



**COPYRIGHT AGENCY LIMITED<sup>®</sup>**

**CONSTITUTION**

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# CONSTITUTION

of

## Copyright Agency Limited

ABN 53 001 228 799

Company Limited by Guarantee

Registered Office:

Level 15, 233 Castlereagh Street  
Sydney, NSW 2000

Phone: (02) 9394 7600

Fax: (02) 9394 7601

Email: [info@copyright.com.au](mailto:info@copyright.com.au)

Website: [www.copyright.com.au](http://www.copyright.com.au)



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## ***MEMORANDUM OF ASSOCIATION***

1. The name of the Company is COPYRIGHT AGENCY LIMITED.
2. The objects for which the Company is established are:
  - (a) To take, purchase, or otherwise acquire and to hold licences and assignments of copyrights and neighbouring rights whether in works or otherwise and whether exclusive, non-exclusive or limited or any part interest in such copyrights or neighbouring rights.
  - (b) To sell, let, grant or otherwise dispose of any copyrights or neighbouring rights belonging to the Company or which it may acquire or any interest in the same.
  - (c) To apply for any copyright or neighbouring right or obtain exclusive or other privileges in respect of the same and to exercise, use or otherwise deal with or turn to account any copyrights or neighbouring rights.
  - (d) To promote and foster the interests of owners of copyrights and neighbouring rights.
  - (e) To publicise the Company's activities in particular by means of publishing circulars and other literary matter and through radio and television.
  - (f) To take any gift, grant or contribution of property of any kind whatsoever for the furtherance of any one or more of the objects of the Company.
  - (g) To enter into any arrangements with any government or authority, supreme, municipal, local or otherwise, that may seem conducive to the Company's objects or any of them; and to obtain from any such government or authority any rights, privileges and concessions which the Council may think it desirable to obtain; and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions.
  - (h) To support or oppose any legislation which might affect the Company's interests.
  - (i) To subscribe to, become a Member of and co-operate with any other Company, institution, association or organisation, whether incorporated or not, whose objects are altogether or in part similar to those of the Company.
  - (j) To appoint, employ, remove or suspend such managers, clerks, secretaries, servants, workmen and other persons as may be necessary or convenient for the purposes of the Company.
  - (k) To erect, purchase or otherwise acquire and to improve, maintain, develop, work, manage, carry out or control any buildings, works, factories, mills, plant, houses, offices, workshops, theatres, studios, shops, dwellings, garages and other works and conveniences and to contribute to subsidise and otherwise assist or take part in the construction, improvement, maintenance, development, working, management, carrying out or control thereof.
  - (l) To borrow or raise or secure the payment of money in such manner as the Company may think fit and to secure the same or the repayment or performance of any debt, liability contract, guarantee or other engagement incurred or to be entered into by the Company in any way and in particular by the issue of debentures, perpetual or otherwise, charged on all or any Company's property (both present and future) and to purchase, redeem or pay off any such securities.
  - (m) To make draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments.
  - (n) To invest and deal with the moneys of the Company not immediately required upon such securities and in such manner as may from time to time be determined.
  - (o) To sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the Company.
  - (p) To subscribe and underwrite, purchase or otherwise acquire and to hold, dispose of and deal with the shares, stocks, securities and evidence of indebtedness or the right to participate in profits or other similar documents issued by any government, authority, corporation or body or by any Company or body of persons and any options or rights in respect thereof and to buy and sell foreign exchange.

- (q) To take such steps by personal or written appeals, public meetings or otherwise, as may from time to time be deemed expedient for the purpose of procuring contributions to the funds of the Company in the shape of donations, annual subscriptions or otherwise.
- (r) To print or publish any newspapers, periodicals, books or leaflets that the Company may think fit for the promotion of its objects.
- (s) To amalgamate with any companies, institutions, societies or associations having objects altogether or in part similar to those of the Company.
- (t) Without in any way limiting the generality of the above objects, to do any things referred to in the above objects for a purpose which is or includes or is in connection with the provision to the Company of office accommodation.
- (u) To do all such other things as are incidental or conducive to the attainment of the objects and the exercise of the powers of the Company.

AND IT IS HEREBY DECLARED that the objects of the Company shall be separate and distinct objects and none of them shall be in any way limited by reference to any other or others of them.

3. The liability of the Members is limited.

4. Each Member of the Company undertakes to contribute to the assets of the Company, in the event of its being wound up while he is a Member or within one year after he ceases to be a Member, for payment of the debts and liabilities of the Company contracted before he ceases to be a Member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding \$20.00.

## ARTICLES OF ASSOCIATION

### INTERPRETATION

#### 1. Definitions

- (a) In these Articles unless there is something in the subject or context inconsistent therewith:

“**Accounting Period**” means a period of not more than 12 months ending on 30 June in any year or on such substituted date as may be adopted by the Company in accordance with the Corporations Act 2001.

“**Act**” means the *Copyright Act 1968*.

“**Artwork**” has the meaning assigned to it under the Resale Royalty Act.

“**Collecting Society**” means a person in any country whose functions include administering copyright and neighbouring rights on behalf of persons who own or control copyright or neighbouring rights.

“**Company**” means Copyright Agency Limited.

“**Copyright Material**” means a Work or Published Edition.

“**Director**” means a director of the Company.

“**Distributable Fund**” in respect of an Accounting Period means the residue of an ER Fund for that Accounting Period determined pursuant to Article 74(e).

“**Equitable Remuneration**” means all equitable remuneration payable to Members and other owners of the Rights in Copyright Material under the Statutory Licences and received on behalf of such Members and owners by the Company.

“**ER Fund**” means a fund established pursuant to Article 74(a).

“**Member**” means a person entered in the register of Members as a Member.

“**Month**” means calendar month.

“**Office**” means registered office for the time being of the Company.

“**Published Edition**” means a published edition of a Work.

“**Register**” means the register of Members to be kept pursuant to the Corporations Act 2001.

“**Regulation Trust Fund**” means the separate trust fund established pursuant to Article 76(a).

“**Resale Royalty Act**” means the *Resale Royalty Right for Visual Artists Act 2009*.

“**Resale Royalty Revenue**” means all remuneration payable under the Resale Royalty Act.

“**Resale Royalty Right**” means the right under section 6 of the Resale Royalty Act.

“**Rights**” means the right to reproduce Copyright Material in any material form, the right to communicate Copyright Material to the public, the Resale Royalty Right and any other rights in relation to Copyright Material that the Company may be required or may agree to administer, including under an agreement with another Collecting Society.

“**Seal**” means the common seal of the Company if any.

“**Secretary**” includes any person appointed to perform the duties of secretary temporarily.

“**Special resolution**” has the meaning assigned to it by the Corporations Act 2001.

“**State**” means the State of New South Wales.

“**Statutory Licences**” means the licences contained in Part VB of the Act and Division 2 of Part VII of the Act.

“**Trust Period**” in respect of moneys held in the Regulation Trust Fund means a period of four years, or such further period not exceeding two years as the directors may in their discretion determine prior to the expiration of ~~four years from the date of allocation. the period of four years, from the end of the Accounting Period in respect of which the moneys are transferred to the Regulation Trust Fund pursuant to Article 76(a).~~

“**Work**” means a work in which copyright subsists under the Act or an Artwork.

Expressions referring to writing shall unless the contrary intention appears, be construed as including references to printing, lithography, photography, reprographic reproduction and other modes of representing or reproducing words in visible, audible, magnetic or tactile form.

These Articles shall be interpreted subject to the Corporations Act 2001, and, unless the contrary intention appears, an expression in an Article that deals with a matter dealt with by a provision of the Corporations Act 2001 shall have the same meaning as in the provision of the Corporations Act 2001.

In these Articles, a reference to any legislative instrument shall include any consolidation, variation or replacement of that instrument.

