Report of Review of Copyright Collecting Societies' Compliance with their Code of Conduct for the Year 1 July 2008 to 30 June 2009

INTRODUCTION AND SUMMARY CONCLUSIONS

This is the seventh 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.

For the purposes of the annual review of the Societies' compliance with their Code of Conduct, cl 5.2(b) of the Code requires each of them to report to the Code Reviewer on its own compliance, including:

> " (i) its training of employees and agents in accordance with cl 2.7 [which, under the heading of "Staff Training", requires the taking of "reasonable steps to ensure that its employees and agents are aware of, and at all times comply with, this Code", and, "[i]n particular ... that its employees and agents are aware of the procedures for handling complaints and resolving disputes set out in cl 3, and are able to explain those procedures to Members, Licensees and the general public"];
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> (ii) the activities it has undertaken under cl 2.8(a) [which requires the Society to "engage in appropriate activities to promote awareness among Members, Licensees and the general public about ... the importance of copyright; [about] the role and functions of Collecting Societies in administering copyright generally;" and, in particular, the role and functions of the Society so reporting]; and
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> (iii) the number of complaints it has received and how those complaints have been resolved."

In addition, the Code Reviewer is empowered, by cl 5.2(a)(i), to "call for submissions from Members, Licensees and the general public, and from groups representing them, on the level of compliance by Collecting Societies" with their obligations under the Code. Each year, and this year also, the Code Reviewer has ensured that wide advertisement of the review, and of the opportunity to make submissions, has taken place. Members, Licensees and a large number of representative bodies were contacted, either by mail or through the websites of the various societies. Further details will be found in Part 1 of the Appendix. A number of responses were received and considered. Where appropriate, they are referred to in the relevant sections of this report, of which each person who made a submission will receive a copy. Those persons are listed in Part II of the Appendix. The Code Reviewer, as on previous occasions, visited the premises of each society to interview senior executives, including in most cases the Chief Executive, concerning the policies, activities and records of the society. This process was greatly facilitated by the detailed documentation that had accompanied the Societies' reports to the Code Reviewer.

Having considered all this material, which will be discussed in later sections of this report, the Code Reviewer concludes that it reveals, despite the inevitable occasional lapse by some individual, a thorough commitment by each of the societies to the spirit and the terms of the Code of Conduct. It is frequently adverted to both in training and in the regular operations of the societies, and its influence is pervasive. The Code Reviewer is satisfied, in the terms of cl 5.2(f) of the Code as revised in 2008 and published by the societies, that good "compliance generally by Collecting Societies with this Code", during the period under report, has been demonstrated.

COMPLAINTS

As in his previous reports, the Code Reviewer has given particular consideration to this subject, both because the Code itself places emphasis on it (for example, cl 5.2 (b) (i), read with cl 2.7, singles it out as a "particular" subject of training, and then cl 5.2 (b) (iii) returns to it as a matter requiring detailed reporting) and because the number and nature of complaints, and the manner of their resolution, throw a piercing light upon the operation in practice of the Code in each society. Accordingly, this report now turns to a consideration of the complaints made against each society during the period under report.

Copyright Agency Limited ("CAL")

During the period under report, an outstanding complaint from earlier years (previously discussed by the Code Reviewer), upon which CAL had obtained senior counsel's advice, was finally acknowledged to be satisfied. There were 12 complaints lodged in the year under report, as follows:

1. An author member and a publisher member are in dispute about entitlement to remuneration collected by CAL. The author member has complained (a) that CAL breached her privacy by providing to the publisher information as to payments made to her; and (b) that CAL failed to hold certain payments in suspense following the eruption of the dispute. The first matter was also the subject of a complaint to the Privacy Commissioner, which was dismissed after investigation. No ground appears upon which the Code Reviewer should differ from the Privacy Commissioner's view that no breach was shown either of privacy legislation or of CAL's privacy policy. The second matter of complaint does disclose a failure on the part of CAL to place some payments in suspense, for the reason that there was a failure to identify certain works as being in dispute. The identification problem was itself due to incomplete title information. CAL cannot, of course, simply adjust the accounts now in respect of the disputing parties, because the dispute itself, which was taken by them to the Federal Court of Australia, remains unresolved. In the meantime, pending a determination, CAL has acknowledged the past error, and has placed the succeeding payments which it has been able to identify in suspense. It is also undertaking a special program of training relevant staff as to the importance of obtaining complete and consistent information from new members so as to avoid a repetition of the situation that gave rise to this complaint.

