



Audio-Visual Copyright Society Ltd  
trading as Screenrights

# Memorandum and Articles of Association

A Company Limited by Guarantee  
**ABN 76 003 912 310**

Approved 1996 AGM  
Last modified by the Society at AGM  
on 1 November 2018

**screenrights**

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# Corporations Law

## Memorandum of Association of Audio-Visual Copyright Society Limited ABN 76 003 912 310

### A Company Limited by Guarantee

1. The name of the Company is "Audio-Visual Copyright Society Limited" (hereafter referred to as "the Society").
2. Subject to the Corporations Act 2001 the Society has the rights, the powers and privileges of a natural person.
3. The income and property of the Society, whencesoever derived, shall be applied solely towards the promotion of the objects of the Society as set forth in this Memorandum of Association; and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise, to the members of the Society, provided that nothing herein contained shall prevent the payment in good faith of remuneration to any officers or servants of the Society or to any member of the Society in return for any services actually rendered to the Society or expenses properly incurred on its behalf or for goods supplied in the ordinary and usual way of business nor prevent the payment of interest at a rate not exceeding the rate for the time being fixed for the purpose of this paragraph by the Board of directors of the Society on money borrowed from any member of the Society or reasonable and proper rent for premises demised or let by any member to the Society.
4. The liability of the members is limited.
5. Every member of the Society undertakes to contribute to the property of the Society, in the event of the same being wound up while he/she is a member, or within one year after he/she ceased to be a member, for payment of the debts and liabilities of the Society (contracted before he/she ceases to be a member) and of the costs, charges, and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding Ten Dollars (\$10.00).
6. If upon winding up or dissolution of the Society there remains after the satisfaction of all its debts and liabilities any property whatsoever and same shall not be paid to or distributed among the members of the Society but shall be given or transferred to some other association, company, institution or body having objects similar to the objects of the Society and which shall prohibit the distribution of its income and property among its members to an extent at least as great as is imposed on the Society under or by virtue of clause 3 hereof. Such other Society, company, institution or body is to be determined by the members of the Society at or before the time of dissolution and in default thereof by application to the Supreme Court of the State of New South Wales for determination and if and so far as effect cannot be given to the aforesaid provisions then to some charitable object determined by the members.
7. True accounts shall be kept of the sums of money received and expended by the Society, and the manner in respect of which such receipt and expenditure takes place, and of the property, credits and liability of the Society; and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed in accordance with the Articles of Association for the time being in force shall be open to the inspection of the members. Once at least in every year, the accounts of the Society shall be examined by one or more properly qualified Auditor or Auditors who shall report to the members in accordance with the provisions of the Corporations Act 2001.

## Objects

- 7A. The objects of the Society are to:
- (a) operate a collecting society for the purposes of and in accordance with the provisions of Division 3 of Part VA and Division 6 of Part VB of the Copyright Act 1968 and any other scheme under the Copyright Act 1968 as amended from time to time or any legislation or provision enacted in its place, in respect of which the Society is declared a collecting society; and
  - (b) operate as a collecting society in respect of any scheme other than the scheme established under Parts VA and VB of the Copyright Act 1968, pursuant to which the Society holds on trust, royalties collected for copyright owners who have authorised the Society to act as their agent in administering their rights.

## Manner of Alteration

8. Notwithstanding anything in the Society's Articles of Association no alteration of the Articles of Association, (except an alteration that does not relate in any way to the operation of Part VA and/or Part VB of the Copyright Act 1968) shall come into effect unless a copy of the Articles of Association as so altered, together with a statement setting out the effect of the alteration and the reasons why it was made has been sent to the Attorney-General for the Commonwealth of Australia.

## Subscribers

9. The full names and addresses of the subscribers to the Memorandum of Association of the Society are as follows:

Susan Jill Bridge	Solicitor	82 Alfred Street, Milsons Point NSW 2061
Elizabeth Nield	Managing Director	5/2 Holt Street, Double Bay NSW 2028
Allison Catherine Rowe	Copyright Officer	54 Prospect Road, Summer Hill NSW 2130
David Geoffrey Watts	Solicitor	12 Broughton Road, Strathfield NSW 2135
Tracey Geraldine Meredith	Solicitor	15 Market Street, Randwick NSW 2031
Richard Raftos	Literary Agent	16 Dudley Street, Paddington NSW 2021

# Corporations Law

## Articles of Association of Audio-Visual Copyright Society Limited (ABN 76 003 912 310)

### A Company Limited by Guarantee

#### 1. Preliminary

##### Definitions

1.1 The following words have these meanings in these Articles unless the contrary intention appears.

**Accounting Period** means a period determined by the Directors for accounting, distribution and reporting purposes, that does not extend beyond 30 June in any calendar year.

**Act means the Copyright Act 1968**, as amended from time to time or any legislation or provision enacted in its place and includes any regulations and instruments under it.

**Agent** means the person entitled to exercise all the rights of the Copyright Owner or Registered Title Owner but excludes the Society.

**Articles** means these articles of association as amended from time to time and a reference to a provision of these Articles is a reference to that provision as amended from time to time.

**Auditor** means the auditor for the time being of the Society.

**Chairperson** means the person appointed under Article 4.8 or Article 10.7 as the case may be.

**Copyright Owner** means a person who is the legal or beneficial owner of copyright in a Copyright Work.

**Copyright Work** means a protected subject matter in which copyright subsists in Australia or elsewhere.

**Direct Vote** means a vote referred to in Article 5.9.

**Director** means a director of the Society, and where appropriate includes an Alternate Director.

**Directors** means all or some of the Directors acting as a board.

**Distributable Amount** means that proportion of either or both of the Statutory Collection or Voluntary Collection that is available for distribution to Qualified Persons, in accordance with these Articles.

**Distribution Period** means the period during which the Society holds a Potential Share on trust in the Statutory Trust Fund or the Voluntary Trust Fund in accordance with Article 16.6.

**Member** means a member of the Society.

**Memorandum** means the memorandum of association of the Society as amended from time to time.

**Officer** has the same meaning as in section 9.

**Potential Share** means that proportion of the Distributable Amount accruing to a Qualified Person, in accordance with these Articles.

