

DATE: 26 June 2019

CLUBS

FINAL POSITION PAPER

OneMusic Australia is an initiative of APRA AMCOS and PPCA. On 13 October 2017 OneMusic Australia released a consultation paper seeking feedback on a proposed music licensing scheme for clubs. That consultation paper is available upon request by emailing consultations@onemusic.com.au.

After the release of the paper OneMusic Australia entered into direct discussions with Clubs Australia on behalf of the various state/territory associations. Those discussions centred on the adoption of a “member-based” rate structure covering the key areas in which Clubs use music. We are grateful for the support and engagement of the main industry body, Clubs Australia, which helped us develop a truly new and simplified licence scheme which we believe is fair for both clubs and music creators.

This document serves as further notification that OneMusic Australia has reviewed the way in which clubs will be licensed to use music in order to implement 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.

The proposed scheme is set out below and will be rolled out to clubs (already licensed by APRA AMCOS and/or PPCA) from September 2019 onwards. OneMusic Australia, with Clubs Australia’s support, will also seek to engage with those clubs without pre-existing music licences to ensure compliance is in place where required.

YOUR NEW ONEMUSIC LICENCE FEES

The per-member rate (Music For Clubs) includes the following types of music use within the environs of the Club, which are defined in the Definitions section of this paper.

- Background music
- Featured music and live music performances where ticket or admission prices is \$40 or less
- Music in dance classes
- Workplace music
- Telephone on hold music
- Digital Copy/Delivery for the uses above

The annual per-member rate for Clubs, inclusive of GST, is:

Rate Per Member Tier	Rate Per Member*
1 - 5,000	\$0.70
5,001+	\$0.30

* \$0.70 rate applied to first 5,000 members \$0.30 rate applied to any additional Members.

Subject to a Minimum Annual Fee of \$135.

WHAT THE PER-MEMBER RATE DOES NOT INCLUDE

The music uses below will be subject to separate licensing fees under the Clubs licence scheme, as outlined in the following sections.

- Featured music and live music performances with a ticket or admission price over \$40
- Recorded Music for Dance
- Fitness Classes

RATES FOR ADDITIONAL USES

For the uses of music listed above that are not included in the per-member rate, the following fees, inclusive of GST, will apply:

Premium Featured Music (i.e. where ticket price or entry fee is over \$40)

Featured Recorded Music

PPCA Sound Recordings*	PLUS	APRA Works and AMCOS Works
\$0.053 multiplied by FRM Area Capacity for each day of operation (24 hour period)		\$0.167 per person admitted to the FRM Area for each day of operation (24 hour period)

Live Music Performance

APRA Works and AMCOS Works
2.2% of Gross Expenditure on Live Artist Performers
For all Live Music Performances where Live Artist Performer is paid a fee to perform directly by Your Club, RSL, Sporting Club or Cultural Club, including any monies paid by You to that Live Artist Performer from the box office for that Live Music Performance.
1.65% of Gross Sums Paid for Admission
For all Live Music Performances where the Live Artist Performer is paid only by a third party such as a booking agent.

Live Music incorporating Recorded Music Performance

PPCA Sound Recordings*	PLUS	APRA Works and AMCOS Works
\$0.267 per person admitted to each Recorded Music Performance (i.e. a performance where there is an Entry Fee, and the Entry Fee is \$40 or less)		2.2% of Gross Expenditure on Live Artist Performers
		For all Recorded Music Performances where the Live Artist Performer is paid a fee to perform directly by Your Club, including any monies paid by You to that Live Artist Performer from the box office for that Live Music Performance
		1.65% of Gross Sums Paid for Admission
		For all Recorded Music Performances where the Live Artist Performer is paid only by a third party such as a booking agent.

Karaoke

PPCA Sound Recordings*	PLUS	APRA Works and AMCOS Works
\$0.053 for each person admitted to the Karaoke Area per day of operation (24 hour period)		\$20.64 for each day (24 hour period) that karaoke functions are held at the Location

Other uses (regardless of ticket price or entry fee)

Recorded Music for Dance

PPCA Sound Recordings*	PLUS	APRA Works and AMCOS Works
\$1.354 multiplied by the RMFD Area Capacity for each day of operation (24 hour period)		\$0.912 per person admitted to the RMFD Area for each day of operation (24 hour period)

OneMusic has agreed to extend the consultation period for the above rates for Featured Recorded Music, Live Music Performances, Live Music incorporating Recorded Music Performances, Karaoke and Recorded Music for Dance Use and they may change in the future depending on the outcome of that consultation.

