMCOS are mixed. Some report good relationships with their licensing representative. They feel their dealings with APRA have been smooth and their needs have been met. They believe communications from APRA have been clear and easy to understand.

However, some LPA Members report frustration dealing with APRA. In particular, LPA Members are frustrated by the lack of responsiveness from APRA to licensing requests or queries, requiring them to constantly chase APRA for a response. LPA Members are also frustrated by APRA's frequent lack of adherence to their own timelines.

These frustrations are most prevalent in the licensing of music use in a dramatic context, particularly when music needs to be referred to the copyright owner for clearance. In these situations, copyright owners may not respond in a timely manner and consequently may delay APRA's ability to respond to licensing requests. This causes a lot of stress for licensees due to the uncertainty about whether the music can be used.

LPA is also aware of one instance during the review period where the APRA representative's conduct and communications towards a LPA Member were rude and unprofessional. LPA understands that this situation transpired following a debate between APRA and the LPA Member about the calculation of licence fees.

2. Licensing process

The Code of Conduct states that each collecting society aspires to be responsive to the needs of licensees and copyright owners/creators. However, many LPA Members believe the process for dramatic context licensing is inappropriate and does not reflect the realities of how the industry works.

For example, APRA requires dramatic context licensing requests to be submitted at least 6-8 weeks prior to the first performance. However, in many cases the music requirements are not yet known. These decisions are generally made during the rehearsal process, which usually occurs 2-4 weeks prior to the first performance or preview. Even if there are initial ideas about music choices prior to rehearsals, this may change during the creative process. If licensing requests are not actioned quickly by APRA once submitted, then there is a risk that licensees do not have the relevant approvals to use a piece of music.

APRA has indicated to LPA that it seeks to improve the process for handling dramatic context licensing requests. LPA looks forward to learning more about this proposal.

3. Transparency

Licensees pay APRA and PCCA significant sums in licence fees for the right to use music in public performances. Given this, LPA Members regularly query whether the licence fees they pay are reaching the relevant copyright owner, and question what happens to expired undistributed funds.

LPA notes that APRA AMCOS and PCCA have distribution policies. LPA believes there is a lack of industry awareness that these policies exist and information on revenues, distributions and expenses could be presented in a more user-friendly format.

LPA also notes that the ACCC's draft determination sets out a range of conditions related to transparency. LPA supports the conditions proposed by the ACCC to improve transparency.

4. Alternative Dispute Resolution

The Code of Conduct requires collecting societies to have a process for dealing with complaints and resolving disputes, which includes establishing appropriate alternative dispute resolution (ADR) procedures. In APRA's case, it is a condition of reauthorisation by the ACCC to have an ADR scheme in place.

Despite APRA's ADR scheme being in place since 2014, only one dispute involving a licensee from the live performance industry has been resolved through APRA's ADR scheme. This matter was reviewed in April-May 2019, using the non-binding expert opinion option. The parties involved in the dispute were a licensee and APRA, and the matter related to the interpretation of dramatic

context. Feedback from the licensee was that the dispute resolution process was beneficial, providing a supportive process to gain clarity of understanding. It also offered external and impartial analysis of the situation and a swift resolution to a complicated challenge.

LPA has not had any experience with PPCA's ADR scheme. We are also not aware of any of our Members using PPCA's ADR scheme to resolve disputes. As such, we are unable to comment on the appropriateness and effectiveness of this scheme.

LPA believes licensees need access to a cost-effective and efficient means for resolving licensing disputes. We are pleased that APRA AMCOS and PPCA have ADR schemes in place. However, we maintain ADR will not be appropriate for all disputes within the live performance industry context, particularly where time is of the essence.

We are also concerned that there is a lack of awareness about the ADR schemes. We encourage APRA AMCOS and PPCA to advise licensees upfront and early that ADR schemes exist to resolve disputes.

5. Consultation with industry associations

The Code of Conduct requires collecting societies to "consult in good faith with relevant industry associations in relation to the terms and conditions applying to licences or licence schemes offered."

OneMusic Australia, a joint initiative between APRA AMCOS and PPCA, commenced operations on 1 July 2019. LPA Members are particularly concerned that the establishment of OneMusic Australia will increase both entities' market power, and allow the collecting societies to substantially increase licence fees.

While APRA AMCOS and PPCA indicated some time ago that they would be establishing this joint licensing regime, little detail was known prior to the commencement date how it would work in practice. For example, invoices are being issued under the OneMusic banner, even though consultation on certain licences (such as events and sports) have not yet concluded. LPA is extremely concerned that in the intervening period, before agreement has been reached on the OneMusic events licence, licensees will be charged for fees that have not been budgeted. This may affect the viability of events.

LPA appreciates the complexity in trying to harmonise the licensing schemes of two entities into one. However, LPA does not believe there has been adequate transparency or proper consultation about the impact of the proposed changes for licensees.

Consultation for events and sports licences are currently open for consultation. LPA Members have expressed that it is not evident from the OneMusic Events consultation paper that there are significant implications for the industry of the proposed scheme.

Many licensees will be considerably worse off, as aspects of the proposed scheme deviate significantly from current industry practice. LPA will continue to liaise with OneMusic Australia over the coming weeks and months to express our concerns and see how they can be addressed.

We look forward to continuing to work with APRA AMCOS, PPCA and OneMusic Australia to achieve efficient and equitable outcomes for both copyright users and owners.

Once again, we thank you for the opportunity to present this submission for consideration.

Yours sincerely,



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ABOUT LPA

LPA is the peak body for Australia's live performance industry. Established 100 years ago in 1917 and registered as an employers' organisation under the Fair Work (Registered Organisations) Act 2009, LPA has over 400 Members nationally. We represent commercial and independent producers, music promoters, performing arts companies, venues (performing arts centres, commercial theatres, stadiums and arenas), arts festivals, music festivals, and service providers such as ticketing companies and technical suppliers. Our membership spans from small-medium and not-for-profit organisations to large commercial entities. LPA has a clear mandate to advocate for and support policy decisions that benefit the sustainability and growth of the live performance industry in Australia.

LPA EXECUTIVE COUNCIL

Richard Evans (President)
Australian Chamber Orchestra

Torben Brookman
GWB Entertainment

Liza McLean
Tinderbox Productions

John Kotzas (Vice-President)
Queensland Performing Arts
Centre

Alex Budd
Opera Australia

Rod Pilbeam
AEG Ogden

Maria O'Connor (Vice-
President)
Ticketmaster Australia & New
Zealand

Lisa Campbell
Luckiest Productions

Melanie Smith
Arts Centre Melbourne

Michael Coppel AM
Live Nation Australasia

Fiona Winning
Sydney Opera House

Sue Donnelly
Belvoir St Theatre

Louise Withers
Louise Withers & Associates

Douglas Gautier AM
Adelaide Festival Centre

Judy Vince
Crown Perth

Shirley McGrath
Gordon Frost Organisation

Observers
Tim McGregor TEG
Cameron Hoy Ticketek
Paula McKinnon The Walt
Disney Company

Patrick McIntyre
Sydney Theatre Company