

Friday 8<sup>th</sup> March 2024

## **ACA submission to ACCC: Australasian Performing Right Association Ltd – application for revocation of authorisation AA1000433 and substitution of new authorisation AA1000661 – interested party consultation**

### **Introduction**

As an interested party in the application for revocation of authorisation AA1000433 and substitution of new authorisation AA1000661 by the Australasian Performing Right Association Ltd (APRA), the Australian Childcare Alliance (ACA) is submitting this document to raise concerns regarding the selling practices of OneMusic Australia, a joint venture between APRA and the Australasian Mechanical Copyright Owners Society (AMCOS).

As the national peak body for the Australian Early Childhood Education and Care (ECEC) sector, the ACA represents more than **3,000 early learning (child care) service provider members** who employ more than **75,000 early childhood educators** and care for more than **360,000 families** throughout Australia.

ACA therefore represents a large number of OneMusic Australia licencees as well as prospective licencees.

ACA recognises the importance of ensuring fair and transparent practices in the music licensing industry, not only to protect the rights of Australia's musical artists but also to protect the rights of businesses when approached unsolicited by sellers.

In particular ACA recognises the right for businesses (i.e privately-owned early learning service providers) to go about their daily operations without being bullied, harassed or threatened to be fined by the sales team from OneMusic Australia.

By presenting this submission, ACA aims to highlight the selling practices of OneMusic Australia and our concerns that they may be engaging in **unconscionable conduct**.

ACA believes that it is essential for the Australian Competition and Consumer Commission (ACCC) to thoroughly assess the implications of the proposed authorisation revocation and substitution to protect the early learning sector, as well as other sectors, from unfair selling practices.

## Response to ACA questions

1. In relation to the Alternative Dispute resolution (ADR) scheme which is available for members and licensees to resolve disputes with APRA, please indicate:

- a. whether you were aware of the existence of the scheme, including the resolution options available to you and the potential costs involved;
- b. the factors you take into account when considering whether or not to try to resolve a dispute through the scheme; and
- c. if you decided to try to resolve a dispute through the scheme, whether you were satisfied with the handling and outcome of your matter.

ACA was not aware of this scheme.

We note that the scheme was set up to support disputes between copyright owners, licensees and/or APRA AMCOS, so it doesn't apply to the businesses APRA AMCOS sells their music licences to and is therefore not relevant to ACA's member base.

2. The ACCC imposed multiple conditions in its 2020 authorisation that were aimed at improving transparency, including in relation to transparency of licence fees (Condition C1) and distribution of fee income (Condition C2), and clarity regarding resignation, opt out and licence back provisions (Condition C3). In addition, the ACCC required APRA to publish an annual Transparency Report (Condition C4) and could require APRA to provide an independent report about its methodologies for determining licence fees (condition C5). Please explain:

- a. To what extent have these conditions:
  - i. helped you to make better-informed decisions about your dealings with APRA;
  - ii. improved your ability to negotiate with APRA; or
  - iii. improved APRA's accountability?
- b. To the extent that the aims of these conditions have not been achieved, what alternative or additional condition/s could be imposed to address this?

ACA has no comments on this item. (Not applicable to ACA members.)

3. In 2018, the APRA AMCOS membership voted to change members' voting entitlements in board elections and annual general meetings. Please explain:

- a. the impact of this change on the composition of APRA's board since 2018;
- b. whether the current composition of APRA's board (as of the date of this letter) is representative of all APRA members; and
- c. any suggested further changes to voting entitlements which would improve the representation of smaller, independent members to APRA's board.

ACA has no comments on this item. (Not applicable to ACA members.)

4. Have the public benefits of the conduct authorised in 2020 (such as transaction cost savings in negotiation of rights, avoiding costs of having to make changes to APRA systems, and efficiencies in enforcement and compliance monitoring) changed in recent years, especially given the technological changes in the last 4 years?

ACA has no comments on this item. (Not applicable to ACA members.)

5. How do you consider technological changes have impacted on the ability of competitors to APRA to enter the Australian industry? For example:

- a. Has technological changes lowered barriers to entry for a collecting society operating with a similar or different business model to APRA's?
- b. Do you consider that the sunk costs to establish specialised knowledge and systems have been lowered, given new technologies available?
- c. Do you consider that economies of scale and scope, and network effects, have become lower, perhaps for new innovative business models for the granting of copyright licenses in return for royalties paid to owners of the musical works? This could also include a business model that facilitates direct dealing between users and owners of the musical works.