Fitness Classes

Music in Classes		
Option A		Option B
\$5.41 Per Fitness Class for all classes per annum	OR	\$7.61 for each Fitness Class with more than 10 participants per year
		PLUS
		\$3.27 for each Fitness Class with 10 or fewer participants per year
Subject to a Minimum Fee of \$220 Includes any number of devices for Music in Classes		
Partial Rights discount minus 48.25% on the per class rate for each Fitness Class that does not use PPCA Sound Recordings or does not use APRA Works or AMCOS Works.		

All \$ rates will be increased by CPI on 1 July of each Licence Year.

PHASED IN 'LEGACY LICENCE FEE CAP'

OneMusic acknowledges that the new per-member metric will see some clubs experience large changes in their annual licence fee for the uses covered under the rate. Accordingly, it has agreed with Clubs Australia to introduce a 'Legacy Licence Fee Cap' on fees for eligible clubs. The cap does not include licence fees paid for Featured Recorded Music, Live Music Performances, Live Music incorporating Recorded Music Performances, Karaoke and Recorded Music for Dance Use and Fitness Classes because the per-member rate does not cover these uses.

Eligible clubs are those that are licensed for any relevant tariffs by both PPCA and APRA AMCOS (as required) prior to 1 July 2019. Clubs that only hold APRA licences prior to this date may be eligible if only APRA licensing is required, for example if only broadcast radio or TV, or so-called 'PPCA-free' product, is used throughout the club.

In year one the Cap means that eligible clubs would see an increase of no more than 25% on their legacy licence fee, in year two 50%, year three 75%, year four 100% and year five 125%.

OneMusic will assess each club's eligibility for the cap and notify those that qualify. If you believe your club is eligible for the cap but are not notified prior to relicensing your business with OneMusic, we will be happy to discuss and assess your particular circumstances.

AGGREGATED MEMBER NUMBERS

In circumstances where a licensee operates as a group, for example where one club owns and operates more than one club location, it will be possible to aggregate member numbers for the purpose of assessing the Music For Clubs fee and provide a single member total for calculation of the group's annual fee for this cover.

PARTIAL RIGHTS

For those clubs that can show they are not using both APRA AMCOS and PPCA rights – for example, businesses that use background music which does not require a PPCA licence (e.g. the club only plays music from terrestrial broadcast stations) include any PPCA recordings (e.g. only uses ClubMUSIC recordings), or that have licensed either the underlying musical works or the sound recordings directly with copyright owners - a 48.25% 'partial rights' discount will be applied to the relevant rates. A club may benefit from both a partial rights discount and the Cap at the same time.

DEFINITIONS

The following definitions are relevant to the OneMusic licensing scheme for Clubs. The definitions will form part of the final terms and conditions offered by OneMusic, subject to possible minor amendments required to draft the agreement without changing the intent of the meaning.

Background Music means any Licensed Music (recorded or otherwise) used in the Location including for dining, gyms and function rooms, which is primarily intended to be passively listened to and not to be the main focus (and specifically excludes music used for Featured Recorded Music, Recorded Music for Dance Use, Live Music Performances, Recorded Music Performances, Karaoke and Music in Fitness Classes).

Club means a registered and licensed member-based club, such as RSLs, sporting clubs and cultural clubs.

Club Group means a group of individual Clubs that are all owned and operated by a single entity.

Digital Copy/Delivery means to reproduce up to 2,000 tracks containing PPCA Sound Recordings and/or APRA Works and AMCOS Works:

- a) by copying from a licensed physical copy (e.g. a CD) to an electronic copy or another physical one;
- b) by copying from a licensed electronic copy (e.g. a legally acquired MP3 download) to another electronic copy or a physical one; or
- c) by downloading or accessing a stream from a personal digital music service for the purpose of performing music in public (that is, using a subscription, ad-funded or download music service that is limited in its terms of use to non-commercial listening).