**Qualified Person** means a Copyright Owner or a Registered Title Owner.

**Registered Office** means the registered office for the time being of the Society.

**Registered Title** means a Copyright Work registered with the Society by a Member for the purpose of the Voluntary Scheme.

**Registered Title Owner** means a person who is the legal or beneficial owner of any of the Registered Title Rights.

**Registered Title Rights** means in respect of a Registered Title the exclusive right to do or authorise any or all of the following:

- (a) any act comprised in the copyright whether existing at the date of these Articles or otherwise; or
- (b) the right to collect royalties from collecting agencies outside Australia which distribute royalties collected within their respective territories; but does not include the right to copy (including any reproduction) under the Statutory Scheme.

**Related Body Corporate** has the same meaning as in section 50.

**Representative** means a representative appointed by a Member under section 250D.

**Seal** means the common seal of the Society and any official seal of the Society.

**Secretary** means a person appointed as a secretary of the Society, and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Society.

**Society** means the Audio-Visual Copyright Society Limited.

**Society Competing Claims Fund** means the fund operated by the Society for the purposes of Articles 16.8 – 16.11.

**Society Reserve Fund** means a fund established and operated by the Society for the purpose of Articles 16.2(c) and 16.4(c).

**Statutory Collection** means in relation to each Accounting Period, the amount of equitable remuneration received by the Society in accordance with the Statutory Scheme (and any interest earned from investment of the equitable remuneration) that is attributable to an Accounting Period.

**Statutory Scheme** means the scheme in Australia under Part VA and Part VB of the Act, under which the Society has been authorised to collect equitable remuneration on behalf of Copyright Owners, and to hold on trust and distribute the amounts collected to the relevant Copyright Owners, and any other scheme under the Act in respect of which the Society is declared to be the relevant collecting society.

**Statutory Trust Fund** means the fund operated by the Society for purposes of holding the Statutory Collection on trust for Qualified Persons.

**Voluntary Collection** means in relation to each Accounting Period, the royalties received by the Society under the Voluntary Scheme (and any interest earned from investment of royalties received) that is attributable to an Accounting Period.

**Voluntary Scheme** means any scheme other than the Statutory Scheme, pursuant to which the Society holds on trust royalties collected for Registered Title Owners who have authorised the Society to administer the Registered Title Rights.

**Voluntary Trust Fund** means the fund operated by the Society for purposes including holding the Voluntary Collection on trust for a distribution to Qualified Persons.

## Interpretation

1.2 In these Articles unless the contrary intention appears:

- (a) the word person includes a firm, a body corporate, an unincorporated association or an authority;
- (b) the singular includes the plural and vice versa;
- (c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (d) a reference to writing includes typewriting, printing, telex, telegram, facsimile, electronic mail, other electronic transmission and other modes of representing or reproducing words in a visible form;

**Interpretation continued**

- (e) a reference to an Article is a reference to one of the Articles;
  - (f) a reference to a section is a reference to a section of the Corporations Act 2001; and
  - (g) a reference to the Corporations Act 2001 or to a provision of the Corporations Act 2001, means the Corporations Act 2001 or that provision as amended from time to time, or any statute, code or provision enacted in its place, whether by New South Wales or the Commonwealth of Australia, and includes regulations and other instruments under it.
- 1.3 Headings are inserted for convenience and do not affect the interpretation of these Articles.
- 1.4 Powers conferred on the Society, the Directors, a committee of Directors, a Director or a Member may be exercised at any time and from time to time.

**2. Membership****Becoming a Member**

- 2.1 Subject to Article 2.2, a person is eligible for admission as a Member if that person is:
- (a) A Copyright Owner or their exclusive licensee;
  - (b) A Registered Title Owner or their exclusive licensee;
  - (c) The Agent of a Copyright Owner or their exclusive licensee;
  - (d) The Agent of a Registered Title Owner or their exclusive licensee; or
  - (e) Any other person whom the Directors consider fit to be a Member irrespective of ownership of rights.
- 2.2 If the Copyright Owner, Registered Title Owner or either of their exclusive licensees has an Agent, only the Agent is eligible for admission as a Member.
- 2.3 A person who is eligible for admission as a Member may apply to the Directors for admission.
- 2.4 The application must be made in writing in a form that is determined by the Directors in their absolute discretion.
- 2.5 The Directors may require the Applicant to supply any information that provides evidence of the applicant's eligibility for admission as a Member.
- 2.6 If the Directors consider that the applicant is eligible for admission, the Directors may admit the Applicant as a Member. The applicant will become a Member provided that it has agreed to be bound by the Memorandum and Articles.
- 2.7 The Directors must admit the Applicant as a Member where the Applicant is entitled to membership under the Act.
- 2.8 The Directors must issue a certificate of membership to each Member.
- 2.9 A Member may not assign or transfer their rights and privileges of membership of the Society to any other person.

**Resignation**

- 2.10 A Member may resign from membership of the Society by notice in writing to the Secretary.

**Termination**

- 2.11 The Directors may by notice in writing to the Member terminate the membership of any Member with immediate effect where a Member ceases to be eligible for membership.



## Classes of Members

- 2.12 Subject to these Articles and the Corporations Act 2001 the Society in Members' meeting by ordinary resolution may:
- (a) establish any new class of Members and prescribe the qualifications, rights, restrictions and obligations of Members in that class; and
  - (b) vary or abrogate the qualifications, rights, restrictions or obligations of Members in any new or existing class.
- 2.13 The Directors may:
- (a) admit any person to membership in any class of Members; and
  - (b) transfer a Member, with the Member's consent, from membership in one class to membership in another class.
- 2.14 The Directors may transfer the rights and privileges of a Member to the person lawfully administering the estate of a deceased Member upon that person producing such evidence of title to the Member's rights and privileges of membership as the Directors think sufficient.
- 2.15 In the case of a joint membership in the name of two or more Members, the surviving Member or Members or the person lawfully administering the estate of the deceased Member, may be recognised by the Directors as having title to the deceased Member's rights and privileges of the joint membership.

## 3. Members' Meetings

### Power to convene Members' meeting

- 3.1 A Members' meeting must be convened on requisition in accordance with section 249D or in default may be convened by such requisitions as are provided by section 249E.
- 3.2 Any Director may call a Members' meeting.

