

DATE: 13 October 2017

DINING MUSIC LICENSING 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 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 dining businesses' music licence needs and remove the requirement to obtain multiple licences separately from APRA AMCOS and PPCA.

OneMusic Australia aims to harmonise existing tariffs, 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 dining businesses have access to the correct licences, allowing easy account management with OneMusic Australia. Given that one in-three hospitality business owners say that they would rather lose a day's trade than permanently cease playing music for customers and staff¹, we believe that this new licensing structure will be of great value to these kinds of businesses.

In association with Recorded Music New Zealand, APRA AMCOS has been operating OneMusic New Zealand for more than three years, and it has been a huge success. It has simplified the process of music licensing for similar businesses in New Zealand, increased awareness of copyright and compliance but also ensured that music remains an important, valuable and legal input to businesses everywhere.

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 dining businesses are licensed to use music with a view to implementing a new, wide-ranging and simplified music licensing scheme. For businesses which use music in ways other than those discussed in this paper, our proposed schemes for Hotels, Pubs, Taverns and Bars and for Recorded Music For The Purpose of Dancing might be relevant to your music use, and consultation documents for these schemes can be found on our website [here](#).

Please note also that this paper is not for the purpose of consultation on the individual distribution processes to members, licensors and affiliates undertaken by APRA AMCOS and PPCA, which are a matter for those organisations' respective Boards.

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

¹ Research was conducted by VisionCritical in April 2012 among 1,000 UK businesses and Entertainment Media Research (EMR) in 2009 among 2,000 UK consumers. EMR also conducted the research in 2010 among 400 small retailers, hairdressers, offices and factories.
Source: <http://www.musicworksforyou.com/research/business-sectors/33-restaurants-and-cafes>

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

Dining businesses currently require multiple licences from both APRA AMCOS and PPCA for their varied use of musical works and sound recordings. The proposed OneMusic Australia scheme, which is detailed below, is structured to consolidate these licences into one simple to administer scheme, which covers the majority of music use across the industry.

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 (in particular through the development of an eCommerce platform);
- b) To develop future-proofed schemes in preparation for the evolution of audio and audio-visual delivery platforms; and
- c) To develop simple and industry-relevant structures that are fair and equitable across business types and locations and, insofar as possible, to be licence fee neutral when considered across the industry as a whole.

CONSIDERATIONS

OneMusic Australia has made many considerations when preparing this proposed licence scheme for dining businesses. First and foremost, OneMusic Australia notes that the current PPCA and APRA AMCOS definitions of a dining business differ. OneMusic Australia has formed the view that PPCA's version, subject to some simplification, is the appropriate definition to use for the proposed scheme as follows:

“Dining Business or Establishment” means a business or a specific area within a multi-function establishment (e.g. a pub, club or entertainment complex):

- a) that is open to the public; and
- b) where the primary function is either:
 - (i) the sale of food, with or without beverages; or
 - (ii) the sale of hot beverages (e.g. tea, coffee) alone or in conjunction with the sale of food and which is not licensed for the consumption of alcohol; and
- c) that has a designated seating area available for patrons of that business or establishment to consume the food/hot beverages on the premises,

but excluding any such business or area within a multi-function establishment where accommodation is its primary function (e.g. hotel, motel or guest house) and the sale of food/hot beverages is for the benefit only of residents and their guests (i.e. the Dining Business or Establishment is not promoted to the general public).

This includes restaurants, cafés, coffee shops, takeaway shops and other similar providers of food services, and according to individual circumstances, may include dining areas in multi-function establishments such as pubs and clubs.

As licensees would be aware, APRA AMCOS and PPCA currently apply different licence fee structures to the use of music in dining businesses and establishments. Accordingly, OneMusic Australia has considered multiple metrics that might be employed as a single fee structure under the joint venture.

Option One was a scheme that would adjust based on a combination of the average price of a main meal (which is part of the current PPCA licensing structure), the number of meal seatings per day or the meal seatings offered across normal trading hours (for example breakfast, lunch and dinner). However, we have found through our research and analysis, as well as from anecdotal conversations with existing APRA AMCOS and PPCA licensees and Restaurant & Catering Australia, that a metric that links the rate to food price or opening hours is not widely accepted by the sector. It is for these reasons that in this paper we did not pursue a proposal based on this option.

