

# **Report of Review of Copyright Collecting Societies' Compliance with their Code of Conduct for the Year 1 July 2005 to 30 June 2006**

## **INTRODUCTION AND SUMMARY CONCLUSIONS**

This is the Fourth annual report on compliance with the Code made by the Code Reviewer, J. C. S. Burchett, QC, since the adoption of the Code in 2002.

This report and those that preceded it have been made in respect 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 Code Reviewer's conclusion for the year to 30 June 2006, stated summarily, is that an examination of the correspondence of the societies, and their practices, has shown no significant breach of the Code by any of them and, positively, that there has been, in the words of cl. 5.2(c) of the Code, good "compliance generally by Collecting Societies with [the] Code".

As in previous years, the review was advertised widely through society websites and by mail (details will be found in the Appendix) with an invitation to persons to make submissions to the Code Reviewer, as a result of which the Code Reviewer received a number of letters, including requests for hard copies of the Code, but only one submission suggesting a breach of the Code. That submission was a repetition, unaccompanied by any further argument or support, of a contention which was considered last year and found lacking in substance; however, it has been again considered, in this report, without a breach of the Code being disclosed. In the face of a wide opportunity for licensees and organisations representing licensees, and persons or bodies otherwise affected by the operation of the societies, as well as members, to make submissions, the almost complete absence of any

submission to the review alleging a breach of the Code, while the one such submission that was made was without foundation, is evidence raising an inference that the Code is being observed.

But the Code Reviewer has placed much more reliance, in this regard, on the access he has been given to documents showing directly the measures taken by the societies to comply with the Code. Each society is required, by cl. 5.2(b) of the Code, to furnish reports to him that contain information about:

- (a) the society's staff training in the Code, including in complaint handling procedures;
- (b) the society's promotion of the importance of copyright and of the role and functions of collecting societies generally, including its own role and functions, and including the dissemination of information; and
- (c) the number of complaints received by the society and how they have been resolved.

In each year, including the present year, the reports furnished to the Code Reviewer have contained voluminous information about the activities of the societies, and copies of relevant documents. He has followed them up by interviewing Chief Executives and other senior staff of the societies to discuss any aspect of each report that required clarification or elaboration, and to explore questions of doubt or difficulty.

In both the first and the last of the three sets of issues which the societies' reports to the Code Reviewer are required to cover, as set out above, mention is made of the topic of complaints. An examination of the societies' performance in relation to complaints lies at the heart of each review of their compliance with their Code of Conduct. It is desirable, therefore, to turn first to that topic.

## **COMPLAINTS**

In last year's report, the conclusion was reached, after an analysis of all complaints made against the societies, that they did not reveal any significant breach of the Code, and that one large society (APRA) had made great gains in the reduction of complaints over the period of operation of the Code. This

year, although there was some variation in the composition of the figures, the low total number of complaints (by comparison with the statistics at the time the Code began to operate, and in relation to the membership and number of licences issued) shows that this great improvement achieved by APRA has been maintained. It is not only the *number* of complaints which is relevant. Their nature, and what is done about them, may be even more significant. A small number of complaints appeared to reveal a system failure or a human error, while others arose from the complainant's own mistake, misunderstanding or a concern unrelated to any fault attributable to the society. In the case of another large society (CAL), this year there were, as will appear, eight complaints reflecting a variety of aspects of the one problem, a difficulty inherent in a distribution rule which CAL is setting out to remedy – although the task will be lengthy, complex and doubtless expensive. Of particular interest, having regard to the Code's emphasis on desirable conduct in the first place, as well as on a desirable response to any complaint, is the number of instances where a society, having dealt with a complaint, went on to take action to amend some practice or procedure in order to avoid a repetition of the problem revealed by that complaint. The basis of this observation will appear in the analysis of complaints which follows.

Before that analysis is undertaken, reference should be made to some further matters. A number of complaints, over the years, have arisen out of the activities of societies, such as APRA, to make business people, particularly small business people, aware of their legal obligations in respect of copyright, activities which unfortunately may sometimes have to be pursued to the stage of legal proceedings against persistent infringers. The society may be met with indignation and allegations of unnecessarily peremptory behaviour. Ironical as it may seem, an opposite complaint has now emerged; the proprietors of businesses which do comply with their obligations complain on occasion that not enough vigour is shown in the enforcement of those obligations against their competitors! Examination of these complaints reveals that sometimes the competitors are in fact paying licence fees, but sometimes they have failed to do so although making use (of which the society may have been unaware) of copyright material.

The Code requires the societies to maintain records of all complaints. When these records are examined, it is relevant to bear in mind the size of the membership and the number of licence transactions from which complaints may arise. Accordingly, this information is noted at the beginning of each analysis, society by society, of complaints.

