



**Response to Discussion Paper:
Review into the efficacy of the Code of Conduct
for Australian Collecting Societies**

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SUMMARY OF POSITION

We welcome the opportunity to participate in this review of the efficacy of the Code of Conduct for Collecting Societies (the Code) in promoting fair and efficient outcomes.

The Discussion Paper recognises that ‘collective administration will generally be a more efficient way to manage copyright than *individual* administration, particularly for low-value transactions’. This reflects the view of the Australian Consumer and Competition Commission (ACCC), quoted approvingly by the Productivity Commission (PC):

... collective licensing provides a particularly efficient way to overcome the high transaction costs of licensing copyright in markets where the value of individual rights may be low relative to transaction costs and it may be difficult or impossible to predict in advance precisely which rights may be required.¹

Copyright Agency will provide the Department with an economic paper that provides further analysis of the efficiencies associated with collective administration.

As noted in the Discussion Paper, the Code forms part of a broader regulatory framework, that for Copyright Agency includes the Copyright Tribunal, provisions in the Copyright Act and Regulations, and government guidelines for declared collecting societies.

Most matters raised by licensees with the PC are part of commercial negotiations regarding licence fees and collection of information regarding licensees’ use of content. In the event that negotiations fail (which is rare), these issues can be determined by the Copyright Tribunal.

The PC was under the mistaken impression that licensees need information about distribution payments in order to negotiate directly with rightsholders rather than relying on the statutory licence. It is information about usage by licensees, not distribution, that can have a role in licence fees. Licensees have more information about that than Copyright Agency does.

As noted in the Discussion Paper, technological developments have affected the way people create, distribute and consume content. This has contributed to licensing developments such as:

- extension of the education statutory licence to digital content and uses in 2000;
- extension of all our other licences to cover digital content and use; and
- licensing of digital-only businesses, such as news aggregation services.

Technological developments have enabled new avenues for direct licensing, meaning increasing competition to Collective Management Organisations (CMOs) and pressure to ensure they perform in the interests of members.

CMOs have also taken advantage of technological developments to introduce efficiencies such as automated payments and communications, and collection and processing of data.

We recognise that there are opportunities to increase confidence in collective management of rights, particularly through targeted communications for different groups of stakeholders. For example, we are developing additional communications on how our distribution processes work. Our operations are complex, however, given the range of revenue sources, data and other factors, and this poses some challenges for communicating those processes in ways that address the needs and interests of a range of stakeholders. We must also have regard to our obligations regarding privacy and confidentiality when disclosing information.

¹ Submission 35 to Productivity Commission inquiry, at p8.

OUR MEMBERS

Copyright Agency currently has more than 31,000 members. They include writers, artists, surveyors, publishers and other CMOs.

Copyright Agency also manages Viscopy, which represents about 13,000 Australian artists and estates, and manages the artists' resale royalty right.

OUR LICENSEES

We have a range of different licences and licensees.

- **Education statutory licence:** licence negotiations for the entire school sector are conducted with the Copyright Advisory Group for the COAG Education Council (CAG). Licence negotiations for the 39 major universities are conducted with Universities Australia. CAG also negotiates for most of the TAFE sector, apart from Victoria (for which there is a separate agreement). We also have individual agreements with about 1,000 other education institutions, such as registered training organisations.
- **Government statutory licence:** licence negotiations are conducted with the Commonwealth, and with each state and territory. There are separate agreements for government sales of survey plans.
- **Voluntary licences:** these include 'blanket' licences for corporations (such as pharmaceutical companies, PR agencies and local councils); media monitoring licences (for example with Isentia and Meltwater); fine art licences (e.g. with auction houses); and pay-per-use licences (primarily for newspaper content and journal articles).
- **Artists' resale royalty:** the Code also covers the artists' resale royalty right, which we are appointed by the Minister for Communications and the Arts to manage.

CONCERNS IDENTIFIED BY PRODUCTIVITY COMMISSION

The PC identified three areas of concern raised by participants in the inquiry:

1. Licence fees charged to users
2. Deductions from licence fees collected for rightsholders
3. Licensees' access to information

We address each in turn.

Licence fees charged to users

Licence terms can be referred to the Copyright Tribunal for determination if negotiations fail.

In addition, as outlined above, the bulk of Copyright Agency's licence fees are negotiated with peak bodies that are monopsonies.

Fees to rightsholders (administrative costs)

The PC noted in its report that expense ratios for Australian collecting societies are on par with collecting societies overseas. For example, the PC referred to the expense ratio for the UK PRS for Music (13%).²

Copyright Agency's expense to revenue ratio has been around 14% for the last five years.

² The PC also referred to the expense ratio for the UK Copyright Licensing Agency (CLA) as 10.8%. However, most *distribution* of moneys collected by CLA is done by other CMOs which deduct their (additional) administrative fees: primarily Publishers Licensing Society (6%), Authors Licensing and Collecting Society (9.5%), Design and Arts Copyright Society (25%), and Picstel.

Licensees' access to information

The PC referred to concerns raised by licensees about information available to them, particularly regarding distribution of licence fees. Licensees said that they want the information to assist them to negotiate directly with rightsholders, rather than rely on statutory licences.

The PC said:

The specific issue of how collecting societies calculate the remuneration payable to rights holders generated significant debate. Information of this nature is important because it enables licensees to better bargain with individual rights holders.

...

The Commission is particularly concerned by the submissions of statutory licence users that they are not able to access the information needed to allow them to effectively negotiate directly with rights holders. The purpose of the statutory licence systems is to ensure licensing solutions are available in cases where transaction costs would prevent ordinary bargaining from occurring. The fact that users have indicated their desire to negotiate directly with rights holders, but are unable to do so, suggests arrangements are not supporting efficient and fair market outcomes

The PC's comments raise three issues:

1. licensees' freedom to negotiate directly with rightsholders rather than rely on statutory licences
2. licensees' access to *usage* information
3. licensees' access to *distribution* information

Licensees' freedom to negotiate directly with rightsholders

Statutory licences are compulsory for rightsholders but not for users. Licensees can be eligible for a statutory licence, but choose not to use it.

The education statutory licence explicitly refers to licensees' ability to negotiate with rightsholders directly. The data access protocol, agreed between the education sector and Copyright Agency, expressly states that the survey data can be used by the schools' representatives for this purpose.

The government statutory licence does not explicitly set this out, but governments clearly can, and do, get direct licences.

If a licensee does choose to rely on a statutory licence, then it must deal with the declared collecting society, if there is one for the relevant use. Under the government statutory licence, Copyright Agency is the declared society for copying, but not for communication. Copyright Agency is, however, agent for its members for communications by governments. On this basis, Copyright Agency covers communications in its agreements with governments.

Under s184(4), a government can notify a rightsholder that it has communicated the rightsholder's work, and the rightsholder can negotiate terms or seek a determination by the Copyright Tribunal under s183(5). A government can do this even if the rightsholder is a Copyright Agency member.

Licensees' access to usage information

CAG and UA have access to *all* the data collected from surveys in schools, universities and TAFEs.

In addition, Copyright Agency has agreed to provide CAG with *additional* information from its research: the name of the publisher for content in the survey data. CAG requested this information to assist it to approach rightsholders directly.

