

# Report of Review of Copyright Collecting Societies' Compliance with their Code of Conduct for the Year 1 July 2007 to 30 June 2008

## INTRODUCTION AND SUMMARY CONCLUSIONS

This is the sixth annual report of the Code Reviewer, J. C. S. Burchett, QC, assessing the compliance with their Code of Conduct of the following eight societies: Australasian Performing Right Association Limited ("**APRA**"), Australasian Mechanical Copyright Owners Society Limited ("**AMCOS**"), Phonographic Performance Company of Australia Limited ("**PPCA**"), Copyright Agency Limited ("**CAL**"), Audio-Visual Copyright Society Limited ("**Screenrights**"), Viscopy Limited ("**Viscopy**"), Australian Writers' Guild Authorship Collecting Society Limited ("**AWGACS**") and Australian Screen Directors Authorship Collecting Society Limited ("**ASDACS**"). The practice adopted in previous reports of referring to APRA and AMCOS, which is administered by APRA, where it is unnecessary to distinguish between them, simply as "APRA" will again be followed in this report.

As in previous years, the review was initiated by a process of advertising for submissions from persons or organisations by websites and by mail. Details are contained in the Appendix. Apart from the provision of this opportunity for those interested to participate, a platform for the review was provided by cl. 5.2(b) of the Code itself, by which each society was required to furnish a report to the Code Reviewer concerning:

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

The reports were accompanied by detailed material relevant to the issues raised by the Code.

The Code Reviewer's examination of this material, of responses to his questions and of further material provided to him, leads to the conclusion, which is stated briefly here, that the societies have shown, in the words of cl. 5.2(c) of the Code, good "compliance generally ... with [the] Code".

## **COMPLAINTS**

At the forefront of a review of the societies' compliance with the Code must be placed an examination of the frequency and nature of the complaints made against their actions; the response given to any complainant; and the response within the society itself to any revelation through a complaint of a failure on its part. Therefore, this report turns now to the details of the complaints against each of the societies during the year under review.

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

In the last annual report, the Code Reviewer recorded that CAL had reduced complaints received by it from 11 in the previous year to just 3 new complaints, which was consistent with its record, apart from that previous year, of very few complaints. It is pleasing to find that in the current year, only two new complaints have been received. Such a low level of complaints must also be seen against a substantially increased membership of 11,671 serviced by staff numbering 106.5 (when expressed in terms of full-time equivalent employees). The number of licensees has also grown, to 12,469.

1. One of the new complaints was from the Victorian government (a statutory licensee), with which a retrospective photocopying agreement was being hammered out. A time frame had been estimated for a particular government response, and then a public servant wrote that a representative of CAL was behaving in an "unnecessarily aggressive" way by "bombard[ing] [the public servant] with constant, repeated inquiries about the same thing" (apparently, the estimated time frame had been exceeded). CAL treated the matter as a significant complaint, and its response was accepted as obviating any need to pursue the matter further. The particular representative of CAL involved is no longer employed by the society.

2. The second matter related to an email that raised two separate issues. One was dealt with promptly by the department of CAL which it concerned; the other was not passed on to an appropriate person for reply. When this lapse was revealed about eight months later, CAL's Complaints Officer made a full apology, explaining what had happened, furnishing a reply to the outstanding issue, and inviting a formal complaint if her apology and explanation were not considered sufficient. The matter did not give rise to a formal complaint.

Apart from these two matters recorded as complaints in the year under report, there remained on CAL's Complaints Register the unresolved privacy question discussed in the last two annual reports reviewing conduct under the Code. That question involves conflicting views about legal obligations, and awaits the complainant's agreement concerning the appropriate way to reach a decision upon the outstanding differences. As was pointed out in the last report, the nature of the dispute and the circumstances are such that the Code Reviewer should not comment on its merits, but leave them to a Court, Tribunal or process of alternative dispute resolution.

CAL's response to each of the two complaints received in the year probably helps to explain why there were so few complaints. The administrative culture that treats complaints in this way also tends to prevent them arising in the first place.

The existence of CAL's complaints handling and dispute resolution procedures is publicised through its website and information sheets. In addition, CAL informs members and licensees by means of its quarterly newsletter, *Calendar*, at presentations and seminars, and individually in response to requests. CAL has appointed a Complaints Officer, who is a senior lawyer, and departmental complaints officers in all its departments. The procedures provide for assistance in the formulation of a complaint and a time frame for dealing with it. The procedures for complaints handling and alternative dispute resolution are reviewed regularly to ensure they adequately reflect current practices and continue to comply with the Code. The Complaints Officer also meets regularly with departmental officers to ensure the procedures are observed.

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

APRA/AMCOS complaints registers are maintained in several different categories. During the year to 30 June 2008, the total number of complaints recorded for all categories was 21. This is an historically low figure, which maintains (and somewhat improves upon) the record of APRA/AMCOS in recent years of complaints being reduced by more than half to a figure in the twenties. As has been pointed out in previous Code Review reports, an evaluation of APRA's performance as revealed by the complaints figures must take account both of the large and growing numbers of members, licensees and transactions involved, and also of APRA's commendable practice of zealously recording anything in the nature of a complaint, even in some cases where a less strict eye might see little more than a conflict of opinion.