OneMusic Australia tested three other potential metrics that could be used to license the use of music in dining businesses such as restaurants, cafés, coffee shops, takeaway shops and other similar providers of food services. In order to further develop these metrics, with the assistance of Restaurant & Catering Australia, we undertook a survey of 300 professionals in the dining industry who are currently APRA AMCOS and PPCA clients.

These three metrics are as follows:

Option Two links licence fees to tiered annual gross turnover bands. OneMusic Australia used the existing revenue classifications as published by the Australian Tax Office (ATO) and Australian Bureau of Statistics (ABS) to develop the tiers in this potential structure.

The strong merit of Option Two is that under such a structure licence fees would be directly linked to the size of each business and provide a logical user-pays metric. However, the aforementioned survey did not show any clear support for such a scheme. Moreover, OneMusic Australia is concerned that there could be significant definitional issues that could lead to disputes (e.g. should revenue associated with takeaway or home delivery purchases be included in the base) as well as compliance and verification problems associated with declarations of particular revenue bands. Our modelling suggested also that this structure would result in significant fluctuations in per location licence fees, given that the rates would have been derived from averages. Some existing licensees would have experienced large savings, and others significant increases. For these reasons, OneMusic Australia does not propose a tariff scheme based on turnover.

Option Three is a flat fee rate per year for each different use of music (for example, background music, live music, featured music), regardless of business size or turnover. This structure has its foundations in the existing APRA AMCOS licence scheme. While the structure of Option Three appears, from licensee feedback, to be broadly supported, our data modelling indicates that the application of that structure in a joint licence would cause widespread and significant fee increases for smaller dining businesses. As a result, OneMusic Australia also chose not to pursue this option.

Option Four is based on per-day rates, scaled depending on the seating capacity of the business. By using seating capacity (an element of the current PPCA scheme) and splitting fees between background and featured music (an element of the current APRA AMCOS scheme) in this option, our analysis shows that the result is a structure that delivers simplicity and ease of compliance to our customers. Our modelling also shows that this option (subject to annual fee caps linked to whether the business is licensed for sale and service of alcohol, or not) greatly minimises significant variations between current fees for both rights and a OneMusic Australia scheme. Moreover, the scheme can and will be calibrated to provide an overall reduction in aggregate licence fees across the industry for those premises already licensed for both rights. Dining businesses will also note that OneMusic Australia has responded to feedback it has already received and removed the link between the licence fee and the average cost of a main meal. For these reasons, OneMusic Australia proposes to advance this structure.

OneMusic Australia also notes that the current APRA AMCOS scheme includes additional rights for both featured music performances and website use. Many dining businesses have taken advantage of the availability of these uses under that scheme and, subject to appropriate adjustment for the additional rights of PPCA, OneMusic Australia proposes to offer these rights under this scheme.

OneMusic Australia considers that featured music performances are a premium use of music and should be priced appropriately. Featured music performances include, but are not limited to, recorded and/or live music used at a dining establishment that is given prominence as a feature of the premises, or of any part of the premises.

The following factors may indicate that music has prominence, but are not exhaustive:

- a) the music is compiled, presented and/or performed by a Live Artist Performer or similar engaged for the principal purpose of compiling, presenting and/or performing the music for patrons;
- b) the music has been advertised to the general public as a feature of the premises, or as a feature of a specific event or series of events at the premises;
- c) the music is principally comprised of music of a particular and recognisable theme, such as 'retro';
- d) the music is associated with a particular event with a music-related theme, such as 'Friday Night Beats' or 'Sunday Jazz'.

OneMusic Australia recognises that many restaurants, cafés, coffee shops, takeaway shops and other similar businesses operate websites to provide an online presence for their business. Accordingly, for those dining businesses that stream music in the form of audio-only content on their website, it is proposed that this licence scheme will include this right at a flat fee of \$550 per year, including GST. In order to provide dining businesses with the requisite rights, this proposed rate is double the existing APRA AMCOS 'online mini' licence fee that APRA AMCOS has made available for several years.