Governments provide limited data about usage of content under the government statutory licence. They have access to all the data provided.

Appendix 3 shows samples of the data provided to CAG from the surveys in schools.

Licensees' access to distribution information

It is not clear how access to *distribution* information assists schools or governments to 'better bargain with individual rights holders'.

Schools have access to all the usage information. They can use this information, if they choose, to approach rightsholders whose content has been recorded as used in surveys in schools. If a rightsholder gives schools a direct licence (free or paid), then that content is excluded from the 'volume estimates' taken into account in licence negotiations.

Governments provide limited usage data. Licence fees from governments are distributed, following international standards, according to the best approximation we can make of content available for use in that sector. It is difficult to see how this assists governments, when they themselves know what content they are using (and we don't).

Our position remains that we should not disclose information about payments to a particular member without that member's consent. This is consistent with the Code, and takes account of legal obligations relating to privacy and confidentiality.

We outline the information provided about distributions in our response to Question 8.

Avenues for licensees' grievances

The PC said:

The arrangements for reviewing and amending the code are also deficient, particularly given the recent supplementary review found that the grievances of licensees could not be accommodated within the existing system.

This statement is misconceived in a number of respects.

The Code Reviewer said, at [45], that he was:

[not] prevented from recommending the adoption of amendments sought by the State and CAG by the fact that on their face they would not be for the immediate benefit of the two declared societies

But following careful consideration of all the arguments made by NSW and CAG, he did not think that the case was made: see [46].

He also referred at [64] to the fact that 'some of the information sought is confidential to the members of Copyright Agency and Screenrights' and noted that 'those collecting societies take the view, with some justification, that an undertaking by the State and CAG to preserve that confidentiality does not meet the problem. The consent of the copyright owners who provided the information would be required.'

Finally, the Code Reviewer referred to other avenues for NSW and CAG, including 'application to the Copyright Tribunal for a determination fixing equitable remuneration which, according to State and CAG, would be an amount that would excluded unwarranted administrative expenditures'.

The 'existing system' is *not* confined to the Code. It includes the broader regulatory framework referred to in the Discussion Paper at p12, and in particular it includes the Copyright Tribunal.

QUESTIONS

Question 1: To what extent is the Code meeting its original purpose

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?

The purpose of the Code is set out in the objectives listed in Clause 1.3. From Copyright Agency's perspective, the implementation of the Code is meeting these objectives.

As discussed elsewhere, the Code is part of a broader framework that ensures that collecting societies operate efficiently, effectively and equitably.

Efficiency can be assessed by measures such as the cost to revenue ratio, and the time between collection and distribution of licence fees. For example, the licence fees paid by the school sector for 2017 were received by April 2017, and nearly all distributed by 30 June 2017. Effectiveness can be assessed by both ease of access to content for licensees (for example, by comparing the costs that would be incurred if direct permissions were required for each use), and fair compensation to rightsholders. Equity can be assessed by both the processes for developing licence schemes, and distribution policies and practices (for example, in taking account of different classes of rightsholders).

Appropriateness of the Code's objectives

The Australian Code's objectives are similar to those in other Codes, and we think they remain appropriate, particularly when viewed in the broader regulatory context.

In *Principles for Collective Management Organisations' Codes of Conduct*, the British Copyright Council (BCC) says:

The purpose of such codes is to set the standards CMOs apply in terms of their dealings with members and licensees and in the operation of their internal governance processes and to provide members and licensees with core information about CMOs.³

The BCC goes on to say that the objectives of the framework it sets out in its document are:

1. *to provide a framework for codes of conduct for individual CMOs which will:*
 - *identify the rules governing a CMO's governance structure, licensing arrangements, royalty collection and distribution practices, administration charges;*
 - *clarify service levels for members and licensees;*
 - *set out requirements for rates to be fair and consistent across all users;*
 - *provide for transparency in terms of access to licence tariffs;*
 - *explain the implications of a member's mandate to a collective management organisation;*
 - *clarify complaints/disputes procedures for members and licensees.*

³ http://www.britishcopyright.org/files/9714/1312/6511/BCCPGP_Policy_Framework_250512.pdf

2. *to promote generally a visible commitment by CMOs in the UK to providing awareness of and access to information about copyright and the role and function of CMOs in administering copyright on behalf of their members and providing licensing solutions to users;*
3. *to promote confidence in CMOs and their effective administration of copyright and delivery of licensing solutions in the UK;*
4. *to promote confidence generally in the commitment of CMOs collectively to principles of good governance, transparency and accountability in their management of copyright and provision of licensing solutions in the UK; and*
5. *to thereby enhance the experience of members and licensees when dealing with CMOs and empower them to fairly and properly benchmark the service they are receiving.*

The UK Copyright Licensing Agency says:

Our Code of Conduct sets out details about our organisation, licences and licence fees and the standards of behaviour and service we aim to achieve in our dealings with licensees and other copyright users. In particular it details key service standards and sets out a written complaints procedure for the first time.

Although written to apply specifically to CLA, the Code aligns with, and incorporates guidelines published by the British Copyright Council in its document 'Principles of Codes of Conduct for Collective Management Organisations.

The Code demonstrates commitment to best practice in customer service and internal governance.⁴

The UK Publishers Licensing Society Code of Conduct says:

The purpose of this code

This Code of Conduct sets out the service levels publishers can expect of PLS when acting on their behalf in administering the voluntary collective licensing of their published material. It provides an overview of how PLS operates, the standards it adheres to, and the procedure for seeking redress if a publisher considers PLS has fallen short in any aspect of its dealings with the publisher, including failure to adhere to this Code of Conduct.⁵

The UK Design and Artists Copyright Society (DACS) says:

This Code sets out the principles governing membership of DACS, our licensing and other activities, our governance framework and the standards that can be expected from us. It also explains what to do if things go wrong, and how to complain about matters covered by this Code.⁶

It is the role of the broader regulatory and governance framework, not the Code on its own, to 'ensure collecting societies operate efficiently, effectively and equitably'. That framework includes the Copyright Tribunal, requirements for declared collecting societies, and members' entitlements under Corporations law.

⁴ <https://www.cla.co.uk/code-of-conduct>

⁵ <https://www.pls.org.uk/about/code-of-conduct/?p=3>

⁶ <https://www.dacs.org.uk/about-us/code-of-conduct>

Question 2: Effectiveness of Code in regulating the behaviour of collecting societies

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

Each annual review of collecting societies' adherence to the standards of the Code by the Code Reviewer includes review of a society's management of complaints to the society, and submissions made directly to the Code Reviewer. Code Reviewers have referred to complaints and submissions as indicators of concerns that standards are not being met.

Copyright Agency has always implemented Code Reviewers' recommendations. Some examples are:

- In 2013, the Arts Law Centre of Australia made a submission to the Code Reviewer complaining about lack of transparency in communicating deductions made from licence fees collected by Copyright Agency and distributed by Viscopy. The Code Reviewer said in his report that 'the position should be made clear on the Viscopy website'. Copyright Agency (which has been managing Viscopy's services since 2012) amended both the Copyright Agency and Viscopy websites, in consultation with the Arts Law Centre.
- In 2013, Copyright Agency reported a complaint from a member about delay in receiving licence fees allocated to him by the UK Authors Licensing and Collecting Society. The Code Reviewer said Copyright Agency should pay the member the interest that accrued during the delay. Copyright Agency paid interest to the complainant and to other members whose payments had been delayed by the same circumstances.