In these Articles, a reference to an even year is to a year (other than 1996) ending in an even number and a reference to an odd year is to a year ending in an odd number.

In these Articles, a reference to a person includes a company, corporation, body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated).

In these Articles, a reference to any gender denotes the other genders.

- (b) To the extent permitted by law, the replaceable rules in the *Corporations Act 2001* do not apply to the Company.

## MEMBERS

### 2. *Membership*

For the purpose of the *Corporations Act 2001* the number of Members is declared to be unlimited.

### 3. *Eligibility for Membership*

Persons entitled to be Members of the Company shall be as follows:-

- (a) All persons who are Members at the time these Articles become binding upon the Company;
- (b) All persons who have appointed the Company their agent for the Rights in some or all of their Copyright Material at the time these Articles become binding upon the Company;
- (c) Any Collecting Society; and
- (d) Any person to whom Article 3(a), 3(b) or 3(c) does not apply being either:-
  - (i) any author of Copyright Material being the owner or holder of a Right in that Work, or the licensee or agent appointed in writing, executor, administrator, successor or assignee of such Right; or
  - (ii) any publisher of Copyright Material being the owner of a Right in that Work, or any licensee or agent appointed in writing, executor, administrator, successor or assignee of such Right.

### 4. *Application and Admission to Membership*

- (a) Any person who is eligible for membership may apply to the Board for admission to membership. Such application shall be made in writing, signed by the Applicant, and shall be in such form as the Board shall from time to time prescribe. The Board may require any Applicant to supply such evidence of eligibility as it considers reasonably necessary.
- (b) The Board shall consider each application and shall, if reasonably satisfied that the Applicant is eligible for membership, admit the applicant to membership with specific reference to the appropriate category of eligibility (i) or (ii) in Article 3(d). The Board may request the Applicant to furnish such further information as it thinks appropriate to determine the eligibility of the Applicant for membership.
  - (i) Any person who is eligible for membership under category (i) of Article 3(d) shall be an Author Member.
  - (ii) Any person who is eligible for membership under category (ii) of Article 3(d) shall be a Publisher Member.

- (iii) Any person who is eligible for membership under Category (b) of Article 3 and is the author of a Work shall be designated an Author Member.
  - (iv) Any person who is eligible for membership under category (b) of Article 3 and is the publisher of a Work shall be designated a Publisher Member.
  - (v) Any person who is eligible for membership under category (c) of Article 3 shall be a Collecting Society Member.
- (c) Any person who has been admitted to membership by the Board shall have issued to him a certificate of membership in such form as the Board shall from time to time prescribe.
  - (d) Any eligible person may be admitted to membership as both an Author Member and as a Publisher Member but may not be admitted to the same class of membership more than once.
  - (e) A person who is a Member by virtue of category (a) of Article 3 may also be admitted to membership as either or both an Author Member or a Publisher Member but may not be admitted to the same class of membership more than once.

5. *Entitlement of Members*

- (a) Except as otherwise provided by these Articles, each Member of the Company shall be entitled to notice of and to attend and vote at general meetings.
- (b) Notwithstanding any other provision of these Articles, a Collecting Society Member shall not (in its capacity as such a Member) be entitled to receive notice of or to attend or vote at general meetings.
- (c) In the event that any Member shall have failed during any 10 consecutive financial years of the Company (ending with the financial year current at the date of adoption of this article or any subsequent financial year) to have allocated to him any share of moneys collected by the Company, then such Member shall not be entitled to notice of, or to attend or vote at any general meeting held after the expiration of the said 10 consecutive financial years and until after the expiration of a financial year during which that Member shall have been allocated to him a share of moneys collected by the Company.

6. *Determination of Membership*

Any Member may by not less than 3 years notice in writing to the Secretary to expire on the 30th day of June in any year, or by such shorter period of notice expiring at such time as may be accepted by the Board, determine his membership and his membership shall cease accordingly at the expiration of such period of notice.

7. *Cessation of Membership*

Subject to the terms of any agreement between the Company and any Member, upon the cessation of membership of the Company by a corporation or person the rights (if any) already vested in the Company by such corporation or person, or controlled by the Company by virtue of the election of such corporation or person to the membership of the Company, shall remain so vested or controlled for a period ending on the 30th day of June in the third year following the year in which the cessation of membership occurred. Any payment to which the corporation or person would have been entitled if it or he had remained a Member of the Company shall during such period be made to the person entitled for the time being to receive debts due to the corporation or person.

8. *Cessation of Membership*

The membership of any Member shall ipso facto cease -

- (a) upon legal protection for the copyright ceasing to subsist in Australia in respect of all of the Copyright Material in respect to which such Member is entitled to participate in the allocation of moneys collected by the Company;
- (b) upon the Member ceasing to own or hold the Rights in all of the Copyright Material in which the Member is entitled to participate in the allocation of moneys collected by the Company;
- (c) in the case of any Member being an executor, administrator or trustee, upon his having disposed of all Rights which have been vested in him as such executor or administrator or trustee;

- (d) in the case of any Member, other than a Collecting Society Member, being an agent upon his having ceased to be in control of the Rights or upon the termination of such agency; or
- (e) in the case of a Collecting Society Member and in its capacity as such a Member, upon the Member ceasing to be a Collecting Society.

9. *Rights and Obligations*

Subject to the provisions of Articles 7 and 8, all rights, privileges and obligations of membership shall cease on the day of cessation of membership. In particular and without prejudice to the generality of the foregoing the Member concerned shall cease to have any claim upon the assets of the Company and shall not be entitled to participate in any further allocations of moneys held by the Company. Provided that any person who has ceased to be a Member shall be entitled, notwithstanding the cessation of his membership, to continue to receive any allocation and distribution of moneys to which he becomes entitled in respect of any period during which he was a Member of the Company.

## **GENERAL MEETINGS**

10. (a) *Annual General Meeting.*

General meetings of the Company each called the "annual general meeting", shall be held at such intervals permitted by or under the Corporations Act 2001 and at such places as may be decided by the Directors.

(b) *Extraordinary General Meeting*

All other meetings of the Company shall be called "extraordinary general meetings".

11. *Convening of Extraordinary General Meeting*

The Directors may convene an extraordinary general meeting whenever they think fit.

12. *Notice of General Meetings*

(a) At least 21 days' notice of any meeting of Members shall be given in the manner provided by these Articles and not otherwise to the Members; provided that in the circumstances and subject to the conditions specified in the Corporations Act 2001 a meeting may be called by notice shorter than that hereinbefore prescribed.

(b) Every such notice shall specify the place, day and hour of the meeting, the general nature of any special business to be transacted at it and shall in all other respects comply with the Corporations Act 2001.

(c) The accidental omission to give notice of any annual general meeting to, or the non-receipt by, a member shall not invalidate a resolution passed at a general meeting.

## **PROCEEDINGS AT GENERAL MEETINGS**

13. *Business of Annual General Meeting*

(a) The business of an annual general meeting shall be to receive and consider the profit and loss account, the balance sheet and the reports of the Directors and of the auditors, to elect auditors, to elect the Author Director and Publisher Director and to fix, or to authorise the Directors to fix, the remuneration of the auditors.

(b) It is not necessary for a notice of an annual general meeting to state that the business to be transacted at the meeting includes the consideration of accounts and the reports of the Directors and auditors, the election of the Author Director and Publisher Director in the place of those retiring or the appointment and fixing of the remuneration of the auditors.

14. *Quorum*

No business shall be transacted at a general meeting unless a quorum of Members is present in person or by proxy at the time the meeting proceeds to business. Except as otherwise provided in these articles, a quorum shall be:-

(a) 8 registered Members of the Company at the date of the meeting; and

(b) consisting of not less than 4 Author Members and 4 Publisher Members registered at the date of the meeting.

