

**Report of Review of Copyright Collecting  
Societies'**

**Compliance with their Code of Conduct  
for the Year 1 July 2013 to 30 June 2014**

**The Hon K E Lindgren AM, QC**

**30 November 2014**

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# **Report of Review of Copyright Collecting Societies'**

## **Compliance with their Code of Conduct for the Year 1 July 2013 to 30 June 2014**

### **INTRODUCTION AND SUMMARY CONCLUSIONS**

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1. This report of the Code Reviewer, the Hon K E Lindgren, AM, QC, is the twelfth 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 ("**Copyright Agency**"), 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**"). This report assesses that compliance during the period 1 July 2013 to 30 June 2014 (the Review Period).
2. AMCOS is administered by APRA. Therefore, the practice is adopted of referring to APRA and AMCOS collectively as "APRA/AMCOS" except where it is necessary to distinguish between the two societies.
3. Viscopy is administered by Copyright Agency. Therefore, the practice is adopted of referring to Copyright Agency and Viscopy collectively as "Copyright Agency/Viscopy", except where it is necessary to distinguish between the two societies.
4. For the purposes of the review, each society reported to the Code Reviewer in respect of its activities covered by the Code during the Review Period. In

some cases, their reports were accompanied by documents (in the cases of APRA/AMCOS and PPCA, voluminous documents) which provided the evidence for the statements made in the text of the report (Accompanying Underlying Documents).

5. The review and the opportunity to make submissions relevant to it were widely advertised: see the Appendix to this Report for the notice of the review and for details of the publication of the notice.
6. Certain organisations and individuals were individually notified by the Code Review Secretariat. The Secretariat has prepared and holds an alphabetical list of them. It is available for inspection on request, but is so voluminous that, in the interests of convenience, it is not attached to this Report.
7. In my Report for 2012-2013, reference was made (at [11] – [13] and [530] ff to the draft determination of the Australian Competition and Consumer Commission (ACCC) in response to an application lodged by APRA for revocation and substitution of authorizations A 91187-A 91194 and A91211.
8. On 6 June 2014, the ACCC granted to APRA conditional authorization for five years to continue its arrangements for the acquisition and licensing of performing rights in music. The conditional authorisation was stated to be until 28 June 2019.
9. The authorisation was expressed to be subject to conditions requiring APRA to revise its Alternative Dispute Resolution (ADR) Scheme and to publish plain English guides relating to its licensing regime, and its members' right to opt out and to obtain licences back from APRA.
10. In my Report for 2012-2013, reference was made (at [14]) to the Discussion Paper issued in May 2013 by the Australian Law Reform Commission (ALRC) entitled *Copyright and the Digital Economy* (ALRC DP 79).

11. The ALRC's Final Report of the same title was issued in November 2013 (ALRC Report 122).
12. Proposals for the amendment of the *Copyright Act 1968* (Cth) (the Act) which would have been of fundamental importance to the collecting societies, were not proceeded with in the Final Report. The Final Report deals in Chapter 8 with "Statutory Licences". The ALRC concluded that there is a continued role for the statutory licences provided for in Parts VA, VB and VII Div 2 of the Act, but that they should be made less prescriptive.
13. By "less prescriptive" the ALRC means that the detailed provisions concerning the setting of equitable remuneration, remuneration notices, records notices, sampling notices and record-keeping should be removed from the Act, which should also not require sampling surveys to be conducted. Instead, the Act should, according to the ALRC, "simply provide that the amount of equitable remuneration, and other terms of the licences should be agreed between the relevant parties, or failing agreement, determined by the Copyright Tribunal" (Recommendation 8-4).
14. In substance, the Final Report did not deal with the Part VC and VD licences.
15. It remains to be seen whether any, and if so which, recommendations made by the ALRC in its Final Report touching on the role of collecting societies will be implemented.
16. During the Review Period, while there were some failures to comply with the Code, on the evidence before me, in the terms of Clause 5.2(f) of the Code, I am satisfied that the collecting societies complied generally with the Code.
17. I record my thanks to Kylie Toombs who constitutes the Code Review Secretariat for her considerable help to me in bringing this Report to a conclusion.

**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)**

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

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

**General**

19. As noted at [2] above, APRA administers AMCOS. The two societies jointly occupy the same premises; and they provided a joint report to the Code Reviewer. Accordingly, generally speaking, this report deals with them together.
20. As at 30 June 2014, APRA had 80,246 (Australian and New Zealand) members, comprising composers and authors (together, “writers”) and publishers. Of these 79,619 were local writer members, and 627 were local publisher members. In addition, APRA had 937 overseas resident writer members and 11 overseas resident publisher members. Most Australian and New Zealand composers and publishers are members. The requirements for membership of APRA are set out in its Constitution.
21. As at 30 June 2014, AMCOS had 13,454 (Australian or New Zealand) members, of whom 12,939 were writers and 515 were publishers. In addition, AMCOS had 202 overseas resident writer members and four overseas resident publisher members. The requirements for membership of AMCOS are set out in its Constitution.

22. As at 30 June 2014, APRA/AMCOS had 1,056 Aboriginal and Torres Strait Islander (ATSI) members, which represented an increase of 9% during the Review Period. Although indigenous membership is still low, APRA/AMCOS state that they are committed to increasing awareness through their National Indigenous Membership Strategy, overseen by the Society's ATSI National Representative.
23. Neither APRA nor AMCOS is a declared collecting society under the Act in respect of any of its statutory licences. Accordingly, neither is required to comply with the Attorney-General's Guidelines for Declaration of Collecting Societies. In practice, however, they say that they satisfy many of those requirements.

#### **Legal Framework (Code, Clause 2.1)**

24. APRA/AMCOS have not changed any of the principal characteristics of their membership structures during the Review Period.
25. The APRA Board has six writer directors, elected by the writer members, and six publisher directors, elected by the publisher members. The AMCOS Board is elected by the members of AMCOS.
26. APRA/AMCOS provided in support of their Report to the Code Reviewer three substantial volumes of Accompanying Underlying Documents.
27. During the Review Period, APRA/AMCOS amended their Privacy Policy to comply with the *Privacy Amendment (Enhancing Privacy Protection) Act 2012*, and, in particular, the Australian Privacy Principles. A copy of the APRA/AMCOS Privacy Policy is one of the Accompanying Underlying Documents.

## **Members (Code, Clause 2.2)**

28. Statistics as to the membership of APRA and AMCOS as at 30 June 2014 were given under "General" above.
29. During the Review Period, APRA's Writer Services Department engaged in email correspondence with Writer Members on some 56,130 separate occasions, as well as sending approximately 10,000 generic emails relating to song ownership. The Publisher Services Department sent approximately 23,313 emails to publisher members. In addition, over 1,574,863 emails were sent to members containing information including event notices, payment advices and publications of the two collecting societies.
30. In respect of the quarterly distributions during the Review Period, APRA paid royalties to an average of 15,884 members per quarterly distribution. During the Review Period, Writer Services staff logged 2,039 telephone queries following APRA distributions and 33 following AMCOS distributions. Further statistics relating to the number of contacts with members are included in one of the underlying documents referred to earlier. Another of the Accompanying Underlying Documents is a compilation of communications from members expressing thanks and appreciation for the assistance received from individual members of staff of APRA/AMCOS. Included in the Accompanying Underlying Documents is a status report (as at 30 June 2014) in relation to issues arising from a Member Survey that was conducted during the previous review period.
31. As noted at [30] of the Compliance Report relating to the previous review period, APRA/AMCOS have an International Department which is responsible for reciprocal representation agreements with societies administering performing and mechanical rights around the world. The International Department undertakes royalty distributions for performing rights to members, and in the last financial year distributed a record high amount of over \$27.1m to members in 12 separate distributions (in the



Review Period, distributions moved to a monthly basis from the previous 8 distributions per year).

32. The distribution of mechanical rights income through AMCOS ceased to be made by the Distribution Department as previously, and came to be made by the International Department. Over \$773,000 was distributed during the Review Period to AMCOS members in four distributions.
33. The International Department monitors the use of the APRA repertoire overseas, makes claims for missing payments, and researches members' notifications and enquiries related to overseas use and payments. The International Department acts as the conduit for communications between APRA/AMCOS and their respective affiliated societies overseas, the umbrella representative bodies Confédération Internationale des Sociétés d'Auteurs et Compositeurs (CISAC) and Bureau International des Sociétés Gérant les Droits d'Enregistrement et de Reproduction Mécanique (BIEM), as well as dealings with World Intellectual Property Organisation (WIPO).
34. As noted in last year's Compliance Report, APRA provides to members the opportunity to "opt out" and to request that their entire repertoire be assigned to them for all territories in respect of all or particular usages, or to "license back" specific works for specific uses in Australia and/or New Zealand. During the Review Period, two "opt out" applications and ten "licence back" applications were received.
35. APRA/AMCOS state that they have developed an extensive program of benefits for its members. Information of the members' program is provided on the website and a copy was provided in the underlying documents.

### **Licensees (Code, Clause 2.3)**

36. APRA/AMCOS has "licensing departments" that are dedicated to liaising with licensees and prospective or potential licensees. The three main areas of licensing operations are: Licensing Services, Broadcast & Online

Services, and Recorded Music Services. Collectively, these three licensing departments administer approximately 67,500 annual licences representing approximately 96,300 businesses.

37. The licence fees payable vary according to the licence scheme applicable.
38. Details of all major APRA/AMCOS tariffs have been provided previously to the Code Reviewer.
39. The **Public Performance Licensing Department** administers most of the licences, with approximately 63,412 annual licensees, representing approximately 92,280 businesses. During the Review Period, this Department executed 12,785 new annual licences and 5,038 one-off event licences, including licences for dance parties, festivals and music used in theatrical performances.
40. At [38] of last year's compliance report, it was noted that APRA/AMCOS had commenced a review of its "Client Relationship Management" (CRM) processes. During the Review Period, work continued on a new CRM system which was intended to be launched in September 2013. However, the process has taken longer than anticipated, and the launch is now scheduled for late 2014. As part of the new website launched in June 2014, licensees have access to Plain English Guides tailored to their industry type, and can complete applications for licences online and submit them for processing.
41. During the Review Period, the Public Performance Licensing Department had more than 620,000 contacts with licensees, including by letter, email and telephone. A breakdown of the statistics is one of the Accompanying Underlying Documents.
42. The **Broadcast & Online Licensing Department** administers APRA/AMCOS's commercial and community radio and television broadcast to clients, along with cinema and airline licensees. In total, approximately

942 broadcast licensees were administered by this Department during the Review Period. The Department also administers production music (written and recorded for inclusion in all forms of audio and audio-visual productions). There were 910 Australian production music clients licensed during the Review Period.

43. The Broadcast & Online Licensing Department also grants licences in respect of various online services, including user-generated content sites, online portals, on-demand streaming sites, webcasters, podcasters, online simulcasters and online production music usage. In total there were 222 Online Services clients administered by the Department during the Review Period.

44. The ***Recorded Music Licensing Department*** issues 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-to-business applications, dance schools, and videographers. During the Review Period this Department administered more than 1,093 annual licences and issued an additional 918 one-off licences.

45. The information made available to licensees and potential licensees differs according to the nature of the relevant licence. For example, generally speaking, sophisticated national broadcasters and telecommunications companies need less information than do small business operators who have less exposure to copyright law and limited access to specialist legal advice. According to their report to the Code Reviewer, APRA/AMCOS state that they take this into account when providing information. The website contains a licensee section containing information relating to the various categories of licence, with contact details for the relevant Licensing Department.

46. APRA/AMCOS state in their report that they work hard at maintaining relationships with various bodies representing major licensee groups and

that during the Review Period they have supported the activities of several of those bodies (including the Australian Hotels Associations and Clubs Australia) by way of sponsorships.

47. In their report, APRA/AMCOS state that they consult regularly with relevant trade associations in relation to the introduction of new licence schemes or variations to existing licence schemes.
48. During the Review Period, APRA/AMCOS commenced a tariff simplification project for its Public Performance Licensing operations. The simplification aims to introduce a flat fee structure for various background music licence schemes in fitness centres, hospitality, retail and general business sectors.
49. In August 2013, APRA reached an agreement with Fitness Australia on a new licence scheme for background music played in fitness centres. A copy of the new form of licence is one of the Accompanying Underlying Documents.
50. In August 2013, APRA/AMCOS opened consultations with the Hotel, Club and Restaurant industry with the goal of simplifying hospitality tariffs. Relevant documents are included in the underlying documents provided to the Code Reviewer. In May 2014, agreement was reached on a new licence scheme for Restaurants and Cafes (excluding take away cafes) for background music and featured music use. Details have been provided in APRA/AMCOS's report to the Code Reviewer.
51. During the Review Period APRA commenced negotiations with Live Performance Australia (LPA) on the terms of a new licence scheme for promoted concerts. APRA's tariff for them had not been reviewed in more than 20 years. The parties reached agreement on new "headline terms" to apply from 1 January 2015, with legal drafting of the new licence schemes still the subject of negotiation.

52. During the Review Period, APRA/AMCOS negotiated with several service providers (including Google and MySpace) for the communication of APRA works and the reproduction of AMCOS works. In their report to the Code Reviewer, APRA/AMCOS state that they have successfully negotiated acceptable benchmark rates with the service providers to facilitate their launch in the Australian market.
53. APRA/AMCOS state that they have continued to develop a simple, user-friendly licence scheme for digital music services that are characterised by low levels of revenue and music use.
54. During the Review Period, APRA/AMCOS have introduced a new licence that caters for advertising agencies who want to use licensed music for promotional purposes. This is the “Online Showreels Licence”, the annual fee for which ranges from \$220 to \$550, depending on the type of music used.
55. During the Review Period, APRA/AMCOS negotiated a simple blank ring tone licence to allow for fees to be calculated on total revenue, rather than on a transactional ring tone sale basis. A copy of the Ringtones Blanket Licence Agreement is one of the Accompanying Underlying Documents.
56. During the Review Period, APRA/AMCOS negotiated a licence for an “Online Lyrics Service” with “LyricFind”. LyricFind operates its own lyric website and sub-licenses to other lyrics services. LyricFind will pay an annual service fee to AMCOS to offset the cost of administering the licence.
57. During the Review Period, APRA/AMCOS (NZ) jointly with PPNZ launched “OneMusic New Zealand” which aims to simplify the music licensing process.
58. APRA/AMCOS has a Pan-Asian licensing project which aims to cooperate with publishers in order to establish a simple one-stop-shop multiple

territory licensing scheme for online usage, covering the largest number of Asian territories for the largest possible repertoire of musical works.

