

Report of Review of Copyright Collecting Societies' Compliance with their Code of Conduct for the Year 1 July 2004 to 30 June 2005

INTRODUCTION AND SUMMARY CONCLUSIONS

This is the third annual report on compliance with the Code made by the Code Reviewer, J. C. S. Burchett, QC, since the adoption of the Code in 2002. The suitability of the Code itself was assessed earlier this year in the light of its initial two years of operation and of submissions received in response to widely disseminated advertising, and some – though not many – recommendations were made with respect to proposed amendments. The Code being voluntary, it is pleasing to note the continued adherence to it of all eight of the Societies that adopted it: Australasian Performing Right Association Limited ("**APRA**"), Australasian Mechanical Copyright Owners Society Limited ("**AMCOS**"), Phonographic Performance Company of Australia Limited ("**PPCA**"), Copyright Agency Limited ("**CAL**"), Audio-Visual Copyright Society Limited ("**Screenrights**"), Viscopy Limited ("**Viscopy**"), Australian Writers' Guild Authorship Collecting Society Limited ("**AWGACS**") and Australian Screen Directors Authorship Collecting Society Limited ("**ASDACS**"). That adherence has not come without cost. In each of the three years, detailed information has been assembled for the Code Reviewer – in the case of the larger societies, very voluminous information – and the Code Reviewer has spent a number of hours conferring at the highest level with the officers of the societies to explore relevant details of their administration.

In broad terms, two conclusions follow. The fullness of the information and the way it has been sifted and considered enable the Code Reviewer to report that, in this year as in the two previous years, there has been good "compliance generally by Collecting Societies with [the] Code" (see Clause 5.2(c)). Secondly, and more subtly, but perhaps even more significantly, the willingness of the Societies to engage annually in this quite arduous process argues a commitment to the objectives of the Code, and the regular recurrence of the task of review may be thought likely to concentrate attention upon the requirements of the Code so as to enhance compliance. Several of those interviewed during the review considered the adoption of the

Code had itself modified procedures and conduct – as, of course, it was intended and expected to do.

The Code lays down detailed provisions for the handling by a society of complaints and disputes. As previous reports have emphasised, complaints are the canary that can signal a breach of the Code. It is therefore important to note, in assessing the operation of the Code, that complaints made to the societies in the period under review have only exceptionally provided evidence of even a minor breach of the Code that may have produced a complaint, and the handling of complaints when made has invariably shown a sensitivity to the requirements of the Code.

As has been pointed out, the observance by the societies of their legal obligations, their proper and courteous treatment of and the transparency of their dealings with their members and licensees, the due implementation of their distribution policies, their proper governance and accountability and the effectiveness of their staff training and complaints and dispute resolution procedures, are all matters upon which light can be thrown by the nature and frequency of the complaints they incur. In the year under review, all complaints received by the societies were considered by the Code Reviewer and will be discussed in more detail later in this report; but it may be said now that, in the light of these complaints, none of the societies is revealed as having been in any significant breach of the Code in any of the respects mentioned. The statistics show one large society to have made great gains in the reduction of complaints consistently over the period of operation of the Code.

This year the Code Reviewer received two substantial submissions that were generally hostile to the performance of at least one of the societies in the implementation of the Code (and in a number of respects hostile to the Code itself) and one substantial submission that was supportive both of the Code and of the conduct of the societies that have subscribed to it. The Code Reviewer has considered the attacks with care, and has reached the conclusion that they are ill-founded.

COMPLAINTS

The complaints received by the societies in the period may be analysed as follows:

1. Copyright Agency Limited ("CAL")

CAL has received only four complaints, all from members. In each instance, CAL informed the complainant about its procedure for the making and resolution of a formal complaint, but none of the complaints was thereafter pursued. Each was noted in CAL's log of complaints which provides for the recording of details including the date of the complaint, the dates of its acknowledgement and CAL's first response to it, any action taken and the date of any final response.

- (i) The first complaint was in respect of the receipt one month late of CAL's quarterly newsletter *CALendar*. This lapse on a particular occasion, the cause of which has been remedied, was the subject of a letter of apology personally signed by the Chief Executive, and the complaint was taken no further.
- (ii) The second complaint was from a publisher who had had an unfortunate experience with a probationary membership officer of CAL. The complaint was made by letter dated two days before Christmas, but was acknowledged by telephone by the Chief Executive on 11 January, and fully dealt with by letter on 19 January. The complaint was somewhat muted – suggesting the problem might be "just a stuff up, which happens to us all" and stating, too, "we have never had any problems with CAL". The explanation, apology and promise of remedial action proffered by the Chief Executive of CAL have been accepted. Remedial action has been taken.
- (iii) The third matter logged as a member's complaint arose out of an old dispute (prior to the adoption of the Code) in which the member unsuccessfully attempted to use CAL's dispute resolution procedures, unsuccessfully because the other party refused to co-operate. It was acknowledged that the member's "'quarrel' is not really with CAL who have always tried to be really helpful", but with a third party. In that situation, the logging of the matter as a

complaint was perhaps unnecessarily cautious. Certainly, no breach of the Code is apparent.

- (iv) The fourth complaint was from a member who regarded the cost of production of CAL's free quarterly newsletter, *CALendar*, as exorbitant and its usefulness as dubious. He was advised by letter of CAL's obligation to inform its members; of the role of *CALendar* in its doing so; and that the cost of production averaged 70c per copy. In a further, more detailed, letter, he was informed of research into the usefulness of *CALendar* and also told "communication experts advise that a variety of printed and electronic material is most effective". It was pointed out that "CAL has many members who are not able, for various reasons, to access the internet", but an assurance was given that members would be advised of their option to receive *CALendar* electronically, and that the issue would be put on the agenda of the Board's Communication Committee. The correspondence is testimony to CAL's willingness to consider and respond to members' points of view, and the complaint has not been pursued.

CAL's complaints procedures are also available to licensees, but no licensee's complaint has been logged in the period under review.

CAL's standard form of contract of employment of its staff refers to the Code, a copy of which is supplied to all incoming employees and is also placed on its website and intranet. Numerous documents associated with the induction of new staff make direct reference to the Code, and there are also numerous separate references to the ethical issues with which it is concerned. CAL's staff handbook, updated in 2004, refers to the Code, to complaints handling and to dispute resolution. By its procedures, by talks to staff meetings and by discussions, CAL keeps before its employees the value of the Code and the need to observe it. That only the complaints described above emanated from CAL's direct membership (to which should be added many more indirect members) of 8,427 in the year under report is evidence of the effect of this attention to the requirements of the Code.

