

Copyright Agreement between the Attorney-General's Department and APRA

Information sheet

The following sheet provides information about the copyright agreement between the Attorney-General's Department (the AGD) and the Australasian Performing Right Association (APRA). It consists of the following parts:

PART A

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The agreement can be accessed at:

<http://www.ag.gov.au/www/securitylawHome.nsf/AllDocs/RWPDC2749D57F0D56A2CA256D8200124C86?OpenDocument>

PART A – Background Information

A.1 What is APRA?

APRA is a copyright collecting society that administers the public performance rights in musical works and lyrics of songs. It is a non-profit company limited by guarantee whose members are composers, songwriters and music publishers. APRA claims to represent nearly all music copyright owners in Australia and New Zealand and, through its reciprocal arrangements with overseas collecting societies, most of the music repertoire of the world.

Most music copyright owners have partly assigned to APRA their exclusive right under the law to perform their musical works and lyrics in public. Therefore, APRA has the authority to collect licence fees payable for uses of these rights, pursuant to licensing agreements negotiated with the users of these works. In accordance with its Articles of Association, APRA then distributes the licence fees collected to its members whose works are used.

A.2 What is the public performance right?

The *Copyright Act 1968* (the Act) grants creators such as composers and songwriters a number of exclusive economic rights, which can be assigned or licensed to others. One of the exclusive rights is the right to perform a work in public.

The public performance right covers circumstances where music is played in public using equipment such as compact disc or DVD players, cassette recorders or radio or television sets. It also covers the performance of live music in public. The term 'in public' includes most situations that are not of a private or domestic nature. It would include most premises where music is played for the benefit of either staff or customers.

A.3 Why does the AGD have a copyright agreement with APRA?

According to s183 of the Act the exclusive right to perform a work in public is not infringed by the Commonwealth, or by a person authorised in writing, if the performance is done for the services of the Commonwealth. Copying under s183 does, however, impose a number of statutory obligations. These obligations are:

- (a) to inform the copyright owner - s183(4); and,
- (b) to agree terms of use - s183(5).

The AGD has negotiated and entered into an agreement with APRA in order to discharge its statutory obligations in relation to the public performance rights in musical works and lyrics of songs. This agreement has not been negotiated on behalf of the Commonwealth as a whole.

A.4 Has APRA had agreements with the Commonwealth in the past?

There have been two previous agreements in which the parties to the agreement were the Commonwealth and APRA, with the Commonwealth being represented by the AGD. Under these agreements, departments and agencies individually subscribed to the agreement and were listed in schedules to the agreement through notification by the AGD to APRA. Not all departments and

agencies subscribed to these agreements. The last Commonwealth agreement with APRA expired on 30 June 2002.

A.5 Why isn't this agreement between the Commonwealth and APRA?

There is no statutory obligation for the Commonwealth *as a whole* to enter into an agreement with APRA. Section 183 imposes obligations on individual Commonwealth departments and agencies in relation to the public performance of music. The AGD decided to negotiate a separate agreement with APRA and will no longer be responsible for negotiating and administering agreements with APRA on behalf of the Commonwealth. APRA agreed with this approach on the understanding that the AGD would endorse its agreement with APRA as a model for adoption by other Commonwealth departments and agencies.

PART B – Overview of the model agreement between the AGD and APRA

B.1 What is covered/not covered by the agreement?

As with the previous agreements between the Commonwealth and APRA, this agreement covers the performance of music by the Department, or authorised by the Department for the services of the Commonwealth. However, the scope has been extended under the new agreement to also cover the performance of music by, or authorised by, the Department which is not covered by s183 but is for the benefit of employees provided these performances take place at premises belonging to the Department or at functions and places where the general public are not admitted.

Performances of music that are not within APRA's repertoire are not covered by the agreement nor are the types of performances set out in clause 3.4 of the agreement (eg performances of Grand Rights works in their entirety).

APRA has supplied the AGD with a document which lists examples of performances that would/would not be covered by the agreement. This document is for guidance only and does not form part of the agreement. The document is attached at the back of this information sheet (Appendix A).

The APRA agreement does not cover the performance right in sound recordings. Another collecting society called the Phonographic Performance Company of Australia (PPCA) represents the owners of copyright in sound recordings (as opposed to the musical works recorded). It administers the separate broadcasting and public performance rights granted by the Copyright Act to these copyright owners, who are generally record companies. In some circumstances, such as where recordings are played in public using compact disc or DVD players or cassette or video recorders, a licence from the PPCA will be required in addition to a licence from APRA. However, unlike a licence from APRA, a licence from the PPCA is not required in circumstances where the sound recording is performed in public by turning up the volume of a radio or television set on which it is being heard.

B.2 What is the term of the agreement?

The agreement between the AGD and APRA covers the period from 1 July 2002 (when the previous Commonwealth agreement expired) and runs for an initial period of two years. After the expiry of the initial term, the agreement will continue for successive one year periods until

terminated on the anniversary of the agreement by either party on at least one month's notice. Therefore the shortest period for which the AGD is bound by the agreement is three years. The Department can terminate the agreement if APRA is wound up, a receiver or provisional liquidator or the like is appointed, or an amendment to s183 of the Act comes into force.

