

Copyright Code Review
Director, Economic Research
Bureau of Communications and Arts Research
Department of Communications and the Arts

By online submission.

AMPAL submission to the Bureau of Communications and Arts Research in response to the Draft Report on the Review of Code of Conduct for Australian Copyright Collecting Societies

AMPAL

The Australasian Music Publishers' Association Limited (AMPAL) welcomes the opportunity to respond to the Bureau of Communications and Arts Research's Draft Report on the Review of Code of Conduct for Australian Copyright Collecting Societies (the Report).

AMPAL is the trade association for music publishers in Australia and New Zealand. Our members include large multi-national companies as well as many small businesses. AMPAL's members represent the overwhelming majority of economically significant musical works enjoyed by Australians.

Music publishers invest in songwriters across all genres of music. They play a critical role in nurturing and commercially exploiting their writers' musical works and providing returns to songwriters. AMPAL and our members also recognise the immense cultural and artistic significance of the works that music publishers represent.

We note that the review of the Code of Conduct for Copyright Collecting Societies (the Code) will examine the role of the Code in promoting fair and efficient outcomes for both members and licensees of copyright collecting societies in Australia. The Department of Communications and the Arts has invited stakeholder submissions on the Draft Report. We set out our comments below.

AMPAL members are also members of the Australasian Performing Right Association (APRA) and the Australasian Mechanical Copyright Owners Society (AMCOS) and we endorse their joint submission.

AMPAL also refers to its submission dated 29 September 2017 in response to the discussion paper released by the Department.

Comments on the Draft Report

Firstly, AMPAL's position is that:

- the Code meets its rationale and objectives, including promoting confidence and participation in the system, and mitigating any potential market power issues where these occur in relation to collecting societies;
- the Code promotes transparency, accountability and good governance, and the Code contains sufficient monitoring and review mechanisms to achieve this, and
- the Code represents best practice compared to other domestic and international codes and guidelines.

AMPAL welcomes the Bureau's finding in the Draft Report that '[o]verall the Code has had a positive

effect on the conduct and operation of collecting societies'¹ and that there has been 'a strong track record of compliance with the Code'.²

AMPAL submits that copyright collecting agencies such as APRA AMCOS play a central role in reducing transaction costs, and that APRA AMCOS operates transparently, efficiently and at best practice. This submission does not seek to respond to all recommendations made in the Draft Report. Rather it seeks to re-affirm AMPAL's satisfaction with the current Code and its confidence in APRA AMCOS' operations. AMPAL welcomes any opportunity to improve the practices of APRA AMCOS, however it is submitted that APRA AMCOS already operates at best practice in respect of its governance and transparency arrangements.

Therefore in response to Draft Recommendations 4, 5, 6 and 7 in the Draft Report, AMPAL recognises the immense and clear information that APRA AMCOS makes available to licensees on available licences and how fees are determined. APRA AMCOS has comprehensively demonstrated a willingness to enter into fair and flexible music licensing arrangements, and notes the Department's observation that 'APRA AMCOS and PPCA, for instance, have undertaken wide-ranging consultation in developing new schemes for the use of music'.³ AMPAL submits that licensees are currently provided with sufficient information as to how their licence fees are calculated, and no additional measures are currently needed.

The essential role that the Copyright Tribunal holds should also be noted, whereby any licensee or potential licensee may request a determination by the Copyright Tribunal on the terms of any licence. The Copyright Tribunal must take into consideration any competition issues, and also has the power to make the ACCC a party to any proceedings. Therefore collecting societies are prevented from unreasonably refusing or imposing terms of a licence.

Regarding transparency, AMPAL notes that distribution rules and practices of APRA and AMCOS are determined by its boards of directors and are publicly available. It is not appropriate, contrary to what the Productivity Commission in its inquiry into intellectual property arrangements seemed to suggest,⁴ for licensees to receive details of the APRA AMCOS member to whom licence fees are distributed, nor the amounts of distributions made to individual copyright holders including music publishers. This clearly is the subject of private contract, and is confidential, commercially sensitive information between APRA AMCOS and its individual members. It should be noted that the Code Reviewer in 2015 agreed with this position in his triennial review.⁵ Therefore it is also submitted that no additional measures are currently needed to achieve greater transparency in the distribution of funds by APRA AMCOS.

Conclusion

AMPAL thanks the Department for the opportunity to make this submission to in response to the Draft Support. AMPAL supports APRA AMCOS' submission and reiterates its confidence in the governance, transparency and accountability of APRA AMCOS' operations. AMPAL submits that the Code remains fit for purpose in balancing the interests of copyright collecting societies and licensees. Please contact me if we can be of any further assistance.

Matthew O'Sullivan
General Manager

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¹ Draft Report, page 7.

² Ibid.

³ Ibid, page 17.

⁴ Productivity Commission, 2016, Intellectual Property Arrangements, Inquiry Report No. 78, page160.

⁵ K. Lindgren, 2015, *Supplementary Report of the Code Reviewer upon a Review of the Operation of the Code of Conduct of the Copyright Collecting Societies of Australia*, page 17.