

**DATE:** 1 June 2017

## COUNCILS ONEMUSIC AUSTRALIA CONSULTATION

OneMusic Australia is a joint venture initiative of APRA AMCOS and PPCA.

APRA AMCOS is the trading name of the Australasian Performing Right Association and the Australasian Mechanical Copyright Owners Society. APRA AMCOS grants licences for the live performance, broadcast, communication, public playing or reproduction of its members' and affiliates musical works. APRA AMCOS then distributes the licence fees collected to its over 89,000 songwriter, composer and music publisher members, and affiliated societies worldwide.

PPCA is the Phonographic Performance Company of Australia Ltd. PPCA grants licences for the broadcast, communication or public playing of recorded music (such as CDs, records and digital downloads or streams) or music videos. PPCA then distributes the net licence fees collected to its licensors (generally record labels) and registered Australian recording artists.

In the second half of 2018, APRA AMCOS and PPCA intend to launch the OneMusic Australia partnership to provide a one-stop shop for Council music licence needs and remove the requirement to obtain multiple licences separately from APRA AMCOS and PPCA.

OneMusic Australia aims to simplify music licensing, reduce administrative burden and counter market confusion around the difference between APRA AMCOS and PPCA. An eCommerce facility for the purchase and maintenance of music licences will ensure that Councils have access to the correct licences, allowing you to manage your account with OneMusic Australia easily. Further information about OneMusic Australia can be found [here](#).

In association with Recorded Music New Zealand, APRA AMCOS has been operating OneMusic in New Zealand for more than three years, where it has been a huge success. It has simplified the process of music licensing for Councils in New Zealand, increased awareness of copyright and compliance but also ensured that music remains an important, valuable and legal input to businesses everywhere. We note that the structure proposed in this paper has been successfully adopted by Councils in New Zealand and administered by OneMusic New Zealand since 2013.

APRA AMCOS and PPCA, trading as OneMusic Australia, are parties to the Code of Conduct for Collecting Societies and have a policy to consult, where appropriate, with relevant industry bodies or licensees when developing and implementing new or revised licence schemes for the use of music. We believe that receiving input from music users allows us to better understand how music is used across different industries. Consultation also ensures that our clients have a better understanding of how royalty payments flow and the purpose of such licences, which in turn leads to improved ongoing relationships.

This document serves as notification that OneMusic Australia intends to review the way in which Councils are licensed to use music with a view to implementing a new, wide-ranging and simplified music licensing scheme. This paper is not for the purpose of consultation on the individual distribution processes undertaken by APRA AMCOS and PPCA.

### CONSULTATION TIMELINE

OneMusic Australia expects that the consultation on the proposed scheme will progress as follows:

- a) Circulation of this first consultation paper for Council response;
- b) Consolidation of responses;
- c) Depending on the initial feedback, the circulation of a second consultation paper if required, taking into account submissions made at part b) above;
- d) Final submissions accepted and integrated where appropriate; and
- e) Written documentation provided to businesses serving as at least three months' notification of the commencement of the new scheme.

## THE PROPOSED SCHEME

Currently, separate licences for the use of the musical work and sound recording rights are required (generally obtained from the two separate organisations, APRA AMCOS and PPCA). In most cases, multiple licences for varied uses of musical works and sound recordings are required by Councils in order to meet the legal requirement under the *Copyright Act (1968)* (hereafter the 'Act') that rights holders are fairly compensated for the use of their works. In fact, recently some Councils have sought to put in place licensing for their music use and the APRA AMCOS rights alone have required some 20 to 30 different licence schemes to cover the gamut of Council music use. Consolidation of the existing separate licences into the proposed scheme tailored especially for Councils and covering as much music licensing activity as possible, will allow Councils to easily meet this requirement. The simplicity of this scheme will mutually benefit the Councils and rights holders.

APRA AMCOS and PPCA undertook a consultation with Councils in 2015 and we do not believe that the licensing landscape has changed since this occurred. It is evident from our research and analysis that many Councils are either under licensed or unlicensed for their use of music. This in turn means that music creators are not compensated for the use of their intellectual property in line with the requirements of the Act.

Our view remains that the reasons for the current widespread level of infringement by Councils vary but likely include:

- Difficulty identifying the applicable licences;
- Changing contacts within divisions of Councils;
- Perceived complicated existing licence structures vis-à-vis the multiple ways that Councils use music; and
- A general lack of education and understanding of the legal requirements for music licensing.

Our analysis also indicates that currently, out of the 560 local governments<sup>1</sup>, approximately 25% are unlicensed, 70% are under-licensed and only 5% are fully compliant with their music licensing requirements<sup>2</sup>.

## CONSIDERATIONS

OneMusic Australia understands that at their core, Councils exist to serve their communities. Acknowledging that fact, our aim in formulating a new scheme specifically for Councils is:

- to provide a framework for Councils to use music in as many ways as possible without concern of infringing rights; and
- to return a fair and equitable licence fee to the creators of that music.