The Code itself is reviewed every three years by the Code Reviewer, who invites submissions from all stakeholders. This is an in-built process that enables the Code to be amended to take account of new circumstances. The collecting societies have always implemented Code Reviewers' recommendations regarding amendments to the Code.

Question 3: Interaction of Code with broader regulatory framework

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?

The interaction of the Code with the broader regulatory framework is sometimes not well understood, and it would be useful to explain this more clearly. Ways of doing this include an amendment to the Code itself, and an explanatory note (such as the one recently added to explain the distinction between a complaint and a dispute).

For example, the UK Copyright Licensing Agency's Code includes:

11. What the Code does not Cover

Whilst not exhaustive, examples of issues not covered by the Code are set out below:

11.1 As we pay the licence fees we receive to ALCS and PLS in the proportions determined in an independent valuation process, and pay international monies to the CMOs overseas with whom we have agreements, any copyright owner with a question or complaint relating to membership, distribution policy, payments and repertoire management should address this in the first instance to those organisations.

11.2 Issues to do with the interpretation or application of copyright law are not covered by this Code. If you are a copyright user, but do not have a CLA Licence, and

are contesting the need to take a CLA Licence, that is a matter has to be resolved ultimately through a legal process and which cannot be dealt with in this Code or through the complaints handling procedure.

11.3 Complaints about the licence fees we charge or the other terms and conditions of our Licences are not a matter for this Code, as they are subject to the jurisdiction of the Copyright Tribunal (see Section 5.6).⁷

Question 4: Single Code effective given differences?

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

A single Code is effective, including because it simplifies and standardises the review processes by the Code Reviewer. This helps ensure that the review process is efficient, particularly for the Code Reviewer, and effective.

Having said that, the Code can set different standards for different types of collecting societies. For example, the recently introduced clause 2.9 only applies to declared collecting societies.

Question 5: Impacts of the internet

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

Licences cover content from the internet

Copyright Agency's licences (both statutory and voluntary) now enable use of content from the internet that would otherwise require a licence from a copyright owner. Terms of use for content available on the internet vary. For example, terms of use for some content allow only personal use, meaning use by organisations requires a licence (unless there are other reasons that a licence is not required, such as the application of an exception).

The statutory licence for education was extended to cover digital content and digital uses of content (e.g. scanning and making available online) in 2000. The amendments were intended to enable, amongst other things, 'reasonable access to copyright material available on the internet'.⁸

And we are developing licence schemes for internet-only businesses, such as online media monitoring services.

Other CMOs (e.g. the UK Copyright Licensing Agency) have similarly extended their licence offerings to cover content from the internet.⁹

Monitoring of content used from the internet

We receive data from schools and universities about use of content from the internet. We process that data in accordance with data processing protocols agreed with CAG and UA. Under those protocols, we exclude from the 'volume estimates' that are part of the licensing negotiations any uses that are allowed by the terms of use for the website. While there are ways we can improve the process, at the moment this is the agreed objective basis on which

⁷ https://www.cla.co.uk/sites/default/files/Code_of_conduct_17.pdf

⁸ Explanatory Memorandum to Copyright Amendment (Digital Agenda) Bill 1999, page 1: 'Users of copyright material, such as libraries, archives and educational institutions, are concerned about being able to obtain reasonable access to copyright material available on the Internet.'

⁹ <https://www.cla.co.uk/cla-schools-licence>; <https://www.cla.co.uk/higher-education-licence>

we distinguish uses that are 'directly licensed' (i.e. under the terms of use) from those that would require permission but for Copyright Agency's licence. We are in discussions with licensees on improvements that could be made to the processes for collecting and processing this data.

New licensing frameworks for internet-based business models

The internet is continuing to enable the development of new business models, some of which are posing challenges for licensing.

This is particularly so for online business models that are based on business benefits from third party content, such as advertising revenue or collection of data. There are also important policy questions about value of content to these businesses, and their role in supporting the sustainability of new content for the longer term.

We also note the comments of the US Copyright Office on the limits of the US copyright system to facilitate mass digitisation of content such as occurred with the Google Books project.¹⁰ The Copyright Office recommended a pilot program of extended collective licensing (ECL), based on frameworks that have been operating for many years in Scandinavia, and have been more recently introduced in the UK, France and Germany.

On the other hand, there are licensing arrangements in place for new business models such as online news aggregators and media monitoring companies. We have, for instance, recently provided licences that cover new services and new entrants.

And the recent amendments to the education statutory licence mean that, for the future, the licence will be more easily adaptable to both the development of new business models for content, and new uses of content by licensees.

Increase in copyright fees collected

Licence fees have increased from new sources, such as online news aggregators.

Licence fees from schools and universities have increased due to increased student numbers. Agreements with the school sector have been based on an agreed price per student per year. The price has remained the same in dollar terms since 2013, so has effectively decreased when CPI is taken into account. The licence fee for the university sector is an agreed amount for the entire sector. But if the amount is divided by the number of students, the effective price per student has decreased since 2014.

Licence fees from the government sector have decreased significantly due to changes in the ways that governments acquire and consume content.

Question 6: Impacts of digitalisation

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?

Some data for distribution is acquired digitally. For example, we acquire comprehensive data from media monitoring services and full text database services. We also receive data on sales and/or lodgements of survey plans digitally.

For education licensing, we receive data on digital use in digital form. Data on photocopying is still acquired in paper form and scanned by us for processing. We are in discussions with school and university representatives about alternative ways to collect data in the future.

¹⁰ <http://copyright.gov/orphan/reports/orphan-works2015.pdf> at p72

These include, for example, automated data feeds from multi-function devices in schools. Developing these alternative mechanisms requires cooperation from licensees, as well as mechanisms to filter out irrelevant data, and information that is private or confidential.

In the UK, Copyright Licensing Agency has developed a successful online content repository and management system in consultation with the university sector. We are developing digital products and services that will facilitate the discovery, delivery and reporting of content under the education licence and the disabilities provisions. These products are designed to deliver productivity increases, reduced costs and administrative efficiencies to both Copyright Agency and its licensees.

Question 7: Transparency on calculation of licence fees

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 majority of licence fees collected by Copyright Agency are negotiated with peak bodies. These are principally CAG (for the school sector and most of the TAFE sector), and UA for the university sector.

All licences are subject to review by the Copyright Tribunal. While most Tribunal cases involve licence fees in the millions of dollars, the Tribunal is also able to accommodate applications relating to relatively small amounts of money, and the costs for an applicant are not disproportionate to the money at stake.

Survey data from schools and universities

By agreement with school and university representatives, surveys of usage are conducted in a sample of schools and universities each year. The survey designs are agreed with the school and university representatives, and conducted by an independent research company.

The survey data is 'processed' by Copyright Agency staff in accordance with data processing protocols agreed with school and university representatives. The protocols are available on Copyright Agency's website.¹¹

Broadly, the protocols aim to:

1. exclude from the data any uses not made under the licence; and
2. identify uses that have a relatively higher value (in accordance with determinations of the Copyright Tribunal).