Light is thrown on the size of APRA's operations by the following figures. It employs a staff of about 225 in Australia and 14 in New Zealand. At 30 June 2008, APRA had 51,325 Australian and New Zealand members (including most Australian and New Zealand composers and publishers), while AMCOS had 1,843 Australian and New Zealand members. APRA has approximately 85,000 general licensees, and in addition it enters into broadcast, recording and online licences involving more commercially sophisticated licensees including the major broadcasters.

### **APRA/AMCOS Members' Complaints**

During the year under report, five complaints in this category were recorded.

1. APRA sent a general email to all members for whom it had an email address, asking them to register for electronic voting as a measure to "save money and trees". A member replied by email: "Please stop sending me this shit." APRA contacted him to clarify the matter, and put a stop on the sending of emails to him. It also reviewed its practice in relation to the volume and nature of emails to members and instituted a requirement of management approval for email "campaigns" of this kind.

2. Another member also complained of the number of emails sent out regarding electronic voting, with the same result.
3. A writer member sought information about mechanical royalty payments from a music company for the period 1982-1990. There was a delay of three months, for which the Chief Executive wrote to apologise, but the real problem was that neither the company nor AMCOS still had records of the relevant payments in late 2007 when the inquiry was made of AMCOS. The Chief Executive explained carefully why this was inevitably so.
4. A writer member complained about what were seen as unsatisfactory replies to queries concerning royalty entitlements in the UK, and also the completion of partial opt-out arrangements. The problem had some complexities, and there appear to have been misunderstandings – particularly as to APRA's position as recipient of distributions from the UK society, PRS. APRA apologised for some lack of precision in one of its replies, but the matter was resolved by an appropriate opt-out agreement.
5. A writer member complained that a telephone inquiry to APRA (in which he had asked to speak to someone in the appropriate area) had been answered by a receptionist in a rude, arrogant and argumentative manner. She slammed the telephone down on him. He telephoned again, insisting on speaking to someone else. Eventually, the receptionist put him through to another person whom he described as "very nice, polite", and he was then transferred to a third person for complete information in response to his query. Both apologised, and the last mentioned, who was again "very nice", suggested he lodge a formal complaint. There had been no previous complaint from a member or licensee about this receptionist, but there had been internal complaints addressed by management, and she was dismissed. It is fair to add that the complainant has been a member for 20 years, and he stated that, apart from this incident, he "could only praise all APRA staff from the reception up to executive management for their courtesy, kindness but very efficient professionalism".

## **On-line and Recording Services Complaints**

In the period under report, there was just one complaint in this category. A licence had been taken out for the manufacture of a CD, which was never actually produced. The complaint was that attempts were made to collect the debt consisting of the licence fee of \$63.25, despite two previous assurances having been given, so it was asserted, that the amount would be waived. There was no record of any request for a waiver, or of any agreement to waive the fee, but APRA tendered an apology, nevertheless, for its pursuit of the matter, and wrote off the small debt.

## **Alternative Dispute Resolution**

Three matters were recorded in this category.

1. There was a dispute between members, because of which APRA suspended certain distribution payments. Solicitors for one side claimed APRA had not responded to their fax, but the fax had never been received, as APRA carefully explained. The dispute was really between the parties, APRA's role being to make sure it distributed correctly. However, in the course of the consideration of the matter it was ascertained by APRA that a broadcaster had under-reported its use of the music in question. Appropriate distribution payments were made and APRA, in its discretion, paid interest on a sum withheld pending resolution.
2. There was a dispute between members about an alleged infringement, leading to current Federal Court proceedings in which APRA and AMCOS have been joined. But the only allegation against them is that AMCOS did not formally declare a dispute. This is not a complaint that falls within the scope of the Code.
3. There is a dispute between members as to their entitlement to shares in rights to certain musical works. APRA has invited all parties to engage in a process of mediation. One party claims to have submitted song registrations to APRA in the 1980s, but APRA has no record of that or of any objection being raised to the other party's inconsistent registrations.

## Licensing Services Complaints

There were 13 complaints recorded in this category, of which, however, 3 arose and were recorded in the previous year, but remained on the register of complaints as at 1 July 2007 because they had not been fully resolved.

1. Enforcement proceedings in respect of a debt for an unpaid licence fee of \$679.96 had reached the stage of the issue of a local court warrant to a sheriff's officer, when a complaint was received that the sheriff's officer had behaved in an "unacceptable" manner, and that a letter had been sent explaining the music use for which the licence had been obtained was not taking place. In fact, APRA's records do not include any such letter, and when what was asserted to be a copy was produced, it was addressed "To whom it may concern", not to APRA. Nor did APRA have any record of any conversation with the licensee about the matter. At the same time, the agency used by APRA to collect the debt did have a record of a promise made by the licensee to send a dispute letter by email, which was not received; and the agency's subsequent 6 messages left for the licensee had not been responded to. In those circumstances, the legal action taken seems entirely justified, and certainly APRA is not responsible for the way a sheriff's officer carries out his duties. However, in this case, APRA accepted that a change in music use had occurred, so that a licence was no longer required, and the proceedings to enforce the debt were not pursued further.