## **1. Copyright Agency Limited ("CAL")**

In the year to 30 June 2006, CAL received 11 complaints from members and licensees, which it has recorded and dealt with under its complaints handling procedures. While this number is greater than CAL's previous record of very few complaints (4 last year), it should be noted that a substantial proportion (8 out of 11) of the complaints relate to one issue – the problem of a publisher or author receiving a distribution under the distribution rules upon an undertaking to make to any other person entitled any payment out of the distribution which may be due. The difficulty arises from allegations that these undertakings are not always observed, and CAL, as has been indicated in the summary section of this report, is in the process of setting in place a revised scheme of distribution to remedy the situation by splitting payments between the persons entitled.

CAL's membership now stands at 9,129, of whom 5,996 are authors and 3,133 publishers. CAL estimates that, through members who represent other rightsholders, it has an indirect membership of over 25,000 rightsholders. It licenses copying in over 10,000 institutions including 9,600 government and private schools, 38 universities, 53 TAFEs, 701 independent educational colleges, 425 churches, 72 Commonwealth Government departments, and various State and local governmental bodies.

An analysis of all of the complaints received reveals the following:

1. An author complained that a publisher which, under the existing arrangements, was entitled to receive the whole distribution for her book, but subject to paying to her her 50% entitlement within 60 days, had failed to do so. CAL supplied details of payments made and explained that each payment had been made upon an agreement by the publisher to review any contracts in order to

determine whether any other person was entitled to a share and to distribute any such share within 60 days. The author was also informed of CAL's decision to introduce a "new approach [to] allow members to notify CAL of their agreed revenue split for CAL payments up front and for CAL to act on that notification. ... At this stage CAL hopes to be able to implement this new model next year." In addition, the author was advised the issue would be raised in CAL's next newsletter.

2. A second complaint arising out of confusion as to the splitting of rights was somewhat different. On this occasion, the error was committed by an employee of CAL who assumed the authors of a work were entitled when, in fact, only a broadcasting company was. Then, on the company drawing attention to the error, CAL treated the matter as a dispute in respect of entitlement between the company and the authors, advising them of CAL's dispute resolution procedures. As there was in fact no dispute, the company complained its good relations with the authors had been unnecessarily jeopardised. CAL obtained an acknowledgement from the authors that the company was entitled, and also wrote to the company admitting that it "should review the appropriateness of automatically handling such matters as 'disputed claims'". This complaint illustrates both the problem of determining entitlements for some distributions, and also in respect of the somewhat over enthusiastic resort to dispute resolution procedures before it was clear there was a dispute, the wisdom of James Thurber's remark that "you might as well fall flat on your face as lean over too far backwards!" CAL is, in fact, putting in place new procedures designed to avoid any recurrence of this reaction to an apparent problem.
3. A further variation on the theme of the splitting of distributions gave rise to the next complaint to be discussed. An artist, being a member of CAL and claiming entitlement in respect of artwork reproduced in a literary work, was paid the whole of a distribution relating to the artwork upon an undertaking to review her contractual arrangements and to pay to any other person entitled the appropriate share of the distribution within 60 days. More than 60 days later, the publisher, after being notified by CAL – not by the

artist – of the making of the payment, complained that under the contract for the illustration of the literary work by the inclusion of the artwork, the publisher was entitled to the whole of the distribution. It would appear that CAL acted in accordance with its rules, but, as has been said, they are being reviewed in order to avoid this kind of problem in the future. Quite apparently, a system of paying members upon an undertaking to pay others is open to abuse, or, at best, to the effects of misunderstandings.

4. A large publishing firm complained that, in 2005, CAL had distributed over \$300,000 directly to its authors, of whom “only a dozen have forwarded the 50% due to [the publisher]”. Again CAL explained its current distribution practice of sending distributions to authors, where they are members of CAL, upon an undertaking to pay other entitlements; and its present endeavours to develop a new system to distribute to different rightsholders upon notification of the relevant contractual arrangements.
5. Another substantial publisher of educational material complained that, for the past three years, “not a single author” who had been paid distributions by CAL under the current practice “had voluntarily paid the publisher share”, although “upon request and pressure”, many but not all had done so. In one case, it was asserted, a large sum had been paid to a member who was neither the author of the work nor the publisher, but a contributor by way of authorship of a particular chapter. CAL responded by advising: (a) that it had written to the authors whose names the publisher had advised; and (b) that it would implement a new procedure in about twelve months time upon the installation of its new computer system.
6. A literary agent complained (somewhat indirectly, almost *sotto voce*) that, although CAL notified publishers of payments to authors, it had not advised her (on behalf of her authors) of payments to publishers. CAL explained that where an author was a member of CAL, a payment would only be made to the publisher, under the current scheme of distribution, at the request of the author, so no further notice would be required.
7. As part of the introduction of the proposed new practice of splitting distributions between those having various entitlements, CAL determined upon a trial involving 14 works by 12 authors, all the

authors and publishers being members of CAL. A senior employee of CAL obtained the relevant information from the publisher members, and then notified the Australian Society of Authors (ASA) that she was seeking the same information from the authors. The Executive Director of ASA wrote complaining in strongly coloured terms that CAL should have approached the authors first and the publishers only afterwards. CAL responded that the trial was intended to ascertain necessary information and test processes, all of the publishers and authors being members of CAL and two of the authors being also members of ASA. Only where both author and publisher agreed would they participate in the trial. The Executive Director of ASA did not accept the appropriateness of this response, and discussions are ongoing.