ACA has no comments on this item. (Not applicable to ACA members.)

Please comment on any other issues you consider relevant to the ACCC's assessment of this matter.

In the context of the ACCC's assessment of the Australasian Performing Right Association Ltd's application for revocation of authorisation AA1000433 and substitution of new authorisation AA1000661, the Australian Childcare Alliance (ACA) would like to bring the **selling practices** of OneMusic Australia to the ACCC's attention.

OneMusic Australia is a joint initiative between APRA AMCOS and PPCA.

It was set up in 2019 to sell music licences to businesses Australia-wide on behalf of APRA AMCOS and PPCA,.

## Background

In February 2022 the ACA was approached by OneMusic Australia (OneMusic) and invited to consider a sponsorship proposal.

OneMusic informed ACA that their primary goal in establishing the sponsorship arrangement was to educate the early learning sector about the legal obligations of individual service providers when playing music in their services.

OneMusic explained that the organisation was set up in 2019 and had mapped out the various industries and sectors that were the least aware of their legal obligations when playing music in their business environments.

OneMusic had already successfully ran an education/sales campaign targeted at the retail sector as well as the fitness sector, and that raising awareness rather than generating sales was the main objective when they first target a sector.

They informed ACA that their intention for 2022/2023 was to focus on the early learning sector, with the aim of running an education campaign for one to two years moving to use any enforcement tools to change business behaviours and encourage those playing music to buy a OneMusic Australia annual licence.

ACA gave some consideration to the sponsorship proposal and agreed to commence promoting OneMusic-branded content to its member base, with a view to signing a formal sponsorship agreement a few months down the track, knowing it would take some time to develop a formal agreement with terms and conditions that both parties were happy with.

ACA was provided with some OneMusic Australia-branded educational materials to share with its member base (i.e. early learning (child care) service providers). (*See Attachment A*)

Following ACA's initial promotion of OneMusic communications assets (such as OneMusic-branded fact sheets, links to the OneMusic website, etc), ACA started receiving unprompted feedback from members about the selling practices of OneMusic sales staff.

### **ACA member feedback about the sales techniques of OneMusic sales staff**

Feedback from a handful of ACA members (i.e. early learning (child care) service providers) based in Queensland and New South Wales indicated that the OneMusic sales staff were:

- Calling early learning service providers unsolicited.
- Taking note of whether the early learning service phone system used hold music.
- Asking whoever answered the phone - often an early childhood educator – whether they played music in the service, whether they played it during music, dance or exercise sessions with the children, whether they played music during events with parents, whether they showed the children any videos, and so on.
- Telling whoever answered the phone that the early learning service was already in breach of Australia’s music copyright laws, citing the fact that they use hold music or play music during one of the activities confirmed by the educator earlier, and that the owner needs to buy a OneMusic Australia music licence to avoid being fined or other consequences.
- Calling back repeatedly, including to the direct mobile numbers of some early childhood educators, to urge the service provider to buy a OneMusic licence.

As a result of this telemarketing approach, early childhood educators were left:

- feeling stressed that they had somehow betrayed their employer by answering such questions.
- nervous about how to explain to their employer that as a business, they were now in trouble with the law.
- questioning whether they should answer the telephone as an ongoing practice.

Upon learning of the situation from their staff, early learning (child care) owner/operators felt anxious about possibly breaking the law, and also felt that their staff were being harassed and bullied by OneMusic’s sales team.

Further to this member feedback, ACA received direct feedback from ACA Queensland Vice President Jae Fraser, whose staff had answered the phone when OneMusic telemarketers had contacted them.

Following telephone discussions between his staff at Little Scholars School of Early Learning and the sales team at OneMusic, Mr Fraser received an email from OneMusic Director Catherine Giuliano which stated:

Dear Jae,

I am the Director of OneMusic Australia. You have been advised on a number of occasions by our Account Manager Rebecca Bradstock, and provided with all the relevant information, that The Scholars Group Pty Ltd requires a OneMusic licence for the public performance of our music.

When playing music represented by OneMusic Australia in public, by any means, it is a requirement to obtain permission from the copyright owners; whom we represent and provide by way of licence agreements.