APRA reviewed its procedures following this complaint, because it appeared the licensee had verbally advised APRA's debt collecting agency (though not APRA) of changes in her music usage. Finance department procedures have been modified so that any notification of that kind is to be reflected in a referral to the Licensing Services department, and in cessation of debt collection pending resolution.

2. This was another complaint concerning a debt collection agent – in this case objection was taken to allegedly intimidatory language on the telephone. APRA has checked with the agency and rejects the complaint. However, APRA was able to verify that the complainant's

business had stopped, which led it to reduce its claim. The smaller amount was duly paid. Had the licensee sent a clear letter explaining the position at the proper time, this matter might have been avoided. Its circumstances were taken into account in the review mentioned in the discussion of complaint number 1.

3. A complaint was made that a staff member's answer to a request for information was "hard to understand" and the staff member "seemed impatient". Observation of the staff member's interaction with clients, and the comments of other staff, were reported to show a "very patient" attitude. However, she was specifically requested in future to refer to someone in the Licensing department if unable to explain a particular licence agreement. The complainant was told of APRA's response to the complaint and appeared satisfied.
4. There was a complaint about APRA's policy not to make a fractional refund in respect of a licence fee following the closure of a business. As in the particular case the business only operated for three months, APRA made an exceptional proportionate refund.
5. This was a complaint of harassment in the pursuit of a licence agreement. The complainant said he had left a message on APRA's voicemail stating no music was used by him. It transpired on investigation that his father had indeed left such a message, but without identifying himself or giving any details of the premises! The Director of Licensing Services responded to the complaint, apologising for the erroneous perception that music was used (as the complainant was adamant it was not), but explaining that from time to time APRA made compliance visits to cafe premises of the kind involved. Little more than one month later, the complainant advised he had changed his mind about music use and wanted a licence, which he obtained.
6. This complaint illustrates a recurring problem. A licensee may seek to cancel a licence by making a telephone call. In general, that is plainly unsatisfactory because open to misinterpretation or dispute, the cancellation of a licence being a serious matter which may expose the former licensee to an infringement suit. Accordingly, APRA seeks



confirmation in writing. But this may irritate careless or unbusinesslike people. In the present case, a request to confirm telephone advice led to a heated argument. APRA's solution was to apologise, check with the person who was to take over the music usage, then cancel the existing licence and confirm what it had done by letter.

7. This was one of the outstanding matters from the previous year. It was not then regarded by the Code Reviewer as involving any breach of the Code, but a question whether a particular use of a television set required a licence. The matter has now been resolved and licence fees paid.
8. A complaint about the appropriateness of a licence for the type of music played and also about APRA's distributions was posted on APRA's MySpace page. When observed, it was initially read as a comment rather than a complaint, but it was decided a reply would be made by the Client Services Manager. Unfortunately, her draft response was overlooked when she moved to a new position soon afterwards. Upon realising, four and a half months later, that no response had been sent, a staff member telephoned the complainant. At that stage, she could not recall posting the complaint or comment. She was advised how she could follow the matter up if she wished, but has taken it no further since.
9. This is the second complaint remaining on APRA's register of complaints from last year. In last year's Code review report, it was recorded that a proposed licensee complained of a telephone reminder as heavy-handed; the APRA representative concerned denied doing more than giving a normal reminder about a licence application form which had not been returned; and APRA had responded to the complaint by offering an apology and to accept a letter verifying music was no longer used.

What followed, in the current year, was a compliance check which showed that – contrary to the complainant's assertion – music was being used. A letter was sent, and then contact was made by telephone with the complainant, who acknowledged he was using a radio, but

blustered and terminated the telephone conversation abruptly. APRA then referred the matter to its solicitors, with the result that a licence was entered into, and payment of the fee was received. This conclusion of the events that unfolded as the matter was dealt with left the original complaint – which APRA’s representative had disputed at the time – without credibility.

10. This is the third of the complaints remaining on APRA’s register from last year. It was made by the Pastor of a community church who accepted APRA’s apology for a failure to return telephone calls in circumstances discussed in last year’s Code Review report. Reference was made in that report to APRA’s having undertaken a review of procedures to avoid a repetition of the problem. The review also dealt with steps to be taken before debt recovery action where cancellation of a licence might be pending. This review was completed in the current year, and procedures were laid down.
11. A video store owner objected to a licence being required for the playing of more than one television set – he took the view that a fee should be charged for only one. His contention was put as a complaint, but the issues were really: (i) what did he do? and (ii) what licence did that require?
12. This was a case of a failure to pay licence fees, the closure of a business being imminent. The matter got to the stage where APRA had engaged debt collectors, when the licensee complained he had previously advised APRA the business would be closing. APRA’s records disclosed a reassessment form had been sent to the licensee for completion, but never returned. As a result, debt collection procedures had continued. Eventually, the business did close and reassessment figures were calculated, a promise of payment being made. Nevertheless, payment was not received until after many reminders. The problem in this case does not appear to involve, even arguably, a breach of the Code, but arose out of either the dilatoriness or the financial difficulties of the licensee, or both.

13. This matter was logged as a complaint because a licensee complained to APRA that a solicitor engaged by its debt collection agency had given no heed to the licensee's explanation. What is really in issue is a question of the use made in a restaurant of television sets (inconsistent statements have been made about this), as well as the legal problem of the effect of the Copyright Act, given that use. Negotiations about these matters are proceeding.