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

This report will follow the practice of previous years, referring generally to the above two societies together as APRA, since APRA also administers AMCOS. But it is appropriate to note, particularly when considering the complexity of the tasks of distribution undertaken by APRA/AMCOS and the incidence and nature of members’ complaints, that APRA now has 42,000 and AMCOS 600 Australian and New Zealand members.

During the year under review, there have been complaints from seven members of APRA.

- (i) The first matter had its origin in a failure by APRA some years ago (and well before the adoption of the Code) to pursue with vigour a payment due from the German society, GEMA. This failure was examined in connection with last year’s review of the operation of the Code, when it was noted that considerable efforts had been made by APRA in that year to secure recovery, but the complaint could not be regarded as closed, since payment had not yet been achieved. Subsequently, APRA did receive the money and, as some measure of recompense for the delay that had occurred, immediately remitted it to the complainant upon the basis of the exchange rate considered most favourable to the complainant, plus interest, again at a favourable rate. Appreciation was expressed in writing of this “resolution of the matter”.

But at the same time as expressing that appreciation, the member revived, as a complaint, an earlier dispute with another member over the royalties payable in relation to a song. Many years ago, APRA registered the song, pursuant to an application signed by both members, as a song in respect of which the royalties were to be shared in stated percentages (70% and 30%) between the members. It should be appreciated that the only royalty amount ever received for the song is \$30, and nothing has been received in more than a decade. It should also be appreciated that, although

the complaint relates to APRA's alleged failure, when accepting the application, to query the shares stated in it with the complainant, the application is admitted to have been signed by the complainant, whose signature would probably have been known to APRA's officers through previous applications. The matter has been complicated by unsuccessful attempts to resolve it, but it remains essentially a dispute between the members concerned. The registration was effected long before the adoption of the Code, but if it had been effected recently, APRA's conduct in accepting a signed form would not have contravened the Code.

- (ii) There was a complaint from a member about APRA's failure to collect and pay royalties for a particular work repeatedly broadcast on a particular television station. The problem arose from a reporting failure within the television station, made more difficult for APRA to pick up by an absence of any specific details of the performance of the work, that performance being embedded within some larger program. An explanation and apology were proffered by APRA, which made a special effort to speed up payment upon identifying the broadcasts in question, and has also seen to it that the television station's relevant records system has been corrected so as to avoid a repetition of the problem.
- (iii) There was a complaint from a member who gave live performances of his own songs at different venues. A question was raised as to whether certain venues were covered by licences for the performances there, a matter relevant to the calculation of royalties. The matter was resolved by APRA's Director of Member Services to the member's expressed satisfaction.
- (iv) Two members with identical surnames each wrote a work and called it (presumably each in ignorance that the other had done so) by the same name. Upon receiving, in respect of one of the works, royalties collected overseas totalling about \$1,400, APRA mistakenly allocated this amount to the wrong one of the two members. Then, upon the error being discovered, the member who had been wrongly paid was debited the sum in question in APRA's accounts, so that it was deducted from his future receipts

from APRA. In normal practice, such debits can be made to rectify mistakes, but where the amount exceeds the relatively small sum of \$500, APRA's policy is to inform the member to be affected by the debit in advance. Through an office error, that was not done in this case. Upon a complaint being made on 22 December 2004, a letter of full and prompt explanation and apology was sent by the Director of Member Services on 11 January 2005.

- (v) A member objected to APRA sending a reminder to him via his mobile phone by SMS. APRA responded by explaining the circumstances and undertaking not to send such a message to him again. He acknowledged this "prompt and excellent response", adding for good measure that he thought APRA was "fabulous" and was "really pleased with [its] service".
- (vi) A complaint was made about a question of the authorship of a version of a song. The song was not registered by the complainant with APRA, but APRA responded to the complaint by suggesting registration and the use of its facilities for Alternative Dispute Resolution. The complainant responded that APRA should "just forget the whole issue". If there was in reality a dispute, as distinct from some misunderstanding, there is nothing to suggest any fault on the part of APRA.
- (vii) A member, who has been involved in litigation over the copyright in works and may be involved in further litigation, has written to APRA alleging it has taken an attitude that is not even-handed to the holding in suspense of disputed royalties and to his dispute generally. APRA's Chief Executive has refuted these claims in a detailed reply, pointing out that many of the issues raised by the complainant relate to decisions made a number of years ago, which have remained since then undisturbed. No reason appears in this correspondence, destined as it perhaps seems to be to end in further litigation, to perceive any breach of the Code by APRA. The fundamental issues relate to disputes over the entitlement to royalties, and any withholding of particular payments by APRA has depended and must depend upon the precise questions in dispute

at any relevant time. There is no basis in the complaint to regard APRA's conduct as other than even-handed. The disputes themselves are, of course, between parties that do not include APRA.

In respect of licensing, APRA maintains separate registers of Media Licensing Complaints and General Licensing Complaints. There were 10 Media Licensing Complaints during the period under review.

- (i) A reference to previous "compliance issues" in a letter from APRA agreeing to accept payment of licence fees by instalments (but over a shorter period than had been requested) was the occasion for an expression of "extreme personal umbrage" by the General Manager and Chairman of a radio station. But not every piece of plain speaking by a Media Licensing Officer is to be regarded as inappropriate, and APRA could fairly view the long history of the matter in question (to an earlier aspect of which reference was made in the report of the first review under the Code) as evincing an attitude that did indeed raise compliance issues.
- (ii) In the case of another radio station of which the General Manager and Chairman was the same person who was General Manager and Chairman of the station referred to in the previous item, there was somewhat lengthy correspondence concerning agreement upon a licence. Impractical difficulties were raised on behalf of the station, and ultimately APRA threatened to sue for infringement unless a licence was entered into. Obviously, if a radio station (or anyone else) persists in conduct that may involve infringement, APRA is justified in pointing that out and in giving notice it will bring proceedings in respect of any infringement. In this case, the result was the belated execution of the licence.
- (iii) AMCOS threatened to sue in respect of a number of infringements by unlicensed reproductions. The response was a complaint of unfair treatment by comparison with competitors. AMCOS has rebutted this complaint, and referred the matter to its solicitors. Litigation is impending, in which the question of infringement and the grievance grounded on an assertion of unfair treatment will doubtless be ventilated. In the circumstances, it is not appropriate

to say more than that no breach of the Code is admitted by AMCOS and the matter rests in allegations of a failure to advise appropriately upon the licence applicable to the not inexperienced complainant's needs.