This email is to advise you that this has now been referred to our legal representatives who may begin infringement proceedings.

If you wish to avoid legal action and incurring legal costs please fill out the attached licence agreement and email back to me immediately.

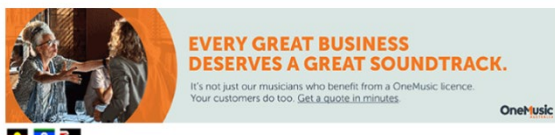
Also, I suggest you contact the Australian Copyright Council where you can obtain legal advice [Legal Advice - Introduction](http://copyright.org.au) (copyright.org.au)

Thank you in advance

Catherine



**Catherine Giuliano**  
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I acknowledge the traditional Aboriginal and Torres Strait Islander owners of country throughout Australia and pay my respects to them, their culture and their Elders past, present and future.  
I also acknowledge Māori as tangata whenua and Treaty of Waitangi partners in Aotearoa New Zealand.

*(Copy of original email supplied at Appendix A)*

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## ACA raised its concerns with OneMusic

Following this feedback from a number of members, ACA contacted OneMusic directly and asked for a meeting with their in-house legal team. This request was granted, and on 20 July 2022 ACA met with OneMusic via Zoom to discuss concerns around their selling practices.

ACA talked through the feedback received from their members in this context, and expressed concerns that OneMusic's unsolicited telephone calls to ACA members, which included threats of negative consequences if the business didn't buy a music licence, could amount to unconscionable conduct as well as misleading and deceptive conduct.

During the meeting ACA asked OneMusic's legal team if they could consider retraining their sales staff to:

- ask if they could speak to the owner/operator at first contact with an early learning service (as opposed to talking to the educator who may have answered the phone).
- refrain from collecting enforcement evidence during unsolicited sales phone calls.
- use the phone call as an opportunity to educate the owner/operator about their legal obligations when playing music in their service, rather than threatening them with negative consequences such as fines or other legal action.
- refrain from telling early learning services and their staff that buying a OneMusic Australia music licence is the only way a business can comply with Australia's copyright laws – ACA believes this is misleading given that businesses can limit the music they play and engage directly with the copyright owner.

Following ACA's verbal request, OneMusic told ACA that their sales team could talk to prospective customers however they liked, given that it is a legal requirement for businesses that play music in their business settings to seek permission from the copyright owner.

## ACA response to OneMusic's refusal to change their sales practices

As a result of this direct feedback from OneMusic's in-house legal team, ACA declined to enter a sponsorship agreement with OneMusic.

ACA then worked with HWL Ebsworth Lawyers to produce a fact sheet on the rights and obligations of early learning services when playing music in their services. (*Please refer to Appendix B.*)

ACA circulated the fact sheet to ACA members (i.e. our member base of early learning service providers) along with a link to the ACCC's webpage about [unfair selling practices](#), and in particular are that talks to the illegal practice of [pressuring and harassing prospective customers](#).

ACA has warned its members about the telephone selling techniques used by OneMusic and suggested that **only** the owner/operator talks to their sales staff, should they get in touch.

ACA also reported this information to the ACCC in 2022 via the ACCC's 1300 302 502 phone number

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## Conclusion

ACA understands the need for business to seek permission before playing copyright-protected music in business settings. Furthermore ACA supports the rights of individual musical artists to be remunerated when their music is used for commercial and income-generating purposes.

ACA was committed to assisting OneMusic Australia in educating the early learning sector about their rights and obligations when playing music in early learning services.

However we became concerned about the selling practices of OneMusic Australia and the impact these practices are having on the early learning sector.

ACA is concerned that OneMusic Australia is acting as a retailer of music licences whilst simultaneously acting as a regulator and enforcer of Australia's copyright laws (as they apply to the playing of music in business environments).

ACA is concerned that OneMusic Australia does not seem to be aware of Australia's Competition and Consumer Law regarding unfair selling practices.

We would recommend that the ACCC gives consideration to the sales practices being used by OneMusic Australia and introduces some conditions that effectively protect Australian businesses from their questionable selling practices as part of any new authorisation provided to the Australasian Performing Right Association Ltd.

We thank you for taking the time to read this submission.

Should you have any queries, please feel free to contact the Australian Childcare Alliance directly:

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