There are agreed data access protocols that provide school and university representatives with access to all this data. The data processing protocols are reviewed and renegotiated periodically having regard, in part, to the data provided under the data access protocols.

Role of survey data in negotiation of licence fees

Recent agreements with the school sector have been for a flat, capped rate for each student, irrespective of school level, school type (government, Catholic or independent), or state.

The 'page rate per student' from the usage surveys is one input into the commercial negotiations. Copyright Agency and the school sector acknowledge that the current electronic use survey is not a reliable method of capturing information about digital use in schools.

¹¹ <https://www.copyright.com.au/about-us/what-we-do/collecting-and-distributing-royalties/data-processing-protocols/>

In the negotiations for the current agreement, it was agreed that content viewed by students directly from the internet would not be monitored. It was also agreed that all communications of artistic works to enable viewing in class were excluded.¹²

Other key inputs into the commercially negotiated rate are discounts for:

- 'small portions';¹³
- 'black line masters' (workbooks that purchasers are licensed to copy in certain circumstances); and
- 'non-original' content.

These discounts have not been not negotiated individually, partly because of the limited data in relation to each. The outcomes of the commercial negotiations have been based on a whole range of factors and uncertainties, including many factors about which there is incomplete or limited data.

Other uses excluded from the rate negotiations include:

- uses of digital content under direct licences (such as subscriptions); and
- 'interactive' content.

All the matters above mean it is difficult to apportion the licence fees paid to any particular type, source or use of content as the negotiated amount is a global one for all types, sources and uses of content.

Question 8: Transparency on distribution of funds

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

Information currently provided

We recognise that we need to develop some new ways of communicating our distribution processes and outcomes to a range of stakeholders with differing levels of interest. Amongst other things, we are looking at what has worked well for other CMOs.

Our current communications include:

- general information:
 - distribution policy;
 - administrative fees;
 - distribution schedule, linked to information sheets on each distribution;
- information in annual report, such as:
 - breakdown of licence fees from the education sector and governments by class of recipient;
 - infographic showing licence fees received from overseas, and licence fees paid to recipients overseas;
 - estimate of the overall proportion of licence fees from schools and universities that reach individual creators, directly and indirectly;
 - breakdown of unpaid allocations rolled over after four years;
 - the titles most copied in schools; and
 - summaries of the results of the surveys in schools.

¹² In accordance with s28(7).

¹³ That is, uses made under ss135ZG and 135ZMB.

- information to recipients of distribution payments:
 - a payment summary and detailed spreadsheet to recipients of distribution allocations;¹⁴
 - allocation and payment information via the members' online accounts; and
 - information on request via the Member Services team.

There are different distribution processes for different sources of licence fees, and different types of data. The processes are complex, as they are aimed at producing the fairest outcome in the light of incomplete data, and the need to contain costs. This presents challenges for communication, but we are exploring ways in which these processes could be communicated more clearly.

Responses to additional information requested by stakeholders

We have provided additional information in the annual report from time to time, in response to requests from stakeholders.

In 2015, we included the following additional information requested by the NSW Department of Justice (NSW) and the Copyright Advisory Group to the COAG Education Council (CAG):

- a more detailed breakdown of primary recipients of licence fees;
- a breakdown of recipients of licence fees paid by governments; and
- a breakdown of funds held in trust, by licence fee source.

In 2016, in response to a request from the Department of Communications and the Arts, we included the following additional information:

- estimate of the indirect payments to writers and illustrators by publishers; and
- a graphic showing the payments received from overseas, and paid to overseas recipients.

Each year, we ask the Department about additional information to be included in the annual report, and we have included all additional information requested.

Disclosure of amounts paid to particular recipients

As noted above, licensees have asked Copyright Agency to disclose information about payments to particular members. Our position is that we should not disclose information about payments to a particular member without that member's consent.

As also noted above, we do not think that this information has any bearing on licensees' ability to seek direct licences.

Question 9: Guidance on treatment of undistributed funds

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

The Guidelines for Declared Collecting Societies anticipate that there will be some allocations that remain unpaid at the end of the trust period. These amounts are reported in some detail in our annual reports.

These amounts are currently applied to offset operating cost deductions, so effectively passed on to members.

As noted in our annual reports and outlined in our financial statements, the Board decided in 2013 to establish, over time, a reserve fund (known as the Future Fund), having regard to the circumstances at the time and its considered position on what was in the best interests of the membership overall. We provide more information about this in our response to Question 14.

Question 10: Reporting and financial record keeping

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?

In addition to the obligations in the Code, Copyright Agency is subject to requirements in the Copyright Act and the Resale Royalty Right for Visual Artists Act regarding the preparation, auditing and provision to the Minister of its financial accounts.

Copyright Agency also includes financial information in its report of operations, prepared for the Minister and tabled in Parliament. As noted elsewhere, Copyright Agency has added information to this report from time to time, in response to requests from the Minister or the Department.

There are also provisions in the Copyright Regulations, Copyright Agency's Constitution and Corporate Governance Statement.

Copyright Agency's Corporate Governance Statement refers, among other things, to the need to 'minimise cross subsidisation of other licence schemes from revenue received under the statutory schemes', reflecting Clause 22 of the Guidelines for Declaration of Collecting Societies.

Clause 22 also says that [r]eporting to the Attorney-General need only concern the society's statutory operations'. However, in the interests of transparency, Copyright Agency's annual reports cover all aspects of its business.

Statutory licences and 'taxpayer funds'

The Discussion Paper refers to the PC's statement that:

consistent with the requirement for governments to spend taxpayer funds efficiently, there is also a case for licence fees paid under the statutory licences to be held, and accounted for, separately by the declared societies.

Copyright Agency is certainly accountable to its *members* for its expenditure from, and distribution of, licence fees. This accountability is covered by the Code (as well as other parts of the governance framework, including the Corporations Act and Copyright Agency's Constitution).

Copyright Agency is also accountable to the Minister for meeting requirements in the Act and Regulations for declared collecting societies.

In addition, Copyright Agency appreciates that *general* confidence in collective management of licence fees is supported by information about how licence fees are collected and distributed, including deductions from licence fees and the time between collection and distribution.

But governments' responsibilities to ensure that public monies are spent properly relate to matters such as selection of vendor and agreement on price, not what a vendor does with the money paid.

And, of course, not all the licence fees paid under the education statutory licence are government appropriations. The fees include those from private schools, private colleges, universities and a range of other non-government entities.

Commonwealth PGPA Act

Expenditure by the Commonwealth is covered by the Public Governance, Performance and Accountability (PGPA) Act. Its objectives include 'to use and manage public resources properly'. The Act is relevant to the Commonwealth's agreement with Copyright Agency regarding equitable remuneration payable under the statutory licence for governments.

The Act provides that a Commonwealth official must exercise his or her powers, perform his or her functions and discharge his or her duties:

- 'with the degree of care and diligence that a reasonable person [in the official's position] would exercise'; and
- 'in good faith and for a proper purpose'.

As we understand it, the Commonwealth official who approves the amount to be paid to Copyright Agency in respect of the Commonwealth's reliance on the government statutory licence must meet these criteria. These criteria are directed to proper discharge of the Commonwealth's obligation to pay equitable remuneration under s183A, and to agree terms under s183(5).