8. An illustrator member of CAL telephoned CAL's Complaints Officer and later had a discussion with her to express dissatisfaction with CAL for notifying her publisher of distributions to her under the current practice, such a notification being claimed to be a breach of privacy (although CAL's form letter enclosing a distribution, in such cases, not only refers to the recipient's undertaking to pay other persons entitled, but also advises that "CAL may provide details of this payment to other rightsholders in these works [including] publishers"). Various other matters were raised in the discussion, one of these matters being a mistake in the calculation of a distribution (which CAL acknowledged and apologised for), and it was said a formal complaint would be lodged. That has not happened, but two months later an email was sent that the "complaint regarding distribution problems that directly affecting our future CAL payments [sic]" and the "matter of privacy" would be pursued and the complainant "will proceed to the Privacy commissioner and the attorney General's department [sic]". But the fact is, it is understood, that this complainant, after the question was raised, did agree with the publisher that it was entitled to 50% of the distribution.
9. The next complaint to be discussed is the first in the year to 30 June 2006 which did not relate, in some way, to the problem of split entitlements to distributions. This complaint related to a serious failure to deal with correspondence over a period of

months. It appears to have been due to a significant staff shortage which has now been made up by a substantial increase of staff numbers in the relevant section of CAL's office. As well, a tracking system has been put in place designed to prevent letters remaining unanswered. No complaint of this kind has arisen since. While remedying the general situation in these ways, CAL has dealt with the particular situation by a frank apology, the payment of an outstanding distribution, and a practical suggestion aimed at removing the problem that had led to the correspondence in the first place.

10. Another complaint of delay was from a licensee who had not received an invoice for licence fees over a period of three years. The delays were acknowledged by CAL to have been "obviously unsatisfactory", and it was undertaken that policies would be implemented "to ensure that this situation does not arise again". In fact, CAL reorganised its office to take invoicing from the licensing staff and put it in the hands of staff brought in specifically to perform this function.
11. One licensee of CAL complained that a competitor holding a similar licence was advertising it was able to use its licence in a way the licences forbade, conduct which (if CAL refrained from preventing it) would damage the complainant's business by giving an advantage to its competitor. CAL confirmed that the same restrictions applied to both licensees, and the breach was rectified. Subsequently, one of the competitors purchased the business of the other.

In last year's report, there was discussion of a strongly worded complaint made in a submission to the Code Reviewer by a body known as the States and Territories Copyright Working Group (also called "the Government Group" or simply "the Group"), which objected about aspects of long-running negotiations with Screenrights and CAL, particularly CAL, relating to government copying. Although the complaint was strongly worded, upon analysis, no actual breach of the Code could be demonstrated. This year, the Group renewed its complaint in one respect, again not as a complaint to CAL or Screenrights, but as a submission to the Code Reviewer in respect specifically of CAL. It is a repetition of a point argued last year, that the



obligation of transparency of dealing voluntarily accepted by CAL through cl 2.3(b) of the Code is contravened in respect of the surveys of copying upon which CAL relies. Put in the precise terms chosen by the Group, it is asserted:

“CAL consistently refuses to provide the States and Territories with access to raw survey data. By keeping that [*sic*] data to itself, CAL hinders the States and Territories from managing copying practices, and they are unable to fully review the survey results and make their own determination in regard to compliance, survey design or the accuracy of CAL’s internal procedures.”

It will be appreciated that the surveys in question are designed to ascertain what copying actually takes place, and also to ascertain information necessary for a fair and proper distribution of the remuneration involved to the persons entitled; they are not directed to the relevant Government’s “managing [of its own] copying practices”, but to the independent measurement of them and of the revenue to which they create an entitlement. It was pointed out in last year’s report on the review of the Code that there was a question “about the appropriate balance to be preserved between the integrity of the survey and the ability of those concerned to have the procedures adequately checked.” Reference was made to *Copyright Agency Limited v University of Adelaide* [1998] A CopyT 3 at para 6 where the Copyright Tribunal accepted that “the provision of information capable of pointing a finger at departments or individuals has the potential to affect behaviour”, adding : “Individuals may make short term changes in their copying habits during the currency of a survey the details of which they know will become available to their university [or their public service superior?], thereby distorting the picture it gives of their overall behaviour and, more importantly, of the overall behaviour across the universities [or government departments?] of which their behaviour is a representation.” This issue has been squarely raised again in proceedings which are current in the Copyright Tribunal and in the Federal Court of Australia. It is an appropriate issue for tribunal or judicial determination, given the widely differing positions taken up by government bodies including the Group, on the one hand, and CAL and the survey specialists upon whom it relies, on the other. In that situation, the Code Reviewer reported last year

there was no breach of cl 2.3(b) of the Code and, although the issue has been raised again this year, nothing further has been put to explain why a different view should now be taken. Whether the view taken by the Group or that taken by CAL ultimately prevails in the current litigation (a matter with which the Code Reviewer, of course, has no concern), no breach of cl 2.3 (b) is involved in CAL maintaining its stance in that litigation and in negotiations with the Group. The appropriate approach for the Code Reviewer to take to such an issue was explained at pp 3-4 of the report for the year 1 July 2003 to 30 June 2004.