### Notice of Members' meeting

- 3.3 Subject to the provisions of the Corporations Act 2001 as to short notice, the Society must give to each Member and the Auditor at least 21 days' notice of a Members' meeting.
- 3.4 A notice convening a Members' meeting must:
- (a) set out the place, date and time;
  - (b) state the general nature of the business;
  - (c) if a special resolution is to be proposed, set out the intention to propose the resolution and state the resolution;
  - (d) contain a statement on:
    - (i) a Member's right to appoint a proxy; and
    - (ii) the need for the proxy to be a Member of the Society or not; and
  - (e) contain any statement required by Article 5.16.

### Cancellation or postponement of Members' meeting

- 3.5 The Directors may, whenever they think fit, cancel the Members' meeting or postpone the holding of the meeting to a date and time determined by them.

## 4. Proceedings at Members' Meetings

### Business of annual Members' meeting

- 4.1 The business of an annual Members' meeting is to receive and consider the profit and loss account, the balance sheet and the reports of the Directors and the Auditor, and the appointment of Directors.

### Special business

- 4.2 All business other than that referred to in Article 4.1 which is transacted at an annual Members' meeting and all business transacted at any other Members' meeting is special business.

### Quorum

- 4.3 The quorum for a Members' meeting of the Society is three. An individual attending as a Representative must be counted to determine whether or not a quorum is present. An individual can only be counted once.
- 4.4 An item of business may not be transacted at a Members' meeting unless a quorum is present when the meeting proceeds to consider it.
- 4.5 If a Members' meeting does not have a quorum present within 30 minutes after the start time set out in the notice of the meeting, the meeting is adjourned to the date, time and place that the Directors specify. If the Directors do not specify those things, the meeting is adjourned to the same day in the next week at the same time and place.
- 4.6 At any such adjourned meeting two persons each being a Member, or Representative present at the meeting are a quorum, and if a quorum is not present within 30 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.
- 4.7 If within 30 minutes after the start time appointed for a meeting, convened on requisition of Members under section 249D or 249E, a quorum is not present the meeting is dissolved.

### Chairperson

- 4.8 The Members at Members' meetings must elect a Member present to chair that meeting or part of it if:
- (a) the Directors have not previously elected a Chairperson to chair Directors' meetings and Members' meetings;
  - or
  - (b) a previously elected Chairperson is not available within 15 minutes after the start time set out in the notice of the meeting, or declines to act, for the meeting or part of the meeting.
- 4.9 If there is an equality of votes on any special resolution or resolution put to the vote at a Members' meeting (subject to Article 5.9 and Article 6.12), the Chairperson has a casting vote in addition to any votes to which the Chairperson is entitled either as a Member or as a Representative of a Member. The Chairperson has a discretion both as to whether or not to use the casting vote and as to the way in which it is used.
- 4.10 If there is an equality of votes and the Chairperson does not use the casting vote, the special resolution or resolution must be put for a second vote. If there is an equality of votes and the Chairperson does not use the casting vote on the second vote, the resolution fails.

### How questions decided

- 4.11 A special resolution or a resolution put to the vote at a Members' meeting must be decided on a show of hands unless a poll is demanded in accordance with these Articles.
- 4.12 An ordinary resolution must be passed by a majority of votes cast by Members entitled to vote on the ordinary resolution and a special resolution must be passed by a majority of at least 75% of the votes cast by Members entitled to vote on the special resolution.

### How questions decided continued

- 4.13 On a show of hands, a declaration by the Chairperson is conclusive evidence of the result. Neither the Chairperson nor the minutes need to state the number or proportion of the votes recorded in favour or against.
- 4.14 At any Members' meeting, a poll may be demanded by:
- (a) the Chairperson;
  - (b) three Members present (including by proxy) entitled to vote on the resolution; or
  - (c) Members present (including by proxy) who hold at least 5% of the votes that may be cast on the resolution on a poll.
- 4.15 The poll may be demanded before a vote is taken, before the voting results on a show of hands are declared or immediately after the voting results on a show of hands are declared.
- 4.16 The percentage of votes which Members hold is to be calculated when the demand for the poll is made or otherwise as the Chairperson directs.
- 4.17 If a poll is demanded, the result of the poll is to be deemed the resolution of the meeting at which the poll was demanded.
- 4.18 A poll demanded on the election of a Chairperson of a meeting or on a question of adjournment of a meeting is to be taken at the meeting and without adjournment.
- 4.19 A demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

### Objection to voting qualification

- 4.20 A challenge to a Member's right to vote at a Members' meeting:
- (a) may only be made at the meeting; and
  - (b) must be determined by the Chairperson, whose decision is final.

### Adjournment

- 4.21 The Chairperson of a meeting must if directed by the Members present adjourn the meeting to an alternative time and place, provided that only unfinished business of the adjourned meeting is to be transacted at a meeting resumed after an adjournment.
- 4.22 If a meeting is adjourned for more than 30 days, notice of the adjournment must be given in accordance with Article 3.4.

## 5. Voting of Members

### Voting rights

- 5.1 Subject to these Articles:
- (a) on a show of hands, each Member present in person and each other person present as Representative of a Member has one vote; and
  - (b) on a poll, each Member has one vote plus one additional vote for each \$500 distributed to the Member in the previous Accounting Period, provided that no Member is entitled to exercise more than 15% of the total votes available to Members entitled to attend and vote at a Members' meeting.

## Right to appoint proxy

- 5.2 A Member of the Society who is entitled to attend or cast a vote at a Members' meeting may appoint another person as proxy to attend and vote in the Member's place at the meeting and a proxy has the same right as the Member to speak and vote at the meeting.

## Instrument of proxy

- 5.3 Any appointment of a proxy is valid if it is signed, or in the case of an appointment notified electronically, authenticated in a manner approved by the Directors, by the Member of the Society making the appointment and contains the following information:
- the Member's name and address;
  - the name of the Society;
  - the proxy's name or the name of the office held by the proxy; and
  - the meeting at which the proxy may be used.
- 5.4 An appointment of a proxy may specify the way the proxy is to vote on a particular resolution. If it does:
- the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
  - if the proxy has two or more appointments that specify different ways to vote on the resolution – the proxy must not vote on a show of hands;
  - if the proxy is the chair of the meeting at which the resolution is voted on – the proxy must vote on a poll, and must vote that way; and
  - if the proxy is not the chair – the proxy need not vote on the poll, but if the proxy does so, the proxy must vote that way.

