

Report of Review of Copyright Collecting Societies' Compliance with their Code of Conduct for the Year 1 July 2010 to 30 June 2011

INTRODUCTION AND SUMMARY CONCLUSIONS

This report of the Code Reviewer, J. C. S. Burchett, QC, is the ninth annual report assessing the compliance with their Code of Conduct ("the Code") of the following eight societies:

Australasian Performing Right Association Limited ("**APRA**"), Australasian Mechanical Copyright Owners Society Limited ("**AMCOS**"), Phonographic Performance Company of Australia Limited ("**PPCA**"), Copyright Agency Limited ("**CAL**"), Audio-Visual Copyright Society Limited ("**Screenrights**"), Viscopy Limited ("**Viscopy**"), Australian Writers' Guild Authorship Collecting Society Limited ("**AWGACS**") and Australian Screen Directors Authorship Collecting Society Limited ("**ASDACS**"). The practice adopted in previous reports of referring to APRA and AMCOS, which is administered by APRA, where it is unnecessary to distinguish between them, simply as "APRA" will again be followed in this report.

For the purposes of the review, each society reported to the Code Reviewer in respect of its activities covered by the Code; the Code Reviewer personally interviewed senior executives, generally including the Chief Executive, of each of the societies; and the review was widely advertised as an opportunity for submissions to be made: see the Appendix for details.

This report focuses on issues on which the Code focuses, specifically requiring the societies to inform the Code Reviewer concerning (i) their training of employees and agents; (ii) their activities to promote education and awareness concerning copyright and their own role; and (iii) complaints they have received and how complaints have been resolved. But, as in previous years, the conduct of the societies generally, and with respect to other Code obligations, has been examined also. Matters such as governance and the accountability of directors have not called for repetitive mention because, since they were examined in an earlier report, there have not been significant changes.

The Code Reviewer is satisfied, in the terms of cl 5.2(f) of the Code, that good “compliance generally by Collecting Societies with this Code”, during the period under review, has been demonstrated.

COMPLAINTS

In this section of the report details are furnished of the number and nature of complaints against each society and of the society’s responses to any complaints.

Copyright Agency Limited (“CAL”)

CAL has recorded 13 matters as complaints made during the relevant period 1 July 2010 to 30 June 2011 by members or licensees.

1. Although included in CAL’s Complaints Record for the relevant period, this was actually a complaint made in the previous year and fully answered then. Apparently, the complainant publisher, who was not actually a member, had overlooked an explanation of the essence of her query. She was concerned about the requirement of membership to receive a payment and some associated issues, but the issue raised again was the source of the need to join CAL to receive a payment, the complainant having an apparent objection to joining any organisation. A senior employee of CAL explained again by telephone that CAL was not authorised to pay statutory royalties to non-members, and the requirement of the Attorney-General’s Guidelines in this regard was cited to her. The advice was confirmed in writing. No breach of the Code appears in this instance.
2. An author member complained the new electronic payments process gave her difficulties and she would prefer to continue to use the post. A senior employee of CAL contacted her and arranged for her to receive hard copies in future. Also, CAL reviewed the electronic procedure, which had only just come into use, and simplified it.

3. Another member, too, complained about the electronic documentation of a small payment. CAL responded, and the complaint has not been pursued.
4. An author member joined CAL under one name, but she supplied an ABN number showing a different name. CAL amended its records to accord with the ABN number, but neglected to advise the member, who later complained. CAL apologised for the failure to notify, but explained it could only use the legal name. Subsequently, the member had her ABN changed and CAL then amended its records.
5. An author member received a remittance advice concerning a royalty payment as an attachment to an email. The member complained that the full details in the advice thus sent might leave her open to fraud. The electronic payment system was new, and the complaint exposed a flaw in it which was eliminated by CAL within a fortnight. The member expressed satisfaction with CAL's response.
6. Another author member wrote to CAL objecting to *sending* his bank details by email on the same ground, the insecurity of emails. Obviously, if the payment is to be made by direct deposit into a bank account, details are required. But CAL pointed out the details could be sent to it by hard copy, and it provided assistance for the obtaining of the appropriate form through its website. The member wrote thanking CAL "for [its] detailed response".
7. A non-member complained about the receipt of unsolicited emails from CAL. In fact, the complainant had worked with a member on a website, and the member had given CAL this email address. Upon the circumstances being explained, the explanation was accepted. The complainant's email address was removed from CAL's system.
8. A member who was also a teacher participating in a survey, complained of the administrative burden of the survey and suggested an e-learning package for staff training would assist. CAL explained: (a) that individual schools are not surveyed more than once in eight years; (b) that a working party has been established with schools to develop an automated data collection survey; and (c) that an e-learning package for

staff training was actually deployed in the first term of 2011. Plainly, these queries about the survey procedure could not be seen as raising a question under the Code.

