Report of Review of Copyright Collecting Societies' Compliance with their Code of Conduct for the Year 1 July 2011 to 30 June 2012

The Hon K E Lindgren AM, QC

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Report of Review of Copyright Collecting Societies' Compliance with their Code of Conduct for the Year 1 July 2011 to 30 June 2012 (the "Review Period")

PREFACE

Sadly, the Hon James Charles Sholto Burchett, QC, who was the first Code Reviewer, passed away on 30 September 2012.

Jim Burchett was the author of nine annual reports covering the nine years ended 30 June 2003 to 30 June 2011 assessing compliance of collecting societies with their Code of Conduct. In addition, he was the author of three triennial reviews of the operation of the Code itself, issued in April 2005, April 2008 and June 2011.

In all of this work, Jim Burchett demonstrated the thoroughness and dedication to high standards for which he was well known.

We were colleague judges of the Federal Court of Australia, and he was my predecessor as President of the Copyright Tribunal of Australia and now as Code Reviewer. Having taken on the role of Code Reviewer, I acknowledge my indebtedness to him.

For this, my first annual report, I have, generally speaking, chosen to follow his precedent in terms of the Report's structure and general coverage.

I record my thanks to Kylie Toombs, who constitutes the Code Review Secretariat, for her very considerable help to me in the circumstances of the passing of Jim Burchett, in bringing this Report to a conclusion with no greater delay than was unavoidable.

INTRODUCTION AND SUMMARY CONCLUSIONS

This report of the Code Reviewer, the Hon K E Lindgren, AM, QC, is the tenth annual report assessing the compliance with their voluntary Code of Conduct ("Code") of the following eight collecting 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**"). In previous reports the practice was adopted of referring to APRA and AMCOS, which is also administered by APRA, collectively as "APRA". This practice will again be followed in this report except where it is necessary to distinguish between the two societies.

For the purposes of the review, each society reported to the Code Reviewer in respect of its activities covered by the Code. The review and the opportunity to make submissions were widely advertised: see the Appendix to this Report for the notice of the review and for details of the publication of the notice. The Code Review Secretariat has prepared and holds an alphabetical list of those organisations and individuals who were individually notified by the Secretariat of the review. It is available for inspection on request but is so voluminous that in the interests of convenience, it is not attached to this Report.

This report focuses on the requirements of the Code and compliance with them in the year 1 July 2011 to 30 June 2012 (the Review Period). Each of the eight collecting societies furnished a written report to the Code Reviewer addressing the question of its compliance with those requirements during the Review Period.

On the evidence before him, in the terms of cl 5.2(f) of the Code, the Code Reviewer is satisfied that in the year under review the collecting societies complied generally with the Code.

COMPLIANCE WITH CODE REQUIREMENTS OTHER THAN THOSE RELATING TO COMPLAINTS AND DISPUTES IMPOSED BY CLAUSE 3 OF THE CODE, WHICH ARE ADDRESSED IN A SEPARATE SECTION, "COMPLAINTS AND DISPUTES", BELOW

This section of the Report, structured society by society, addresses significant events, changes and developments during the Review Period by reference to the respective clauses of the Code.

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

General

APRA administers AMCOS under an arrangement between the two collecting societies dated 1 July 1997; they occupy the same premises; and they provided a joint report to the Code Reviewer. Accordingly, generally speaking, this report deals with them together.

As at 30 June 2012, APRA had 70,988 (Australian or New Zealand) members, comprising composers and authors (together, "writers") and publishers. Of these 70,418 were local writer members and 570 were local publisher members. In addition, APRA had 816 overseas resident writer members and 10 overseas resident publisher members. Most Australian and New Zealand composers and publishers are members of APRA.

As at 30 June 2012, AMCOS had 10,627 (Australian or New Zealand) members, of whom 10,180 were writers and 447 were publishers. In addition, AMCOS had 145 overseas resident writer members and three overseas resident publisher members.

Legal Framework (Code, Clause 2.1)

There has been so significant change within the Review Period.

Members (Code, Clause 2.2)

APRA/AMCOS have a large Membership Department, within which sits the Writer Services Department. During the Review Period, the Writer Services Department engaged in email correspondence with writer members on some 54,558 separate occasions – a year on year increase of 19.3% over 2010-2011. In addition, the Publisher Services Department of APRA/AMCOS engaged in email correspondence with members on approximately 32,954 separate occasions. In addition, more than 1,148,057 individual broadcast emails were sent to members which included information including notices of events, payment advices, and details of APRA/AMCOS publications.

Writer Services Department staff logged 2,114 phone queries following APRA distributions and 53 phone queries following AMCOS distributions, during the Review Period.

APRA/AMCOS's report to the Code Reviewer states (para 2.3) that APRA's and AMCOS's relationships with their members are at the core of their operations, that communications with members are frequent and that staff employed in the Membership Department are expert in advising members on their relationships with the collecting societies and with the music business generally.

The report refers to these societies' large Membership Department (within which sits the Writers Services Department), the National Indigenous Membership Strategy (launched in 2009), the Aboriginal and Torres Strait Islander (ATSI) Music Office launched during the Review Period, the International Department, the "Opt Out and Licence Back" possibility available to members, and the "Member Benefits Program" available to members. In all these respects, the Report was supported by Volumes 1 and 2 of three volumes provided to the Code Reviewer (Volume 3 related to "Complaints").

Licensees (Code, Clause 2.3)

APRA has a large Licensing Department which is concerned with licensees and potential licensees. The Licensing Department itself has three Divisions or Departments: "Licensing Services", "Broadcast & Online Services" and "Recorded Music Services". Collectively the three administer approximately 60,268 annual licensees, representing approximately 84,000 businesses.

During the Review Period the Licensing Services Department engaged in over 390,950 contacts with licensees, including contact by letter, email and telephone call.

Fees payable by licensees vary according to the licence scheme applicable to the particular circumstances of use.

Most of the licences are administered by the Licensing Services Department which administers approximately 50,129 annual licensees, representing approximately 80,861 businesses. During the Review Period, this Department executed 9,539 new annual licences and 4,167 one-off event licences, which included dance parties, festivals and music used in theatrical performances.

During the Review Period, the Licensing Services Department implemented electronic invoices through the "Client Management System" (CMS). This allows APRA/AMCOS to invoice and communicate with their clients in a more efficient, cost effective and "environmentally friendly" manner than was previously possible.

During the Review Period, the Licensing Services Department engaged in over 390,950 contacts with licensees, including by letter, email and telephone.

The Broadcast & Online Services Department administers APRA's commercial radio and television broadcast clients. There are 261 commercial radio licensees, 52 commercial television licensees, 10 pay television licensees, and licences to SBS and the ABC.

In addition, this Department administers the licences for over 400 community/narrowcast radio stations and six community/narrowcast television stations, as well as "production music" (AMCOS-controlled Production Music relating to music specifically written and recorded for inclusion in audio-visual productions). There were 818 Australian Production Music clients licensed during the Review Period.

The Broadcast & Online Services Department also licenses various online services, including: user-generated content sites, online portals, on-demand streaming sites, webcasters, podcasters, online simulcasters and online production music. In total there were 292 online services clients administered by this Department during the Review Period.

The Recorded Music Services Department issued a range of licences relating to the reproduction of musical works in various contexts including: CD sales; digital download sales; video on demand services; digital subscription music services; ringtones; business applications; dance schools; and videographers. In total over 1,300 annual licences were administered during the Review Period by this Department and an additional 1,000 one-off licences.

The information provided by APRA/AMCOS to licensees and potential licensees varies according to the sophistication of the user. Sophisticated national broadcasters and telecommunications companies are to be contrasted with small business operators who have less knowledge of copyright law and perhaps limited access to specialist legal advice.

APRA/AMCOS have relationships with various trade associations representing major licensee groups, including television and radio broadcasters, record companies, internet service providers, small businesses, hotels, restaurants, fitness centres and educational institutions. APRA/AMCOS report that they "always have regard to the matters set out in Clause 2.3 of the Code when setting or negotiating licence fees and tariffs."

In 2011, APRA negotiated the introduction of a new licence scheme with Fitness Australia for the use of musical works in fitness classes. The new licence scheme commenced on 1 July 2011. It takes into account the diverse nature of fitness centres in Australia and gives licensees the option to pay at the start of each licence year a single rate applicable to all classes or a two-tiered rate tailored for smaller centres. As at 30 June 2012 there were 985 businesses licensed under the single rate and 403 under the two-tiered rate.

The implementation of the new scheme began for licensees with the Licensing Services Department mailing out termination letters and reassessment forms two months prior to the licence renewal. As well, the peak industry body, Fitness Australia, wrote to its members confirming the new tariff. During that process, 1,476 licensees were contacted with 1,507 premises being affected by the new scheme. As at 30 June 2012, only 165 of these premises had not taken out the new licence. No complaints were made in relation to the re-licensing procedure.

During the Review Period, APRA negotiated a new agreement for the communication of APRA works by commercial television networks and stations with the peak Australian industry body for free to air commercial television stations, namely FreeTV Australia. The new agreement provides for increased tariffs, but also extends the rights granted to include communication by way of Catch-Up TV (not more than 28 days per free to air broadcast) and Live Streaming (a free and simultaneous streaming of the broadcast).

During the Review Period, APRA/AMCOS negotiated a new licence scheme for the communication of APRA works and limited reproduction of AMCOS works by community radio stations. Consultation took place with several bodies in relation to the new scheme, including the peak community radio industry body, namely the Communication Broadcasting Association of Australia. The new agreement came into effect on 1 July 2012. It offers a simplified licence scheme for the community radio sector, encompassing a one stop shop licence for broadcast, reproduction, web simulcast, on demand streaming and other online rights.

In December 2011 the AMCOS/ARIA Schools Audio-Visual Licence Agreement was reviewed in consultation with the Copyright Advisory Group (Schools) representing the peak educational bodies in each State and Territory (Government, Independent and Catholic). The updated licence scheme is now entitled the "APRA/AMCOS/ARIA Music Recordings and Access Licence Agreement". It maintains the existing physical audio-visual reproduction right, but includes a more extensive granting of digital rights mainly pertaining to the use of musical works and recordings on a schools content management system. The revised licence fee for the expanded agreement was negotiated with the Copyright Advisory Group and provides for a graduated phasing of the higher tariff over the first two years of the new scheme, with annual CPI increments throughout the remaining term of the licence.

The Licensing Services Department engaged with 159 clients in the Review period in respect of relief arising out of natural disasters that effected Queensland, NSW, Victoria and Western Australia.

Distribution of Remuneration and Licence Fees (Code, Clause 2.4)

Clause 2.4 of the Code requires each collecting society to maintain and make available to its members on request a "Distribution Policy" that sets out certain things, and that the society distribute payments to its members in accordance with its Constitution and the Distribution Policy.

APRA/AMCOS maintain and make available on their website Distribution Rules and Distribution Practices. They were most recently amended at the end of June 2012. The major change related to the introduction of quarterly distributions for APRA.

The AMCOS Distribution Rules were amended in February 2012 and the AMCOS Distribution Practices most recently in July 2011. The major change involved allowing the AMCOS Commission Rates to be varied at any time at the discretion of its Board of Directors, but subject always to the maximum Commission Rates set out in the AMCOS Membership Agreement.

The change to a quarterly distribution of APRA royalty payments to APRA's members and affiliated societies is a change to February, May, August and November each year for all major distribution categories except television. In addition, APRA pays a further five "mini-distributions" of foreign income throughout the year. According to the APRA / AMCOS report to the Code Reviewer, this initiative has been warmly welcomed by the members of APRA. (APRA changed its television accounting to a quarterly distribution cycle with effect from August 2012.)

APRA/AMCOS's unaudited financial accounts for the year ended 30 June 2012 show a total combined net distributable revenue for the year then ended of $226.8m. This represented a year on year increase of approximately 7.5%.

During 2011, APRA adopted the internationally approved Common Royalty Distribution (CRD) electronic reporting format which carries more information about the individual performances being paid for and enables publisher members and affiliated societies to analyse the detail of the source and territory from which their earnings come.

In 2011 a review was undertaken of APRA/AMCOS's treatment of works whose ownership details are not held in their system. In effect, the copyright owners are "unidentified" and therefore associated royalties are unable to be paid to them. The key outcomes of the review are:

- Introduction of a three year retention policy after which royalties are returned to their respective distribution pools and paid out to members;
- Accelerated pre-distribution reporting to members to enable increased royalty claims and distribution of royalties;
- Harmonisation of practices across APRA and AMCOS;
- Integrated rights reporting;
- Centralisation of copyright ownership maintenance in the Publishers Services Department; and
- Integrated single CMS interface to enable access by publishers to all unpaid works.

Also in 2011, a review was undertaken of APRA's Distribution Practices for payment of royalties arising from concerts and major events. The key outcomes were:

- The introduction of mandatory electronic reporting;
- Responsibility for the procurement of set lists transferred to the Membership Department;
- System updates to improve management reporting;
- Establishment of workflow milestones in order to expedite distribution of royalties; and
- Change in the value threshold from $200 per event to $15 per work in line with existing value thresholds across other media.

In the Review Period, details of APRA/AMCOS's International Distribution Practices were made available on the website.

Collecting Society Expenses (Code, Clause 2.5)

APRA's audited accounts show that its operating expenses are deducted from total gross revenue. The Commission Rate depends on the source of the revenue. The expenses to revenue ratio was 12.24% for the year ended 30 June 2011. (The ratio for the year ended 30 June 2012 was 12.82%.)

Governance and Accountability (Code, Clause 2.6)

Clause 2.6 (e) of the Code requires each collecting society to include certain information in its annual report. The annual report of each of APRA and AMCOS contains that information.

The Board of each of APRA and AMCOS is elected directly by its members and each Board has established an Audit and Governance Subcommittee which meets at least five times a year and focuses exclusively on issues relating to the corporate governance of the society.

The management of APRA/AMCOS also has an internal governance committee which meets every week to discuss matters pertaining to day to day operation and management.

APRA's membership, licensing, distribution and international arrangements are all the subject of "authorisations" by the Australian Competition and Consumer Commission (ACCC). The existing authorisations continue until 31 October 2013. Under the terms of its most recent authorisation from the ACCC, APRA was required to amend its ADR facility and to comply with a condition that it submit an annual report to the ACCC detailing disputes notified to APRA under its ADR process for licensees and potential licensees. APRA's annual Dispute Report for the year ended 31 March 2012 has been supplied to the Code Reviewer.

Staff Training (Code, Clause 2.7)

During the Review Period, Board members and senior executives attended a Board Retreat which included a session relating to directors' duties under the *Corporations Act 2001* and the obligations of directors and management under the *Competition and Consumer Act 2010*.

The Divisional Heads and the Chief Financial Officer meet on a weekly basis to discuss matters relating to policy and strategy development and assessment.

Manager and Team Leader Forums are held four times a year. At these, the Chief Executive addresses the middle and front line management teams.

The Licensing Services Department and the Member Services Department each holds staff training conferences at least once (usually twice) a year.

During the Review Period, APRA/AMCOS invested in video conferencing facilities for all of their offices.

The Licensing Services Department seeks to develop staff through internal and external training. In the Review Period that Department engaged in 102 instances of individual staff training, 60 of which were through an external means. A breakdown of the individual training is included in the report to the Code Reviewer.

The Broadcast & Online Services Department holds monthly general Departmental staff meetings covering day to day issues and wider company initiatives and issues, including compliance with the Code.

The Recorded Music Services Department held several Departmental staff meetings which included discussion of compliance with the Code.

During the Review Period, six members of the Information Technology Services Department attended an external project management training course conducted by the Australian Institute of Management.

The Corporate Services & Administration Department held a one day team development conference which involved updating staff on Departmental initiatives and issues.

The Finance Department held its annual conference offsite in September 2011.

Details relating to induction and training sessions organised by "Human Resources" have been provided to the Code Reviewer.

Each year, APRA/AMCOS funds a higher education assistance program for the benefit of staff. This program aims to provide support and financial assistance (up to $5,000 per year for a maximum period of two years) to staff who undertake tertiary studies that are relevant, necessary or desirable for them in their careers within APRA/AMCOS.

APRA/AMCOS offers a leadership development program for team leaders, managers, deputy directors and directors.

APRA/AMCOS submitted their second report to the Equal Opportunity for Women in the Workplace Agency (EOWA) in May 2012, a copy of which has been provided to the Code Reviewer. EOWA advised APRA/AMCOS in July 2012 that they were considered to have complied with the *Equal Opportunity for Women in the Workplace Act 1999* (Cth).

In May 2011, APRA/AMCOS introduced a new performance rating system as part of the annual performance and salary review. Under this system, all staff are assessed on their performance over the previous 12 months and salary reviews and performance rewards are tied to their performance rating.

APRA/AMCOS operate an intranet facility for staff which forms the basis of staff training and a key information source for staff. All new APRA/AMCOS staff are trained in accessing and using resources housed on the intranet and have access to the intranet. During the Review Period, APRA/AMCOS introduced a "Wiki" facility for staff – an intranet run resource which contains information on procedures, technological and other support and helpful tips and any other information that may be useful to staff.