The rights that OneMusic Australia is able to license for online uses are limited, in part because of restrictions on the use of music in advertisements. Under this part of the scheme businesses must:

- limit music use to audio-only content;
- only use music where it is incidental and where the primary purpose of the website is not the streaming or sharing of musical content;
- use no fewer than 5 and no more than 15 tracks playing in a random linear, non-interactive loop;
- not derive any revenue from the playing of music; and
- only stream music from their website (e.g. does not include use on a business' Facebook or YouTube pages).

In circumstances where one or more of these criteria are not met, separate licensing will be required, possibly including source licensing from content owners.

OneMusic Australia believes that the scope of this licence will cover the overwhelming majority of needs of dining businesses. Those businesses that require a wider scope (including, for example, online audio-visual or synchronisation rights) should seek advice from APRA AMCOS and PPCA on licensing options.

RIGHTS

Having regard to the considerations discussed above, the proposed scheme will cover restaurants, cafés, coffee shops, takeaway shops and other similar dining businesses (but not head offices, branch or administration offices of restaurant chains) for the following uses of music:

Part 1 – Background Music

- i. background music (irrespective of the device used to play that music) played across the entirety of the dining business space including music playing in non-public areas such as the kitchen for the benefit of staff;
- ii. the use of music on a telephone on hold system (for up to two lines – standard rates apply thereafter²); and
- iii. the copying of music for the purpose of the above, with limitations applicable to the number of tracks copied per year.

Part 2 – Featured Music

- iv. the use of music in the form of
 - a) live artist performers (includes performances by bands, singers, soloists and other live performers where no pre-recorded music is used);
 - b) performers using recorded music (includes performances by DJs, dancers, theatre performers and other performances which use recorded music as a featured or backing track); or
 - c) patron karaoke.

In each instance this is limited to featured performances where the highest ticket price (or additional charge) is \$40 or less per person (separate licensing through a OneMusic Australia event licence is required where the ticket price exceeds \$40).

² The proposed OneMusic Australia 'Telephone on Hold' scheme can be viewed on the OneMusic website at <http://www.onemusic.com.au/consultations/>

Part 3 – Website Music

v. Streaming music on your business website subject to the scope limitations set out above.

Music in the above contexts includes all works and recordings represented by APRA AMCOS and PCCA respectively. The breadth of repertoire is vast including the worldwide repertoire of thousands of musicians and millions of recordings.

Business owners should also note that the proposed scheme will not cover the use of music in private function rooms or hireable spaces linked to your dining business. A separate OneMusic Australia scheme will apply to the use of music in these spaces.

STRUCTURE

As set out above, OneMusic Australia examined and tested four potential licensing models and found Option Four for background music best met the aims of simplicity, easy compliance, and minimal disruption. In addition, the proposed scheme will include licences for featured music and website use.

The proposed structure is set out below. The minimum fee per seating capacity tier for all premises is fixed at the equivalent of one day a week opening, and the most a premises licensed to serve alcohol would pay is the equivalent of six days a week (with a further discount if they are not licensed to serve alcohol or BYO only). This means that any restaurant open seven days a week would receive at least a day 'free' per week.

	BACKGROUND MUSIC	FEATURED MUSIC	WEBSITE MUSIC
SEATING/ AREA CAPACITY ³	PER DAY/NIGHT RATE & MIN/MAX ANNUAL FEE	FEE PER DAY/ NIGHT OF USE	ANNUAL FEE
0 – 30	\$4.13 per day/night of operation Min. Annual Fee \$210 Max. Annual Fee \$1,280 (licensed to serve alcohol) Max. Annual Fee \$640 (not licensed to serve alcohol or BYO only)		
31 – 50	\$6.19 per day/night of operation Min. Annual Fee \$320 Max. Annual Fee \$1,930 (licensed to serve alcohol) Max. Annual Fee \$965 (not licensed to serve alcohol or BYO only)	\$12	
51-100	\$9.29 per day/night of operation Min. Annual Fee \$480 Max. Annual Fee \$2,890 (licensed to serve alcohol) Max. Annual Fee \$1,445 (not licensed to serve alcohol or BYO only)		\$550
100+	\$13.93 per day/night of operation Min. Annual Fee \$720 Max. Annual Fee \$4,340 (licensed to serve alcohol) Max. Annual Fee \$2,170 (not licensed to serve alcohol or BYO only)	\$24	

Please note that all rates detailed in this paper are inclusive of GST. This scheme will be subject to minimum and maximum fees and all fees will increase annually in line with the weighted average of eight capital cities Consumer Price Index. The rates set out above are applicable to the first licence year only.