## Right to appoint attorney

- 5.5 If:
- an appointment of a proxy specifies the way the proxy is to vote on a particular resolution at a meeting of the Society's members;
  - the appointed proxy is not the chair of the meeting;
  - at the meeting, a poll is duly demanded on the question that the resolution be passed; and
  - either of the following apply:
    - if a record of attendance is made for the meeting – the proxy is not recorded as attending;
    - the proxy does not vote on the resolution, the chair of the meeting is taken, before voting on the resolution closes, to have been appointed as the proxy for the purposes of voting on the resolution at that meeting.
- 5.6 A Member may by power of attorney executed in the presence of at least one witness and (if necessary) stamped, appoint an attorney to act on the Member's behalf at all or any Members' meetings.

## Receipt of proxy and other instruments

- 5.7 If a person appoints a proxy for a Members' meeting, the following documents must be given to the Society at its registered office or at a place specified for the purpose in the notice calling the Members' meeting, or otherwise received by the Society by facsimile transmission or electronically in accordance with the Corporations Act 2001:
- a proxy's appointment;
  - if the appointment is signed or authenticated by the appointor's attorney, the authority under which the form was signed or a certified copy of the authority; and

**Receipt of proxy and other instruments continued**

- (c) the appointment and any authority must be given to the Society at least 48 hours before the Members' meeting at which the proxy may be used. Validity of vote in certain circumstances

**5.8** A vote cast by a proxy or attorney is valid even if that person's authority has been revoked by the death of the principal or otherwise, unless the Society has received written notice of the matter before the start of the Members' meeting at which the proxy or attorney votes.

**Direct voting**

**5.9** The Directors may determine that Members who are entitled to vote at any meeting of the Society may cast their votes by sending them to the Society before the meeting by post, facsimile or electronic means.

**5.10** The Directors may institute procedures consistent with these Articles and the Corporations Act 2001 for the casting of Direct Votes, including procedures for:

- (a) how votes are to be cast; and
- (b) when votes must be received by the Society in order to be effective, which must be no later than the time appointed for the commencement of the meeting.

**5.11** Direct Votes will not be counted if a resolution is decided on a show of hands.

**5.12** Direct Votes will be counted if a resolution is decided on a poll, as follows:

- (a) subject to Articles 5.13, 5.14 and 5.15, votes cast by Direct Vote by a Member entitled to vote on the resolution will be counted as if the Member had cast the votes in the poll at the meeting;
- (b) a Direct Vote received by the Society on a resolution which is amended is taken to be a Direct Vote on that resolution as amended, unless the Chairperson determines that this is not appropriate; and
- (c) receipt of a Direct Vote from a Member has the effect of revoking (or, in the case of a standing appointment, suspending) the appointment of a proxy, attorney or Representative made by the Member under an instrument received by the Society before the Direct Vote was received.

**5.13** A Direct Vote:

- (a) may be withdrawn by the Member by notice in writing received by the Society before the time appointed for the commencement of the meeting; and
- (b) is automatically withdrawn if:
  - (i) the Member attends the meeting in person (including by Representative, proxy or attorney);
  - (ii) the Society receives from the Member a further Direct Vote on the same resolution (in which case the most recent Direct Vote is, subject to Articles 5.9-5.16, counted in place of the prior Direct Vote); or
  - (iii) the Society receives, after the Direct Vote is received, an instrument under which a Representative, proxy or attorney is appointed to act for the Member at the meeting in accordance with these Articles.

**5.14** A Direct Vote withdrawn under Article 5.13 is not counted.

**5.15** A Direct Vote received by the Society is valid even if, before the meeting, the Member:

- (a) dies or becomes mentally incapacitated;
- (b) becomes bankrupt or an insolvent under administration or (in the case of a body corporate) is wound up; or
- (c) where the Direct Vote is cast on behalf of the Member by an attorney, revokes the appointment of the attorney or the authority under which the appointment was made by a third party, unless the Society has received written notice of the matter before the commencement of the meeting.

**Direct voting continued**

- 5.16 If the Directors have made a determination under Article 5.9 to allow voting by Direct Vote at any meeting, the notice of meeting must inform Members of their rights to vote by Direct Vote and of any relevant matters specified in procedures instituted under Article 5.10.

**6. Directors****Number of Directors**

- 6.1 The number of Directors must not be more than twelve, until otherwise determined by the Society in Members' meeting.

**Transitional provision**

- 6.2 At the annual Members' Meeting held to adopt these Articles, two Directors must retire by rotation notwithstanding Article 6.19.

**Qualification of Directors**

- 6.3 A Director need not be a Member.
- 6.4 Directors must be persons who are ordinarily resident in Australia or New Zealand. The Society may determine further qualifications of Directors at a Members' meeting.

**Nomination and notice of candidature**

- 6.5 A person must give written notice to the Society that the person wishes to nominate as a candidate for election to the office of Director at the meeting at least 35 days before the meeting, to be eligible to be elected as a Director at a Members' meeting.
- 6.6 Article 6.5 does not apply to a Director retiring from office by rotation at the meeting.

**Appointment**

- 6.7 Except in relation to the appointment of Directors to fill casual vacancies, under Article 6.10(a), all elections to fill vacancies for Directors arising from retirement or otherwise must take place by ballot in accordance with Articles 6.12 and 6.17. The total number of Directors must not at any time exceed the maximum fixed under Article 6.1. The Society must, with the notice of meeting, forward each Member notice of the name of each candidate for election to the office of Director and any information about the candidate that is authorised by the candidate and conforms with any requirements specified by the Directors.
- 6.8 If the number of candidates for election does not exceed the number of Directors to be elected, all the candidates will be deemed to be elected Directors without a ballot.
- 6.9 If the election of a Director is made by ballot, voting rights will be the same as if the vote was conducted by a poll. The candidate who receives the highest number of votes will be elected. If there is more than one vacancy, the candidate who receives the second highest number of votes will be elected and so on, until all the vacancies are filled. If there is an equality of votes, the position must be determined by drawing lots in any manner determined by the Chairperson.

