

‘Still No Good: APRA’s non-commercial licensing amendments and what they mean for Creative Commons users’

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Historically, APRA members have not been able to use Creative Commons licences. This is because, in Australia (and New Zealand) when a musician becomes a member of the Australasian Performing Right Association Limited (APRA) they give up control of part of their music. Like many collecting societies around the world, APRA requires a full assignment of the member’s performing rights of all past, present and future works. Assigning the rights to the collecting society allows more efficient administration and enforcement of the royalty collection process, increasing the ease and utility of the system for APRA members and users alike. However, the assignment of rights to the collecting society also has disadvantages. In particular, it presents compatibility issues with online business and distribution models.

To address this licensing shortfall in the APRA model, in late 2008 APRA introduced a “Noncommercial Licence Back” option for worldwide, noncommercial licensing of musical works online. APRA has had two similar mechanisms for regaining control of works in the APRA repertoire—“opt out” and “license back”—for some time. However, limitations in the terms of these mechanisms meant that musicians still had no (legal) ability to communicate their musical works online. This paper will examine the limitations of the new Noncommercial Licence Back, explore what is being done to address the incompatibility of the Creative Commons and performing right society systems internationally and will propose alternatives to the Licence Back that could accommodate Creative Commons while preserving musician’s ability to continue to access the benefits of APRA.