15. *When Quorum Not Present*

If within 20 minutes after the time appointed for the meeting a quorum is not present the meeting, if requested or called by Members under Section 249D, 249E or 249F of the Corporations Act 2001, shall be dissolved; but in any other case it shall stand adjourned to the same day in the next week at the same time and place or to such other day, time and place as the Directors may by notice to the Members appoint. If at such adjourned meeting a quorum is not present the meeting shall be dissolved.

16. *Chairman of General Meeting*

The chairman of the Directors or, in his absence, the deputy chairman (if any) shall be entitled to take the chair at every general meeting. If there be no chairman or deputy chairman or, if at any meeting he is not present within 15 minutes after the time appointed for holding such meeting, or he is unwilling to act, the Directors present may choose a chairman and in default of their doing so, the Members present shall choose one of the Directors to be chairman and, if no Director present be willing to take the chair, shall choose one of their number to be chairman.

17. *Adjournment*

The chairman of a general meeting may, with the consent of the meeting, adjourn it from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

18. *Demand of a Poll*

At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before the vote is taken, before the voting results on a show of hands are declared or immediately after the voting results on a show of hands are declared) demanded:

- (a) by the chairman
- (b) by at least 3 Members present in person or by proxy and entitled to vote on the resolution; or
- (c) by any Member or Members present in person or by proxy and representing at least 5% of the votes that may be cast on the resolution on a poll.

Unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn.

19. *Taking of Poll*

If a poll is demanded as aforesaid it shall be taken in such manner and at such time and place as the chairman of the meeting directs and either at once or after an interval or adjournment or otherwise and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. Any dispute as to the admission or rejection of a vote shall be determined by the chairman and his determination made in good faith shall be final and conclusive. A poll demanded on the election of the chairman or on a question of adjournment shall be taken immediately.

20. *Casting Vote*

In the case of an equality of votes, whether on a show of hands or on a poll the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second casting vote.

21. *Voting*

At any general meeting on a show of hands every person present who is a Member other than a Collecting Society Member in its capacity as such a Member or representative of a Member other than a Collecting Society Member in its capacity as such a Member shall have one vote and on a poll every Member other than a Collecting Society Member in its capacity as such a Member present in person or by proxy or by attorney or other duly authorised representative shall have one vote.

22. *Incapacity*

A Member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mental health may vote, whether on a show of hands or on a poll, by his committee or by his trustee or by such other person as properly has the management of his estate, and any such committee, trustee or other person may vote by proxy or attorney.

23. *Objections*

No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes.

Any such objection made in due time shall be referred to the chairman of the meeting whose decision shall be final and conclusive.

24. *How Votes to be Given*

Votes may be given either personally or by proxy and a person may be appointed a proxy who is not a Member of the Company.

25. *Proxies to be in Writing*

The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or if such appointor is a corporation under its common seal or the hand of its attorney.

26. *Proxies to be Deposited at Offices*

The Company receives an appointment of a proxy and any power of attorney under which it is executed when they are received:

- (a) at the Office by any means of communication approved by the Directors or permitted by the Corporations Act 2001; and
- (b) not less than 48 hours before the person named in the proxy purports to vote in accordance with it.

27. *When Vote by Proxy Valid although Authority Revoked*

A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy or transfer of the share in respect of which the vote is given provided no intimation in writing of the death, revocation or transfer has been received at the Office or by the chairman of the meeting before the vote is given.

28. *Form of Proxy*

Every instrument of proxy whether for a specified meeting or otherwise shall, as nearly as circumstances will admit, be in any form commonly in use or in such other form as the Directors may from time to time prescribe or accept. Any instrument of proxy deposited at the Office in which the name of the appointee is not filled in shall be deemed to be given in favour of the chairman of the meeting to which it relates.

**ARTICLES 29 – 38: DIRECTORS, APPOINTMENTS, ETC.**

29. *Period of Office*

- (a) The maximum period for which a person may hold office as a Director is 9 years, whether served continuously or otherwise.
- (b) The maximum period in Article 29(a) does not include any period during which the person holds office as chairman.
- (c) The maximum period in Article 29(a) does not include any period from a person's appointment to fill a vacancy under Article 37 until the annual general meeting of the Company that the Director in whose place that person is appointed would have retired had that Director not vacated their office.

30. *Composition of Board*

Subject to any vacancy in the office of a Director, the board of Directors shall be comprised as follows:

- (a) 1 Director who is an Author Member and who is elected by the Author Members of the Company (“the Author Director”);
- (b) 1 Director who is a Publisher Member and who is elected by the Publisher Members of the Company (“the Publisher Director”);
- (c) 2 Directors appointed by the Australian Society of Authors Limited ACN 008 558 790 or such other association of authors as may be substituted by a special resolution of the Company (“the ASA Directors”);
- (d) 2 Directors appointed by the Australian Publishers Association Limited ACN 003 985 313 or such other association of publishers as may be substituted by a special resolution of the Company (“the APA Directors”); and
- (e) a maximum of 4 Directors appointed in accordance with Article 35 (“the Independent Directors”).

31. *Definitions*

- (a) “A” Directors means one of the ASA Directors (“the “A” ASA Director”), one Independent Director appointed under Article 35(b) (“the “A” Independent Director”) and one of the APA Directors (“the “A” APA Director”).
- (b) “B” Directors means the Author Director, the Publisher Director and, subject to Article 35(c), one Independent Director appointed under Article 35(b) (“the “B” Independent Director”).
- (c) “C” Directors means the other ASA Director (“the “C” ASA Director”), the other APA Director (“the “C” APA Director”) and each of the Independent Directors appointed under Article 35(a) (“the “C” Independent Directors”).
- (d) “A” Years means 2008 and every third year thereafter.
- (e) “B” Years means 2009 and every third year thereafter.
- (f) “C” Years means 2010 and every third year thereafter.
- (g) A Director’s classification remains until the Director’s next retirement from office.

32. *Prerequisites*

- (a) No Director appointed in accordance with paragraph (c), (d) or (e) of Article 30 need be a Member of the Company.
- (b) Notwithstanding any other provision of these Articles, no person may be elected or appointed as a Director if that person is, at the time of election or appointment, an employee of or a contractor to:
  - (i) an author representative body or association or a publisher representative body or association; or
  - (ii) a Collecting Society other than the Company.

33. *Appointment of ASA Directors & APA Directors*

- (a) Not less than six weeks before the annual general meeting of the Company in each “A” Year, the Australian Society of Authors Limited or such other body that may be substituted in accordance with Article 30(c) shall notify the board of Directors of the Company in writing of its nominee to be appointed as the “A” ASA Director. The nominee will be automatically appointed as a Director for the period from the end of the relevant annual general meeting until the end of the next annual general meeting after that meeting that is held in an “A” Year, subject to the Director ceasing to hold office at an earlier time as permitted by these Articles.
- (b) Not less than six weeks before the annual general meeting of the Company in each “C” Year, the Australian Society of Authors Limited or such other body that may be substituted in accordance with Article 30(c) shall notify the board of Directors of the Company in writing of its nominee to be appointed as the “C” ASA Director. The nominee will be automatically appointed as a Director for the period from the end of the relevant annual general meeting until the end of the next annual general meeting after that meeting that is held in a “C” Year, subject to the Director ceasing to hold office at an earlier time as permitted by these Articles.