9. An author member wrote complaining that the figures provided by CAL related to calendar years. A detailed reply was furnished, explaining the position, and there has been no further correspondence on the matter.
10. A publisher member complained he had not been notified of payments of statutory royalties that may be due. In fact, none of his publications had been picked up by the relevant surveys. Ultimately, a fairly lengthy email correspondence exposed one issue: that the complainant considered he should receive payments in respect of published edition copyright from university and school copiers. However, CAL pointed out that this claim was contrary to its legal advice and to a decision of a Full Federal Court in *Nationwide Newspapers v CAL*, decided in 1996. CAL explained the position, and the complaint does not reveal any breach of the Code.
11. A non-member complained that a poster, intended to inform illiterate persons regarding the resale royalty scheme for artworks, was “racist”, “repulsive” and “offensive”. CAL explained the poster, of which no one else had complained, was designed by a well known indigenous graphic designer to reach persons who could not, or not readily, be reached by written language alone. This method of communicating complex information, of great importance to aboriginal artists, was adopted after consultation with individuals and organisations having long experience in the industry of promoting remote artworks. CAL added to its explanation an invitation to the complainant to make any suggestion to improve the scheme and the awareness of artists concerning their rights. Nothing further has been heard. While such matters inevitably involve subjective considerations, no breach of the Code has been revealed in this instance.
12. A publisher and author member, through a diffuse and lengthy email correspondence, raised in somewhat belligerent terms a number of complaints concerning:
 - (a) the red tape involved in payments;
 - (b) the treatment of illustrations in the calculation of payments;
 - (c) the treatment of “Black Line Masters”; and

(d) the scope of surveys of educational copying.

The complaint brushed aside legal barriers to courses the complainant proposed, or treated the barriers as if they were CAL's responsibility. CAL explained that it could only operate within the law (the Copyright Act) and the arrangements made with the schools for the surveys. It added that it was endeavouring to negotiate improvements to those arrangements, but the sampling survey scheme involved a trade-off between costs, burden and accuracy. It became clear in the correspondence that the complainant was also at odds with educational authorities. CAL's replies gave detailed information; and if the correspondence revealed irreconcilable differences of opinion on numbers of issues, it did not thereby reveal breaches of the Code. It is, of course, the fact that CAL is bound by the Act and by the arrangements (whether laid down by the Copyright Tribunal or by agreement) governing the surveying of copying in schools.

13. A group of publisher members, who published "Black Line Masters" (BLMs), wrote to CAL expressing their concerns about the treatment of copying of BLMs in schools. The question of the evaluation of illustrations was also raised once more. In the main, the correspondence was not really complaining about CAL, but about the legal situation and the behaviour of some teachers. CAL explained it was unable to obtain accurate information as to whether acts of copying of BLM publications were done in reliance on the BLM licence or the statutory licence. Accordingly, the Copyright Tribunal had required it not to pay the full amount on a distribution of statutory licence moneys; it could only pay a discounted amount to allow for the fact that some of the copying would have been done pursuant to the one right, and some pursuant to the other. As regards the treatment of illustrations, CAL referred to s.135ZM of the *Copyright Act 1968*.

Comment

Of these 13 matters, the foregoing analyses show that 10 did not reveal arguable breaches of the Code. There were 2 which arose out of the implementation of a new system without due recognition of a risk of the exposure of some members to fraud; in each of these two cases CAL took prompt remedial action to the expressed satisfaction of the complainants. Such errors are, of course, bound to occur occasionally; but the matters are a reminder that the vigilance of

members cannot always be relied on, and new procedures may require attention to appropriate warnings and guidance. Finally, one complaint involved a failure on the part of someone at CAL to notify a member that a sensitive change had been made to her registration – a matter for which CAL apologised upon the complaint being made, and which was rectified.

CAL's complaints record should be seen against the background that it has the full-time equivalent of 100 employees; it collected in the relevant year licence fees totalling \$117.6 million; it distributed \$121.2 million at an expenditure ratio of 13.1% of total income; and it approved in the same period \$3.4 million in grants from its Cultural Fund. These activities involved a vast number of individual transactions. Should any transaction give cause for complaint, a would-be complainant, whether licensee or member, may readily refer to CAL's complaints handling procedures which are publicised through its website and by information papers. Those procedures involve the offer of assistance in the preparation of a formal complaint, if required. They are kept under regular review by a Complaints Officer, and in conferences with departmental officials of CAL.