### **Complaints, Finance**

Two complaints are recorded under this category.

1. This was a debt recovery matter relating to a licence fee. The licensee having failed to pay, APRA referred recovery to a debt collector. The licensee complained (a) that APRA had not sent reminders following its initial invoice, and (b) that an employee of the debt collector had used rudely abusive language. APRA's records indicate two reminder letters were sent in accordance with normal procedures at intervals of 45 days and a further 15 days. So far as concerns the allegation of abusive language, this was denied by the debt collection company, APRA's previous experience with which would support its denial. Nevertheless, the debt having been paid, although 137 days after the invoice, and a month and a half after the referral to the debt collector, APRA apologised for any inconvenience and waived recovery of its costs of debt collection proceedings.
2. A licensee failed to pay an invoice on time. APRA sent a final reminder 60 days after the invoice date, which must have crossed in the mail the debtor's cheque received one day later. The debtor wrote complaining about the terms of APRA's final notice, which warned of legal action in the event payment was not made. As to that, the warning was in quite usual terms. But the complaint also suggested the inclusion of some indication that the letter could be disregarded if payment had already been made. APRA reviewed both its first reminder letter and its final reminder letter, to ensure the former contained the suggested statement, and redrafted the latter to add a sentence: "Should you need to discuss this matter, or to advise that you have already sent your

payment, please contact our office toll free [number supplied]". This is a good example of the use of a complaint to generate an improvement in business procedures. Of course, it was necessary to tell the complainant the procedures would be reviewed, and she was told this very promptly after the complaint was made.

## **Comment**

Reference has just been made to a response to a complaint which did not merely aim to satisfy the complainant, but to remove a potential source of complaints by an improvement in the applicable procedure.

In a joint response to some other complaints, the Finance and Licensing Services departments of APRA have discussed ways of improving communications between the departments with respect to informal or oral requests for the cancellation of licences. The aim is to have doubtful cases clarified by the Client Services department directly with the client. A new Client Management System to be inaugurated late in November 2008 is planned to enable more efficient tracking and follow-up of all client communications. This is another example of a response to the revelation of a need by the receipt of complaints that are taken seriously and analysed accordingly.

An analysis of APRA's complaints records shows how far its conduct is from revealing any tendency to overlook the concerns of its members or its licensees, or to deal with them insensitively. On a number of occasions it has chosen to waive a right rather than allow a dispute to develop that would have been disproportionate to the value of the right. On a number of occasions, too, it has apologised where it could have maintained there was nothing in its actions to apologise for. This is the kind of response enjoined by the Book of Proverbs: "A soft answer turneth away wrath". There is no doubt it is a response that is in keeping with the spirit of the Code.

Of the five complaints by members of APRA, only one related to a clear failure to treat a member with courtesy and conscientious concern to help. In that case, the offending staff member was dismissed following an investigation.

Two of the other complaints were from members who did not wish to receive emails, and the remaining two were from members upset about the answers given to enquiries they had made that necessarily raised difficulties.

The three matters recorded under the heading “Alternative Dispute Resolution” were disputes between members and/or third parties, in which APRA was only marginally involved, and not in a way that shows any lapse on its part.

Taking together the 13 Licensing Services complaints, the one Online and Recording Services complaint and the two Finance complaints, a total of 16, it will be recalled that three did not actually arise in the year under report, but were registered as current because actions to resolve them had not been finalised at the end of the previous year. They have all been finalised since, one (which involved a failure to record and respond to telephone messages) by an accepted apology and administrative measures aimed at avoiding any repetition, and the other two in circumstances that do not suggest any breach of the Code.

Seven of the complaints arose out of debt recovery action. One case had gone so far as to involve a sheriff’s officer, and it was of *his* actions that the complaint was made to APRA. In another, the complaint was concerning what a solicitor employed by a debt collector was said to have done or failed to do. Two more related to debt collection agencies employed by APRA. The other three complaints arising out of debt recovery related to APRA itself, but did not show any breach of the Code: one of them led APRA to make a change to its final letter of demand, but perusal of the form previously used does not suggest it was actually defective – rather that the change was an improvement.

There was one complaint arising out of a staff member’s attempt to answer a query – but, after investigation, the staff member was not considered to have been at fault, and there is no reason to doubt this conclusion.

There was one complaint about APRA’s policy of not making fractional refunds of annual licence fees; in an exceptional case, such a refund was made.

There was one complaint of harassment by an employee of APRA seeking the execution of a licence. But this complaint lacks credibility. The complainant’s assertion that he did not use music was accepted, but he was told compliance

checks would be made. Within a short time, he said he had changed his mind; would use music; and required a licence, which was issued.

There were two disputes about what type of licence was required, but neither showed any breach of the Code, and both were resolved.

There was a heated argument about the need for something in writing as evidence of the cancellation of a licence, in order to avoid exposing the licensee to the risk of infringement if an informal cancellation should have an unintended effect. Accepting that an APRA employee, by becoming heated, infringed the Code, he did so in attempting to observe a practice that was in the interests of the licensee. APRA has apologised and taken upon itself the responsibility of ensuring the appropriateness of the terms of the cancellation in the circumstances.