**Casual vacancy**

- 6.10 The Directors may at any time:
- (a) appoint a person to fill a casual vacancy; or
  - (b) decide that an election to fill the casual vacancy must be held by the Society in Members' meeting by ballot.

## Casual vacancy continued

- 6.11 Any Director appointed to fill a casual vacancy holds office until the next annual Members' meeting but must not be taken into account in determining Directors who are to retire on rotation.

## Ballot

- 6.12 In addition to any electronic voting procedures instituted under Article 6.17, postal voting for Directors shall be available to any Member entitled to vote on request by the Member in writing to the Society within 5 days after the giving of notice of the Members' meeting at which the Member wishes to vote. If a Member requests to vote by post, the Society must forward the following information to the Member:
- a voting paper stating the number of Directors to be elected and the names of all candidates for the election in alphabetical order;
  - a statement of the number of votes that are allocated to the Member in the postal ballot;
  - an envelope for the completed voting paper and a return envelope addressed to the attention of the Secretary;
  - an identification form for the Member's endorsement, to be verified by the Secretary, as postal voting must be exercised personally and not by proxy; and
  - appropriate instructions as to the voting procedure.
- 6.13 Only those postal votes received by the Secretary at least seven days before the Members' meeting fixed for the election of Directors will be counted in the postal ballot. Voting papers not returned to the Secretary will not invalidate the ballot.
- 6.14 The non-receipt by any Member of a voting paper or any of the other items required by Article 6.12 does not invalidate the ballot.
- 6.15 A scrutineer, being a partner or employee of the Auditor may be appointed by the Directors for the ballot. The scrutineer may declare that a vote is valid even if:
- the votes are endorsed for a lesser number of candidates than the number of Directors to be elected;
- or
- the method for completing the ballot paper has not been strictly followed but the scrutineer considers that the voting intention is clear.
- 6.16 Ballot papers must be destroyed after the declaration of the result of the election, unless the Chairperson otherwise directs.
- 6.17 Notwithstanding any other provision in these Articles setting out a method of voting, including postal voting, the Directors may institute procedures for voting electronically in such manner and at such times as they consider appropriate.

## Rotation of Directors

- 6.18 A Director may not retain office for more than three calendar years or beyond the third annual Members' meeting following the Director's election (whichever is the longer period) without submitting for re-election.
- 6.19 At the annual Members' meeting in each year, one third of the Directors in office or, if their number is not a multiple of three, the number nearest to but not less than one third, must retire from office.
- 6.20 A retiring Director may act until the conclusion of the meeting at which the Director retires and is eligible for re-election.
- 6.21 Subject to the Corporations Act 2001, the Directors to retire by rotation at each annual Members' meeting are those who have been longest in office. The length of time a Director has been in office must be computed from the date of the Director's appointment.

### Rotation of Directors continued

- 6.22 If two or more Directors have been in office an equal length of time, the Directors to retire are, in default of agreement between them, to be determined by drawing lots in any manner determined by the Chairperson.

## 7. Remuneration and Expenses

- 7.1 Subject to Article 7.2, the Directors are entitled to remuneration for their services as Directors, such sum accruing from day to day as the Society in Members' meeting determines.
- 7.2 If a Director at the request of the Directors, performs additional or special duties for the Society, the Society may remunerate that Director by payment of a fixed sum or salary to be determined by the Directors and that remuneration may be either in addition to or in substitution for that Director's remuneration under Article 7.1.
- 7.3 A Director is also entitled to be reimbursed for such reasonable travelling, accommodation and other expenses as the Director may incur when travelling to or from meetings of the Directors or a committee or when otherwise engaged on the business of the Society.

## 8. Vacation of Office

### Vacation of office

- 8.1 The office of a Director is automatically vacated if the Director:
- (a) ceases to be a Director by virtue of, or becomes prohibited from being a Director because of an order made under, the Corporations Act 2001;
  - (b) becomes bankrupt or insolvent or makes an arrangement or composition with creditors of the Director's joint or separate estate generally;
  - (c) dies;
  - (d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
  - (e) resigns office by notice in writing to the Society or refuses to act;
  - (f) is not present personally or by an Alternate Director at the meetings of the Directors for a continuous period of six months without leave of absence from the Directors; or
  - (g) is removed from office by an ordinary resolution of the Society.

## 9. Powers of Directors

- 9.1 The management of the affairs of the Society is vested in the Directors and they may exercise all the powers and do all the things which the Society is by its Memorandum or otherwise authorised to exercise and do and are not by these Articles or by statute required to be exercised or done by the Society in Members' meeting, subject to the provisions of the Corporations Act 2001 and of these Articles.
- 9.2 The Directors may borrow or raise money for the Society and secure the repayment, satisfaction or performance thereof or of any debts liabilities contracts or obligations incurred or undertaken by the Society as they think fit.

### Appointment of Attorney

- 9.3 The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Society for the purposes and with the powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Directors) and for the period and subject to the conditions that they think fit.



### Appointment of Attorney continued

- 9.4 Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

## 10. Proceedings of Directors

### Meetings

- 10.1 The Directors may meet for the dispatch of business, adjourn and otherwise regulate their meetings and proceedings as they think fit.

### Quorum

- 10.2 Unless the Directors determine otherwise, the quorum for a Directors meeting is 3.

### Effect of vacancy

- 10.3 The continuing Directors may act notwithstanding a vacancy in their number but, if their number is reduced below six, the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to six or for summoning a Members' meeting.

### Convening meetings

- 10.4 A Director may, and the Secretary on the request of a Director must, convene a meeting of the Directors.
- 10.5 A Director who is not in Australia or New Zealand at the time that notice of a meeting of Directors issues, is not entitled to notice of a meeting of Directors.
- 10.6 A Directors' meeting may be held in two or more venues using any technology that gives Directors a reasonable opportunity to participate and is agreed to by all Directors.

