

Chapter 3

Information provided to small businesses by copyright collecting societies

Introduction

3.1 This chapter examines the information provided to small businesses by copyright collecting societies. The evidence showed that copyright collecting societies dedicate a significant amount of time, effort and money towards contacting and attempting to secure licence agreements with those businesses they believe to be using music. The most common form of contact for both APRA and the PPCA was through printed material received by mail. This is complemented by information provided by licensing staff, usually over the telephone. An analysis of the nature of the material shows that there were notable differences in the style and intensity of the collecting societies' campaigns to increase the number of licensees.

APRA

National compliance campaign

3.2 About two years ago, APRA conducted a compliance survey to determine the proportion of small retail businesses using music which had licences. The survey results indicated that less than three per cent of these businesses had a licence with APRA to play music.

3.3 APRA's traditional methodology for licensing businesses that were using music involved personal contact from field licensing representatives who would encourage the business to take out a licence. However, small business was not the focus of the licensing representatives' activities. Pursuing multiple small businesses was costly and time consuming and the licence fees for background music were not high.¹ One finding was that the overwhelming majority of small businesses were using music without having a licence.

3.4 In an attempt to increase compliance in the small businesses, APRA changed its tactics. It embarked on a 'national compliance campaign', described by APRA as a 'telemarketing campaign'.² This campaign involved sending standard correspondence to small businesses. The first stage of the correspondence included:

- a 'courtesy notice' designed to inform the recipient of his or her potential legal obligations
- a licence application form
- a brochure entitled 'Music and your business'
- an exemption form
- a complimentary interim licence, and
- a business reply paid envelope.

3.5 Examples of some of this material can be found in Appendix D.

1 The cost of licences for background music are outlined in below in Chapter 4.

2 Mr Cottle, APRA, *Transcript*, p. 53.

3.6 In its opening sentence, the courtesy notice referred to its 'National Compliance Campaign'. It gave the recipient notice that a licensing representative would contact the business to ensure that it held the appropriate APRA licence. The letter described the purpose of APRA and explained that APRA is empowered to take legal action on behalf of its members. The letter used bolding and underlining to emphasise that playing music without a licence is in breach of Commonwealth legislation. The letter referred to the enclosed interim licence and explained that 'to avoid further action' the recipient must obtain a licence from APRA.

3.7 If neither a licence application form nor the exemption form were returned, APRA sent a second letter titled 'Final notice'. This notice stated, in bold print, that 'it is an offence to continue using copyright music' unless a licence is obtained. This letter was also accompanied by the brochure, exemption form and business reply envelope.

3.8 If there was still no response, a final letter titled 'Did your application go astray' was sent. The letter stated, in bold print, that 'you may be breaking the law and could be liable to substantial penalties'. This letter also included the brochure, exemption form and reply paid envelope.

3.9 According to APRA's submission, a telephone call was made to each business on at least one occasion. If the business advised APRA's

representative that no music was being played, no further contact was made.³

3.10 The Committee also notes the leaflet titled 'What you have a right to know about APRA ... '. This leaflet is in 'question and answer' format, addressing eight different questions. The final three questions address APRA taking legal action in the case of infringement of copyright. The answers state that APRA is authorised to initiate legal proceedings against people who it believes is using music without a licence and that APRA has 'frequently launched' such legal proceedings. The leaflet also emphasises the cost of legal proceedings, stating that the filing fees alone in the Federal Court are \$1200 and that 'APRA usually seeks to recoup such filing fees (and other legal costs) from unsuccessful defendants'.

3.11 APRA also briefed relevant industry associations and chambers of commerce prior to sending correspondence to businesses. APRA provided the Committee with a list of associations it had contacted.

Response to the campaign

3.12 The evidence shows that the universal response of small business operators and organisations to APRA's campaign was one of confusion, disbelief and outrage.