Education and Awareness (Code, Clause 2.8)

In their report to the Code Reviewer, APRA/AMCOS state that they devote considerable resources to the education of members, licensees, industry associations and members of the public regarding the matters set out in Clause 2.8(a) of the Code. They have supplied in their report a list of organisations and associations with which they have an ongoing relationship.

Representatives of APRA/AMCOS often participate in seminars and public forums with a view to increasing the knowledge and skills of their members.

In their report to the Code Reviewer, APRA/AMCOS have mentioned, in particular, the following:

- "Song Summit 2012" held at the Sydney Convention Centre on 26 – 28 May 2012 and supported by the NSW Government;
- *Why Music Matters* program, launched by APRA and ARIA in 2011, a " platform for artists, audiences and those who work in and around music to remind listeners of music's enduring value".
- 195 events during the Review Period hosted by staff of the Member Services Department;
- 104 industry association functions and events, nationwide, attended by staff of the Licensing Services Department;
- contribution to the activities of the Australian Copyright Council;
- provision of funding for the Australian Music Publishers' Association Limited which is the major trade organisation for Australasian music publishers;
- co-funding with ARIA the music industry piracy investigation which, during the Review Period, was "rebranded" "Music Rights Australia";
- APRA/AMCOS are founding members of the Australian Content Industry Group which was established in 2011 and which includes the major content industry groups across book publishing, music, interactive games and software which have come together to seek common solution to the issue of online copyright infringement;
- APRA/AMCOS's Grants, Sponsorships and Promotions (during the Review Period, 117 applications were received and APRA supported most of them, awarding more than $700,000 in music grants during the Review Period);
- The "Generate Program", a federal government and industry funded pilot program offered through the Office for the Arts in partnership with Creative Industries Innovations Centre and APRA during the Review Period;
- Recognising and celebrating the success of music creators in the form of award events, namely, the APRA Music Awards, the Art Music Awards and the Screen Music Awards;
- Funding by APRA/AMCOS of a two-year contract position (Music Export Producer) under the banner "Sounds Australia";
- The "Indigenous Ambassador Program" which fosters increased understanding of the APRA/AMCOS role and activities; improving APRA/AMCOS's understanding and awareness of issues facing members; and building of the community;
- Development of APRA/AMCOS's profile with State and Federal Governments, Oppositions and Departmental staff;
- Maintenance of the APRA/AMCOS website.

Complaints and Disputes (Code, Clause 3)

This subject is dealt with in a separate section, "Complaints and Disputes", below.

Publicity and Reporting (Code, Clause 4)

APRA/AMCOS state that they have kept their members and licensees updated with information regarding the Code and that they host a copy of the Code on their website. The website also hosted an invitation to any interested party to make submissions to the Code Reviewer.

Copyright Agency Limited ("CAL")

General

At 30 June 2012, CAL had more than 24,000 members: 67% creators (including writers, journalists, photographers, illustrators, other visual artists and surveyors) and 33% publishers.

Two important developments relevant to CAL took effect from 2 July 2012. The first is that under a new services agreement with Viscopy, CAL manages Viscopy's services to members and licensees, and the former Viscopy staff are employed by CAL. In relation to compliance with the Code, the relevant person previously employed by Viscopy is employed by CAL.

The second development is that CAL has been "rebranded" as "Copyright Agency". Nonetheless, because this report relates to the Review Period, 2011-2012, the reference "CAL" is retained, albeit for the last time in a report by the Code Reviewer.

CAL has reported against the Code in all its Annual Reports and Annual Reviews since 2001-02, and reports against its corporate governance statement in its Annual Review.

Legal Framework (Code, Clause 2.1)

CAL's Legal & International Department has day to day responsibility for the society's legal compliance. In addition to the *Copyright Act 1968* and the *Corporations Act 2001*, the *Resale Royalty Right for Visual Artists Act 2009* is of particular relevance to CAL. CAL was appointed on 27 May

2010 to administer the Resale Royalty scheme under the Resale Royalty Right for Visual Artists Act 2009.

At its 2011 Annual General Meeting, the members of CAL approved of a minor change to CAL's Constitution to confirm that the allocations that were unpaid after four years could be rolled into similar revenue pools immediately on the expiration of the four year period. This means that CAL does not have to wait until the next financial year in order to redistribute unclaimed allocations.

A copy of the Constitution showing the amendments is Annexure A to CAL's report to the Code Reviewer. The Constitution is available to all members and the general public for free download at CAL's website.

Members (Code, Clause 2.2)

CAL's members fall into four categories:

- "author" members (as at 30 June 2012, CAL had 16,251 author members, representing about 67% of its voting membership);
- "publisher" members (as at 30 June 2012, CAL had approximately 8,091 publisher members, representing approximately 33% of its voting membership);
- "collecting society" members, being foreign collecting societies with which CAL has fee exchange agreements (there are 26 such members – they are not eligible to vote for election of directors or at a general meeting of CAL); and
- "article 3(a)" or "red book" members, being persons who were already members of CAL when the classification of members into author members and publisher members was adopted, and most of whom have since elected to be classified as one or the other of those two classes (red book members are not eligible to vote in an election for directors, and there remains only one red book member).

CAL estimates that in 2012 it dealt with the following numbers of enquiries relating to membership each week:

- Joining CAL: 25;
- Change of contact detail: 20;
- CAL's payments, survey and distribution processes: 80-100; and

- General copyright enquiries: 30 – 40.

Other communications include:

- Claim notifications to members (more than 13,000);
- Phone calls and emails to non-members regarding membership and entitlement claims;
- Broadcast emails to all members;
- Monthly e-news;
- E-alerts about the artists' resale royalty scheme; and
- Quarterly magazine

In its report to the Code Reviewer, CAL asserts that it goes to considerable lengths to ensure that its operations and services are known and understood by members and potential members. This and strong industry relationships are cultivated through partnerships with industry associations, sponsorship of industry events and use of industry communication channels.

The form of application for membership is available on CAL's website. This includes warranties and other undertakings required of a person becoming a member. The printed membership application form is also available on request.

New members receive an information pack. Normally this is delivered electronically but it can also be sent in hard copy form, according to the new member's preference. The pack includes a copy of the completed membership agreement, including the terms and responsibilities of membership.

Policies and procedures that affect members are:

- Complaints Handling Procedure;
- Privacy Policy;
- Dispute Resolution between CAL and members and licensees;
- Dispute Resolution between members;
- The Code;
- Corporate Governance Statement;
- Service Charter; and
- Distribution Rules

These documents are publicly available on CAL's website. In addition, CAL advises members of new policies and changes to existing policies through its monthly newsletter and quarterly member magazine *CALendar*.

In 2011, CAL's Member Services and Payments Services areas were regrouped under the umbrella of "Member Services", the two divisions being renamed "Membership" and "Member Claims" respectively.

In the Review Period, CAL recruited 4,515 new members – a number which exceeded its recruitment target.

During the Review Period, CAL issued "log-ins" to all of its members, each consisting of a unique user name and password which take members to a secure online environment to view and update their membership details and register additional works for the CAL database using bibliographic details (including ISBN/ISSN information).

Persons may also join CAL via the website by completing an application form online. They may join as a publisher member, author member, or visual artist member. Unsolicited new members numbering 972 joined CAL in the Review Period, primarily online through the new "Customer Relationship Management" system linked application process.

During the Review Period, CAL continued to publish a list of "difficult to find" non-member authors on its website. The list was updated quarterly during the Review Period, the last update in that Period being in February 2012. In addition, during the Review Period, CAL conducted an advertising campaign in industry publications targeting non-members, particularly authors.

In December 2011, CAL launched phase 2 of its direct payment method or service which allows members to notify CAL of their agreed shares of entitlement in a work and for CAL to make payments accordingly directly to the respective participants.

In December 2011, CAL successfully conducted its first direct payment distribution through the new system.

Members continued sending CAL information about their titles for the direct payments service, and in the Review Period CAL received 43 files, primarily from publisher members, advising of 104,427 titles they would like register for direct payment.

In February 2012, CAL conducted formal presentations to literary agents in Sydney and Melbourne regarding the gradual implementation of the direct payment service and registration options, and this was followed up by emails to the literary agents in April and June. Prior to the distributions in May 2012, an email was sent to members explaining that this would be the last allocation that would be advised using the old documentation, and that future allocations would be advised through their online member accounts. Members receiving hard copy notifications were encouraged to provide an email address and to go online, although a number still prefer hard copy and CAL accommodates that preference.

CAL has kept the Australian Society of Authors ("ASA"), the Australian Publishers Association ("APA"), the Australian Literary Agents Association ("ALAA") and the Media Entertainment and Arts Alliance ("MEAA") informed in relation to the direct payment service.

On 23 February 2012, CAL conducted its annual seminar entitled *Digital Publishing Today* in Melbourne. The seminar concentrated on the progress of digital publishing in Australia and coincided with the launch of *Digital Publishing Australia*, an online community for sharing knowledge about digital publishing with an accompanying guide to "getting started" with e-books.

Both events were recorded and are available to CAL's members and others on CAL's website.

In the Review Period, CAL held "CopyConnect" events in Sydney, Melbourne, Brisbane, Perth, Adelaide, Canberra and Darwin to ensure that members still have an opportunity to interact with CAL staff face to face.

In February 2012, CAL launched "Digital Publishing Australia" and the complementary "Twitter feed". The website was developed as a community based project in response to feedback from CAL members and interested stakeholders, and was designed to encourage sharing information about current digital publishing practices in Australia as well as general "best practice" from around the world.

During the Review Period, CAL coordinated activities required to support the Artists' Resale Royalty Scheme. Much of CAL's activity in this respect is aimed at raising awareness of the scheme among art market professionals (art dealers, galleries and auction houses) as well as visual artists themselves. The means includes face to face meetings, email updates to art market professionals and a Resale Royalty e-newsletter (four editions in the Review Period with a distribution of between 2,200 and 2,500 per edition).

In 2011, CAL conducted a member survey designed to assess satisfaction with the service it already provides to its members and to gain information concerning potential member benefits.

In the Review Period, the Australian Book Sellers' Association joined the Digital & Industry Training Coordination Group, which consists also of representatives from the Australian Council for the Arts, the APA and the ASA. The Group coordinates digital training offered by each organisation in an effort to cover the wide range of needs that emerge with new technology.

During the Review Period, the Australian Major Performing Arts Group ("AMPAG") joined the regular meetings between the APA, CAL, the Australian Music Publishers Association Ltd ("AMPAL"), Interactive Games & Entertainment Association ("IGEA") and Screen Producers Association of Australia ("SPAA") under the umbrella of the "Creative Content Producers & Publishers Group".

During the Review Period, CAL held two CEO Boardroom meetings with key publisher members from small, medium and large companies, one in Sydney and one in Melbourne, both in May 2012.

CAL's quarterly magazine, *CALendar*, reaches approximately 21,827 members, licensees and key stakeholders.

CAL's Member Services teams, both "Membership" and "Member Claims", deal with queries from members as well as the general public, both by email and telephone.

Licensees (Code, Clause 2.3)

CAL has the following policies that affect licensees:

- Service Charter;
- Complaints Handling Procedure;
- Dispute Resolution between CAL and members or licensees;
- Privacy Policy;
- The Code itself; and

- CAL's Corporate Governance Statement.

More than 90% of CAL's revenue is derived from commercial, educational and governmental licensees.

In the Review Period, CAL continued its fixed price agreement ($16.934 plus CPI) with its major client groups, the schools. The fee covered both hard copy and electronic use. The Review Period was the final year of the three-year period of the agreement.

CAL is the collecting society (by the Attorney-General) for the statutory licences in Part VB, and is one of the collecting societies declared (by the Copyright Tribunal) under s183A for government copies (Screenrights is also declared). Part VB contains the statutory licences for: the educational use of text, images and print music; and institutions assisting people with disabilities (for which the Board of CAL has decided not to seek payment). Screenrights is the declared society for Part VA. CAL's fees for administering these statutory licences amount to 13.4% of the equitable remuneration received by CAL in respect of them.

Apart from the Part VB licences, the fastest growing area of revenue for CAL is that of the voluntary licence schemes: in the Review Period, international licensing revenue was up by approximately 27.59% and other voluntary licensing was up by 4.5% overall.

During the Review Period, CAL conducted training sessions for the staff of licensee organisations. Information about each of the licence schemes that CAL administers is available from CAL's website.

Progress was made during the Review Period with the development of automated data capture systems. Trials were carried out in schools at the end of 2011, using photocopier technology to capture soft copies of all jobs going through the photocopier.

During the Review Period, CAL negotiated with the major Australian newspapers to allow CAL's corporate licensees to publish, on payment of an additional fee, a limited number of press clippings on their website, and to email a limited number of these to clients and third parties.

In relation to the Resale Royalty Scheme for Visual Artists, during the Review Period art market professionals reported to CAL 8,478 resales of which 2,689 (32%) attracted a resale royalty payment.

CAL has three specialist staff members whose task is to assist artists and art market professionals in the day to day operation of the scheme. These are the Resale Royalty Manager who assists art market professionals; the Visual Artist Manager who assists artists; and the Indigenous Communications Coordinator who provides additional support to indigenous artists.

Distribution of Remuneration and Licence Fees (Code, Clause 2.4)

In 2011, CAL's Distribution Rules were revised and updated. An updated copy of the current Distribution Rules is published on CAL's website and is available on request. The Distribution Rules incorporate obligations contained in CAL's membership agreements, Constitution, and the Attorney-General's Guidelines for Collecting Societies. They also incorporate various CAL Board decisions that relate to distribution, such as changes to the scheme of allocation and the number or frequency of distributions or both.

CAL's report to the Code Reviewer describes the different bases for calculating entitlements.

In relation to the Resale Royalty Scheme, CAL paid $351,345 to visual artists during the Review Period. There is a difference between generated royalties and paid royalties. The difference arises from the fact that a portion of generated royalties is not invoiced until the legislated opt out period expires (during the opt out period an artist may instruct CAL not to collect the royalty on his or her behalf). This means that there is always a lag between CAL's receipt of royalties and its payment of them to the Artists. Another reason for the difference is that most artists who have an entitlement are from remote indigenous communities and sometimes it can be weeks before contact is made with them to confirm payment arrangements. Finally, there is a small number of artists who are deceased and whose legal personal representatives have not yet obtained probate of the will or letters of administration of their estate establishing their entitlement to receive the payment.

CAL holds undistributed amounts allocated as part of a distribution in trust for four years and any amounts remaining undistributed at the end of that period are rolled over and added to the next distribution of licence fees for the scheme. Until the Review Period, roll over amounts were added after the licence fees had been broken down into separate allocation pools for distribution. However, in order to ensure that the benefits for roll over are shared among all recipients of a distribution, CAL now adds roll over amounts to licence fees before they are broken down into allocation pools. This means that all recipients of a distribution receive a small increase in the amount allocated to them rather than a smaller number of recipients receiving a significantly higher increase.

During the Review Period, CAL received 21 requests for a search of its database for instances of copying of the works of the requesting person. If the result is a finding of copying, where CAL has paid another person CAL advises both the enquirer and the payee of the result of the enquiry. In the event of a dispute between members (a "dual" claim) CAL's Dispute Resolution Procedure is invoked.

Collecting Society Expenses (Code, Clause 2.5)

For the Review Period, CAL's operating costs were $17.92 million and revenue was $126.05 million. Operating costs were 14.2% of total revenue. In other words, for every dollar received by CAL during the Review Period, 85.8c was available for distribution to rightsholders.

CAL has an operating account and a trust fund account. Licence fees are paid into the trust fund account and operational expenses are drawn down from the trust fund account into the operating account. The balance of the trust fund as at 30 June 2012 was $44.2 million. During the Review Period, CAL distributed $141.29 million to members.

In relation to Resale Royalty Payments, CAL collected in the Review Period a total of $0.40 million and distributed $0.35 million to artists or their estates, retaining $34,933 as CAL's authorised management fee.

Governance and Accountability (Code, Clause 2.6)

CAL has a Corporate Governance Statement which was updated during 2011. The current form of the Statement was adopted by CAL's Board of Directors on 30 June 2011. This version draws on the ASX Statement of Principles and Recommendations for Good Governance, modified to replace the market disclosure obligations with a Statement more appropriate to a non-listed public company limited by guarantee. New provisions included a limited period during which a director could not be appointed as Chief Executive and vice versa.

CAL's Corporate Governance Statement is available to the public for free download from the CAL's website.

Many rightsholders are represented by other members. For example, one large publisher member often represents many smaller publisher imprints. Groups such as the Media, Entertainment and Arts Alliance represent many thousands of journalists.

As at 30 June 2012, CAL's Board comprised:

- 2 directors appointed by the ASA;
- 2 directors appointed by the APA;
- 1 author director elected by other author members;
- 1 publisher director elected by other publisher members;
- 2 independent directors appointed by the Board under Article 35(b) of CAL's Constitution; and
- up to two independent directors appointed under Article 35(a) of CAL's Constitution.

