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## RECORDED MUSIC FOR THE PURPOSE OF DANCING 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 the music licence needs of venues that use recorded music for the purpose of dancing and remove the requirement for these kinds of venues 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 venues have access to the correct licences, allowing easy account management with OneMusic Australia. We believe that this new licensing structure will be of great value to these kinds of venues.

In association with Recorded Music New Zealand, APRA AMCOS has been operating OneMusic in New Zealand for more than three years, where 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 venues are licensed to use recorded music for the purpose of dancing with a view to implementing a new, wide-ranging and simplified music licensing scheme. For venues which use music in ways other than for the purpose of dancing, our proposed schemes for Hotels, Pubs, Taverns and Bars and for Clubs 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](#).

## 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

Nightclubs and other venues providing recorded music for dancing 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 venue types and locations and, insofar as possible, to be licence fee neutral when considered across the industry as a whole.

## CONSIDERATIONS

The Copyright Tribunal handed down its determination on the use of recorded music for dancing in 2007. APRA AMCOS and PPCA commenced the operation of new licences shortly thereafter on the basis of that determination. While these are often referred to as the 'nightclub schemes', the licences apply to any businesses that use music for the purpose of dancing, whether those businesses are dedicated nightclubs or multi-purpose venues such as hotels that have separated spaces for dancing.

Under existing licence arrangements, venues not only have to pay separate licence fees to APRA AMCOS and to PPCA, but the basis on which the respective fees are calculated is different. For APRA AMCOS the licensing metric is currently a rate per attendee (capped at capacity) and for PPCA it is a rate multiplied by capacity per night of operation. OneMusic Australia proposes to offer a joint licence scheme with a single rate determined by one simple metric, thereby reducing administration for licensees. In considering the structure of this new scheme, OneMusic Australia was keenly aware of the issues facing such venues currently, including but not limited to, liquor licensing restrictions and lock-out laws. Given this, we believe that we have developed a licensing metric that is fair and reasonable for the sector, as well as for our APRA AMCOS and PPCA members and licensors.

To develop the proposed structure, OneMusic Australia analysed the data that APRA AMCOS and PPCA receives from existing licensees. It was clear from this data that attendance figures provided to APRA AMCOS in recent years were, for the majority of clients, reported as constant. This differs from APRA AMCOS' expectations that attendance numbers would change from year to year to reflect actual variations in the popularity of the venue. This has not occurred. Indeed the static reporting of attendance numbers from year to year to APRA AMCOS rather suggests that the figure essentially acts as a proxy for capacity (i.e. PPCA's current metric).

In developing the proposed scheme, OneMusic Australia found that the sector is accustomed to also providing capacity information to government bodies for purposes such as liquor licensing. Given this, and noting that capacity is already used as a licensing metric by PPCA and is a more easily measurable metric to report and verify than attendance, we propose to use capacity as a basis for the new licence scheme.

We are aware that some licensees have concerns about the use of capacity where attendance numbers may be lower than the full capacity of a venue. We acknowledge those concerns – indeed our compliance checks of venues suggest that where a business has more than one night of operation per week, it is more likely that attendance (as a percentage of capacity) will be lower across the additional nights per week than for the first night. We also note that the Copyright Tribunal’s original determination took these variances of attendance versus capacity into account when setting the metric and licence fee.<sup>1</sup>

Taking these factors into account, OneMusic Australia has developed the proposed scheme based on the total capacity of a venue, but tiered according to the number of days/nights a venue operates per year.

## RIGHTS

The proposed scheme will cover venues using recorded music for the purpose of dancing, for example by way of patrons dancing to a DJ performance. This scheme would apply to venues which have a dance floor or other area for dancing and in that way remains consistent with the current definitions used by both PPCA and APRA AMCOS which are as follows:

Current APRA AMCOS Definition	Current PPCA Definition
<p>Venue means a licensed premises that:</p> <ul style="list-style-type: none"> <li>a) is used for providing music for dancing; and</li> <li>b) uses recorded APRA AMCOS Works as the primary form of music for dancing; and</li> <li>c) has a dance floor or other area for dancing or charges an entry fee (even if the fee is not charged to all patrons); and</li> <li>d) is not being used for: (i) a private function; (ii) a Dance or Dance Party; (iii) an event that features ballroom or similar traditional dancing; or (iv) an event for underage persons (such as a “blue light” disco).</li> </ul> <p>The definition includes a Venue operating within a multi-purpose premises in a physically separate area of that premises, where that separate area satisfies the above criteria.</p>	<p>“Nightclub” means a licensed venue that:</p> <ul style="list-style-type: none"> <li>a) is used for providing music for dancing;</li> <li>b) uses sound recordings as the primary form of music for dancing;</li> <li>c) has a dance floor or other area for dancing or charges an entry fee (even if the fee is not charged to all patrons); and</li> <li>d) is not being used for: (i) a private function; (ii) a Dance or Dance Party; (iii) an event that features ballroom or similar traditional dancing; or (iv) a ticketed, multi-act music event.</li> </ul> <p>The above definition includes a nightclub operating within a multi-purpose venue in a physically separate area of that venue, where that separate area satisfies the above criteria.</p>

OneMusic Australia notes that these definitions are structurally very similar and therefore does not propose to make any material changes.<sup>2</sup> Instead, we propose to amalgamate these definitions so that a venue which uses music for the purpose of dancing is a licensed premises that:

- a) Provides music for the purpose of dancing by patrons;
- b) Has a dance floor or other area for dancing or charges an entry fee (even if the fee is not charged to all patrons); and
- c) Is not being used for
  - i. a private function;
  - ii. a dance or dance party;
  - iii. an event that features ballroom or similar traditional dancing; or
  - iv. a ticketed, multi-act music event.

This definition covers venues which are stand-alone businesses using music for the purpose of dancing, such as nightclubs, as well as venues which are operating as part of a multi-purpose venue, or within a multi-purpose premises in a physically separate area of that premises, where that separate area satisfies the above criteria.

The scheme does not cover other types of public performance that may occur at the venue – for example a live performance by a band, featured music performances where DJs perform and there is no dancing, or the use of background music across other areas in the venue or when the venue is not operating for the purpose of dancing. These rights will be covered under separate schemes to be offered by OneMusic Australia.

<sup>1</sup> See [Phonographic Performance Company of Australia Limited under section 154\(1\) of the Copyright Act 1968 \(Cth\) \[2007\] ACopyT\\_1](#) at [211] and [214].

<sup>2</sup> Please note that the actual OneMusic Australia licence terms and conditions may contain different defined terms, distinguished through capitalisation. For example the terms may use “Premises” rather than “Venue” or “Nightclub”.

## STRUCTURE

The proposed licensing metric is a fee per person, per night of operation, for each person of the venue's capacity. The rate applicable is tiered based on the number of days/nights that the venue operates at each specific capacity. The capacity in this context is the number of patrons licensed by the local government, liquor licensing body or fire department as applicable to that venue. OneMusic Australia will continue to provide PPCA's option to venues, which are multi-level or multi-space and open only a portion of their spaces on certain nights, to license the relevant operating space only for those nights. The OneMusic Australia eCommerce reporting mechanism will allow licensees to input their capacity per night to account for this.

OneMusic Australia proposes that the capacity rate is tiered according to the total number of nights of operation to take account of anecdotal evidence that suggests attendance numbers, when compared to capacity, are lower where a venue is open for multiple nights per week.

As at June 2017, the PPCA rate for recorded music used for the purpose of dancing was \$1.29 per person multiplied by capacity, per night and the APRA rate was \$0.86 per person multiplied by attendance, and capped at the venue's capacity. Applying estimated annual CPI<sup>3</sup> increases between now and when OneMusic Australia commences in 2018, and converting the APRA rate per attendee to a rate per capacity (using our analysis of licence information provided by venues holding both licences), the existing combined rate is \$2.20 per person. The proposed rates are set out below:

	NUMBER OF NIGHTS OPERATING PER YEAR PER DECLARED CAPACITY DANCING AREA	RATE PER HEAD PER NIGHT OF OPERATION TO BE MULTIPLIED BY CAPACITY (INC GST)
Tier 1	Up to 52 nights of operation per year	\$2.20
Tier 2	53 to 104 nights of operation per year	\$2.10
Tier 3	105 to 156 nights of operation per year	\$2.00
Tier 4	More than 156 nights of operation per year	\$1.90

Venues which restrict their premises to different capacities on different days will have the ability under this scheme to declare those variances. This ensures that venues are only paying for the capacities at which they are operating on any given night. Under this scheme, OneMusic Australia will separately assess licence fee calculations against the capacities reported.