3.13 The initial response of many small business operators was to contact a range of different organisations to verify, firstly that APRA

3 APRA, *Submissions*, p. S459.

was a legitimate organisation, and secondly that it did, in fact, have the right to demand the licence fees outlined in the correspondence. Industry associations, radio stations, members of federal and state parliaments, government departments and the ACCC all received complaints and inquiries of this nature.⁴

3.14 Many business operators had not heard of APRA until they received correspondence from APRA demanding payment of money. Some of these people had been playing music in their business for some time without any knowledge of their obligation to have a licence.⁵

3.15 The Townsville Chamber of Commerce referred to the law as having been 'dormant to the regional community for some 29 years' because it had never been enforced amongst the vast majority of small businesses.⁶

4 Examples of organisations & individuals receiving complaints include: Mr Peter Andren MP, *Submissions*, p. S81; Australian Medical Association (Victoria) (AMA (Vic)), *Submissions*, pp. S248–S250; Council of Small Business Organisations of Australia (COSBOA) *Submissions*, p. S307; Australian Competition and Consumer Commission (ACCC), *Submissions*, pp. S320–S321; NSW Department of Fair Trading, *Submissions*, p. S696; Mr Barry Wakelin MHR, *Submissions*, p. S718; Attorney-General's Department, *Submissions*, p. S768; Miss Preece, B105FM, *Transcript*, p. 529; Ms Buddle, Austereo (Adelaide); *Transcript*, p. 641.

5 Those who expressed this concern to the Committee include: COSBOA, *Submissions*, p. S303; Small Business Development Corporation, Western Australia (SBDC (WA)), *Submissions*, pp. S481–S482; Townsville Chamber of Commerce, *Submissions*, p. S503; NSW Department of Fair Trading, *Submissions*, p. S697; South Australian Minister for Industry, Trade and Tourism, *Submissions*, p. S803; Mr Baldock, Queensland Retail Traders and Shop Keepers Association (QRTSA), *Transcript*, p. 553.

6 Townsville Chamber of Commerce, *Submissions*, p. S503.

3.16 Many witnesses believed that the demands for payment were a hoax or a scam.⁷ Others found the material to be threatening, intimidating confusing and overly legalistic.⁸

3.17 Another comment was that the correspondence required a response regardless of whether the recipient was using music. If the recipient of the material did not complete and return either a licence application form or an exemption form, they continued to receive correspondence and/or telephone calls from APRA. This was described as being:

illogical, as if a person who does not wish to drive a car should have to notify the relevant registrar of his intention not to drive.⁹

3.18 In evidence to the Committee, representatives from the ACCC commented that APRA's material may have been 'misleading or

7 Those who expressed this concern to the Committee include: Liquor Stores Association of Victoria (LSA (Vic)), *Submissions*, p. S83; ACCC, *Submissions*, p. S321; Tourism Council of Australia (TCA), *Submissions*, p. S371; Restaurant & Catering Industry Association of Australia (RCIAA), *Submissions*, p. S434; Townsville Chamber of Commerce, *Submissions*, p. S503.

8 Those who expressed this concern to the Committee include: Mr Douglas Barrie, *Submissions*, p. S39; West Australian Small Business and Enterprise Association (WASBEA), *Submissions*, p. S53; National Meat Association of Australia (Victorian Division) (NMA (Vic)) *Submissions*, pp. S108–S109; COSBOA, *Submissions*, p. S303; TCA, *Submissions*, p. S371; RCIAA, *Submissions*, p. S434; Townsville Chamber of Commerce, *Submissions*, p. S503; The Pharmacy Guild of Australia, *Submissions*, p. S576; NSW Department of Fair Trading *Submissions*, p. S697; Victorian Employers Chamber of Commerce and Industry (VECCI), Ms Harmer *Transcript*, p. 436.

9 The Pharmacy Guild of Australia, *Submissions*, p. S576. A similar observation was made by the NSW Department of Fair Trading, *Submissions*, p. S697.

deceptive' in that 'the overall way in which it was presented gave the impression that you had to have a licence, that you had no choice'.¹⁰

PPCA

3.19 The PPCA also has a standard information package which is sent to businesses to find out if they need a licence in relation to sound recordings. The package includes:

- a covering letter explaining the role of the PPCA and the requirements of the Copyright Act
- a brochure giving detailed information about the PPCA
- an application for a licence
- a schedule of PPCA member companies and the labels they control
- the tariffs thought applicable to the business, and
- a reply paid envelope.