B.3 How much will the agreement cost each year?

The AGD has agreed to pay royalties to APRA each financial year based on the Full Time Equivalence (FTE) rate for that financial year, multiplied by the number of Full Time Staff Equivalents of the AGD for the then immediately preceding financial year.

The FTE rate for the financial year 2002/03 was \$0.59 (GST exclusive) per full time employee. The FTE rate for each succeeding financial year will be calculated in accordance with the Consumer Price Index.

Example of AGD's liability for financial year 2002/03

On June 30 2002, the AGD had 1566.1 Full Time Staff Equivalents.
 $1.566.1 \times \$0.59$ (GST exclusive) = \$923.998 (+ GST).

B.4 What will be the Department's ongoing responsibilities under the agreement?

The key ongoing responsibilities under the agreement are:

1. to establish a procedure for obtaining written authorisations for public performances by third parties;
2. to establish a procedure to ensure such authorisations are kept for record keeping purposes as required under the agreement;
3. to ensure prompt and correct notification to APRA of the number of Full Time Staff Equivalents for the immediately preceding financial year within 3 months after the commencement of each financial year; and,
4. to ensure payment to APRA within 30 days of a correctly rendered tax invoice by APRA.

In order to ensure that these responsibilities are discharged the Department will inform all employees of their obligations under the agreement (eg the need to obtain written authorisations in the case of third party performances).

Those departments or agencies that adopt the model agreement will be responsible for administering their own ongoing obligations under their separate agreement with APRA.

PART C – Further Information

C.1 Does your department or agency have to adopt the model agreement offered by the AGD?

The Department has negotiated an agreement which is acceptable to the AGD. We have agreed with APRA to endorse it as a model for adoption by other Commonwealth departments and agencies. Our expectation is that the provisions of the 'model agreement' should be acceptable to

the majority of departments and agencies. However, it will be a matter for each department and agency to make such a determination for itself. Some departments and agencies may choose to conduct their own negotiations with APRA. It may be that some departments and agencies do not need to enter into an agreement with APRA at all. For example, where a small business plays music via a radio or TV set to no more than 20 employees, in such a way that is clearly not intended to be heard by customers or other members of the public, APRA may issue a complimentary licence to the business. If you are a small agency it may be worth checking whether APRA would be prepared to issue a complimentary licence under similar conditions.

For those departments and agencies that decide that they do wish to negotiate an agreement they will need to decide whether to adopt the same terms as the AGD or negotiate different terms with APRA. For instance, departments and agencies may want to consider their attitude to liability in 2002/03 and make relevant provision.

C.2 What should your department or agency do if it wants to adopt the model agreement with APRA?

Departments and agencies that wish to enter into an agreement with APRA using the AGD model agreement need to do the following:

1. Download the model agreement from
<http://www.ag.gov.au/www/securitylawHome.nsf/AllDocs/RWPDC2749D57F0D56A2CA256D8200124C86?OpenDocument>
You will need to insert the name of your department or agency in the relevant places in the agreement. You will also need to specify contact person/s for notification purposes.
2. Send signed Agreement to

Director – General Performance Licensing
Australasian Performing Right Association Limited
Locked Bag 3665
ST LEONARDS NSW 1590

Telephone: 02 9935 7900
Facsimile: 02 9935 7790

Important Note: APRA has requested that departments and agencies should send with the signed agreement the Full Time Staff Equivalents as of 30 June 2002 and 30 June 2003 for invoice purposes.

C.3 Enquiries about the agreement

General questions about the AGD agreement should be directed to:

Ms Angela Tsongas
Copyright Law Branch
Attorney-General's Department

Ph: 02 6250 6758
Fax: 02 6250 5929
Email: angela.tsongas@ag.gov.au

C.4 Information about copyright law

General information about copyright law can be located on the Attorney-General's Department website at: <http://www.ag.gov.au/copyright>

C.5 Information about APRA

Further information about APRA can be located on its website at <http://www.apra.com.au/>

Appendix A - Guidelines

This document was provided by APRA for guidance purposes only. It does not form part of the agreement.

Commonwealth Government Agreement

Performances **covered** by this agreement include:

- i. Marketing and public relations presentations, both internal and external
- ii. Department social functions and events, Xmas parties etc
- iii. Staff training, both in house and external, where audio, and audio-visual presentations occur.
- iv. Background music piped through the work environment.
- v. Department sponsored or sanctioned health programmes for employees such as aerobics and/or exercise to music classes/yoga etc.
- vi. Televisions, radios, CD players provided for the benefit of staff in the department.
- vii. Musical entertainment at conferences and retreats

Performances **excluded** from this agreement include:

- i. Performances conducted in concert halls, theatres and similar locations which are essentially commercial or quasi commercial in nature.
- ii. Festivals such as the Festival of Sydney, Adelaide Festival etc and events designed or intended to attract the general public.
- iii. Performances in schools
- iv. Background music in retail outlets operated by the Department ie post offices
- v. Music on hold (communication)
- vi. Other communications of a musical work (broadcast, diffusion, transmission)