2. CAL has received too a complaint from the publisher involved in the preceding matter objecting to the payments being suspended. The publisher challenges the reality of the dispute. However, at this stage, it has not been demonstrated that no dispute exists. Perhaps, depending on how the matter develops, CAL may need to consider whether its rules permit, or should permit, it to exercise a discretion to remove payments from suspense, either upon terms or otherwise.

3. A request for a search of records, to ascertain payments made in respect of certain works, arose out of an ancient dispute between two members about entitlements. Unfortunately, the request was received just when a company-wide restructure was being undertaken, and the request did not reach the relevant department. It was not located until the following year, when the member sent a reminder. CAL apologised, and has also succeeded in mediating a settlement of the longstanding dispute. However, the aggravating factor in this case, as in some others, has been the practice (discussed in earlier reports) of paying shared entitlements to one of those entitled upon an undertaking to pay the due shares of others. CAL has been working towards a system of split payments to avoid the inherent difficulties of this practice, but there have been many problems and the new system cannot start before 2010.

4 and 5. Two members complained about CAL's participation in lobbying for resale royalty rights for visual artists in Australia, comparable to those available in England. These two members object to the concept, but CAL is satisfied that the overwhelming majority of its members supported its stand, which appropriately advocated the interests of its artist members.

6. A member indicated he wished to terminate his membership, complaining that CAL had made "zero efforts" on his behalf and copying of his works was "utterly invisible" to CAL. In fact, he had received a number of distributions from CAL over a period of years. At the time his letter was received, a further distribution of over $1,000 was being processed, for the purposes of which he had already been sent a letter seeking confirmation that he still controlled certain rights. The complaint, expressed in terms of general abuse, asserting both unspecified "lies" and a baseless charge of "corruption", does not show any breach of the Code, or identifiable failure of any kind.

7. A member in a retirement home has difficulty using computers. She wrote, not really a complaint, but a plea for help, which CAL answered both by careful letters and a special visit to her in her retirement home to explain the Google Book Settlement, which had raised concerns in her mind.

8. Another member complained, thinking CAL would in future send *Calendar* to her only digitally. CAL responded by making it clear that it would continue to

send her hard copy versions of *Calendar* and other publications, and it has done so.

9. A change in CAL's distribution schedule for payments relating to artistic works led a publisher member to complain of delays in payment and a breach of the existing distribution rules. It is true that an amendment of the rules, which was in train, having received Board approval, was anticipated, but the new procedure was designed to achieve, and has achieved, quicker payments, not slower. The Chief Executive responded to the complaint in a careful and detailed letter, which explained the changes had received Board approval and the published rules were in process of amendment.

10. A CAL employee declined to provide requested information to a member on privacy grounds. The member then asked another CAL employee, who referred the matter to the Manager, Member Services. The information was supplied with an apology for the first employee's mistake. The incident led to steps being taken to develop procedures for handling similar requests and appropriate staff training.

11. A member expressed dissatisfaction with the failure of a particular CAL employee (now no longer employed by CAL) to return telephone calls, and with the tone taken when they did speak to each other. The employee was not normally in direct contact with members and was not working at CAL at the time of the preceding staff training in relation to member complaints. CAL apologised to its member and emphasised the importance of the obligations owed to members at its next Code of Conduct training sessions held on 17 March 2009. It is also reviewing its special training for member-facing teams to ensure such conduct does not recur.

12. Each year, CAL conducts seminars, at which those attending are asked to complete "feedback" forms. A non-member who attended the 2009 seminar in Brisbane left halfway through the afternoon session, expressing disappointment at its content, which dealt in some detail with the Google Book Settlement. Of the over 350 persons who attended the 2009 seminars, 186 responded, 66% rating the seminars as "very good" and 33% rating them as "quite good". In any case, the expression of disappointment is not a complaint of a breach of the Code.