## **2. Australasian Performing Right Association Limited (“APRA”) and Australasian Mechanical Copyright Owners Society Limited (“AMCOS”)**

Since APRA also administers AMCOS, this report, like earlier reports, will refer generally to these two societies together as “APRA”. Both have continued to grow in membership, which now stands at 44,000 Australian and New Zealand members for APRA and 900 (approximately two-thirds being writers and the rest publishers) for AMCOS. APRA has about 70,000 general licensees, plus 4,500 broadcast and 3,600 mechanical licensees (including about 500 on-line licensees).

During the year to 30 June 2006, APRA’s register of complaints from members has contained three recorded complaints, of which two had actually been recorded in an earlier year but remained on the register because it had not been possible to achieve a complete resolution before 30 June 2005. So only one complaint arose from nearly 45,000 members during the year under report. The three complaints may be summarised as follows:

1. This was one of the “old” complaints. As was noted in last year’s report on the implementation of the Code, the problem was essentially a dispute between two members as to the sharing of royalties for a song. APRA’s conduct did not involve a contravention of the Code, and it made persistent efforts to assist the parties in settling their dispute. During the year now under report, the dispute was finally settled.

2. The other “old” dispute arose out of a claim by a member that another member’s musical composition infringed his copyright. His complaint, as was reported last year, was that APRA had not been even-handed in the matter; but, upon review of the correspondence, this complaint did not appear to be borne out. However, the dispute did expose the rigidity of a distribution rule of APRA, pursuant to which, once a genuine dispute was established, APRA was required to put further royalty payments into a suspense account. Expert advice was obtained concerning this rule, and in the light of that advice the rule was changed so as to introduce a discretion. The amendment seems entirely appropriate. In the meantime, the dispute between the two members has followed a somewhat leisurely course, a matter which remains beyond the control of APRA.
3. The one fresh complaint came from a member who considered APRA was in breach, in relation to a particular form used by it, of its taxation law obligations. Advice was obtained from leading accountants, who disagreed with the complaint, and a special ruling was then sought from the Australian Taxation Office, which confirmed the propriety of APRA’s practice. No breach of the Code was involved.

There was no Media Licensing complaint (such a complaint – if there were any – would now be referred to as a Broadcast Licensing complaint) in the period under review. But there were three Mechanical Licensing complaints, as follows:

1. A licensee who was in default raised questions about the effect of the licence, and then complained of a delay in the receipt of a reply to his queries (three months, including the Christmas holiday period), suggesting this delay constituted a monopolistic disregard for his problems. However, although the delay was certainly inappropriate, the real dispute appeared to be about money, and it was settled when APRA allowed payment by instalments.
2. A complainant, who did not furnish his full name or address, alleged via a website that APRA allows the unlicensed manufacture of karaoke recordings. APRA responded, advising that piracy

investigations are undertaken in the music industry by Music Industry Piracy Investigations (MIPI), which APRA supports and to which APRA has referred "several karaoke related piracy issues" for action. The name and telephone number of the General Manager of MIPI were supplied. APRA does support this body financially, and MIPI has concentrated some attention on karaoke.

3. A member complained that a letter written by the Manager, Commercial Recording of APRA/AMCOS contained an inaccuracy which had caused him embarrassment. Strictly read, the letter was capable of conveying an inaccurate impression. APRA promptly clarified the matter, and received an acknowledgement that it had indeed been "straightened out". However, it is suggested the acrimony, if quite temporary, would have evaporated even more quickly if APRA's very first response had evinced less self-justification and simply a plain acceptance that its letter had not been well worded; but the fault was extremely slight, and the clarification not delayed. The episode suggests APRA's staff were scrupulous in recording a small matter of complaint, and it is by learning the lessons of such small matters that hopefully larger ones will be avoided.

There were 18 General Licensing complaints recorded in the year, as follows:

1. A licensee, who was concerned about the cost of performances staged by him, complained that only 12% of the performers were members of APRA, yet he was obliged to pay substantial licence fees. In fact, as he was informed, 65% of the artists were APRA members, and others were likely to be performing works within APRA's repertoire. The licence was renewed without further complaint.
2. The proprietor of a scuba diving business complained that, although he had been paying licence fees for eight years, his competitors were unlicensed. On investigation, this complaint was acknowledged to be true, and 20 businesses were contacted, five of which were using music and were then licensed. The others were not using music.

