

**AUSTRALASIAN PERFORMING RIGHT ASSOCIATION LIMITED AND
AUSTRALASIAN MECHANICAL COPYRIGHT OWNERS' SOCIETY
LIMITED**

SUBMISSION TO CLRC ON COPYRIGHT AND CONTRACTS

1. Australasian Performing Right Association Limited (**APRA**) is a public company limited by guarantee. It is the collecting society in Australia in respect of the performing rights of composers and music publishers. The performing rights, in relation to musical works, are those set out in section 31(1)(a)(iii) and (iv) of the *Copyright Act 1968* (and formerly, in section 31(1)(a)(iii) – (v)).
2. Australasian Mechanical Copyright Owners' Society Limited (**AMCOS**) is a public company limited by guarantee. It is the collecting society in Australia in respect of the mechanical (reproduction) right of music publishers for certain purposes. In particular, AMCOS administers the statutory licence contained in the Act for the making of records of published musical works.
3. APRA administers the operations of AMCOS, under contract.
4. APRA and AMCOS welcome the opportunity to make submissions in relation to this reference.
5. The Act contains certain statutory licences, which are a major derogation from the rights of copyright owners, included in the Act for reasons of public policy. APRA and AMCOS understand that the Committee's focus in this reference is not on statutory licences, and so propose to make no detailed submissions regarding them. However, should the Committee wish to discuss the statutory licences and their impact on copyright contracts generally, APRA and AMCOS would seek to make further, detailed, submissions.
6. Subject to the matters referred to in paragraph 5 above, it is the view of APRA and AMCOS that copyright owners and users should be free to contract in relation to their copyright material. The terms of such contracts often extend beyond the matters dealt with in the relevant legislation, and it is important that the right to regulate use of intellectual property be restricted as little as possible consistent with copyright and competition policies.
7. APRA and AMCOS respectfully agree with the submissions of the Australian Copyright Council in relation to the distinction between access to a use of material. Thus, while exceptions to the rights of copyright owners are contained in the Act for reasons of public policy (which in general are supported by APRA and AMCOS) a copyright owner may seek to modify those exceptions if the consideration passing under the contract includes access to material which is not otherwise available.
8. In general, however, APRA and AMCOS do not have a specific response to issues 1 –4. While both companies grant licences for the use of material in an electronic or digital context, they do so without seeking to impose conditions that attempt to exclude or modify any limitations to the rights of copyright owners contained in the Act.

9. In relation to issues 5 and 6, it is the view of APRA and AMCOS that there is no reason to grant protection to users of copyright material in addition to the protections already existing.
9. The jurisdiction of the Copyright Tribunal over licences granted by APRA and AMCOS gives considerable protection to users of copyright material in circumstances where the terms proposed by the copyright owners are unreasonable in all the circumstances. For example, the Act contains provisions which ensure that the Copyright Tribunal can effectively allow the use of copyright material on reasonable terms, should the copyright owner unreasonably refuse to grant a licence where one is required (section 159).
10. APRA and AMCOS are concerned to ensure that their licence agreements and licensing practices are reasonable, clear, and accessible. APRA in particular has a very large number of small business licensees. However, it is the view of APRA and AMCOS that the provisions of the *Trade Practices Act 1974* adequately protect the interests of licensees, and that there is no reason to extend the provisions of the *Copyright Act* to further regulate the terms of licences.
11. No APRA or AMCOS contracts contain provisions that prohibit the use of copyright material that would otherwise be allowed under the Act. Indeed, AMCOS' contracts facilitate the use of copyright material under a statutory licence that is in many respects difficult for copyright users to comply with.
12. APRA and AMCOS have no view about mass-market licences related to their direct experience, but note that it would seem adequate for the general provisions of contract and consumer laws to apply to such contracts.
13. APRA and AMCOS own and control rights only in specified territories, and so cannot grant licences to exercise rights outside those territories. While the business of both APRA and AMCOS increasingly relates to the use of copyright material in a digital or on-line context, international reciprocal agreements and territorial rights mean that the companies' contracts regulating such use do not differ materially from non digital contracts. APRA and AMCOS do not have a view about the jurisdictional issues raised (issue 7), but in general believes that the law of any contract relating to copyright should be determined by the terms of the contract itself.
14. The nature of the APRA and AMCOS business is currently such that the terms of this reference do not directly impact on the contracts entered into (as copyright owners) by the companies. Accordingly, APRA and AMCOS merely wish to state their commitment to the process of review, and that they believe contracts dealing with copyright material are, in general, adequately regulated by copyright, consumer protection and contract law.