Staff Training (Code, Clause 2.7)

During the Review Period, CAL gave affect to its induction procedures aimed at ensuring that staff knew and understood the Code, including CAL's Complaint Handling and Dispute Resolution Procedures.

An "Induction Handbook" is provided to all staff on their first day of employment and prior to their undertaking active duties. New staff are required to sign a form acknowledging that they have read and understood the information provided to them.

CAL conducts staff meetings to keep staff informed about current activities and issues relevant to the society, including any changes to its operations or new policies and procedures.

From time to time, CAL staff attend "Introduction to Copyright and Copyright Agency" training sessions.

In April 2012, 20 CAL staff members undertook a one-off indigenous cultural awareness training day at CAL's offices.

Education and Awareness (Code, Clause 2.8)

In September 2011, CAL conducted a survey of e-News recipients on how frequently they prefer to receive it. They voted to receive it on a monthly basis and this change was implemented in October 2011. E-News is now sent out on the first Friday of every month. As at June 2012, over 12,000 CAL members and other stakeholders received E-News.

CAL's Board is authorised by its Constitution to allocate up to 1.5% of its income to cultural development. This is known as the "Cultural Fund". The Cultural Fund supports a wide variety of projects designed to encourage, and provide practical assistance to, CAL's members and the Australian cultural community. In the Review Period, $1.973 million was allocated from the Cultural Fund for creators working on projects to the benefit of Australia's creative and cultural communities. Details of the allocations are contained in CAL's report to the Code Reviewer.

Complaints and Disputes (Code, Clause 3)

This subject is dealt with in a separate section, "Complaints and Disputes", below.

Publicity and Reporting (Code, Clause 4)

During the Review Period, CAL published its adherence to the Code in the following ways:

- including information about the Code in the induction processes for all new staff and running specific training for staff about the Code and its application to CAL's business (see further *"Staff Training (Code, Clause 2.7)"* above);
- referring regularly to the Code in CAL's monthly e-news and quarterly member magazine *Calendar* (where applicable);
- referring to CAL's adherence to the Code in its Annual Review;
- providing information about CAL's obligations regarding the Code in all applicable information sheets;
- promoting the Code and the Code Review on CAL's website;
- providing a full-text, fully searchable and downloadable version of the Code on CAL's website;
- ensuring the online version of the Code links to relevant documents and providing links on CAL's website back to the online full-text version of the Code from multiple pages;
- placing a copy of the 2011 Code Reviewer's report on the CAL website; and

- informing members and licensees about how to make submissions to the Code Reviewer in the July edition of CAL's e-newsletter and on the its website.

CAL also mails a copy of the Code to members, licensees or others, if requested.

Audio-Visual Copyright Society Limited ("Screenrights")

General

As at 30 June 2012, Screenrights had 3,464 members and 907 licensees. It collects royalty payments from schools, universities, vocational training bodies, government agencies, TAFEs, resource centres, retransmitters and New Zealand schools and tertiary institutions.

In its report to the Code Reviewer, Screenrights sets out the respective numbers of its members and licensees as at 30 June 2012 as follows:

Type of Entity	**Number**
Screenrights Members	3,321
Licensees:	907
Schools – Govt, Catholic Systemic, Independent – Peak Bodies	26
Higher education including universities	44
Private Vocational Education/Training Organisation (inc ELICOS)	11
Government Agency	120
TAFE	12
Resource Centre	8
Retransmitter	9
NZ – Tertiary	26
NZ – Schools	651

In section 3 of its report to the Code Reviewer, Screenrights describes the operation of the Australian educational licences under Part VA of the Act which is headed "Copying and Communication of Broadcasts by educational and other institutions". Screenrights is the declared collecting society under s135P of the Act, for the purposes of the statutory licence under that Part. In particular, the report gives an account of the amount of equitable remuneration payable, according to whether a sampling or records system operates.

Screenrights' report gives a short separate account of the equitable remuneration payable under New Zealand educational licences. The amounts have been adjusted on those previously payable for CPI increases only.

Division 2 of Part VII of the Act creates a statutory licence for the use of copyright material for the Crown (Commonwealth or State). Under s 153F of the Act, Screenrights is the declared collecting society for the purposes of that Division. At paras 11 – 18 of its report to the Code Reviewer, Screenrights describes the position as to the amounts of equitable remuneration payable by Commonwealth and State and Territory departments and agencies.

Finally, Screenrights' report addresses the statutory licence to retransmit free to air broadcasts under Part VC of the Act. Under s 135ZZT (1) of the Act, Screenrights is the collecting society for the purposes of that Part. The rate of equitable remuneration was determined by the Copyright Tribunal of Australia in 2006 (*Audio-Visual Copyright Society Ltd v Foxtel Management Pty Ltd (No. 4)* [2006] ACopyT 2; (2006) 68 IPR 367) and Screenrights entered into "Collection Scheme Agreements" with pay television companies and other retransmitters (such as Telstra) following that determination, confirming the application of the rates determined by the Tribunal.

On 1 June 2012 the Tribunal determined on an amount of equitable remuneration of 10c per subscriber per month for the retransmission of all of the nine new multichannels which had not existed at the time of the 2006 determination: see *Audio-Visual Copyright Society vs Foxtel Management Pty Ltd* [2012] ACopyT 1. That determination left for the future an issue as to the amount of equitable remuneration in the case of subscribers who do not have access to all of the new multichannels but have access to only to one or more (but less than nine) of them. That issue was the subject of a determination by the Tribunal on 23 August 2012: see *Audio-Visual Copyright Society Ltd vs Foxtel Management Pty Ltd* [2012] ACopyT 2. The determination reflected a table set out in Screenrights written submissions to the Tribunal.

Legal Framework (Code, Clause 2.1)

Screenrights' Articles of Association are unchanged and the procedures governing the appointment, procedures and powers of directors are contained in them – Articles 6, 7, 8, 9, 10 and 12.

Members (Code, Clause 2.2)

Screenrights produces brochures, information sheets and newsletters for current and prospective members. The new and updated versions are reproduced in Annexure C to Screenrights' report to the Code Reviewer.

During the Review Period, Screenrights launched an online portal for members called "MyScreenrights" enabling them to "manage their membership" online. Screenshots of "MyScreenrights" are provided in Annexure D to Screenrights' report.

Finally, Screenrights published new Membership Application and Registration forms to streamline the process of application for membership, and to update the language used in the forms to make them easier to use and to "provide interactive functionality". A copy of the Screenrights' Membership Kit is provided in Annexure E to Screenrights' report to the Code Reviewer.

Finally, Screenrights continues to distribute to members electronically on a monthly basis (excluding January) "*Off the Air*". Copies are contained in Annexure F to Screenrights' report.

Licensees (Code, Clause 2.3)

During the Review Period, Screenrights updated information leaflets for licensees and upgraded Screenrights' corporate website to make navigation of it easier.

Distribution of Remuneration and Licence Fees (Code, Clause 2.4)

There were no amendments during the Review Period to Screenrights' Distribution Policy as approved by its Board of Directors on 31 March 2010. A copy is Annexure H to Screenrights' report.

Collecting Society Expenses (Code, Clause 2.5)

Screenrights' expenses for the year ending 30 June 2012 were 15.3% of gross revenue (see Clause 2.5 (a) of the Code). A detailed summary of Screenrights' expenses to collections ratios can be found at page 11 of its Annual Report for the financial year 2011/2012, where a comparison with the years 2009-2010 and 2010 -2011 is depicted.

Governance and Accountability (Code, Clause 2.6)

Screenrights report to the Code Reviewer attaches as Annexure G its Annual Report for 2010-11, including the audited accounts as at 30 June 2011.

Staff Training (Code, Clause 2.7)

Screenrights reports that all new staff are informed of and trained in Screenrights' Dispute Resolution Policies as part of their induction. The relevant information is also available on Screenrights' website.

Staff training in relation to the society's obligations under the Code and as to the handling of complaints and alternative dispute resolution procedures is carried out regularly. This is in addition to regular staff meetings at which specific issues are raised and training given, such as in relation to privacy issues.

Education and Awareness (Code, Clause 2.8)

See discussion under "Members" (clause 2.2) and "Licensees" (clause 2.3) above.

Complaints and Disputes (Code, Clause 3)

Screenrights' Alternative Dispute Resolution Procedure, which is available to resolve claims between rightsholders, remained unchanged during the Review Period. A Complaints Handling Procedure information sheet detailing how to make a complaint is available on the website or upon request.

Complaints made during the Review Period and the society's handling of them are dealt with in a separate section, "Complaints and Disputes", below.

Publicity and Reporting (Code, Clause 4)

Screenrights publicises the Code and the fact that it has agreed to be bound by it by referring to that fact and making the Code available on its website for download by members and licensees and other interested stakeholders. (see clauses 4 (a) (i) and (ii) of the Code; and *www.screenrights.org/about-us/governance/code-of-conduct)*

Screenrights includes a statement in its Annual Report (at page 7 under "Governance") that it complies with the Code (see Clause 4 (b) of the Code)

Phonographic Performance Company of Australia Ltd ("PPCA")

General

Some idea of the size of the operations of PPCA can be gained from the following statistics that were supplied as part of its report to the Code Reviewer:

Number of Licensors as at 30 June 2012	1,106
Number of registered artists (approximately)	2,750
Number of initial letters sent to potential licensees	7,027
Number of licence renewals processed (public performance)	61,107
Number of new licence applications processed (public performance)	4,488
Number of licence cancellations processed (public performance)	4,838
Number of reassessments processed (public performance)	14,552

By way of general information, in its report to the Code Reviewer, PPCA advised that on 10 October 2011, PPCA and Fitness Australia agreed to adopt a new licensing scheme known as "Tariff V1" to cover the use of protected sound recordings accompanying fitness classes.

On 18 October 2011, PPCA wrote to all fitness class tariff holders advising them of the new tariff to be implemented on and from 1 January 2012. There was included an explanatory brochure and other documents. Fitness class tariff holders were given a number of options as to licences required and frequency of billing.

In April 2011, PPCA commenced a review of the licensing scheme for events and festivals. This review resulted in a new tariff (*Tariff E4: Music Events and Festivals*) and in changes being made to the existing tariff (*Tariff B: Events and Festivals*).

In September 2011, the drafts of Tariffs E4 and B were sent to PPCA licence holders who might be directly affected by the proposed changes as well as to those who held events/festival licences but were unlikely to be affected by them. PPCA's letter explained the review process and invited recipients to consult with PPCA and to forward submissions in relation to the proposed changes.

Other publicity was given to the proposal. Ten submissions were received.

The planned implementation date of 1 January 2012 could not be met. The new tariffs were in fact implemented on 1 July 2012.

Legal Framework (Code, Clause 2.1)

Both PPCA's Memorandum and Articles of Association (containing provisions governing the appointment, powers and proceedings of Directors) and its Privacy Policy remain unchanged.

Members (Code, Clause 2.2)

As at 30 June 2012, PPCA had 1,106 licensors representing major record companies and independent copyright owners. In addition the number of registered artists stood at approximately 2,750.

Licensors authorise PPCA to sub-licence on a non-exclusive basis via the execution of an Input Agreement. During the Review Period, the form of the Input Agreement remained unchanged (it was last amended in January 2009 to facilitate licensing by PPCA of a range of digital services).

During the Review Period, PPCA's website was modified to allow both Licensors and Artists to lodge on-line registrations. This innovation was in addition to the pre-existing options of (a) downloading the relevant forms for completion, or (b) contacting PPCA to have a registration pack posted or emailed.

Licensees (Code, Clause 2.3)

At 30 June 2012, PPCA had 54,718 businesses licensed for the public performance of protected sound recordings and music videos, under a variety of tariffs. By volume, this is the largest sector of its licensing activities and is managed by the largest team of staff (the Public Performance Licensing Department). PPCA also has licences in place with broadcasters (free to air, subscription, community and public) and digital service providers.

The PPCA website contains extensive information on its standard public performance licence schemes, including descriptions of tariff categories and the cost of the relevant licences, and details of the relevant licence terms. Licence applications may be submitted (a) on line, (b) via an application form which can be downloaded from the website, (c) using PPCA's hard copy application form, or (d) by phone. The website also contains information on the range of broadcasting and digital licences available (including the application process) and a range of 'FAQs' covering matters both specific to PPCA and on copyright more generally.

PPCA regularly liaises with relevant trade bodies throughout the course of each year, and continued that activity during the Review Period. In addition PPCA holds corporate memberships of a number of trade associations, including the Australian Hotels Association, the Restaurant & Catering Association, the Tasmanian Hospitality Association, and Clubs Australia.

PPCA's public performance tariffs generally increase annually, on July 1, by an amount equivalent to the CPI. These increases, when proposed, are communicated to a wide range of trade and peak industry bodies by 1 April each year, when PPCA writes to all relevant key industry associations it has been able to identify, inviting comment on the proposed tariff alteration.

In addition to these regular communications, during the Review Period PPCA consulted extensively with licensees and representative trade groups on reviews of (i) the tariff scheme applicable to 'Fitness Classes', which was ultimately implemented on 1 January 2012, and (ii) the tariff scheme applicable to 'Events and Festivals', which was implemented on 1 July 2012 (see above).

Distribution of Remuneration and Licence Fees (Code, Clause 2.4)

PPCA maintains and makes available on its website the "PPCA Distribution Policy", which describes how PPCA collects licence fees for the use of sound recordings and music videos, and how it allocates and distributes payments to the licensors who have authorised PPCA to issue licences on their behalf. The Policy also incorporates details of PPCA's 'Direct Artist Distribution Scheme' – an *ex gratia* arrangement under which featured Australian artists may register to receive payments directly from PPCA, whether or not they have retained copyright in the sound recordings on which they feature.

The Policy was amended in July 2011 to ensure greater clarity in the distribution process. Key updates included (a) a 31 August deadline for the registration of new recordings with PPCA, and (b) a process by which adjustments could subsequently be made to distribution allocations and payments in circumstances where an error by a PPCA staff member resulted in an underpayment to a PPCA Licensor or Registered Artist.

In addition to website publication, a copy of the Policy is also provided to each new Licensor as part of its registration pack. An information sheet on the Direct Artist Distribution Scheme is also provided to each registering artist as part of the artist registration pack. The information sheet describes the overall scheme as outlined in the Policy, and advises artists that it (and all other policies) can be viewed on the PPCA website, or supplied on request

Collecting Society Expenses (Code, Clause 2.5)

PPCA's operating expenses are deducted from total gross revenue, yielding a surplus available for allocation and distribution in line with PPCA's Distribution Policy. The annual report for 2011, published during the Review Period, shows that the expense to revenue ratio was 22.6% for the year ended 30 June 2011.

The annual report for the Review Period (published after 30 June 2012) shows an expense to revenue ratio of 20.3%.

Governance and Accountability (Code, Clause 2.6)

PPCA publishes, and makes available on its website, an annual report incorporating reports from both the Board of Directors and the external auditor. The overall report includes information on total revenue within the financial year, the sum and nature of expenses, and amounts distributable to Licensors under PPCA's Distribution Policy.

All Licensors and Registered Artists are alerted to the availability of the annual report via PPCA's regular '*On the Record'* newsletter.

Staff Training (Code, Clause 2.7)

PPCA reports that, on the commencement of their employment, staff are provided with a number of key documents including the Code, the PPCA Privacy Policy and the PPCA Complaints Handling and Dispute Resolution Policy. They have an opportunity to discuss and review them with their Departmental manager, and are encouraged to review the policies regularly and to approach senior staff with any questions or suggestions for process improvement.

The staff of the Licensing Department, which has the highest volume of dealings with consumers, meets frequently (at least once a month). At these meetings staff are reminded of PPCA's obligations under the Code and other policies, and are trained in preferred methods of dealing with customers. Ideas for improvements to the procedures of the organisation are also discussed. A booklet containing standard responses to 'frequently asked questions' is provided as a resource for the Public Performance Licensing Team. Regularly updated, this resource was developed in order to support staff training and consistency of approach.

Other Departments (such as the Distribution Department, which handles queries from artists and licensors) also meet periodically for staff training and process review purposes.

A copy of any complaint received is provided to the Manager of the relevant team for discussion and review at team meetings. PPCA reports that in its experience, this process promotes staff awareness, assists staff training, and initiates review of standard processes.

During the Review Period, staff were sent to external training courses covering:

- Customer service/telephone skills;
- Goal setting and time management; and
- Leadership skills

Education and Awareness (Code, Clause 2.8)

In its report to the Code Reviewer, PPCA has provided information on:

- The information packs provided to new Licensors and Registered Artists,
- Communications with Licensors and Registered Artists, including regular newsletters and updates,
- Participation on panels at seminars, workshops and conferences directed at content creators,
- Consultation with bodies representing Licensors and Recording Artists,
- Information packs provided to potential licensees,
- Materials provided to licensees and licensee representative bodies, including quarterly newsletter updates, and
- Consultation with licensee representative trade bodies.