3. A dentist was licensed in respect of background music and music on hold. After demands were made for outstanding fees, he complained he had already paid. Upon investigation, it turned out that, instead of lodging a request for renewal of his licence, he had, on an earlier occasion, made a fresh licence application. As the fresh application did not show his name in precisely the same form in which it appeared on the previous licence, APRA's computer did not pick up the duplication. The payment received was credited to the new licence, leaving the original licence in arrears. Upon this being discovered, APRA took several steps:
  - (a) it transferred all payments to the original licence account and cancelled the second licence;
  - (b) it wrote a letter of apology and enclosed a small refund; and
  - (c) it took care to ensure that a new computer program which it is installing will be capable of detecting such a situation in the future.
4. A club which was a licensee complained that the music it played was all very old and out of copyright. APRA investigated, to find that 75% was not out of copyright. The complainant (really, rather a querist) accepted this, and has renewed its licence.
5. A coach tour operator in Western Australia complained that it was asked to pay licence fees while others in the same industry were unlicensed. APRA has acted on the complaint by contacting 20 other coach companies as to whether they are using music so as to require a licence. The complainant was advised that this action would be undertaken.
6. A cinema proprietor completed and lodged a return of box office takings for a particular year, which represented a very considerable drop in the figures. APRA sent out a form letter, in terms requesting a re-evaluation and resubmission of the return. This drew a vigorous objection from the company's chartered accountant and auditor. APRA wrote apologising and accepting the figures. It does seem that a polite enquiry as to the explanation for the figures would have been more in keeping with business procedure and expectations than to ask for resubmission, which strongly implies a serious default in respect of the obligation of submission. APRA has responded to the disclosure of the

inappropriateness of its form letter by redrafting the form to remove the implication.

7. A retail store proprietor complained that APRA had ignored his oral advice that he had expanded the number of his stores, and had later implied he had not notified it. APRA could find no record of the alleged oral advice, but it apologised and then changed its system to avoid renewals of licences, in the case of chains of stores, without prior checking as to the number of stores. APRA reports that the new system is working well, without further problem.
8. A telephone indication that a complaint would be made was logged as a complaint. What was involved was really a matter of the appropriate licence to fit the situation, and an employee of APRA explained this during the telephone call and then sent out the necessary forms for completion and return. No formal complaint eventuated. Appropriate licences have since been taken up.
9. A fitness centre proprietor complained, after licence fees were increased pursuant to an agreement reached in Copyright Tribunal proceedings. He was sent a letter of explanation of the situation, and duly paid without further demur. Of 811 fitness centre licensees (a number of which control multiple centres), only 2% have yet to renew under the new scheme.
10. A complaint was received from an organisation with a Croatian cultural emphasis that it did not require to be licensed because its Croatian music was outside APRA's control and, so far as background music was concerned, it no longer played any. APRA responded by deleting background music from the licence, while pointing out that it represented the Croatian collecting society, HDS, so a licence was required for the performance of the music of virtually all Croatian composers of copyright musical works. The reduced licence fee was paid.
11. A complaint about the inaccuracy of an invoice under a licence was examined promptly by the Chief Executive, who acknowledged it involved two errors, the source of which he explained in detail. The complainant then wrote stating he "very much appreciated" this response, and would be "delighted" to pay the revised invoice. The correspondence illustrates the value of a frank recognition of a

- mistake, particularly when associated with a willingness to deal with the problem without delay.
12. The chairman of a community hall complained he had forwarded licence forms over a month earlier, and had subsequently been telephoning and emailing for about two weeks without eliciting any reply. APRA responded to the complaint promptly, forwarding fresh forms as it could not locate the documents. It apologised for the delay. Shortly afterwards, APRA revised the procedure for handling customer telephone calls to reduce the chance of such a failure of response and to improve efficiency.
  13. A teacher of dancing complained by telephone about the need for licences for both APRA and PPCA. She also said she was only teaching four days a week, not five. APRA responded in writing, explaining the position fully, and at the same time allowing a credit for the reduced days of teaching.
  14. A renewal of a bowling club's licence was arranged on the telephone, but a demand for an overdue payment had already been sent out earlier on the same day. The renewal form was, of course, received by APRA still later. A complaint was then made about the receipt by the club of the demand after it had arranged for the renewal. A letter of apology was sent, but it does not seem there was any validity in the complaint.
  15. A complaint was made by a cinema proprietor about APRA's "legalistic" correspondence, but the real issue was the amount of an increase in the licence fee. This had been agreed in proceedings in the Copyright Tribunal. A full and careful explanation was provided; however, there had been some delay following an earlier verbal complaint made in the absence of the responsible senior officer of APRA on holidays. This delay, caused by the verbal complaint not being adequately recorded and passed on to the officer on his return to work, must be attributed to human error.
  16. A complaint was made by telephone by a representative of a licensee that an APRA employee had been "rude and aggressive" on the telephone when speaking to his receptionist. APRA's Client Services Manager questioned the APRA employee, and then telephoned the complainant to say the APRA employee did not accept the complaint, but APRA was "sorry for any upset that had

been caused to [the] receptionist". The APRA employee's telephone manner and approach were considered by the Client Services Manager to be professional and friendly (he had been employed for some six months). The complainant responded that he "did not want to make a big deal of the issue", and the matter has gone no further.