Other legislation regarding appropriate expenditure of government funds

We understand that there is other legislation that deals with appropriate expenditure of government funds, such as the Victorian Integrity and Accountability Legislation Amendment (A Stronger System) Act 2016.

But this legislation goes to governments' decisions about whether, and to what extent, they will choose to rely on the government statutory licence, and the considerations taken into account in determining equitable remuneration or reasonable terms. In any given instance, a government can decide to not use a piece of content, or to approach the rightsholder for a direct licence, or to rely on a licence with Copyright Agency.

If a government enters a direct licensing arrangement, for example with a publisher of a full text database, the government does not ask the publisher to account for all its revenue-sharing arrangements with content creators, or its obligations to shareholders.

Code Reviewer comments

In the course of the 2014 triennial review of the Code, the NSW government and CAG made submissions regarding expenditure of 'public funds'. They argued that

the declared collecting societies should be required to account in the same way as other bodies that are entrusted with the role of collecting and distributing public funds.

The Code Reviewer said at [62]:

In my view, there is a flaw in this argument. It equates the declared collecting societies with official bodies that expend monies for public purposes. But those for whom Copyright Agency and Screenrights collect are, or are substantially, private interests – the copyright owners. Those private interests are represented by a declared collecting society in the same way that the private interests of manufacturer, distributor, wholesaler and retailer are served in the sale by the retailer to the ultimate consumer.

Question 11: Dispute resolution methods

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?

Copyright Agency has complaint and dispute resolution procedures that comply with the requirements of the Code.¹⁵

There is also a dispute resolution process for members who are in dispute with each other about entitlement to receive Copyright Agency allocations. The number of these disputes is relatively low.

Disputes with licensees are resolved by commercial negotiation. In rare cases, they are resolved by the Copyright Tribunal. These have been disputes involving millions of dollars in licence fees. The Tribunal is empowered to order mediation.

APRA AMCOS has developed a successful independent dispute resolution framework called Resolution Pathways. While there are some differences in the number and types of disputes for Copyright Agency, this could be a model for Copyright Agency to adopt.

Access to the Copyright Tribunal

While most cases before the Tribunal involve licence fees worth millions of dollars, and legal costs commensurate with such high stakes, the Tribunal has also successfully resolved much smaller cases, sometimes involving self-represented applicants.

For example, recent proceedings involving the use of a Bruce Woodley song resulted in a determination of about \$190,000, and an order that the Commonwealth pay the applicants' costs (despite settlement offers having been made by the Commonwealth).

The Tribunal has considerably more flexibility than courts to determine the processes that will apply to resolve an application made to it.

Dispute resolution for matters in a negotiation

In the 2005 report on annual compliance with the Code, the then Code Reviewer addressed complaints by the States and Territories Copyright Group and CAG that Copyright Agency did not 'offer alternative dispute resolution when impasses are confronted in negotiations'.

The Code Reviewer rejected the complaints:

... alternative dispute resolution is normally spoken of in the context of possible or actual Court proceedings, not as a step in a process of negotiation. ... In respect of government or educational copying, the alternative dispute resolution mechanism chosen by Parliament is the Copyright Tribunal.

He went on to say:

One of the reasons ... for [the Tribunal's] constitution ... was to protect weak licensees against a potentially strong society; but the State governments are certainly not at any disadvantage either in negotiations (in which they start with a statutory right to copy) or before the Tribunal.

Question 12: Powers to ensure compliance with Code

Does the Code Reviewer have sufficient powers to make collecting societies accountable for their compliance with the Code? If not, what alternative

¹⁵ <http://copyright.com.au/about-us/governance/compliments-complaints/dispute-resolution/>

monitoring and review processes could be introduced to improve outcomes for members and licensees?

Copyright Agency has implemented all recommendations made by the Code Reviewer from time to time. There are no instances in which Copyright Agency has refused to implement a recommendation.

Copyright Agency is also accountable to the Minister. From time to time the Minister or Department has requested that additional information be included in Copyright Agency's annual report. Copyright Agency has always implemented these requests.

Question 13: Balance of members' and licensees' interests

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?

The objectives of the Code are not directed to 'balancing' of the interests of members and licensees, but rather setting out the standards of service expected of collecting societies for all customers (both members and licensees). The obligations to members are met without any detriment to the obligations to, or interests of, licensees. The objectives, for both members and licensees, relate to:

- **information** about copyright and collective management;
- **confidence** in collecting societies and administration of copyright;
- **standards of service**; and
- **complaints and disputes** procedures.

In his supplementary report on the 2014 triennial review of the Code of Conduct, the Code Reviewer noted Copyright Agency's obligations to members, and went on to say, at [42]:

When the Code was adopted, the directors of Copyright Agency and Screenrights thought it to be in the best interests of their members for those societies to agree to be bound by the Code, including the obligation found in clause 2.3(b) to ensure that their dealing with licensees were 'transparent'.

Statutory licence funds that 'cannot be paid to rightsholders'

The Discussion Paper refers to the following statement in the PC report:

any funds that cannot be paid to rights holders (for example, because the works are orphaned) should be returned to government rather than distributed to other rights holders who have no connection with the work used.

Unfortunately, the PC did not have a good understanding of how licence fees from the education and government sectors are distributed.

The agreements for the education and government sectors set a fixed price for the period of the agreement. The fee allows licensees to copy and share all content for which they would otherwise need a licence. The extent to which they choose to rely on the licence is up to them.

Under current arrangements, not every rightsholder whose content is used will receive a payment, because we do not receive data about every use made under a licence.

Currently, Copyright Agency uses data from surveys in schools and universities to distribute licence fees. This data is far from comprehensive, and Copyright Agency's distribution process involves a series of decisions aimed at apportioning the licence fees as fairly as possible given the available data, and the need to keep costs reasonable.

The fact that a particular rightsholder does not receive a distribution payment has no bearing on the value of the blanket licence to the licensee. If it did, we would be refunding the licence fees for all the uses that are *not* picked up in the surveys of usage. Those surveys occur in quite a small sample of schools each year. It also makes no sense to pay refunds to licensees for instances in the survey data in which the data is insufficient for *us* to identify a rightsholder. The fact that we have been provided with insufficient data does not mean that the content is an ‘orphan work’; the rightsholder may well be identifiable with sufficient information.

In addition, the all-you-can-eat licence fee represents the overall value of the blanket licence to the licensee. This includes the value of the content itself, but also the value of not having to search for rightsholders. For ‘orphan works’, it essentially outsources the ‘diligent search’ that would otherwise be required.

The Guidelines for declared societies contemplate that there will be unpaid allocations at the end of the trust period:

Amounts which remain in the trust fund at the expiration of the trust period would fall into general revenue for distribution in respect of the then current accounting period (or the period just terminated if that happens to coincide with the expiration of the trust period).

For licence fees paid by governments, we currently receive very limited data about actual usage. We distribute these funds based on availability of content for use, using indirect data sources such as library data on book and journal titles used by governments.

Question 14: Members’ input into policies and procedures

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?

In his supplementary report on the 2014 triennial review of the Code of Conduct, the Code Reviewer noted at [38]:

Ultimately, the legal duty of the directors of Copyright Agency and Screenrights, as companies limited by guarantee, is to act in the interests of their respective members as a whole.