Australasian Performing Right Association Limited ("APRA") and Australasian Mechanical Copyright Owners Society Limited ("AMCOS")

APRA has registered the following matters as complaints during the year under report:

1. A member ("the member") who formerly played in a band was registered as owner of the copyright in certain works. Other members of the band later registered as owners of shares in those works. APRA, under Distribution Rule 13, placed royalty payments in suspense pending clarification of these conflicting registrations. The member complained at this decision. APRA pointed out it could not determine the legal question, but it offered the use of its alternative dispute resolution procedures (which was rejected), and to make payments under its discretionary power upon receipt of the member's undertaking to make a refund if ultimately found not to be entitled to the full royalties. That solution was adopted. It would appear that APRA in this instance acted strictly and appropriately in accordance with its Distribution Rule 13, which was amended some years ago specifically to provide the discretion here exercised.

2. A member formally complained that APRA accepted registrations for works without undertaking any validation procedures to verify the accuracy of claims made. APRA responded that it was not feasible for it to determine the correct authorship of particular works. It referred to its more than 60,000 members; the millions of works in its database; and the burden both on it and on individuals which the complainant's approach would impose. It also cited the comments of Jacobson J in Larrikin Music Publishing Pty Ltd v EMI Songs Australia Pty Ltd (2010) 83 IPR 582 at [284-5], [296], [315-6] and [328-9], where his Honour referred, with apparent approval, to APRA's practice of relying on warranties from members to whom it made payments. Although the member asked that the matter be referred to the Code Reviewer as a formal complaint, it has not been shown to raise a question under the Code.

3. A writer member received an incorrect distribution of mechanical royalties from the Japanese affiliate society of AMCOS, JASRAC. The member's royalty accounts were placed on hold pending the ascertainment of the precise position. On investigation, it was found the member had made a publishing agreement with an Australian music publisher which was not a member of AMCOS and the publisher had made (without notice to AMCOS) a sub-publishing agreement with a music publisher in Japan. These facts being elucidated, it followed the Japanese sub-publisher should have received the mechanical royalties from JASRAC, and then accounted for them to the Australian publisher, who should in turn have accounted to the writer member. The member's complaint was that his royalty account was frozen because of an error, not of his doing, but occurring between JASRAC and APRA. APRA ascertained the position within a few days of complaint, and advised the member the account had been removed from hold and the erroneous payment was being settled between the publishers. An apology was tendered for what had happened. Like the matter of the change of name which led to a complaint against CAL, this matter emphasizes the importance of immediate notification to members, so far as possible, of sensitive changes in relation to their membership details.

4. A member wrote to APRA about the licensing of the playing of music by radio as background music at commercial premises. Given that the radio station had to have a

licence, he suggested “double dipping” was occurring. A senior officer of APRA explained to him the different rights under copyright law that were involved, and nothing further has been heard from the member. Plainly, the relevant licences comply with the *Copyright Act 1968*, both literally and in its intent.

5. APRA organised a presentation by established songwriters, effectively as a seminar of APRA. One of the songwriters used obscene language and presented a lyric which a member found “extremely offensive”. He had brought with him his eleven year old daughter, a prize-winning young songwriter, and the group was a mixed group. He complained. APRA apologised and undertook to “ask our panellists to keep their swearing to a minimum at future events”. There was no further correspondence.
6. A radio station licensee complained that APRA had wrongly calculated the licence fees payable by it for its music use in 2008 and 2009. They had been calculated on financial information and details of music use supplied by the station through an employee other than the one responsible for the complaint. Following an internal audit at the radio station, it was agreed that the music use percentage was much lower than had been reported and a calculation of a reduced licence fee was made based on 1.75% of gross revenues, not the original figure of 3%. Revised invoices were promptly prepared and paid. Plainly, the whole problem arose from errors in the radio station’s office.

Comment

It is clear that four of the six complaints disclosed no breach of the Code. The other two should be classified as oversights or as arising out of a failure to appreciate a need to exercise greater sensitivity in matters likely to prove sensitive for some members. Prompt apologies were offered in both cases. Perhaps it is only fair to the organiser of the seminar to note that, while this report was under preparation, a responsible Federal Minister used the swear word particularly objected to on ABC television.

As in the case of CAL, APRA is entitled to have its relative freedom from complaints seen against the background of the great number of transactions it engaged in during the year. APRA membership was 65,854 at 30 June 2011, while in addition AMCOS had 9,314 Australian and

New Zealand members. The Member Services Department dealt with 72,500 emails from members, and held 166 events attended by 7,441 members. Licensing activities included the execution of over 12,000 new licences and the administration of licences for over 74,000 businesses, involving over 348,000 communications with licensees. At 30 June 2011, APRA had 264 employees (including 18 in its New Zealand office). It achieved an expenses to revenue ratio for the year of 12.12%, which is in conformity with world's best practice.

APRA has systems in place to ensure that any complaint is logged to its complaints records; it has a Complaints Officer; and its Complaints Handling Policy and Procedure provides explicit guidance for the making of any complaint by any person who has dealings with APRA. The policy lays down a tight time frame to ensure a complaint receives prompt attention with a view to its solution. If a complainant is not satisfied, provision is made for expert determination.