59. During the Review Period, APRA/AMCOS continued its policy regarding licensees affected by natural disasters. This policy was introduced in 2010. The aim of the policy is to alleviate financial pressure on affected businesses, including the deferral of licence fee renewals for up to three months, extended payment periods, and corporate donations to relief appeals.

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

60. APRA/AMCOS's financial accounts for the year ended 30 June 2014, audited by KPMG, show that their total combined net distributable revenue for the year was \$252.8 million, representing a year on year increase of approximately 3.8%. In their report, APRA/AMCOS assert that given the general economic conditions in Australia and New Zealand during the Review Period, this was "an excellent result" (at [4.1]).
61. In 2011, APRA began the process of moving from half yearly to quarterly distributions, except in the case of live performances, the returns from which have continued to be done annually. The process of moving from annual to quarterly distributions was completed in 2013.
62. APRA/AMCOS maintain, and make available on the website, comprehensive Distribution Rules and Practices. The "APRA Distribution Rules" are at Tab 14 of Vol 1 of the Report to the Code Reviewer.
63. The APRA Distribution Rules and APRA Distribution Practices were most recently updated in April 2014 and June 2014 respectively.
64. The AMCOS Distribution Rules and Practices were amended in October 2013. The major change made was an amendment of the remaining

distribution clauses from half yearly to quarterly distributions to correspond with the relevant APRA quarterly distribution cycle.

65. APRA/AMCOS were founding members of the “Global Repertoire Database” (GRD) which was an initiative to develop a single, comprehensive, authoritative and multi-territory representation of the global ownership and control of musical works. Unfortunately, during the Review Period the GRD project ceased, due to another founding member having dropped out of the project, resulting in a lack of funding. Two possibilities have emerged from two separate parties for a GRD replacement, and APRA/AMCOS are continuing discussions with both parties in relation to their respective offers.
66. At [48] of last year’s compliance report, it was noted that in March 2013, APRA/AMCOS delivered to Publisher Members a new system under which they could access details of “unclaimed/dispute/suspense” royalties. This is intended to provide full transparency regarding APRA/AMCOS’s management of undistributed royalties. The societies report that no enhancements were made to the facility during the Review Period, but that it is intended that the facility will form part of APRA/AMCOS’s core system replacements discussed below.
67. In 2013, APRA/AMCOS introduced Music Recognition Technology (MRT) to help identify music being played in nightclubs. APRA entered into an agreement with DJ Monitor to use music fingerprint recognition technology for APRA’s analysis of music played in discos and nightclubs. Special digital recording and streamlining devices were placed in selected nightclubs to record and stream the music to DJ Monitor. Through its music fingerprint database, DJ Monitor identified the musical works being performed and reported to APRA to assist it in identifying the correct copyright owners for those works.
68. Unfortunately, as APRA/AMCOS acknowledge, they did not consult fully enough with members prior to implementing MRT with the result that a

group of dance music writers and publishers complained in respect of the process. APRA/AMCOS state that they have now undertaken a full consultation process with their members and have resolved the complaint by implementing a “Club Music Advisory Group”, which meets regularly throughout the year to discuss how best to utilise MRT in nightclubs.

69. APRA/AMCOS’s large Membership Department comprise staff who are trained to deal with enquiries by members and others, including enquiries in relation to distributions. The Boards of both APRA and AMCOS have membership and distribution committees which deal with, among other things, requests by members for distributions in relation to “unlogged performances”. These committees also deal with complaints from and disputes between members. Members are encouraged to resolve disputes between them using alternative dispute resolution procedures made available by APRA/AMCOS.
70. During the Review Period, APRA/AMCOS commenced investigating whether it should embark on a core system replacement project. The Board and Management concluded that such a project was required in order for APRA/AMCOS to be able to offer a “best-in-industry” service in the years ahead. Accordingly, they engaged Accenture to design and implement a new “copyright licensing enterprise facility” (CLEF). The project is due to be completed by the end of calendar year 2015.

#### **Collecting Society Expenses (Code, Clause 2.5)**

71. APRA’s accounts show that its operating expenses are deducted from total gross revenue. Commission on revenue pays AMCOS’s expenses. The commission rate depends on the source of the revenue.
72. In the audited financial statements for the year ended 30 June 2014, APRA achieved an expense to revenue ratio of 13.34%. Further information concerning APRA’s expense to revenue ratio is contained in the



“APRA/AMCOS Year in Review 2013 - 14” and Sustainability Report, which can be read at <http://sustainability.apra-amcos.com.au/>.

### **Governance and Accountability (Code, Clause 2.6)**

73. The Annual Report of each of APRA and AMCOS contains the matters set out in Cl 2.6(e) of the Code.
74. The relationship between APRA and AMCOS and their respective Boards of Directors is governed by each company's Constitution and “Charter of Corporate Governance”. The Boards have both established Audit and Governance sub-committees, which meet at least five times a year and concentrate on issues relating to Corporate Governance.
75. The APRA/AMCOS management also has an internal Governance Committee which meets each fortnight to discuss matters relating to the day to day operation and management of the societies. This Governance Committee deals with policy setting and other matters relating to Human Resources and Industrial Relations, risk management, infrastructure, general administration and regulatory compliance
76. In 2013, APRA/AMCOS introduced a “Staff Code of Conduct”, which complements the Code. A copy of the Staff Code of Conduct is one of the Accompanying Underlying Documents.
77. APRA and AMCOS maintain financial records which are audited each year, and a statement by each company's auditors is included in the society's Annual Report. The audited accounts of each of APRA and AMCOS have been supplied to the Code Reviewer. APRA's membership, licensing, distribution and international arrangements are all the subject of “authorisation” by the Australian Competition and Consumer Commission (ACCC).

78. As noted earlier, the ACCC published its Final Determination on APRA's application for authorisation on 6 June 2014, granting conditional authorisation for five years expiring on 28 June 2019.
79. The conditions of authorisation require APRA:
- (a) to publish, within three months of the Final Determination (that is to say, by 6 September 2014), a comprehensive plain English guide that outlines all of the licence categories individually and includes other specified information (<http://www.apraamcos.com.au/about-us/plain-english-guides/>);
  - (b) within the same period of three months, to take certain steps to increase awareness of the licence back and opt out provisions provided by APRA, including publication of a plain English guide, and launching an education campaign; and
  - (c) to implement a revised ADR scheme to be managed by an independent facilitator. The scheme must offer informal resolution, mediation, expert opinion and binding determination to licensees and members. The ADR scheme must incorporate a consultative committee to provide feedback and other advisory input to APRA and to the facilitator.
80. APRA states that it is in the process of complying with these conditions (including consultation with interested parties) and will provide further details in its report to the Code Reviewer for the purposes of the compliance report for 2014/15.
81. A copy of the ACCC's final determination is provided at Vol 1, Tab 16 of the Accompanying Underlying Documents.
82. A number of Interested Parties' submissions to the ACCC raised concerns that APRA considered were more appropriately directed to the Code Reviewer. APRA says that it has notified the relevant Interested Parties, where possible, that APRA will treat those submissions as "complaints" under the Code. Summaries of them and of APRA/AMCOS's actions in

response to them are included in the Accompanying Underlying Documents (Vol 2, Tab 2) and are dealt with in the “Complaints and Disputes” section of this report.

83. APRA suggests that its authorisations over the years by the ACCC and the conditions attached to those authorisations form an important part of APRA’s governance and accountability framework.

#### **Staff Training (Code, Clause 2.7)**

84. APRA/AMCOS say that their staff at management level have all been comprehensively trained regarding the Code.
85. Divisional Heads meet on a weekly basis and discuss matters relating to policy and strategy development and assessment. At these meetings issues relating to service and staff performance and training are dealt with.
86. In addition, the wider senior management team meets every four to six weeks to discuss interaction with members, licensees and the wider community. At these meetings, the Code of Conduct is regularly discussed.
87. Manager and Team Leader forums are held at which the Chief Executive and Divisional Heads address the middle and front line management teams.
88. The Public Performance Licensing Department and Member Services Department each holds staff training conferences at least once (usually twice) a year. Programs from those conferences showing session titles and presenters are included in the Accompanying Underlying Documents (Vol 1, Tabs 17 and 18).
89. In their report to the Code Reviewer, APRA/AMCOS give fairly detailed descriptions of the induction and training sessions that they provide for staff (at Vol 1, Tab 19). In these, the Code of Conduct is a central element. In the Review Period, APRA/AMCOS developed “a new brand blueprint specifying

[their] purpose, values and personality”, a copy of which was provided to the Code Reviewer at Vol 1, Tab 20.

90. As a result of concerns raised by their “music customers” during the ACCC authorisation process, APRA/AMCOS have included on their new website a “live chat” facility enabling prompt and “real time” response to urgent requests.
91. APRA/AMCOS have several internal staff development and wellbeing programs, including an “Employee Wellbeing Program” that was introduced in the Review Period.
92. Under the *Workplace Gender Equality Act 2012*, APRA/AMCOS submit their annual report to the Workplace Gender Equality Agency outlining their performance against a set of six standardised gender equality indicators. A copy of the report is provided at Vol 1, Tab 22 of the Accompanying Underlying Documents.
93. APRA/AMCOS operate a “wiki” facility and internal social networking tool named YAMMER which form the basis of staff training and are a key information source for all APRA/AMCOS staff.

#### **Education and Awareness (Code, Clause 2.8)**

94. APRA/AMCOS say that they devote “considerable resources” to the education of members, licensees, industry associations and members of the public, regarding the matters set out at Cl 2.8 (a) of the Code. A list of the organisations and associations with which APRA/AMCOS have an ongoing relationship is set out in the Accompanying Underlying Documents (Vol 1, Tab 22).
95. In its report, APRA claims that as Australia’s oldest and largest collecting society (incorporated in 1926), it is in a position to have developed extensive materials and expertise in relation to education of the kind

described. In their report, APRA/AMCOS describe their educational activities under the headings “Member Education”, “Licensee Education”, “International Relations”, “Government Relations”, “APRA/AMCOS Website & Social Media”.

### **Complaints and Disputes (Code, Clause 3)**

96. This subject is dealt with in a separate section, “Complaints and Disputes”, below.

### **Publicity of the Code and Reporting of Compliance with it in the Annual Report (Code, Clause 4)**

97. APRA/AMCOS claim to have kept their members and licensees updated with information regarding the Code, in particular by maintaining relevant information including a copy of the Code on their website. On their website they invite any interested person to make submissions to the Code Reviewer. A copy of that invitation is provided at Vol 2, Tab 8 of the Accompanying Underlying Documents.
98. Of course, APRA/AMCOS’s annual report to the Code Reviewer is itself directed to the issue of their compliance with the Code.

### **Copyright Agency Limited (“Copyright Agency”) / Viscopy**

99. With effect on and from 2 July 2012, Viscopy has retained Copyright Agency to manage its services. A joint Copyright Agency/Viscopy report was provided to the Code Reviewer in respect of the Review Period. Accordingly, this report by the Code Reviewer deals with both collecting societies together. As noted at [3] above, reference is made to “Copyright Agency/Viscopy” except where it is necessary to distinguish between the

two societies. In fact I have found it necessary to do so often in what follows.

## **General**

### **Copyright Agency**

100. Copyright Agency is a company limited by guarantee that has more than 27,000 members, who include writers, artists, surveyors, publishers and other collecting societies.

101. In its report to the Code Reviewer, Copyright Agency has categorised its operations as follows:

- Its operations in accordance with its role as a declared collecting society:
    - management of the statutory licences for government use of text, images and print music, including negotiation, collection and distribution of fair compensation for content creators;
    - management of the statutory licences for people with disabilities (no compensation is paid under these licences); and
    - management of the Artists' Resale Royalty Scheme;
  - Its operations in accordance with the authority of its members and foreign affiliates, and with the oversight of the Copyright Tribunal of Australia, formulation and management of "voluntary" licensing arrangements, principally for the corporate sector; and
  - Its operations in accordance with its agreement with Viscopy, management of Viscopy's services to its members and licensees."
- (Copyright Agency/Viscopy report, page 4)

102. Copyright Agency is declared by the Attorney-General as the collecting society appointed to manage the statutory licence in Part VB of the Act for "each owner of copyright in a work, other than a work included in a sound recording or in a cinematograph film". The statutory licences are for

educational purposes, assisting people with a print disability, and assisting people with an intellectual disability.

103. Copyright Agency is also the declared collecting society under ss 153F and 182C of the Act for Div 2 of Part VII in relation to the government copying of published works (other than those embodied in sound recordings, films and television and sound broadcasts).
104. As distinct from the statutory licences, Copyright Agency manages the scheme for the payment of royalties to visual artists under the Resale Royalty for Visual Artists Act 2009 (Cth) ("Resale Royalty Scheme").
105. In addition, Copyright Agency formulates and manages voluntary licensing arrangements in accordance with the authority of its members and foreign affiliates.

## **Viscopy**

106. Viscopy is also a company limited by guarantee. It represents more than 10,000 artists and artists' estates and beneficiaries from Australia and New Zealand. Viscopy also represents more than 40,000 international artists and their estates and beneficiaries in the Australasian territory through reciprocal agreements with more than 40 visual arts rights management agencies round the world.
107. Copyright Agency provides services to Viscopy under the arrangement that has operated since 2 July 2012. Those services include management of the Viscopy licences for Australia and New Zealand, which are primarily licences for the reproduction and communication of art works by auction houses and public galleries.
108. Copyright Agency has established a visual arts unit with staff dedicated to managing relationships in the visual arts sector, including those with

licensees, artists and people affected by the Artists' Resale Royalty Scheme.

## **Legal Framework (Code, Clause 2.1)**

### **Copyright Agency**

109. Copyright Agency states that during the Review Period it complied with its obligations under the legislation and other documents referred to in Clause 2.1 of the Code.
110. On its website, Copyright Agency publishes its Constitution; Corporate Governance Statement; Customer Services Charter; Privacy Policy; Dispute Management Procedure; and Complaints Management Procedures (<http://www.copyright.com.au/about-us>).
111. Other documents accessible from the website include the Code; the Attorney-General's Guidelines for Declaration of Collecting Societies; the Attorney-General's Declaration of Copyright Agency for Part VB purposes (see[102] above), and the Copyright Tribunal's declaration of Copyright Agency for the purposes of Div 2 of Part VII of the Act.
112. Copyright Agency's in-house lawyers oversee compliance issues and monitor relevant legal and regulatory developments.
113. In the Review Period, Copyright Agency reviewed and updated its Privacy Policy and its privacy practices, and arranged training for key staff in the light of amendments made to the Privacy Act.