Noting that the current model does not adequately address those key objectives, OneMusic Australia is proposing a simplified licensing model under which the fee is derived from an Council's population (as reported annually by the Australian Bureau of Statistics<sup>3</sup>).

This proposal takes the same form as a proposal made to Councils nation-wide by APRA AMCOS and PPCA in 2015.

The structure of the proposed scheme takes into account that, broadly speaking, music used by Councils is proportionate to the number of people that it represents. We accept however that there is not always a perfectly direct relationship between population size and music use. In this sense, the proposed scheme is similar, for example, to existing APRA AMCOS or PPCA licence schemes for music used by general businesses. The rates calculated under these schemes are based on floor size but businesses of the same physical size may have different opening hours or trading days meaning that 'total' music use may be different between businesses that fall under the same licensing category. In the past the Copyright Tribunal has accepted the premise that a broad licence scheme for a sector may cover a variety of different business types and volumes of music use but, on balance, is an appropriate alternative to a series of individually agreed licence fees and agreements (an alternative which would make the process much more complex for individual Councils).

<sup>1</sup> As at 2 February 2017, according to the website of the Australian Local Government Association at <http://aCouncil.asn.au/?ID=42&Menu=41,81>.

<sup>2</sup> Based on evidence collected and analysed by APRA AMCOS and PPCA in 2014 and 2015.

<sup>3</sup> Available for download here: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/3218.0Main+Features12015-16?OpenDocument>.

In formulating the proposed scheme we reconsidered many potential methodologies for rate calculation which we initially explored in our 2015 consultation, including, but not limited to the number of rate payers within the Council, budget allocations and geographic size and location. However, we maintain that as per our 2015 proposal a calculation based on a rate per person residing in the Council produces the most equitable structure and is easy for Councils to administer. We also maintain from our 2015 proposal that music usage patterns between urban and rural Councils suggest that there should be a differential in the rate based on geographical location.

We hope that the proposed model detailed in this paper serves to significantly reduce administration for Councils by wrapping up a large number of individual licences into a single consolidated scheme and by using an external independent source to identify Council populations in order to calculate licence fees. Such a model will also ensure that fees do not significantly fluctuate year on year, which provides a welcome degree of certainty for Council budgeting.

More importantly, a simplified scheme would result in simplified invoicing and we hope would allow Councils to use music more widely within their community for a variety of purposes, knowing that they are fulfilling their legal obligations under the Act, and without having to make multiple applications for licences or question whether an existing licence covers the use.

Given the importance of music in bridging cultures, we believe this is an outcome that is better for the community, for Councils and for songwriters and recording artists.

## RIGHTS

The grant of rights that this proposed new licence would cover are:

- a) Playing background music (for example from radios, CD players, smartphones, tablets, television screens and other devices) at council buildings and council-run premises including in reception or front-of-office areas open to the public;
- b) Playing background music at council owned and operated halls and function centres for all events where there is no admission fee (whether or not the event is ticketed);
- c) The use of music in council-owned and operated premises which have been let for hire to third-parties (whether free or at a cost):
  - when it is played as background music; or
  - when it is performed by a Live Artist Performer<sup>4</sup> but provided that the total payments made to performers<sup>5</sup> by the lessee are no more than \$50,000 per event<sup>6</sup>;
- d) Playing music in offices, warehouses and similar areas for the benefit of Council employees (for example, corporate presentations and training sessions, internal intranet, performances by Live Artist Performers of recorded or live music at staff functions or parties (subject to the restriction on events where more than \$50,000 is spent on musical entertainment as noted above), and as background music at workstations, in staff recreation areas, warehouses, workshops and lunchrooms etc.);
- e) Using telephone on hold music for council services, irrelevant of the caller capacity of the phone system;
- f) Streaming music on Council websites, as long as this streaming is incidental, not the primary purpose of the website and provided that (i) no revenue is generated directly as a result of the streamed music, and (ii) the use does not suggest any association with or endorsement by the artists;
- g) Live Artist Performances of live and recorded music at events where there is no admission fee (whether or not the event is ticketed) and where the total payments to those performers are no more than \$50,000 per event;
- h) Using music at council-owned and operated community concession fitness centres in classes and as background music<sup>7</sup>;

<sup>4</sup> Live Artist Performer means any performer participating in the performance of music including featured and associated singers, musicians, DJs, dancers, models and conductors.

<sup>5</sup> Includes all monies and the monetary value of all benefits receivable directly or indirectly by the Live Artist Performer including all salaries, wages, profit shares, allowances, accommodation, travelling and other expenses and whether receivable by the Live Artist Performer or an agent.

<sup>6</sup> These rights did not form part of our 2015 proposal, but are included here for no additional charge.

<sup>7</sup> Where a fitness centre is owned by a council but run by a third party provider, this licence will not apply. Only those council run fitness centres through which disadvantaged members of the community are able to access low-fee concessions for their use of the facility are covered.