Audio-Visual Copyright Society Limited (“Screenrights”)

No complaint against Screenrights was received during the year to 30 June 2011.

As has been explained in previous reports, there is a considerable number of disputes between claimants to shares in distributions, involving conflicting assertions of entitlement. Screenrights has adopted a three-step policy for these matters, the first step being to put the claimants in touch with each other (this has solved most problems which had generally arisen from some misunderstanding); the second step (if necessary, and the parties agree) being mediation; and the third step being expert determination arranged by Screenrights. In the year under report there were 1,138 new disputes involving \$2.34 million held in trust pending their resolution. Of these, 457 have been resolved at stage one, approximately \$1.45 million in royalties being released for payment. Since the development, mentioned in the Code Reviewer's last report, of a Multiple Claims Database, which has operated from April 2010, 1,725 multiple claims have been resolved resulting in the release of \$3.43 million in royalties. There were, as at 30 June 2011, 1,117 multiple claims awaiting resolution, involving \$1.52 million. As previously reported, Screenrights has appointed a full-time Conflicts Resolution Coordinator to manage the resolution of multiple claims.

No dispute has proceeded to mediation under stage two of the policy during the year to 30 June 2011, nor has any dispute proceeded to stage three.

Screenrights had, at 30 June 2011, 3,321 members, and it collected royalty payments from 897 entities, including schools, universities, vocational training bodies, governmental agencies, TAFEs, resource centres, retransmitters and New Zealand schools and tertiary institutions. Screenrights' annual report makes prominent reference to its adherence to the Code of Conduct, which is also referred to in its newsletter, *Off The Air*. Although there was no complaint to be dealt with under the Complaints Handling Procedure, or by Alternative Dispute Resolution, Screenrights has these policies in place, as reported previously.

Phonographic Performance Company of Australia Limited (“PPCA”)

PPCA has registered the following matters as complaints made during the year to 30 June 2011:

1. A licensee complained he had received a rude response to a telephone inquiry about the need for both an APRA and a PPCA licence. He claimed a young employee of PPCA “yelled out” at him “and basically hung up on [him] after raising his voice with [the complainant]”. PPCA was unable to identify the person who had answered the call. But its Complaints Officer wrote to the complainant, apologising and assuring him the matter had been raised with all staff members, and it would be followed up further at PPCA's regular team meetings.
2. An intemperate and ill-informed letter expressing disapproval of the fitness tariff increase ordered by the Copyright Tribunal was received and filed.
3. A licence holder queried why the restaurant licence was the subject of quarterly, rather than annual, billing. In a prompt answer, PPCA made it clear that annual payment remained open if that was preferred. This query was not really a complaint.

4. This was another intemperate attack on the fitness tariff increase ordered by the Copyright Tribunal.
5. This was a request for advice, not actually a complaint. A recording made in a film studio for the purposes of the production of a film was later issued (without the knowledge or approval of the artist) as a separate recording. The question was what could be done about it. PPCA responded that it could not give legal advice, but it made practical suggestions as to a course that might be taken.
6. A licensee complained that PPCA was demanding a payment (as outstanding) which had in fact been made some time previously. But upon PPCA seeking details of the payment alleged to have been made, it was revealed that it never had been; a mistake was acknowledged; and payment was duly made.
7. An anonymous complaint was made by a former employee of a fitness club that the club was using music in breach of copyright. The club was placed on PPCA's list of possible prospective licensees.
8. A complaint was made on 9 November 2010 that PPCA, in relation to nightclubs, restaurants and gymnasiums, was using its near monopoly position to enforce rises that were unjust, not in keeping with inflation and not in the public interest. PPCA was also suggested to be in breach of a condition of its ACCC authorisation. A reply was sent on 11 November 2010 refuting the suggestion of a breach and pointing out that the tariffs were settled both for nightclubs and for fitness classes by the Copyright Tribunal, the body established to determine such questions. Nothing further has been heard from this complainant.
9. This was another complaint about the amount of the fitness tariff as settled by the Copyright Tribunal.
10. This was a complaint that the complainant and certain other entities play only royalty free music in fitness classes. PPCA acknowledged they could act on this basis, and there has been no further correspondence.

11. This was an anonymous complaint that a new fitness business had no licence for music it played. PPCA added the business to its list of prospective licensees.
12. A new radio business complained it had not been fairly dealt with in royalty negotiations. The complaint was satisfied by an agreement to refer the matter for neutral evaluation, which has occurred. The result is not yet known.
13. A licensee complained that the restaurant tariff had been increased by 100%. PPCA's Complaints Officer replied promptly, pointing out that the tariff had been reduced from the original proposal after consultation and was being introduced over a period of five years. Details of its adoption were set out on the PPCA website.
14. This was another complaint about the amount of the restaurant tariff, to which was added a request to cancel the complainant's licence. PCCA promptly complied, while pointing out that to play protected recordings without a licence would be a breach of the *Copyright Act 1968*.