17. A fitness centre objected to the new rates. APRA provided a detailed explanation. (See para (9) above).
18. A hotel proprietor complained about other hotels being unlicensed. It was explained that all the hotels in his area were in fact licensed. He then changed tack, to complain he did not believe they paid the correct fees, but expressed satisfaction that his complaint had been looked into.

An analysis of the complaints recorded by APRA (under a system which is applied zealously to record anything in the nature of a complaint) reveals the following:

- there were seven occasions when human error or system failure attributable to APRA caused or contributed to a complaint;
- there were 11 complaints which, on examination, related to matters for which APRA could not be shown to be responsible, and two others which were at most doubtful;
- there were two complaints (which have not been counted in the above categories) where a complainant correctly complained that his competitors had escaped being licensed for the same activities;
- there were four complaints where the real problem was simply that the complainant did not want to pay licence fees that were due.

The numbers assigned to the categories mentioned total 26, whereas there were in all only 22 complaints made in the year under report, together with the two recorded in earlier years but not finalised. That is because some complaints fell into more than one category.

Some conclusions arising from the examination of APRA's registers of complaints should now be stated. In the first place, it is pleasing to note that, although the number of general licensing complaints (at 18) slightly exceeds last year's figure of 14, it is still far fewer than the numbers recorded in the



first two years of the operation of the Code. And the nature of the complaints is quite different from the abusive (and even obscene) complaints which were too often recorded during those first two years. Also, although there have been four more general licensing complaints than last year, there has been a reduction of media licensing (now called broadcast and mechanical licensing) complaints from ten to three and a reduction of members' complaints made during the year from seven to one, that is to say, the total of all complaints has dropped by nine, from 31 to 22. When it is remembered that the majority of these complaints, upon examination, did not demonstrate any relevant failure on the part of APRA, while those that did showed nothing in the way of a disregard of the Code but rather a human or system inadequacy, the conclusion seems to be that APRA's emphasis on the observance of the Code has continued to make, as last year's report concluded it had made, a significant impact.

Where a complaint did reveal a defect in a system or practice, the foregoing examination of the recorded complaints shows that, on seven occasions, APRA took positive action in response to the complaint by amending a system or form, or taking some other step to avoid a recurrence of the problem. In many cases, too, even when no fault was attributable to APRA, a prompt apology was proffered. It cannot be overemphasised that the Code is designed to use complaints as insights into improvements that may be desirable, and also to ensure that the relations of the collecting societies with members, licensees and others are harmonious. In the maintenance of harmony, the soft answer that turns away wrath is supremely important.

### **3. Audio-Visual Copyright Society Limited ("Screenrights")**

Screenrights, which now has 2505 members, and has copying agreements with 9,364 schools, 62 TAFES and 39 universities, has received no complaints during the period under report.

Screenrights has dealt, during the period, with about 50 cases where two or more claimants sought the same amount payable as a distribution by Screenrights, each claiming to be the relevant copyright owner. This problem has also been encountered in earlier years, but such claims do not necessarily, or of their nature, involve complaints or even disputes. This year,

all but one were resolved upon Screenrights putting the parties in touch with each other. Generally, it became apparent, when the parties discussed the matter, that one was mistaken as to some question of title, or as to the relevant copyright, some licence's expiry or the territory covered by it, or as to some similar point. One matter only required mediation between the claimants, which may resolve the outstanding issue. No complaint against Screenrights is involved, and it has promoted the mediation in accordance with its policy in such cases.

#### **4. Phonographic Performance Company of Australia Limited ("PPCA")**

PPCA now represents 550 licensors, ranging from major record labels to a host of small independent labels. The list is in continuous growth. Currently, PPCA administers more than 40,000 licences.

PPCA received just one complaint in the year under report – from a licensee who sold his business within a month of paying the licence fee of \$60.39, and claimed a proportionate refund. PPCA has a policy of making such a refund in certain types of case, including the sale of the business involved, but subject to an administrative processing fee of \$33 (inclusive of GST). In this instance, the application of the policy produced a net refund of a mere \$22.36. The complaint of the licensee recipient of this tiny refund was that his "settlement agent" had inquired about a refund in advance of the fee being paid but had not been told about the processing fee. Although PPCA could not confirm any such inquiry, in the response to which its policy would have required mention to be made of the processing fee, it wrote explaining the position, but adding that if a telephone inquiry had been inappropriately handled it apologised, and it refunded the processing fee in full.

#### **5. Viscopy Limited ("Viscopy")**

Viscopy, which now has a membership of 6,700 (including over 3,000 indigenous members) and was a party to over 10,000 licensing transactions in the period under report, did not receive in that period any complaint. It received a number of queries that were made, and cleared up, by telephone.

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

AWGACS now has 893 members. It does not issue licences. During the period under report, it received no complaint.

**7. Australian Screen Directors Authorship Collecting Society Limited ("ASDACS")**

ASDACS has a membership of 322. Like AWGACS, it is not a licensor. As might be expected, given its small size, relations between ASDACS and its members tend to be informal. One member made a complaint, during the year under report, regarding delay, but upon receiving an explanation, apologised for complaining. As in previous years, there were also some questions about overheads, which are high in percentage terms (47% last year) because the gross income is so small (\$289,519 last year). When the situation has been explained, questioners have accepted the explanation.