3.20 Examples of some of this material can be found at Appendix D.

3.21 The covering letter explained the purpose of the PPCA and the need for people playing sound recordings in public to have a licence. It explained that an application for a licence was enclosed 'in case you do cause the playing of protected sound recordings'. The recipient was asked to complete the form 'if appropriate'. The letter also advised that a licence with APRA is not in itself sufficient to fulfil the requirements of

10 Mr Kiley, ACCI, *Transcript*, p. 233; see also Exhibit No 20, Healsville Physiotherapy, p. 1.

the Copyright Act, and that persons playing music may require a licence from both APRA and the PPCA.

3.22 In conjunction with the correspondence sent directly to businesses, the PPCA ran communication programs. These programs included publishing advertisements and articles in trade magazines and journals and sponsoring events. The PPCA also met with representatives from trade associations and spoke at seminars around the country. Information is also provided over the telephone by licensing staff.¹¹

3.23 The Committee notes the PPCA's brochure, which is in 'question and answer' form, and explains the different copyrights that APRA and the PPCA administer. The brochure advises that a person playing sound recordings will need a licence from both APRA and the PPCA.

Response to the material

3.24 The Committee received no specific complaints about the tone of the PPCA's material. Any complaints regarding the PPCA were generally based on the confusion generated by having to pay fees to a second organisation for what appeared to be the same activity.

Comparison of approaches

3.25 The overwhelming majority of complaints about the nature and tone of information provided to small business from collecting societies was directed at APRA. Some of the potential reasons for this lies in the

¹¹ PPCA, *Submissions*, pp. S347–S349.

different approaches taken by the two organisations which are outlined below.

Intensity of the campaigns

3.26 APRA's campaign has been described as an 'assault' on the small business community.¹² It seems that thousands of letters were sent to people over a relatively short period of time. This can be contrasted with the approach taken by the PPCA. The Executive Director of the PPCA told the Committee that in the early 1990s, the PPCA did consider '... entering into a bit of a blitz campaign ...' but decided against it due to both economic and style reasons. Instead, the PPCA set gradual targets of 20 to 30 per cent growth each year.¹³

Building a relationship

3.27 The PPCA made a conscious decision to focus on 'building the relationship with small business as we go'.¹⁴ The hope was that through increasing public relations and liaison with those who use music, many business owners would have heard of the PPCA and its activities prior to receiving directly addressed information packages.¹⁵ While APRA had meetings with some industry associations before it launched its campaign, it did not seem to place the same priority on educating and

12 WASBEA *Submissions*, p. S51.

13 Mr Candi, PPCA, *Transcript*, p. 289.

14 Mr Candi, PPCA, *Transcript*, p. 289.

15 PPCA, *Submissions*, p. S347, Mr Candi, PPCA, *Transcript*, pp. 290–291 and 293.

communicating with business operators and their representatives prior to sending out its material. While APRA consulted with legal and marketing advisers prior to finalising the material, it did not hold discussions about the nature of the material with industry groups.¹⁶

Enforcement vs information

3.28 APRA's material was more focused on outlining legal obligations than educating the recipients about the nature of copyright and the reasons behind APRA's licensing scheme. APRA's correspondence used more forceful language and placed a comparatively greater emphasis on the potential legal ramifications of not taking out a licence than that sent by the PPCA. APRA's priority is demonstrated by its use of the term 'National Compliance Campaign' in its material. The aim seemed to be to achieve the highest rate of compliance as quickly as possible.

APRA's response to criticism

3.29 In defending the legalistic nature of its correspondence, Mr Cottle told the Committee that APRA had tried 'softer, more friendly approaches' in their efforts to license small businesses and that these had not resulted in a high rate of compliance.¹⁷

I think that has been a real catch-22 for us because the more that we have pointed out to people that there were legal rights and

16 Mr Cottle, APRA, *Transcript*, p. 53.

17 Mr Cottle, APRA, *Transcript*, p. 55.

obligations involved, the higher the level of compliance we have obtained but also the higher the level of complaint and unhappiness we have received.¹⁸

3.30 In the final public hearing of the inquiry, Mr Cottle drew the Committee's attention to steps APRA had taken in response to the concerns that were raised about its information. He told the Committee that APRA had created a new position of customer services manager within the general licensing department. APRA has also begun developing industry-specific brochures and information sheets. In addressing the criticisms raised about the way in which APRA approached licensees, Mr Cottle conceded that:

In a sense we are compelled to take our punishment in that respect because it is clear that the materials that were sent to people certainly upset a number of them.