Comment

Of the 14 complaints, six objected to tariffs the subject of determinations of the Copyright Tribunal; two were in the nature of queries, not complaints; another two did not relate to the conduct of PPCA; and one was entirely based on a complainant's mistaken recollection of fact. The remaining three were a complaint of the rudeness of a PPCA employee on the telephone, in response to which an apology was tendered and remedial steps taken; a complaint about negotiations to fix a royalty amount, which was resolved by reference to neutral evaluation; and an assertion that only royalty free music was played at a site in respect of which PPCA was proposing a licence, an assertion that was accepted by PPCA.

As at 30 June 2011, PPCA had 969 licensors and 2,500 registered artists. It had processed in the year 63,356 public performance licence renewals and 5,743 new applications. There had been 5,322 licence cancellations and 15,994 reassessments.

PPCA's Complaints Handling Policy is stated in writing; made publicly available on its website; and a hard copy is provided to all new employees. A Complaints Officer oversees its implementation, having access to all other employees so as properly to address any questions arising. It incorporates mediation, neutral evaluation and conciliation options, and is publicised in various documents issued by PPCA. It gives clear information about the making of a complaint and offers assistance if required. The policy acknowledges that dealing with a complaint may reveal the need to rectify a mistake or review procedures. All complaints are registered and reviewed to identify any recurring issue.

Viscopy Limited ("Viscopy")

Viscopy has recorded the following two matters as complaints made during the year to 30 June 2011:

1. A representative of a gallery complained that Viscopy had licensed works of artists for whom the gallery acted without authorisation. An immediate check on the position by Viscopy revealed that it had not licensed the use of these works. The complaint had resulted from a misreading or misunderstanding of a spreadsheet supplied by an auction house for checking. Viscopy promptly explained by telephone (later confirmed in writing) and the complainant "apologised for jumping to the wrong conclusion", thanking Viscopy for the clarification.
2. A complainant complained in September 2010 that Viscopy in October 2008 had licensed the reproduction of a work it had been authorised to licence only for use in auction catalogues. A royalty, less commission, had been paid to the complainant without query in 2008. The Viscopy employee responsible was no longer in Viscopy's employment, and it was not clear how the licence came to be issued. Viscopy's records did at the time clearly show the relevant limitation of its authority. There was no record of any relaxation of that limitation. In the circumstances, Viscopy accepted the licence was issued in error; apologised; notified relevant staff with a view to avoiding any repetition; and refunded the commission. The complainant continues to deal with Viscopy in relation to licensing.

Comment

Plainly, only one of these two matters requires any discussion. It is acknowledged to have involved a mistake by an employee of Viscopy, but Viscopy's prompt and frank response has apparently been appreciated by the complainant who continues to do business as before.

Viscopy's Complaints Policy and Alternative Dispute Resolution Policy are available to members, licensees and others on its website, and in hard copy on request. The policies provide information about the making of complaints and how they will be dealt with. They are reviewed annually to ensure their continued suitability, but there was no change in them during the year under report.

As at 30 June 2011 Viscopy had a membership of 8,454 Australian and New Zealand members, an increase of just over 8% on the previous year. Of that membership, 3,935 or 46.5% were identified as indigenous Australians. Through reciprocal agreements, Viscopy also represented over 40,000 international artists and beneficiaries of artists' estates in the Australasian territory. During the year under review, Viscopy issued 536 licences with an average licence value of \$1,753.

Australian Writers' Guild Authorship Collecting Society Limited ("AWGACS")

AWGACS has, again in the period under report, received no complaint.

Comment

As reported previously, AWGACS has developed procedures for dealing with complaints and the resolution of disputes. They have been posted on the AWGACS page of the Australian Writers' Guild website, and a copy is made available on request. It refers to the Code of Conduct and the relevant Australian Standard, and it states clearly that AWGACS will provide assistance to any member wishing to lodge a complaint. AWGACS does not have licensees. The document sets out the procedure for lodging a complaint and a timetable for the society's response. For

appropriate cases, it refers to the possibility of expert determination if a complainant is not satisfied with the way the complaint is resolved.

As at 30 June 2011, AWGACS had 1056 members, an increase of 23 on the number at 30 June 2010. Having no licensee, it receives distributions from overseas collecting societies.

Australian Screen Directors Authorship Collecting Society Limited (“ASDACS”)

ASDACS received no complaint during the period under report.

Comment

As at 30 June 2011, ASDACS had 520 members, an increase of 30 on the number at 30 June 2010. Like AWGACS, it has no licensee, but receives distributions from a number of overseas collecting societies. It employs one full-time staff member and for most of the year one part-time staff member who worked on one day per week. It has adopted a complaints handling procedure which has been notified to members by newsletter.