**SUBMISSIONS**

This year, although an opportunity was given to a large number of parties affected by the work of the societies, there was only the one submission to the Code Reviewer, the submission concerning CAL which has been discussed above.

**GOVERNANCE AND ACCOUNTABILITY**

No changes making any adverse impact on a society's governance or its accountability to its members are reported for the year to 30 June 2006. The relevant organisational structures have been examined in detail in earlier reports.

**STAFF TRAINING**

AWGACS has only two part-time employees, an executive director and an administrator; in that situation, procedures applicable to the training of a large or even moderate-sized staff are not applicable, but both officers are aware of their responsibilities under the Code, the terms of which are on AWGACS' website and are reflected in a complaints handling procedure. An accidental

omission to comply with cl 4 (a) of the Code (at a time when there was no administrator) has been noted for rectification. ASDACS, similarly, has no full time staff (it has a part-time director, administrator and book-keeper). It has implemented the Code in the adoption of processes for complaints handling, and placed the Code on its website. Neither of these societies has licensees. Both receive relatively small sums for distribution from European societies.

The other, larger societies all (in addition to their complaints handling and dispute resolution procedures) provide information and staff training for their staff in the implementation of the Code. These matters have previously been reported upon, and it is sufficient to note here that the necessary training and provision of information have been ongoing. The low level of complaints is evidence of the effectiveness of the training, although, as has been noted, CAL had a staff shortage and allocation problem giving rise to some complaints at one stage during the year under report, which was, at least in part, due to the rapid expansion of its activities. Generally, the records showed a scrupulous care to note anything in the nature of a complaint and to make a conscientious effort to overcome any possible problem. This is important, for any tendency by a society employee to refuse to recognise an error, or to insist it is the complainant who is wrong, would not be helpful either in satisfying the complainant, or in identifying a defect in the society's practices. As has been emphasised before, a complaint should provide an insight into a problem and an opportunity to remedy it. It is pleasing to be able to note how often this wisdom has been heeded.

## **PROMOTIONAL ACTIVITIES**

The obligations accepted by the societies under cl 2.8 of the Code in respect of public education to promote awareness about the importance of copyright and the role and functions of the societies generally, and of each particular society, in administering copyright may be described as relative rather than absolute. The Code tempers the severe wind of obligation to the small society – its obligations do not extend beyond what is appropriate; and in determining what is appropriate for it to do, it may take into account its size, its membership and the number of its licensees, its revenue and the possibility of undertaking activities jointly with another society. An important joint activity of the societies is their support of the Copyright Council which is a centre for the provision of information and advice concerning copyright.

Plainly, societies of the size of ASDACS and AWGACS are not in a position to incur substantial expenditure themselves on educational activities. ASDACS has been involved in negotiating for and advising its members about retransmission rights for film directors. It continues to negotiate to expand its links with European societies, and to advise film directors as it obtains the right to receive distributions on their behalf. AWGACS, too, is engaged in negotiations with European societies and has continued to obtain rights to share in distributions. It provides information about its activities through the Australian Writers' Guild publication *Storyline*, and via its website. During the period under report, it also, on two occasions, sent its members information bulletins concerning copyright issues of importance to them.

Very much larger societies, such as CAL, are able to do very much more. CAL maintains an informative website, involves itself in industry events and activities together with industry bodies, and issues a quarterly newsletter, *CALendar*, information sheets and other publications. Representatives of CAL attend industry occasions and CAL arranges for the insertion of articles in industry magazines. CAL organises seminars and forums from time to time, including panel sessions featuring authors, publishers, media and copyright experts. CAL also promotes creative and cultural courses through its Cultural Fund, from which well over \$700,000 was allocated in the year under report. Funds have been provided for causes ranging from the support of projects and awards for the development of literature in various forms to the teaching of the English language to refugees from countries such as Afghanistan.

APRA has established relationships with a great number of bodies, both governmental and private, representing persons and corporations having some involvement with musical copyright, such as the Australian Entertainment Industry Association, the Consumers Federation of Australia, the Australian Hotels Association, various associations of clubs, the Restaurant and Catering Association, fitness bodies, music suppliers, retail bodies, professional bodies, hairdressers' and other small business associations, and government departments concerned with business, intellectual property and communications, as well as many others. Staff from APRA speak regularly at seminars, providing specialised advice to participants in the music industry and those involved with that industry. For instance, every second Tuesday, APRA made a 15-20 minute presentation, dealing with