### **Viscopy**

114. Viscopy also claims that during the Review Period it complied with its obligations under the legislation and other instruments referred to in Clause 2.1 of the Code.



- 115. There was no change in Viscopy's legal status or compliance status with regard to relevant laws since last year's Report.
- 116. Compliance by Viscopy is also overseen by Copyright Agency's in-house lawyers, and the description above in relation to compliance by Copyright Agency applies also to Viscopy.
- 117. Viscopy's Constitution is available to all members and to the general public for free downloading on the Viscopy website.

### **Members (Code, Clause 2.2)**

#### **Copyright Agency**

- 118. Membership of Copyright Agency is open to owners of copyright in works and their licensees and agents, as well as to those entitled to royalties under the Resale Royalty Scheme. Membership is free. Applications for membership are approved by the Board. Applications for membership can be made online.
- 119. Visual artists are invited to become members of both Copyright Agency and Viscopy.
- 120. Copyright Agency claims to have adopted a range of policies and processes aimed at ensuring that its members are treated fairly, honestly, impartially, courteously, and in accordance with its Constitution and membership agreements. It has a "Service Charter", induction training for new staff and annual training for all staff on the requirements of the Code.
- 121. In its report to the Code Reviewer, Copyright Agency gives details of its modes of communication with its members and potential members.

122. Copyright Agency's Constitution is available to the public on its website, and new and potential members are directed to it.
123. In February 2014, Copyright Agency/Viscopy conducted a survey of their members on a range of issues including their satisfaction with the services provided by the societies to their members. The results are set out in a table on page 8 of the report to the Code Reviewer. There were 771 responses. Member satisfaction appears to have been quite high.

### **Viscopy**

124. Membership of Viscopy is open to all artists and other owners of copyright in artistic works, including the estates of artists. Membership of Viscopy is free of charge.
125. Information on Copyright Agency and Viscopy websites invites artists to join both societies.
126. For the membership satisfaction survey, see [123] above.

### **Licensees (Code, Clause 2.3)**

#### **Copyright Agency**

127. Copyright Agency claims to have adopted a range of policies and processes aimed at ensuring that its licensees are treated fairly, honestly, impartially, courteously and in accordance with its Constitution and licence agreements. These include: a "Service Charter", induction training for new staff, and annual training for all staff on the requirements of the Code.
128. In the case of the statutory licences for education and government, Copyright Agency deals mostly with bodies or departments representing a class of licensees, such as Universities Australia, the Copyright Advisory Group for most schools and TAFEs, and the Commonwealth Attorney-

General's Department for the Commonwealth, rather than with individual licensees. A major exception is the independent colleges which are licensed individually.

129. Most aspects of the statutory licences are governed by the Act and the Regulations under it. The major areas for negotiation are the amount of remuneration, the manner of collecting information about usage, and the processing of that information to estimate the "volume" of usage.
130. Copyright Agency publishes information about its "voluntary" licences ("blanket" and pay-per-use) on its website and on the RightsPortal website ([rightsportal.com.au](http://rightsportal.com.au)). As well, it provides information about its licences through, for example, seminars, trade shows and in response to specific enquiries.
131. Copyright Agency claims that it regularly reviews the terms of its voluntary licence agreements to ensure that they are expressed in plain language and correspond to its mandate from its members.
132. New industry licence schemes are usually designed by Copyright Agency with the input of the relevant industry association. For example, in the Review Period Copyright Agency designed a licence for law firms in consultation with the Law Society of New South Wales and similar bodies in other states.

## **Viscopy**

133. Licences issued by Viscopy cover the reproduction, publication and communication of artistic works in such contexts as the print media, internet, merchandise, advertising, film and television. The licences cover "one off" uses as well as uses under "blanket" annual licences. Licensees include those in the government and corporate sectors as well as individuals.

134. Viscopy also claims that its licences and agreements are expressed so as to be readily understood by licensees. Copyright Agency staff provide additional information where required.
135. Viscopy claims that its licence fees and other licence terms are regularly reviewed and updated to reflect changing kinds of reproduction and customer needs.
136. The Viscopy website includes information for licensing customers, including a searchable database of Viscopy members, information about licences and licence fees, and information about the circumstances in which a licence is not required.

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

##### **Copyright Agency**

137. On its website, Copyright Agency publishes its “Distribution Policy”, a schedule of forthcoming distributions, and its deductions for its administrative expenses. It distributes in accordance with the Distribution Policy and its Constitution.
138. Copyright Agency’s distributions are audited at several stages. These include internal auditing, and external auditing by Pitcher Partners.
139. Distribution of licence fees from educational institutions in 2014 included adjustments relating to some distributions in 2012 and 2013. These related to:
- The relative proportions of licence fees from schools allocated to the use of content in primary and secondary schools respectively; and
  - The relative proportions of licence fees from schools and other educational institutions allocated to text and to images copied with text, respectively.

These issues arose in the course of a transition from old to new systems as part of a major upgrade of Copyright Agency's systems and processes.

These particular aspects of calculating distribution "pools" were not carried forward from the old system.

140. In its report, Copyright Agency states that in addition to completing the transition, it has introduced increased quality assurance, based on advice from external auditors, and improved internal systems and checks.
141. Copyright Agency states that it communicated with all affected members, explaining the adjustments. In addition to emailing each affected member, the CEO and other senior staff telephoned and met with the seven members most affected, and the Membership Manager telephoned approximately 65 other members who were affected. Some have requested additional information about the adjustments which Copyright Agency is preparing.
142. There have been ten queries to date relating to the adjustments, of which two raised concerns. However, neither has resulted in a formal complaint to the Complaints Officer, but are summarised in the "Disputes and Complaints" section of this report.

## **Viscopy**

143. Viscopy's "Payments Policy" sets out the basis for calculation of entitlements to remuneration and licence fees, the management and frequency of payments to members, and the amounts deducted by Viscopy. The Payments Policy is available on the Viscopy website and also in hard copy form upon request. There is also information on the relevant page of the Viscopy website about when distributions are scheduled to be made.

## **Collecting Society Expenses (Code, Clause 2.5)**

### **Copyright Agency**

144. Copyright Agency reports that its administrative costs associated with managing the statutory and voluntary licence schemes are met from its revenue. In a few cases, the deduction is a fixed percentage (eg for distribution of licence fees collected from overseas), but in most cases it represents the deduction represents the actual cost relevant to the particular licence scheme. This statement by Copyright Agency means, to the Code Reviewer's mind, that, for example, the actual cost of administering the Government copying scheme under Part VII Div 2 of the Act, is deducted from the revenue received from governments under that scheme.
145. Copyright Agency's Board of Directors must approve the annual operating budget and in fact reviews the budget at each meeting of the Board.
146. Copyright Agency received funding from the Australian Government to assist with the cost of administering the Resale Royalties Scheme during the establishment of that Scheme. In accordance with its agreement with the Australian Government, Copyright Agency deducts ten percent of each royalty towards its administrative costs. It also deducts GST on that "administrative fee". In its Compliance Report to the Code Reviewer, Copyright Agency asserts (page 12) that "[a] Resale Royalty recipient may be entitled to claim that amount in their tax return".
147. Copyright Agency's Constitution allows it to deduct up to 1.5% of revenue for cultural or benevolent purposes. Its Board approves the amount to be deducted and allocated for these purposes. Copyright Agency publicly invites applications for cultural support. The Board approves of the successful applications following a recommendation by a committee of the Board.

148. Copyright Agency publishes information about deductions in its “Distribution Policy” and on its website ([www.copyright.com.au/admin-fees](http://www.copyright.com.au/admin-fees)). It publishes information about expenses, including the expense to revenue ratio for each financial year, its Annual Report.

## **Viscopy**

149. Under the Services Agreement between Copyright Agency and Viscopy, Copyright Agency receives deductions from Viscopy’s licensing revenue. In the Review Period this was:

- 25% of fees from Viscopy’s voluntary licence agreements;
- 17% of statutory licensing remuneration collected by Copyright Agency and Screenrights for Viscopy members; and
- 10% of royalties collected from overseas via Viscopy’s international partner organisations.

150. The Services Agreement with Copyright Agency provides that the deductions from statutory licensing income will decrease over time in accordance with a schedule set out in that Agreement. The agreed deductions were 25% for 2012-2013; 17% for 2013-2014; and 10% as from 1 July 2014. This information is available on Viscopy’s website ([www.viscopy.org.au/service-fees](http://www.viscopy.org.au/service-fees)), to which there is a link on Copyright Agency’s website.

## **Governance and Accountability (Code, Clause 2.6)**

### **Copyright Agency**

151. Under Copyright Agency’s Constitution, its Board comprises a director elected by author members, a director elected by publisher members, two directors appointed by the Australian Society of Authors, two directors appointed by the Australian Publishers Association, and up to four directors

appointed by the Board. The current directors and the capacity in which they were elected or appointed appears on Copyright Agency's website.

152. Copyright Agency provides, on request, information to rightsholders about entitlement to payment, subject to the terms of its Privacy Policy. For example, that Policy allows Copyright Agency to disclose to a person who has a copyright interest in a work (such as an author) the amount being paid to another in respect of the work (such as, the publisher).
153. The society's financial statements are audited annually. Information about revenue, expenses and distribution of licence fees is included in each year's Annual Report, which includes the auditor's report and is made available to the public on Copyright Agency's website, as well as to members and to the Attorney-General and Minister for the Arts. In addition, the Annual Report is tabled in Parliament.

## **Viscopy**

154. Viscopy is governed by a non-executive Board of Directors which includes artist members and business experts from various professions. The Directors may serve a maximum of three two-year terms. Viscopy's Directors are unpaid but are reimbursed out of pocket expenses incurred in connection with their attendance at meetings.
155. Viscopy's Constitution provides for its Board to have a minimum of seven directors. There is information about Viscopy's current Directors on its website.
156. Viscopy claims to maintain proper and complete financial records, including records relating to the collection and distribution of royalties and payments of expenses.



157. Viscopy's financial statements are audited annually by external auditors, the results being published in its Annual Report. The Annual Report and the auditor's report are available on Viscopy's website.

### **Staff Training (Code, Clause 2.7)**

#### **Copyright Agency**

158. Copyright Agency's procedures for making its staff aware of the Code include:

- induction training for new staff members on the requirements of the Code;
- policy documents implementing those requirements on the society's intranet; and
- annual training for all staff on the requirements of the Code.

#### **Viscopy**

159. The staff training for Copyright Agency staff on the Code includes training in relation to Viscopy's obligations under the Code.

### **Education and Awareness (Code, Clause 2.8)**

#### **Copyright Agency**

160. At pages 15-16 of its report to the Code Reviewer, Copyright Agency has given considerable detail of the education and awareness activities which it conducted during the Review Period. Those activities included activities directed to members and licensees and other organisations, such as the Australian Copyright Council, the National Association for the Visual Arts, and the Australian Society of Authors.

## **Viscopy**

161. Copyright Agency's education and awareness activities referred to above cover issues relevant to Viscopy's members and licensees. In addition, information specific to those members and licensees is provided on the Viscopy website.

## **Complaints and Disputes (Code, Clause 3)**

### **Copyright Agency**

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

## **Viscopy**

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

## **Publicity of the Code and Reporting of Compliance with it in the Annual Report (Code, Clause 4)**

### **Copyright Agency**

164. The Code is available on the Copyright Agency website as is information about the Annual Compliance Review of its compliance with the Code, the Code Reviewer's annual Compliance Reviews and his triennial review of the Code itself.
165. Copyright Agency alerts its members and others to the existence of the Code and to the Code Reviewer's Annual Compliance Review of the

activities of Copyright Agency in several ways, including on its website and monthly e-News.

166. Of course, Copyright Agency's annual report to the Code Reviewer is itself directed to its compliance with the Code.

### **Viscopy**

167. The Code and information about how to participate in reviews of Viscopy's compliance with the Code are also available on the Viscopy website.
168. Of course, Viscopy's annual report to the Code Reviewer is itself directed to its compliance with the Code.

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

### **General**

169. Audio-Visual Copyright Society Ltd, operating under the name "Screenrights", was established in 1990 to be the declared collecting society for purposes of the statutory licence for the copying and communication of broadcasts by educational and other institutions under Pt VA of the Act ("Copying and Communication of Broadcasts by Educational and Other Institutions")(see s135P of the Act).
170. Screenrights also represents the owners of the copyright in sound recordings and cinematograph films (and works included in sound recordings and cinematograph films) for the purposes of the statutory licence in favour of educational and other institutions under Pt VB Div 4 of the Act ("Reproduction and Communication of Works etc by Institutions Assisting Persons with an Intellectual Disability")(see s135ZZB of the Act).

171. In addition, Screenrights is the sole collecting society for the collection of equitable remuneration for the retransmission of free-to-air broadcasts under Pt VC of the Act. (see s135ZZT of the Act).
172. Finally, Screenrights is the declared collecting society in respect of television and radio broadcasts under the government copying scheme in Div 2 of Pt VII of the Act (Copyright Agency is also declared for that purpose) (see s153E of the Act).
173. As at 30 June 2014, Screenrights had 3,693 members and 1,026 licensees. It collects royalty payments from schools, universities, vocational training bodies, government agencies, TAFEs, resource centres, retransmitters, and New Zealand schools and tertiary institutions, as shown in the following table (page 2 of Screenrights' report to the Code Reviewer):

Type of Entity	Number
Screenrights Members	3,693
Licensees	1,026
Schools -- Govt, Catholic Systemic, Independent -- Peak Bodies	26
Higher education including universities	66
Private Vocational Education/Training Organisation (inc ELICOS)	55
Government Agency	145
TAFE (including individual institutions and Departments representing multiple institutions)	16
Resource Centres	8
Retransmitter	8
NZ -- Tertiary	26
NZ -- Schools	674

### **Legal Framework (Code, Clause 2.1)**

174. No changes or other developments relevant to Screenrights' legal framework happened during the Review Period.

### **Members (Code, Clause 2.2)**

175. Statistics in relation to the membership of Screenrights were set out under "General" above.
176. Information sheets, Membership and Registration Forms remained unchanged during the Review Period.
177. Screenrights states that it continues to publish the distribution status of its "pools" on its website, in order to keep its members better informed of distributions.