SUBMISSIONS

1. In last year’s report, the Code Reviewer discussed, in relation to Viscopy, CAL and Screenrights, a question raised by the Arts Law Centre of Australia whether, where a claim to a distribution in respect of a work of visual art is made to CAL or Screenrights on behalf of a Viscopy member to whom the payment is ultimately made by Viscopy, it is made sufficiently clear to the claimant that a fee is payable both to Viscopy and to CAL or Screenrights as the case may be. In his comments on the complaints reported in respect of CAL, the Code Reviewer stated that CAL and Screenrights had accepted that, although such a claimant would be a Viscopy member, not their member, they should “take steps to ensure the position is explained in the clearest terms”. Action taken by CAL was noted as follows:

“CAL has prepared an information sheet in conjunction with the Arts Law Centre and published it on its website as suggested by the Centre. It explicitly states that where a payment from CAL is received indirectly, via a publisher, an agent or another collecting society, ‘the intermediary may be entitled to deduct a portion of the CAL payment under a contract or agreement before remitting the remainder to the artist or author’. It also makes it plain that authors and artists can receive payments direct from CAL by becoming members, subject to the obligation ‘to on-pay any amounts due to other right holders’. “

Last year’s report returns to the Arts Law Centre’s letter in relation to Screenrights in the following terms:

“The concern is about transparency in respect of the fees deducted from these distributions. Apparently, the Arts Law Centre was under the impression that, in these cases, ‘the distribution function is undertaken by Viscopy for Screenrights’, but neither Viscopy’s website nor Screenrights’ website stated that Viscopy’s fees would be charged in addition to the charges made by Screenrights. Concern was also expressed about the difficulty said to be involved for an artist who wished to ascertain Screenrights’ own charges. Screenrights’ Chief Executive responded, as to the last point that the information appeared in the Annual Report, newsletters, and on the payment statements themselves. Turning to what appeared to be the substantial issue, he made it clear: ‘Viscopy does not undertake a distribution function on behalf of Screenrights, rather Viscopy claims royalties on behalf of the artist it represents in the capacity of their agent. Any artist can join Screenrights directly if they choose. There is no cost to Screenrights membership’. The fact is the Viscopy members in question do not join Screenrights – Viscopy does. Similarly, an artist could choose to claim through his or her accountant, or a gallery, and would, of course, pay fees to the accountant or the gallery for handling the claim.

Although this response seems entirely correct, as a business and legal proposition, it is necessary to bear in mind the wide spread of levels of business experience and education of the members represented by Viscopy; and Screenrights, accepting that,

has discussed with the Arts Law Centre a form of notice which it has included in its website, as follows:

‘Because Screenrights is a non-profit organisation, all money it collects is distributed to members after the deduction of administrative overheads only. These overheads vary from service to service and from year to year, however as a rough guide, for 2010 our overall ratio of administrative expenses to total collections was 14.2%. More information on expenses to collections ratios for each service can be found in our Annual Report.

Rightsholders should note that if they appoint an agent to collect Screenrights royalties on their behalf, the agent may also charge an administrative or agent's fee on top of Screenrights costs.’ “

Finally, in respect of Viscopy the report noted:

“There remains the matter raised by the Arts Law Centre which was outlined in the section of this report dealing with complaints made to Screenrights. As the society directly involved in the relationships with members to which the Centre refers, this matter required the attention of Viscopy. It has taken the step of adding to its website the following clear notification which satisfies the Arts Law Centre’s concern:

‘Once you become a member, Viscopy will deduct a proportion of any royalties we collect for you to cover our administration costs. Our current charges are 25% for royalties Viscopy collects in Australia and New Zealand and 10% for royalties Viscopy collects from overseas. Viscopy members that choose to receive royalties from statutory copyright schemes for photocopying and re-broadcasting through Viscopy pay commissions to CAL and Screenrights, the organisations that administer those schemes, and also pay commissions to Viscopy.’ “

It will have been observed that, in relation to all three societies, action was taken to clarify the matter in conjunction with the Arts Law Centre itself. However, a further letter was received this year in the form of a submission to the Code Reviewer from the Arts Law Centre. It specifically states:

“We have taken care not to target any particular society, all of whom provide a valuable service.”

But it repeats the earlier complaint in general terms. It does not question the accuracy of the Code Reviewer’s report that the three societies acted in conjunction with it in clarifying the position under discussion. Nor did it challenge the specific detail given by the Chief Executive of Screenrights in answer to the suggestion that the amount of that society’s fees was somehow obscure. Apparently, the purpose of the submission is not to criticise any current practice, but to emphasize the importance of transparency where fees are concerned. Understanding it in that way, the Code Reviewer has no hesitation in endorsing it, and if any alleged breach of the Code of that kind were raised, it would certainly be investigated (see cl 2.2(c) of the Code).