PPCA also reported on the launch of Facebook and Twitter communication channels, with the objectives of (i) engaging in purposeful discussion with artists and licensors about the services offered by PPCA, and (ii) keeping those groups informed of relevant industry issues and events. PPCA now communicates with its followers three to four times per week, providing information on registration dates and current campaigns, as well as the latest music industry news, events and education initiatives. This supplements the material already available on PPCA's website at www.ppca.com.au

In March 2012 PPCA launched its "Patron Program" in order to better educate artists, record labels and businesses about PPCA activities. PPCA remains in close contact with its patrons in order to keep them informed of all issues impacting PPCA, and allow them to disseminate that information through their own social network channels.

PPCA also sought to increase awareness of the organisation, and of copyright generally, through its support of the Australian Copyright Council, Sounds Australia, the PPCA Performers' Trust Foundation, the Australian Music Prize (the 'AMP'), the Deadly Awards, Support Act Limited, the Australian Independent Record Labels Association ('AIR'), and the Arts Law Centre of Australia.

Complaints and Disputes (Code, Clause 3)

This matter is dealt with in a separate section, "Complaints and Disputes", below.

Publicity and Reporting (Code, Clause 4)

PPCA publishes a copy of the Code and the annual compliance reports on its website. Licensors, registered artists and licensees are advised of the annual review process, and are invited to make submissions to the Code Reviewer via notices in the quarterly newsletters and on the website.

PPCA refers to the Code and to the annual report of the Code Reviewer in its annual report, which is also available on the website.

The standard information leaflet distributed to potential licensees provides, in addition to general information on music licensing, details of the Code and where individuals can access copies of it.

Viscopy

General

Viscopy is Australasian rights management organisation for the visual arts. It provides, on behalf of its members, copyright licensing services in Australia and New Zealand for a wide and varied customer base, including all of the major Australian auction houses and public galleries. Viscopy represents 9,500 Australian and New Zealand artists or their heirs and beneficiaries. This is approximately 43% of the total population of visual artists in Australia and New Zealand, of whom almost half are indigenous Australians. As well, Viscopy represents more than 40,000 international artists and beneficiaries of artists' estates in Australasia through reciprocal agreements with over 40 visual arts rights management agencies around the world.

As at 30 June 2012, Viscopy had 8,891 Australian and New Zealand members. Viscopy also represents more than 40,000 international artists and beneficiaries of artists' estates in the Australasian territory, through agreements with over 40 visual arts rights management agencies around the world.

In the financial year ended 30 June 2012, Viscopy's turnover was $3,223,435.

During the Review Period, Viscopy issued 427 licences for 174 customers, with an average licence value of $2,182 (excluding GST).

As noted earlier, under "General" in the part of this report dealing with CAL, from 2 July 2012, an agreement between Viscopy and CAL took effect under which CAL provides back-office services to Viscopy and its members and licensees. In consequence, similar to the position with APRA/AMCOS, future reports to the Code Reviewer and by the Code Reviewer will refer to CAL/VISCOPY (or, more precisely, "Copyright Agency/Viscopy", because of a re-branding of CAL as "Copyright Agency" also effective from 2 July 2012). The present report will therefore be the last one of the Code Reviewer treating the two collecting societies separately.

Legal Framework (Code, Clause 2.1)

During the Review Period there was no change to Viscopy's legal or compliance status with respect to relevant laws.

Members (Code, Clause 2.2)

There was no change during the Review Period. During the Review Period 181 people joined Viscopy using its online facility.

Licensees (Code, Clause 2.3)

Viscopy issues a range of licences relating to the reproduction, publication and communication of artistic works. These include individual and annual licensing agreements.

During the Review Period, Viscopy issued 427 licences to 174 licensees, with an average licence fee income of $2,182 (excluding GST).

In addition to revenue from Viscopy's licensing activities in Australia and New Zealand, the society receives royalties from its international "partners" in relation to the licensing of its members' works overseas.

Although not a declared collecting society for the purpose of any of the statutory collective licensing schemes, Viscopy participates indirectly in two of those schemes. These are the photocopying and digital copying and communications schemes administered by CAL and the off-air recording and retransmission schemes administered by Screenrights. Viscopy also receives revenue from collective schemes operated by Screenrights in New Zealand.

In addition, Viscopy receives revenue for its members from overseas collective schemes via Viscopy's international "partners".

Finally, by arrangement with CAL, Viscopy distributes resale royalties collected by CAL for Viscopy members, where CAL does not have the necessary contact and payment details.

Distribution of Remuneration and Licence Fees (Code, Clause 2.4)

Viscopy's Payments Policy sets out the basis for calculating entitlements to receive payments from remuneration and licence fees, the manner and frequency of payment to members, and the amounts deducted by Viscopy for its administrative charges. The Payments Policy is available on Viscopy's website. During the Review Period, Viscopy made three distributions to its domestic members and two distributions to its international partner organisations. In the case of Resale Royalties, it distributes as soon as practicable after receipt of royalties from CAL (see under CAL above).

Collecting Society Expenses (Code, Clause 2.5)

In the Review Period, Viscopy deducted a commission charge of 25% of copyright licensing and statutory revenue collected in Australia and New Zealand to cover its expenses. On royalties received from overseas partner organisations, whether for copyright or collective licensing, Viscopy deducts a commission charge of 10%. In the case of Resale Royalties (received from CAL), however, Viscopy levies no administration fee.

Governance and Accountability (Code, Clause 2.6)

Viscopy is under the control of a Board of Directors which includes artist members and business experts from various professions. Directors may serve for a maximum of three two-year terms. The Directors are unpaid but Viscopy reimburses their out of pocket expenses associated with their attendance at meetings.

The Board of Directors has a Finance and Audit Committee, Nominations Committee and John Fries Memorial Prize Committee.

Viscopy's financial records are audited annually by external auditors. The audited accounts are available on Viscopy's website.

Staff Training (Code, Clause 2.7)

All staff are trained in compliance with the Code and with Complaints Handling Procedures. The training takes place in-house shortly after a new member of staff commences employment. All other staff members participate in an annual "refresher".

Throughout the Review Period, Code compliance issues and complaints handling were standing items on the agenda of the weekly senior management team meeting and were also regularly discussed with all staff members at team meetings.

Education and Awareness (Code, Clause 2.8)

Viscopy's application for a continuation in the Review Period of federal government funding of the indigenous education program was not granted. However, Viscopy continued the program in a more limited form and delivered education workshops for indigenous artists and art centre workers around Australia on 12 occasions with a total attendance of 300.

A legally qualified member of Viscopy's staff is available to provide information on copyright issues to members. In addition, Viscopy provides a copyright infringement reporting service which allows members to notify it of suspected infringements of their copyright in Australia as well as overseas. Where infringements have occurred, Viscopy deals with them as appropriate, including by referral to Viscopy's international partners in the case of overseas infringements. If, for some reason, Viscopy cannot assist the member, it will endeavour to refer the member to other appropriate services, including the Arts Law Centre of Australia and the Australian Copyright Council.

Complaints and Disputes (Code, Clause 3)

This subject is dealt with in a separate section, "Complaints and Disputes", below.

Publicity and Reporting (Code, Clause 4)

The Code is available to members, licensees and the general public via Viscopy's website and otherwise on request. The website has a page dedicated to information about the Code. Notice of the current Code review process was published on Viscopy's website at the beginning of June 2012.

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

General

The number of members of AWGACS at 30 June 2012 was 1132, an increase of 76 in the Review Period.

AWGACS does not deal with licensees.

For more than two years, AWGACS has been engaged in the pursuit of collecting society royalties owed to Australian screenwriters which have been paid to the Writers Guild of America (WGA), the Motion Picture Association of America (MPAA), and the Alliance of Motion Picture and Television Producers (AMPTP).

AWGACS became aware of a class action law suit between WGA and Richeart and others in California, the class definition of which included members of AWGACS. AWGACS sought to have the definition amended so as to exclude its members, but the WGA did not agree. AWGACS proceeded on behalf of its members to opt them out of the class. This means that its members retain the right to pursue the royalties owing to them but collected by the WGA and MPAA.

Despite formal and informal attempts, in person and in writing, the WGA has refused to implement any procedures to prevent their collection of monies owing to members of AWGACS. Schedule 1 to the AWGACS report to the Code Reviewer is a summary of the communications that have occurred.

AWGACS has made presentations to the International Confederation of Societies of Authors and Composers (CISAC), both its audio Visual Authors Committee and Audio Visual Technical Committee, in order to generate an understanding of, and remedial action to overcome what AWGACS perceives to be the global misallocation of a large number of English language titles to United States guilds and production companies.

Legal Framework (Code, Clause 2.1)

There has been no change since the previous Code Reviewer's report. It is noted that AWGACS is not a declared collecting society under any of Parts VA to Parts VD of the *Copyright Act 1968*.

Members (Code, Clause 2.2)

The number of members of AWGACS as at 30 June 2012 was 1,132, an increase of 76 in the Review Period.

Licensees (Code, Clause 2.3)

Clause 2.3 of the Code does not apply to AWGACS because AWGACS is not a licensor of copyright material.

Distribution of Remuneration and Licence Fees (Code, Clause 2.4)

AWGACS does not recover licence fees for distribution.

In relation to remuneration collected by AWGACS on behalf of its members, it has a "Distribution Policy" a copy of which is Schedule 4 to its report to the Code Reviewer. The Distribution Policy is posted on the AWGACS section of the AWG website and is available on request.

The AWGACS financial year is a calendar year. In the calendar year ended 31 December 2011 AWGACS collected $1,470,330 and distributed $1,200,000. In the six months 1 January 2012 to 30 June 2012, AWGACS collected $309,272 and distributed $255,718.

Collecting Society Expenses (Code, Clause 2.5)

AWGACS deducted 5% of gross royalties received as a cultural levy to be directed towards appropriate activities in support of its members.

Governance and Accountability (Code, Clause 2.6)

The Board of Directors of AWGACS comprises five directors of whom two are AWGACS members who are appointed by the Board of the Australian Writers' Guild, two are AWGACS members who are elected by the members, and one is the AWG Executive Director.

Staff Training (Code, Clause 2.7)

During the Review Period, the Collections and Distribution Manager and the External Database consultant trained a new Collections and Distribution Officer, who in turn, trained a junior researcher.

Education and Awareness (Code, Clause 2.8)

AWGACS is a relatively small collecting society with limited funds and capacity to conduct education and awareness campaigns. However, during the Review Period AWGACS made an effort to educate its members and the broader writing community about its role, functions and activities by way of advertising (cf the AWGIE awards program, 'Storyline', the flagship journal for performance writers), chairing an international working group on the collection and distribution of English language titles and the entitlements of the authors of those works, Q&A sessions on moral rights, advice to members and producers on moral rights, entitlements, contract provisions, and individual advice on request.

In addition, AWGACS's website provides information about AWGACS Policies and Procedures, Constitution, Privacy Policy, Complaints Handling Procedure and Dispute Resolution Procedure, and Distribution Policy.

Complaints and Disputes (Code, Clause 3)

The subject of complaints and disputes is dealt with in a separate section, “Complaints and Disputes”, below.

Publicity and Reporting (Code, Clause 4)

The Code is posted on the AWGACS page of the AWG website and is made available to members and the general public upon request.

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

General

As at 1 July 2011 ASDACS had 520 members and by the end of the Review Period it had 556 – an increase of 36.

As it is not a declared collecting society under any of Parts VA to Parts VD of the *Copyright Act 1968*, ASDACS's role with respect to Australian copyright can only be as agent, as service from which it derives no income. Thus, its sole royalty income for the Review Period was that collected from Europe (sometimes second-hand via USA or the UK) on an authorship rights basis.

The ASDACS report to the Code Reviewer states that ASDACS maintained a program of “regular cultural funding support” to the Australian Directors’ Guild (ADG) which it began in 2009. Since its inception, the annual amount has been $24,000 which represents about 4% of the total annual royalty collections of ASDACS.

ASDACS continues to employ one staff member full time and another person part time. ASDACS’s royalty income received during the Review Period was $350,445 and its sources according to overseas countries are shown in its report to the Code Reviewer.

According to that report, the fact that ASDACS's only income is derived from Europe left the society exposed to the volatility of the European economic situation. There was in consequence an unexpected decrease in income.

This had the result that the administration costs of ASDACS for the Review Period rose from the previous year's 24% to 31% and would have been higher but for a dip into reserves.

Legal Framework (Code, Clause 2.1)

There was no change during the Review Period

Members (Code, Clause 2.2)

The report states that ASDACS's "dialogue with [its] members has remained firmly on the warm side of cordial".

Licensees (Code, Clause 2.3)

ASDACS does not grant licences.

Distribution of Remuneration and License Fees (Code, Clause 2.4)

ASDACS does not receive licence fees and the comment under "General" above about its income suffices for present purposes.

Collecting Society Expenses (Code, Clause 2.5)

The increase in expenses as a percentage of income and the reason for it was noted above under "General".

Governance and Accountability (Code, Clause 2.6)

ASDACS's Governance remains unchanged. ASDACS's Board of Directors comprises 10 directors of whom seven are ASDACS members elected by the membership, two are non-members invited by the Board, and one is the ASDACS Executive Director.

During the Review Period, ASDACS continued to submit its financial reports to ASIC but for the first time they were submitted after audit review rather than audit, under the ASIC Tier 2 arrangements for smaller companies.

Staff Training (Code, Clause 2.7)

As in previous years, the immediate needs of the organisation dictated its training program. During the period the external database consultant trained the full time staff member in the operation of the new database system for distribution and works registration.

Education and Awareness (Code, Clause 2.8)

ASDACS continued to inform its membership of developments in its member services through member updates and on its website. It communicated with the wider film community through its support for cultural programs provided during the period by the Australian Directors' Guild, including speaking and circulating ASDACS materials at the annual directors' awards in May 2012.

Complaints and Disputes (Code, Clause 3)

This matter is dealt with in a separate section, "Complaints and Disputes", below.

Publicity and Reporting (Code, Clause 4)

During the Review Period, the operation of the Code was mentioned only in passing to members through updates to them. The latest iteration of the Code is available for download by visitors to the ASDACS website. The latest report of the Code Reviewer (for 2010-2011) and the 2012 call for submissions were also both published on the ASDACS website.

COMPLAINTS AND DISPUTES

This section of the report gives details of the complaints against the collecting societies and of their responses to them. The accounts given of the complaints are, of course, based on those supplied by the collecting societies in their reports to the Code Reviewer supported by the correspondence relating to the complaints.

The significance of the number of complaints in respect of any particular collecting society should be assessed against the background of the extent, previously noted, of that society's operations, and, in particular, the number and frequency of its dealings with its members and licensees. There are great differences between the societies in this respect. As well, complaints differ in their seriousness.

In the accounts below, the identity of the complainants is concealed.

I do not think that every complaint necessarily calls for comment by me. In particular, I have not commented where the account given of the complaint and of the collecting society's response to it speaks for itself.

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

During the Review Period there were three new complaints by members and no complaints by members carried over from the previous Review Period (2010-2011).

During the Review Period there were three new licensee complaints, and there were no licensee complaints carried over from the previous Review Period.

As at 30 June 2012, there were 131 ongoing general infringement matters under the management of the Licensing Services Department, of which 49 were under the management of APRA/AMCOS's external solicitors.

For failure to pay invoices issued by APRA/AMCOS, the Finance Department pursues the defaulting licensee and if necessary the matter is referred to APRA/AMCOS's external mercantile agent to proceed through debt recovery proceedings. As at 30 June 2012, 791 APRA/AMCOS licensees were under the management of APRA'S mercantile agents.

The APRA/AMCOS report to the Code Reviewer contains details of the alternate dispute resolution procedures available in respect of members and in respect of licensees or potential licensees.

Complaints by Members

1. An APRA writer member telephoned an APRA office in a state other than New South Wales and asked to speak with APRA's Writer Services Representative for that state. The member was told (by a Licensing Representative) that that person was out of the office that day and that the member should contact the Writer Services Department at APRA's Head Office in Sydney on APRA's 1800 toll-free number. The member refused and asked the Licensing Representative to assist him directly. When the Licensing Representative said that he was not in a position to do so, the member became verbally abusive and the Licensing Representative decided that he should end the telephone conversation.

   The member promptly rang back and the Licensing Services Manager answered the phone. The member verbally abused the Licensing Services Manager on the basis that the Licensing Representative had not assisted him. The Licensing Services Manager tried to explain that since the enquiry was related to membership, it would be best to contact APRA's Writer Services Department at the Head Office in Sydney on the 1800 toll-free number, but there was further verbal abuse and a threat of physical abuse by the member. The Licensing Manager for the state then ended the telephone conversation.

   Following the incident, APRA's Client Services Team leader phoned the member and invited him to lodge a formal complaint. He did so after thanking the Client Services Team Leader for the prompt follow up, emphasising that he had always received excellent service from the Writer Service Representative for the state.

   The member lodged a complaint. APRA's Complaints Officer responded in writing advising of the steps APRA had taken to resolve the matter, but there was no response from the member.