Comment

It will be seen that 3 of the 12 complaints were not really Code complaints at all, while a fourth, though vituperatively expressed, revealed no substance. Another 2 complaints simply reflected a minority view on a question of policy, on which the view taken by CAL was not only open to it, but has appealed to parliaments, both in Australia and in the United Kingdom.

Of the remaining 6 complaints, the first raised two issues, an issue of privacy law on which CAL's view has been accepted as correct by the Privacy Commissioner, and a mistaken failure to place some payments in suspense in the circumstance that the information provided to CAL was incomplete. The second complaint was from the other side in the same dispute, asserting no payment should be held in suspense, but on the current state of CAL's knowledge, it considers it is bound to hold some payments in suspense. The third of these complaints involves an admitted failure on the part of a CAL employee at a time when CAL's systems were under unusual stress, but the ultimate cause of the problem was the difficulty of getting in place the new and complex payments system projected for 2010. The fourth arises out of a systems improvement which outran (but without causing any known mischief) its enshrinement in a new formal rule. The fifth and sixth of these 6 complaints involved the individual failures of two staff members, for which due apologies were offered and which led to steps being taken to avoid any repetition.

As has been pointed out in previous reports, it is appropriate to assess the significance of the lapses that have occurred against the size of CAL's operations which involve a staff (in full-time equivalent terms) of 99 and a rapidly growing membership of 13,823 at 30 June 2009, after an increase during the year of 2,152, distribution payments having achieved over $100 million.

It is also to be noted that, in 4 cases, the failing revealed by a complaint has not only been acknowledged, but CAL has taken steps to improve its training or other practices to deal with the problem for the future. This kind of response is an important purpose of a complaints policy. The focus on improving CAL's systems is also to be seen in regular weekly meetings of complaints officers (who are managers in the areas of membership, payments and licensing) with the CAL Complaints Officer, Ms Edwards, to deal with issues that could lead to complaints.

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

APRA maintains separate complaints records under the headings "Member Services", "Recorded Music Services" and "Licensing Services". In the year to 30 June 2009, 7 Member Services complaints were recorded, there was 1 Recorded Music Services complaint, and there were 4 Licensing Services complaints plus 23 letters substantially in the same form from nightclubs associated with a particular organisation, Association of Liquor Licensees Melbourne ("ALLM"), the website of which contained two similar forms of letter one or other of which was utilised in the 23 letters – the letters were in response to a new licence scheme, introduced by APRA following the Copyright Tribunal's decision in *Re Phonographic Performance Company of Australia Limited* ACopyT 10 July 2007, in relation to Recorded Music for Dance Use in Nightclubs (tariff GFN). Only 7 of the letters actually relate to a nightclub that would require a GFN licence, while one does not require any kind of APRA licence. In addition, 2 Licensing Services complaints recorded in the previous year remained on the complaints records until resolved during the year under report.

Member Services

1. As part of APRA's promotion of music, it supports professional development awards conferred by an independent body, known as "The Push". A member of APRA submitted to The Push paperwork, which was to be accompanied by three CDs, to be considered for a professional development award. However, The Push can find no trace of the CDs, and at the end of the judging process, the paperwork was returned without any CD. The member complained to APRA, asserting she had sent the CDs but The Push had lost them. It seems dubious whether any CD was ever received, but both The Push and APRA have apologised and offered the member assistance, which has been accepted. To the extent that APRA is concerned with the procedures of The Push, it does seem that organisation's practice, of not writing back upon receipt of an incomplete application until after all applications have been judged, is a recipe for discontent. Apparently, The Push takes the view that the state of an application as submitted is itself an aspect of what is to be judged in relation to a professional development award, but clearly this application – without the CDs – could not have been successful, and an earlier

letter stating that the CDs had not been received might have reduced the complainant's dissatisfaction.

2. An annual national conference of Member Services staff is an integral part of APRA's staff training program. Nine days' notice was given by email that all staff of this department, including Publisher Services staff, would be absent at the conference over the last three days of a week. An executive at a publisher complained this would cause inconvenience, although emails would be checked daily by the Manager of Publisher Services during the conference, with a view to his dealing with any urgent matter. The complainant was immediately advised accordingly. Perhaps, although the suggestion of inconvenience was repudiated by the executive's managing director, this complaint could have been avoided had the email explained the procedure available for urgent matters.