- (c) Not less than six weeks before the annual general meeting of the Company in each "A" Year, the Australian Publishers Association Limited or such other body that may be substituted in accordance with Article 30(d) shall notify the board of Directors of the Company in writing of its nominee to be appointed as the "A" APA Director. The nominee will be automatically appointed as a Director for the period from the end of the relevant annual general meeting until the end of the next annual general meeting after that meeting that is held in a "A" Year, subject to the Director ceasing to hold office at an earlier time as permitted by these Articles.
- (d) Not less than six weeks before the annual general meeting of the Company in each "C" Year, the Australian Publishers Association Limited or such other body that may be substituted in accordance with Article 30(d) shall notify the board of Directors of the Company in writing of its nominee to be appointed as the "C" APA Director. The nominee will be automatically appointed as a Director for the period from the end of the relevant annual general meeting until the end of the next annual general meeting after that meeting that is held in a "C" Year, subject to the Director ceasing to hold office at an earlier time as permitted by these Articles.

34. *Election of the Author Director and Publisher Director*

The procedure for the election of the Author Director and the Publisher Director is as follows:

- (a) any 2 Author Members may, by signed notice in writing to the Secretary at least 3 months before the annual general meeting held in 2008 and each "B" Year from and including 2012, nominate another Author Member to serve as an Author Director;
- (b) any 2 Publisher Members may, by signed notice in writing to the Secretary at least 3 months before the annual general meeting held in 2008 and in each "B" Year from and including 2012, nominate another Publisher Member to serve as a Publisher Director;
- (c) the Secretary must prepare lists ("Voting Papers") of the names of the persons nominated as the Author Director and the Publisher Director respectively and indicate on the Voting Papers which of them are retiring Directors who are standing for re-election;
- (d) the Voting Papers must be sent to Author Members and Publisher Members respectively at the same time as the notice of the annual general meeting;
- (e) each Member wishing to participate in the election of these Directors must:
  - (i) if the Member is an Author Member, identify (in accordance with the instructions on the Voting Paper) the Author Director nominee for whom the Member wishes to vote;
  - (ii) if the Member is a Publisher Member, identify (in accordance with the instructions on the Voting Paper) the Publisher Director nominee for whom the Member wishes to vote;
  - (iii) insert the Voting Paper in and endorse the Member's name on the envelope sent to the Member by the Secretary for that purpose; and
  - (iv) return the envelope to the Company at least 48 hours before the date of the annual general meeting;
- (f) if there is disruption to normal community services beyond the control of the Company, the Directors may extend the period within which votes must be returned ("Extended Period") and, if any Extended Period expires after the date of the annual general meeting, the then current Directors hold office until the end of the Directors' meeting referred to in paragraph (j);
- (g) if an Author Member purports to vote for more than 1 Author Director, the vote is informal and must not be counted;
- (h) if a Publisher Member purports to vote for more than 1 Publisher Director, the vote is informal and must not be counted;
- (i) after the ballot closes, the Secretary must, in the presence of at least 1 Director, count the votes on Voting Papers received in accordance with this Article 34;
- (j) the Secretary must declare the result of the ballot at the annual general meeting or, if any Extended Period expires after the date of the meeting, at a Directors' meeting held within 7 days after the expiry of the Extended Period and the persons elected hold office from the end of the annual general meeting or Directors' meeting, as the case may be;

- (k) if 2 or more nominees for a vacancy receive equal votes, the Directors must, at a Directors' meeting held:
  - (i) before the annual general meeting; or
  - (ii) in accordance with paragraph (j), elect 1 of those nominees to fill the vacancy;
- (l) if any questions arise as to the validity of a Voting Paper or an election, the decision of the Secretary is conclusive;
- (m) if only 1 person is nominated in accordance with this Article 34 for election as an Author Director or a Publisher Director, the person nominated must be declared elected by the Secretary and the provisions of paragraphs (c) to (l) do not apply to that vacancy; and
- (n) where an Author Member or a Publisher Member is not a natural person, in Article 30 and this Article 34 "Author Member" and "Publisher Member" means the nominated representative of the Author Member or Publisher Member from time to time.

35. *Appointment of Independent Directors*

- (a) No later than 28 days following the annual general meeting of the Company held in every "C" Year, the Directors shall hold a Directors' meeting and shall appoint a minimum of one and a maximum of two "C" Independent Directors.
- (b) The Directors may at any time appoint one or two Independent Directors so that the total number of Independent Directors at that time is no more than 4. Any member of the Australian Society of Authors Limited or Australian Publishers Association Limited (or any other body that is substituted for either of those bodies in accordance with Article 30(c) or 30(d), as applicable) shall not be eligible for election as an Independent Director under this Article 35(b).
- (c) If the Directors appoint one Independent Director under Article 35(b), that Director shall be the "A" Independent Director. If the Directors appoint two Independent Directors under Article 35(b), one of those Directors shall be the "A" Independent Director and the other shall be the "B" Independent Director.

36. *Director's Retirement by Rotation*

- (a) At every annual general meeting of the Company held in an "A" Year, the "A" Directors shall retire from office.
- (b) At every annual general meeting of the Company held in a "B" Year, the "B" Directors shall retire from office, except that the Author Director and the Publisher Director shall not retire in 2009.
- (c) At every annual general meeting of the Company held in a "C" Year, the "C" Directors shall retire from office.
- (d) Subject to Article 36(e), a retiring Director is eligible for re-election or re-appointment.
- (e) A retiring Director is not eligible for re-election or re-appointment if, at the expiry of the term of re-election or re-appointment, and on the assumption that the Director does not during that term hold office as chairman, the Director would be in breach of Article 29.

37. *Vacancy*

- (a) Should there be a casual vacancy in the office of a Director, then that vacancy may be filled:-
  - (i) in the case of an Author Director - by appointment by the board of another Author Member to be a Director;
  - (ii) in the case of a Publisher Director - by appointment by the board of another Publisher Member to be a Director;
  - (iii) in the case of either of the ASA Directors - by appointment to be effected by nomination in writing by the Australian Society of Authors Limited or such other body as may be substituted in accordance with Article 30(c);
  - (iv) in the case of either of the APA Directors - by appointment to be effected by nomination in writing by the Australian Publishers Association Limited or such other body as may be substituted in accordance with Article 30(d); and

- (v) in the case of an Independent Director appointed in accordance with Article 35(a) - by appointment of another person by a majority of the rest of the board.
- (b) Any Director appointed in accordance with this Article 37 shall retire at the annual general meeting of the Company that the Director in whose place that person is appointed would have retired had that Director not vacated their office and that person is eligible for re-election or re-appointment.

**37A. Transition Arrangements**

- (a) Notwithstanding any other provision of these Articles, the members in general meeting shall have the power to make arrangements for:
  - (i) the classification of directors as "A", "B" or "C" Directors;
  - (ii) the length of the period(s) of appointment of "A" Directors from the 2007 annual general meeting until the 2008 annual general meeting;
  - (iii) the length of the period(s) of election of the Author Director and the Publisher Director from the 2007 annual general meeting until the 2012 annual general meeting;
  - (iv) the length of the period(s) of appointment of the "B" Independent Director from the 2007 annual general meeting until the 2009 annual general meeting;
  - (v) the length of the period(s) of appointment of "C" Directors from the 2007 annual general meeting until the 2010 annual general meeting; and
  - (vi) any other transitional matters relating to "A" Directors, "B" Directors and "C" Directors, including authorising the Directors to determine these matters.
- (b) This article 37A shall cease to have any effect and shall be automatically deleted from these Articles with effect at the end of the 2012 annual general meeting.

**38. Remuneration**

The remuneration of the Directors shall from time to time be determined by the Company in general meeting. That remuneration shall be deemed to be accrued from day to day. The Directors may also be paid all travelling, hotel, and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or general meetings of the Company or in connection with the business of the Company.

**DISQUALIFICATION OF DIRECTORS**

**39. Vacation of Office**

The office of a Director shall ipso facto be vacated -

- (a) if he becomes bankrupt or makes any assignment or composition with his creditors generally;
- (b) if he becomes a patient or a mentally disordered person or a mentally ill person within the meanings of those terms in the Mental Health Act 1990 of New South Wales or any enactment by which that Act is replaced;
- (c) if he absents himself from the meetings of the Directors for a continuous period of 3 months without leave of absence from the Directors and the board resolves that his office be vacated;
- (d) if by notice in writing to the Company he resigns his office;
- (e) if his office is vacated or he is prohibited from being a Director under any of the provisions of the Corporations Act 2001.