### **Licensees (Code, Clause 2.3)**

178. During the Review Period, Screenrights updated application forms for licensees to reflect CPI based changes in rates, and agreed with Foxtel on a new remuneration rate for retransmission.

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

179. There were two changes during the Review Period: first, a registration deadline of 30 April was introduced in respect of royalties for each annual period ended 30 June; and, second, the minimum threshold for payment was lowered with effect from 27 November 2014.
180. As to the first of these changes, the deadline of 30 April was introduced to allow sufficient time for multiple claims to royalties to be resolved, and the resulting royalty payment to be made ahead of the 30 June royalty deadline. This policy prevents royalties from entering a multiple claims situation with

insufficient time for the dispute to be resolved.

181. The change in the minimum distributable amount was a reduction from \$200 to \$100. This was made possible by improvements in Screenrights' "systems and processes" according to its report to the Code Reviewer.
182. A copy of Screenrights' current Distribution Policy was supplied to the Code Reviewer as Annexure A to Screenrights' submission.

### **Collecting Society Expenses (Code, Clause 2.5)**

183. Screenrights' expenses for the year ending 30 June 2014 were 14.9% of gross revenue (see Clause 2.5 (a) of the Code). A detailed summary of Screenrights' expenses to collections ratios can be found in Screenrights' Annual Report for the financial year 2013-2014, where a comparison with the years 2011-2012 and 2012-2013 is given.

### **Governance and Accountability (Code, Clause 2.6)**

184. Screenrights' Annual Report for 2013-2014 is available from 26 September 2014, including the audited accounts as at 30 June 2014.

### **Staff Training (Code, Clause 2.7)**

185. Screenrights reports that all new staff are informed of and trained in Screenrights' Dispute Resolution Policies. The relevant information is also available on Screenrights' website.
186. Screenrights reports that 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. In addition, there are regular staff meetings at which specific issues are raised and training given, such as in relation to privacy issues.

187. Screenrights provided to the Code Reviewer as Annexure B to its submission to him, a copy of the training materials that were in use during the Review Period.

#### **Education and Awareness (Code, Clause 2.8)**

188. This is dealt with above under “Members” (Clause 2.2) and “Licensees” (Clause 2.3).

#### **Complaints and Disputes (Code, Clause 3)**

189. This subject is dealt with in a separate section “Complaints and Disputes” below.

#### **Publicity of the Code and Reporting of Compliance with it in the Annual Report (Code, Clause 4)**

190. Screenrights publicises the Code and its undertaking to be bound by it, by referring to that fact, and making the Code available, on its website for downloading by members and licensees and other interested persons ([www.screenrights.org/about-us/governance/code-of-conduct](http://www.screenrights.org/about-us/governance/code-of-conduct)) (see clauses 4(a)(i) and (ii) of the Code).
191. Screenrights includes a statement in its Annual Report (under “Governance”) that it complies with the Code (see Clause 4 (b) of the Code).
192. Of course, Screenrights’ annual report to the Code Reviewer is itself directed to its compliance with the Code.

## **Phonographic Performance Company of Australia Ltd ("PPCA")**

### **General**

193. PPCA's letterhead states: "PPCA provides licences for the public use of sound recordings and music videos protected by copyright. Users may alternatively obtain licences directly from all relevant copyright owners."
194. As at 30 June 2014, PPCA had approximately 1,582 licensors representing major record companies and independent copyright owners, approximately 3,250 registered artists, and over 60,000 public performance licensees (ie, businesses licensed for the public performance of protected sound recordings and music videos).
195. PPCA is not a declared collecting society for the purpose of any of the mandatory licensing schemes under the Act.
196. On 17 September 2012, PPCA referred a proposed licence scheme to the Copyright Tribunal of Australia (CT 1 of 2012) under s154 of the Act. This was a "Subscription Television Broadcast Licence Scheme". It is a scheme for the use of PPCA's sound recordings by subscription television providers..
197. PPCA states that the proposed scheme was referred to the Tribunal only after extensive consultation with the subscription television sector beginning in late 2010.
198. PPCA reports that the hearing of the reference is now scheduled for the first half of 2015, but remains hopeful that the matter may be resolved by negotiation in the meanwhile.



199. On another matter, PPCA has been in dispute with Commercial Radio Australia (CRA) in respect of the breadth of the existing broadcast licence arrangements in place for CRA's members. CRA has contended that the arrangement covers its members' online simulcasting of broadcasts (and the sound recordings contained in those broadcasts), while PPCA has taken the view that online simulcasting is a separate activity requiring a licence.
200. The question was determined by the full Federal Court of Australia in PPCA's favour in the first quarter of 2014, but CRA sought leave to appeal to the High Court. Special leave was refused in August 2014.
201. Following the full Federal Court decision, PPCA contacted CRA inviting discussion on the potential terms of a commercial radio internet simulcast licence scheme, but nothing has come of this.
202. PPCA states that CRA's members had continued to simulcast online without the benefit of a sound recording licence. Accordingly, on 25 September 2013, PPCA lodged a reference (CT3 of 2013) with the Copyright Tribunal of Australia for a "Commercial Radio Broadcasters Simulcast Licence Scheme". In December 2013, the Tribunal made orders establishing interim arrangements, to allow broadcasters to simulcast their broadcast services online until the Tribunal delivers its final decision.
203. The hearing of CT3 of 2013 has been scheduled for the first half of 2015. PPCA states that it continues to seek opportunities to settle terms outside the Tribunal process.

#### **Legal Framework (Code, Clause 2.1)**

204. PPCA's Constitution was amended on 7 May 2014 as a consequence of the Universal Music Group's acquisition of EMI Music Australia Pty Ltd in 2012.

205. The major amendments were an amendment increasing the number of licensor directors from one to two, and an amendment with respect of the voting power of directors, increasing the voting power of each shareholder director to two votes, with licensor, artist and managing directors each retaining one vote.
206. Opportunity was taken to make several other minor changes to the Constitution.
207. PPCA's Privacy Policy was amended on 14 May 2014 to give effect to changes that had been made to the *Privacy Act 1988* (Cth).

#### **Members (Code, Clause 2.2)**

208. PPCA is a company limited by shares, the shares being held equally by the remaining three of the six founding members. The three members are ineligible for any dividend, and receive remuneration only on the same basis as all other licensors, in line with PPCA's "Distribution Policy", a copy of which has been supplied to the Code Reviewer.
209. As a result, whereas other collecting societies represent the interests of their "members", PPCA represents the interests of "licensors" (ie the owners or exclusive licensees in respect of copyright in sound recordings), only three of which are in fact members of PPCA.
210. PPCA's relationship with licensors is governed by the terms of its standard "Input Agreement", a copy of which has been supplied to the Code Reviewer, rather than by PPCA's Constitution. The Input Agreement allows PPCA to sub-license on a non-exclusive basis, and to create blanket public performance and broadcast licensing schemes used by the users of sound recordings (particularly, small businesses).
211. In the same way, PPCA has "registered artists" rather than "artist members". The payments made available to Australian featured artists

under the PPCA Distribution Policy is on an ex gratia basis and does not arise from any copyright held by the artists.

212. Neither the Input Agreement nor the Distribution Policy was amended during the Review Period.
213. PPCA reports that increasingly it receives queries relating to registering as a licensor by telephone or email. Generally speaking, in those circumstances PPCA refers the enquirer to the relevant section of the website and the related on-line registration form (<http://www.pcca.com.au/labels/register-as-a-licensor/>)
214. PPCA states that it continues to seek improved sources of usage data to increase the accuracy of its distribution processes. During the Review Period, PPCA conducted a survey of its licensors in order to understand better how they are servicing digital channels, and how that information may flow to potential audio recognition monitoring services.
215. Similarly, enquiries from artists on registering with PPCA are received increasingly by email, in which cases again they are directed to the relevant area of the website (<http://www.pcca.com.au/artists-at-home/register-as-an-artist/>) and the on-line registration forms. These forms were amended to conform with amendments made to the *Privacy Act 1988* (Cth) and related amendments to PPCA's Privacy Policy.
216. The PPCA website includes "FAQ" sections for both licensors and artists, in order to explain the services that PPCA provides. The licensor FAQs were updated to reflect changes to the structure of PPCA's Board of Directors. During the Review Period, PPCA emailed its registered artists and licensors a number of times, keeping them informed of developments in the ongoing matter of internet simulcasting by commercial radio broadcasters.

### **Licensees (Code, Clause 2.3)**

217. As noted under “General” above, as at 30 June 2014 PPCA had over 60,000 businesses licensed for the public performance of protected sound recordings and music videos. By volume, this is the largest part of PPCA’s licensing activity and is managed by its Public Performance Licensing Department. PPCA also has in place licences with broadcasters (including linear and customer influenced streaming services).
218. PPCA’s report to the Code Reviewer attaches its standard form documents that illustrate the general statements contained in this report.
219. PPCA’s Public Performance tariffs generally increase on 1 July every year by an amount reflecting the CPI increase. By 1 April each year PPCA writes to relevant key industry associations that it has been able to identify, advising them of the proposed increases and inviting them to contact PPCA if they wish to have advice about the proposal or to discuss it.

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

220. PPCA maintains and makes available on its website its Distribution Policy, which sets out how it collects licence fees for the use of sound recordings and music videos, and allocates and distributes payments to licensors who have authorised PPCA to issue licences on their behalf. The Distribution Policy also incorporates details of the Direct Artist Distribution Scheme. As indicated above, this is an *ex gratia* arrangement under which featured Australian artists may register to receive payments direct from PPCA, regardless of whether they have retained copyright in the sound recordings on which they feature.
221. PPCA’s Distribution Policy was unchanged during the Review Period.
222. In addition to being available on the website, the Distribution Policy is also provided to each new licensor as part of an information pack. An

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

223. PPCA undertakes an annual distribution for the financial year ended 30 June, which is made prior to the following 31 December.

#### **Collecting Society Expenses (Code, Clause 2.5)**

224. 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.
225. PPCA's Annual Report for the year ended 30 June 2013 (published during the Review Period) showed that the expense to revenue ratio was 17.0%.

#### **Governance and Accountability (Code, Clause 2.6)**

226. PPCA's annual financial statements are audited. The audited financial statements were included in the Accompanying Underlying Documents.
227. Reports of the Board of Directors and of the external auditors are published in the Annual Report which is available on the PPCA website, and which contains the information specified in the Clause 6.2(e) of the Code.
228. A Finance Committee appointed by the Board meets regularly to review interim financial accounts, and the outgoings and expenses referred to in them.
229. The PPCA Board, committees and relevant managers are also provided with PPCA's "Trade Practices Compliance Guidelines" and "refresher" presentations are held from time to time.

- 230. In line with PPCA's Constitution (clauses 6.2(b) and 6.2(c)) PPCA conducts regular elections to fill the positions for both licensor and artist representative directors.
- 231. At each meeting of the PPCA Board, directors are reminded of their obligations and duties.
- 232. The PPCA Management Team meets each week to discuss operational and strategic matters.

#### **Staff Training (Code, Clause 2.7)**

- 233. PPCA's practice of providing staff at the commencement of their employment with a number of key documents, including the Code, the PPCA Privacy Policy and the PPCA Complaints Handling and Dispute Resolution Policy, continued to be followed during the Review Period.
- 234. Members of the Licensing Department meet at least once each month and individual licensing teams meet more frequently. At these meetings, staff are reminded of PPCA's obligations under the Code and of various PPCA policies.
- 235. A document containing standard responses to frequently asked questions is provided as a resource to the Licensing Department. During the Review Period, Licensing staff attended training sessions in "Preferred Customer Communication" and refresher courses in the accounts management systems.
- 236. Staff training sessions for the Licensing and Distribution Departments on the subject of the Code are held regularly.
- 237. During the Review Period, Distribution Department staff have also attended specific sessions focussed on explaining (a) changes to protected

territories, and (b) the new track registration procedures (incorporating automatic dual claim procedures).

- 238. Departmental managers are provided with copies of any complaints received so that they can be discussed and reviewed at team meetings.
- 239. Staff training sessions on the Code for the Licensing, Credit, Enforcement and Distribution Departments are held regularly. PPCA maintains an intranet which serves as a repository for all key policy documents, including the Code. Staff are encouraged to review the intranet regularly.
- 240. During the Review Period, new staff were also sent to external courses dealing with customer service and telephone skills.

#### **Education and Awareness (Code, Clause 2.8)**

- 241. PPCA reports that it meets regularly with licensees and key licensee representative bodies. It distributes explanatory materials and publishes a quarterly newsletter, "In The Loop", which is forwarded to each licensee with the periodic licence renewal notice. PPCA is itself also a member of several licensee representative bodies.
- 242. During the Review Period, PPCA wrote to some 5,350 businesses advising them of the licensing obligation relating to the use of protected sound recordings, and the convenience in this respect of the PPCA licence. The information pack, "Do you play recorded music in your business?", was provided to them.
- 243. During the Review Period, PPCA met with artists and licensors to make them aware of the role and function of PPCA, presented at seminars and panel discussions, and distributed explanatory materials.
- 244. PPCA issues a newsletter, "On the Record", to artists and licensors.

245. PPCA uses Facebook and Twitter to communicate directly with registered and potential artists and licensors.
246. Awareness of PPCA is also enhanced through its sponsorship and support of various prizes, details of which are contained in PPCA's report to the Code Reviewer.
247. PPCA's website is a source of information for music users and copyright owners, and is updated regularly.

### **Complaints and Disputes (Code, Clause 3)**

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

### **Publicity of the Code and Reporting of Compliance with it in the Annual Report (Code, Clause 4)**

249. PPCA publishes notification of the process for the annual review of compliance with the Code on its website and in its newsletter, "In the Loop".
250. Of course, PPCA's annual report to the Code Reviewer is itself directed to the issue of its compliance with the Code.

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

### **General**

251. The Australian Writers' Guild (AWG) was established some 50 years ago by radio writers who formed a guild to represent their professional interests as television started to take over from radio plays.



