



AUSTRALIAN
COPYRIGHT COUNCIL

**Submission in response to review into the efficacy of the Code of Conduct for
Australian Copyright Collecting Societies**

September 2017

BACKGROUND

The Australian Copyright Council (ACC) welcomes the opportunity to participate in the bureau's review of the Code of Conduct for Australian Collecting Societies.

The ACC is an independent, non-profit organisation. Founded in 1968, we represent the peak bodies for professional artists and content creators working in Australia's creative industries and Australia's major copyright collecting societies. That is, we represent the collecting societies covered by the Code and their members. A full list of our members is attached at Appendix 1.

This submission will therefore focus on the collecting societies and their members although we note that we also provide services to licensees.

Question 1: To what extent is the Code meeting its original purpose: to ensure collecting societies operate 'efficiently, effectively and equitably'? If it is not meeting its original purpose, do the Code's stated objectives need to be revisited to better deliver on its purpose?

As the Discussion Paper acknowledges, the Code is but one component of regulation to which copyright collecting societies in Australia are subject. For example, copyright collecting societies are subject to general provisions relating to corporations, competition, and consumer laws, in addition to specific regulation under the Copyright Act. This is acknowledged in the Code itself.

In this context, the Code is but one vehicle for ensuring that copyright collecting societies operate efficiently, effectively and equitably. For example, clause 2.8 of the Code deals with education and awareness. While the collecting societies do some of this work themselves, much of this activity occurs under the umbrella of the ACC (as it did prior to the establishment of the Code). See, for example, our information sheet on Copyright Collecting Societies.

http://www.copyright.org.au/acc_prod/AsiCommon/Controls/BSA/Downloader.aspx?iDocumentStorageKey=4e5d0255-143d-481a-bc7e-5ff57ad90b64&iFileTypeCode=PDF&iFileName=Copyright%20Collecting%20Societies

In addition, the ACC provides pro bono legal advice to members and licensees of collecting societies as part of its legal advice service.

In our view, the Code is still meeting its original purpose, although we welcome suggestions as to possible amendments.

Question 2: How effective is the Code in regulating the behaviour of collecting societies? Does it remain fit-for-purpose?

The Code is 'light-touch' in its regulation of collecting societies, however, in our view it operates effectively as part of the regulatory framework to moderate the behaviour of copyright collecting societies.

Question 3: Is there sufficient clarity as to how the Code interacts with the broader regulatory framework? Should the Code be modified to help parties better understand the broader legislative obligations of collecting societies?

Clause 2.1 of the Code requires participants to observe the legal framework, however, it does not specify how the framework interacts with the Code. Some

material explaining the regulatory environment for copyright collecting societies would be useful. There are a number of ways this could be done, for example, in the Code itself, by the Department or even by the ACC (if this were appropriate).

Question 4: Considering the differences in the way different collecting societies operate, is a framework in which a single code applies to all societies effective?

Copyright collecting societies differ in many ways, such as their membership, the rights they administer, their age, their size, and whether they are declared or voluntary. These factors all impact on the culture of an organisation.

The notion of an industry code supposes that there are some high-level principles that apply to the industry as a whole. In our submission, this continues to be the case for copyright collecting societies in Australia. We therefore favour an overarching code for all copyright collecting societies.

Question 5: What have been the impacts of the internet on the collecting society business model?

The internet has impacted business models in general. Collecting societies are best placed to comment on how the internet has affected their specific business models. However, as a general observation, it would be fair to say that the internet has reduced the market power of copyright collecting societies in Australia.

Question 6: What administrative costs has digitalisation enabled collecting societies to reduce or avoid? How has digitalisation impacted on the way collecting societies collect and distribute funds?

The collecting societies are best placed to respond to this question.

Question 7: Are additional measures needed to ensure licensees have greater transparency over how their licence fees are calculated? If so, how could this be achieved?

The Copyright Tribunal of Australia has jurisdiction to deal with disputes over licence fees. In the ACC's view, additional transparency measures are not required, although we would be happy to consider any proposals for change.

Question 8: What additional measures may be needed to achieve greater transparency in the distribution of funds? How could these measures be implemented?

Distributions are of vital importance to the members of copyright collecting societies. As far as the ACC is aware, the collecting societies have adequate systems in place to deal with queries and complaints in relation to distribution. It is worth noting that there is a balance to be struck between transparency and protecting commercially sensitive or private information.