**CONTRACTS WITH DIRECTORS**

**40. Directors' Contracts**

- (a) No Director shall be disqualified by his office from holding any office or place of profit under the Company and any Director may be or become a Director of or otherwise hold office or a place of profit in any other Company promoted by the Company or in which the Company may be interested as vendor shareholder or otherwise.

No Director shall be disqualified by his office from contracting with the Company either as vendor, purchaser or otherwise; nor shall any such contract or arrangement entered into by

or on behalf of the Company in which any Director is in any way directly or indirectly interested be avoided; nor shall any Director be liable to account to the Company for any profit arising from any such office or place of profit or realised by any such contract or arrangement by reason only of such Director holding that office or of the fiduciary relations thereby established.

- (b) A Director must disclose to the Company any interest as aforesaid and must not vote in respect of any contract or arrangement with the Company in which he is in any way, whether directly or indirectly interested or in respect of any matter arising out of such a contract or proposed arrangement and if he votes in contravention of this sub-article, his vote shall not be counted.

41. *Management*

The business of the Company shall be managed by the Directors, who may pay all expenses incurred in promoting and registering the Company, and may exercise all such powers of the Company as are not, by the Corporations Act 2001 or by these regulations, required to be exercised by the Company in general meeting, subject, nevertheless, to any of these regulations, to the provisions of the Corporations Act 2001, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the Company in general meeting; but no regulation made by the Company in general meeting shall invalidate any prior act of the Directors which would have been valid if that regulation had not been made.

42. *Powers*

The Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property, and uncalled capital, or any part thereof, and to issue debentures and other securities whether outright or as security for any debt, liability, or obligation of the Company or of any third party.

43. *Seal*

The Directors may exercise all the powers of the Company in relation to any official seal for use outside the State and in relation to branch registers.

44. *Attorney*

The Directors may from time to time by power of attorney appoint any corporation, firm or person or body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys of the Company for such purposes and with such powers, authorities, and discretions (not exceeding those vested in or exercisable by the Directors under these regulations) and for such period and subject to such conditions as they may think fit, and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Directors may think fit and may also authorise any such attorney to delegate all or any of the powers, authorities, and discretions vested in him.

45. *Cheques, Bills, etc*

All cheques, promissory notes, drafts, bills of exchange, and other negotiable instruments, and all receipts for money paid to the Company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, by any 2 Directors or in such other manner as the Directors from time to time determine.

46. *Minutes*

The Directors shall cause minutes to be made -

- (a) of all appointments of officers
- (b) of names of Directors present at all meetings of the Company and of the Directors; and
- (c) of all proceedings at all meetings of the Company and of the Directors.

Such minutes shall be signed by the chairman of the meeting at which the proceedings were held or by the chairman of the next succeeding meeting.

## **PROCEEDINGS OF DIRECTORS**

47. *Meetings and Quorum*  
The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings and proceedings as they think fit. Until otherwise determined, a quorum shall be three Directors including:-
- (a) one Director who is an Author Director or an ASA Director; and
  - (b) one Director who is a Publisher Director or an APA Director.
- 47A. The Directors shall be treated as present together when in communication by any means of audio or audiovisual communication if each Director is able to hear each other participating Director.
48. A Director may at any time and the secretary upon the request of a Director shall convene a meeting of Directors.
49. *Directors May Act Notwithstanding Vacancy*  
The continuing Directors may act notwithstanding any vacancy in their body but so that if the number falls below the number necessary to form a quorum the Directors shall not except in emergencies or for the purpose of filling up vacancies or convening general meetings act so long as the number is below that number.
50. *Chairman*  
The Directors may elect a chairman and deputy chairman of their meetings and determine the periods for which they are respectively to hold office but if no chairman or deputy chairman is elected or if at any meeting neither the chairman nor the deputy chairman is present at the time appointed for holding it the Directors present shall choose one of their number to be chairman of the meeting.
51. *Decision by Majority Votes*  
Questions arising at any meeting shall be decided by a majority of votes and in the case of an equality of votes the chairman shall have a second or casting vote.
52. *Powers of Quorum*  
A meeting of the Directors for the time being at which a quorum is present shall be competent to exercise all or any of the authorities powers and discretions by or under the regulations of the Company for the time being vested in or exercisable by the Directors generally.
53. *Delegation to Committee*  
The Directors may delegate any of their powers to committee consisting of such member or members of their body as they think fit and may from time to time revoke such delegation. Any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may from time to time be imposed upon it by the Directors. The meetings and proceedings of any such committee consisting of 2 or more Members shall be governed by the provisions herein contained for regulating the meetings and proceedings of the Directors so far as they are applicable thereto and are not superseded by any regulations made by the Directors under this clause.
54. *Acts of Directors Valid Notwithstanding Defective Appointment*  
All acts done at any meeting of the Directors or of a committee of Directors or by any person acting as a Director shall notwithstanding that it is afterwards discovered that there was some defect in the appointment of such Director or person acting as aforesaid or that they or any of them were disqualified be as valid as if every such person had been duly appointed and was qualified to be a Director.
55. *Resolution in Writing*  
If all Directors (other than those Directors absent on leave and those Directors disqualified from voting on a matter) assent to a resolution and the assenting Directors would have constituted a quorum at a Directors' meeting, the resolution assented to is deemed to have been passed at a Directors' meeting. Any such resolution may consist of several documents in like form signed by one or more Directors.

56. *Alternate Director*

- (a) Any Director may from time to time appoint any person approved by a majority of the Directors to be an alternate Director in his place during such period as he thinks fit.
- (b) An alternate Director is entitled to:
  - (i) perform all the duties of a Director while his appointor is not exercising or performing them;
  - (ii) receive notice of meeting of the Directors, where the Company has been notified that the alternate Director is attending in place of his appointor; and
  - (iii) attend and vote at meetings of the Directors (and for this purpose be counted in a quorum and sign resolutions) if his appointor is not present.
- (c) A Director may at any time revoke the appointment of his alternate and if for any reason he ceases to be a Director then the person appointed by him shall thereupon cease to have any power or authority as alternate Director.
- (d) An alternate Director shall look for his remuneration to the Director appointing him but shall be entitled to be reimbursed by the Company for all travelling and other expenses incurred by him in attending meetings of the Company or otherwise on the Company's business.

## **INDEMNITY OF OFFICERS**

56A. *Right to Indemnity*

Subject to Articles 56B, 56C and 56D, to the extent permitted by law the Company indemnifies each officer (as defined for the purposes of section 199A of the Corporations Act 2001) against any liability to another person incurred by the officer as an officer of the Company.

56B. *Restrictions*

The indemnity referred to in Article 56A does not indemnify an officer against a liability:

- (a) owed to the Company or a related body corporate as defined in section 50 of the Corporations Act 2001 ("Related Body Corporate");
- (b) for a pecuniary penalty order under section 1317G of the Corporations Act 2001 or a compensation order under section 1317H of the Corporations Act 2001; or
- (c) that is owed to someone other than the Company or a Related Body Corporate and did not arise out of conduct in good faith.

56C. *Legal Costs*

The indemnity referred to in Article 56A does not indemnify an officer against legal costs incurred in defending an action for a liability incurred as an officer of the Company if the costs are incurred:

- (a) in defending or resisting proceedings in which the officer is found to have a liability for which the officer could not be indemnified under Article 56B;
- (b) in defending or resisting criminal proceedings in which the officer is found guilty;
- (c) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or
- (d) in connection with proceedings for relief to the officer under the Corporations Act 2001 in which the court denies the relief.