- (iv) A radio broadcaster targeting overseas audiences disputed APRA's claim that it required a licence. The dispute related to legal questions, but there was also a suggestion the amount of royalty claimed was too high, and the matter was included in APRA's register of Media Licensing Complaints. The broadcaster has since accepted it does require a licence as claimed by APRA. Concerning the question of amount, APRA referred the broadcaster, which is alleged to have been infringing copyright for several years, to its alternative dispute resolution procedures and also to the availability of the Copyright Tribunal.
- (v) A person entitled to royalty income complained that AMCOS, in making distributions, had missed distributing several payments to him. The explanation (given within 24 hours by the Director of Media Licensing) was that the amount in question had not been distributed because it had not been paid to AMCOS. An assurance was forthcoming that steps had been taken in an endeavour to secure prompt payment for the future.
- (vi) A request for information about fees for production music used on web pages was treated as a complaint because the request referred to the fees as "expensive". A full explanation of the position was given, and there the matter rests, except that the request triggered an internal decision by APRA to clarify general information furnished by it on the matter. The stimulation of such a reaction is, of course, as is made clear in the *Australian Standard for Complaints Handling* (AS 4269-1995 at para 3.12), one of the objects of a system for recording and resolving complaints.
- (vii) APRA received a complaint that the complainant had been prevented from videoing his grand-daughter (aged 12) singing at a college concert, the organisers having asserted that APRA did not permit such a recording. In a very prompt reply, APRA advised that the concert had not been licensed so that the reference to APRA was simply incorrect, and in any case a licence to record could not be issued by APRA, though it might be by AMCOS. Information

was given as to the possibility, if a similar situation should arise in the future, of the complainant himself obtaining a licence from AMCOS, subject to any rules applicable to a particular venue. APRA also advised it would be in touch with the organisers in question about their reference to it, in a situation where no licence had been obtained by them, and as to whether they needed one.

- (viii) A production company disputed invoices received from AMCOS in respect of the use of production music in a television production. The dispute involved complex questions of fact which were debated in lengthy correspondence. Examination of that correspondence does not suggest any breach of the Code, but rather that one or a number of persons involved (whether at the production company, the office of its client or the office of AMCOS) probably made a serious mistake as to some aspect of the matter. Appropriately, in the circumstances, a compromise settlement was reached after a process of negotiation.
- (ix) A record manufacturer (apparently just starting out in a small way) engaged in an extremely hostile correspondence with AMCOS, alleging repeated breaches of the Code's requirements, threatening to seek some action by the ACCC against AMCOS and alleging (falsely, so far as the terms of the very detailed correspondence and emails reveal what occurred) that the manufacturer's representative had been subjected by AMCOS to "lack of courtesy [and an] ongoing torrent of abuse". In fact, the Chief Executive of AMCOS made several offers to travel interstate at short notice to clarify personally the complainant's problems, but was put off with obviously unreasonable requests that AMCOS arrange to fly the complainant to Sydney instead! Careful perusal of the records of the interchanges between this manufacturer and AMCOS fails to suggest any breach of the Code. On the contrary, AMCOS appears, for the most part, to have behaved with exemplary patience and restraint.
- (x) A complaint about advice given in relation to production music began as follows:

"I am not some-body [sic] who would normally complain (because I feel generally APRA and AMCOS do a terrific job) but I feel it is important to draw attention to misleading and contradictory advice

we have received from your Production Music Licensing Department.”

The problem was whether various additions to production music amounted to “adaptations”. In a helpful response, which appears to have been accepted as such, APRA’s Complaints Officer referred to the definition of “adaptation”, in the relevant sense, in s.10 of the *Copyright Act 1968* as “an arrangement or transcription” of a musical work, but pointed out that approval of an adaptation was a matter for the copyright owner. An apology was made for any contradictory advice, but it was explained that the source of the advice in each case was the expressed view of the relevant publisher. Publishers’ views differed. The Complaints Officer did not restrict herself to general explanation, but added that the issue of appropriate guidelines was being considered, and made an offer to attend the complainant’s office to speak to his producers about the problem. As I have already remarked in this report, and previously, such a response is in keeping with an important objective of a complaints handling policy – that instead of a defensive reaction, there should be a positive use of the complaint as an indication of a need, pointing the way to an improved service.

In the two previous annual reports, the number of general licensing complaints, many of which were in the nature of expressions (quite often in unreasonable and abusive terms) of resentment of the Australian law of copyright and APRA’s role pursuant to it, was too great to permit individual discussion of each complaint. They were grouped, for analysis, in categories. However, it was noted in the second annual report that the total number of complaints had dropped from the preceding year by 19.23%. Eliminating the members’ complaints and the media licensing complaints, the figures for general licensing complaints were 42 in the first year of the operation of the Code, reduced to 36 in the second year, that is by 14.3%. In the third year, now under review, the general licensing complaints have dropped to 14, that is by 61.1% of the second year’s figure, or to exactly one third of the number of general licensing complaints recorded for the initial year. Of course, at the same time, the improvement in the number of media licensing and members’ complaints (from 5 to 4 and from 5 to 2 respectively from the first to the second year) has been reversed in the third year to 10 and 7 respectively. But

these numbers are small, and the examination made of each of the complaints does not suggest the sudden emergence of breaches of the Code in those areas.

Whether the dramatic reduction in the larger numbers of general licensing complaints should be credited, wholly or partly, to APRA's adherence to the Code can best be considered after a review of the complaints, as follows:

- (i) The first complaint relates to a licence for background music in a hairdressing salon (licence fee: \$68.31). The application for the licence was endorsed : "I did not wish to apply for this you make us we have no choice [sic]. I think it stinks." APRA acknowledged the application with a two-page explanation of its role under copyright law.
- (ii) A verbal complaint was made about a peremptory expression in a standard follow-up letter sent upon a failure to reply to an initial letter concerning the need for a licence for copyright music used in a business. APRA considered the complaint and redrafted the letter in question, thanking the complainant for his comment and advising him of its response.
- (iii) A particular licensee had reached agreement each year for several years to pay APRA by instalments, the arrangement being a special one differing from the normal course. Upon renewal of the annual licence, a new credit officer at APRA was unaware of the arrangement, to which the licensee had always adhered. He made a complaint to APRA that she had ignored the prior arrangement and told him his mode of payment was "not acceptable". The Client Services Manager, General Licensing of APRA wrote a letter indicating the procedures for renewal of this licence had been amended to avoid a recurrence, and a mutually agreed mode of payment was sorted out.
- (iv) A licensee complained of letters from APRA threatening legal action in a situation where she claimed she had ceased "for approximately 3 months" to need a licence. She did not suggest she had previously informed APRA, and thanked APRA's representative, who telephoned her, "for being diplomatic". The complaint was

not pursued further, and an intention to take out another licence with APRA at a later date was indicated.

