



**Australasian Performing Right Association Limited (APRA) & Australasian Mechanical
Copyright Ownership Society Limited (AMCOS)**

Submission to the Department of Communications, Information Technology and the Arts.

Review Of The Regulation Of Content Delivered Over Mobile Communications Devices

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The Manager
Mobile Content Review
Broadcasting Division
Department of Communications, Information Technology
and the Arts
GPO Box 2154
CANBERRA ACT 2601

Dear Madam/Sir

APRA and AMCOS welcome the opportunity to make a submission to the review of regulation of content delivered over mobile communications devices.

By way of background, Australasian Performing Right Association (APRA) is a non-profit service organisation established in 1926 and administers the rights of the world's composers, songwriters and publishers in Australia and New Zealand. APRA represents over 38,000 Australasian writers and publishers through direct membership, and over 1.6 million writers and publishers throughout the world under reciprocal, bilateral contracts with similar overseas service organisations. APRA administers the Performing Rights in music: that is, the rights of *performance in public* and *communication to the public*. Since 1997 APRA has also managed the music reproduction rights licensing business of Australasian Mechanical Copyright Owners Society (AMCOS) including record manufacturing, broadcast mechanicals, certain print rights and production music.

APRA and AMCOS are supportive and enthusiastic about developments within the telecommunications and information technology industries that allow consumers and businesses to benefit from the provision of content over mobile communications networks. APRA and AMCOS understand that these industries do not wish to be hampered with onerous content regulation requirements; however, it is also important that measures are put in place to ensure that the interests and rights of Australian and foreign authors and copyright owners are considered and protected in circumstances where their works are being utilized over mobile networks. APRA and AMCOS wish to put forward suggestions that will allow for the growth of the mobile content industry whilst allowing copyright owners an effective means of protecting their rights.

APRA and AMCOS believe that the appropriate approach to a review of mobile content should include measures to regulate illicit content. Illicit content is any content that breaches, incites or encourages breaches of a law of the Commonwealth, or a law of the States or Territories of Australia. Such content may include X or RC content, gambling services as well as content that infringes the rights of copyright owners.

A broad-based view of illicit mobile content will allow for an efficient regulation regime that addresses the interests of a wide range of stakeholders, and will create a consistent approach to

regulating content delivered over mobile communications devices. APRA and AMCOS see no benefit in creating a divergent approach to regulating mobile content that seeks to separate the treatment of different types of illicit content. APRA and AMCOS submit that carriers and service providers are the best placed parties in mobile content business models including premium voice, premium SMS/MMS and proprietary networks to expeditiously assist in the prevention of illicit mobile content dissemination. As parties that derive considerable revenue directly from the provision of mobile content, it is appropriate that they bear some liability in relation to that content.

Issue 2: Report on the type of audiovisual services and related features that are available or are being developed for mobile devices and platforms in Australia and overseas.

By way of background, the use of copyright musical works in the mobile content environment will invariably involve the *reproduction* and the *communication* of those copyright works. The reproduction and communication of musical works are acts comprised in the copyright in each work - section 31(1)(a)(i) and (iv) of the *Copyright Act* 1968 (Cth).

As an example, APRA and AMCOS have been licensing the use of copyright musical works sold as mobile phone ringtones since early 2001. The APRA ringtone licence authorizes the *communication* of the musical work (as a ‘ringtone’) from a storage device (e.g. a server) to the customer’s handset, whilst the AMCOS licence authorizes the *reproduction* of the musical work (as a ‘ringtone’) onto storage devices for the purpose of operating a ringtone service, as well as the *reproduction* of the ringtone onto the customer’s handset.

The same principles apply to APRA and AMCOS’ current licensing arrangements for the downloading of full length digital audio tracks and music videos to mobile handsets.

APRA and AMCOS frequently meet with industry to discuss the copyright implications of new mobile content services that utilise musical works.

We note that services continue to develop in the mobile arena and APRA and AMCOS have also developed licensing arrangements for the following services.

- i) Ringback or callback tone services – where subscribers to a ringback tone service may select music for their callers to listen whilst the caller waits for the subscriber to answer their phone.
- ii) The streaming of audio and audio visual content containing musical works to mobile devices over higher bandwidth mobile networks.
- iii) The use of mobiles/mobile internet access to provide a search and billing facility for downloads of audio recordings to PCs.
- iv) Song dedication services to mobile phones (the recording of a personal message with a song delivered to a friend or relative).
- v) Karaoke-ringtones (a music MIDI file delivered with lyric content designed to scroll across the screen synchronized with playback of the music).
- vi) Phonographic ringtones (‘richer’ ringtones that in which the work is embodied in a sound recording rather than a MIDI file).

- vii) Song recognition services (using a mobile handset to transmit – via a standard call – music to central database, in order to receive a return-SMS containing details of the song).
- viii) Video streaming to mobile phones, including the retransmission of existing terrestrial services, on-demand delivery of news/sport programming and music videos.

APRA and AMCOS note the financial relationship in the value chain of parties responsible for enabling the provision of mobile content.

In APRA and AMCOS' experience, revenue derived from mobile content is shared amongst carriers, service providers and content providers. For the mobile content industry in Australia, each of these parties has a vested commercial interest in achieving high volumes of revenue directly related to mobile content provision.

APRA and AMCOS submit that where carriers and service providers:

- i) receive financial benefit directly related to enabling the provision of mobile content, and***
- ii) where they have the ability to terminate the provision of that content;***

they should bear some liability to ensure that the content is not illicit content.

APRA and AMCOS submit that the TISSC Code of Practice, in its current form, be given the force of law.

APRA and AMCOS submit that the ACA's Interim Consumer Protection Principles and Procedures for Premium Rate and Intranet Services, in its current form, be given the force of law.

APRA and AMCOS further submit that an appropriate method to protect Australian consumers and copyright owners from unlicensed content is by way of take down notices issued to carriers and service providers in respect of unlicensed content to which they enable access to, and are in a technical position to terminate access to.

APRA and AMCOS submit that a central facility – similar to AusRegistry's WHOIS search service - be made available, whereby the public can determine the identities of mobile Internet content hosts, responsible for hosting illicit content.

Conclusion

Mobile carriers and service providers are increasingly procuring, hosting, marketing, delivering and billing for content. Their role in relation to mobile content provision is becoming more akin to a broadcaster. It is not appropriate for mobile carriers and service providers to operate under regulations that do not acknowledge their fundamental position in the provision of these services.

In terms of this review “Illicit Content” must include any content that breaches, incites or encourages breaches of a law of the Commonwealth, or a law of the States or Territories of Australia including copyright infringement.

In instances where carriers and service providers receive financial benefit directly related to enabling the provision of illicit mobile content, and where they have the ability to terminate the provision of that illicit content, it is a fair, reasonable and efficient regulatory measure to apportion some liability to these entities in relation to illicit mobile content.

APRA and AMCOS remain keen to work with the Department of Communications, Information Technology and the Arts as well as industry and other stakeholders to introduce fair and workable arrangements to achieve these goals.

Yours faithfully

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