Copyright Agency’s Corporate Governance Statement provides (at 8.1):

The Board shall ensure that Copyright Agency’s communications with members, other rightsholders and other stakeholders encourage their participation in governance, Copyright Agency licence schemes and other benefits offered by Copyright Agency.

Copyright Agency’s objects

Copyright Agency’s Constitution provides that its objects include:

- to promote and foster the interests of owners of copyrights and neighbouring rights.
- to support or oppose any legislation which might affect the Company’s interests.

The Constitution forms part of members’ agreements with Copyright Agency and with each other.

Future Fund

In 2013, the Board decided to establish a reserve fund over time, using undistributed funds and interest, having regard to the potential threat to members’ interests from recommendations in the Australian Law Reform Commission’s draft report to both repeal the statutory licence for education and introduce a new exception based on the US ‘fair use’ exception. The Board’s decision was influenced by recent developments in Canada, whereby changes to the law led to education institutions cancelling their licences with the Canadian CMO and issuing ‘fair dealing’ guidelines to staff. The CMO instituted proceedings in both the Copyright Board (similar to our Copyright Tribunal) and the courts. Earlier this year, a Canadian court held that the guidelines adopted by York University did not reflect Canadian law, and that the university’s actions had harmed Canadian authors and publishers. That decision has been appealed by York University, however, which means that there will be further delay in resolving the legal issues associated with the liability to pay licence fees.

The Board’s rationale for setting up this fund was outlined by Copyright Agency’s Chair in the attached article.

The fund is currently capped at \$15m. Unpaid allocations and interest are now being returned to members as an offset against administrative costs (as noted in our Distribution Policy).

The Board periodically reviews the fund, having regard to members’ best interests, and approves any expenditure from it.

The following amounts have been spent from the fund on activities directed to raising members’ and public awareness about the policy recommendations of the ALRC and the PC:

2014–15	2015–16	2016–17	Total
\$58,337	\$120,822	\$160,510	\$339,669

Members want and expect advocacy

In 2016, Copyright Agency conducted a member survey. Responses were received from 1,856 (16%) of the members who had received a payment in the last two years, and 982 (5%) of the members who had not received a payment in that time.

One of the survey questions asked members how important it was to them that Copyright Agency promotes and defends sources of creator income such as payments for copying in schools and universities.

The vast majority of recipients said it was very important (77%) or quite important (17%). The results were virtually the same for recipients who had not received a payment in the last two years as they were for recipients who had received a payment.

Paid in last 2 years	Important	Not important	Neither	Unsure
yes	94.62%	1.86%	2.81%	0.72%
no	94.61%	2.45%	2.45%	0.49%

Question 15: Costs and benefits of prescribing the Code under legislation

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 Code is voluntary in the sense that collecting societies choose to be bound by it, but all societies have elected to be bound by it, so there would be no change if the code were to be

mandatory. Assuming that making the Code mandatory would involve cost, it is difficult to see the benefit that would ensue.

The collecting societies have implemented the recommendations made by the Code Reviewer from time to time. There is no evidence that the societies are unwilling or unable to address issues of concern that have been identified by the Code Reviewer.

It is true that the Code Reviewer has, at times, rejected submissions made by licensees, but after very careful consideration. This does not mean that the societies have failed to comply with the Code, or that the Code itself is deficient.

2005 annual compliance report

In his 2005 report on compliance with the Code, the Code Reviewer (then Mr James Burchett QC) said in his report that he had received

Two substantial submissions that were generally hostile to the performance of at least one of the societies in the implementation of the Code (and in a number of respects to the Code itself) ... The Code Reviewer has considered the attacks with care and has reached the conclusion that they are ill-founded.

The submissions were from the States and Territories Copyright Group and from CAG.

The submissions ‘focused on delays caused by lengthy negotiations’, but also dealt with some other issues, including access to information associated with surveys of usage, and communications by Copyright Agency regarding the status of negotiations with CAG.

The submissions also raised issues related to the Code itself (rather than compliance with it), that the Code Reviewer noted had not been raised in the recent review of the Code itself.

Supplementary report on 2014 triennial review

In his supplementary report on the 2014 triennial review of the Code itself, the current Code Reviewer (Dr Kevin Lindgren AM QC) said that he was not convinced that the NSW Government and CAG had made a case for amendment of the Code, for reasons that he described in detail, but he referred to other avenues open to NSW and CAG.

ACCC Guidelines on voluntary industry codes

The ACC *Guidelines for developing effective voluntary industry codes of conduct* say that reasons for developing a voluntary industry code include:

- it is more flexible than government legislation and can be amended more efficiently to keep abreast of changes in industries’ needs;
- it is less intrusive than government regulation;
- industry participants have a greater sense of ownership of the code leading to a stronger commitment to comply with the Act;
- the code acts as a quality control within an industry; and
- complaint handling procedures under the code are generally more cost effective, time efficient and user friendly in resolving complaints than government bodies.

Question 16: International regulatory models

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?

The most useful point of comparison may be UK implementation of the EU Directive on collective management. We are not sure to what extent the Directive has been implemented in other countries.

We have annexed a table we provided to the PC that compares Copyright Agency's reporting with the UK regulations on the EU CRM Directive.

Question 17: Other domestic industry codes

Are there features of other domestic industry codes that could be adopted to improve the fairness and efficiency of Australia's collecting societies?

The ACCC Guidelines for developing effective voluntary industry codes of conduct may provide a useful starting point for consideration of other industry codes.¹⁶

¹⁶ <https://www.accc.gov.au/business/industry-codes/voluntary-codes>

APPENDIX 1: NEWSPAPER ARTICLE BY COPYRIGHT AGENCY CHAIR (1 MAY 2017)

<http://www.theage.com.au/comment/copyright-doesnt-hinder-technological-development-it-encourages-it-20170428-gvv078.html>

COPYRIGHT DOESN'T HINDER TECHNOLOGICAL DEVELOPMENT, IT ENCOURAGES IT

Kim Williams

Published: May 1 2017 - 11:45PM

Steve Jobs said: "From the earliest days at Apple, I realised that we thrived when we created intellectual property. If protection of intellectual property begins to disappear, creative companies will disappear or never get started."

Bravo Steve, I say! His products embodied his inherent belief that technological development and respect for artists and their copyright go hand in hand. Production companies and artists may not always be happy with Apple's terms of trade, but fundamentally Apple respects copyright.

Regrettably, the recent report by the Productivity Commission into our intellectual property arrangements has failed to heed this lesson. It makes radical recommendations that favour technology companies but which would have a deeply detrimental impact on film and television makers, writers, artists and journalists ability to tell Australian stories.

The Productivity Commission appears to believe that its recommendations will miraculously lead to a profusion of Silicon Valleys around the country. But its report does not demonstrate how the change in legislation it proposes will lead to this innovation. Moreover, it pays no attention to what actually drives innovation – namely access to capital, human talent, a business culture that supports risk, and certainty in underlying settings.

It also fails to recognise the success stories of many digital businesses in Australia, which have thrived because we have strong copyright and intellectual property arrangements. These businesses include Seek, REA, Atlassian and even the AFL – which runs one of the most successful and innovative sports codes in the world.