This analysis leads to the conclusion that a relatively small proportion of the complaints recorded by APRA in the period under report raised issues under the Code, and these were dealt with in an appropriate manner.

It should also be noted that, during the year under review, APRA's complaints handling procedures were reviewed in accordance with clause 3 (d) of the Code, and system changes were made to ensure that complaints could be referred between departments more readily and to assist central review of them. As well, staff training in relation to complaints was enhanced.

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

The membership of Screenrights grew, in the year under report, to 2,815. Its 849 licensees continued (as to the great majority of them) to be licensed under educational licences (for schools, universities, TAFEs etc) which were unchanged except for the effects of changes in the Consumer Price Index (CPI) applied to their rates. The calculation of the remuneration is almost always under a sampling system, with the exception of a few Victorian TAFEs which prefer records systems. Amendments to the New Zealand legislation will produce additional royalty income in the future. A new agreement has been reached in respect of retransmission of free to air broadcasts to mobile telephones. A head agreement has been executed between the Commonwealth and Screenrights with respect to

equitable remuneration for Government copying, rates being indexed to the CPI, but progress in reaching agreements with the States and Territories remains slow.

Screenrights' activities have given rise to no complaint against it in the year under report. There were 18 instances of disputes between members with regard to multiple claims. Such disputes arise when there are two or more claimants to the same amount available for distribution. Often, the reason is a mistake with respect to the relevant copyright or the period or territory of a licence. Of the 18 instances that arose during the year, four were related to a dispute about agency representation.

Screenrights has a three-step policy for these matters. First, the members are put into contact with each other, a step which generally (last year, subject to a matter to be mentioned, in every case) leads to an understanding of the position and a resolution of the dispute. Secondly, if that were to fail, Screenrights would propose mediation. Thirdly, if both the first step and the second should fail, Screenrights would propose expert determination. To further the process, Screenrights appoints for each multiple claim dispute a Case Manager, at its own cost.

Three of the four multiple claims that were related to a dispute over agency representation were confronted by a statutory deadline for payment. A proposed settlement agreement having broken down at the eleventh hour, Screenrights, in order to try to avoid unfair disadvantage to the true rightsholder, and in the exercise of its discretion as trustee of the amount to be distributed, made its own determination on the information available to it, and processed a payment accordingly before the deadline took effect.

Should a complainant wish to lodge a complaint, ready access to Screenrights' complaints handling procedure, providing details of how to make a complaint, is offered by Screenrights' website, or the information will be made available on request. All new staff are trained in the society's dispute resolution policies; and staff training on the obligations imposed by the Code, and as to complaints handling and alternative dispute resolution procedures, is carried out regularly. There are also fortnightly staff meetings at which particular issues are raised.

The complaints handling policies and procedures of Screenrights were recently reviewed to ensure that they remained compliant with the Australian Standard (AS-ISO 10002-2006) for complaints handling.

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

In the year under report, PPCA's licensors have grown in number to 706, and in that year PPCA reached a total of 50,974 active public performance licences and approximately 2,150 registered artists.

Its complaints handling policy is publicised on its website, and staff are provided with a copy on induction, informed about it, and review the processes regularly. A Complaints Officer has been appointed, with access to all other employees to address any questions relating to the policy. Staff are trained to point consumers to the policy, explain the process for making complaints and direct enquiries to the Complaints Officer as required. Assistance is available to lodge a complaint and that fact is made known in the policy, which also sets out a time frame for a response to a complaint. PPCA recognises that it needs not only to deal appropriately with an individual complaint, but also to rectify anything in its practices that may have led to it.

Following a 2007 ACCC authorisation determination, PPCA amended its previous policy relating to the arbitration of disputes in order to make specific provision for mediation, neutral evaluation and conciliation options. PPCA's complaints handling procedures were also fully reviewed (a) as part of its compliance with the Code; and (b) as part of what was involved in the authorisation proceedings.

During the year under report, PPCA has recorded four complaints.

1. A representative of some members of a band ("the Group"), who were in dispute with a record company about rights to royalties, claimed that moneys paid by PPCA to the record company in respect of certain recordings were wrongly paid, and demanded details of payments going back to the 1980s, alleging PPCA was bound by its Code obligation of transparency in its dealings with "Members" (see cl 2.2(c)) to furnish these details. PPCA has pointed out that records going so far back simply do not exist, but provided particulars from 1999. It also referred the whole



