

Master Grocers Australia Ltd

Trading as:
MGA Independent Retailers

Submission to
OneMusic Australia

July 2018

OneMusic Australia music licensing changes for the retail sector, including service providers

OneMusic Australia, through their brand will be implementing extensive changes in obtaining a licence to play music in outlets. In the retail industry, there is a significant number of product and service providers that will be affected by any proposed licensing changes.

It is noted that OneMusic Australia will be replacing the requirement of having two licences (APRA AMCOS and PPCA) to form an alliance and a one stop shop, through a joint venture. The proposed changes the current structure, follow a prolonged quiet period. The primary factor for the review of fees falls back on the expectations of music creators and licensors.

Master Grocers Australia (MGA Independent Retailers) thanks OneMusic Australia for the opportunity to briefly respond to the consultation document for retail and services providers published on their website on 02 May 2018 and to provide observations. All subsequently quoted parts are in reference to such consultation document.

About Master Grocers Australia (MGA Independent Retailers)

MGA is a National Employer Industry Association that is registered with the Fair Work Commission, representing family enterprises and independent supermarkets, packaged liquor businesses owners, and service providers in all States and Territories. MGA's 2,700 members trade under brand names such as: FoodWorks, Friendly Grocers, IGA, SPAR, Supa IGA, Bottlemart, Cellarbrations, Ritchies Liquor, The Bottle O and other independents.

MGA's businesses range in size from small, to medium and large, and make a significant contribution to the retail industry, employing 115,000 people and accounting for approximately \$15 billion in retail sales.

Introduction

MGA provides limited support of OneMusic's proposal, which will have a further impact on the music industry, its creators, licensors and users. MGA understands OneMusic's proposal of merging the licencing structures for simplicity's sake and to review the fees. Further, MGA acknowledges the emphasis placed on recompensing the creators of works.

Many MGA members rely on playing music in public spaces in their stores, pay the relevant fees and hold music licenses as currently required. Given our members' reliance on the playing of music, we request great consideration to what will be subsequently addressed.

In determining its limited support of the consultation paper, MGA assessed the proposal's numerous aspects in light of the needs and interests of its members, taking into account the following:

- Ease of use;
- Structure, the new scheme and Forums;
- Price and costs; and
- Incidentals.

However, MGA requires further information about certain aspects of the proposal, as indicated below to reach its final view of the new scheme.

Ease of use

OneMusic's proposed approach, which will allow businesses, including MGA's members to purchase and renew different licence types from the same body, is supported by MGA, particularly through the eCommerce facility. However, further information about the facility is required to determine whether it will in fact 'simplify licensees' initial and ongoing reporting and administration requirements' as highlighted by OneMusic. If the eCommerce facility actually performs what it suggests, then as an online system, that consider the business' needs at the time, may truly be of great benefit in streamlining the process. Additionally, the removal of 'the requirement to report the number of devices and different spaces using background music that exists under ... [the] current APRA AMCOS and PPCA licences' will ensure owners are not further burdened with additional business-related and administrative burdens, is also supported by MGA.

MGA openly supports a scheme that would simplify the process of music licensing for our members, as long as its reasonable and justified. This is of particular importance since the PPCA scheme has not been reviewed for over 20 years. However, in the process of reviewing the current systems, we request that OneMusic ensures the licensing process is in fact streamlined and made more comprehensible. MGA's concern with ease of use, stems from the associated complexities of the current APRA AMCOS and PPCA requirements and having to abide by them. Retailers and service providers are already burdened with the management of their businesses. As such, additional requirements that don't directly impact on the smooth running of their businesses, may be given a lesser priority, particularly if it is convoluted and difficult to navigate. In revamping the system of licensing, MGA expects the final breakdown of the proposed scheme that is released to the general public is far clearer than what was included in the consultation paper, by defining vague terminology, ensuring its concise and easy to interpret.

Structure, the New Scheme and Forums

MGA supports the user-pay structure (with Gold, Silver and Bronze packages) that OneMusic has proposed, akin to the previous arrangement under APRA AMCOS and PPCA. OneMusic's user-pay structure is more advantageous to our members as it allows greater freedom of choice, when selecting the manner in which the retailers and service providers might use music in their businesses. However, MGA requires further data about the 'detailed analysis and testing across the data collected from existing APRA AMCOS and PPCA licensees [that was used] to develop the proposed licensing structure and fees'.

The new scheme fails to address some details, which MGA requests further information about, particularly:

- The phase in over three years to assist businesses with the revaluation of PPCA's background music rights – further brief about the breakdown of what each of the three years entails and the extent of phasing;
- What are the economic and non-economic benefits of the joint venture between the bodies;
- Should members be concerned about the possibility of a monopoly?

The various forums of the new scheme are considered separately below:

Background music

MGA supports the significantly simple structure for licensing background music as it will no longer require our members to take into account the number of devices and spaces used at the premises.

Music videos

MGA does not support the additional flat fee of \$340 as it of the same nature as what constitutes background music. OneMusic defines “background music” as ‘the playing of audio or audio-visual material that is music or contains music.’ On the face of it, it is possible that the definition of background music can encompass and absorb “music videos”, rather than defining it differently and charging a separate fee to businesses. These slight distinctions in definitions is what could possible turn away retailers and service providers from playing music in their businesses or keeping the use to a nominal amount.