Having dismally failed to demonstrate how their proposed changes will drive innovation, the Productivity Commission flies headlong into recommendations that would seriously undermine the ability of Australian creators to keep producing content.

Take their recommendation that the government introduce a new "fair use regime". This is an American legal principle that would allow large enterprises to use copyright material for their own purposes either for free or at very significantly reduced rates to what they currently pay today under our copyright system.

PwC has estimated that the introduction of such a system in Australia would result in the loss of GDP in the order of \$1 billion. This loss occurs because less money would flow to Australian production companies and artists, which would undermine their ability to keep investing and telling Australian stories. In short, it's a hit job on Australian creators.

One of the many disturbing things about the Productivity Commission's approach is that they appear to take the dismay at their recommendations expressed by major Australian companies that create Australian content as a measure of the soundness of the commission's arguments. But they do not pause to consider whether the repeated cheers from lobby groups like the Australian Digital Alliance mean they've got the balance wrong.

The fact is that the Australian Digital Alliance, far from being a disinterested advisory group, is a lobby group which is supported by large technology companies and education interests.

There is nothing wrong with such groups putting their views. But these views should be taken for what they are – the views of a lobby group.

Peter Martin, one of Fairfax Media's economic writers, recently questioned why the Copyright Agency Board had set money aside over a period of time, capped at \$15 million, to defend the rights of its 43,000 members.

The reason for provisioning this money is simple: any board that does not prudently provision for the risk of a calamitous regulatory change which is being pushed by entities as powerful as the Australian Digital Alliance would be guilty of extreme negligence.

By the end of this financial year we will have distributed close to \$465 million to members since we started gradually setting aside monies for the fund in 2013. The money we have distributed supports creativity. We have a duty to our members to ensure they continue to get fair payment for use of their work by education enterprises and businesses.

None of the above is to say that we should not continue to evolve the Copyright Act. This is why we strongly supported the recent changes that simplify the education licence provisions, make it easier for libraries to exhibit material and enhance access to copyright material for the visually impaired.

But clearly any changes to our current settings must remember what Steve Jobs said: technology development and content creation are not in opposition to each other – they must go hand in hand or creative companies will disappear or never get started.

Kim Williams is Chair of the Copyright Agency

APPENDIX 2: COMPARISON OF UK REGULATIONS ON EU CRM DIRECTIVE WITH COPYRIGHT AGENCY REPORTING

8 July 2016

Prepared for Productivity Commission.

Type of information	UK Regulations				Copyright Agency practice
	Who information must be made available to				
	Individual right holders	Other CMOs ¹⁷	Users	The public	
Right holder contact details	M				√ ¹⁸
Rights revenue per category of rights and per type of use	M				√ ¹⁹
Period during which the use took place, for which rights revenue was attributed	M				√ ²⁰
Deductions in respect of management fees	M	M			√ ²¹
Other deductions	M				√ ²²
Rights revenue which is outstanding	M	M			√ ²³
Deductions in respect of (agreed) deductions	M	M			√ ²⁴
Information on any licences granted or refused		M			√ Licences granted No power to refuse licence ²⁵
Relevant resolutions of the General Assembly of Members		M			√

¹⁷ with which we have a representation agreement

¹⁸ All members have an online account that enables them to update their contact details.

¹⁹ Provided in the payment spreadsheet accompanying each payment: copyright.com.au/membership/payments/your-payment-summary/your-payment-spreadsheet.

²⁰ Provided on the distribution schedule webpage: copyright.com.au/membership/payments/distribution-schedule/

²¹ Provided on payment summary (copyright.com.au/membership/payments/your-payment-summary/) and Administrative Fees webpage (copyright.com.au/membership/administration-fees/)

²² See fn 5

²³ See annual reports (copyright.com.au/about-us/governance/annual-reports)

²⁴ See fn 5

²⁵ Copyright Agency manages statutory and 'voluntary' (based on members' authorisation) licences. The combination of the statutory licence and Copyright Tribunal provisions in the Copyright Act mean a collecting society cannot refuse to license.

Type of information	UK Regulations				Copyright Agency practice
	Who information must be made available to				
	Individual right holders	Other CMOs ¹⁷	Users	The public	
Information on works and other subject matter, rights, and territories covered OR because works and other subject-matter cannot be determined, the types of works, the rights, and territories covered	On request	On request	On request		✓
Statute				P	✓ ²⁶
Membership terms (where not covered by statute)				P	✓ ²⁷
Standard licensing contracts and standard applicable tariffs				P	Most licences are negotiated. Licences for the education and government sectors are negotiated at a sectoral level. Terms for licences purchased via the online RightsPortal are displayed (for agreement) in the course of the transaction.
The names of those who manage the business of the CMO				P	✓ ²⁸
General policy on distributions				P	✓ ²⁹
General policy on management fees				P	✓ ³⁰

²⁶ copyright.com.au/about-copyright/

²⁷ copyright.com.au/membership/join-us/terms-and-conditions/

²⁸ copyright.com.au/about-us/our-people/; copyright.com.au/about-us/our-people/our-board/

²⁹ copyright.com.au/wp-content/uploads/2015/04/R01024-Copyright-Agency-distribution-policy-2015-03-27.pdf

³⁰ copyright.com.au/membership/administration-fees/

	UK Regulations				Copyright Agency practice
	Who information must be made available to				
Type of information	Individual right holders	Other CMOs ¹⁷	Users	The public	
General policy on deductions (other than management fees), including deductions for social, cultural and educational services				P	√ ³¹
List of representation agreements				P	√ ³²
General policy on use of non-distributable amounts				P	√ ³³
Complaint handling and dispute resolution procedures				P	√ ³⁴

³¹ copyright.com.au/membership/administration-fees; <http://copyright.com.au/culturalfund>; Cultural Fund allocations listed in annual reports (copyright.com.au/about-us/governance/annual-reports)

³² <http://copyright.com.au/about-us/international-affiliates>

³³ copyright.com.au/wp-content/uploads/2015/04/R01024-Copyright-Agency-distribution-policy-2015-03-27.pdf and annual reports.

³⁴ copyright.com.au/about-us/governance/compliments-complaints; copyright.com.au/about-us/governance/compliments-complaints/dispute-resolution; copyright.com.au/membership/payments/disputes-between-members/

APPENDIX 3: SAMPLES OF DATA PROVIDED TO CAG

The following are extract from the data provided to CAG under the Data Access Protocol. They are from surveys in schools in Term 1 of 2016. The 'hardcopy' survey data is from NSW and ACT. The electronic use survey is from all states.

Survey records are processed in accordance with data processing protocols agreed with CAG. CAG has access to the datasets for the 'included' and 'excluded' records.

'ISN' refers to International Standard Book Number (ISBN) or International Standard Serial Number (ISSN). 'BLM' is 'Blackline Master': a workbook whose purchase price includes a licence to photocopy by the purchaser. 'Major work type' means the type of publication (e.g. book, journal, website). 'Minor work type' refers to what was copied from the publication. 'Chapter' refers to an extract of text (it may not be a 'chapter' in the everyday sense of the word).

The datasets also include columns showing: year; term; survey period; survey location; state; and copier number. We have de-identified: Title; Author; Illustrator; ISBN and Publisher.