problem to solicitors for advice, following which the representative of the Group members was informed that the dispute, being between the Group and the record company, was not a matter for PPCA. Attention was drawn to the review of PPCA's conduct by the Code Reviewer, to whom some of the correspondence was referred by the Group's representative, but the ultimate conclusion was not the subject of a further Code complaint, nor does the earlier correspondence reveal any failure by PPCA to observe its obligations under the Code. The obligation of transparency expressed in cl. 2.2(c) has an important bearing on a collecting society's dealings with its members, but it does not entitle someone who is *not* shown to have had relevant dealings with the society as its member to appeal to the Code simply because the society and its solicitors have rejected a claim as groundless, or (if valid) as properly lying against a third party (the record company). The Code Reviewer is in no position to function as an alternative tribunal to decide contested questions of fact and law, more especially in a case where not all the relevant facts have been placed before him. Whether or not the representative of the Group is right in alleging the record company has claimed rights exceeding its legal entitlements in relation to certain recordings must be determined elsewhere. Likewise, whether PPCA, in accepting some claim made by the record company, has erred in law and thereby acted in a way that prejudiced the Group, and whether the Group was at the relevant time a party to which PPCA owed any obligation under its constitution and rules, are disputed questions that cannot be determined by the Code Reviewer. As in the case of the privacy issue mentioned earlier, the Code Reviewer should leave these matters, if the parties wish to pursue them, for determination by a Court, Tribunal or process of alternative dispute resolution. Once the substance of the matter is seen as a dispute about legal rights, there is nothing to show any action or omission by PPCA in breach of the Code.

2. In a case of error piled on error, an accounts clerk at PPCA altered the date on an invoice for \$64.02, also altering the statement on it of the "due date". Then, apparently unaware of these alterations, a clerk telephoned to say the account was overdue more than 10 days before the specified date. Not only that, the proprietor of the business being absent, an employee was told this account was unpaid, which provoked some concern on the part either of the proprietor (when he learned of it) or of the employee.

PPCA's Complaints Officer wrote very promptly to apologise, and to assure the complainant the issues would be raised with staff to avoid any repetition, and that a specific note had been placed on PPCA records that accounts issues should only be discussed with the proprietor or his wife. In fact, rules about alteration of documents and the need to take care and exercise discretion when making contact with licensed premises, particularly concerning outstanding payments, were put in writing and discussed with staff.

3. A proposed licensee ("the licensee") was in dispute with PPCA as to the appropriate tariff. PPCA forwarded to the licensee's solicitors a copy of its Complaints Handling and Dispute Resolution Policy, with a request to advise how they would like to proceed. No obligation under the Code is called into question by this matter.
4. A person proposing to enter an input agreement with PPCA emailed a series of questions about the agreement, saying he did not think he had "been informed enough". PPCA referred him to the Arts Law Centre of Australia, with which PPCA has made an arrangement for the free provision of independent advice concerning the terms of its normal input agreement.

Viewed against the licensing figures noted at the beginning of this section, the four complaints do not impugn PPCA's high standards in general. Its response to the unfortunate mistakes in respect of the invoice for \$64.02 was appropriate, particularly in so far as it took immediate steps to avoid the risk of repetition and to reassure, as well as apologise to, the complainant.

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

Viscopy has a full-time staff of 6, and (currently) a part-time Chief Executive Officer. A new CEO, to start in January 2009, will be employed full-time. Two of the full-time staff are responsible for Viscopy's relations with Aboriginal members. At 30 June 2008, the membership was 7,221 of whom 4,863 were Aboriginals. Viscopy's Complaints Policy, Privacy Policy, its Constitution and its Distribution Policy are made available online, and it undertakes an annual training workshop for staff during which complaints handling in accordance with the Code is inculcated. Its website advises would-be complainants how to make a complaint concerning

its services, processes or staff. Hard copy advice is also available. All written complaints will be reviewed independently. Mediation is offered to members through the Arts Law Centre. The Code of Conduct is publicised online, and a hard copy will be mailed out on request.

In the period under report, Viscopy has had no complaint.

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

AWGACS had 924 members at 30 June 2008. It has no licensee. In October 2007, its former Administrator left, and her replacement, a new Manager, was not appointed until mid-March 2008. She is the sole member of AWGACS' staff. The society's website promoted its complaints handling and dispute resolution procedures for appropriate cases, and a new website to be launched late this year will continue to do so. Hard copies of the policies are available on request. The new Manager has made herself familiar with these procedures. A copy of the Code of Conduct will be posted on the new website, and the 2007 Annual Accounts include a statement of compliance.

There was one complaint in the year under report. The complainant queried two aspects of the audited accounts, but was satisfied by a detailed explanation furnished in writing by the Executive Director.

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

ASDACS at 30 June 2008 had 398 members, and no licensee. Its only employee is its Executive Director – who works for it part-time 3½ days per week. It is one of the smallest collecting societies in the world, meeting a special and limited need. Its membership is widely dispersed through the world, affected by differing residencies and taxation regimes. The Code is posted on its website, and was referred to in a recent circular to all members.

For the year under report, three queries were logged as complaints, but only one really answers that description – and it was expressed in the mildest terms. However, it drew from the Executive Director of ASDACS what must be regarded as a model answer:

“Thanks for bringing this to my attention. You are completely right and I am completely wrong. Mea culpa!

I'm sending you a cheque for the difference (\$7.30 plus GST = \$8.03) today.

The error has forced me to rethink the [relevant] form....I'm sorry for the inconvenience. Thanks for helping ASDACS improve its service.”

The comment seems inescapable – how better would you know where a drop of oil is needed, than by hearing and heeding a squeak?

## **SUBMISSIONS**

The Code Reviewer received a number of responses to the advertisement of this review of the Code, but none calls for separate discussion here.

## **GOVERNANCE AND ACCOUNTABILITY**

During the year under report, the societies continued to be governed in accordance with organisational structures the nature of which has been explained in previous reports. These structures are designed to ensure the accountability of each society to its members.