3. A member complained about royalties sought by MUST, the society corresponding to APRA in Taiwan, for a Taiwanese performance. Additionally, the member complained that APRA had written a letter about the matter to his co-writer. In fact the letter was about something else altogether. As for the Taiwanese royalties, they were, of course, beyond APRA's control. APRA sent a prompt email explaining the situation, and that MUST had distributed a royalty sum which APRA would remit to the member.

4. APRA sent a broadcast email to launch its 2009 Professional Development Awards. The email began: "Young and got talent?" and later repeated this question, adding "Enter now!" It also indicated that "Eight young Australian songwriters and composers" would receive awards. It did not state any age limit, nor was there one. A quite intemperately expressed complaint described APRA's email as "Age discrimitory" [sic], and suggested APRA thought "it is OK to kick older people aside". APRA's Director, Member Services wrote a prompt reply acknowledging that the reference to youth was inappropriate and stating : "The underlying principle of the PDA's is to identify emerging talent. We have, accordingly, amended our copy to reflect this". The letter confirmed there was no age limit and the awards were "open to all". An unreserved apology was offered.

5. A member complained about his inability to access APRA "with confidence" using his Safari browser. He also complained that he did not wish royalties to be charged for broadcast use of his songs, although he did not claim to have told APRA this on any previous occasion (he did assert his website showed it). APRA responded without delay, explaining that early versions of Safari had a compatibility problem, and offering assistance. It also pointed out that if he wanted to offer music free for a particular use, the complainant could do so through "a non-exclusive licence-back or an opt-out of [his] works". Although the complaint was rather provocatively expressed, APRA's response was both helpful and polite.

6. A member had made a number of requests that he not receive "business emails". By an error in the use of a standing procedure, an APRA employee sent him an email about which he strongly complained. An APRA staff member telephoned promptly with an apology, for which she was thanked by the member, who wished APRA "the best for the future". APRA determined to remind all staff of the procedure with respect to emails, for the avoidance of any recurrence of the problem, and to raise the matter at a following Writer Services teleconference. The Deputy Director, Member Services wrote an explicit memorandum requiring a tightening of the procedure, a reminder to all staff and advice to the complainant that the issue would be addressed and the procedure rectified.

7. A member complained about the "user-unfriendliness" of APRA's electronic Live Performance Return (ELPR). The Director, Member Services telephoned the member to explain the reasons for some complexities of the return. As a result of this complaint, APRA has done two things: first, it has added an explanatory sentence to the note on the ELPR system on its website, which so far seems to be working smoothly; secondly, in the discussion with the member it transpired that the relevant location (Jenolan Caves) was inadequately licensed, and that has since been remedied.

Recorded Music Services

1. This complaint arose out of a change in procedure. The complainant made a payment for a video licence of a kind for which AMCOS used to issue a certificate, but it had been decided that an invoice in the form in question,

upon payment, fulfilled all requirements. The complaint was that a certificate should have been issued, and a junior officer had refused to issue it upon request on the basis he was bound by the new policy. The complainant renewed his request, with the result it was decided within the hour to issue a certificate to him.

This example suggests the wisdom of explaining a change of policy and, where a form is omitted, of perhaps adding to the explanation that it will be supplied upon notice that it is required. The principle behind this approach is similar to that which applies in a situation such as was involved in the second Member Services complaint, previously discussed.

Licensing Services

1. A licensee was in the habit of writing light-hearted (but innocuous) comments on documents received from APRA. Someone in APRA's office altered the address in the computer for his invoices so as to describe him, not as "The Proprietor" of his business, but as "the Tool", and the next invoice just went out that way. He complained, and was sent immediately a very frank apology. The responsible employee could not be traced. This particular breach of the Code is fortunately likely to be unique. The system was under review at the time and has been changed so as to make anonymity very difficult for a future prankster to achieve.