- (v) A church which had a licence failed to respond to three invoices and a letter concerning its debt. APRA's accounting system, in that situation, generated a debt collection letter, to which an officer of the church objected by telephone. He also indicated the church's use of music was confined to "the normal worship service". On that basis, APRA cancelled the licence and offered to refund a payment that had been belatedly received.
- (vi) A complaint was received from a business in a country town that other businesses were not licensed. APRA had in fact licensed over 100 organisations in the town, but it acted on the complaint, instituting enquiries as to whether other businesses were infringing copyright. Inquiry suggested the complainant was really concerned about a particular neighbouring business.
- (vii) An important aspect of APRA's activities is to educate the proprietors of shops, businesses and a variety of establishments concerning their legal obligations under the Copyright Act in respect of music played in public by them. If copyright is being infringed, APRA offers a licence. From time to time, an effort may be made in a particular town to contact business proprietors on this subject. As part of the process, APRA has a policy of writing to the Chamber of Commerce or similar association, to explain what it proposes, before arranging for a representative to make calls at shops in the targeted area. A complaint was received from the proprietor of a shop, where music was played to customers in a remote town, that a representative of APRA had "spied on her" by calling without notice. Although she complained of the attendance at her shop without notice, she acknowledged she did require a licence; said she would comply; "and apologised if she had been short with [the APRA representative to whom she complained]." APRA's Client Services Manager, General Licensing took the matter up with her; indicated APRA would write to the local Chamber of Commerce; and proposed to arrange for a representative to visit the town to discuss licensing requirements with various businesses there. The indignation expressed in this matter emphasises the difficulty of APRA's task of reaching large numbers of widely scattered non-

complying businesses, so as to secure compliance with the law, while avoiding any unnecessary offence. As a result of this complaint, nine separate explanatory letters were sent to various business organisations within a few days of the complaint being received.

- (viii) A licensee complained that a form letter (sent by facsimile after two prior communications had failed to elicit a response) was too peremptory. She also complained that when she telephoned, she was cut off several times. The Finance Manager, upon reviewing the form letter, considered it appropriate, but he circularised the relevant staff (the actual recipient or recipients of the telephone calls not being identified), reminding them of the need to call back immediately to apologise if a caller was accidentally cut off. The issue was also noted for discussion at a team meeting within APRA.
- (ix) A proprietor of a small business in a country town complained he had received a letter from APRA about licensing requirements although he had, he said, informed APRA ten years previously that music was only played in the back of his shop for himself and not for customers. APRA accepted his assertion, and there the matter rests.
- (x) A licensee was informed that, as public performance of sound recordings occurred in her business, she required also a licence from PPCA. She complained she had not been told that when she obtained her licence from APRA. It was pointed out that APRA's standard brochure forwarded to applicants for a licence (which she seems to accept she had not read) did refer to the possibility that a licence from PPCA might also be required. A further explanation was given, both by telephone and in writing, and she was offered a personal explanatory call from a representative. There is no doubt that the requirements of copyright law are of some complexity and are not always understood, but of course this is a result of the nature of the subject matter of copyright.
- (xi) A business proprietor commissioned a composer to write a piece of music for use as "music on hold" in the business. The composer subsequently advised his client there would be no royalty obligation to APRA, but later acknowledged this was not correct. APRA

proposed to issue (and charge for) a retrospective licence for the period the music had been used without a licence. The proprietor of the business complained that he had acted in good faith upon the information furnished by the composer. APRA's Director, General Licensing, upon the matter being referred to him, accepted the complainant's argument without hesitation, notwithstanding that APRA had always asserted (though not originally very vigorously) that a licence was required.

- (xii) The proprietor of a café in a shopping centre complained hers was the only business there with a licence. She alleged this situation constituted unlawful discrimination against her! In fact, other businesses in the centre were licensed, but APRA arranged for a compliance officer to check on all the businesses in the centre, and wrote to the complainant accordingly.
- (xiii) The Public Affairs Officer of a City Council claimed an invoice received from APRA (which had not been paid so that a debt collection letter had eventuated) was very complicated and not fully understood by her. The complaint was oral, and upon APRA undertaking to issue to the Council a special manually prepared invoice with full details, the complaint was resolved.
- (xiv) A complaint was made that a licence was issued in respect of the wrong period. It conformed to the application, but APRA made an amendment in accordance with the licensee's representations. What precisely had happened, according to the licensee, is somewhat unclear, but apparently there had either been a mistake or a change of mind on his part. Either way, no breach of the Code is suggested.

When the threads of decision are drawn together to enable a conclusion to be reached as to the causes of the reduction in the number of complaints, it is necessary to take account of APRA's Complaints Procedure, and of the training given to employees and the emphasis placed on the Code within APRA. The Complaints Procedure, which is laid down in writing, made freely available, and frequently referred to in APRA's correspondence if some shadow threatens to affect its dealings with a licensee or member, states how and to whom a complaint should be made; offers assistance, if necessary, in its formulation; promises to acknowledge a complaint within

seven days and respond to it within 14 days, affording the complainant an opportunity to take the matter further; and suggests alternative dispute resolution by expert determination.

The Code of Conduct has been placed on APRA's website together with a discussion of its nature and purpose written by the Chief Executive. By instructions to staff and in conferences of staff (of which several were held during the year under report) emphasis is placed on the conduct with which the Code is concerned, on the Code itself and on complaints handling procedures. Referral of all complaints to a Complaints Officer is automatic.

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

Screenrights has had no complaints during the period under report, nor has there been any dispute between Screenrights and a member. Each year, Screenrights does encounter the problem of multiple claims. A multiple claim situation is one where more than one claimant seeks a payment for copying of a work. Such cases may arise from some relevant mistake. In the period under report, all multiple claims have been dealt with under Screenrights' Dispute Resolution Policy, but none has proceeded beyond the stage of negotiation, all being either settled or apparently in the process of settlement.

Like CAL and APRA, Screenrights informs and trains all new staff in its policies for dispute resolution and carries out regular staff training in complaint handling and alternative dispute resolution. These procedures have been reviewed to ensure their conformity to Australian Standard AS 4269-1995 and publicised on Screenrights' website.

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

PPCA has received one complaint during the period under report from the proprietor of a hairdressing salon who objected to a message being left for him over the telephone with a junior member of his staff who, he pointed out, was not a secretary but an apprentice hairdresser. The complaint was responded to promptly by the Manager – Finance, Operations and

Administration of PPCA, who was also the Complaints Officer. She assured the complainant that his complaint had "been brought to the attention of both the individual staff member and the department manager, so we can work to ensure that the situation is not repeated". Attention was also drawn to the Complaints and Disputes Policy to be found on PPCA's website, to its adherence to the Code and to the annual review of the Code. The complainant was informed he could make a submission and was given the Code Reviewer's official address. (He has not in fact made a submission.)