   The Licensing Services Manager and the Licensing Representative involved were counselled regarding their handling of the telephone enquiry. In future, if there is no Member Services Representative available in the particular state office, members are to be offered the choice of calling the Member Services Department at the Head Office in Sydney on the toll-free number or leaving a message with a Licensing Services Representative in the state office who will ask a Member Services Representative from

Head Office to call the member back. In addition, APRA is planning to install a new phone system in the particular state office which will enable it to transfer calls directly to the Member Services Department in the Head Office.

Note – Post-Review Period

In November 2012, APRA/AMCOS ordered, at significant expense, a new telephone system for all its interstate offices which will allow internal and external calls to be transferred between them, together with other benefits. There has been some delay on the part of the service provider in installing the new system but its advice is that the new system be fully operational by the end of March 2013.

Code Reviewer's Comment

The collecting society's response seems appropriate, although the provider's delay in effecting the installation is unfortunate.

2. An APRA Writer Member was voted the winner of a song category in an international competition and wrote to APRA asking it to publish the information to its membership. The employee who received the email misunderstood the request and thought that the Writer Member was asking APRA to promote the international song competition generally. Accordingly, the employee replied that APRA does not usually promote third party events.

   The APRA Writer Member lodged a complaint that APRA had failed to support and celebrate its member's achievements by refusing to share his success with the APRA membership generally.

   APRA promptly apologised to the member for the misunderstanding and arranged for his success to be published on the APRA/AMCOS website. The Writer Member expressed satisfaction with this resolution and the complaint was closed.

3. An APRA Writer Member had several conversations with APRA's Licensing Services Department and Writer Services Department about his concerns over his works being performed as part of a third party production. The production involved live performance

of the works simultaneously with the exhibition of a film for which he had originally composed them.

Upon request, the member eventually put his enquiry to APRA in writing. He asked how he could prevent the live performance and whether he could exclude particular works, from his grant of rights to APRA under his membership agreement.

The APRA Writer Services Representative who dealt with the enquiry had, at that time, only recently assumed responsibility for managing APRA's "opt out" and "licence back" facilities. As a result, there was a delay of 30 days before APRA provided a substantive response. APRA accepts that this delay was unacceptable.

APRA advised that in order to prevent the performance of particular works, members were obliged to use APRA's "opt out" facility by which APRA re-assigns to a member his or her entire repertoire of works for a particular category of use.

The member allegedly submitted an APRA online "opt out" application form but APRA did not receive it. APRA's Writer Services Representative confirmed to the member that it had not been received. At the same time, the Representative advised the member that some of his works were the subject of a publishing arrangement and that as a result he would also have to obtain his publisher's consent to the "opt out".

The member complained about APRA's handling of the matter including the delay in the initial response; the alleged failure of APRA's electronic "opt out" application form; the piecemeal flow of information; and the limitations on the "opt out" facility generally, such as the requirement for three months' notice and the fact that an opt out must be for a member's entire repertoire.

The complaint was referred to APRA's Membership Administration Manager and Corporate Counsel. APRA provided a comprehensive written response to the member.

APRA's Corporate Counsel and Director of Membership met personally with the member to explain the opt out process in greater detail. APRA also undertook to obtain the necessary consents required from the publisher, and from the co-writers and their publishers, in order to process the "opt out" application.

The "opt out" application was fast tracked and approved by the APRA Board.

The Member expressed satisfaction with this result and the complaint file was closed.

Subsequently, APRA took the following steps to ensure that complaints such as the present one do not recur:

- APRA's Writer Services Representative responsible for dealing with "opt out" and "licence back" requests was provided with additional training in relation to APRA's procedures in this regard and now has a standing monthly meeting with APRA's General Counsel to review all "opt out" and "licence back" requests;
- Any "opt out" or "licence back" requests which are directed to APRA's Licensing Department are to be referred immediately to the Member Services Department; and
- Any "opt out" request received from a member is to be forwarded to APRA's General Counsel immediately upon receipt.

Code Reviewer's Comment

APRA concedes that the initial delay in providing a substantive response was unacceptable. Otherwise, the handling of the particular complaint and the systemic improvement appear to have been satisfactory.

Complaints by Licensees

4. A complaint was made by the owner and operator of a hotel which was a well-known music venue and which regularly featured touring live bands and disc jockies.

A director of the licensee company in question (the Director) wrote to APRA's Chief Executive, raising the following substantive commercial issues:

- Whether, in connection with the performance of recorded music, the hotel should be licensed under scheme GFN or scheme GFR;
- The basis on which the hotel should be licensed for live performances under APRA's GLA scheme and whether certain performances should be excluded;
- The basis on which the premises should be licensed for the use of background music under APRA's BH scheme, with particular reference to the question how

many television sets on the premises were operated with sound as well as pictures and therefore were relevant devices for the purposes of the BH scheme.

The Director also complained about the content, manner and tone of the conversation of APRA's Licensing Services Representatives, alleging that their conduct had been "inconsistent, heavy handed in some respects and bordering on intimidation in others with the ever looming threat of litigation being offered as a trump card".

APRA's Chief Executive replied, explaining APRA's position in relation to the three substantive commercial issues.

In relation to the complaint concerning the Representatives' conduct, APRA's Chief Executive advised the Director that he had investigated the matter and that both Representatives in question had denied any inconsistency or heavy handedness. However, they had expressed a high degree of frustration over their communications with the Director. The Chief Executive advised the Director that if that frustration had led to heated or intemperate language, APRA apologised.

In relation to the threat of litigation, the Chief Executive advised that APRA's Licensing Representatives were obliged to inform music users who declined to take out a licence on proper terms that infringement could lead to legal action. Moreover, APRA wrote advising of this possibility only after an initial meeting with APRA's Licensing Manager for the State in question and a subsequent meeting with APRA's Director of Licensing had failed to resolve the matter.

Finally, if the Director did not agree with APRA's position in relation to the outstanding substantive commercial issues, the Chief Executive offered to meet with him or to refer the matter to expert determination in accordance with APRA's Alternative Dispute Resolution procedure.

The Director advised that he wished to meet with APRA's Chief Executive who flew to the capital city in question to meet with the Director at the hotel. Following the meeting, APRA formed the view that the complaint regarding the conduct of APRA's Licensing Representatives was resolved.

In relation to the outstanding substantive commercial issues, APRA's Chief Executive continued to communicate with the Director by telephone and wrote to him again outlining APRA's revised position. The Director did not reply and the Chief Executive referred the matter to APRA's external solicitors who wrote to the Director. On the same day, APRA received from the Director a response. Subsequently, APRA also received from the Director a set of APRA licence application forms together with a cheque. APRA's Chief Executive replied explaining that APRA had accepted his background music licence application but not his application for a licence for live performances or featured recorded music as it did not accord with APRA'S understanding of the way in which music was in fact used at the hotel or the amount of expenditure and receipts generated by live music there. APRA offered the Director the opportunity to submit revised application forms or to have the matter referred for expert determination.

Note – Post-Review Period

As at the date of APRA's report to the Code Reviewer (3 August 2012) APRA was holding the amount of the cheque together with a previous payment in escrow pending resolution of the dispute

Since August 2012, APRA has continued to communicate with the Director in an attempt to resolve the outstanding commercial issues. In December 2012, the Director requested, and APRA agreed, that the matter be referred to APRA's alternative dispute resolution facility in the New Year. In January 2013, the licensee company changed its legal representation, and APRA's Chief Executive, General Counsel and Director of Licensing arranged to meet with the Director and the company's new solicitors on 20 February 2013 to try to resolve the matter by negotiation prior to referral for expert determination. The meeting took place and the matter was resolved at the meeting.

Code Reviewer's Comment

There are different terms in which the possibility of legal action can be drawn to attention. A collecting society might make a threatening confrontational statement or instead a statement along the lines, "The society would be most reluctant to initiate legal action, but I am obliged to draw your attention to that possibility" or "The society only initiates legal action as a last resort, but I am obliged ..." or "Commencement of legal proceedings is something that the society seeks to avoid, but I am obliged …". It may be that APRA writes in some such terms but if not consideration should be given to the desirability of its doing so.

5. A company held licence from APRA for the use of music "On Hold" at its various premises including five offices in a State capital. The annual renewal date was 1 March. Before that date, APRA sent the company an invoice for the period 1 March to 28 February in relation to those offices.

A company representative (the Representative) emailed APRA advising that the individual named on the APRA invoice had left the company and that the invoice had only recently been passed to the Representative. The Representative requested that APRA cancel the company's account for the use of music on hold in the five offices for the year, as those offices were about to be migrated to a new "music on hold" system which did not use works within APRA's repertoire.

APRA's Licensing Services Representative advised that he was not in a position to cancel the invoice for the year and that it was not APRA's policy to refund annual licence fees where the application for cancellation was received later than 30 days after the annual renewal date. The company lodged a complaint with APRA.

The complaint was referred to APRA's Corporate Counsel in his capacity as APRA's Complaints Officer. He wrote to the company advising that since the original invoice had been addressed to a former employee and the cancellation request was received less than a week into the 30 day cancellation period, APRA was prepared to vary its standard policy on this occasion.

APRA agreed to "pro-rate" the relevant annual licence fee to reflect the period that music on hold was used at the five offices in reliance on APRA's licence. APRA cancelled the original invoice and issued a revised invoice in the relevant amount which was promptly paid with an accompanying expression of thanks to APRA for its having re-considered its position.

APRA considered the complaint resolved.

6. A company owned and operated a hotel. Since at least 2009 the company had held an APRA licence for the use of background music at the hotel.

In August 2011, upon the annual renewal of the licence, a representative of the company (the Representative) engaged in an extended course of communications with APRA's Licensing Services Representatives regarding the background music licence and also issues relating to APRA's licensing and distribution practices and procedures generally. In the meantime, the company's licence fees under its background music licence remained outstanding.

Given the detailed and legal nature of the enquiries, APRA referred the matter to its external solicitors to correspond with the Representative. They did so, attempting to answer his detailed enquires, many of which were not directly relevant to the company's background music licence. Finally, APRA's solicitors sent a letter providing a final response but also demanding payment within seven days.

The Representative lodged a complaint with APRA which raised the following issues:

(a) the basis on which APRA had calculated the licence fee;

(b) the conduct of APRA's solicitors in demanding payment;

(c) the advice of APRA's solicitors that APRA was not willing to enter into further correspondence;

(d) an alleged breach by APRA of the National Privacy Policy guidelines;

(e) an alleged failure by APRA to disclose key financial information in its audited annual reports;

(f) allegedly misleading statements by APRA in its "Year in Review" summary document in relation to APRA's expense to revenue ratio, given the accounting treatment according to expenses and income relating to the management of the AMCOS business and the inclusion of cultural grants funding in APRA's distributed revenue.

APRA's Complaints Officer/Corporate Counsel sent interim responses to the complainant on 14, 16 and 29 November and 15 December 2011. In addition, APRA placed the company's account "on hold", undertaking not to pursue recovery of the outstanding licence fees until the issues raised in the complaint had been addressed.

The Representative wrote to APRA rejecting its response to the complaint and demanding further information. APRA's Corporate Counsel sent interim responses and advised that the matter had been "escalated" to APRA's Chief Executive.

APRA's Chief Executive wrote to the Representative and participated in an extended telephone conversation with him. After that, the Chief Executive again wrote to the Representative confirming the steps that APRA had agreed to take to resolve the complaint.

The steps that APRA agreed to take in relation to the six issues of the complaint were as follows:

(a) APRA acknowledged and apologised for an error in its calculation of licence fees and agreed to provide an adjustment;

(b) APRA acknowledged and apologised for its failure to meet its own timetable for responding substantively to the complaint. It denied that its external solicitors' correspondence had amounted to harassment but acknowledged that APRA should have responded in a less legalistic manner in-house, and apologised for that.

(c) APRA explained that the advice of its solicitors that APRA was not prepared to enter into any further correspondence was not intended to deny the company access to APRA's complaints process, ADR process or appeal process. Rather, the comment related to the Representative's ongoing series of requests for further information.

(d) APRA denied that it had breached the National Privacy Policy guidelines.

(e) APRA denied that it had failed to disclose key financial information in its audited annual reports, but agreed to refer the issue to APRA's independent auditors, KPMG, and to the APRA Board's Audit & Governance Committee.

(f) APRA denied that it had made misleading statements in its "Year in Review" document but agreed to refer the issue to APRA's independent auditors, KPMG, and to the APRA Board's Audit & Governance Committee.

APRA did refer (e) and (f) above to KPMG and the APRA Board's Audit & Governance Committee. The Chief Executive wrote to the Representative confirming the outcome of those referrals.

As to issue (e), both KPMG and the Committee thought APRA's disclosures of expenses by function were in accordance with the disclosure requirements of the Australian Accounting Standards. In relation to issue (f), both opined that the expenses to revenue ratios for 2010 and 2011 referred to in the 30 June 2011 "Year in Review" document were in accordance with the year end management accounts when calculated to the nearest $100,000. They also confirmed that the inclusion of the AMCOS management services income and expenses and the Music Grants Distribution in the expenses to revenue calculation was appropriate.

The Committee did acknowledge, however, that further disclosure in APRA's "Year in Review" document in relation to its account for Music Grants as a distribution rather than as an expense would be beneficial. Accordingly, APRA undertook to take account of the Representative's comments and the Committee's recommendation, and to ensure that there is full and transparent disclosure of APRA's inclusion of Music Grants in its distribution figures when preparing its "Year in Review" for the year ended 30 June 2012.

The Representative responded and did not challenge the conclusions reached by KPMG and the Committee, and expressed satisfaction with the way in which APRA had ultimately handled the complaint.

Note – Post-Review Period

APRA contends that in accordance with its undertaking, it ensured that there was "full and transparent" disclosure of APRA's inclusion of Music Grants in its distribution figures in its "Year In Review" summary for the year ended 30 June 2012 (published in November 2012). APRA has not received any further complaint from the Representative and now considers the complaint resolved.

Code Reviewer's Comment

In relation to (b) above, see the discussion under Complaint Number 4 above.

7. The following material was written by the late The Hon Mr James Burchett, QC for inclusion in the Code of Conduct Review for the year ended 30 June 2012.

I have read for myself the correspondence in question and, subject to one comment below, am content to adopt his material as my own since my views generally accord with his.

"Some months after the deadline for submissions in respect of the review for the year 1 July 2010 to 30 June 2011, emails were received at the official email address of the Code Reviewer, not from a member or licensee of APRA/AMCOS, but from a former member (who will be referred to as "the **Complainant**"). As it was not either a member's or a licensee's complaint, it had not been entered in either of the registers of complaints kept by APRA/AMCOS (see clause 3(a) of the Code) in respect of these categories of complaints.

The complaint, as submitted to the Code Reviewer, consisted of emails and attachments referring to a number of matters, but more particularly to the authorship of certain lyrics of songs that had been registered with APRA/AMCOS by a member who had won a substantial prize as the author of one of them. Although the core of the matter appeared to be an allegation of infringement of the Complainant's copyright by the prize-winner member (who will be referred to as "the **Member**"), the Complainant has not, it seems, sued the **Member**, complaining rather against APRA/AMCOS. The complaint is expressed in general terms, but the Complainant stated: "I believe that the attachments [to her emails] cover the essentials".

In her submission to the Code Reviewer dated 12 Feb 2012, the Complainant raises the point that "APRA has not filed a record of [her] complaints made during 2010-2011"; she claims authorship of the lyrics in question; and she claims to "have been met with nothing but theft and corruption", and that APRA "seem[s] to be content to behave in an unethical manner". The submission goes on to criticise the registrations of songs by the **Member**, asserting it is "most likely that most of her APRA registrations are bogus".

Whether APRA should have entered the Complainant's name in its register of members' complaints is perhaps a nice question; and it will be convenient to deal with it after the substantial issues have been discussed. But first, a short history of the matter, as it is disclosed by the Complainant and APRA's records, will enable the circumstances to be seen in their setting, as follows:

(a) The Complainant sought membership of APRA and AMCOS, being admitted in May 2010.

(b) The basis of the applications for membership was joint authorship of certain works with an existing APRA member; but when the standard step was taken of checking with that member, he denied having any share and stated that the works were composed solely by the member who has been referred to as "the **Member**".

(c) The **Member** had registered the works in her own name some twelve months earlier, and she confirmed she was the sole author.

(d) APRA advised the Complainant in June 2010, but she maintained her claim of joint authorship as author of the lyrics, and (initially, and for some time) that the person she had nominated had written the music.

(e) In June 2010, one of the works in question won an award in a competition APRA helped promote, although in that year it had no involvement in the judging of it.

(f) On 2 July 2010, APRA's Corporate Counsel, Jonathan Carter, wrote to the Complainant, inviting her to provide evidence sufficient to demonstrate her authorship of the relevant works. In response, the Complainant furnished two books and a CD recording, no part of which related to any of the relevant works. Mr Carter's letter added the alternative requirements of withdrawal of the registrations in question (being the sole basis of the membership) or resignation. Having referred to Article 12 of APRA's Constitution, the letter gave notice that expulsion by the Board might be recommended, depending on her response.