### Chairperson

- 10.7 Subject to Article 10.8, the Directors must elect a Chairperson who holds office from the date of election until the first meeting of Directors held following the annual Members' meeting in the year after election.
- 10.8 The Chairperson may be removed from that office by a resolution of the Directors of which not less than 14 days' notice has been given to all the Directors for the time being in Australia.
- 10.9 The Chairperson is entitled to preside at meetings of the Directors but, if the Chairperson is not present and able and willing to act within ten minutes after the time appointed for a meeting or has signified an intention not to be present and able and willing to act, the Directors must elect one of their number to be Chairperson of the meeting.

### How questions decided

- 10.10 Questions arising at a meeting of the Directors are to be decided by a majority of votes and if there is an equality of votes the Chairperson of the meeting has a casting vote. The Chairperson has a discretion both as to whether or not to use the casting vote and as to the way in which it is used.
- 10.11 If there is an equality of votes and the Chairperson does not use the casting vote, the questions arising at a meeting of the Directors must be put for a second vote. If there is an equality of votes and the Chairperson does not use the casting vote on the second vote, the question to be decided fails.

## Committees

- 10.12 The Directors may delegate any of their powers to a committee of Directors.
- 10.13 A committee must exercise the powers delegated to it in accordance with any directions of the Directors. The effect of the committee exercising a power in this way is the same as if the Directors exercised it.
- 10.14 Subject to Article 10.13, the meetings and proceedings of a committee consisting of two or more Directors are governed by the provisions of these Articles as to the meetings and proceedings of the Directors so far as they are applicable.

## Written resolution

- 10.15 A resolution may be passed by the Directors without a Directors' meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- 10.16 For the purpose of Article 10.15, two or more separate documents may be distributed for signing by the various Directors provided that each document is in identical terms. All documents so distributed will be deemed to be one document. The resolution is passed when the last Director entitled to vote signs the document.

## Validity of acts of Directors

- 10.17 All acts of the Directors, a committee or a person acting as a Director or member of a committee are valid even if it is afterwards discovered that there was some defect in the appointment, election or qualification of any of them or that any of them was disqualified or had vacated office.

## 11. Chief Executive Officer

### Appointment and removal

- 11.1 The Directors may appoint a person to the office of Chief Executive Officer either for a fixed term or without limitation as to period of appointment but not for life, and may remove a person so appointed and appoint another instead.

### Remuneration

- 11.2 The Directors may determine the remuneration of a Chief Executive Officer.

### Powers

- 11.3 The Directors may confer on a Chief Executive Officer such of the powers conferred on the Directors by these Articles, for such time, to be exercised for purposes, on terms and with restrictions as they think fit and all or any of those powers may be conferred collaterally with but not to the exclusion of the powers of the Directors and may be revoked or varied by the Directors.

## 12. Alternate Directors

- 12.1 Subject to the Corporations Act 2001, a Director ("appointor") may in writing appoint a person other than a Director who is approved by a majority of the other Directors to act as an Alternate Director in the appointor's place whether for a stated period or periods or until the happening of a specified event or from time to time.
- 12.2 An Alternate Director:
- may be removed or suspended from office in writing by the appointor or by ordinary resolution of the Society;

### Alternate Directors continued

- (b) subject to these Articles, is entitled to receive notice of meetings of the Directors and to attend and vote if the appointor is not present;
  - (c) may exercise all the powers of the appointor except the power to appoint an Alternate Director and, subject to the Corporations Act 2001, perform all the duties of the appointor in so far as the appointor has not exercised or performed them;
  - (d) automatically ceases to be an Alternate Director if the appointor ceases to be a Director;
  - (e) whilst acting as a Director is responsible to the Society for the Alternate Director's own acts and defaults and the appointor is not responsible for them;
  - (f) may not receive any remuneration from the Society as a Director except for any special services which in the opinion of the Directors are outside the scope of the ordinary duties of a Director; and
  - (g) may not be taken into account separately from the appointor in determining the number of Directors.
- 12.3 If the appointor retires by rotation but is re-elected by the meeting at which the appointor retires, the appointment of the Alternate Director continues to operate as if the appointor had not retired.

## 13. Local management

- 13.1 The Directors may provide for the management and transaction of the affairs of the Society in a specified locality whether in Australia or abroad as they think fit and Articles 13.2 to 13.4 do not limit the generality of this Article.
- 13.2 The Directors may establish local boards or agencies for managing any of the affairs of the Society in a specified locality and may appoint persons to be members of those local boards or managers or agents and may fix their remuneration.
- 13.3 The Directors may delegate to a person so appointed any of the powers vested in the Directors and may authorise the members of a local board or any of them to fill vacancies in it and to act notwithstanding vacancies.
- 13.4 Any such appointment or delegation may be made on terms that the Directors think fit and the Directors may remove a person so appointed and may revoke or vary any such delegation.

## 14. Secretary

- 14.1 A Secretary holds office on such terms and conditions, as to remuneration and otherwise, as the Directors determine.

## 15. Obligations of the Society

- 15.1 The Society must determine the Accounting Period in any calendar year.
- 15.2 The Society must follow a consistent practice in attributing the receipts and expenditure of the Society to an Accounting Period.
- 15.3 The Society must exercise reasonable endeavours to collect monies under the Statutory Scheme and the Voluntary Scheme and having regard to the expenses to be incurred in the collection of these monies.
- 15.4 The Society must establish and operate:
- (a) a Statutory Trust Fund;
  - (b) a Voluntary Trust Fund; and
  - (c) a Society Reserve Fund.

## Obligations of the Society continued

- 15.5 The administrative costs and other outgoings of the Society that are paid out of the Statutory Trust Fund and Voluntary Trust Fund must be reasonable.

## 16. Allocation and Distribution of Monies

- 16.1 The Society must not distribute dividends to Members.

