

DATE: 2 May 2017

EXERCISE PROVIDERS 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 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 a partnership called OneMusic Australia to provide a one-stop shop for exercise providers' music licence needs and remove the requirement to obtain separate licences 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. A state-of-the-art eCommerce facility for the purchase and maintenance of music licences will ensure that music users have easy access to the correct music licences, allowing them to manage their accounts with OneMusic Australia. 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. It has simplified the process of music licensing for businesses in New Zealand, increased awareness of copyright and compliance, and 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 exercise providers are licensed to use music with a view to implementing a new, wide-ranging and simplified music licensing scheme.

CONSULTATION TIMELINE

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

- a) Circulation of this first consultation paper for client response;
- b) Consolidation of client 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 exercise providers serving as at least three months' notification of the commencement of the new scheme.

THE PROPOSED SCHEME

OneMusic Australia is proposing a simplified licence scheme for exercise providers to cover their use of music, the structure of which is based on key elements of the existing APRA AMCOS and PPCA licences available to the sector. The new scheme will be available to businesses such as gyms, exercise professionals, yoga, pilates and barre studios, high impact interval training providers, functional fitness providers, Zumba instructors, open workout spaces, boot camp providers, weight loss circuit centres, martial arts and boxing providers, virtual fitness facilities, boutique fitness studios and other kinds of exercise providers.

CONSIDERATIONS

In developing the proposed scheme, OneMusic Australia took into account the different business structures that exist across the exercise industry. OneMusic Australia understands anecdotally that there are diverse business models operating; ranging, for example, from 24/7 gyms with cardio and free-weights spaces to high impact interval training providers which only operate fitness classes with limited or no 'free gym time' available to patrons. Furthermore, patrons of the industry are no longer accessing exercise and fitness classes in a traditional way, with many using free passes and 'taster' passes to access multiple classes across different studios.¹

OneMusic Australia has developed the proposed structure in an effort to present the industry with a scheme that will meet the diverse needs of all, while still remaining fair and equitable to music creators.

OneMusic Australia examined the existing APRA AMCOS and PPCA methodology of licensing classes with fewer and/or more than 10 participants at a different rate. From this, OneMusic Australia found that fewer than 5% of exercise providers licensed by both APRA AMCOS and PPCA employ this option for licensing music used in fitness classes. Given the relatively minor uptake of this option and to support a more simplified structure, OneMusic Australia proposes to adopt the OneMusic New Zealand model that has been established and accepted where there is a single rate for classes irrespective of attendee numbers.

To mitigate any potential financial impact of the above change, OneMusic Australia proposes to include the existing APRA AMCOS charge for virtual fitness classes in the overall per member background music tier at no additional cost.

Acknowledging that different business models are emerging in the fitness industry, OneMusic Australia also proposes the introduction of an alternative 'all in' rate. This is a fee per member that would be available – at the option of the exercise provider depending on their particular circumstances – to cover all rights set out below, instead of the separate fitness class and background music rates.

RIGHTS

The proposed scheme will cover the following uses of music:

- Playing background music (including from music videos) at an exercise facility, music played in waiting areas, reception, locker rooms, change rooms, open exercise areas and other spaces within the facility;
- Playing music during classes, including specified training sessions, functional sessions, small group classes, virtual fitness sessions, relaxation and recovery sessions and other kinds of led workouts;
- Making a limited number of copies of tracks for use as background music or as music played during a fitness class; and
- In the case of those who choose to obtain their licensing through tier (d) below, which is an 'all in' structure, the use of music on a telephone on hold system.²

Music in this context includes all works and recordings represented by APRA AMCOS and PPCA respectively. The breadth of repertoire is vast including the worldwide repertoire of hundreds of thousands of musicians and millions of recordings.

The scheme does not cover the use of music on hold, except where a licensee opts to obtain the tier (d) 'all in' licensing metric; music used at special events; the use of music on a website; use of music in a café attached to the facility; or any other use not expressly noted above. Further licensing is required from OneMusic Australia for additional music uses which are outside the scope of rights detailed above.

¹ For example, through the use of products such as [ClassPass](#).

² A [separate paper](#) has been released by OneMusic Australia on telephone on hold music, which may be of interest to those exercise providers who will not utilise the tier (d) structure and will therefore require further licensing to undertake this use.