252. Today the AWG is the professional association representing Australian “writers for performance”, including performance via film, television, theatre, radio and narrative games and digital media.
253. The Australian Writers' Guild Authorship Collecting Society (AWGACS) was born out of the AWG for the purpose of collecting secondary royalties within the internationally recognised framework of voluntary collecting societies.
254. The number of members of AWGACS at 30 June 2014 was 1,310, an increase of 102 during the Review Period.
255. AWGACS does not deal with licensees under either statutory or voluntary licences.
256. During the Review Period, AWGACS continued to pursue royalties owed to Australian screenwriters, which, it says, have been incorrectly paid to the Writers' Guild of America (WGA), the Motion Picture Association of America (MPAA), the Alliance of Motion Picture and Television Producers (AMPTP), and other US entities.
257. AWGACS is also a member of CISAC (see [33] above). Therefore, AWGACS submits to the International Best Practice Guidelines. AWGACS is considered a “developing society” in CISAC terminology, reflecting the number of its members, level of collections, age and infrastructure. AWGACS reports to CISAC extensively on an annual basis, and was also selected by “lottery” to be subject to a full audit of collecting societies’ policies and practices by the Regional Director of CISAC. This CISAC review involved provision of extensive paperwork and responses to detailed questionnaires and an on-site visit by the Regional Director to meet with all relevant staff and to examine the files and database procedures of AWGACS.

### **Legal Framework (Code, Clause 2.1)**

258. There was no change to the legal framework of AWGACS during the Review Period. AWGACS asserts that it has met all of its relevant obligations under clause 2.1 of the Code.

### **Members (Code, Clause 2.2)**

259. As noted above, the number of members of AWGACS as at 30 June 2014 was 1,310, an increase of 102 during the Review Period.

260. There was no change to the membership criteria or the constitutional obligations of members during the Review Period.

261. Membership remains available to all scriptwriters.

### **Licensees (Code, Clause 2.3)**

262. 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)**

263. AWGACS does not grant licences and therefore does not receive licence fees for distribution.

264. AWGACS distributes to its members monies that it collects from other collecting societies on their behalf, notably, Screenrights.

265. In relation to remuneration collected by AWGACS on behalf of its members, it has a "Distribution Policy" a copy of which is an Attachment to its report to the Code Reviewer. The Distribution Policy is posted on the AWGACS section of the AWG website. That Policy deals with such matters as the

registration of audio-visual works written in whole or in part by its members, “percentage splits”, and the preference accorded to the credited writer, the deduction of the actual operating expenses, and the requirement that writers provide a Warranty and Indemnity in favour of AWGACS in respect of each title in relation to which the writer claims an entitlement.

266. The AWGACS financial year is a calendar year. In the calendar year ended 31 December 2013, AWGACS:

- collected \$1,375,239 (distributable in the following calendar year, 2014); and
- distributed \$1,005,933 from prior years' collections.

#### **Collecting Society Expenses (Code, Clause 2.5)**

267. AWGACS deducts from each calendar year’s collection its “standard operating costs for that year” (page 2 of AWGACS’s report to the Code Reviewer).

268. AWGACS deducted 5% of gross royalties received as a “cultural levy” to be directed towards appropriate activities in support of its members. It sponsors the Annual AWGIE Awards for scriptwriters.

269. AWGACS claims that it invests, to the extent that human and cash resources permit, in pursuing new sources of income for its constituents.

#### **Governance and Accountability (Code, Clause 2.6)**

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

271. The audited annual accounts for calendar 2013 were attached to AWGACS's report to the Code Reviewer.

**Staff Training (Code, Clause 2.7)**

272. During the Review Period, there were no new appointments.
273. AWGACS states that all employees are aware of the Code and of its requirements and of the society's Complaints Handling Procedure.
274. It states that all current employees contributed to the CISAC review and were questioned about governance and accountability by the Regional Director of CISAC.

**Education and Awareness (Code, Clause 2.8)**

275. In its report to the Code Reviewer, AWGACS describes itself as a small "developing" society, and states that it relies on its membership of the Australian Copyright Council to contribute to the promotion of the importance of copyright and the importance of collecting societies in general in Australia, and on its active membership of CISAC for the same purposes internationally.
276. AWGACS states that it seeks to increase awareness among its members and the scriptwriting community by advertising and print, via "Storyline" (the journal for performance writers) with a print run of approximately 3,000, and via sponsorship of the two largest events for scriptwriters, the Annual AWGIE Awards and the National Screenwriters' Conference.
277. AWGACS has promoted awareness of moral rights to members and the industry via electronic bulletins and a website interview. The society provides an individual advice service to members and to the industry on copyright and related issues.

278. All of AWGACS's foundation documents are available internationally to other collecting societies, via the CISAC portal, and domestically via the AWGACS website.
279. AWGACS responds individually to all telephone and email questions from members, potential members and the general public about the society's purposes and practices.

### **Complaints and Disputes (Code, Clause 3)**

280. The subject of complaints and disputes is dealt with in a separate section of this report, "Complaints and Disputes", below.

### **Publicity of the Code and Reporting of Compliance with it in the Annual Report (Code, Clause 4)**

281. The Code is posted on the AWGACS section of the AWG website and is made available to members and potential members upon request.
282. Calls for submissions to the Code Reviewer are made on the society's website in accordance with the requirements of the Code.
283. Of course, AWGACS's annual report to the Code Reviewer is itself directed to the issue of its compliance with the Code.

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

### **General**

284. As at 1 July 2013 ASDACS had 788 members. By the end of the Review Period on 30 June 2014, membership stood at 881 – an increase of 93 members.

285. ASDACS is not a declared collecting society under the Act. All of its income was from overseas. The amount of that royalty income during the Review Period was \$598,658. In addition a small payment was received from Screenrights arising out of Australian retransmission rights, which was passed on to members of ASDACS without any deduction.

286. In its report to the Code Reviewer, ASDACS states that the significant increase in membership in the Review Period was due to increased research and email contact. It also states that the only significant increases in its costs were in development costs for its overseas registration system.

287. ASDACS reports that through its association with the Australian Directors Guild, it was active in promotion of small gains for directors.

288. ASDACS continues to employ one full-time staff member.

#### **Legal Framework (Code, Clause 2.1)**

289. There was no change during the Review Period.

#### **Members (Code, Clause 2.2)**

290. There was no change during the Review Period.

#### **Licensees (Code, Clause 2.3)**

291. ASDACS does not grant licences to use copyright works.

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

292. ASDACS reports that after another year of disappointing income in calendar 2013 (ASDACS's financial year is a calendar year), it used its reserves to

“bolster the distributable funds for its members, reducing the administration fee charged in 2013 to a long-term average fee of 25%.

### **Collecting Society Expenses (Code, Clause 2.5)**

293. ASDACS deducts a 25% administration fee to cover its operational expenses.
294. Although ASDACS’s financial year is a calendar year, it is required to report to the Code Reviewer on a review period of twelve months ending on 30 June. This disconformity sometimes makes for awkwardness. During the Review Period (in fact in late 2013), ASDACS distributed income received by it in calendar 2012.
295. The members of ASDACS received the full gross royalties that ASDACS had received from its European sister societies for their works, less an amount of no more than 4% which is set aside for strengthening the industry and directors’ rights (the “Cultural Purposes Fund”); an administrative deduction of 25% covering the cost of running ASDACS during the year in which the money was collected; and any membership fee applicable to working directors who are not members of the Australian Directors Guild or of the Screen Directors’ Guild of New Zealand (SDGNZ) (for these, the percentage is 10%).
296. The Cultural Purposes Fund is authorised by the ASDACS Constitution and is (as it has been for several years) an amount of \$24,000, which is paid to the ADG.

### **Governance and Accountability (Code, Clause 2.6)**

297. The governance principles implemented by ASDACS remained unchanged during the Review Period.
298. At the annual general meeting of ASDACS in 2014, its Constitution was

amended to change the eligibility for election to the ASDACS Board and to make employees ineligible to sit on the Board.

299. ASDACS now has six directors, five of whom are elected members of ASDACS and one appointed as per the amended constitution.

#### **Staff Training (Code, Clause 2.7)**

300. During the Review Period, the Executive Director resigned from her position and no staff training was undertaken.

#### **Education and Awareness (Code, Clause 2.8)**

301. As in previous years, ASDACS's website has updates to keep its members informed and aware of its work and progress. The website discusses the importance of copyright and refers to the nature of copyright as administered by collection societies in Australia and overseas, addressing the particular role and policies of ASDACS.
302. ASDACS used the newsletter of the Australian Directors Guild as a vehicle for broader awareness campaigns, and provides sponsorship and cultural support through the Guild to enhance its visibility to the wider film and TV community.

#### **Complaints and Disputes (Code, Clause 3)**

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

#### **Publicity of the Code and Reporting of Compliance with it in the Annual Report (Code, Clause 4)**

304. ASDACS publicises the Code on its website and in all information documents provided to members and potential members.



305. The Code is posted on the ASDACS website in an area called “Governance”, where those interested can also find related topics. Members can download those documents or obtain paper copies upon request to the ASDACS office.
306. Of course, ASDACS’s annual report to the Code Reviewer is itself directed to the issue of its compliance with the Code.

## **COMPLAINTS AND DISPUTES**

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

#### **General**

307. APRA/AMCOS deal with complaints and disputes in paragraphs 9.1 – 9.17 of the text of their report to the Code Reviewer and in Volume 2 of the accompanying underlying documents. Allowing for the fact that no doubt a collecting society has an interest in the way in which it describes complaints and its dealings with them, it must nonetheless be said that APRA/AMCOS’s report in both respects to the Code Reviewer is commendably detailed and, apparently, frank.
308. For the purposes of its report, APRA/AMCOS have applied the distinction between “Complaints” and “Disputes” to which I referred in my Report upon a Review of the Operation of the Code of Conduct, which was published in April 2014.
309. In summary, there were five new licensee complaints received during the Review Period and these are evidenced by the documents in Vol 2, Tab 2.

There were five licensee complaints that were carried over from the previous review period, all of which arose from licensee submissions to the ACCC, which can be found behind Tab 3 in Volume 2 of the accompanying documents.

310. Member complaints are documented behind Tabs 4 and 5 of Volume 2. There were two new member complaints during the Review Period (Tab 4) and one carried over from the previous review period (Tab 5).
311. APRA/AMCOS claim that they have adopted a broad approach to the definition of “complaint”. However, where they have been unsuccessful in their attempts to license a use of music and the matter is referred to their external solicitors, the issue is not treated as a complaint unless there is in fact a complaint regarding the conduct of APRA/AMCOS’s employees or external solicitors.
312. As at 30 June 2014 there were 94 ongoing general infringement matters under the management of the Public Performance Licensing Department, of which 15 were under the management of APRA/AMCOS’s external solicitors. More information regarding the activities of the external solicitors, including litigation commenced during the Review Period, has been offered to me upon request.
313. Where a licensee fails to pay invoices issued by APRA/AMCOS, recovery is pursued by the Finance Department and, if necessary, referred to external mercantile agents to manage and, if necessary, to pursue the debt recovery proceedings. As at 30 June 2014, 430 APRA/AMCOS licensees were under the management of external mercantile agents. Again, these matters are not characterised as APRA/AMCOS as “complaints” unless they include a complaint regarding the conduct of the Finance Department or debt collector. There were no such complaints made during the Review Period. Again, APRA/AMCOS have offered to provide to me, if I request to do so, information regarding activities of their external mercantile agent.

314. During the Review Period, APRA/AMCOS conducted a full review of their Alternative Dispute Resolution (ADR) mechanism, with a view to implementing a new independent ADR facility by 31 March 2015. A copy of the current ADR facility for licensees or potential licensees, is included behind Tab 6 of Vol 2 of the accompanying documents.
315. The society's ADR facilities publicised on their website, in materials released to the public and in legal correspondence. The society's external solicitors have "standing instructions" to make the existence of the facility known to parties prior to commencing litigation and negotiation.
316. Under the terms of its authorisation from the ACCC, APRA is required to amend its ADR facility and also to comply with the condition that it submit an annual report to the ACCC detailing those disputes that have been notified to APRA under its ADR process for licensees and potential licensees. A copy of APRA's annual dispute report to the ACCC for the year ended 31 March 2014 is included in the accompanying documents behind Tab 7 of Vol 2.
317. During the Review Period, two licensees sought to utilise the ADR facility, and both disputes were resolved by commercial negotiation first. Details of the two disputes are set out in APRA's annual dispute report to the ACCC.
318. APRA/AMCOS state that they believe that the limited utilisation of their ADR process by licensees demonstrates that they are effective in resolving licensing disagreements, and that their licensees are relatively satisfied with the licensing arrangements offered.
319. APRA/AMCOS acknowledge that on occasions their members might dispute the ownership details of a work. Where they are notified of a dispute among members or involving members with an affiliated society as to the allocation of shares in a work administered by that society, APRA/AMCOS may, if satisfied that it is appropriate to do so, place all or any of the performance credits for the work in suspense until the dispute is resolved.

320. The society's policy for resolving disputes between its members is set out on its website and in Rules 7 and 13 of the respective Distribution Rules of AMCOS and APRA (Tabs 6 and 14 of Vol 1 of the accompanying documents).
321. APRA/AMCOS encourage their members to resolve disputes by the use of the ADR facility for members, but none used the facility during the Review Period.
322. APRA/AMCOS's ADR facility for their members is also currently under review. It is expected that a new independent ADR facility will be introduced by 31 March 2015.

## **Complaints by Licensees**

### ***APRA/AMCOS Licensee Complaint 1***

323. A representative of a football club telephoned APRA and asked several questions with respect to the use of a particular song at the games in the forthcoming football season. At some stage, the conversation became unpleasant. According to the complainant, the APRA employee said such things as "talk to \_\_\_\_\_ not to me" and "you aren't listening".
324. The complainant complained in writing about the staff member's conduct. The Chief Executive Officer responded apologising for the difficulty and frustration that the complainant had experienced, advising that APRA had counselled the employee, and providing answers to her questions. As well, the CEO invited the complainant to contact him directly on his mobile telephone.
325. The complainant expressed thanks for the "clear information" provided, and for the CEO's having followed up her complaint.

326. APRA properly regards the complaint as having been resolved.

***APRA/AMCOS Licensee Complaint 2***

327. The complainant wrote to APRA complaining over the administrative costs of APRA which, according to him, made it “top heavy”. He complained that only a “pittance” trickles down to the artist.

328. APRA’s Director of Membership replied, directing the complainant to financial statements on the APRA/AMCOS website and offering to meet with the complainant.