## **STAFF TRAINING**

Because the training of staff in the obligations imposed upon Collecting Societies by their role, and accepted by them under the Code, is closely bound up with a review of any complaints brought against them, and of their response to complaints, this topic has already been touched upon. However, some further examination of staff training will now be made.

Leaving aside the small societies which do not have large staffs to train, each of the larger societies maintains a staff training program that includes a significant emphasis on the Code. **CAL** carries out annual Code training, this year's sessions being held in May 2008. It also briefs new employees at the commencement of their employment concerning the Code, and makes it available, together with

complaints handling and dispute resolution procedures, on the staff intranet. The Code of Conduct is referred to in its standard employment contract. Designated staff members have particular responsibility for the Code, complaints handling and dispute resolution. Upon these departmental complaints officers becoming aware of a complaint, they report to CAL's Complaints Officer and consult concerning its resolution. Detailed information sheets on complaints handling and dispute resolution have also been prepared. CAL staff attend regularly at training sessions held by the Australian Copyright Council, where CAL's role is explained.

CAL is currently carrying out a review of its intranet, which includes its complaints handling and dispute resolution procedures.

**APRA** has an induction checklist of matters to be discussed with a new employee; it includes "Code of Conduct awareness". APRA's training notes deal in detail with the topics of "Harassment and Complaints" and "Grievance Handling". APRA also has training notes for its various departments, in which references are made to "ensur[ing] awareness of the Code of Conduct", to doing so "during informal departmental meetings", to the "Code of Conduct for collecting societies and how applied to work of [the particular department]" and to "Complaints Procedure". The Licensing Services and Member Services departments each hold staff training conferences at least once (usually twice) each year, and in the year under report the Finance and Distribution departments also held staff training conferences. At these conferences, the Code of Conduct was discussed, with emphasis on the identification of complaints and dealing with them. At least four times a year, all managers of APRA/AMCOS meet, when the Code and complaints procedures are discussed. New staff training includes the Code. A new whole-of-staff training program introduced in February 2008, involving sessions throughout the year, includes conflict resolution and covers the importance of attitude and accountability.

On appointment, a new staff member of **Screenrights** is made aware of its complaints handling and dispute resolution procedures pursuant to the Code; receives training in them; and is handed copies of the relevant documents. Regular staff training follows, and is supplemented by fortnightly staff meetings where, specific issues being raised, training is given. Staff training in the year under report also included two sessions dealing with Member Services conflict

reviews, one specifically for new staff, and a further session of Member Services staff training.

On joining **PPCA**, a new staff member is provided (inter alia) with copies of the Code of Conduct, the society's Privacy Policy, and its Complaints Handling and Dispute Resolution Policy. It is an aim of management to involve employees in discussion of these policies, through which they may contribute to further development of the processes. The Licensing Department, which has more dealings with consumers than other departments, meets at least once a month, when staff are reminded of the Code and other policies, and receive training in the personal contacts involved in their work. Other departments also meet from time to time for staff training and systems review. Further specific training sessions were held during the year under report concerning (inter alia) the Code, policy changes including changes to the Complaints and Disputes Handling policy and the new ACCC authorisations granted to PPCA. Staff were also sent to external training in first aid, customer service, telephone skills and debt recovery and credit services. A report to management on a particular training presentation on the Code, given on 4 April 2008, indicates it was designed to stimulate discussion of the Code's implications for the way clients and others are dealt with, and that the Code was discussed in a practical way, the importance of identifying a complaint and referring it to a Complaints Officer being emphasised. Significantly, it was noted that, where a doubt exists as to whether a complaint is actually being made, the matter should be so referred as a precaution.

As has already been noted, **Viscopy** has an annual training workshop for its staff of 6 full-time employees. Such a small staff will provide less scope for the kind of formal training programs discussed earlier. **AWGACS** and **ASDACS**, each with a staff of one, are in an even more special position. Their adherence to the implementation of the Code requires these individuals to make *themselves* familiar with its requirements, not to train others. The Complaints section of this report provides evidence that they have acted in accordance with the Code.

## **EDUCATION AND AWARENESS**

In previous reports (for example, last year's), the Code's requirement that collecting societies take part in promotional and educational activities to inform the community about copyright and their own role has been explained. It is very

important that the obligations of copyright law, and the reasons why international treaties and our own Parliament have insisted upon them, should be better appreciated.

The operations of all of the societies conduce to this end. For instance, **Viscopy**, with its significant Aboriginal membership, is necessarily involved in education. It receives Commonwealth funding, through DOCITA, to carry on an Australia-wide Indigenous Copyright Education program through which over 30 workshops were conducted in the year under report. Seminars were also held at centres of art education.

**AWGACS**, as a smaller society, and even more so, **ASDACS**, are unable to bear a large part in educational activities. However, they do engage in promotion through personal contact, by web page and information bulletins. AWGACS was promoted at a Screenwriters Conference in Victoria late in 2007, and it is planning further promotion through the Australian Writers Guild quarterly magazine, *Storylines*. ASDACS has sent a news update to all its members concerning its role, the new right of Australian directors in respect of retransmission, a further proposal for amendment of the Copyright Act and the Cultural Purposes Fund of ASDACS.