For the purposes of this Article 56C, the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

56D. *Insurance Premiums*

The Company may, in accordance with the Corporations Act 2001, pay the premiums on contracts insuring a person who is or has been an officer of the Company.

## **CHIEF EXECUTIVE OFFICER**

57. *Appointment of Chief Executive Officer*

The Directors may from time to time appoint a Chief Executive Officer of the Company either for a fixed term or without any limitation as to the period for which he is to hold such office and may

from time to time (subject to the provisions of any contract between him and the Company) remove or dismiss him from office and appoint another in his place.

58. *[This article was deleted on 12 November 2004].*

59. *Remuneration of Chief Executive Officer*

The remuneration of a Chief Executive Officer shall (subject to the provisions of any contract between him and the Company) from time to time be fixed by the Directors and may be by way of fixed salary or otherwise.

60. *Powers and Duties of Chief Executive Officer*

The Directors may from time to time entrust to and confer upon a Chief Executive Officer for the time being such of the powers exercisable under these presents by the Directors as they may think fit and may confer such powers for such time and to be exercised for such objects and purposes and upon such terms and conditions and with such restrictions as they think expedient.

61. The Directors may confer such powers either collaterally with or to the exclusion of and in substitution for all or any of the powers of the Directors in that behalf and may from time to time revoke, withdraw, alter or vary all or any of such powers.

62. *[This article was deleted on 10 November 1999].*

## **SECRETARY**

63. *Secretary*

The Secretary shall in accordance with the Corporations Act 2001 be appointed by the Directors for such term, at such remuneration, and upon such conditions as they may think fit; and any Secretary so appointed may be removed by them.

## **MINUTES AND REGISTERS TO BE KEPT**

64. *Minutes and Registers*

There shall be kept such minutes of meetings and proceedings of Members, Directors and managers of the Company and such registers as are required by the Corporations Act 2001 to be kept by the Company; and the Company shall comply with all the requirements of the Corporations Act 2001 relating to the same.

## **BRANCH REGISTERS**

65. *Branch Registers*

The Company may exercise the powers conferred by the Corporations Act 2001 and may cause to be kept in any country, state or colony outside New South Wales a branch register of Members. The Directors may subject to the Corporations Act 2001 make from time to time such provisions as they think fit respecting the keeping of any such branch register and may comply with the requirements of any local law.

## **THE SEAL**

66. *The Seal*

If the Company has a Seal, the Directors shall provide for the safe custody of the Seal and the Seal shall never be used except by the authority of the Directors or a committee of the Directors and the presence of at least one Director who shall sign every instrument to which the Seal is affixed and every such instrument may be countersigned by the Secretary or a second Director or some other person appointed by the Directors.

The board may by resolution determine either generally or in any particular case that the signature of any Director, Secretary or other person may be a facsimile signature or may be affixed by some mechanical means specified in such resolution.

67. *Seal for Use Outside the State*

(a) If the Company has a Seal, the Company may have for use in any place outside New South Wales an official seal which shall be a facsimile of the Seal with the addition on its face of the name of every place where it is to be used and the person affixing any such official seal

shall in writing under his hand certify on the instrument to which it is affixed the date on which and the place at which it is affixed.

(b) *Duplicate Seal*

If the Company has a Seal, the Company may have a duplicate seal which shall be a facsimile of the Seal and a certificate under such duplicate seal if affixed in the same manner as the Seal is required to be affixed under Article 66 shall be deemed to be sealed with the Seal.

## **ACCOUNTS AND INSPECTION OF RECORDS**

68. *Accounts*

The Directors shall cause to be kept such accounting and other records and shall cause to be prepared from time to time such profit and loss account and balance sheet as are required by the Corporations Act 2001, the Resale Royalty Act and the Act; and every such profit and loss account and balance sheet shall be dealt with in accordance with the Corporations Act 2001, the Resale Royalty Act and the Act.

69. *Separate Accounts or Equitable Remuneration*

The Directors shall cause separate accounts and records to be kept in respect of:-

- (a) the receipt and expenditure of all Equitable Remuneration;
- (b) the manner in which the entitlement of Members to Equitable Remuneration is determined and carried out;
- (c) the receipt and expenditure of all Resale Royalty Revenue; and
- (d) the manner in which the entitlement of Members to Resale Royalty Revenue is determined and carried out

and, in doing so, shall as far as possible, adopt a consistent practice in allocating receipts and expenditure to Accounting Periods.

70. *Inspection of Accounts*

The Members of the Company shall be entitled to inspect the accounting and other records of the Company at such times and places and under such reasonable conditions or regulations that the Directors shall from time to time (subject to the provisions of the Corporations Act 2001) determine. Provided that no Member (not being a Director of the Company) shall be entitled to require or receive any information concerning the business trading or customers of the Company or any trade secret or secret process of or used by the Company.

71. *Inspection of Records*

The owner or holder of any Rights in relation to Copyright Material shall be permitted to inspect the records of the Company at such times and places and under such reasonable conditions or regulations that the Directors shall from time to time determine, provided that any such owner or holder notifies the Company in writing that he wishes to do so, and such notice specifies as the day of inspection an ordinary day, not earlier than 7 working days after the date on which the notice is deemed given.

## **PROFITS OF THE COMPANY**

72. *Application of Profits*

The profits of the Company shall be applied solely towards the promotion of the objects of the Company and no portion thereof shall be applied or transferred directly or indirectly, by way of dividend, bonus or otherwise to Members.

## **RECEIPT AND ALLOCATION OF MONEYS OTHER THAN EQUITABLE REMUNERATION AND RESALE ROYALTY REVENUE**

73. *Application of Moneys Received on behalf of Members*

Moneys received by the Company on behalf of Members from all sources, other than Equitable Remuneration and Resale Royalty Revenue, shall be held as a separate fund to be applied as follows:

- (a) in payment to the Company of all expenses and other amounts properly chargeable by the Company;
- (b) if the Directors so determine, such amounts as the Directors may consider proper for such special purposes (including cultural and/or charitable purposes) as the Directors think fit not exceeding 1.5% of all such moneys received; and
- (c) any surplus then remaining shall be allocated and distributed to Members in accordance with a method of entitlement to be fixed from time to time by the Directors.

## **COLLECTION AND DISTRIBUTION OF RESALE ROYALTY REVENUE**

### *73A. Establishment and Application of the Resale Royalty Revenue Fund*

Resale Royalty Revenue collected by the Company from all sources including income derived from the investment of any of the Resale Royalty Revenue shall be held on trust as a separate fund to be paid in accordance with the Resale Royalty Act to each holder of the Resale Royalty Right less the Company's administration fee.

### *73B. Article 73B Trust Fund for Resale Royalty Revenue*

- (a) The Company shall hold on trust and separately account for:
  - (i) Resale Royalty Revenue to which a holder of a Resale Royalty Right is entitled where the holder of the Resale Royalty Right cannot be located or identified;
  - (ii) Resale Royalty Revenue to which a holder of the Resale Royalty Right is entitled under the Resale Royalty Act;
  - (iii) Resale Royalty Revenue the entitlement to which is disputed;
  - (iv) Resale Royalty Revenue required to be held under arrangements between the Company and other Collecting Societies; and
  - (v) such part of Resale Royalty Revenue as the Directors determine to be reasonable for allocation at a later time where the Directors consider that the information available is insufficient or not sufficiently accurate to enable an equitable and accurate allocation to be made.
- (b) *Retention in Article 73B Trust Fund*

All moneys transferred to this Article 73B Trust Fund shall be held upon trust for a period of at least six years from collection or such other period as may be provided for by the Resale Royalty Act.