329. APRA correctly regards this complaint as having been resolved.

***APRA/AMCOS Licensee Complaint 3***

330. This licensee complained that APRA’s statements/invoices were confusing and hard to understand. The licensee had received an invoice from APRA in respect of the activities of a small singing group. The invoice included a fee for the forthcoming financial year with an “unallocated cash amount”.

331. APRA’s senior Dispute Resolution Liaison Officer replied, explaining the terms used in invoices by APRA’s Finance Department. APRA advised that an internal review had revealed that another licensee’s cheque had been mistakenly allocated to the complainant’s account.

332. APRA’s officer apologised for the error and informed the complainant that APRA’s internal processes would be reviewed and that the staff responsible would be counselled.

333. The mistaken allocation was transferred to the correct account and an invoice showing the correct amount owing was sent to the complainant-licensee.

334. The complainant also raised a question about a band that had been using the same name as the complainant's band. APRA directed the complainant to the Arts Law Centre of Australia and to the Australian Copyright Council, explaining that APRA itself could not assist by way of enforcement of the complainant's legal rights.
335. APRA correctly regards this complaint as having been resolved.

#### ***APRA/AMCOS Licensee Complaint 4***

336. The complainant licensee operates a fitness centre. APRA contacted her concerning an outstanding invoice.
337. The complainant licensee advised that she had left a voicemail message about the matter eight weeks earlier, which remained unanswered. The licensee advised that she wished to pay by instalments but had not done so as the invoice was, according to her, unclear about the due dates for payment of instalments. APRA's employee advised that she would re-send the instalment payment information which the licensee said she had never received.
338. Subsequently, there was a lengthy conversation between the complainant and an APRA Licensing Representative in which the licensee complained about APRA's invoicing and about the level of the Fitness Centre tariff. The Licensing Representative requested that the licensee send an email to his direct inbox with details of previous telephone complaints, so that he could investigate them further.
339. The licensee forwarded the requested information which the Licensing Representative treated as a complaint and forwarded to APRA's Complaints Officer and relevant management personnel.

340. APRA's Director of Licensing spoke to the licensee and it was agreed that APRA would respond in writing to the initial voicemail complaint and concerning the question of the appropriate licence.
341. APRA so wrote, acknowledging an error in its internal processes which resulted in the initial voicemail being unanswered. APRA assured the complainant that it was reviewing its internal processes to prevent this happening again, and advising that relevant staff would be counselled about responding to voicemails.
342. In relation to the appropriate tariff, APRA undertook to recalculate the licence fee, to terminate the current licence and send a new combined licence application form, and to review the account and refund any amount owing to the licensee in the light of the recalculation.
343. After the recalculation, APRA wrote to the licensee advising that she was entitled to a refund which would be sent to her shortly. APRA's report does not state that the refund was in fact sent, but I assume that it was.
344. On that basis, APRA correctly regards the complaint as having been resolved.

#### ***APRA/AMCOS Licensee Complaint 5***

345. This licensee was issued with an APRA Concert Promoter licence. The licensee requested a six month payment plan.
346. After default, APRA referred recovery to its external mercantile agent.
347. The licensee made a settlement offer which APRA did not accept, and the licensee complained about this and royalties which he alleged had been payable to him for the year 1981-1982.

348. APRA's National Account Representative spoke to the licensee about the royalty question. The Representative explained APRA's organisational structure and its relevance to the issues between the licensee and APRA.
349. Subsequently, the same day, the licensee emailed the Representative thanking him for this time and apologising for the delay in resolving the dispute. Recovery action was placed on hold.
350. The licensee then confirmed that he wished to pursue the matter of unpaid royalties.
351. APRA investigated the matter. Due to the lapse of time there were no remaining records of the claims.
352. APRA again asserted that recovery of licence fees was distinct and separate from any entitlement that a licensee may have to royalties. APRA also pointed out that it was a member's responsibility to ensure that all details in relation to royalty entitlements were correct and up to date.
353. APRA's Senior Dispute Resolution Liaison Officer provided a further response agreeing to a payment schedule of \$30 a week proposed by the licensee.

*Code Reviewer's Comments (if, and to the extent, called for)*

354. The matter appears to remain there. This complaint was APRA/AMCOS Licensee Complaint 2 in the Code Reviewer's Compliance Report for the year 2012-2013. As noted in that report, APRA considered the matter to be unresolved.
355. I commented that there was some conflict between the version of the facts given by the complainant and the version given by APRA, which I could not resolve. Nonetheless I noted that the substance of the dispute was over



non-payment, liability and recoverability – matters which lay outside the Code.

356. In its report for the year 2013-2014, APRA gives an update. It received unsigned licence agreements from the licensee on 23 August 2013. A covering email stated that despite what APRA thought the amounts should be, the complainant specified on the re-assessment form the amounts that he was willing to pay.
357. After APRA's licensing staff followed up the matter with the licensee, he took a Karaoke and Background Music Licence.
358. The complainant is regarded by APRA as currently licensed and has entered into a payment plan which APRA's Finance Department is monitoring.

#### ***APRA/AMCOS Licensee Complaint 6***

359. This complaint was APRA/AMCOS Licensee Complaint 3 in the Code Reviewer's Compliance Report for the year 2012-2013 (pages 66 – 69 of that Report). In my comment I noted that the complaint concerned both the rate of increase in licence fees and the level of licence fees in absolute terms.
360. APRA's current report is in the nature of an update. It reports that APRA's General Counsel sent letters to all ACCC interested party complainants, of whom the present complainant was one, on 19 August 2013. APRA reports that it also gathered further information about the venue in order to assess its music usage. There was, according to APRA, consistent evidence of dance use. The venue's revamped website referred to a resident DJ and to the bar's being the venue's party hub on Friday and Saturday nights.
361. APRA's State Licensing Manager conducted further negotiations and meetings with the venue operator which led to a settlement.

362. APRA reports that licence fees are now paid up to date and that there are no issues outstanding.

#### ***APRA/AMCOS Licensee Complaint 7***

363. This complaint was APRA/AMCOS Licensee Complaint 8 in the Code Reviewer's Compliance Report for the year 2012-2013 (pp 71-73 of that Report).

364. My comment was that it was appropriate that "the cardio machine issue be resolved by negotiation between APRA and Fitness Australia". I also noted that it was important that APRA informed all licensees that those negotiations were taking place. Finally, I stressed that APRA should not abdicate responsibility in this respect by relying on Fitness Australia alone to inform its members.

365. By way of update, APRA reports that the company's director refused to sign APRA's former "Fitness Background Music Licence Agreement". All licensees have now been offered the new Licence Scheme. The complainant was one of those offerees.

366. APRA and the complainant expect (according to APRA) that a licence will be entered into but APRA is awaiting confirmation of membership fees. APRA has made known its expectation that the membership figures supplied would have to be consistent with those reported by Fitness Australia.

#### ***APRA/AMCOS Licensee Complaint 8***

367. This complainant was the subject of APRA/AMCOS Licensee Complaint 4 and APRA/AMCOS Licensee Complaint 5 in the Code Reviewer's Compliance Report for the year 2012-2013 (pp 61-66 of that Report). APRA's present report is therefore in the nature of an update.

368. Shortly, liquidators have been appointed to four of the five companies in question. The one exceptional case involved a dispute over the applicable tariff, and APRA received payment of the licence fees so that there are no issues outstanding as between that company and APRA.
369. In the case of the four companies in liquidation, APRA has attended meetings of creditors and in two of the four cases is on the Creditors' Committee of Inspection.

### **Complaints by Members**

#### ***APRA/AMCOS Member Complaint 1***

370. A writer member entered a certain competition for 2013 conducted by APRA. The Director of Membership sent a generic email to all unsuccessful entrants thanking them for entering, for their support for the competition's beneficiary, and to notify them that their submission would not progress to the second stage of the competition.
371. The writer member sent a letter of complaint about the email and the adjudication in the competition that had taken place. She alleged that APRA and the competition contravened Australian Consumer Law and Discrimination Law. She asserted that the least that she was entitled to a refund of the \$200 entry fee.
372. APRA's General Counsel wrote to the member explaining the adjudication process and addressing her complaint. As a gesture of goodwill, APRA's General Counsel agreed to refund the entry fee.
373. An APRA Writer Services Team Leader spoke to the Writer Member, who thanked APRA for the time spent and gave details of her bank account to enable the refund to be credited to her account electronically.

374. APRA correctly regards the matter as having been resolved.

### ***APRA/AMCOS Member Complaint 2***

375. This writer member emailed a music publisher in relation to ownership of a work and payment of royalties in respect of it. When the writer member felt that his complaint was not being investigated by the music publisher, he forwarded it to APRA requesting action.

376. The writer member lodged a complaint with APRA's Complaints Officer, alleging that a staff member had refused to respond to his emails and telephone calls requesting that APRA investigate the writer member's claim against the music publisher.

377. APRA's Complaints Officer wrote to the complainant explaining that APRA was not in a position to assist with the writer member in relation to his dispute with various record companies and music publishers in the United States.

378. APRA also indicated that it would not engage in further correspondence in relation to the matter.

379. APRA correctly considers the matter to be resolved.

### ***APRA/AMCOS Member Complaint 3***

380. This complaint was APRA/AMCOS Member Complaint 5 in the Code Reviewer's Compliance Report for 2012-2013 (pp 52-53).

381. Therefore, APRA's present report on the matter is in the nature of an update.

382. In the report for 2012-2013, I observed (at [313] – [315]) that APRA's LPR Distribution Scheme had not been completed at the date of APRA's report to the Code Reviewer.
383. By way of update, APRA reports that the writer member emailed APRA's General Counsel requesting a list of licence values for all the venues in which the writer member had performed over the disputed period. In response, APRA's General Counsel contacted him and informed him that performance caps would apply to the relevant performances, and provided an estimate of his claim for the period.
384. The writer member responded providing letters of confirmation from certain venues and objecting to APRA's estimate. He sent a further email stating that he was not satisfied with APRA's accounting and noting that the estimation contained what he perceived to be gross inaccuracies.
385. After discussion between APRA's General Counsel and the complainant writer member, the former wrote a further email addressing the issues raised and inviting the complainant to meet with APRA's CEO, the Head of Member Services, and the Director of Membership, at APRA's State Office, so that APRA's LPR Distribution Policy could be explained to the writer member in person.
386. The following day the writer member replied accepting the invitation. In an email confirming the invitation and containing details of the meeting were sent, the receipt of which was acknowledged by the writer member.
387. Nonetheless, the writer member declined to attend the meeting and nothing further has been heard.
388. In these circumstances, APRA is justified in treating the complaint as "resolved".

**Report under Condition C2 of APRA's existing Authorisations A91187-A91194 and A91211 for the period 1 April 2013 to 31 March 2014**

389. There was included in the Accompanying Underlying Documents a copy of this Report by APRA to the ACCC.

**Copyright Agency Limited ("Copyright Agency") / Viscopy**

390. Copyright Agency/Viscopy report that during the Review Period they did not receive any "formal complaint" (a written complaint to their Complaints Officer under their formal complaints process).

391. However, at pages 19-23 of their report to the Code Reviewer on the Review Period, Copyright Agency/Viscopy set out in tabular form 35 matters that might be regarded as "complaints" as defined in "Australian Standard ISO10002-2006-Customer Satisfaction". That definition, contained in clause 3.2 of the Australian Standard, is: "expression of dissatisfaction made to an organisation, related to its products, or the complaints-handling process itself, where a response or resolution is explicitly or implicitly expected". I will set out here, verbatim, the table from Copyright Agency/Viscopy's report to the Code Reviewer.

NO	ISSUE	RESOLUTION
1	A Viscopy photographer member complained to a film-maker (in correspondence copied to Copyright Agency/Viscopy) that images licensed to the film-maker under a Viscopy licence were not correctly attributed by the licensee. The error arose because the Viscopy licence referred to the photographer's actual name rather than the professional name she prefers for attribution.	Copyright Agency/Viscopy apologised to the photographer and to the film-maker for providing the wrong name for attribution. Copyright Agency/Viscopy also updated its database to record the correct name for attribution in the future.  The film-maker informed Copyright Agency/Viscopy that it could amend the attribution. Copyright Agency/Viscopy relayed this to the photographer, who was satisfied with the outcome.

NO	ISSUE	RESOLUTION
2	An Indigenous art centre complained about the delay between notification by Copyright Agency/Viscopy to a Viscopy member that a payment was due, via the art centre, and the art centre's receipt of the payment for on-payment to the artist. The art centre also advised that Copyright Agency/Viscopy's records regarding which artists are represented by it and other art centres required updating.	Notification processes reviewed. Liaison with art centre to enable direct payments to artists, and to update database in relation to which artists are represented by which art centres.
3	Member complained about delay in distribution of licence fees for newspapers from digital press clipping licence scheme. Delay caused by transition to new systems.	Reasons for delay explained. Arrangements made for advance payment for amount due (about \$5,000) pending finalisation of distribution and payment process for the licence fees.
4	Delay between notification to authors by a foreign collecting society that payments had been allocated and payment to Copyright Agency for on-payment to the authors.	Payments were passed on to authors by Copyright Agency as soon as practicable after receipt of both licence fees and distribution information from foreign collecting society. Further request to foreign collecting society not to notify authors until funds transmitted to Copyright Agency.
5	Concern by member about lower allocations than in previous years for images accompanying text.	Adjustments in 2014 distributions. <sup>1</sup>
6	Payment to author of royalty allocated to author by foreign collecting society. Author had previously advised that she was not entitled to claim payment and it should be paid to publisher.	Update of claiming entitlements in database; transfer of payment to publisher.
7	Wording on documentation associated with payments regarding obligation to on-pay others entitled to a share of an allocated payment, particularly where an author is obliged to on-pay a portion of a payment to a publisher.	Review of communications regarding obligations to on-pay others.

<sup>1</sup> See page 11 above.