2. A submission was received from the Australian Subscription Television and Radio Association (“ASTRA”). ASTRA is a peak industry body for subscription television in Australia, with a membership including the main subscription television operators. Its submission raises two questions. One is the statement in cl 2.3(d) of the Code of matters, broadly, and expressly not exclusively, set out, to which a society may have regard in setting or negotiating licence fees. ASTRA suggests the addition to these matters of the following:

- “(i) the fees paid for comparable licences for copyright material; and
- (ii) the impact licence fees may have on a particular activity, use, or even business, so that legitimate use of copyright material is fostered, and not made uneconomical.”

Both of these matters appear to be legitimate issues to be raised in negotiations, but an amendment to cl 2.3(d) is unnecessary. In the first place, the clause already gives prominence to “the value of the copyright material”, of which ASTRA’s paragraph (i) is one measure. In the second place, cl 2.3(d) concludes by embracing “(v) any other relevant matters”. An example of the scope of the present clause, and its coverage of the second point raised, occurred following the global financial crisis and last year’s

floods in Australia, when APRA voluntarily offered licensees special relief by deferring the invoicing of licence fees.

ASTRA's submission also refers to the burden of reporting requirements, "especially relating to music". So far as practicable, cost saving in this regard is a matter in which the societies are very interested, but it clearly raises questions of administration and business organisation, not any question under the Code of Conduct. Indeed ASTRA does not refer in relation to the reporting requirements of licences to any clause of the Code that has been contravened or should be amended. That said, if it were to appear that a particular licensing requirement was not "fair and reasonable", an issue could be raised under cl 2.3(d).

These issues thrown up by ASTRA's submission have been discussed because of their general importance, but it should be pointed out that the annual review presently being undertaken relates to the societies' conduct under the existing Code, not to the question whether it should be amended, with which the Code Reviewer dealt early in this 2011 calendar year. That earlier review was well advertised, and included a public meeting chaired by the Code Reviewer.

GOVERNANCE AND ACCOUNTABILITY

The governance and accountability of the societies are the subject of cl 2.6 of the Code. The Board of Directors of each society must be accountable to the members, and the clause specifies particular obligations that are aspects of that accountability. In an earlier report, the Code Reviewer set out the requirements of the Constitutions of the various societies with respect to their Boards, and their relevant practices, and concluded that this clause was satisfied. There have been no changes that have disturbed that conclusion.

STAFF TRAINING

Clause 2.7 provides that each society will take reasonable steps to ensure its employees and agents are aware of and at all times comply with the Code. The clause makes specific mention in this regard of the procedures for handling complaints and resolving disputes. In last year's report, the Code Reviewer set out in some detail the steps taken by the societies to ensure, not only that new employees were informed of their obligations under the Code, but also that ongoing training was directed to a maintenance of understanding of its centrality to the societies' operations and the need to have continued regard to it when changes occurred in work practices or a fault in a practice emerged. It is unnecessary to repeat that detail in this report; it is sufficient to note that the training programs continued in the year now under review. The results are apparent from the very low level of complaints that could be attributed to failures on the part of a society.

EDUCATION AND AWARENESS

The Code imposes on societies (subject to limitations to which a particular society is subjected by its size or other factors) an obligation to promote awareness among members, licensees and the general public about the importance of copyright and the role of collecting societies and in particular of the society engaging in this promotion.

APRA in the year under report increased its percentage of distributable revenue set aside for its grants programme, providing \$646,585 in grants to 105 organisations and events. It organised the Vanda & Young Songwriting Competition in support of a music therapy charity, Nordoff-Robbins Music Therapy Australia, raising over \$200,000. It extended its funding support for the Sounds Australia initiative to the end of 2015. APRA produces a substantial volume of written material reflecting its activities, and engages in telephone and email communications to clarify queries. It is committed to the fostering of Aboriginal and Torres Strait Islander music creators and has developed a membership strategy aimed at their needs, having an office in Darwin accordingly. It sees music as an opportunity for advancement for indigenous youth. It uses prominent indigenous artists in a program which promotes music and the recognition of rights

as leading to respect. As has been previously reported, APRA was commissioned by the Australia Council to carry out a study of indigenous music in Australia, the report of which, *Song Cycles*, came out in May 2010. Since then, in the year under review, APRA has developed a Song Cycles Response plan to deal with issues raised by the study. APRA also has a very active International Department which was involved in numerous activities in the relevant year, including training sessions for Asian and Pacific societies, and the achieving of improvements to the processes involved in distributions from overseas societies. APRA's regular involvement with relevant organisations in the promotion of copyright and its role, reported on previously, continued in the year to 30 June 2011.