PPCA does advertise its complaints procedures on its website, advising that assistance is available in making a complaint and inviting contact with its Complaints Officer. Staff are trained in PPCA's policy for dealing with complaints and any complaint is entered in a register of complaints.

5. Viscopy Limited ("Viscopy")

During the period under review, no complaint was received by Viscopy.

Viscopy now has a staff of five, each of whom has received training in the handling of complaints. The *Australian Standard for Complaints Handling AS 4269-1995* has been circulated to all staff, and a system for recording complaints was adopted and staff were trained to use it. Viscopy now has over 5,000 Australian members, and over 1,000 licensees. With almost half of its members indigenous artists, many from remote or widely scattered regions, information about how to make a complaint and how to access assistance in the making of a complaint is regarded by Viscopy as important. Provision is made for the review of complaints by an independent assessor.

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

During the year under report, ASDACS recorded in its Complaints Log six queries from members in respect of the administrative deductions made by it. In every case, the member accepted the explanation given. There was a reason for this number of queries, since ASDACS had incurred a temporary sharp diminution in gross receipts which caused deductions from the

remittances to members to rise as a proportion of the payments. This being explained, the querists were satisfied.

As has been pointed out in previous reports, ASDACS is a very small society. It has 295 members, no full-time employee and no source of income except remittances from French, Swiss, Dutch, German and United Kingdom societies in respect of statutory royalties collected in Europe. It has a staff of three part-time employees. Although the formal structures required in a larger organisation are perhaps looked for less by the small and more informal circle of ASDACS' members, it has adopted a complaints procedure and advised members of it. The Code has been placed on ASDACS' website.

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

AWGACS is a small society (it now has 893 members, but no licensee) which was set up by the Australian Writers' Guild in 1996 as a non-profit company limited by guarantee to collect and distribute moneys receivable from European collecting societies for Australian and New Zealand writers of film and television scripts. The moneys received are statutory payments, in the case of the United Kingdom for educational copying, in the case of France for cable retransmission and private copying, in the case of Switzerland for all those activities, and in the case of Germany for private copying and video rental. The operations of AWGACS have been managed by an administrator with part-time support from the Executive Director, but for almost the whole of the period under report, AWGACS was without an administrator, the occupant of that position having resigned in August 2004. Before the fresh appointment of an administrator in August 2005, the entire organisation was reviewed, particular attention being given to the policies and procedures required by the Code. In these circumstances, staff training in the Code and dispute handling could not follow the normal course, but a dispute resolution procedure has been formulated and its use advocated through the AWGACS website (on which the Code has been placed) and by personal contact. The role and function of the Society have also been set out on the website and two information bulletins have been issued during the year to inform members on copyright issues.

The period under report saw two complaints: one by a writer whose cheque had not arrived, apparently because documents had been mislaid – this was promptly rectified to his satisfaction; and the other by a writer who thought a double deduction of membership fees had been made – this member must have been delighted to be told there was no membership fee for AWGACS at all! As a result of the latter complaint, distribution statements have been clarified.

One breach of the Code that has been reported by AWGACS will no doubt be remedied in future. Clause 4(b) requires a society to “include in its Annual Report a statement about its compliance with this Code”; but that statement was omitted from the report for the past year. Having regard to the upheaval in administration undergone, but now completed, this lapse is relatively minor. Although delayed, the Society’s report to the Code Reviewer does cover the substance of the matters with which Clause 4 (b) is concerned, and the Society has substantially complied with the Code.

SUBMISSIONS FROM “THE GROUP” AND “CAG”

The Code Reviewer has received a submission in writing dated 15 September 2005 from the States and Territories Copyright Group (representing the six States and the Northern Territory and Australian Capital Territory). This body (known as “the Group”) was set up to negotiate in respect of government copying with the collecting societies. The Group refers to difficulties it has had negotiating licences “with CAL and Screenrights”, but gives no specific example involving Screenrights. Another body (known as “CAG”) representing the educational authorities of the same governments together with Catholic Education Offices, Independent Schools and TAFE Colleges, made a very belated submission dated 7 November 2005 supporting the Group’s submission, but expressly stating it “wishes to note that it has maintained positive and successful relationships with APRA, AMCOS, PPCA *and Screenrights*” [emphasis added], with which, in case of dispute, its “experience has been that a resolution has been achieved quickly and efficiently”.

Although the first review of the terms of the Code (after wide advertising, culminating in a public meeting chaired by the Code Reviewer, at which a member of the Group, a representative of the NSW Attorney-General, was present) was carried out earlier this year, both submissions included a number of propositions not raised then which have nothing to do with CAL's or any society's compliance with the Code, but relate to the nature and content of the Code itself.

Both submissions focus on the delays caused by lengthy negotiations, implicitly blamed, in the case of the Group, on CAL and Screenrights, and in the case of CAG, on CAL. Yet the Group concedes "delays have not been caused exclusively by the societies", acknowledging that "time-consuming" consultations occurred between States and Territories. In fact, the outcome suggests these consultations must have proved an obstacle, since both New South Wales and the Northern Territory have actually executed separate agreements with CAL, a matter not referred to in the submission. As for the suggestion of delays by Screenrights, it put forward a proposal of a without prejudice interim survey upon which agreement was reached in principle in 2004, but two states have still not signed. The same proposal had been agreed and implemented with the Commonwealth as far back as 2002.

The Group and CAG complain that CAL does not offer alternative dispute resolution when impasses are confronted in negotiations, and they claim that Governments should receive special treatment beyond that accorded to individual licensees. But alternative dispute resolution is normally spoken of in the context of possible or actual Court proceedings, not as a step in a process of negotiation. It is also often seen as a way of resolving small disputes quickly and cheaply (especially where one party is financially disadvantaged). In respect of government or educational copying, the alternative dispute resolution mechanism chosen by Parliament is the Copyright Tribunal. It has been constituted as an expert body (which can sit as a full tribunal with a judicial member and specialist non-judicial members) for the very purpose of deciding the sorts of question under discussion. One of the reasons, historically, for its constitution, as was pointed out in the Report of the Code Reviewer on the Code itself issued in April 2005, was to protect weak licensees against a potentially strong society; but the State governments are certainly not at any disadvantage either in negotiations (in

which they start with a statutory right to copy) or before the Tribunal. If, over the years of negotiation, CAL was really thought to be making unreasonable and intransigent demands, the appropriate forum in which to allege and seek to establish that proposition has always been the impartial and well-qualified Tribunal. It has certainly never been appropriate to suggest that CAL should treat governments as in a position of privilege by comparison with others to whom CAL owes legal duties by statute, in contract or as a trustee.