³ Seating capacity in this context is the number of patrons licensed by the local government, liquor licensing body or fire department as applicable to that dining business or area of the dining business.

Copying Music

The advent of smartphones and digital music services has increased the music options available to businesses. While new digital music services provide a degree of choice and control not available when using radio stations or CDs, they do not offer the demographically targeted and individually curated playlists designed for their clients by background music service providers. As it currently stands in Australia, almost all businesses that provide publicly available digital music streaming and download services limit their service to personal and domestic use. Furthermore, the making of copies of recordings (for example of a CD or a digital download) is permitted under the Copyright Act (1968) for domestic listening purposes, but this does not extend to public performances (i.e. the type of performance that occurs in a dining business). Therefore any public performances and reproductions (including by the operation of the service itself, such as caching or storing for offline use) require licensing. Such a music licensing solution has been available from APRA AMCOS and PPCA separately for several years and will continue to be offered by OneMusic Australia. That said, OneMusic Australia reminds businesses that if they are using a digital music service, they should refer to the Terms and Conditions of the service’s end user agreement to determine if there are other permissions they may require (including from the service provider itself) that are not under the control of OneMusic Australia.

Although APRA AMCOS and PPCA have licences that permit dining businesses to use, cache or make copies of music for the purpose of playing as background music, there are notable differences in the two existing structures. The current PPCA scheme is limited to a maximum of 250 tracks per year on a cumulative basis, whereas the APRA AMCOS scheme is tiered depending on the maximum number of tracks copied on the relevant device at one time.

OneMusic Australia recognises that a balance must be achieved between ease of compliance on the one hand and a flexible structure to accommodate the needs of dining businesses on the other. To that end OneMusic Australia seeks specific feedback on the two proposed licensing options set out below in *Fig. 2* and *Fig. 3*. Under *Fig. 2*, which follows the current PPCA structure, dining businesses would pay a specific amount for the number of copies they make each year, capped at 1,000. Dining businesses would, however, be able to build up a larger library over time. Under *Fig. 3*, modelled on the current APRA AMCOS licence, dining businesses would pay a fee that allows them to keep up to 2,000 copies at any one time and within that limit are able remove and add tracks to keep their music fresh so long as they keep within the 2,000 cap. Ultimately, either the structure in *Fig. 2* or *Fig. 3* could be offered as part of this scheme, depending on feedback received from the industry. Both options would not be made available concurrently however.

Fig.2

TRACKS COPIED PER YEAR PER LOCATION	RATE PER YEAR (INC GST)
1 – 500	\$400
501 – 1,000	\$800

Fig.3

MAXIMUM NUMBER OF TRACKS PER LOCATION AT ANY ONE TIME	RATE PER YEAR (INC GST)
2,000	\$600

This component of the scheme covers only reproductions made by the licensee for the particular dining business that holds the public performance licence (where the music is not provided by a licensed background music supplier), and does not cover reproductions for any other location that the business may operate. A business with multiple locations would need to pay the above licence fee on a location by location basis. The reproduction of music videos for any purpose, and the copying of sound recordings on to jukeboxes, is excluded. The proposed scheme also does not cover the reproduction of music for the purpose of synchronisation with video footage.

For those dining businesses wishing to make copies outside of these limits, further licensing, including potential source licensing, will be required as these are uses that are not within the rights controlled by OneMusic Australia.