CAL educates and informs its members, licensees and the public through its website, its Annual Report and other publications including the magazine *Calendar*, e-communications, and information sheets. Appropriate staff attend industry events and articles are put in industry magazines. *Calendar* is provided free to members, licensees and others. CAL's website is extensive and updated regularly. CAL also obtains coverage in the general media through activities for which grants from its Cultural Fund are made, and through the reporting of particular activities such as its outreach to indigenous artists through the resale royalty scheme and the successful conclusion of negotiations with State and Territory governments in respect of copying for those governments. CAL offers free seminars for members, and special seminars and forums on particular issues. The presentation at a seminar in May 2011 was recorded and made available on CAL's website. CAL also provides information for members and the industry through its involvement in the Digital and Industry Training Co-ordination Group. In the year under report, CAL engaged extensively in activities to raise awareness of the new resale royalty scheme among art dealers, auction houses, galleries and visual artists. These activities were too numerous to be conveniently listed here. CAL has formed Art Trade and Artists' Advisory Panels to advise on the implementation of the scheme.

CAL's Cultural Fund (as authorised by its Constitution) may be allocated 1.5% of its income. In the relevant year, \$3,402,189 was allocated to assist creators working on projects of benefit to Australia's creative and cultural communities.

CAL provides training for participants in its copying surveys, in the course of which teachers, librarians, lecturers and administrators are informed about the value of copyright, the role of CAL, and the importance of the surveys.

CAL has close relations with many industry bodies, including the Australian Publishers' Association, the Australian Society of Authors, the Media Entertainment Arts Alliance and the Screen Producers Association of Australia.

Screenrights contributes to the Copyright Council's educative role via membership fees and Board representation – this is a role which receives funding from the Australia Council, and is responsible for seminars and publications spanning Australia. In the year under report, Screenrights held training sessions providing education in the compliance obligations imposed by the *Copyright Act 1968* and relevant licence agreements, as follows:

- 11 university survey trainings
- 5 TAFE survey trainings; and
- 16 schools survey trainings

Screenrights continues its close contact with the teaching profession through *enhanceTV* which informs teachers particularly on three questions:

- What is on TV that is educationally relevant?
- How can a teacher use it in the classroom?
- Where can a copy be obtained?

During the year under report, the use made of *enhanceTV* speaks for itself – there were 18,500 subscribers and overall membership grew to nearly 28,000 members. Educators downloaded more than 20,000 free study guides, feature articles and teaching topics.

PPCA provides information by mail, by distribution at industry events, by placement in trade publications and via its website. It is a corporate member of a number of trade associations: Australian Hotels Association in NSW, South Australia, Queensland, Western Australia and Victoria; Restaurant & Catering in NSW and ACT, South Australia, Queensland and Victoria; Tasmanian Hospitality Association; and Clubs in NSW, South Australia, Queensland and Victoria.

It puts out the publication *InTheLoop*, which is updated four times a year, and a general information leaflet for all licensee prospects. Issues of *InTheLoop* may contain music news, information about PPCA itself including its adherence to the Code of Conduct and learned articles by a Professor of Marketing at Sydney University giving practical guidance for the use of music in business. PPCA liaises with trade associations throughout the year, and, particularly, it seeks consultation three months before any proposed tariff increase. It supports various causes related to the production of music through its grants program.

Viscopy, during the review period, held several copyright workshops at its premises for groups including artists and students. It has a legally qualified person on its staff to provide information on copyright issues to members, and it also maintains regular contact by email and telephone with licensing customers. It held two exhibitions at Blackfriars from August to September 2010 and from February to May 2011. With funding from the Department of the Environment, Water, Heritage and the Arts (as it then was), Viscopy delivered a national education program for indigenous artists and art centre workers, including 25 copyright education workshops and seminars across Australia. It also established an Indigenous Reference Group involving aboriginal educators, elders and artists to guide it in the delivery of its education program.

AWGACS and **ASDACS**, the two smallest of the societies, are not able to maintain the same range of outreach activities as the others. However, **AWGACS** is authorised by its Constitution to deduct 5% of gross royalties received as a cultural levy, and in the year under review it did so. It divided the amount so made available into two pools, 5% of the collections for New Zealand members and 5% of the collections for Australian members; and it paid the one amount to the New Zealand Writers Guild and the other to the Australian Writers Guild. It also uses the AWGIE Awards as an opportunity to present promotional material and publishes material in the AWG's weekly e-newsletter. **ASDACS**, despite its small size, also provides \$24,000 annually in cultural funding, paying this sum to the ADG. ASDACS maintains a website through which the Code of Conduct is made available, participates in relevant forums, and was represented at the International Copyright Summit in Brussels in June 2011.

CONCLUDING REMARKS

This report is now submitted to the societies and to the Attorney-General's Department of the Commonwealth of Australia. As is the settled practice pursuant to cl 5.2 (f) of the Code, a copy will be sent to each of those who made a submission to the Code Reviewer.

Dated this 22nd day of December 2011.



The Hon J C S Burchett, QC

Code Reviewer