Featured Recorded Music means recorded music used at the Location or in an FRM Area that is given prominence as a feature of that venue or any part of that venue (not including a Recorded Music Performance). It includes performances by DJs, including those advertised as part of a specific event or series of events, nights of operation where the music has been compiled with a particular or recognisable theme such as 'Retro Night', 'Friday Night Beats' or 'Sunday Jazz'.

Fitness Class means a structured form of exercise conducted in a class environment on a commercial basis, which:

- a) is directed by a fitness instructor (whether or not it is conducted by an on-staff or freelance instructor);
- b) is included in a published timetable or advance notification to potential participants; and
- c) is not a Virtual Exercise Class.

A Fitness Class includes but is not limited to the following category of structured exercise class: freelance or pre-choreographed group fitness (including Les Mills, MOSSA, Radical and Zumba) circuit, dance, cycle / spin, flexibility / stretching / abdominal, yoga, Pilates or aqua.

Karaoke means music used for the purposes of accompanying singing by patrons.

Legacy Licence Fee Cap means the discount applied to Music for Club Licence Fees only for those Clubs licensed for any relevant tariffs by both PPCA and APRA AMCOS, as required, prior to 1 July 2019 and that have received notice from OneMusic Australia of their eligibility for such discounted Licence Fees. More information in relation to the Legacy Licence Fee Cap scheme is available by contacting OneMusic Australia at hello@onemusic.com.au.

Live Music Performance means a performance of music at an event or function by a Live Artist Performer, other than:

- a) a Recorded Music Performance;
- b) a performance held by a National Event Promoter; or
- c) where the performance has an Entry Fee and the price of that Entry Fee is advertised as being more than \$40 (Live Music Performances with an Entry Fee of more than \$40 must be separately licensed on an event-by-event basis).

Live Music Performance Incorporating Recorded Music means a musical performance at the Location by a Live Artist Performer where:

- a) Sound Recordings are played; and
- b) the performance has an Entry Fee and the price of that Entry Fee is advertised as being \$40 or less (Recorded Music Performances with an Entry Fee of more than \$40 must be separately licensed on an event-by-event basis).

Partial Rights Discount means the discount offered by OneMusic Australia on the Licence Fee rates for particular music use where, in respect of that particular music use:

- a) no PPCA Sound Recordings are used;
- b) the particular use of PPCA Sound Recordings does not require a licence from OneMusic Australia (on behalf of PPCA) due to there being a direct or alternate licence in place in respect of that particular use of PPCA Sound Recordings;
- c) no APRA Works and/or AMCOS Works are used; or
- d) the particular use of APRA Works and/or AMCOS Works does not require a licence from OneMusic Australia (on behalf of APRA AMCOS) due to there being a direct or alternate licence in place in respect of that particular use of APRA Works and/or AMCOS Works.

Recorded Music for Dance Use means the use of recorded music for the purpose of dancing.

Telephone on Hold means music used on a telephone on hold system, whether sourced from radio or a recorded source.

Workplace Music means to:

- a) perform music and/or Music Videos by any means for the benefit of employees or their family or corporate guests at the premises and at functions and places to which the general public is not admitted, except at any conference, event or other function where there is an Entry Fee or the total expenditure on Live Artist Performers is \$50,000 or more;
- b) perform music and/or Music Videos in reception or front-of office areas that are open to the public (excluding any retail areas);
- c) allow employees to play music at their workplace (including via radios, streaming services, CD players); and
- d) permit the copying of music from legally obtained sources for the purposes noted above.

CALCULATOR

To see how the proposed OneMusic Australia scheme will apply to your specific circumstances, you can use the calculator found here: <https://www.jotform.com/apraamcos/clubs>. You will need to compare this against previous fees to assess whether the cap applies or not.

NEXT STEPS

Implementation of the new Clubs Licence is scheduled to begin in September 2019. OneMusic Australia intends to publish the main terms of the licence scheme shortly in order to provide advance notice to clubs of the new structure and rates.

Businesses may object to some of the proposals set out above. Licensees and associations have recourse to expert processes under APRA's existing alternative dispute resolution service, Resolution Pathways, which will also be made available in relation to all licences offered by OneMusic.

If there is a reference to Resolution Pathways and the parties are unable to agree on an outcome, then either party may make a reference to the Copyright Tribunal.

FURTHER QUESTIONS

If you have any questions or would like to discuss this scheme further, please email questions@onemusic.com.au and we will be in touch.