REPORTING

Currently APRA AMCOS requires annual reporting from dining businesses and invoices annually. PPCA invoices quarterly and will adjust the licence fee when a restaurant advises them of changed circumstances. OneMusic Australia will have the facility only to accept reporting and issue invoices on an annual or quarterly basis. We therefore seek input from the sector on which would be more appropriate. OneMusic Australia proposes that licensees would be invoiced a provisional fee quarterly in advance and then provide the necessary updated information through retrospective quarterly reporting to enable a reassessment. This proposed structure allows dining businesses to report on and be invoiced for actual use, quarterly in arrears. OneMusic Australia is of the view that this will be particularly attractive to those licensees who may only offer featured music performances on a seasonal basis or otherwise keep different seasonal trading hours; for example those who may open more days/nights during the summer and fewer during the winter months. OneMusic Australia, however, seeks feedback on this structure to confirm whether it is more accepted by the sector than annual reporting on the same basis – that is, in advance and then reassessed at the end of the year based on actual usage.

IMPACT

In testing this proposed model, OneMusic Australia found that across a sample of 336 existing APRA AMCOS and PPCA licensees, there is an average saving of 13% compared to current licence fees.⁴

OneMusic Australia is aware of the fluctuations in licence fees payable that will occur by moving away from the existing APRA AMCOS and PPCA structures – one of which is a tiered structure based on seating capacity and average main meal price, and the other which is compounding flat fees based on type of music use. These potential fluctuations in licence fees between what is currently payable to APRA AMCOS and PPCA through the existing schemes for this sector and what is proposed under this model have been mitigated by the introduction of the minimum and maximum fees.

OneMusic Australia believes that a clear benefit of this proposed scheme is that it differentiates between those dining businesses which are larger – and therefore have the capability to serve more people through the course of one sitting – and those which are smaller. Furthermore, the proposed scheme ensures that licensees are only paying for the days they play music. We believe this is a highly equitable structure that is simple to administer and will encourage fair remuneration for music across the industry.

PARTIAL RIGHTS

OneMusic Australia is aware that some restaurants seek alternative sources of music that do not require all of the rights that would be granted by the proposed OneMusic Australia licence. In the context of restaurants, it is our experience this is often a licence for specific re-records of commercial music sound recordings. In OneMusic Australia's experience the available music in a re-record library is likely to be a mere fraction of the recordings available under the proposed OneMusic Australia licence. Such a limited repertoire is therefore unlikely to cover the range of musical styles and genres that work best for individual restaurants given that numerous studies have shown that it is not just the use of music that helps drive increased takings, but the right type of music matched to a restaurant's demographics. Accordingly, it is OneMusic Australia's view that this proposed scheme offers better value for money, creates a better atmosphere to attract and keep patrons, and helps to increase sales more than re recorded music options. Nonetheless, for those dining businesses that do choose such an alternative music source and have no requirement to access sound recordings under OneMusic Australia's licence – and can provide evidence of this – a discount of 42.5% would be applied to relevant components of the proposed scheme.

TRANSITIONAL ARRANGEMENTS

Our analysis shows that there are a number of dining establishments that are currently licensed only by APRA AMCOS or PPCA but actually require licences for both organisations' rights. APRA AMCOS and PPCA recommend that restaurants revisit their licensing status now, rather than wait for OneMusic Australia to commence, in order to ensure they are fully covered and not unintentionally infringing.

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 note that OneMusic Australia has not sought to review the overall value of music in dining businesses under its new combined licence scheme. OneMusic Australia's approach, consistent with our announcement of the venture, has been to create, so far as possible, a new licence scheme that provides increased simplicity for businesses, including the reduction in the number of music licences required. Accordingly, while comments on the general structure of this proposal and possible alternative approaches are welcome, OneMusic Australia's position is that submissions advocating a fundamental reappraisal of the overall value of music in dining businesses are more appropriately the subject of separate discussions, which may include the use of Alternative Dispute Resolution or the involvement of the Copyright Tribunal of Australia, if required. Should the parties deem it necessary to enter into a separate and more fundamental reevaluation negotiation of this nature, it may mean that in the meantime OneMusic Australia would be obliged to launch with the existing separate licence structures currently offered by APRA AMCOS and PPCA.

While we believe that the proposed scheme will be of great value to dining businesses, we welcome your feedback in general and in relation to the specific questions OneMusic Australia has raised.

Your comments allow us to ensure that the licence schemes we develop are not only theoretically sound, but are also practically applied in a simple and equitable way across the industry.

Please provide your feedback in the form of a submission to consultation@onemusic.com.au by close of business 12 January 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 and we will be in touch.