From the years of negotiation, the Group cites a few specific delays. One is said to have been a four months delay in replying to a proposed agreement. CAL explains the letter of proposal arrived just before Christmas and was not seen by any senior staff for some time as a result, nor were all those concerned available until February. But this is a single instance. If Aristotle was right that one swallow does not make a spring, neither does one delay prove a reprehensible course of conduct. A further complaint that delay in these prolonged negotiations was caused by the raising of an issue by CAL, that turned out to be thought to warrant an application to the Copyright Tribunal, cannot be accepted. Nor can second thoughts about a draft – another example given.

CAG supports the Group's claim that CAL is guilty of unreasonable delays. But it gives only two examples, and ends its discussion of them by conceding "these examples may not be significant in showing delay", while asserting they "are not isolated incidences [sic], and appear to be indicative of an unfortunate cultural attitude within the organisation".

The incident with which CAG chooses to open this attack relates to a series of requests by "school jurisdictions" to CAL "to provide details of which schools copied particular works, and to indicate whether the work was copied by universities or TAFEs". These requests, although apparently intended to assist school bodies in relation to their planning for the copying of copyright works, were put to CAL on the basis that the "school jurisdiction" making each request was entitled *as a member* to remuneration for the particular works, being the owner of the copyright in them. But the requests were directly contrary to Rule 25 of CAL's Distribution Rules:

"CAL does not disclose information about:

- the individual institution that copied a work; and
- the location of surveys which are currently in progress.

CAL has adopted this policy to protect the integrity of the surveys and to promote full disclosure of the works copied by the licensees participating in the survey.”

As CAG must have expected, given this rule, CAL quite promptly declined to give the additional information sought. There ensued correspondence in which CAL was asked to amend its rule. Such a request might well give the recipient pause, and there was a delay of two months before CAL advised that the matter would be referred to its next Board meeting. Though not unique in general business experience, that was certainly an undesirable delay.

But the real dispute here is not about delay. It is about the appropriate balance to be preserved between the integrity of the survey and the ability of those concerned to have the procedures adequately checked. It is an issue that was referred to in the Copyright Tribunal in *Copyright Agency Limited v University of Adelaide* [1999] ACopyT 3 at para 6 where the Tribunal accepted that “the provision of information capable of pointing a finger at departments or individuals has the potential to affect behaviour”, adding: “Individuals may make short term changes in their copying habits during the currency of a survey the details of which they know will become available to their university, thereby distorting the picture it gives of their overall behaviour and, more importantly, of the overall behaviour across the universities of which their behaviour is a representation.” The solution in that case was a special order giving restricted access to a body in the peculiar position of the Australian Vice-Chancellors’ Committee. The solution in the case now under discussion is expected to be laid down by the Copyright Tribunal next year. The point is CAG well knew that the importance of confidentiality with respect to the survey had not only been asserted by the professional survey organisation involved in *Copyright Agency Limited v University of Adelaide*, but had also been accepted by the Copyright Tribunal. Yet it says it “does not believe” the ground of Distribution Rule 25 is “supported by the Copyright Act”, going so far as to support the Group’s submission which describes CAL’s concern about the integrity of the survey as “spurious”, and it actually cites CAL’s failure to accede promptly to its request, not as an example of

genuine disagreement, but as one of only two examples on the basis of which it alleges unreasonable *delay*.

The other example relates to the report received by CAG from CAL on 4 May 2005 of AC Nielsen, the sample surveyor engaged to survey print copying in schools. There were certainly some delays in connection with this report, but it should be pointed out that CAL had to refer it back to the surveyor and had also to recover certain of the records on which it was based after CAG itself uncovered some problems in the report. The initial delay on the part of CAG, which occurred before the problems were identified upon review by CAG on 16 and 17 June 2005, and then notified to CAL by letter dated 21 June 2005, is admitted, but not explained, in CAG's submission. That delay, of over one month and a half, puts in some context CAL's delay of two and a half months in retrieving the raw data and obtaining a final revised report from the professional survey organisation. It is to be remembered that CAL was not the surveyor, and the results questioned involved the identification, retrieval and analysis of processed records, followed by a further referral back to AC Nielsen when an initial revised report dated 21 July 2005 failed to deal with every issue.

Neither example, as has become clear upon analysis, had anything to do with the problem it was supposed to illustrate of an inappropriate attitude by CAL towards *negotiations*. One arose from CAG's insistence upon obtaining information the Copyright Tribunal had found could endanger the integrity of the sampling process without devising the kind of protection the Tribunal imposed in *Copyright Agency Limited v University of Adelaide*; the other may suggest that on a particular occasion both sides showed less than a sense of urgency, not in answering some offer in negotiations, but in the implementation of an existing agreement, although the extent to which CAL may have been affected by delays of the independent surveyor was neither acknowledged nor explored in CAG's submission.

The Group's attack on CAL's alleged delays in negotiations was supplemented by further references to the same problem of the preservation of the confidentiality of data by CAL in the interests of the integrity of samples, which was alleged to contravene cl 2.3(b) of the Code (requiring CAL's dealings with licensees to be transparent), cl 2.3 (d) (ii) of the Code

(unfortunately, this suggestion is not intelligible, since the provision is facilitatory, not prescriptive or restrictive), and cl 2.6 (dealing with Governance and Accountability and requiring the provision of certain “reasonable information”). What has already been said is sufficient to show these complaints must be rejected. The Group then alleges that CAL failed to consult with relevant trade associations in connection with its claim for copying of survey maps and plans, as a result of which its claim was unreasonable. But the question of CAL’s representation of surveyors, as well as its negotiation methods and alleged delays, was the subject of objective determination in the appropriate forum in *Reference by Australian Spatial Copyright Collections Limited* [2004] ACopyT 1, after the Chief Executive of CAL had given evidence. Lindgren P. , who held CAL should continue to be the declared Collecting Society for surveyors whose plans were copied by governments, said (at paras 183-184):

“The course of negotiation may suggest, as a matter of first impression, that CAL has been to some extent slow and half-hearted. I accept, however, that it is very difficult, if not impossible, to secure expeditious agreement of all State and Territory governments to pay, at rates and according to an agreed sampling system, for something for which they have not paid (at least as a separate category) in the past ... It may be that CAL should have brought matters to a head earlier. It is always possible, with the benefit of hindsight, to identify in a course of events, steps that should have been taken earlier than they were. I do not accept, however, that CAL’s performance can be described as ‘perfunctory’ or as pointing to a conclusion that it should cease, in favour of Australian Spatial Copyright Collections Limited, to be the declared collecting society in relation to the scheduled works.”