<b>NO</b>	<b>ISSUE</b>	<b>RESOLUTION</b>
<b>8</b>	Payments made to text authors for accompanying illustrations.	Communication with authors reinforcing obligations to on-pay any amounts due to others. Review of rightsholder information in database.
<b>9</b>	Payments to authors of amounts for on-payment to publishers after receipt of 'notified payment share' information that enables 'direct' payments to all rightsholders.	Explanation of the lag between receipt of notified payment share information and implementation into our systems. Future payments to be made in accordance with notified payment shares.
<b>10</b>	A payment relating to a work whose ownership was in dispute between an author and a publisher was erroneously paid to the publisher rather than held in suspense pending resolution of the dispute.	The publisher agreed to refund the erroneous payment to enable the allocation to be paid in accordance with the resolution of the dispute between the parties.
<b>11</b>	Level of communication by Copyright Agency to members regarding LearningField (a subscription service enabling online access to portions of a variety of school textbooks, developed by Copyright Agency and a number of publishers).	Information to members, including on Copyright Agency's website and in the monthly email bulletin eNews.
<b>12</b>	Concerns with new online member accounts system in relation to viewing works and adding new works.	Assistance to member with using the functionality of the online member accounts system.
<b>13</b>	Delay in providing information to a member relevant to a dispute over entitlement to claim allocations for certain works.	Information provided, and dispute now resolved.
<b>14</b>	Concern about Copyright Agency's administrative costs, including staff salaries, and the proportion of licence fees paid to authors.	Explanation of the amount and basis of administrative costs, including staff salaries, and the basis and proportion of licence fees paid to authors directly and indirectly (e.g. via publishers).
<b>15</b>	Member claimed licensee had copied his work in its entirety, and that he had not been allocated payment by Copyright Agency.	Member advised to contact licensee directly if he believed the licensee has copied in excess of the proportion allowed by the licence. Member also advised of opportunity to apply for an ex gratia claim if he has evidence of copying under the licence not recorded in a survey.



NO	ISSUE	RESOLUTION
16	Author felt she had not received adequate information about notified payment shares and direct payments. She was also having difficulty getting confirmation of reversion of rights from her publisher.	Information about notified payment shares provided.
17	Publisher member concerned about change in practice regarding registration of 'notified payment shares' in our systems where publisher has contractual obligation to on-pay share of the payment.	Reasons for current practice explained, and that past practice for this publisher had resulted from expectation that payment share information was forthcoming.
18	Beneficiary of artist concerned that her share of resale royalty for recent resale was small. There were 15 other beneficiaries, and the total resale royalty received from the sale was not disclosed on the documentation to the recipient.	Review of documentation provided to recipients of resale royalties.
19	Concern by author's agent about share of licence fees being paid to authors, and lack of information about share paid to publishers.	Copyright Agency distribution policy, privacy policy and disclosure policy and practices explained.
20	Member concerned her understanding from a communication from Copyright Agency was that she could no longer receive payments by cheque.	Member advised that she could still receive payments by cheque.
21	Member created a new online account rather than logging in to the one already created for him, so payments allocated to him did not link to the new account.	Payments aligned with online account.
22	Member wanted Copyright Agency to use the member's website usage data to allocate licence fees.	Explained requirements for application for ex gratia payment, including evidence that content was used in reliance on the statutory licence.
23	Copyright Agency mistakenly made a payment to another (journalist) member with the same name.	Payment corrected. Past allocations for member checked.

NO	ISSUE	RESOLUTION
24	Publisher member concerned about decreasing allocations.	Various factors affecting allocations explained. Reasons for variations in allocations checked.
25	Authors' agent concerned about Copyright Agency payments to publisher after rights reverted to author under publishing contract.	Copyright Agency's distribution policies and practices explained. Payments checked.
26	Licensee wrote to Code Reviewer, in connection with triennial review of the text of the Code, seeking amendments to increase transparency obligations, including in relation to distribution of licence fees.	Code Reviewer has sought, and is considering, submissions on the issues raised by the licensee.
27	Concerns raised by PR agencies about letters from Copyright Agency on behalf of its members relating to unlicensed publication of newspaper articles on the agencies' websites.	Letters drafted by members' legal adviser, with a view to future authorised publication of newspaper articles through licensing arrangements. Copyright Agency has since entered into a three-year agreement with the Public Relations Institute of Australia (PRIA) regarding PRIA's members' use of copyright content. <sup>2</sup>
28	A poet complained to a recipient of a grant from Copyright Agency's Cultural Fund that he had not authorised the recipient's performance of his poem. The recipient, which runs a program of performances of poetry in schools, sought assistance from Copyright Agency.	Copyright Agency provided assistance to the recipient, including additional funds for licence fees to poets whose works they wanted to perform.
29	Applicant for an internship program funded by the Cultural Fund raised concern about the grant recipient charging a \$15 application fee.	Application fee not inconsistent with grant conditions, and accorded with industry practice for internships. The fee covered the administrative costs of evaluating the many applications, so that the Cultural Fund grant could be dedicated to the costs of the successful interns.
30	Licensee used 'new licensee' rather than 'renewal' process to renew an annual licence. The new licence was not effectively cancelled by Copyright	Cancellation of new licence and apology.

<sup>2</sup> [bandt.com.au/media/pria-signs-on-with-copyright-agency](http://bandt.com.au/media/pria-signs-on-with-copyright-agency);  
[pria.com.au/membercentre/contentaccess-licence-for-pr-agencies](http://pria.com.au/membercentre/contentaccess-licence-for-pr-agencies)

NO	ISSUE	RESOLUTION
	Agency, and the licensee was invoiced twice, with automated follow up communications from the finance department.	
31	A writer member queried the figures relating to operating costs on a remittance advice. While the figures on the remittance advice relevant to the writer's tax return were correct, the formula used to calculate the stated operating costs for the scheme included an error that resulted in an inflated calculation of operating costs and gross licence fees.	The correct figures were provided to the member, and the formula corrected. We have since published, on our website, the operating costs for each distribution in 2012–13 and 2013–14, and will provide a link to these pages in the next monthly eNews to members.
32	Payment of notified payment shares made to incorrect recipients due to data entry error.	Payment rectified; apology to affected members; data entry systems checked and rectified.
33	An artist joined Viscopy so Viscopy could negotiate a licence with a government department. The licence was issued in April 2013 and the artist was told by to expect payment by August 2013. The payment was not received by Copyright Agency from the licensee as expected, which required numerous follow up communications. The artist was upset about the delay in payment and her impression that Copyright Agency was not following up sufficiently. The licensee thought they had made payment via a fax in April 2013 and were upset that the payment had not been received.	The payment was received by Copyright Agency in late August 2013, and paid immediately to the artist, without any deduction for administration. Copyright Agency staff explained the debt recovery processes and distribution schedule to the artist. Both the artist and the licensee were satisfied with the outcome.
34	A publisher member who received a communication about adjustments for 2013 in distributions for 2014 wrote a letter (14 July 2014) querying the allocation to them for 2014.	Copyright Agency responded in writing, three days after receipt of the member's letter, providing further information and explanation for the allocation in 2014 compared to previous years.
35	A long-term author member wrote a letter (dated 11 July 2014), addressed to the CEO, raising concerns about a notification of payment for 2014 which was less than he was expecting. He also	Copyright Agency has communicated information to the member regarding allocations to him, including the effects of adjustments for 2013. Copyright Agency's CEO will respond to the member on the other issues raised after

NO	ISSUE	RESOLUTION
	raised concerns about developments at Copyright Agency in relation to treatment of authors compared to publishers.	he returns from leave on 28 July 2014.

392. On their face, some of these do not seem to be “complaints” for the purposes of the Code: see, for example, numbers 20, 21 and 22. In response to a request by me, Copyright Agency/Viscopy supplied to me the documents that underlay the five most significant of these complaints: Numbers 2, 3, 4, 15 and 32, on which I report as follows.

**Copyright Agency/Viscopy Complaint No 2 in the Table in paragraph 391 of this Report**

393. The problem has been an ongoing one. In the particular case, Viscopy informed the artist that payment had been made to the Art Centre on 14 March, but in fact it was not made into the Art Centre’s bank account until 21 March.
394. This provoked numerous complaining telephone calls by the artist to the Art Centre which was accused of holding back the money.

*Code Reviewer’s Comments (if, and to the extent, called for)*

395. The procedure of Viscopy’s making payment directly to artists, which Viscopy and the Art Centre are working towards, seems to provide the solution. Of course, Viscopy would have to be sure that it was paying into the bank account of the person entitled.

**Copyright Agency/Viscopy Complaint No 3 in the Table in paragraph 391 of this Report**

396. A newspaper company member of Copyright Agency complained on 6 May, 9 May and 12 May 2014 about non-receipt of any payments since May 2013, about diminution in the amount of payments in recent years, and about a vague assurance that had been given by a staff member of Copyright Agency that the newspaper company should receive a payment by 30 June 2014.

397. Payment of \$5,696.60 was not made until October 2014.

*Code Reviewer's Comments (if, and to the extent, called for)*

398. Although internal records of Copyright Agency record that the complainant was "very pleased with the outcome", the delay is not well explained. Apparently, "due to technical issues [which] were impacting [Copyright Agency's] major distributions, schools and universities, [Copyright Agency had] had to place other distributions on hold".

399. Understandably, the complainant was not satisfied with this explanation.

400. The explanation would not satisfy members falling outside "schools and universities".

401. Apparently the particular complainant was eventually satisfied. Copyright Agency should ensure that the problem does not recur.

**Copyright Agency/Viscopy Complaint No 4 in the Table in paragraph 391 of this Report**

402. In a way this is the converse of Copyright Agency/Viscopy Complaint No 2 which was noted at [393] - [395] above. In this case, it was Copyright Agency itself which bore the role borne by the Art Centre in that Complaint.

403. The United Kingdom Authors' Licensing and Collecting Society Ltd advised an Australian author that it held money to which he was entitled. He became a member of Copyright Agency which pursued recovery of the payment for him.

*Code Reviewer's Comments (if, and to the extent, called for)*

404. I do not detect any complaint by the author against Copyright Agency and do not see any deficiency in its efforts to recover the payment for its member, although there was disappointing delay on the part of the overseas collecting society.

**Copyright Agency/Viscopy Complaint No 15 in the Table in paragraph 391 of this Report**

405. A poet complained that his poems had been copied in circumstances that, according to him, should have led to Copyright Agency's detecting the copying.

406. Copyright Agency advised him that it could make an ex gratia payment to him, and asked him to establish the extent of the copying. This prompted a further complaint by the poet.

407. However, staff of Copyright Agency assisted him to establish the extent of the copying, and the ex gratia payment was paid, which prompted the poet

to write “I’m, naturally, very pleased with the outcome. It comes at the best possible time too! Thank you ever so much for your assistance”.

*Code Reviewer’s Comments (if, and to the extent, called for)*

408. What began as a complaint ended as the very opposite, due to the assistance provided by Copyright Agency’s staff.

### **Copyright Agency/Viscopy Complaint No 32 in the Table in paragraph 391 of this Report**

409. A well-known publisher of scholarly works complained that Copyright Agency was not paying it its share of royalties collected by Copyright Agency (and also that Copyright Agency had been making payments to some individuals other than the publisher’s authors according to their entitlements).

*Code Reviewer’s Comments (if, and to the extent, called for)*

410. The factual background is complex. Copyright Agency contended that its attribution of individual chapters to Copyright Agency members had not been erroneous. However, Copyright Agency confirmed to the publisher that the source work was now registered as 100% “[the publisher] controlled in [Copyright Agency’s] database and all further allocations for this ISBN will go directly to [the publisher]”.

## **Audio-Visual Copyright Society Limited (“Screenrights”)**

### **General**

411. Screenrights reports that during the Review Period it updated its ADR policy to handle multiple claims in respect of a single royalty, in order to facilitate

better the resolution of the competing claims. The changes took effect on 27 November 2013.

- 412. The policy now stipulates that multiple claims to royalties the subject of an upcoming 30 June deadline must be resolved by 15 June. This allows time for the outcome of any multiple claim resolution to be acted upon prior to the payment run in the last week of June.
- 413. As the administrative time and cost involved in accepting and reviewing submissions and supporting documents from the parties to a multiple claim is significant, the ADR policy now includes a minimum threshold of \$1,000 for internal determination of a multiple claim.
- 414. The ADR policy now provides an additional resolution pathway to members where the amount at issue is low and the royalties in question are the subject of an upcoming deadline. In addition to resolution by agreement or withdrawal of a claim, the policy now sets out a pathway where one party to the conflict is unresponsive.
- 415. Under the updated policy, a member can provide Screenrights with evidence that the member has attempted to settle the multiple claim without success due to unresponsiveness of the other party. Subject to Screenrights' satisfaction that the relevant procedures have been followed, the updated ADR policy allows for payment to be made to the party who has been seeking a solution.
- 416. Under the updated policy, low value multiple claims are those for less than \$1,000.
- 417. Under the ADR policy, internal determination is available for multiple claims which meet the minimum threshold of \$1,000 but are less than \$10,000.



418. As under the previous ADR policy, mediation and expert adjudication continue to be provided as options for the resolution of multiple claims to royalties exceeding \$10,000 in amount.
419. As registrations can be received up until 30 April for royalties the subject of the imminent 30 June deadline, it is possible that new multiple claims will be identified after 30 April. In order to account for this, the policy provided for an expedited internal determination process.
420. A copy of the current ADR policy for multiple claims was provided to the Code Reviewer as Annexure C to Screenrights' report.
421. In 2013-2014, 2,906 conflicts were brought to the attention of Screenrights, of which 2,092 are recorded as having been resolved.

## **Phonographic Performance Company of Australia Ltd ("PPCA")**

### **General**

422. During the Review Period, PPCA received nine complaints, of which seven related to public performance licences, one was from an artist having difficulty accessing an online form; and one was a report in respect of venues that appeared to be using music without a PPCA licence. I deal with these nine complaints below.
423. PPCA states that it is committed to "equitably handling and resolving complaints". It claims that all employees are provided with information on its established policy and are encouraged to ask questions and to review related processes regularly. The Complaints and Disputes Policy is available on PPCA's website, its internal intranet site, and in hard copy form. As a hard copy document, the Policy is provided to new employees as part of their induction package.