## **RECEIPT AND ALLOCATION OF EQUITABLE REMUNERATION**

### *74. (a) Establishment of Equitable Remuneration Fund*

The Company shall hold the following amounts as a separate fund in respect of each Accounting Period:

- (i) Equitable Remuneration received during the Accounting Period;
- (ii) moneys carried forward from the ER Fund of the previous Accounting Period pursuant to Article 74(d);
- (iii) moneys transferred to the ER Fund pursuant to Article 76(e);
- (iv) income forming part of the ER Fund pursuant to Article 76(f); and
- (v) income derived during the Accounting Period from the investment of any of the moneys referred to in the preceding paragraphs of this Article.

### *(b) Payments from ER Fund to the Company*

There shall be paid to the Company from the ER Fund as provided by Article 74(c) in respect of each Accounting Period the following amounts:

- (i) all proper and reasonable expenses of and incidental to the collection, allocation and distribution of Equitable Remuneration for that Accounting Period in excess of the amounts paid to the Company in the previous Accounting Period pursuant to paragraph 74(b)(ii);

- (ii) except to the extent to which provision is made under paragraph 74(d)(i), such amounts as the Directors consider to be reasonable to meet the anticipated expenses of and incidental to the collection, allocation and distribution of Equitable Remuneration of future Accounting Periods; and
- (iii) if the Directors so determine, such amounts as the Directors may consider proper for such special purposes (including cultural and/or charitable purposes) as the Directors think fit not exceeding 1.5% of the Equitable Remuneration received by the Company for the Accounting Period in respect of which the payment is made.

(c) *Application of ER Fund to meet payments*

Payments to the Company pursuant to Article 74(b) may be made first out of those parts of the ER Fund included pursuant to paragraphs 74(a)(iv) and (v) as determined by the Directors and, if such moneys are insufficient, the balance of the moneys shall be paid from the remainder of the ER Fund.

(d) *Carry forward of amounts to future Accounting Period.*

The Directors may set aside from any specified part or parts of the ER Fund in any Accounting Period, other than a part included pursuant to paragraph 74(a)(iii), an amount they consider to be reasonable to be carried forward to the next Accounting Period to meet either or both of the following purposes:-

- (i) except to the extent to which provision is made under paragraph 74(b)(ii), to meet the anticipated expenses of and incidental to the collection, allocation and distribution of Equitable Remuneration of future Accounting Periods where the Directors consider that the amount paid to the Company pursuant to paragraph 74(b)(ii) is insufficient for that purpose; and
- (ii) to allocate to Members who satisfy the Directors that they are entitled to a share of the Distributable Fund for the Accounting Period in which the amount carried forward was set aside but where no entitlement was established under the procedures undertaken by the Directors pursuant to Article 75(d).

(e) *Determination of Distributable Fund*

After payment of the amounts provided in Article 74(b) and carry forward of amounts provided in Article 74(d), the residue of the ER Fund shall be allocated, distributed or applied in accordance with Articles 75 and 76.

- (f) The declaration of the Directors supported by the certificate of the auditors as to the amount of moneys received by the Company shall be conclusive and binding on all Members.

75. (a) *Determination of Entitlements of Equitable Remuneration*

Subject to the succeeding provisions of this Article 75, the Directors shall fix and determine not less than once in respect of each Accounting Period at times to be chosen by the Directors the entitlement of any person to a share of the Distributable Fund of that Accounting Period.

(b) *Scheme of Allocation*

Entitlements of persons to the Distributable Fund shall be determined in accordance with the scheme of allocation determined by the Directors in respect of each Accounting Period having regard to, but without limitation, the extent of copying of the relevant Copyright Material and the Company's obligations under arrangements with other copyright collecting societies, professional associations or similar bodies.

(c) *Prohibition on Certain Agreements*

Notwithstanding Article 75(b) the Directors of the Company must not make any binding arrangement, collateral to any scheme of allocation regarding the future exercise of their discretion to make any determination under this Article 75.

(d) *Matters relevant to Allocation by Directors*

In exercising its powers under this Article 75 the Directors must take all reasonable steps to ensure that any person's entitlement to a share of the Distributable Fund is determined equitably and accurately. The Directors shall be entitled to consider all relevant matters in

making their determination under this Article including, but without limitation, the extent to which copying of relevant Copyright Material has occurred under the Statutory Licences as disclosed by:

- (i) records of copying;
- (ii) the results of independently conducted sampling;
- (iii) such other information obtained by the Company designed to ascertain the nature and extent of copying of relevant Copyright Material.

(e) *Members to provide Information*

The Directors may require from time to time each Member to submit to the Company relevant details of all Copyright Material in respect of which the Member is entitled to be a Member of the Company.

(f) *Allocations*

Allocations of the Distributable Fund made by the Directors shall be conclusive and binding on all Members.

(g) *Time of Distribution*

The Directors shall distribute moneys allocated to Members, and such other persons as may be entitled to distributions pursuant to Article 9, in respect of any Accounting Period as soon as practicable after allocation of the Distributable Fund during that Accounting Period.

(h) *Agreements*

Any scheme of distribution fixed by the Directors shall comply with the terms and conditions of any agreement in force from time to time between the Company and any Member.

(i) *Clarification*

The Directors may require from each Member prior to distribution of moneys allocated pursuant to this Article 75:-

- (i) evidence of the entitlement of that Member to the Equitable Remuneration payable in respect of the Copyright Material; and
- (ii) an indemnity in a form reasonably required by the Directors against any liability of the Company to any person with an interest in the Copyright Material in respect of which a share of the Distributable Fund is to be paid to the Member.

76. *Regulation Trust Fund*

(a) The Company shall establish and maintain a separate trust fund, the trustee of which is to be the Company and to which shall be transferred from the Distributable Fund during any Accounting Period:

- (i) moneys to which a Member is entitled where the Member cannot be located;
- (ii) moneys to which a non-Member would be entitled if he were a Member;
- (iii) moneys the entitlement to which is disputed;
- (iv) moneys allocated to a Member where the amount of all accumulated entitlements of that Member is less than 50 dollars or such other sum as is determined by the Directors from time to time;
- (v) moneys required to be held under arrangements between the Company and other copyright collecting societies, including foreign societies, and
- (vi) such part of the Distributable Fund as the Directors determine to be reasonable for allocation at a later time where the Directors consider that the information available is insufficient or not sufficiently accurate to enable an equitable and accurate allocation to be made.

(b) *Retention in Regulation Trust Account*

All moneys transferred to the Regulation Trust Fund shall be held upon trust for a period not exceeding the Trust Period.

(c) *Trust for Persons Entitled*

Moneys transferred to the Regulation Trust Fund pursuant to any of paragraphs 76(a)(i) to (v) inclusive shall be held for the Members or other persons to whom they were allocated absolutely upon and by virtue of the circumstances which lead to the transfer of the moneys to the Regulation Trust Fund ceasing to apply within the Trust Period.

(d) *Trust to make Allocations*

Moneys transferred to the Regulation Trust Fund pursuant to paragraph 76(a)(vi) shall be held absolutely for such of the Members and in such proportions as the Directors may determine during the Trust Period in accordance with the scheme of allocation determined by the Directors for the Accounting Period in respect of which the moneys are transferred to the Regulation Trust Fund.

(e) *Return of Moneys to ER Fund*

Any moneys held in the Regulation Trust Fund to which no person becomes absolutely entitled pursuant to Articles 76(c) or 76(d) within the Trust Period shall be transferred to the ER Fund for the Accounting Period in which the Trust Period expires to be paid or allocated in accordance with Articles 74 (b) and 75 PROVIDED that no amount so transferred to the ER Fund shall be again allocated to any person to whom any of the paragraphs 76(a)(i) to (v) inclusive apply or transferred to the Regulation Trust Fund under paragraph 76(a)(vi).