the use and licensing of music in restaurants and the impact of copyright law, at a year-long course of instruction sessions organised by the NSW Restaurant and Catering Association for persons working in the area of hospitality from across NSW. APRA supports conventions and the granting of awards in the hotel, restaurant and other industries for the promotion of excellence and the promotion of the licensing of the use of music. It inserts advertisements and informative material in trade magazines. APRA maintains a comprehensive website furnishing information about copyright and specifically about the role and activities of APRA (including, of course, AMCOS). APRA has also appointed an Indigenous Project Officer to promote awareness of copyright issues among indigenous composers and songwriters, and has been appointed by the Australia Council to undertake pioneering research into the Indigenous Music sector in Australia. APRA is also involved in the provision of assistance to the Fijian Performing Right Association and in a proposal to assist in the establishment of a similar association in Papua New Guinea. APRA took part in the debates about the inclusion of culture in the Free Trade Agreement with the United States, as well as the amendments set in train for the Copyright Act, and regularly updated its website and publications to provide information on the relevant issues. APRA made a submission to the National Review of School Music Education and continues to make representations to government concerning the result of that review. APRA uses a fund created by the setting aside of 1.25% of distributable revenue for promotion of music by such means as awards, festivals and other projects. It made, in the year under report, a number of professional development awards to talented composers or songwriters.

Screenrights continues to produce its online resource service for teachers, EnhanceTV, which keeps before a numerous group the benefits to education made available through the use of copyright and the activities of this collecting society. With now over 6,000 subscribers, EnhanceTV is a growing tool of accessibility to film in the education sector. Screenrights has also established, with APRA, an identity numbering system for audio-visual work, ISAN (International Standard Audiovisual Number), which is similar to the ISBN for books. This has achieved recognition in the film industry. Screenrights has a monthly electronic newsletter; organises meetings involving key elements in the film industry; and participates in education

conferences in order to promote its activities. It also has a sponsorship budget for the support of the use of film in education. It produces brochures, reports and fact sheets and maintains a website to provide information to its members and those upon whom its role is focussed. Following the recent creation of "directors' rights", Screenrights has issued information referring to the Part VC (of the Copyright Act) distribution implications of this innovation. Similarly, it has issued information concerning "performers' rights" and the position with regard to retransmission royalties. It supplies copies of educational programs to educational institutions. Like other societies, Screenrights supports the educative role of the Copyright Council, which holds seminars and issues publications on copyright issues.

PPCA has a new website and continues to produce quarterly newsletters for its licensees, registered artists and licensors. It has put some emphasis on communication with key trade groups, including the Australian Hotels Association, restaurant and catering groups, clubs and fitness associations. It has produced a video to inform business people concerning music licensing, which it has distributed to educational institutions and industry groups. It has issued and distributed, by mail, insertion in trade publications, via its website, or by handing out at industry events, informative written materials concerning the licensing of recordings and the relevant requirements of copyright law. It has involved itself in music education and promotion through music industry events and the establishment of a prize of \$25,000 for outstanding creativity in a particular year, and it has also sponsored awards, including for music and entertainment, in the Aboriginal and Torres Strait Islander community. PPCA supports the Australian music industry's benevolent fund, of which it was a founding member.

Viscopy is unique among the societies in its large proportion of indigenous members. This has been reflected in its program of Australia-wide visits to regional indigenous communities. In July 2006, it received a government grant to extend this work by the employment of an officer to conduct the education of women artists, particularly in Central Australia, in the effects and implications of copyright. Apart from that grant, Viscopy has pursued an indigenous education program at many centres in 2005-2006. Its Membership and Distributions Manger also conducted in the period under report seminars in Wollongong, at Sydney College of the Arts, at Nepean TAFE, in Cairns and

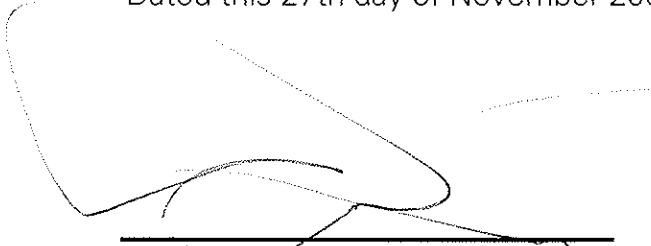
other places. Viscopy maintains a website and issues fact sheets, either via the website or by mail. It issues brochures containing information about its activities and promoting seminars in which copyright protection for artistic work is explained.

It will be apparent from this summary that all the societies have fulfilled, in differing measures, according to the extent of their respective resources, the obligation they undertook when adopting the Code, in respect of public education concerning copyright issues relevant to their role in the administration of the copyright laws of Australia.

### **CONCLUDING REMARKS**

As might be expected of a report of this kind, the foregoing sections have concentrated on particular issues thrown up by the terms of the Code of Conduct, and on the matters disclosed upon the Code Reviewer's examination of the behaviour of the societies. But, as has been noted during previous reviews, the Code appears to have a broad influence over and beyond its effect on particular actions. The very fact that it has been kept before the staff of the societies, not merely through induction courses, but in regular conferences and daily practice, on their websites, and as the subject of specific records, tends over time to create and reinforce attitudes consistent with the aims of the Code. It will, of course, only continue to have this effect while the societies remain committed to it. That they have shown themselves committed to it during the period under review is the most important and promising conclusion of this report, which is now submitted to the societies and to the Attorney-General's Department of the Commonwealth of Australia.

Dated this 27th day of November 2006.



---

The Hon J C S BURCHETT, QC  
Code Reviewer