424. During the Review Period a “Complaints Officer” was appointed to oversee the complaints process on behalf of PPCA. The Complaints Officer has access to all PPCA employees in order to enable him to address properly any issues raised.
425. The Policy sets out guidelines to ensure that any complaint is handled in a fair and reasonable manner. Following the 2007 ACCC Authorisation Determination, the Policy was amended to incorporate mediation, neutral evaluation and conciliation options.
426. The Policy is readily available via the PPCA website, and hard copies are provided upon request. The website is widely publicised. Staff members presenting on PPCA to licensee and licensor groups, routinely refer to the Code and advise people attending of its existence and operation.
427. All staff are provided with an initial hard copy of the Policy, which is annexed and forms part of, their employment contract. The staff are made aware that further copies can be ascertained from PPCA’s website or intranet site, from their supervisor or from the Complaints Officer.
428. The Policy is written in plain language and sets out the means by which complaints may be lodged and how they are handled. Staff are trained, according to PPCA’s report to the Code Reviewer, to be able to point consumers to the Policy.
429. The Policy specifically states that assistance is available should anyone need help in describing or lodging a complaint, and the Policy encourages interested parties to contact the Complaints Officer.
430. The Policy sets out a timeframe and manner of response. PPCA makes no charge for the handling of complaints under the Policy, but if the manner is subsequently referred for independent resolution, the costs will be shared

equally between PPCA and the other party. PPCA claims that it has sought to minimise the cost of any such procedure.

431. The Policy acknowledges that action may have to be taken to rectify any mistake that PPCA may have made.

432. All complaints are recorded in a Complaints Register database and are reviewed for identification and recurring issues. Individual complaints, and the process for handling them, are both reviewed annually.

### **PPCA Complaint 1**

433. PPCA was contacted by a group fitness instructor who conducted classes in several gyms that paid the PPCA licence fee. She said that she had been offered the opportunity to “fill” some classes at a gym that did not hold a licence from PPCA. She sought a licence as a freelance instructor. She said that this was a major issue for her as she could not afford to turn down the work, but also could not afford to “re-buy the PPCA free version of the music either”.

434. PPCA advised her that PPCA issued licences to independent fitness instructors only when they were conducting fitness classes on premises other than a gym or fitness centre, eg a church, scout hall or community hall. PPCA advised that if the fitness instructor wished to use protected sound recordings, eg CDs, tapes, MP3s, iPods, in a registered gym or fitness centre, the gym or fitness centre would have to hold a licence, not the complainant.

435. The complainant advised that she wished to make a formal complaint about PPCA’s policy. She made the point that she wished to support artists through PPCA and was quite happy to pay the fee and found it astounding that PPCA was, in effect, preventing her from doing so, with the result that artists would miss out on royalties. She said that she had colleagues who

chose not to conduct classes in unlicensed gyms, but that when one worked and lived regionally, as she did, that course was not an option.

*Code Reviewer's Comments (if, and to the extent, called for)*

436. It seemed to me that the position taken by PPCA called for further explanation which I sought. PPCA explained its policy as follows:

*"At present PPCA does not make available to individual class operators a licence to use sound recordings in fitness classes conducted in Fitness Centres. PPCA's position is that the relevant licence should be established by the Centre operator in these circumstances*

*This is because of the complexities involved in monitoring and reviewing compliance, particularly where centres may have a variety of different instructors leading classes in their venues, and that instructors may also conduct classes across a range of venues. PPCA believes that there is no barrier to a Centre taking out a licence, particularly as there is no annual minimum fee attached to the relevant tariff and a centre could in fact licence a single class per year for the very modest sum of \$2.50.*

*Based on information that became available to PPCA during its Tribunal proceedings in relation to tariffs for this type of use, PPCA is aware that Centres have the capacity to establish policies for their venues, and dictate the type of music their on-site instructors may utilise in the classes they conduct. As such policy decisions are generally determined by the Centre operator PPCA believes it is reasonable for the operator to take out the necessary licences.*

*PPCA continues to monitor the situation, and periodically reviews the scope of its public performance licences."*

The difficulty of supervision and monitoring seems to be the problem associated with the issuing of licences to individual gym instructors. In the particular case, the solution is for the gym to pay \$2.50 for an annual licence for the complainant's classes.

## **PPCA Complaint 2**

437. The operator of a café complained that the PPCA licence in respect of the café had been cancelled some two months earlier, but that invoices were still being received from PPCA.

438. PPCA reviewed the account and saw that a request for cancellation had indeed been received, but had not been acted upon.
439. PPCA immediately cancelled the licence retrospectively with a resulting credit of \$71.40 which was repaid to the licensee.

### **PPCA Complaint 3**

440. A recording artist was attempting to complete the "Artist Registration Form" on the PPCA website, but the form would not allow him to insert his international telephone number. He complained about this by email, and again by telephone at 9 am the following morning before PPCA had had the chance to respond to the email complaint.
441. PPCA's Distribution Staff established that the online form did indeed not accept spaces in the telephone field. The staff assisted the complainant to complete and submit the Registration Form, and PPCA asked its web developers to amend the online form so that it would accept spaces in that field, in line with other online forms.

### **PPCA Complaint 4**

442. A person complained that a particular venue appeared to be operating as a nightclub or bar, and using music video images displayed on a large screen in association with dance activity. Associated with this activity was a dance floor and DJ box.
443. PPCA pursued the matter with the owners of the business who refused to take out a licence. The issue has been referred to PPCA's legal department.

## **PPCA Complaint 5**

444. A restaurant operator notified PPCA on 16 August 2013 that as from 31 August 2013 music would no longer be played in the restaurant. PPCA acted on the notification promptly on 20 August 2013 and an email advising of the reassessment of licence fees was sent to the restaurant operator on the same day.
445. Notwithstanding this, the restaurant operator contacted PPCA on 28 August 2013 complaining that no response had been received in relation to the request for cancellation of the licence. The complainant also advised that a final payment of licence fees was being made by EFT.
446. PPCA responded by outlining the action that it had taken as described above, that the payment by EFT had been received and applied overnight, and that the licence was cancelled. A statement showing a nil balance was forwarded.

*Code Reviewer's Comments (if, and to the extent, called for)*

447. On these facts, PPCA's conduct is beyond criticism.

## **PPCA Complaint 6**

448. A restaurant operator complained over the increase in the quarterly licence fees applicable to the restaurant. The restaurant operator complained, in particular, that the amount of the licence fee was based on seating capacity, whereas in fact the average number of patrons per night was far less.
449. PPCA replied explaining the reason for the increase. The increase was due to PPCA's having finally obtained accurate information on the licensee's prices for a main meal and days of operation (a default tariff had been

applied in the past in the absence of that information). PPCA explained that the increase was due to a “phased-in rise in the seating capacity cap”.

450. PPCA advised of other options open to the complainant to reduce the tariff (these included playing radio only, using recorded music on certain days of the week only, and turning the music off).

451. Subsequently the complainant contacted PPCA enquiring about the tariff applicable if certain changes were made to the way in which recorded music was used at the venue. PPCA provided the information requested and eventually the complainant advised of changes to music use in various areas of the venue.

*Code Reviewer's Comments (if, and to the extent, called for)*

452. PPCA's responses to the complainant's correspondence was prompt and detailed. The complaint was really one about tariff levels and the basis of them. I do not think that a breach of the Code was involved.

**PPCA Complaint 7**

453. A licensee in respect of a restaurant complained about the way in which PPCA calculated its Tariff R in respect of Restaurants & Cafes. In particular, it was complained that it was unfair that the rate of tariff was based on an average main meal price.

454. PPCA replied, explaining that the tariff was established after extensive consultation with key industry groups. PPCA also outlined options available to the complainant to reduce the cost of Public Performance Licence.

455. The correspondence left the complainant still having a sense of grievance over the fact that the amount of the licence fee was based on main meal prices.

*Code Reviewer's Comments (if, and to the extent, called for)*

456. I repeat my comment in relation to PPCA Complaint 6.

**PPCA Complaint 8**

457. A licensee complained that a PPCA staff member had telephoned and spoken to an employee about an outstanding account, and also that the complainant had written to PPCA advising of a change in mailing address which had not been acted upon.

458. PPCA could find no record of having received correspondence as to the change of postal address, but immediately updated the address to that supplied by the complainant.

459. PPCA's records did indeed show that Licensing Officers had tried to contact the complainant about the outstanding account but had received no response.

460. PPCA apologised to the licensee for having contacted the licensee's employee by telephone, and made a note against the account indicating that contact was, instead, to be made via the licensee's Head Office.

461. About two weeks later, PPCA received a second letter of complaint in very similar terms. PPCA again apologised and asked whether the complainant had been again contacted, as PPCA had no record of this having occurred since implementation of the steps outlined in its initial response.

462. The complainant thanked PPCA for its response and advised that payment of the outstanding invoices had been arranged. The complainant did not respond to PPCA's query as to whether a second email complaint was an inadvertent re-sending of the original email.



*Code Reviewer's Comments (if, and to the extent, called for)*

463. The original email was dated 27 March 2014, PPCA's response was dated 4 April 2014, and the second email complaint was dated 16 April 2014. The lack of response from the licensee to PPCA's query may reasonably suggest that PPCA's email of 4 April 2014 had been overlooked and that there had not been any further telephone contact from PPCA to an employee of the licensee of the kind that gave rise to the original complaint.

**PPCA Complaint 9**

464. A licensee complained that he had been receiving correspondence from PPCA concerning an outstanding account after he had advised PPCA that he was no longer operating his business as a DJ. He complained that he had received from PPCA "many threatening letters" and that he was now being "threatened by a debt recovery service" on behalf of PPCA.
465. When the complainant had originally spoken to one of PPCA's Licensing Officers, he had been asked to confirm the cancellation in writing. It had been agreed at that time that he would respond to an email from the Licensing Officer setting out details of the conversation and confirming the cancellation. Unfortunately emails bounced back from both of the email addresses that PPCA had on file for the licensee, and PPCA had been unable to reach the complainant by telephone.
466. PPCA apologised for the inconvenience caused, and immediately cancelled the licence.

**Cessation of Internet Simulcasting by Regional Radio Stations**

467. In addition to the nine complaints referred to above, PPCA received 226 emails to its "Complaints" email address regarding the cessation of internet simulcasting by regional radio stations.

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

### **General**

468. AWGACS reports, as it did last year, that it developed its "Complaints Handling Procedure" and its "Dispute Resolution Procedure" in line with the requirements of the Code, and requirements of CISAC (see [33] above) and the Australian Standard AS4269 – 1995 ("Complaints Handling"). Those documents are available to members upon request and at any time via the AWGACS section of the Australian Writers' Guild website.
469. During the Review Period, AWGACS received no requests from members for these documents and no complaints from members or affiliates. The Complaints Handling procedures of AWGACS were reviewed by CISAC during the Review Period.

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

470. There were no complaints or disputes during the Review Period reported by ASDACS.

## **OTHER MATTERS INCLUDING SUBMISSIONS MADE DIRECTLY TO THE CODE REVIEWER**

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### **Complaint by Screen Producers Australia**

471. In my Report for the period 2012-2013 at [473]-[487] I dealt with a longstanding dispute between AWGACS and Screenrights. I will not repeat here my description of the dispute contained in that Report.

472. At [486] I said that the "complaint" then made by AWGACS to Screenrights was "not one of non-compliance with the Code but one of legal rights and obligations". At [487] I stated that if the parties could not resolve their dispute, they should consider engaging a process of alternative dispute resolution, and that if that did not bring about a settlement, unfortunately there would be no alternative but to resort to litigation.
473. By a letter dated 7 August 2014, Screen Producers Australia (SPA), which is closely associated with Screenrights, now complains that AWGACS has breached certain provisions of the Code. The complaint is an entirely legitimate and proper attempt to have me reconsider my conclusion last year that the dispute was one concerning the respective rights and obligations of Screenrights and AWGACS, and not one of breach of the Code.
474. With SPA's consent, a copy of its letter was provided to AWGACS.
475. AWGACS has informed me that the parties have been attempting to reach agreement on a mediation process, failing which litigation would be necessary.
476. I think it proper to allow that process to run its course, rather than to address SPA's complaint by reference to the provisions of the Code in this Report. It would create an awkward situation for the parties, and certainly one inimical to mediation, if I were to report on the dispute in terms of the Code obligations, while mediation or litigation is under way or is in contemplation.
477. There is a further matter that should be mentioned. In the final paragraph of SPA's letter, SPA asks that I "investigate" the "potential compliance breaches" outlined in the letter, and that if I find them to "have merit", I should instruct AWGACS to desist engaging in the conduct complained of.
478. But I have no power to instruct a collecting society that has agreed to abide

by the Code to do (or not to do) anything. SPA's request that I issue an instruction to cease and desist may suggest (correctly in my view) that the present dispute is in substance one over legal rights and obligations that are appropriate to be resolved at mediation or, if that fails, by litigation.

479. SPA seems to recognise this by offering in its letter "to participate in any negotiations or discussions between AWGACS and Screenrights to address these issues or broader questions about the operation of the current system."
480. Again, I would encourage the parties to this long running dispute to attempt to resolve it by mediation.
481. The best course for me to follow seems to be to keep SPA's letter on file to be dealt with in next year's Compliance Report if the dispute has not, in the meanwhile, resolved in one way or another.

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 under 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 30th day of November 2014

A handwritten signature in black ink, appearing to read 'K E Lindgren', with a long horizontal flourish extending to the right.

The Hon K E Lindgren, AM, QC  
Code Reviewer

## APPENDIX TO REPORT

### Review of Code Compliance For the Year to 30 June 2014

**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 2014, 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 31 May 2014 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](mailto:codereviewer@gmail.com)

**COPYRIGHT COLLECTING SOCIETIES  
CODE OF CONDUCT  
CALL FOR SUBMISSIONS 2014**

Each of the copyright 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 ("Copyright Agency"), Viscopy Limited ("Viscopy"), Audio-Visual Copyright Society Limited ("Screenrights"), Australian Writers' Guild Authorship Collecting Society Limited ("AWGACS") and Australian Screen Directors Authorship Collecting Society Limited ("ASDACS"), subscribes to a code of conduct. In its original form, the Code came into effect in July 2002.

A copy of the Code is available on each Society's website and can be downloaded or, if requested, a copy can be supplied by post.

Compliance by participating collecting societies with the Code's standards of conduct is the subject of an independent annual review. The Code Reviewer for this purpose is former Federal Court judge and former President of the Copyright Tribunal of Australia, The Hon Kevin Lindgren AM, QC. He is currently reviewing the Societies' compliance with the Code during the period 1 July 2013 to 30 June 2014.

The Code allows for interested parties to make submissions to the Code Reviewer concerning a collecting society's compliance or non-compliance with the Code. Accordingly, should you wish to make such a submission to Dr Lindgren, please do so in writing to the following address by no later than **31 July 2014**.

It would assist if your submission referred to any particular provision of the Code with which you contend that a collecting society has not complied.

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

Email: [codereviewer@gmail.com](mailto:codereviewer@gmail.com)

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