(g) The Membership and Distribution Committee of APRA, having received no response to this letter, referred the matter to the Board, which resolved to require the Complainant under Article 12 to withdraw her application for membership, failing which it would proceed to consider expulsion. This decision was notified to her on 12 Aug 2010.

(h) On 13 August, the Complainant advised she had not received the relevant correspondence, and that she would not be withdrawing. In the circumstances, APRA re-opened the matter, and the Complainant submitted a statutory declaration purportedly made on 11 October 2011 (but referred to by her in a letter of 12 October 2010). The statutory declaration relevantly stated: "The lyrics of all apart from one of the songs on the CD "True Believer" were written by myself". The one song excepted is identified, but otherwise the bald statement is simply put forward without any corroborative detail, or explanatory detail, whether of the time or the circumstances of composition. Nor is it stated that any legal claim will be pursued against the **Member**. For all that appears, a claim so barely evidenced was intended to be asserted but not pursued in any meaningful way. Subsequently, in a letter dated 29 May 2011, the Complainant reiterated a demand that she had made that, not only the **Member**, but two other persons as well, should be asked to make statutory declarations, and then the police should be called in to question them. She added: "Throwing them into a lockup until they tell the truth might also work".

(i) On 18 November 2010 the Board of APRA resolved that the Complainant be expelled from membership under Article 12 of APRA's Constitution. Notice of Proposed Expulsion had also been given by AMCOS, and also on 18 November 2010 the Board of AMCOS passed a corresponding resolution under Article 13 of the Constitution of AMCOS.

The Constitutions of APRA and AMCOS confer on their Boards discretionary powers including powers of expulsion. The Code does not, of course, suggest that the use of those powers in good faith will contravene any obligation imposed by the Code on the societies. In this case, the Complainant made, and persisted in, extremely serious allegations against the **Member** and others, but, when called upon to do so, failed, in the opinion of APRA/AMCOS, to show any convincing basis for her allegations. The material put forward does not suggest any even plausible ground for asserting a breach of the Code by APRA/AMCOS, unless it was a breach arising from the failure in 2011 to show the Complainant's assertions as complaints reportable to the Code Reviewer.

Inevitably, a fine question of judgment will occasionally have to be answered as to whether a matter should be recorded as a complaint against a society or against someone else. Here, the specific assertions made by the Complainant prior to her expulsion related to the claim to authorship made by the **Member** and the denial of composition of the music made by another member. Quite vague allegations of impropriety, lacking any specificity, which came to be added against APRA, may well have been seen merely as intemperate reaffirmations of the Complainant's position as against that of the **Member**. However, the matter was initiated while the Complainant was a member, and it may have been better to have allowed that fact to sway its treatment in the records. Nevertheless, copies of the correspondence were kept, and were made available to the Code Reviewer promptly upon the submission being received."

Code Reviewer's Comment

Clause 3(a) of the Code speaks of "complaints from Members and Licensees" and of "disputes between the Collecting Society and (a) its Members and/or (b) its Licensees". However, Clause 3(c)(iv) speaks of "the Collecting Society to which the complaint relates," not "the Collecting Society against which the complaint is made."

In my opinion, the better view is that the complaint was reportable. As the late Mr Burchett observed, however, copies of the correspondence were made available to the Code Reviewer in any event.

Copyright Agency Limited ("CAL")

During the Review Period, CAL received 10 complaints from members and licensees. Copies of the correspondence in relation to them were provided as Appendix C to CAL's Report to the Code Reviewer.

Complaints Relating to CAL's Member Relations Processes and Correspondence

1. An author member wrote to a CAL Board member and telephoned CAL to express his frustration with CAL's claims process, survey sampling and online member accounts system. He complained about difficulties in understanding the claims process and the lack of payment for his works as a long published writer. He also complained about difficulties in accessing his member online account.

   CAL gave him information about its surveys and the managed licence schemes. Past allocations to him had been "rolled", and he complained that he had not been advised that allocations would be rolled if he failed to claim them after four years. CAL apologised and made an *ex gratia* payment to him for the amount of the rolled allocations and gave him assistance in completing his current claim forms.

2. In 2012, CAL implemented a new method for distributions to members from the equitable remuneration paid by schools. This method used data from schools in all states

over the preceding two years. The object was to provide a more even distribution, particularly to members whose works were heavily used, but only in their own state.

A publisher member was concerned that it had been left financially exposed as its projections of revenue from CAL in 2012 were based on the previous pattern of high payment in an even year.

This member argued that if CAL had communicated the change earlier, it would have had an opportunity to revise its budget. CAL acknowledged that although the information had been available on the website from May 2012, it had not been made available prior to distribution.

The payment history of this publisher member indicated that a substantially lower payment would have been made in 2013 under the old methodology, whereas under the new one the payment can be expected to be higher.

CAL offered to write to the complainant's bank and set out the previous pattern of its payment and to confirm that the new methodology would result in less variations from year to year. CAL does now carry information about distributions including information about changes or the makeup of distributions that would be useful to members. This service was not introduced as a result of the phone call from the particular publisher member, but had already been planned earlier in 2012.

Code Reviewer's Comment

This complaint shows that a collecting society website should not be relied on exclusively as a means of communication between the society and its members on important matters, that is to say, as a substitute for direct communication with them.

3. An author member complained that CAL's system did not allow author members to register online articles they had written. He also complained that his telephone calls had not been returned, or that if they had been, the person who returned them could not help him with his enquiries.

A senior staff member contacted the member, explained the online member facility and that the function of registering individual articles was not yet available. She also apologised that this had not been made clear to the member earlier.

Complaints Relating to CAL's Distributions and Allocations

4. A non-member wrote to CAL complaining that an allocation to his published "letter to the editor" had been wrongly paid to a group which had claimed to be the owner of the copyright in the letter. The individual was involved with the group but as the author of the letter the relevant rights were controlled by him.

He also wrote to his local Federal member. That letter was forwarded to the Attorney General's Department.

The individual complained about CAL's recruitment process including that he was asked to join CAL in order to claim the allocation.

An *ex gratia* payment was made to the individual and CAL provided him with a formal written apology.

5. An author member (Complainant) complained about the conduct of a member of CAL's Board (the Director). The Complainant was engaged in a dispute with the Director's publishing company concerning the terms of her contract as an author with that publisher. The dispute between them was before an arbitrator. An interim arbitration award was issued in May 2011 which found some of the alleged breaches of contract proved. The interim award also found that the publishing company had performed its obligations in respect to CAL allocations.

The Complainant asked that the Director should stand down or be removed from the Board because of the dispute. She also complained that CAL had breached its Code obligations by failing to educate the publisher member on its copyright obligations.

CAL advised the Complainant that

- A director could be removed only by a resolution passed at a general meeting of members;

- Nominations had already been called for a new elected publisher director and that the Director was no longer eligible for re-election;
- On the material before it, the Board of CAL considered that there were no grounds for calling a general meeting to consider a resolution to remove the Director;
- The conduct complained of was not related to the Director's directorship; and
- The matter would be reported in CAL's 2012 Code of Conduct report.

Notes – Post-Review Period

(1) CAL was informed that the parties negotiated a commercial settlement of the arbitral proceeding. However, CAL has been informed by the publisher that the Complainant has commenced a new proceeding in court on other issues and that the publisher has counter-claimed in that proceeding.

(2) In the 2012-2013 year, the Complainant has registered a claim in respect of contributions to certain publications of the same publisher. This is properly to be dealt with in the Code Reviewer's Report for that year.

6. The appointed Plenary Administrator for an individual (the Individual) complained about CAL's management of a dispute between the Individual and a publishing company formerly controlled by the Individual. The dispute concerned the terms and intended effect of an order of the Family Court of Australia made in 2006, and, in particular, the question whether it was intended to transfer the rights of the Individual as an author of works that she had previously published via the company.

The Plenary Administrator argued that the Court's order referred only to the shares in the publishing company, not to the rights of the Individual in works that she wrote. That argument was accepted by CAL as sufficient to place the titles written by the Individual in dispute. As the Plenary Administrator also argued that the Individual's content had been reused without attribution by the publishing company, CAL included in the dispute titles similar to those authored by the Individual.

In 2011, the Plenary Administrator also announced her intention to challenge the Court's order which transferred control of the publishing company to its current managing director. As a result, she requested that all allocations in respect of titles published by the publishing company be placed in dispute.

CAL informed both parties that if no action had been commenced by either party by 31 March 2012 to challenge the Court's order, it would pay to the publishing company all allocations to titles which it was reasonable to assume had not been written by the Individual. A spreadsheet distinguishing between the two classes of titles was provided by CAL to both parties.

By letter, the Plenary Administrator advised that she would not be proceeding with action in the Court.

The Plenary Administrator then advised CAL that she had lodged a contempt application in respect of the Court's order.

The Plenary Administrator complained:

- that CAL should not have released any payment to the publishing company as her contempt application was a challenge to the Court's order; and
- that by making that payment CAL had delayed and interfered in the resolution of the dispute.

CAL advised the Plenary Administrator that by making the payment to the publishing company, CAL had relied on the Plenary Administrator's own earlier advice that she would not be challenging the Court's order. CAL also advised both parties that it proposed to refer the dispute for expert determination later in 2012. CAL did not expect that either party would consent to that referral and the matter might have to be referred to CAL's Board of Directors to exercise its discretion to resolve the dispute, irrespective of the consent of the disputants.

Notes – Post-Review Period

(1) CAL made a further payment to the publishing company on 10 December 2012 for allocations to titles which it could demonstrate had been commissioned to be written by an author other than the Individual. The balance is still held in trust and both parties have been so advised and supplied with an updated spreadsheet of the allocations that CAL considers are in dispute.

(2) The contempt action by the Plenary Administrator did not proceed and the Plenary Administrator has not commenced any other action against the publishing company. However, that company has lodged an application to have the Plenary Administrator removed from office and that application is set down for hearing on 21 March 2013. CAL does not propose to take any further action until this application has run its course.

(3) It may be that the Board of Directors of CAL will be asked to exercise its discretion to resolve the dispute without the consent or co-operation of at least one of the parties to the dispute.

Complaints Relating to Resale Royalty

7. An art market professional member (Complainant) wrote to CAL. She was frustrated with the reporting website for resold artworks. She reported two works that had been resold and indicated that they had been acquired before June 2010. She did not receive the confirmation email as CAL's system was not designed to record sales that would not attract payment of a royalty.

The automated system on the website then notified CAL that the Complainant had not reported correctly and would be fined for a failure to report. This system error was rectified manually so that no royalties are recorded as owing in respect of the two artworks. CAL apologised to the Complainant.

8. CAL sent an email alert to gallery owners and other art market professionals on its mailing list which listed all recipients of the email. One recipient complained that his email address had been disclosed to other art market professionals on the list without his permission. CAL has now removed his name from the "e-alert" mailing list.

9. An artist member complained about CAL's policy under the resale royalties scheme, in particular, as to its effects on indigenous artists. The member requested information on the proportion of the administration costs retained by CAL, and complained generally about how the government treats indigenous people.

CAL provided the member with information about the scheme as it benefits indigenous artists, including information that 66% of royalties paid to date had been paid to such artists. CAL also explained why it retained 10% administration fees from all royalties. It mentioned the wills drafting work that CAL supports and the fact that CAL supports "Arts Law" in its activities in various remote aboriginal communities.

There has been no further response received from the complainant member

Complaints Relating to Blackline Masters

10. During the 2010-11 year, CAL had discussions with several publishers of "Blackline Master" publications (BLMs). These BLMs are books sold with a licence to photocopy pages, usually for classroom use.

This was reported in CAL's report to the Code Reviewer for 2010-11. Concerns have arisen from CAL's decision to allocate a discounted payment to BLMs captured in its surveys to reflect the circumstances in which copying is done in reliance on the statutory licence and not on the licence granted to the purchaser of the BLM book.

Those BLM publishers engaged the law firm, Simpsons, to advise them on this matter. CAL has received no further correspondence from the group that could be regarded as a complaint since CAL's letter of 29 June 2011. CAL provided Simpsons with its comments of a new draft "imprint page" for BLM books.

Complaints relating to Cultural Fund projects

11. A publisher member (Complainant) complained generally about the Australian Poetry Library (APL) website hosted by the University of Sydney which displays Australian poetry online, from which users can download the poems upon paying a fee.

This project was funded by an Australian Government Research Council grant and by CAL's Cultural Fund. Negotiations with the University for the project began in 2006 and the website was launched in April 2011.

The Complainant had submitted an application to the CAL Cultural Fund in 2008, requesting close to $80,000 to digitise poems for which he controlled the relevant rights. However, his application was not successful as it was regarded as duplicating other Cultural Fund projects.

CAL sought the Complainant's authority to include the works of a particular poet in the Australian Poetry Library (APL) website. He advised that he was not sure whether he controlled the relevant rights and suggested that we contact the poet's daughter as the beneficiary of the poet's estate.

In reliance on the permission granted by the daughter, the poet's works were included in the APL website.

Following the launch of the website, the Complainant asserted to CAL that he controlled the relevant rights so that inclusion of them had been unauthorised. He also complained that the APL website was not secure, and gave users unlimited and free access to the poems on it.

CAL replied that it had relied on the permission granted by the poet's daughter. CAL suggested that the matter could be quickly resolved if the Complainant provided a copy of the documents on which he relied to assert his control of the relevant rights.

The Complainant did not respond but a copy of the relevant contract was eventually mailed to CAL by the daughter and was referred to CAL's General Counsel the following day. General Counsel formed the opinion that the Complainant's company did control the relevant electronic rights (albeit subject to an obligation to pay the poet or her estate 75% of payment for the exercise of those rights) and CAL directed the relevant body (Relevant Body) to remove the poems from the APL website immediately.

CAL apologised to the Complainant for having authorised the display of the poems and offered a settlement of $5,500 for the unauthorised display. The Complainant rejected that offer and subsequently launched a claim against CAL in the Consumer, Trader and Tenancy Tribunal (CTTT).

Subsequently CAL instructed the Relevant Body that it was not necessary to remove all of the poet's poems from the APL website – only those published in a particular anthology.

Unfortunately, the Relevant Body misunderstood that instruction and reposted all of the poems to the APL website. CAL was not made aware of this until the preliminary hearing of the Complainant's application in the CTTT. CAL again directed the Relevant Body to remove the poems and it did so.

The matter continues in the CTTT and was listed for hearing on 23 July 2012. CAL hopes to settle the matter before the hearing for an amount reflecting the damage suffered by the Complainant as publisher.

Notes – Post-Review Period

The matter was settled in August 2012.

Audio-Visual Copyright Society Limited ("Screenrights")

Screenrights' three-stage régime for dealing with disputes between members (putting the members in contact with one another, mediation, and expert determination) has been described in previous Code Review Reports and it is unnecessary to describe that régime again.

During the Review Period, Screenrights received two written complaints.

1. The first complaint was made by a potential applicant (Complainant) for an employment position in the Member Services Department of Screenrights. The Complainant had spoken with the Member Relations Manager about applying for the position and complained that that person had conveyed, through her tone, that she was annoyed and not interested. As a result, the Complainant decided not to apply for the advertised position.

   The Head of Member Services wrote to the Complainant thanking him for his comments and discussed the matter with the Member Relations Manager. Based on that conversation, the Head of Member Services believed that the complaint had arisen from a misunderstanding arising out of a very short telephone conversation.

Code Reviewer's Comment

The complaint does not appear to be related to any obligation imposed on a collecting society by the Code.

2. The second complaint was made on behalf of an organisation which was a Screenrights member and which had previously been a Viscopy member (Complainant organisation). The complaint arose out of the claiming of Screenrights' royalties by Viscopy on behalf of the Complainant organisation. Screenrights had paid "artistic works" royalties to Viscopy on behalf of the Complainant organisation on the understanding that works of artistic craftsmanship were involved. Screenrights had paid the royalties to Viscopy based on Viscopy's registration and warranty. Viscopy, in turn, had applied for the registration and given the warranty on the basis of the Complainant organisation's registration with and warranty to Viscopy.

During the investigation of the complaint, an officer of Viscopy spoke with the Head of Member Services at Screenrights to confirm Viscopy's understanding of the basis of the Screenrights payment to Viscopy. Screenrights' Head of Member Services confirmed that the payment had been made for works of artistic craftsmanship, and that if in fact there was no non-animated visual material involved, the particular royalties had not been properly payable to Viscopy or at all.

An officer of Viscopy met with a representative of the Complainant organisation and during the meeting called Screenrights' Head of Member Services by telephone conference (teleconference). The representative of the Complainant organisation confirmed that there was no non-animated visual material involved. Screenrights' Head of Member Services explained that the Complainant organisation had been paid based on that very representative's own warranties that non-animated visual material was indeed involved. She also indicated that Screenrights was entitled to request a refund in light of the confirmation that there was no non-animated visual material involved. She also indicated, however, that Screenrights would not pursue this course.