However Mr Cottle maintained that:

... if one looks at the materials objectively, one sees they are fair and detailed and reasonable. I sincerely believe we made a brave attempt to convey the context and the reason for the payment of the licence fees.¹⁹

Calls for information campaign

3.31 The Committee received a large amount of evidence about the complexity of the issues involved in the collection of fees for the public performance of music and the difficulties associated with explaining the issues. Representatives from both the business and the music industry acknowledged the need for greater education amongst the business

18 Mr Cottle, *APRA, Transcript*, p. 53.

19 Mr Cottle, *APRA, Transcript*, p. 755.

community about the nature of intellectual property and copyright collecting societies. The lack of understanding amongst small businesses about copyright was recognised as being one of the primary causes of the reaction to APRA's compliance campaign.²⁰

3.32 Many people called for an information campaign to educate small businesses about copyright and the way that collecting societies administer rights on behalf of copyright owners.²¹ While some people believed that this was the responsibility of the collecting societies themselves, others suggested that the Government should play a role in educating the community about the law.

3.33 It was acknowledged that there were difficulties in successfully educating businesses about copyright. As the Copyright Council argued:

The task of improving awareness and understanding of copyright for people who have not sought that information can be hampered by a sense of 'information overload' on their part, and it can be difficult to find effective ways of communicating information about copyright to people who find they already have a lot of other new information to deal with. Nevertheless, we submit that the way forward is to improve awareness and understanding of copyright in small business ...²²

20 Ausmusic, *Submissions*, p. S220; VACC, *Submissions*, p. S274; RCIAA, *Submissions*, p. S436; Mr Perjanik, *Transcript*, p. 313.

21 Elizabeth P Fisher, *Submissions*, p. S3; NMA (Vic), *Submissions*, p. S109; COSBOA, *Submissions*, p. S304; RCIAA, *Submissions*, p. S436; SBDC (WA), *Submissions*, p. S482; Townsville Enterprise, *Submissions*, p.687; Ms Harmer, VECCI, *Transcript*, p. 437.

22 Australian Copyright Council (ACC), *Submissions*, p. S294. See also Mr Cottle, APRA, *Transcript*, p. 755; Mr Perjanik, APRA, *Transcript*, p. 313.

Conclusions

3.34 There is a high level of confusion and misunderstanding about the nature of the public performance right and the collecting societies which administer the right.

3.35 Information sent to small businesses:

- in the case of APRA, did not have a customer focus or take a business friendly approach;
- in some cases, failed to clearly explain the nature of copyright and of the obligations of small businesses to pay copyright royalties;
- in the case of APRA, failed to acknowledge that small businesses may be required to obtain licences from more than one collecting society;
- in the case of APRA, was highly legalistic and focused on compliance rather than explanation. The material seemed to be based on an underlying presumption that the business was using music, demanding that either a licence or exemption form be completed immediately, rather than making an initial inquiry about whether music was being used at all.

3.36 Many small business operators had been playing music for years without a licence and without the knowledge that a licence was required. A large proportion of these people had little or no knowledge of copyright before receiving correspondence demanding either the

payment of money or the completion and return of an exemption form. In these circumstances, it is not surprising that many of those receiving the information thought that the licences were a hoax, or construed it to be threatening. A prudent organisation may have considered placing a greater emphasis on preliminary education and communication with industry bodies prior to sending out such demanding and compliance based correspondence.

3.37 The Committee welcomes the changes that APRA has made to its licensing program during the course of the inquiry. The Committee hopes that the feedback provided during the inquiry about APRA's written correspondence will assist APRA when it designs new material for the purposes of contacting potential licensees.

Recommendation 1

The Committee recommends that the Australasian Performing Right Association and the Phonographic Performance Company of Australia, in consultation with the Council of Small Business Organisations of Australia and other relevant peak industry organisations, develop an information campaign designed to educate the small business community about the law in relation to public performance of music and the obligations of those people who play music in public.