FEE STRUCTURE

The proposed scheme is tiered to allow exercise providers to obtain coverage specific to the way they use music. The proposed structure, set out below, is specific to the exercise industry:

TIER	MUSIC USAGE	RATE (INC GST)	MINIMAL ANNUAL FEE PER PROVIDER (INC) GST
(a)	Background Music (including Music Videos)	\$1.35 per member per annum	\$440
(b)	Music in Classes	\$5.30 per class	
(c)	Copying Music	\$450 per annum	n/a
	OR		
(d)	All of the Above (plus music on hold) ³	\$44 per member per annum	\$440

This scheme is subject to minimum fees, which are set out in the table above. All fees under this scheme will increase annually in line with the weighted average of eight capital cities Consumer Price Index.

OneMusic Australia has developed this tiered approach to licensing for exercise providers to accommodate the diverse business models that exist across the sector, as noted above at 'Considerations'. OneMusic Australia is of the view that exercise providers will benefit from the user-pays flexibility that tiers (a), (b) and (c) provide. For those business models that may derive more value from an alternative, 'all-in' per member rate, OneMusic Australia has developed tier (d). A brief explanation of the methodology used by OneMusic Australia to design the proposed structure is as follows:

- a) OneMusic Australia proposes to adopt the existing 'device-neutral' APRA AMCOS licence fee model for background music, which was recently negotiated with Fitness Australia. This is primarily for reasons of simplicity and our understanding that the underpinning rationale for this structure has not changed since these discussions in 2014. We note that under the previous model the majority of APRA AMCOS's licence fees came from the public performance of music from traditional television broadcasts (for which there is no PPCA right payable) and accordingly it is not appropriate to simply double the existing APRA AMCOS rate.
- b) For the use of music in classes the proposed rate simply totals the current APRA AMCOS and PPCA rates, but has added two years' of growth in line with the Consumer Price Index in anticipation of the likely start date of OneMusic Australia.
- c) OneMusic Australia is proposing a rate that is double that of the current APRA AMCOS rate noting that the Copyright Tribunal of Australia has found that where uses are the same, the blanket licence fees for the use of the musical work and the sound recording should be equal.
- d) This new 'all in' tier gives providers the option to adopt an alternative fee model to cover their music use. Because it is linked to the number of members rather than the number of classes, we believe it will be of most benefit (and may result in a reduction in licence fees) to those exercise providers that tend to operate on fewer member numbers with higher numbers of classes.

³ OneMusic Australia acknowledges that some music in fitness classes may not use recordings that are represented by PPCA. When reporting for licensing to cover the use of music in fitness classes, a provider may therefore declare two sets of class numbers to account for this. Where either only the PPCA right or only the APRA AMCOS right is used, the class rate will be at 50% of the published rate. Please note however, that no adjustment for repertoire reduction is available under the 'all in' rate.

⁴ As noted below under 'Reporting', licensees will be required to provide information to OneMusic Australia on a quarterly basis, which will provide for a closer match between usage and the licence fee. Invoices will be issued on a provisional base

To accommodate the varied needs of the sector, it is intended that the OneMusic Australia's state-of-the-art eCommerce facility will be able to,

- a) based on the class and member declarations of the client, calculate which of the options is financially more advantageous for them; and
- b) allow exercise providers to opt in for additional licensing for music uses not covered by the specific exercise providers scheme at the same point of purchase as the proposed specialised licence, making the process of obtaining the correct coverage simple and easy. Separate consultation papers will be released on these 'non-core' activities [here](#).

REPORTING

OneMusic Australia will invoice exercise providers quarterly, on a provisional basis. This means that licensees will be required to report – through the eCommerce portal – actual figures each quarter in accordance with the activity the licence covers. OneMusic Australia will invoice quarterly in advance, based on usage from the previous quarterly period.

IMPACT

OneMusic Australia has tested the implementation of this scheme across a sample of current APRA AMCOS and PPCA licensees in this sector and found that the average licence fee change is minimal across the sector. We note however that there will be some variations on a client-by-client basis as a result of migrating the current PPCA device-specific background music charges to the APRA AMCOS per member model. OneMusic Australia however, is confident that the proposed scheme will provide a huge benefit to the exercise industry by providing a simple way for them to manage risk and remain compliant with the Copyright Act (1968). Furthermore, via the introduction of the new 'all in' alternative rate structure, licensees will be able to ensure that they are obtaining licensing through the most appropriate metric that will result in the most economical rate to cover their usage.



SUBMITTING YOUR FEEDBACK

OneMusic Australia is committed to developing music licence 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 by close of business 31 May 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 and we will be in touch.