The representative of the Complainant organisation did not accept that the organisation had been paid on the basis of his own warranty. He maintained that Viscopy had claimed film royalties for the material and demanded that Viscopy pay the Complainant organisation the commission it had deducted. The Viscopy officer thanked Screenrights' Head of Member Services for her time and assistance, at which time the teleconference ended.

Viscopy later advised Screenrights that the matter had been settled with the Complainant organisation. Subsequently, a representative of the Complainant organisation visited Screenrights to ensure that its registrations were up to date.

At that time he also indicated that the matter with Viscopy had been settled and that he was satisfied with the outcome. The Complainant organisation continues as a member of Screenrights.

Code Reviewer's Comment

In substance, the complaint was directed to Viscopy – see Complaint Number 3 under "Viscopy" below.

Phonographic Performance Company of Australia Ltd ("PPCA")

During the Review Period PPCA received 23 complaints, which can be analysed as follows:

- 5 related to the phased increase in PPCA's quarterly restaurant tariff;
- 9 related to public performance licences;
- 2 related to artists' distributions; and
- 7 consisted of reports of venues that appeared to be using music without a PPCA licence.

As part of its report to the Code Reviewer, PPCA included a table setting out details of the complaints. During the Review Period, under the options available to complainants under PPCA's "Complaints Handling and Dispute Resolution Policy", PPCA participated in one mediation and one neutral evaluation.

1. On 9 August 2011 a licensee emailed PPCA complaining over the extent of the increase in her bill. PPCA's Complaints Officer replied explaining that the increase was part of the five year phase-in of a new Restaurant/Café tariff structure launched in 2009. The Complaints Officer explained that before the new tariff structure was introduced, PPCA had consulted with key industry groups and broadened the consultation to include all Tariff R licence holders at that time. The Complaints Officer's email explained alternative courses that were available to the licensee.

2. By email dated 14 August 2011, another café operator similarly complained over the new rates and received a generally similar reply.

3. On 8 September 2011 a licensee cancelled the (Restaurant and Café Tariff) licence held. The papers do not suggest that this was a complaint, but PPCA recorded the communication from the licensee as a complaint because it was directed to the address of PPCA's Complaints Officer.

4. A licensee sought confirmation that he did not need to hold a licence in respect of the playing of sound recordings on radio or television at his business premises even though the radio or TV was operating in public.

5. On 29 September 2011 a legal firm complained over a threat by PPCA to refer a matter to PPCA's enforcement program for action and PPCA's claim that the firm was publicly playing published sound recordings in its premises. The firm denied that it was doing so and sought an apology in respect of PPCA's letter to it asserting the contrary.

   PPCA replied on 6 October 2011 explaining that PPCA's comments regarding the apparent use of sound recordings was based on a conversation between a person at the firm and a member of PPCA's licensing team, suggesting that "music on hold" was being played at the premises, that a licence had already been obtained, not from PPCA but from APRA, and that the person had wanted to know the difference between APRA and PPCA. PPCA's letter referred to a course of correspondence with the firm from 5 July 2011 to the letter giving rise to the complaint dated 22 September 2011. PPCA's letter noted that since music was not currently being played publicly, PPCA would adjust its records accordingly.

6. A gym instructor complained about another gym instructor who allegedly played "PPCA music in classes", in which other instructors do not play such music. His complaint was that other gyms and instructors abided by the rules and he wanted PPCA to enforce the rules against the offending instructor.

   PPCA thanked him for bringing the potential instances of copyright infringement to PPCA's intention and said that PPCA would make some enquiries into the matter.

On investigation, PPCA determined that the relevant fitness centre was in fact licensed for the use of sound recordings in a number of fitness classes, and no further action was necessary.

7. On 17 November 2011 a licensee (Complainant) complained over a letter of demand for payment received from PPCA. The complaint was not that the amount was not owing – it was. The Complainant had overlooked paying it, having misfiled PPCA's invoice, but had sent off a cheque by the time he received PPCA's letter of demand. His complaint was over the terseness and abruptness of the letter of demand.

In fact, following receipt of the first invoice from PPCA in early October 2011, the Complainant had telephoned PPCA and spoken to someone about the categories for which he was invoiced. PPCA's records indicated that, at that stage, the Complainant intended to give further consideration to his licensing requirements. On 15 November 2011, having received neither payment nor any request for a change in the terms of the licence, PPCA issued a standard form letter demanding payment of the outstanding amount. That was the letter that provoked the Complainant's letter of 17 November.

The Complaints Officer of PPCA replied on 23 November 2011 thanking the Complainant for the payment which had been made in the meanwhile, and reminding him of the opportunity he had to reconsider his licence requirements, and, in particular, to have the licence fee reassessed if his circumstances had changed. The Complainant then provided updated information allowing PPCA to reassess the licence fee and process an adjustment, as a result of which an amendment was made.

8. On 5 November 2011 a licensee complained over receipt from PPCA's Credit and Collection Department with regard to his licence renewal. He said that he had been interstate and therefore had not received renewal notices but had now renewed his licence.

The licensee questioned whether the remedy of recovery of the licence fee was available to PPCA as distinct from his simply becoming unlicensed.

PPCA's Complaint Officer replied on 8 November 2011 explaining the circumstances and apologising if the licensee was unhappy with PPCA's correspondence. She also thanked the licensee for settling his account when he had returned to his own state.

9. On 16 November 2011 the new licensee/general manager of a hotel wrote to PPCA suggesting that the hotel was being treated unfairly by PPCA as compared to its rivals. She pointed out that the hotel was open for only three nights a week which might need to be cut to two in the near future, while other venues which offered DJs and dancing and some of which have a cover charge, do not have to pay the same tariff as the particular hotel. The complainant asked that PPCA investigate the matter and ensure that there was a "level playing field".

PPCA's Complaints Officer replied on 24 November advising that a review of other venues in the vicinity established that most held current PPCA licences, while the remainder were in discussions with PPCA with a view to finalising their licensing arrangements. The Complaints Officer advised that PPCA would be seeking to ensure that the licences held by the other venues were appropriate to their current use of music, with the assistance of the information supplied by the complainant.

The Complaints Officer also addressed another matter raised by the complainant. This related to correspondence with a representative of the particular hotel back in 2009. The Complaints Officer explained that there had been five unanswered phone calls, two phone conversations and an email over the ten months that immediately followed the receipt of the correspondence from the complainant's predecessor. The Complaints Officer's letter demonstrated that PPCA had been hindered by the lack of action by the complainant's predecessor.

10. On 6 December 2011 a complaint was made about the partial illegibility of some registrations forms on PPCA's website. Apparently PPCA's Distribution Manager forwarded the relevant forms to the complainant and asked "IT" to look at the website. PPCA's IT team was unable to replicate the problem, but was able to demonstrate that access was available on both internal and external computers. The complainant was approached for further information on the particular browser software and operating system that the complainant was using, but having received the forms required the complainant did not pursue the matter further.

11. On 19 December 2011 the proprietors of a guest house complained over the classification used by PPCA for hotels and motels which involved an assumption that all hotels and motels used the dining room as a restaurant. The complainants said that they

used their dining room only for breakfast and occasionally for meals when they had groups in or for “Christmas in July”. Accordingly, so the complainants asserted, music was played for two hours in the morning when they had guests in the dining room, probably on average 60 days a quarter at the most. They complained that $400 per year was “ridiculous” and was the same amount as that paid by people who were using recorded music all day.

The Complaints Officer of PPCA replied on the same day explaining the background to the current Restaurant/Café Tariff. In particular the Complaints Officer explained that the current “Tariff R2” had resulted from representations by the Accommodation Association of Australia.

In view of the complainants’ indication that their days of music usage had decreased from 90 per quarter (as it had previously advised PPCA) down to 60 days per quarter, PPCA would process a reassessment of their licence fees.

12. On 21 January 2012 a licensee complained that another café played “all sorts of different music” and had laughed when he asked the people concerned if they paid their fees to PPCA. He asked PPCA “if they don’t have to pay their fees why should we? Please advise.” PPCA replied on 23 January 2012 explaining that a licence was required if a venue was playing protected sound recordings. PPCA said that it would investigate the other venue and thanked the complainant for his email.

13. On 22 January 2012 the complainant said that he had recently enquired about the amount he would be charged if his business was to pay a PPCA licence fee for 2012, and that he had received an invoice for $571.43. He said that this amount was far too high and that for this reason he would henceforth be using “PPCA-free music”.

He said that he had assumed that by not taking action, he would hear nothing further and that his application would be disregarded. However, he had received another demand for payment. He said that he did not wish to pay the fee and wished his application to be cancelled.

On 23 January 2012 PPCA’s Complaints Officer replied, pointing out that the complainant’s application form was for a licence for an initial period of 12 months commencing on 1 January 2012 and that the licence was granted starting on that date.

Apparently the complainant confirmed that he did wish to cancel the licence and, accordingly, PPCA cancelled the invoice.

14. On 7 February 2012 the complainant reported that a particular shop played very loud music with an outdoor speaker commencing between 6:30 and 7:30 am when the staff arrives at the shop to open it. The complainant asked if this conduct was lawful and as to the earliest hours at which music could lawfully be played at the shop.

PPCA's Complaints Officer replied that the matter had been passed on to PPCA's licensing team for investigation and assured the complainant that PPCA would investigate his report.

PPCA's investigation showed that the venue operator had previously been licensed at different premises. A new licence application was subsequently received and a licence was granted.

15. On 24 February 2012 a complainant expressed concern over the increase in fees for playing recorded music in his café. On 2 March 2012 PPCA's Complaints Officer replied explaining that the increase was part of a five year phasing-in period of a new restaurant tariff which was implemented in 2009. The Complaints Officer explained that prior to implementation, PPCA had consulted with key industry groups and broadened the consultative process to include all Tariff R licence holders at that time. She explained that this process had resulted in the final scheme being simplified and the tariff under it being reduced by 25%, being phased in over five years, and being capped at a maximum daily rate.

16. On 3 April 2012 the complainant complained over a dispute he was having with regard to the operation of a nightclub. He had once been the licensee for the nightclub, but since he had been removed from it in August 2010, had had no way of controlling the running of the business.

After checking with " the enforcements team", the PPCA Complaints Officer twice attempted to call the complainant on his mobile and left a detailed message that she was calling in response to his request and left details of her direct phone line urging him to call her. He did not respond.

Finally the Complaints Officer had a long discussion with the complainant on 23 April 2012, explaining that none of the other participants in the relevant business had approached PPCA to try to resolve the matter. She confirmed that while PPCA desired to finalise the matter without recourse to a hearing, at present that seemed unlikely given the lack of any substantive response or engagement from anyone.

Note – Post-Review Period

PPCA closed its file on the matter when the owners became bankrupt in October 2012.

17. On 10 April 2012, a nightclub owner wrote to PPCA anonymously. He complained that he had just returned from interstate where he had been amazed at the vast number of visual TV screens the number of projectors and the length of time during which DJs were playing during the night at the local nightclubs, and how little those nightclubs were paying in fees.

He said that he knew these facts from conversations he had had with the owners of the nightclubs there.

As the complaint was anonymous, PPCA was not able to reply to it. Both venues referred to in the complaint held PPCA licences, although one of them may be “under licensed” and this question has been pursued and was at the stage of inspection as at the end of the Review Period.

Note – Post-Review Period

PPCA reports that, following the inspection process referred to above, the operator of the under-licensed vendor is currently in the process of regularising its arrangements to cover all of its relevant activities.

18. On 3 May 2012, a complainant said that he had held fourteen events at a certain nightclub and was charged $275 on each event by the venue operator purportedly to cover PPCA fees, the overall amount paid totalling $3,850. He complained that the nightclub had not paid over the money to PPCA.

On 4 May 2012, PPCA replied advising that it was in ongoing discussions with the nightclub on several issues and that the information supplied by the complainant would be helpful. PPCA pointed out that if the complainant so preferred, he could in the future licence his events directly with PPCA.

Note – Post-Review Period

The operation of the venue is currently being investigated by PPCA's enforcement team.

19. On 10 May 2012, the complainant reported that a fitness instructor had been playing PPCA music at a PPCA-free venue. The complaint was that this was unfair to other instructors who comply. The complainant said that he had also expressed his concerns to the organisation for which the instructor worked.

    On 14 May 2012, PPCA replied thanking the complainant for the information and for having made the employer organisation aware of the issue.

20. On 19 June 2012, the complainant reported that he had noticed a YouTube clip from a person who asserts that it is an original work, yet the complainant could hear definite phrases from a movie which is a favourite of his. He said that he did not want the person who "did the original" to get into trouble because he liked that person's music too. He enquired as to who should be notified.

    PPCA replied on 19 June 2012 advising that since the matter concerned a motion picture, the complainant should notify Australian Federation Against Copyright Theft (AFACT), and referred the complainant to AFACT's home page.

21. On 21 June 2012 a restaurant operator complained about the blanket tariff system that PPCA had in place. She complained that a restaurant had to pay three times in order to play music: PPCA, APRA and the purchase of the music. She complained that since she used live music she paid four times.

    PPCA's legal department referred the complainant to information on the PPCA website explaining the Tariff R review.

22. On 3 August 2011, solicitors requested a mediation on behalf of various clients who had staged or wished to stage certain events.

The mediation process had been initiated by the complainants after PPCA had made claims against them for breach of contract (i.e. breach of PPCA's standard licence terms and conditions) and/or infringement of copyright in protected sound recordings. However, the central issue for consideration was the PPCA licence fee tariff applicable to each event – "Tariff B" or "Tariff E2". PPCA claimed that Tariff E2 applied, while the complainants contended that Tariff B applied.

Tariff E2 relates to "dance parties". A dance party is defined as a "one off… event charging an entry fee and playing sound recordings for dancing as the primary form of entertainment at the event…". Tariff E2 was approved by the Copyright Tribunal on 10 July 2007 at the same time as the PPCA Nightclub Tariff (E1) was fixed. For the Review Period, Tariff E2 was $3.282 per attendee. From 1 July 2010 to 30 June 2011 it had been $3.198 per attendee.

Tariff B on the other hand covers "festivals", such as arts festivals, carnivals and similar events. Dance parties are specifically excluded. Where sound recordings are used as "featured musical entertainment" the relevant Tariff B fee was $0.22 per attendee per area. This rate had applied since 1 July 2010.

Fortunately, PPCA and the complainants were able to resolve the issue between them at the mediation. A confidential "Heads of Agreement" document was signed at the end of the mediation and the agreement embodied in that document has been adhered to.

23. On 27 August 2011, the agent of an artist who was registered with PPCA contacted PPCA to complaint that the artist had not received a response to a query submitted earlier that month. PPCA was unable to find any record of the earlier email, and dealt with the agent's enquiry promptly upon receiving it.

A Complaint made in the year 2010 - 2011

PPCA's report to the Code Reviewer for year 2010-2011 outlined (at Complaint Number 12) a complaint received by PPCA from a licence applicant seeking terms for a music streaming service. As negotiations had stalled the applicant requested the matter be referred for neutral evaluation under PPCA's Complaints Handling and Dispute Resolution Policy.

During the Review Period the parties agreed and appointed an evaluator, agreed on a timetable and process for submissions, and proceeded accordingly. Unfortunately, due to some unexpected personal circumstances, the evaluator was unable to deliver the opinion to the parties until early December 2011.

During December 2011, PPCA met with the complainant to discuss the results of the evaluation process and potential next steps. At that meeting PPCA explained to the complainant that, given that it now had a number of like services licensed on the basis of the terms previously offered by PPCA, PPCA was not inclined to offer the complainant a substantially different arrangement for the same activity. In PPCA's view that would be contrary to PPCA's policy of imposing like terms for like services, and may result in an unfair advantage to a single operator in the market. PPCA reconfirmed its licence offer on the terms currently applicable to other licensees of similar styled streaming services. This offer was rejected by the complainant, which ultimately established its operation in New Zealand and obtained a licence from the New Zealand sound recording collecting society PPNZ.

Viscopy

During the Review Period Viscopy received three complaints, although one of these, relating to a royalty payment, was more in the nature of a query rather than a complaint.

Particulars of the complaints and Viscopy's handling of them are provided in Appendix 1 to Viscopy's report to Code Reviewer dated 31 July 2012.

1. A member of Viscopy (Complainant) telephoned asking when she would be paid her royalties, stating that she understood that she would receive them during July 2011. An officer of Viscopy explained that the latest distribution had been delayed from July 2011 to October 2011 and apologised for the delay, undertaking to check with Viscopy's Head of Finance and Administration and get back to the Complainant to advise when payment would be made.

The Viscopy officer ascertained that the licence for the use of the Complainant's work was issued on 18 May 2011 and that the invoice was paid by or on account of the licensee on 26 May 2011. This meant that according to Viscopy's distribution cycle, payment would not have been made in the July distribution (delayed until October) but in the following one. The officer sought authority to include the payment in the October 2011 distribution.