The data in the following columns is partly from the data provided by survey participants, and partly (and in some cases predominantly) from our research: Author, Illustrator, ISN, Publisher.

'Hardcopy' survey results: non-internet content

The following shows an extract from the dataset from the 'hardcopy' survey for Term 1 of 2016 from NSW and ACT schools. It is the first 30 records from the dataset for material that did not originate from the internet, and were not excluded in accordance with the data processing protocols agreed with CAG. In this small extract, there are multiple copying instances of works published by Publishers 1, 6, 7 and 8. From the entire dataset, one can ascertain all copying instances attributable to each unique publisher, and the total multiplied copies.

Level	Title	Author	Illustrator	ISBN	Publisher	Copy Type	Pages	Copies	Total Copies	Major Work Type	BLM	Minor Work Type
Primary	Title 1	Author 1		ISBN 1	Publisher 1	Photocopy	2	32	64	Book	No	Chapter
Primary	Title 2	Authors 2 & 3		ISBN 2	Publisher 2	Photocopy	1	2	2	Book	No	Artistic Work
Secondary	Title 3	Author 4	Illustrator 1	ISBN 3	Publisher 3	Print From Electronic Source	1	30	30	Book	Yes	Artistic Work
Primary	Title 4	Authors 5 & 6		ISBN 4	Publisher 4	Photocopy	2	24	48	Book	No	Chapter
Primary	Title 5					Photocopy	26	2	52	Book	No	Chapter
Primary	Title 6	Author 7		ISBN 5	Publisher 5	Photocopy	1	21	21	Book	No	Chapter
Primary	Title 7					Photocopy	1	25	25	Book	No	Chapter
Secondary	Title 8	Author 8		ISBN 6	Publisher 6	Photocopy	3	3	9	Book	No	Chapter
Primary	Title 9	Author 9		ISBN 7	Publisher 1	Photocopy	1	30	30	Book	No	Chapter
Secondary	Title 10				Publisher 7	Print From Electronic Source	1	1	1	Other	No	Play
Secondary	Title 11			ISSN 1	Publisher 8	Photocopy	3	1	3	Journal	No	Article
Primary	Title 12				Publisher 9	Print From Electronic Source	24	1	24	Book	No	Chapter
Primary	Title 13					Photocopy	1	22	22	Book	No	Artistic Work
Secondary	Title 14				Publisher 10	Photocopy	2	32	64	Other	No	Chapter
Secondary	Title 15	Authors 10, 11, 12, 13 & 14		ISBN 8	Publisher 6	Print From Electronic Source	1	29	29	Book	No	Chapter
Primary	Title 16	Author 15		ISBN 9	Publisher 7	Photocopy	1	30	30	Book	Yes	Artistic Work
Secondary	Title 17	Author 16	Illustrator 2	ISBN 10	Publisher 8	Photocopy	2	10	20	Book	No	Chapter
Primary	Title 18			ISBN 11	Publisher 1	Photocopy	2	21	42	Book	Yes	Chapter
Primary	Title 19			ISBN 12	Publisher 1	Photocopy	1	62	62	Book	No	Chapter
Primary	Title 20	Author 17		ISBN 13	Publisher 8	Photocopy	2	93	186	Book	No	Chapter

Hardcopy' survey results: internet content

In our processing, we identify photocopying, printing and scanning of material that originated from the Internet. The following is from the first 30 records from the dataset that were *not* excluded in accordance with the agreed data processing protocols.

Website Notice Classification	Level	Title	URL	ISN	Publisher	Copy Type	Pages Copied	Copies	Total Copies	Major Work Type	Minor Work Type
No Terms and Conditions but contains © statement	Secondary	Title 1	URL 1		Publisher 1	Photocopy	5	1	5	Website	Chapter
Personal Use	Primary	Title 2	URL 2		Publisher 2	Photocopy	1	1	1	Website	Artistic Work
Copying Not Permitted - All Rights Reserved	Secondary	Title 3	URL 3		Publisher 3	Print From Electronic Source	1	1	1	Website	Chapter
Copying Not Permitted - All Rights Reserved	Secondary	Title 4	URL 4		Publisher 4	Print From Electronic Source	3	2	6	Website	Music
Personal Use	Secondary	Title 5	URL 5		Publisher 5	Print From Electronic Source	10	1	10	Website	Chapter
No Terms and Conditions	Primary	Title 6	URL 6		Publisher 6	Print From Electronic Source	1	28	28	Website	Chapter
Copying Not Permitted - Unauthorised Copying	Primary	Title 7	URL 7		Publisher 7	Photocopy	1	140	140	Website	Chapter
Copying Not Permitted - All Rights Reserved	Primary	Title 8	URL 8		Publisher 8	Photocopy	1	124	124	Website	Artistic Work
No Terms and Conditions but contains © statement	Primary	Title 9	URL 9		Publisher 9	Photocopy	1	5	5	Website	Artistic Work
Copying Not Permitted - All Rights Reserved	Primary	Title 10	URL 10		Publisher 10	Print From Electronic Source	1	1	1	Website	Chapter
	Primary	Unknown	URL 11			Print From Electronic Source	1	20	20	Other	Artistic Work
Personal Use	Secondary	Title 11	URL 12	ISSN 1	Publisher 11	Print From Electronic Source	1	1	1	Newspaper	Article
Copying Not Permitted - All Rights Reserved	Primary	Title 12	URL 13		Publisher 12	Photocopy	1	12	12	Website	Artistic Work
Personal Use	Primary	Title 13	URL 14		Publisher 13	Photocopy	10	2	20	Website	Chapter
Personal Use	Secondary	Title 14	URL 15		Publisher 14	Photocopy	16	2	32	Website	Chapter
Personal Use	Primary	Title 15	URL 16	ISSN 2	Publisher 15	Print From Electronic Source	2	2	4	Magazine	Article

Website Notice Classification	Level	Title	URL	ISN	Publisher	Copy Type	Pages Copied	Copies	Total Copies	Major Work Type	Minor Work Type
Personal Use	Primary	Title 11	URL 12	ISSN 1	Publisher 11	Photocopy	1	20	20	Newspaper	Article
Personal Use	Secondary	Title 11	URL 12	ISSN 1	Publisher 11	Print From Electronic Source	1	1	1	Newspaper	Article
Personal Use	Secondary	Title 16	URL 17		Publisher 16	Photocopy	6	20	120	Website	Chapter
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Statutory Licence	Primary	Title 18	URL 19	ISBN 1	Publisher 18	Print From Electronic Source	1	2	2	Book	Chapter
Personal Use	Primary	Title 19	URL 20	ISSN 1	Publisher 11	Print From Electronic Source	1	20	20	Newspaper	Article
Statutory Licence	Primary	Title 20	URL 21	ISBN 2	Publisher 19	Photocopy	2	8	16	Book	Chapter

Electronic use survey: included records

The following shows an extract from the dataset from the 'electronic use' survey for Term 1 of 2016. It is from the first 20 records from the dataset for material that were not excluded in accordance with the data processing protocols agreed with CAG.

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Electronic use survey: excluded records

The following shows an extract from the dataset from the 'electronic use' survey for Term 1 of 2016. It is from the first 30 records from the dataset for material that were excluded in accordance with the data processing protocols agreed with CAG.

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