The remainder of the Group’s submission is really concerned with the Code itself, a matter it chose not to address at the time set aside for the purpose.

The submission of CAG makes a separate allegation that a press release issued by CAL on 17 August 2005 and an article in the September 2005 issue of *CALendar* were misleading and erroneous. Since “to err is human”, this allegation, as a complaint of a breach of the Code, confronts the initial problem that a mere mistake would not infringe the Code, which does not demand of a society that it be infallible. There is no suggestion CAL was

asked to correct anything in the release or the issue of *CALendar*. The alleged errors, however, are quite elusive. According to CAG, "[i]t is strongly implied" in the article that the "negotiations broke down over a failure to agree to a rate and CAL is seeking a ruling [in its recent application to the Copyright Tribunal] on the value of digital copying and communication in Australian schools. This is incorrect." CAG says the breakdown of negotiations related to two survey issues, one being the confidentiality issue mentioned earlier.

But the press release, after announcing the institution of the Tribunal proceedings on 12 August 2005 following "more than four years of talks between CAL and ... CAG", stated that these talks "failed to resolve the method of tracking and monitoring digital copying and its value. A price is already set for paper copying." The wording, unfortunately, was slightly changed by the author of the article in *CALendar*, with the result of obscuring the meaning somewhat: "While CAL and CAG agree that creators should be paid for the digital copying of their work by schools, an agreement could not be reached on the value of that copying or on exactly which activities by schools should be monitored and remunerated." In both versions, the alleged strong implication is simply not there. Both, quite expressly, and the press release very clearly, indicate that there is not one issue of value; there are two issues, one of which is value and the other is "the method of tracking and monitoring digital copying", as it was put in more extended form in CAL's press release. This, inevitably, goes to the value of a course of copying viewed as a whole. In fact, notwithstanding what is said in CAG's submission, the Application filed in the Tribunal on 12 August 2005 requested the Tribunal to determine:

- "(a) the amount of equitable remuneration payable to CAL by the Schools for the licensed copying in electronic form and licensed communications; and
- (b) the matters and processes constituting the EUS [Electronic Use System] to be used for the purpose of assessing the number of licensed copies in electronic form and licensed communications made by the Schools and any matters that are necessary or convenient to be taken into account for the purposes of the system."

There was also in the Application a request for an interim order "requiring the Schools to participate in electronic monitoring as soon as possible" pending final determination.

Paragraph 16 of the Statement of Points in Support of the Applicant's Case on the Preliminary Matters expressly pleads that since about March 2001, CAL and CAG have negotiated "in respect of the rate" and "have been unable to reach agreement on the amount of equitable remuneration payable by the Schools for licensed copying in electronic form and communication." That pleading does not appear to be in issue, and it is supported by a letter of 24 December 2004 from CAG to CAL stating "it is unlikely that we will agree on an appropriate rate to be paid by schools in relation to electronic copying." Certainly, the parties thereafter attempted to agree on a survey procedure, again without success, before CAL made its application to the Tribunal. But that does not make either the press release or the article misleading or incorrect in suggesting the issues were twofold.

Then CAG complains: "The article suggests that schools have been unwilling to pay for the educational use of copyright materials". But the passage quoted earlier from the article expressly says "CAG agree[s] that creators should be paid...". It is impossible, in the face of that, to uphold this complaint.

Then CAG complains: "The article states that the schools were ordered to continue to roll out the EUS in 2005. No such order or decision was made by the Tribunal." But the fact is CAG refused to continue the EUS and the interim order sought by CAL, as previously indicated, related to this very matter. Within just under three weeks from the application, on 31 August 2005, the Tribunal made orders in accordance with "Short Minutes of Order", the first of which noted that the Schools had agreed "to take part in the survey of electronic use [in a particular form] in respect of the period ending 31 December 2005". Anyone accustomed to proceedings in courts and tribunals would understand, in these circumstances, that the temporary agreement so noted amounted to an acceptance that interlocutory relief of that kind would be appropriate if not agreed. What the article actually said differed a little from the complaint. It said "a recent decision by the Tribunal will see this period of electronic monitoring continue until the end of 2005".

That statement was perfectly accurate so far as it went. The agreement settled an Application in the Tribunal, being noted in what appears to have been a consent order; and the decision of the Tribunal upon CAL's application for interim relief did "see" relief granted where, immediately before the application, the parties were at an impasse.

Finally, CAG complains that by the press release "CAL has publicly implied that Schools are not willing to pay for their copyright usage". This is simply untrue. As in the case of the article, the statement is clearly made: "CAL and CAG agree that creators should be paid for the digital copying of their work by schools". While they had not agreed about the method of tracking and value of digital copying, the press release added for good measure: "CAL and CAG have worked closely over the years to monitor photocopying and pay authors and artists for school-based photocopying".

On the basis of the one example of the request that CAL should supply, in breach of its Distribution Rule 25, information it considered would endanger the integrity of a survey, CAG was prepared to add, to its submissions about CAL's inadequacies vis-à-vis statutory licensees, the broad proposition: "It is CAG's experience that CAL's treatment of its *members* [emphasis added] is also below the standard required and expected under the Code." Rightly or wrongly, CAL has taken a view on this for which the survey specialist then engaged by it contended in *Copyright Agency Limited v University of Adelaide*, his view being there accepted by the Copyright Tribunal as having validity, and that view continues to be put forward by those representing CAL in the Tribunal. CAL would, in these circumstances, be recreant to its duty to its members as a whole if it abandoned its stand, unless further professional opinion in the area suggested it should do so. The proposition put by CAG is untenable, but what is disturbing is that this single (and untenable) instance is made the ground of a general statement about CAG's experience of CAL's treatment of its members, as though there were many reprehensible instances.

In the concluding portion of its submission, CAG casts doubt on the "incentives for compliance with the Code" and the "weight, if any, findings of the Reviewer hold in the minds of the collecting societies". This is a surprising slur, for which no evidence is proffered. The remarkable statistical

improvement in the numbers of complaints registered by the largest of the societies since the Code was adopted suggests the contrary. The Code Reviewer can only record that, to date, findings made by him have certainly been discussed seriously with him at subsequent interviews, and there has been no indication that questions of compliance have been regarded as other than very important. The discussions of complaints in now three reports upon compliance have included numerous instances where the Code appears to have influenced the conduct of officers of the societies, and the records of all the societies provide evidence of its implementation and of the training of employees in its application.