On 5 September 2011 the officer spoke to the Complainant and advised her of these facts. The Complainant said that she was upset that the payment had not been made in July as originally scheduled, as she had budgeted on receiving it. She was upset that she had not previously been advised of the delay and wanted it noted that she was unhappy about the matter. She complained that Viscopy should keep its members informed about what is happening if a similar situation were to occur in the future. The Viscopy officer apologised for the fact that she had not been told directly, but noted that the delay in payment had been notified on Viscopy's website.

The Viscopy officer obtained the Complainant's current contact and bank details and payment was made in October 2011.

Code Reviewer's Comment

As does Complaint Number 2 under "CAL" (noted above), this complaint demonstrates the imprudence of relying on a website alone as a means of communication with members on important matters as distinct from direct communication with them individually.

2. On 26 October 2011 a member complained that Viscopy had licensed the use of one of her works in a magazine in March 2011 and that she had received no royalty payment.

On 2 November 2011 Viscopy's Licensing Representative emailed the member advising that a royalty statement had recently been sent to her and that on 5 October 2011 a royalty payment for the particular use of her work had been deposited to her bank account.

On 2 November 2011 the member replied advising that she had received the royalty statement and would check her bank account. On 7 November, the Licensing Representative telephoned the member who said that she had not yet checked her bank account. On 30 November, the Licensing Representative followed the matter again by telephone and the member said that she had checked her bank account and that the royalty had been credited to it on 6 October 2011.

Code Reviewer's Comment

So far as the above account of the facts reveals, the complaint was based on the member's misapprehension.

3. This complaint, made on 29 November 2011 by an organisation member, is also referred to as Complaint Number 2 under Audio Visual Society Ltd ("Screenrights") above.

The Complainant organisation joined Viscopy in 2003 for the purpose of the collection of statutory royalties from CAL, Screenrights and international schemes, but not for the purpose of voluntary licensing. On 5 May 2011, the Complainant organisation resigned as a member of Viscopy.

On 28 November 2011 a representative of the Complainant organisation (First Representative) telephoned Viscopy to ask whether the organisation was owed any royalties from Viscopy's 30 June 2011 distributions. Viscopy's Head of Licensing said that she would check, and on the same day emailed the First Representative confirming that no royalties were payable.

The following day, 29 November 2011, another representative of the Complainant organisation (Second Representative) telephoned and spoke to the Head of Licensing, asking why no royalties were payable. It was explained that since the organisation had ceased to be a member of Viscopy in May 2011, Viscopy had not been collecting royalties since that time. The Second Representative asked to see copies of all of the royalty statements relating to the organisation since it first joined Viscopy.

Also on 29 November, Viscopy's Head of Licensing emailed the royalty statements to the Second Representative who telephoned in response to say that royalties from a certain museum (the Museum) had not been included. The Head of Licensing advised the Second Representative that the Museum was not a licensee from Viscopy and had not paid Viscopy royalties for the use of any of the Complainant organisation's content. Moreover, the Complainant organisation had not authorised Viscopy to license content but only to claim royalties payable under statutory licensing schemes from the declared collecting societies. At this point the Second Representative evinced anger and insisted that Viscopy must have received royalties from the Museum's use. As the Head of Licensing felt that no progress was being made she ended the telephone conversation and asked Viscopy's Complaints Officer and Head of Legal and International (Complaints Officer) to call the Second Representative.

On 30 November the Complaints Officer did so, but she spoke to the First Representative as the Second Representative was unavailable. The First Representative explained that the Museum had taken a portion of one of the Complainant organisation's animations and, without its permission, placed it on the Museum's website where it was intended to be downloaded and used by schools. Apparently the Museum had told the organisation that it should have received royalties for that use through the statutory educational schemes. The First Representative asked if Viscopy had in fact received royalties from Screenrights or CAL for this use. The Complaints Officer explained that Viscopy had not, and that in any case the initial use on the website should have been licensed by the Complainant organisation, and that if it had not been, an infringement of copyright may well have occurred which the organisation would need to take up with the Museum. The First Representative became agitated and angry and continued to emphasise that the Museum had asserted that the organisation should be receiving royalties from the collecting societies.

The First Representative then questioned why Viscopy had collected and paid Screenrights royalties for the organisation when it had been a member of Screenrights since the mid 1990's. The Viscopy officer pointed out that the organisation had joined Viscopy for the purpose of its collecting royalties from Screenrights for visual arts content only , i.e. visual art works in films as opposed to moving images.

The First Representative asked whether Viscopy had ever collected any production royalties from Screenrights, meaning royalties in respect of film copyright, and the Viscopy officer replied that Viscopy would have received royalties from Screenrights only in respect of visual art content in the films. The First Representative then said that the films were animations and contained no separate visual arts content. He asked to see the royalty statements to see what they identified in terms of works. The Viscopy officer said that these had previously been sent to the Second Representative and pointed out that they were sent at the time the payments had been made. The First Representative said that the matter would be followed up with the Museum. He said he appreciated the call from the Complaints Officer.

Later that day the Second Representative telephoned the Complaints Officer. She again said that she was angry and went over the same ground in threatening language and indicated that legal proceedings might be instituted. The Complaints Officer repeated the information previously given, pointing out that the First Representative had indicated that he (the First Representative) understood the issue and was going to follow up the matter with the Museum. The Second Representative said that the Complainant organisation may need to take the matter up with Viscopy's Chief Executive.

On 1 December 2011 Viscopy's Chief Executive telephoned the First Representative who asserted that the organisation had never intended Viscopy to collect royalties from Screenrights. The Chief Executive said that Viscopy had in fact collected the royalties in good faith based on the authority given by the organisation in 2003. She said that Viscopy would investigate the matter and invited him and his colleague to a meeting to discuss resolution of the issue. After the conversation the First Representative emailed the Chief Executive to say that he would be available for a meeting on 13 December 2011.

Prior to the meeting, Viscopy staff members researched the Screenrights royalties collected by Viscopy and paid to the organisation during the time of its membership and also spoke to Screenrights about the issue.

On 13 December 2011, the First Representative attended Viscopy's office for a meeting. The Chief Executive said that Screenrights had confirmed that it had paid Viscopy for "non-animated visual material" in the Complainant organisation's films. The First Representative said that this was "nonsense" because there was no non-animated material in the organisation's films – they were totally animated.

The question of the reason why the organisation had become a member of Viscopy was also explored. The First Representative explained that he had received a call from Viscopy explaining what Viscopy was and that there was also some correspondence at the time. He said that the organisation was already a member of Screenrights and had asked Screenrights if there was any overlap between Viscopy and Screenrights, and was told that there was not.

During the meeting the First Representative raised his voice and became angry and threatening, asserting that Viscopy had misled his organisation and improperly collected Screenrights royalties for the films. He was also angry that Viscopy had taken a commission on top of commission deducted by Screenrights.

It became apparent to Viscopy staff during the meeting that if there was no non-animated visual material in the films; that the organisation had not been entitled to any visual arts royalties on top of the film royalties it had received from Screenrights; and that it had received visual arts royalties because it was a member of Viscopy. Screenrights had paid Viscopy for what Screenrights had understood was non-animated visual material based on the fact that the organisation was a member of Viscopy.

During the meeting, Viscopy officers telephoned Screenrights. When the background was explained, the Screenrights officer confirmed that in the absence of non-animated visual material, the organisation should not have received visual arts royalties via Viscopy. It was pointed out to the First Representative that when the organisation joined Viscopy, it had represented and warranted that it did own copyright in "artistic works". It was also explained that Screenrights could ask the organisation to refund those royalties as having been paid under a mistake, but had indicated that it did not intend do so.

The First Representative was not satisfied with this explanation and continued to assert that Viscopy should not have collected royalties and should return all of the commissions it had deducted. The Chief Executive said that Viscopy would not admit liability for incorrectly collecting royalties given that it had acted in reliance on the organisation's membership of Viscopy and acceptance of royalties and royalty statements over the years. However, in the interests of resolving dispute, she said that Viscopy would put an offer to him. The First Representative accepted this and the meeting concluded.

On 16 December 2011 the matter was settled confidentially. Viscopy understands from Screenrights that the First Representative subsequently met with Screenrights and was satisfied with the outcome of the complaint. The organisation continues as a member of Screenrights.

Code Reviewer's Comment

The complaint arose out of the initial erroneous warranty. I do not know if the significance for collecting society membership purposes of the distinction between animated and non-animated material was clearly brought to the attention of the Complainant organisation at the outset, but Viscopy would do well to review its practice in that respect.

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

AWGACS developed its Complaints Handling Procedure and its Dispute Resolution Procedure in line with the requirements of clause 3 (c) of the Code and Australian Standard AS4269 – 1995 ("Complaints Handling")

During the Review Period, AWGACS had to deal with one dispute and one complaint arising out of the same circumstances. This was only the second complaint that has ever been made to AWGACS.

1. Conflicting claims were made for credits on a certain television series. Previously, royalties for all episodes had been distributed equally between two writers who were both AWGACS members and had warranted that they were the sole writers of the series. A third writer became an AWGACS member in 2012 after being contacted about royalties payable in respect of a different title. He subsequently enquired about collections on the series in question and claimed a 100% share of the royalties collected for six of the 39 episodes of that series. He claimed to have been credited as the writer of the script in respect of those six episodes.

   AWGACS staff made enquiries of the other two writers. No resolution of the dispute between the three was achieved. The writers referred the matter to AWGACS staff and Board of Directors with evidence to support their respective claims.

   The Board decided that the third writer was entitled to a one-third share of the royalties collected for four of the six episodes on which he provided evidence that the credit read "Script – [Writer's Name]", while the remaining two-thirds of the royalties payable on the four episodes was to be shared equally by the two writers credited as "series written by…". AWGACS indicated that it would remit the amount owed to the third writer on this basis from the "AWGACS Errors and Omissions Fund". Any future collections for episodes carrying a similar credit in his favour would be distributed the same way.

The AWGACS Board's decision was based on the written contracts provided by the two writers who had previously been receiving the royalties and on the screen credits provided by the third writer for the four episodes.

The third writer challenged the AWGACS Board's decision and was told that the dispute could not be reconsidered unless there was new evidence supporting his claim. He subsequently provided additional information in an attempt to deny any credit to one of the other two writers, and to claim a minimum of 50% for all six episodes.

The additional information consisted of a letter from a producer of the series (who was also one of the writers who had previously been warranting that she was one of only two writers entitled). The letter stated that the claimant third writer was the sole writer of the six episodes in question based on her storylines. This letter contradicted earlier warranties and statements of recollection by that writer/producer, and was not supported by any independently verifiable evidence.

The Board of Directors adhered to its previous decision and AWGACS staff advised the claimant third writer that the letter did not constitute the type of evidence required to justify a departure from the existing decision.

2. In the course of dealing with the above dispute, an AWGACS staff member inadvertently copied two of the disputing parties in on the same email, disclosing their respective email contact details. One of them complained that his privacy had been infringed.

The staff member apologised as did the AWGACS Legal Affairs officer. The AWGACS's privacy policy was explained to the complainant. It was emphasised that AWGACS highly respects and appreciates the privacy of its members, and that it is an AWGACS policy not to disclose member contact details or personal communications from members to third parties without the prior permission of the member concerned. The infringement of privacy was reported to the Executive Director and the Board of Directors, who confirmed that the apology had been made and the staff member involved was fully briefed on the privacy policy and how to avoid such an infringement of the policy in the future.

Australian Screen Directors Authorship Collecting Society Ltd ("ASDACS")

ASDACS received no complaints during the Review Period.

SUBMISSIONS TO CODE REVIEWER

1. A submission was made by an art dealer that the system according to which the resale royalty under the *Resale Royalty Right for Visual Artists Act 2009* (Cth) operates by CAL is unfair in certain respects. The submission is that the resale royalty should be calculated as a percentage of "gross profit", meaning the resale price minus the purchase price, rather than as a percentage of the resale price. In support, the dealer argued that this would be a fairer process than the present one according to which the royalty is calculated as a percentage of the resale price, in particular because:

   - the art market has been affected considerably since the statutory royalty was introduced;
   - since 1 January 2012 auction sales have been "dismal"; and
   - at least eight galleries have closed since that date, old paintings being characteristic

   Applying the royalty to resale prices of $10,000 has the effect, according to the dealer, of reducing demand and contributing to the failure of the market and the unprofitability of auction houses and dealers. The dealer submitted that a maximum royalty of $500 should be set because in some cases a painting sells three to four times over a period of 12 to 24 months. He argues that high profile artists such as Arthur Boyd, John Brack or Geoffrey Smart can generate royalties exceeding $50,000-$100,000 from a painting when it is "rolled over" in a short term of 12-36 months.

   The dealer submits that if the present régime continues, the market will continue its decline. He points out that the resale royalty continues for 75 years after the artist's death and argues that a maximum of $500 on a resale would be fairer to all "players in the industry".

Finally, the dealer argues that when a painting has been sold at a loss, there should be no resale royalty payable. He states that he purchased a painting for $8,000 and sold it for $7,500, yet still had to pay a resale royalty.

Finally, the dealer states that the popularity of an artist can rise and fall quickly so that sometimes a dealer is forced to sell an item to avoid a further fall in its market value. When this happens, he submits, some allowance should be made to the seller.

In summary, the submission is that the resale royalty should be calculated as a percentage of profit on resale with a maximum of $500, and no royalty where a loss is suffered.

Code Reviewer's Comment

This submission concerns the policy underlying the legislative framework which makes the resale royalty payable on the sale price on commercial resales of an artwork. The submission, which clearly argues the case for a change, would be properly directed to those responsible for the legislation. The submission is not directed to questions of the content of the Code or of CAL's compliance with it.

2. This submission came from an organisation that holds eisteddfods. It expressed support for the efforts of the Association of Eisteddfod Societies of Australia Inc (AESA) to have eisteddfod and other similar performing arts competition events included in an "umbrella" approach to the collection of copyright license fees.

The submission included the following:

> "Not only should such an approach reduce our costs in registering with the various groups involved but it would also ensure that we were fully covered in respect of our compliance with copyright legislation with all of the agencies involved.
>
> Currently we pay separate license fees to APRA, PPCA, and CAL. The introduction of payment of a "one off" annual fee to these societies to cover our eisteddfod as well as our fund raising concert would, we believe, be mutually beneficial."

The submission concluded by asking that serious consideration be given to the AESA proposal to have a "single desk" approach to the collection of fees payable to copyright collecting societies by eisteddfod and other performance competition organisations.

Code Reviewer's Comment

This submission is not directed to the content of the Code or to compliance with it. No doubt, however, the collecting societies will have regard to the submission.

3. The CEO of a media research company wrote to the Code Reviewer asking if it might be possible for him to examine the Code and activities of the Australian Association of Information Monitors (AAIM) which, he said, purports to represent Australian television and radio broadcasters in respect of the collection of copyright fees from the sale of news content.

   He complained, on the basis of information he had received from another person, that the AAIM was no more that barrier to entry to aspiring media monitoring companies (no doubt, such as his own). He said that if this were proved to be true, it might provide a strong argument for a "legitimate collection agency" such as CAL to "be installed in respect of copyright collection for broadcasters in a way that does not reinforce and protect the current [members] from competition".

Comment:

It is not possible for the Code Reviewer to examine the contact of AAIM because it is not a collecting society, and the submission is not directed to the content of the Code or to questions of any collecting society's compliance with it.

CONCLUDING REMARKS

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

Dated this 20th day of March 2013

The Hon K E Lindgren, AM, QC
Code Reviewer

Appendix to Report
Of Review of Code Compliance
For the Year to 30 June 2012

Notice of the Review, with an invitation to make submissions by mail to the Code Reviewer at a specified address or by email by 31 July 2012, was given by the Societies to their members, and by the Code Review Secretariat to the licensees of the various societies or to bodies representing large classes of licensees, as well as to other interested persons, names and addresses having been supplied by the societies. The Notice was published in an advertisement in *The Australian* newspaper on 2 June 2012 and it was also placed on the websites of the societies. It was in the following terms:

The Code Reviewer
Suite 704
4 Young Street
NEUTRAL BAY NSW 2089
EMAIL: codereviewer@gmail.com

COPYRIGHT COLLECTING SOCIETIES
CODE OF CONDUCT
CALL FOR SUBMISSIONS 2012

Each of the 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**"), subscribes to a code of conduct for copyright collecting societies. The Code came into effect in July 2002, and was last reviewed in July 2011. A copy of the Code is available on each society's website and can be downloaded or, if requested, a copy can be sent by post.

Compliance with the Code by participating collecting societies is currently the subject of an independent annual review being conducted by former Federal Court judge, Mr James Burchett QC.

The Code provides for interested parties to be able to make submissions directly to the code reviewer, Mr Burchett, concerning a collecting society's compliance with the Code. Accordingly, should you wish to make any submissions to Mr Burchett in that regard, please address them in writing to the following address by no later than **31 July 2012**.

The Code Reviewer
Suite 704
4 Young Street
Neutral Bay NSW 2089
Australia

Email: codereviewer@gmail.com