

**DATE:** 4 July 2018

## CRUISE SHIPS 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 95,000 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) and 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 the public performance music licence needs of businesses and remove the requirement to obtain licences separately from APRA AMCOS and PPCA.

OneMusic Australia has several aims including where appropriate to simplify music licensing, reduce administrative burden for our customers 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 businesses have access to the correct coverage, allowing easy account management with OneMusic Australia.

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. 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 the relevant OneMusic Australia licence scheme will encompass the licensing of domestic and international cruise ships, the details of which are set out below. Please note also that this paper is not for the purpose of consultation on the distribution of licence fees in the form of payments to copyright owners undertaken by APRA AMCOS and PPCA to their members, licensors and affiliates for the use of music, which are a matter for the Boards of those respective organisations.

Further information about OneMusic Australia can be found [here](#).

### CONSULTATION TIMELINE

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

- a) Circulation of this first consultation paper for 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

Cruise Ships currently require separate licences for the performance of songs and recordings. The proposed OneMusic Australia scheme, which is detailed below, is structured as far as possible to consolidate these licences into one simple to administer scheme, which covers the majority of music use across the sector.

The goals of the proposed scheme and the OneMusic Australia joint venture in general are:

- a) To simplify licensees' initial and ongoing reporting and administration requirements; and
- b) To develop simple and industry-relevant structures that are fair and equitable.

The proposed scheme only covers those cruise ships that offer multi-day pleasure cruises and provide sleeping berths and cabins. Smaller cruise ships including those that operate to provide dining or sightseeing without on-board overnight accommodation will be covered in a separate consultation paper.

## CONSIDERATIONS AND RIGHTS

Entertainment and other music uses form an intrinsic part of the cruise ship experience. Performances are advertised as part of the general marketing material emphasising the range of musical performances that are available from live piano, nightclubs, karaoke and musical performances and shows.

Licence fees payable under the APRA AMCOS scheme, which has been in place for more than 10 years, are assessed per passenger cabin and are currently set at \$132.43 (or \$145.67 inclusive of GST <sup>1</sup>) per cabin per annum. The rate is adjusted according to movements in the Australian CPI (inflation index) on an annual basis. This is an 'all in' rate covering all performances of music on a cruise ship <sup>2</sup> including for example, stage shows, film screenings, DJs, background music, fitness classes, music in the workplace, etc. It replaced the previous arrangements under which individual uses were assessed separately.

OneMusic notes that a number of its tariffs, relevant to the per cabin fee for cruise ships, have increased over the intervening period. These include:

- the nightclub rate that has increased by 70% as part of a phase in to the Copyright Tribunal approved rate; and
- the concert/live music rate that has increased 48% as a result of a detailed consultation with the relevant peak industry body, Live Performance Australia.

These price changes, supported by reference to appropriate comparators, strongly suggest that the current per cabin rate now undervalues the use of music by cruise ships and requires adjustment.

PPCA has not developed a specific licence scheme for cruise ships providing multi-night pleasure cruises with accommodation on board. Accordingly, at present licences must be obtained on a tariff by tariff basis according to usage. A cruise ship may have to obtain licences such as Cinemas, Nightclubs, Bars, Jukeboxes, Shopping Plazas/Centres, Restaurants, Function Rooms, Fitness Classes and Music Videos. Essentially the same 'model' as existed previously for APRA AMCOS.

It is difficult to assess, without more knowledge of the way in which music is used on cruise ships, licence fees derived by the application of the PPCA tariffs. However, there is a general acceptance – supported by the view of the Copyright Tribunal – that the same value for public performance should be ascribed to both the musical work and the sound recording.

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<sup>1</sup> OneMusic notes that in the case of international licensees not operating in Australia, no GST currently applies on licence fees.

<sup>2</sup> APRA's mandate excludes performance of Grand Right Works (e.g. operas and musicals) and music in a Dramatic Context (ballets and live stage performances with a storyline and characters/narration).

### PROPOSED STRUCTURE AND RATE

OneMusic Australia proposes to continue with the per passenger cabin rate structure. The use of this metric is relevant to the overall size of a ship and the passengers it may carry and therefore provides a reasonable proxy for the quantum of music used. The metric is also transparent, easily measurable and provides for easy administration.

OneMusic Australia is of the view that the current APRA AMCOS tariff requires an upward adjustment in light of the component-part rate increases for tariffs that now apply to nightclubs and live music events. Noting on the one hand the importance of these types of performances to cruise ships, but on the other that there are many other uses of music not the subject of such changes, OneMusic Australia proposes an increase of just under 40% taking the per cabin rate to \$185 (exclusive of GST).

The addition of the separate sound recording rights based on the Tribunal's 'equal value' view (including in its comments on the nightclub rate which is entirely relevant to this proposal) would therefore take the total per passenger cabin rate to \$370 (exclusive of GST).

OneMusic Australia proposes to phase the introduction of this rate over a period according to the table below.

GST	YEAR ONE	YEAR TWO	YEAR THREE	YEAR FOUR	YEAR FIVE ONWARDS
Exclusive	\$250	\$300	\$340	\$370	CPI increase
Inclusive	\$275	\$330	\$374	\$407	CPI increase

### PARTIAL RIGHTS

It may be that a cruise ship has no need of the full suite of rights offered by OneMusic Australia because it is flagged in certain overseas territories where sound recordings are not protected under the relevant copyright legislation. Where this applies, the rate will be reduced by 50% subject to a floor at the current APRA AMCOS rate. See table below.

GST	YEAR ONE	YEAR TWO	YEAR THREE	YEAR FOUR	YEAR FIVE ONWARDS
Exclusive	\$132.43	\$150	\$170	\$185	CPI increase

# Subject to any intervening CPI increases under existing scheme.

## SUBMITTING YOUR FEEDBACK

We welcome any comments you may wish to make on the proposal outlined above.

Please provide your feedback in the form of a submission to [consultation@onemusic.com.au](mailto:consultation@onemusic.com.au) by close of business 14 August 2018. 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 as soon as possible.