Finally, CAG asserts it "believes that non-compliance should be identified and reported to the Attorney-General". CAG should know that the Code requires the Code Reviewer to provide a copy of this report to the Department of the Attorney-General for the Commonwealth, as has been done in the case of every report pursuant to the Code.

SUBMISSION FROM THE LAW SOCIETY OF WESTERN AUSTRALIA

For the purposes of this review of the performance of the Collecting Societies under the Code, a submission was also received from the Law Society of Western Australia. That Society considered the "Code of Conduct ... to be a comprehensive and useful document ... no amendment of [which] is required". The Law Society put on record that "[a]part from difficulties which have been brought to our notice with respect to APRA's activities in relation to dramatic context licensing, the Society is not aware of any complaints about the implementation of the standards of the Code of Conduct by the collecting societies who have agreed to comply with it". The submission goes on to discuss the problems of the licensing of music for use in a dramatic context, which, of course, have much to do with the attitudes of composers and publishers of the music, as the Law Society recognises. However, the Law Society points out that specialist tertiary institutions teaching in the area of the performing arts, schools and amateur groups are involved, as well as other users of music. As the root cause of the difficulties is a clash between the legitimate interests of those who compose music and those who wish to use it in a special context, the Code Reviewer did not see it as an example of neglect of the Code, but rather as a policy conundrum

requiring a solution from APRA. The submission was therefore referred to that society. Whether its conduct in this regard is reasonable within the Code must be a question ultimately dependent on what its members are prepared to authorise.

GOVERNANCE AND ACCOUNTABILITY

In last year's report, these issues were examined in some detail by reference, particularly, to the question of the extent to which the Boards of the societies represented their members, and how they did so. It is unnecessary to repeat that examination here, but it should be noted the Board of AMCOS has since been enlarged by the addition of two directors to 14, each directly elected by the members. In the case of all the societies, the records of their dealings with their members examined by the Code Reviewer show that the Chief Executive has been very readily available to the membership, and has often become personally involved when difficulties or complaints have arisen. The several occasions on which, as the records show, Chief Executives or very senior executives have been so available over the Christmas and early new year period is evidence of their dedication to the work of the societies for their members.

STAFF TRAINING

The training of staff in complaints handling, dispute resolution procedures and the importance and scope of the Code of Conduct has been referred to in earlier sections of this report and was discussed in earlier reports. The documents of the societies include programs and notes of training conferences and other evidence of training in these matters. Perhaps the best evidence is the existence of Distribution Rules, membership forms, licensing documents, Complaints Registers, alternative dispute resolution and other procedures and correspondence about particular matters, all referring to the Code or implementing provisions of it. Again, this year, information about the review was widely disseminated, but the vast majority of representative bodies notified of it have not chosen to make a submission. That suggests widespread satisfaction that the Code is observed by the societies and that their staff training with respect to it has been effective.

PROMOTIONAL ACTIVITIES

The Code is concerned also with the promotion of the importance of copyright and of the role and functions of the societies. The submission of the Group referred to earlier takes exception to this (in its view, it is no part of the purpose of a Code of Conduct). But a recognition that the printing of books, in particular, deserves deliberate promotion as a matter of policy goes back in England to the measures of Richard III at the dawn of printing technology, and in Australia to our earliest copyright legislation. Parliament has provided for copyright and for the role of collecting societies, and the law needs to be better understood if it is to be observed so that the ends Parliament believed necessary to the public good may be achieved. The advance of the modern revolution in the technologies of the reproduction of copyright materials, by photocopying and by electronic means, has been so rapid that our laws and systems have been, to a considerable degree, left behind struggling in its wake. To take but one example, every teacher can now reproduce the works of others, which once could only be reprinted by a relatively small circle of printers who knew they could not trample on the rights of owners, and knew what the law required of them. When the circle is so vastly enlarged, there is a new and a greater need to promote a wider knowledge of copyright and of the means by which the rights it confers are made effective and royalties are collected. Much of the burden falls upon the Collecting Societies, and the Code embraces the task, declaring it to be a part of the role the societies have undertaken. In undertaking it, they have ventured upon various activities of an educational kind. They have given support to the Copyright Council and have produced materials to which reference has been made in previous reports. Their day-to-day activities often wear a promotional aspect in the widest sense while meeting some more particular need. Screenrights' website, *enhanceTV*, was instanced in an earlier report. The activities of Viscopy for indigenous artists are another case in point. ASDACS has taken an active part in discussions of amendments to the provisions of the Copyright Act dealing with films, achieving some recognition of the special position of film directors, and it is proposing steps to make the changes better known and understood. Widespread involvement by CAL and APRA in educational activities with respect to copyright has also continued during the year under report. PPCA holds staff training sessions at least monthly and trains its staff to be able to perform an educative role in

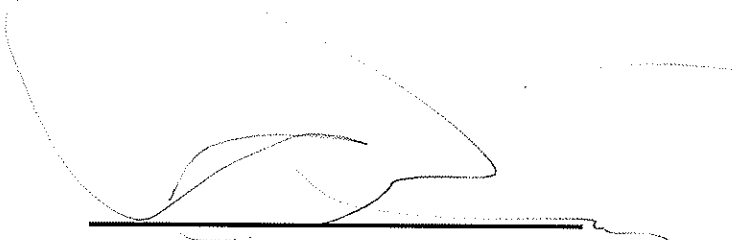
respect of copyright in relation to sound recordings. APRA/AMCOS, in addition to producing a large amount of written material for members, and involvement through representatives in a very large number of seminars and conferences with associations forming a section of the public interested in the performance of musical works, plays an active part in the promotion and development of collective administration of copyright in the Asia Pacific region, including Papua New Guinea and Fiji.

CONCLUDING REMARKS

In presenting this report, the Code Reviewer records that the number of complaints received by the societies in the past year was very small, in most cases miniscule, when compared with the numbers of their members and of the members of the public with whom they have had transactions. APRA, with now 42,000 Australian and New Zealand members and about 66,000 general performance licensees, has reduced its complaints dramatically over the three years of the operation of the Code. Having reviewed its systems, the Reviewer concludes the most likely cause is the serious and detailed attention given to the requirements of the Code, which has also been found to be a feature of the operation of the other societies. As a result, the overwhelming majority of the complaints that have been received, when analysed, were not found to indicate any breach of the Code.

This report is now submitted to the societies and to the Attorney-General's Department of the Commonwealth of Australia.

Dated this 15th day of December 2005.



The Hon J C S BURCHETT, QC
Code Reviewer