As the Code itself envisages (see cl.2.8(b)), the larger societies have taken up a larger role in this respect. **PPCA** provides its staff with a detailed 25-page set of questions and answers to assist in the provision of accurate information about its own role and activities. This was revised as recently as May 2008. Information about these matters is also published on its website. During the year under report, it continued to sponsor music awards and artist development workshops, supporting the Australian Music Prize and donating \$50,000 to the Song Room. It has produced newsletters and worked with industry groups to ensure the dissemination of copyright information in respect of recordings and its own role. Information provided by mail-out, distribution at particular occasional events, insertion in trade journals and by website, during the year, included issues of the newsletter *On the Record*, letters to licensors and registered artists concerning significant decisions of the Copyright Tribunal and the ACCC, details of the Australian Songwriters Contest and other matters of importance to participants in the record industry. PPCA provides music prizes and encourages performance of music. It furnishes to artists who register with it an Artist Information Pack,

containing quite comprehensive material. During the year, information sessions were held and presentations given in each of eleven months at various centres including in NSW, Victoria and Tasmania. Explanatory material and information are circulated in various ways to licensees and those representing them, and placement is also secured in trade publications. PPCA is in regular contact with relevant trade associations. It conducted in the year market research into the use of recorded music in retail outlets.

**APRA** staff speak regularly at seminars, and provide advice to members of the music industry and to those who use music. APRA has a National Indigenous strategy to promote education and protection of Aboriginal and Torres Strait Islander creators of music, and during the year it established a new office in Darwin, appointing a National Indigenous and NT Writer Services Representative. Support of opportunities for indigenous youth in music is seen as part of the way of advancement. APRA has also been active in securing amendments to NSW laws in the hospitality sector that restricted the use of live music at smaller venues. It has co-funded a Live Music Co-ordinator to assist in the presentation of live music at such venues. It has also been active at the national level in conjunction with the Music Council of Australia, with Australian government and industry support. It has facilitated research into regulatory and organisational barriers to live music use. It held in April 2008 the inaugural Song Summit Sydney, involving presentations, workshops, seminars etc. It maintains a comprehensive website, which is currently in the process of overhaul and renewal. With other collecting societies, APRA contributes to the operations of the Australian Copyright Council. AMCOS provides funding for Australian Music Publishers' Association Limited and Music Industry Piracy Investigations. Each year APRA sets aside 1.25% of distributable revenue to fund projects and organisations promoting the use and recognition of music by APRA members. This program of assistance is currently being increased to 1.75%, to be phased in over two years.

**CAL**, apart from maintaining its website, works to establish and strengthen ties with industry organisations. Staff are trained in communication skills, and CAL issues quarterly a newsletter in magazine form, *CALendar*, which is attractively presented and informative. A recent issue may be described to explain the level at which it is pitched. It contains a brief editorial note about the High Court decision on surveyors' copyright; a more detailed statement about the case; a reminder to rightsholders concerning claims; a notice about CAL board elections;



an advertisement of free CAL seminars in Brisbane, Adelaide, Sydney and Melbourne; an article about the resale royalty scheme for artists; a further article about the attitude of artists to the scheme; an article about remote tribal Aboriginal artists and copyright; an article about a research company and its use of a CAL licence; an item giving information about CAL's Cultural Fund, inviting applications for assistance; information about the international publishing scene; and notices about CAL's annual report and a project to produce an Australian Poetry Resources Internet Library. This wealth of informative material in one issue illustrates one of the ways by which the larger societies pursue the object of promoting knowledge and understanding of copyright. CAL is at the present time launching a new website. It also issues regular media statements to increase public awareness of copyright. It offers various seminars and forums on particular issues, and more general free seminars for members twice yearly. Through its Cultural Fund, it promotes many activities of an educational and literary character. In January 2008, it established a full-time position dedicated to engaging with peak industry organisations, government and others involved in the world of publications.

**Screenrights** contributes to the Australian Copyright Council by membership fees and board representation. In the year under report it held 27 training sessions in universities, TAFEs and schools. It produces brochures, reports, information sheets and newsletters. It continues to provide *enhanceTV* which is currently made available weekly to well over 8,000 educators as a valuable resource for the use of electronic educational materials. By these means, and through its website, Screenrights brings to notice a great deal of information about copyright and its own role as a collecting society in respect of audiovisual works. Screenrights is also involved in sponsorship programs in the educational area and in film.

These comments about the promotional and educational work of the collecting societies are not intended to detail exhaustively the coverage achieved by each society, but to show how the Code Reviewer has found the societies have met the challenge and obligation imposed on them by their Code of Conduct in the area of copyright education.

## **CONCLUDING REMARKS**

Again this year, the Code Reviewer visited the office of each of the collecting societies to review personally with senior executives the report and documents transmitted to him by each society. Further documents and information were made available to him as he considered them necessary or useful. The records of the societies and the information obtained confirmed the conclusion that their Code of Conduct has become an important part of their corporate culture, and has been observed by them in the year under report. In numerous respects, the Code Reviewer's examination of their conduct has revealed practices and specific actions that reflected their compliance with the Code.

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

Dated this 24th day of November 2008.



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The Hon J C S Burchett, QC  
Code Reviewer