### Statutory Scheme

- 16.2 In each Accounting Period, the Statutory Collection must be dealt with in the following order:
- (a) for the payment of all reasonable expenses that are incidental to the conduct, management and operation of the Society as the Directors consider appropriate;
  - (b) for such special purposes (including cultural and charitable purposes) that the Directors consider are in the interest of the Society, provided that the funds expended for special purposes do not exceed 1% of the Statutory Collection;
  - (c) to the Society's Reserve Fund to meet any anticipated future obligations of the Society as the Directors consider appropriate; and
  - (d) the remainder, for payment to each Qualified Person who is a Member, in accordance with their Potential Share, as soon as reasonably possible after determination of their entitlement under Article 17.
- 16.3 If the Society is unable, at the time of allocation, to distribute a Potential Share (accruing under Article 16.2(d)) because the Qualified Person is not a Member or for any other reason, the Society must hold that Potential Share on trust and pay it to the Qualified Person (or their Agent), as soon as reasonably possible, or otherwise in accordance with Article 16.6.

### Voluntary Scheme

- 16.4 In each Accounting Period, the Voluntary Collection must be dealt with in the following order:
- (a) for the payment of all reasonable expenses that are incidental to the conduct, management and operation of the Voluntary Scheme as the Directors consider appropriate;
  - (b) for such special purposes (including cultural and charitable purposes) that the Directors consider are in the interest of the Society, provided that the funds expended for special purposes do not exceed 1% of the Voluntary Collection;
  - (c) to the Society's Reserve Fund to meet any anticipated future obligations of the Society under the Voluntary Scheme as the Directors consider appropriate; and
  - (d) the remainder, for payment to each Qualified Person in accordance with their Potential Share, as soon as reasonably possible after determination of their entitlement under Article 17.
- 16.5 If the Society is unable, at the time of allocation, to distribute a Potential Share (accruing under Article 16.4(d)) for any reason, the Society must hold that Potential Share on trust in the Voluntary Trust Fund and pay it to the Qualified Person (or their Agent), as soon as reasonably possible after determination of their entitlement under Article 17, or otherwise in accordance with Article 16.6.

### Undistributed Trust Monies

- 16.6 If any Potential Share has remained in the Statutory Trust Fund or the Voluntary Trust Fund under Articles 16.3 and 16.5 for a period of four years from the end of the Accounting Period in which the Directors determined the relevant total Distributable Amount, the monies may be distributed in accordance with Articles 16.2 and 16.4, unless the Directors are satisfied that special circumstance require the monies to be held on trust for a further period of not more than two years.

## Other Monies

- 16.7 Any monies received by the Society from any source other than under the Statutory Scheme or the Voluntary Scheme may be dealt with by the Society in its absolute discretion.

## Competing Claims

- 16.8 Where there is a dispute between two or more Members with respect to entitlement to a Potential Share, and that dispute has not been resolved by the end of the Distribution Period, the disputed Potential Share must be paid into the Competing Claims Fund at the end of the Distribution Period.
- 16.9 Monies placed in the Competing Claims Fund must remain in the Competing Claims Fund until the dispute between the relevant Members has been resolved, or for a period of no longer than one year, whichever is the shorter.
- 16.10 If the dispute has not been resolved at the end of one year from the date of payment into the Competing Claims Fund, the monies must be distributed in accordance with Articles 16.2 and 16.4.
- 16.11 Distributions made from the Competing Claims Fund, either on resolution of the relevant dispute or on the expiry of one year, are final and binding.

## 17. Determination of Entitlements

- 17.1 The Directors must determine the total Distributable Amount at least once in each Accounting Period.
- 17.2 The Directors must exercise reasonable endeavours to ensure that each Potential Share is allocated equitably and accurately.
- 17.3 The Directors must, in determining the scheme of allocation of the Distributable Amount, have regard to all relevant matters including without limitation the following:
- (a) records;
  - (b) information provided under a sampling procedure; and
  - (c) any information obtained by the Directors that assists in ascertaining the nature and extent of use of the Copyright Works or the Registered Titles.
- 17.4 The Directors may request a Qualified Person to supply the Society with any details, including without limitation details relating to a Copyright Work or a Registered Title for any purpose including without limitation verification that the Qualified Person is a Copyright Owner or a Registered Title Owner.
- 17.5 Except as provided in Articles 16.8 and 17.7 the allocation of Potential Shares by the Directors is final and binding.
- 17.6 If a person claims to be entitled to a share in the Statutory Collection or the Voluntary Collection and has not been allocated a Potential Share, the Directors may if satisfied that the person is entitled to a payment, make any payment to the person that they consider fit, from the Society's Reserve Fund.
- 17.7 If the Directors determine that a Potential Share allocated and paid to a Qualified Person constitutes an over-allocation, the excess may be deducted from any subsequent allocation by the Directors to that person.
- 17.8 Where the accumulated total of monies allocated to a Qualified Person is less than \$200.00, or such other sum that is determined by the Directors, the Directors may retain the amount of the relevant Potential Share in the Statutory Trust Fund or the Voluntary Trust Fund as applicable.
- 17.9 The Directors may from time to time make and publish rules regulating the use of funds from time to time accounted for in the Society's IBNR Fund, the Society's Competing Claims Fund and the Society's Reserve Fund, including without limitation the amalgamation of those two Funds, in accordance with which the determination and distribution of entitlements will be made. The power in this Article 17.9 may only be exercised if the Directors form the view that it will enhance the purposes referred to in Articles 16.2, 16.4 and 16.6 and not cause any detriment to the persons referred to in Articles 16.2, 16.4 and 16.6.

## 18. Authentication of Documents

### Signatures by Directors

18.1 Every document signed on behalf of the Society by a Director must be counter-signed by the Secretary or a second Director or some other person appointed generally or in a particular case by the Directors for that purpose.

### Negotiable instruments

18.2 Cheques, bills of exchange, promissory notes and other negotiable instruments may be signed, accepted, drawn, made or endorsed on behalf of the Society in the manner and by persons (whether Directors or officers of the Society or not) as the Directors determine but not otherwise.

### Signatures by electronic means

18.3 The Directors may determine generally or in a particular case that the signature of a Director, Secretary or other person appointed by the Directors for the purpose of signing documents may be written by a specified electronic means.

## 19. Accounts

19.1 The Directors must cause accounts and records to be kept relating to:

- (a) sums of money received and expended by the Society and the reason for the receipt and expenditure;
- (b) the manner in which the allocation of moneys by the Society is determined and carried out; and
- (c) the assets and liabilities of the Society.