Question 9: Should there be more guidance around the treatment of undistributed funds held in trust? If so, what specific issues should this address?

From time to time, there is controversy over the expenditure of funds by copyright collecting societies. The recent publicity around Copyright Agency's 'fighting fund' is a case in point. Ultimately, each collecting society is responsible to its members. Hence, this is essentially a matter of internal governance for each society and its Board. The ACC remains to be convinced that more guidance about the treatment of undistributed funds would be helpful.

Question 10: How could safeguards be strengthened to improve reporting and financial record keeping by collecting societies? What would be the impact of more robust reporting obligations?

This is outside the ACC's area of expertise, although like all systems, there is no doubt room to streamline the financial reporting of collecting societies. The question will be whether the benefits of more robust reporting obligations outweigh the costs.

Question 11: How effective is the Code in facilitating efficient, fair and low-cost dispute resolution for members and licensees? What alternative models could be considered to provide these outcomes?

We understand that all collecting societies use alternative models for dispute resolution. The Code is one mechanism for encouraging this. There are also other mechanisms, for example the system established by APRA|AMCOS pursuant to their authorisation by the ACCC.

Question 12: Does the Code Reviewer have sufficient powers to make collecting societies accountable for their compliance with the Code? If not, what alternative monitoring and review processes could be introduced to improve outcomes for members and licensees?

We are not aware of any instance where a collecting society has refused to comply with the recommendations of the Code Reviewer. We would therefore query the need for greater powers.

Question 13: Does the Code adequately balance the interests of members and licensees? If not, what criteria could be used to assess whether that balance is achieved?

We query whether it is the role of the Code to balance the interests of members and licensees. This is not apparent from the objectives set out in clause 1.3 of the Code nor the explanatory memorandum. In our view, the role in relation to members and licensees is more properly described as ensuring that there are appropriate complaints handling mechanisms in place.

Question 14: Does the Code need to be improved to better ensure collecting societies act in the best interests of their members? How could members be given a greater say in a collecting society's key policies and procedures, such as the distribution of funds and use of non-distributable amounts?

As noted above, the directors of each collecting society are required to act in the best interests of their members under the Corporations Act. In addition, the Constitution of each collecting society provides for the appointment of member directors to the Board. This being so, we are uncertain whether the Code has a role to play in ensuring that collecting societies act in the best interests of their members. In our view, this is the primary obligation of all copyright collecting societies.

Question 15: What would be the costs and benefits of prescribing the Code under legislation? What factors should be considered and which are most important in weighing the costs and benefits?

The obvious benefit of prescribing the Code under legislation would be the enhancement of public confidence in the Code. Careful analysis of the costs and benefits would be required before taking that step, particularly in light of Government policy in regard to 'red-tape'. It may be that public confidence in the Code and in collective management generally can be improved by other mechanisms.

Question 16: Which international regulatory models, or aspects thereof, could best meet the objectives of improving the fairness and efficiency of copyright collecting societies? How feasible is the introduction of these models in Australia and what would be the impact on collecting societies, members and licensees?

We understand that the EU Directive was developed in response to particular issues arising in the collective management system in Europe. Having said that, we think that it may be worth looking at how the United Kingdom has implemented its obligations under the Directive.

Please do not hesitate to contact us if we can provide any further information or assistance.

Fiona Phillips

Chief Executive Officer

Appendix 1: Australian Copyright Council Affiliates

The Copyright Council's views on issues of policy and law are independent, however we seek comment from the 25 organisations affiliated to the Council when developing policy positions and making submissions to government. These affiliates are:

Aboriginal Artists' Agency
Ausdance
Australian Directors Guild
Australian Institute of Professional Photography
Australian Music Centre
Australasian Music Publishers Association Ltd
Australian Publishers Association
APRA AMCOS
Australian Recording Industry Association
Australian Screen Directors Authorship Collecting Society
Australian Guild of Screen Composers
The Australian Society of Authors Ltd
Australian Writers' Guild
Authentic Design Alliance
Christian Copyright Licensing International
Copyright Agency|Viscopy
Illustrators Australia
Media Entertainment & Arts Alliance
Musicians Union of Australia
National Association for the Visual Arts Ltd
National Tertiary Education Industry Union
Phonographic Performance Company of Australia
Screen Producers Australia
Screenrights