Featured music

MGA acknowledges that featured music tends to be the higher, more premium end of the spectrum of music. Although our members do not utilise this particular service, we support the proposed price to be paid to OneMusic. However, it should be noted that if the requested daily tariff is substantially high, that could result in the decrease in utilising live music. When compared to website music, an annual fee of \$550 is required, meaning that the daily fee is \$1.51. Featured music has a daily fee of \$12.00. As previously stated, although MGA appreciates the premium side of featured music, it still appears to have a significantly higher tariff than other licenses – some proportionality must be maintained.

Copying music to use as background music

MGA supports the proposal which combines the copying of music to use as background music to the first category discussed above. However, we note that under the scheme, it has been included only in the gold package, which starts from \$650, subject to additional extras of table 2. Some of our members rely only on the copying of music to use as background music, without utilising other services. The inclusion of this licence only in the gold package will force our members to purchase it, albeit none of the other forms of included licenses will be used by them.

Additionally, the cap placed by OneMusic of 2,000 songs is quite restrictive and is unjustified, particularly since the current scheme allows unlimited music downloads and storage. That will require businesses to spend more time having to amend and update their music on a regular basis, rather than just adding to what is being played. This may result in repeating music, which could negatively deter customers from businesses. After all, OneMusic is aware of the positive impact of playing music in comparison to ones that do not, as considered in their proposal.

Website music

Although website music plays a large part in attracting customers to websites, it is incidental to the larger picture of revenue generation for our members’ businesses. The annual fee is extensive and not justified, in light of the fact that our members can’t event derive any revenue from the playing of such music.

Price and Costs

Given the significant amounts of royalties to be paid to music creators and licensors, it is of great importance to ensure that there is a direct line of communication and accountability between OneMusic Australia and its customers.

OneMusic Australia plans to continue fulfilling the duties and responsibilities of APRA AMCOS and PPCA combined. As such, MGA requests greater transparency in relation to how royalty payments flow and the purpose of each licence. This can be done by disclosing OneMusic's full budget to us. Additionally, a percentage breakdown of the costs, and what is the amount that OneMusic Australia is charging for their services as the 'middle man' between customers and music creators and licensors. Moreover, we require clarification about whether the revenue obtained will be directed towards just OneMusic, or each of the associated bodies separately. Finally, on behalf of our members, we request detailed processes that OneMusic will be utilising to measure music use in our members' businesses and the relevant portion music creators and licensors will be paid.

It is of great concern to MGA that the new proposal of OneMusic notes an increase in the rate for retailers and service providers due to the fact that there has been an absence of any review of the PPCA rate in the last 20 years. This is then further reiterated again by OneMusic, stating that 'majority of retailers in Australia who currently hold both an APRA AMCOS and PPCA licence, the increase will be less than \$100 per year.' Before MGA can acknowledge the increase, it is necessary to be provided with actual figures that substantiate the claims raised. We understand the burdens associated with having to review a system that has not been examined for a considerable period of time. However, that does not justify shifting the associated costs on the members, especially since OneMusic forecasts and estimates 'that one in ten businesses covered under the proposed rate would experience a decrease in annual licence fees.' Accordingly, MGA must ensure that its members are in a better off position before completely supporting OneMusic's proposal.

Under the proposal, OneMusic indicated that 'In developing the proposed scheme, ... [it] also considered alternative metrics, not part of the current APRA AMCO and PPCA licencing structures [such as] ... the type of business ... whether the premises are in a metropolitan or regional area.' However, in assessing the new licence fees, there is no costs distinction that is based on the locality of the premises or the type of business.

Additionally, a business interest that underpins decision making is the cost of a good sold or service provided. As such, a prominent concern for our members is the possibility that the costs under the new scheme might not in fact have the result of providing "commercial value". That could in turn have a contrary impact on the music industry and the use of music by business, turning them away from utilising the service of OneMusic.

Incidentals

MGA is interested in obtaining further details about the board members that will be managing OneMusic Australia, since there appears to be little information available online. However, given that two separate bodies with similar interests but distinct right holders, are unifying under the new scheme, it may be possible that they maintain two separate boards. Therefore, we request that OneMusic Australia comments, by providing their position in relation to this issue in light of its legal structure and status in Australia.

Another issue that OneMusic did not address in their consultation paper, is dispute resolution. MGA requires further information about how disputes between businesses and OneMusic will be conducted and settled. Clarification about whether the Australia Competition and Consumer Commission would be utilised in such instances.

A further area lacking some detail is in relation to discounts available. As previously mentioned, MGA is an employer organisation representing chains of independent supermarkets and liquor retailers. These businesses adopt similar processes and conduct their stores in a manner that is akin to each other. As such, in joining OneMusic, would these multi-store owners be offered discounts, specially if all hold comparable licenses? This is to be considered in light of the fact that music licensing in Australia is heavily regulated and is costly. Also, if fees are on the rise and are to 'increase annually in line with the weighted average of eight capital cities Consumer Price Index', shouldn't there be an applicable discount for multi-store owners?

In relation to the enforcement date of this scheme, in order to adequately advise our members with sufficient notice, we require more approximate details regarding the further development and launch of its new licence schemes. The proposal merely indicates that the commencement will be 'in the first half of 2019'.

Conclusion

When considered holistically, OneMusic does appear to refurbish the system of licensing, which is acknowledged and appreciated by MGA. MGA welcomes OneMusic's proposal, however such support is limited by the caveats previously discussed. If the above is addressed in the second round of consultation papers, particularly the more intricate details of the process, then MGA may possible offer its full support.

MGA once again thanks OneMusic for the opportunity to make this submission and looks forward to receiving a response.

Jos de Bruin



CEO MGA
2 July 2018