19.2 The accounts and records must be kept at the Registered Office or at such other place or places as the Directors think fit, and must always be open to inspection by the Directors.

19.3 Subject to the Corporations Act 2001, the accounts of the Society must be examined by the Auditor at least once in every year. The Auditor must prepare a report to the Members following their examination.

## 20. Inspection of Books

20.1 Subject to the Corporations Act 2001 and any resolution of the Society in Members' meeting, the Directors may determine whether and to what extent and at what times and places and under what conditions and regulations the books and documents of the Society or any of them will be open to inspection by the Members and other persons.

20.2 A Member, not being a Director, is entitled to have reasonable access to inspect the records of the Society insofar as the records relate to that Member's entitlement to receive a Distributable Amount, at such times and places and under such reasonable conditions as the Directors determine.

20.3 Where a Member requires access to the Society's records, the Member must provide notice to the Society specifying:

- (a) the category of records that the Member wishes to inspect;
- (b) the date of inspection, not less than seven business days from the date on which the Society received notice; and
- (c) an undertaking by the Member to pay all reasonable costs incurred by the Society in providing such an inspection.

## 21. Service of Documents

- 21.1** A notice or other document may be delivered or served by the Society either personally or by sending it:
- (a) in the case of a Member who does not have a registered address in Australia, by airmail post; and
  - (b) in any other case, by ordinary post, to the registered address notified in writing to the Society by that Member and is at the risk of the addressee as soon as it is given or posted.
- 21.2** A Member whose registered address is not in Australia may specify in writing an address in Australia to be deemed the Member's registered address within the meaning of Article 21.
- 21.3** A document sent by post is to be deemed received or served on the day next following that on which it was posted. In proving delivery or service it is sufficient to prove that the envelope or wrapper containing the document was properly addressed and stamped and was posted.
- 21.4** A certificate in writing signed by a Director, Secretary or other officer of the Society that a document or its envelope or wrapper was properly addressed and stamped and was posted is conclusive evidence of those facts.
- 21.5** A notice or other document may be served by the Society on a Member or other person under these Articles by sending it by facsimile to that person at the facsimile number notified in writing to the Society by that Member or other person. A notice so sent is to be deemed served if the correct facsimile number appears on the facsimile transmission report generated by the sending facsimile machine and to have been effected at the time the facsimile transmission is sent.
- 21.6** A notice or other document may be served by the Society on a Member or other person under these Articles by sending it by electronic mail or other electronic means to the unique resource locator, domain name or other electronic address notified in writing to the Society by that Member or other person. A notice so sent is to be deemed served at the time it was sent in its entirety.
- 21.7** Subject to the Corporations Act 2001:
- (a) if a given number of days' notice or notice extending over any other period is required to be given, the day on which the notice is to be deemed served and in case of a notice convening a meeting the day on which the meeting is to be held are to be excluded in calculating the number of days or other period;
  - (b) if these Articles require or permit a notice to be given by the Society, the Directors, a Director or the Secretary, neither accidental omission to give the notice nor non-receipt of the notice invalidates the meeting, resolution, procedure or matter to which the notice relates;
  - (c) the signature to a written notice need not be handwritten;
  - (d) a reference in these Articles to signing a notice or any other thing includes authentication in a manner approved by the Directors; and
  - (e) all summonses, notices, process, judgments and orders in relation to any legal proceedings by the Society or its liquidator against a Member not in New South Wales may be served by certified or registered post (the foregoing provisions as to notices applying with necessary changes) and that service is to be deemed personal service.

## 22. Indemnity

### Indemnity of Officers and Auditor

- 22.1** Subject to this Article 22, to the extent permitted by law the Society indemnifies each Officer and Auditor against any liability to another person incurred by the Officer or Auditor as an Officer or Auditor of the Society.

## Indemnity of Officers and Auditor continued

- 22.2** The indemnity referred to in Article 22.1 does not indemnify an Officer or Auditor against a liability:
- (a) owed to the Society or a Related Body Corporate;
  - (b) for a pecuniary penalty order under section 1317G or a compensation order under section 1317H, section 1317HA or section 1317HB ; or
  - (c) that is owed to someone other than the Society or a Related Body Corporate and did not arise out of conduct in good faith.

This Article 22.2 does not apply to a liability for legal costs.

- 22.3** The indemnity referred to in Article 22.1 does not indemnify an Officer or Auditor against legal costs incurred in defending an action for a liability incurred as an Officer or Auditor of the Society if the costs are incurred:
- (a) in defending or resisting proceedings in which the Officer or Auditor is found to have a liability for which the Officer or Auditor could not be indemnified under Article 22.2;
  - (b) in defending or resisting criminal proceedings in which the Officer or Auditor is found guilty;
  - (c) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or
  - (d) in connection with proceedings for relief to the Officer or Auditor under the Corporations Act 2001 in which the court denies the relief.

Article 22.3(c) does not apply to costs incurred in responding to actions taken by the Australian Securities and Investments Commission or a liquidator as part of an investigation before commencing proceedings for the court order.

- 22.4** For the purposes of Article 22.3, the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.
- 22.5** The Society may, in accordance with the Corporations Act 2001, pay the premiums on contracts insuring a person who is or has been an Officer or Auditor of the Society.

## 23. Confidentiality

- 23.1** Every Director, Managing Director, Manager, Secretary, member of committee, or other officer employed or engaged in the business of the Society and having access to records, accounts, transactions and any other information relating to the affairs of the Society, must sign a declaration that they will not reveal other than to the Directors or management, and not use for their own business or private purposes, any information relating to such matters which has come to their knowledge, except where required to do so by the Directors or by a Members' meeting or under a duty imposed by any statute or law.

## 24. Members' Information

- 24.1** To the extent permitted by law, the Society may collate information provided to the Society by a Copyright Owner or a Registered Title Owner, and disclose such information in a manner consistent with the objectives of the Society.

## 25. Paramount Articles

- 25.1** The definition of Accounting Period in Article 1.1, and all of Articles 15.1, 15.2, 15.3, 15.4, 15.5, 16.1, 16.2, 16.3, 16.6 and 20.2 will have effect despite the operation of any contrary provision in the Articles.