- i) Holding cinema screenings where there is no admission fee or ticket price;
- j) Authorising public performances given by street performers in the Council;
- k) Using music in not-for-profit council-run child care centres; and
- l) Copying music for the purposes set out above.

The proposed scheme would specifically exclude:

- a) Using music in fitness classes and centres which are not covered by (h) above;
- b) Using music, other than background music, at events where an admission fee is charged;
- c) Live performances (including DJs) where the total expenditure on performers is more than \$50,000 per event;
- d) Using music at any nightclub run by the Council; and
- e) Synchronisation rights for the purpose of making any audio-visual content.

Music in this context includes all works and recordings represented by APRA AMCOS and PPCA respectively. The breadth of this repertoire is vast including the worldwide catalogues of hundreds of thousands of musicians and millions of recordings. The exclusions to this proposed scheme will require further licensing from OneMusic Australia. They have been excluded as, according to our research, they are rarely used by Councils and to factor them into the scheme would increase the rate unnecessarily.

It should be noted that the use of music in concession fitness centres which are owned and operated by Councils was not part of the initial consultation proposal that was put forward by APRA AMCOS and PPCA in 2015, nor was the right to allow third parties who hire council owned and operated spaces to play music. The use of music in these contexts has been included in this proposal after feedback from Councils with no change to the proposed licence fee.

## STRUCTURE

The proposed structure is a rate per person residing within the Council, with a different rate applicable to urban and rural Councils based on the classification in the Department of Infrastructure and Regional Development's Local Government National Report<sup>8</sup>.

The proposed annual rates are 18 cents per person residing within an Urban Council<sup>9</sup> and 15 cents per person residing within a Rural Council<sup>10</sup>, with a minimum fee of \$350 per year per Council. These rates are inclusive of GST and applicable to the first OneMusic Australia licence year only. All fees under this scheme will increase annually in line with the weighted average of eight capital cities Consumer Price Index.

Under the proposed scheme, Councils will be required only to report to OneMusic Australia the number of people residing within their jurisdiction as published annually by the Australian Bureau of Statistics. This has a further benefit for Councils by making the licence year concurrent with the financial year. Currently Councils with multiple licences across APRA AMCOS and PPCA may have a

<sup>8</sup> The most recent of which can be found online here: <http://regional.gov.au/local/publications/reports/>.

<sup>9</sup> This includes those categorised as RAL, RAM, RAS, RAV, RSG, RTL, RTM, RTS and RTX as per the Department of Infrastructure and Regional Development classifications.

<sup>10</sup> This includes those categorised as UCC, UDL, UDM, UDS, UDV, UFL, UFM, UFS, UFV, URL, URM, URS and URV as per the Department of Infrastructure and Regional Development classifications.

variety of different non-standard reporting periods.

### IMPACT

In developing the scheme, OneMusic Australia tested the proposed metric across existing APRA AMCOS and PPCA licensees. We recognise that there will be significant fluctuations for many Councils between what they are currently paying for their music licensing versus the amount payable under the new OneMusic Australia scheme. The reason for this, as noted above, is the substantial number of Councils which are under licensed or completely unlicensed for their use of music. Those 5% of Councils which are properly licensed currently by APRA AMCOS and PPCA, should see minimal changes in their licence fees.

The reporting requirements under this scheme are significantly reduced from what is currently required to be provided to APRA AMCOS and PPCA for existing licences to cover Council music use. We believe that by removing requirements such as reporting the number of attendees at each event, the number of classes run by community concession fitness providers and the number of employees at an Council will reduce the administrative burden on the council and each of its business units, and allow for greater peace of mind to use music diversely, knowing that usage is licensed.

OneMusic Australia is confident that the proposed scheme will be of huge benefit to Councils by providing a simple and consolidated way for them to manage risk and remain compliant with the Act. We believe this will make the process of obtaining licensing simple and administratively easy for our clients. Furthermore, under this scheme, Councils will have access to a dedicated OneMusic Australia account manager who will provide advice, administrative support and copyright guidance when required by Councils. OneMusic Australia will also provide Councils with useful support guides, FAQs and documents detailing what the licence does and does not cover. We believe that this will be of huge value to Councils as it will ensure that all business units across the council will have access to information on the agreement and be able to obtain a quick and clear understanding of what they are licensed to do. The proposed scheme will also give Councils reassurance that the vast majority of music uses across the business are covered by the scheme, and that those uses which are not covered will be clearly defined and explained in easily accessible collateral.



### SUBMITTING YOUR FEEDBACK

OneMusic Australia is committed to developing music licensing schemes that are fair, equitable and relevant to Australian industries. Your feedback on the above proposal is integral to this process.

Please provide your feedback in the form of a submission to [consultation@onemusic.com.au](mailto:consultation@onemusic.com.au) by close of business 4 August 2017. All submissions must be in a Microsoft Word or PDF format.

### FURTHER QUESTIONS

If you have any questions or would like to discuss the proposal further, please email [questions@onemusic.com.au](mailto:questions@onemusic.com.au) and we will be in touch.