(f) *Trust of Income*

All income earned from the investment of moneys held in the Regulation Trust Fund shall form part of the ER Fund and shall be paid or allocated in accordance with Articles 74 and 75 PROVIDED that no such amount shall be allocated to any person to whom any of the circumstances specified in paragraphs 76(a) (i) to (v) inclusive apply or transferred to the Regulation Trust Fund under paragraph 76(a)(vi).

(g) *Directors Determination*

For the purposes of Article 76(c) the determination of the Directors that the circumstances which lead to the transfer of any moneys to the Regulation Trust Fund have ceased to apply and the persons so entitled to the moneys shall be final and binding on all persons.

## NOTICES

77. *Notices*

- (a) A notice may be given by the Company to any Member either personally or by sending it by post to him at his registered address or (if he has no registered address within the State) to the address, if any, within the State supplied by him to the Company for the giving of notices to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice and to have been effected in the case of a notice of a meeting on the day after the date of its posting and in any other case 3 days after the date of its posting.
- (b) Notwithstanding any other provision in these Articles, a notice or communication under these Articles may be given using facsimile transmission or any electronic means approved by the Directors from time to time. Where a notice or communication is by facsimile, proof of the sending of a notice and the time of completion of transmission may be established by production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the addressee. Where the Directors approve the giving of notices by electronic means, the Directors may specify the requirements in respect of such notices, including the types of notices which may be given and the circumstances in which they may be given (including the manner in which and time at which notice is deemed to have been given).

78. *General Meeting*

- (a) Notice of every general meeting shall be given in any manner hereinbefore authorised to -
- (i) every Member entitled to receive notice at the address for the giving of notices last supplied by the Member to the Company;
  - (ii) the auditor for the time being of the Company; and
  - (iii) every Director of the Company.

- (b) No other person shall be entitled to receive notices of general meetings.

## AUDIT

79. *Audit of Accounts and Share Register*

Once at least in every year the accounts of the Company shall be audited and the correctness of profit and loss account and balance sheet ascertained by one or more auditor or auditors.

80. *Auditors*

Auditors of the Company shall be appointed and may be removed and their remuneration rights and duties shall be regulated in accordance with the Corporations Act 2001.

81. *Audited Accounts to be Conclusive*

Every account of the Company when audited and approved by a general meeting shall be conclusive except as regards any error discovered therein within 3 months next after the approval thereof. Whenever any such error is discovered within that period the account shall forthwith be corrected and thenceforth shall be conclusive.

## WINDING UP

82. *Winding Up*

If upon the winding up or dissolution of the Company there remains after satisfaction of all its debts and liabilities any property whatsoever the same shall not be paid to or distributed among the Members of the Company but shall be given or transferred to some other institution or institutions having objects similar to the objects of the Company, such institution or institutions to be determined by the Members of the Company (other than Collecting Society Members in their capacity as such Members) at or before the time of dissolution, and if and so far as effect cannot be given to the aforesaid provision, then to some charitable object.

## STATUTORY LICENCES

83. (a) As regards the receipt and allocation of Equitable Remuneration the following provisions shall have effect notwithstanding anything to the contrary in these Articles; namely:
- (i) Accounting Periods shall be determined, in accordance with these Articles, by the Company for accounting purposes. No such period shall extend beyond 30 June in any year;
  - (ii) a consistent practice shall be followed with regard to attributing the receipts and expenditure of the Company to a particular Accounting Period;
  - (iii) the Company shall exercise reasonable diligence in the collection of amounts of Equitable Remuneration, having regard to the expenses likely to be incurred in the collection of such amounts;
  - (iv) the total amount of any gifts for cultural or benevolent purposes made by the Company in respect of any Accounting Period shall be an amount not exceeding such percentage of the total amount of Equitable Remuneration received by the Company in respect of that period as is specified in Article 74(b)(iii);
  - (v) the administrative costs and other outgoings of the Company paid by the Company out of the amounts of Equitable Remuneration collected by it shall be reasonable;
  - (vi) the Distributable Fund, in respect of each Accounting Period of the Company, shall be allocated in accordance with a scheme of allocation (in this Article called 'the scheme') that:
    - (A) is determined in accordance with these Articles; and
    - (B) includes criteria for allocation that are specified in Article 75; and
    - (C) provides for the allocation of potential shares in the Distributable Fund to qualified persons;
  - (vii) in relation to each potential share in the Distributable Fund allocated in accordance with the scheme of the Company, an amount representing that potential share:

- (A) where the qualified person to whom that share was allocated is, at the time of the allocation, a Member of the Company - shall be distributed as soon as is reasonably possible after the allocation, to that qualified person; or
  - (B) where the qualified person to whom that share was allocated is not, at the time of the allocation, a Member of the Company:
  - (C) shall be paid, as soon as is reasonably possible after the allocation, into the Regulation Trust Fund operated by the Company for purposes referred to in paragraph (viii); and
  - (D) subject to sub-subparagraph (c), shall be held in that fund in accordance with Article 76; and
  - (E) if the qualified person, or that person's agent, becomes a Member while the amount representing that person's potential share is held in the Regulation Trust Fund - shall be distributed to that person or that person's agent, whichever first becomes the Member, as soon as is reasonably possible after that person, or that person's agent, as the case may be, becomes a Member;
- (viii) a trust fund, in this Article called the Regulation Trust Fund, shall be operated by the Company for purposes that include the holding on trust for any relevant copyright owner who is not a Member of the Company, and whose agent is not a Member, of any potential share allocated to that owner in accordance with the scheme;
- (ix) any part of a Distributable Fund, being a part that, in relation to an Accounting Period, cannot for any reason be allocated or distributed, shall be held on trust in the Regulation Trust Fund until distribution becomes possible or until the end of the Trust Period, being a period of not less than 4 years, whichever happens first;
- (x) a Member of the Company, including a Member who is a relevant copyright owner or the agent of a relevant copyright owner, shall be entitled to reasonable access to the records of the Company;
- (xi) the Company shall not distribute dividends to its Members.

(b) In this Article:

**“Distributable Fund”**, in relation to an Accounting Period of the Company means the amount of Equitable Remuneration received by the Company that is :

- (i) attributable to that period (in accordance with the practice of the Company); or
- (ii) otherwise available for distribution;

after the payment or reservation, out of that amount, of:

- (iii) amounts attributable to that period, including:
  - (A) gifts made by the Company; and
  - (B) administrative costs and other outgoings of the Company; and
- (iv) amounts to be carried forward, in accordance with Article 74(d), to the next Accounting Period;

**“potential share”** in relation to a Distributable Fund, means a share in the amount comprising that Fund in relation to which share the distribution of an amount representing that share will take place in the circumstances referred to in subparagraph (vii) (A) or (B).

**“qualified person”** in relation to the Company means:

- (i) a Member of the Company who is a relevant copyright owner or the agent of a relevant copyright owner; or
- (ii) a relevant copyright owner who is not a Member of the Company and whose agent, if any, is not a Member.

**“relevant copyright owner”** means the owner of the copyright in Copyright Material.

## RESALE ROYALTY RIGHT

- 84 As regards the collection and distribution of Resale Royalty Revenue the following provisions shall have effect notwithstanding anything to the contrary in these Articles; namely:
- (a) the Company shall exercise reasonable diligence in the collection of Resale Royalty Revenue in accordance with the Resale Royalty Act;
  - (b) interest earned by the Company on Resale Royalty Revenue shall be included in payments to the holders of the relevant Resale Royalty Rights in accordance with the Resale Royalty Act; and
  - (c) a trust fund, in these Articles called the Article 73B Trust Fund, shall be operated by the Company for purposes set out in Article 73B and in accordance with the Royalty Revenue Act.

#### **COMPLAINTS BY MEMBERS**

- 85 The Company shall establish and maintain a complaint notification and handling procedure for dealing with Member complaints, including Member complaints in relation to Resale Royalty Revenue.