By way of example, a venue is open three nights per week and on Friday and Saturday the whole venue is open at a capacity of 200 people (104 days of operation over the year) but on Thursday it only opens the ground floor bar, which has a capacity of 100 people (another 52 days of operation over the year). That venue would report these differing capacities as follows in order to take advantage of the tiered rate structure:

AREA NAME	NIGHTS PER YEAR	CAPACITY	APPLICABLE RATE	FEE PAYABLE (INC GST)
Full Venue	104	200	\$2.10	104 x 200 x \$2.10 = \$43,680
Ground Floor Bar Only	52	100	\$2.20	52 x 100 x \$2.20 = \$11,440
				<b>Total = \$55,120</b>

By way of comparison, under the current APRA AMCOS and PPCA schemes and assuming the same CPI adjustment, the estimated licence fee would be approximately \$56,000 – producing a saving of around \$1,250.

The proposed scheme is subject to a minimum fee of \$200 (including GST) per area, per year. All fees under this scheme will increase in line with the weighted average of eight capital cities Consumer Price Index annually.

<sup>3</sup> Assuming CPI at long term average of 2.5%.

Some venues enhance the atmosphere on their dance floor by exhibiting the music video associated with the track being performed. This is currently licensed by PPCA under their Tariff WE – Music Videos (Nightclubs) at \$1,405 per annum for a single 30 inch TV (higher fees apply for multiple screens). OneMusic proposes an additional tariff for such use at \$1,250 per annum for up to six screens. This provides venues with a saving of between \$155 and \$2,260 when compared to current licences.<sup>4</sup>

## REPORTING

OneMusic Australia proposes that venues will continue to report capacity and nights of operation information annually, but have the choice to pay either annually, quarterly or monthly. Accordingly venues would report:

- The number of days recorded music is used for the purpose of dancing within each tier each year;
- The name of the area within the venue where music was used for the purpose of dancing (for example ‘Whole Venue’ or ‘Basement Bar only’); and
- The capacity of the area within the venue where music was used in this way.

OneMusic Australia also intends to continue with the joint APRA AMCOS and PPCA implementation of Music Recognition Technology (currently using DJ Monitor and Kuvo) to obtain performance data from selected nightclubs and other venues. This data is used by both societies to make their separate ‘nightclub’ distributions based on a sample of music played in nightclubs and will continue to be used in this way. The terms and conditions of the OneMusic Australia licence will therefore continue to include reporting obligations to facilitate accurate distributions back to songwriters and recording artists.

## IMPACT

OneMusic Australia has tested the implementation of this scheme across a sample of current APRA AMCOS and PPCA licensees in this sector in order to deliver as close to a revenue-neutral result as possible. The average licence fee fluctuation for venues which currently hold both an APRA AMCOS and PPCA licence for the use of recorded music used for the purpose of dancing is a decrease of 3.8%.

OneMusic Australia is of the view that the proposed structure of this scheme will benefit the sector in that the fees account for the anecdotal evidence that some venues are not at capacity every night of opening. Furthermore, we believe that the proposed structure strikes a balance between the existing APRA AMCOS scheme which is based on attendance, and the existing PPCA scheme which is based on capacity.

## TRANSITIONAL ARRANGEMENTS

Our analysis shows that there are a number of venues that are currently licensed only by APRA AMCOS or PPCA but actually require licences for both organisations’ rights. AMCOS and PPCA recommend that venues 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.

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<sup>4</sup> When background music only is being used, rights will be covered under separate schemes to be offered by OneMusic Australia such as the scheme for hotels, pubs, taverns and bars. The consultation paper for that scheme can be found [here](#).



## 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 recorded music when used for the purpose of dancing 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 recorded music used for the purpose of dancing 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 revaluation 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 nightclubs, 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](mailto:consultation@onemusic.com.au) by close of business 27 November 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](mailto:questions@onemusic.com.au) and we will be in touch.