2. A query about an invoice, which was dealt with by APRA's Finance Department, led to a revised invoice being sent, but without any covering letter referring to the query. For two or three months (over Christmas and the period of APRA's relocation to new premises) emails from the mystified client got no clarifying response. The accounting problem was eventually sorted out, but the client complained a whole saga of confusion would have been avoided had the revised invoice been accompanied by an explanation responsive to his letter that had led to the revision. APRA acknowledged that this was "absolutely right" and apologised for the inconvenience caused.

   As a consequence, it has been arranged that Finance Department staff now attend training sessions of the Licensing Department and also have training of their own – one aim of which is to make Finance Department staff more

conscious of client relations. A policy has been adopted that any email or letter received by the Finance Department is to be answered within two days.

3. A licensee complained that APRA's invoices were confusing. The Deputy Director of Licensing Services discussed the particular invoices with the Finance Director, reaching the conclusion that they were satisfactory, but agreeing to review the procedure in the light of any further problems. The particular issue arises where a default invoice has to be sent out, but is then followed by a supply of information leading to a corrected invoice.

4. A complaint was made about the terms of a letter warning that a matter would be referred to solicitors. The letter had followed a series of telephone conversations in which the complainant had promised to send a licence form by facsimile, but had each time failed to do so. The complaint was that the letter did not refer to the alleged fact that the complainant had several times attempted to fax the form. In this case, normal procedures had been followed, and the complainant was promptly so advised.

Two Outstanding Complaints from earlier year

Both these matters were discussed in last year's report. They were finalised during the year now under report. One involved a failure of understanding between an APRA employee and a licensee's agent over the supply of necessary information to APRA. A senior officer of APRA took the matter in hand and sorted out the difficulty. The other concerned the question whether a particular licence was required by a restaurant. After some discussion, and following compliance visits, APRA accepted that the licence was not required. No question of a breach of the Code was raised by this matter.

Comment

It will be seen that, apart from the 23 form letters which objected to a new tariff intended to reflect a decision of the Australian Copyright Tribunal (while actually ameliorating its impact by relating the tariff to attendance rather than capacity) and which did not bring to light anything in the nature of a breach of the Code, these complaints total 12. Upon examination, as set out above, 7 of them could not fairly be regarded as disclosing any failure by APRA or AMCOS in their observance of the

Code. Of the remaining 5 cases, 3 involved some unintentional error, 1 involved the individual misconduct of an APRA employee who tampered with a client's record for his or her own amusement, and one involved a failure by APRA employees to operate its system in respect of licensing payments properly. In 9 of the cases, an apology was promptly forthcoming from APRA and/or practical assistance was provided by it to the relevant member or licensee. As has already been noted, a number of the complaints led to changes in APRA's procedures to remove apparent weaknesses that had been revealed.

The complaints, as has been noted in previous reports, must be seen in the light of the size and complexity of APRA's operations. It now has a staff of 248 (200 in Sydney and the balance spread over Melbourne, Brisbane, Adelaide, Perth and Auckland) and a membership of over 55,000. During the period under review, there were 191,000 contacts with licensees and 8,320 members attended 193 events hosted by APRA, while APRA staff attended 123 industry functions and events. It is plain that the number of complaints was small, when compared with the scale of the operations of APRA from which they arose.

Audio-Visual Copyright Society Limited ("Screenrights")

Screenrights has not received any complaint during the year under report.

As in previous years, Screenrights has encountered a number of disputes between claimants to distributions. Screenrights has a three-step policy for these cases, which most frequently arise out of some misunderstanding about the copyright in question or the term or scope of a licence. The first of the three steps is to put the parties, who have made conflicting claims to a distribution, in touch with one another – which is normally sufficient. If necessary, mediation or expert determination may follow, with the assistance of a Screenrights Case Manager. In the year to 30 June 2008, 18 such disputes were successfully resolved, although three required special discretionary decisions by Screenrights in order to overcome the guillotine effect of a time bar. In the current year, the number of these disputes rose dramatically to 806, requiring $1.8 million to be held in trust pending their resolution. The explanation for this increase lies in the Australian Retransmission Scheme, which resulted in a very great increase in registrations and relevant records.

In order to meet the problem, Screenrights has appointed a full-time Conflicts Resolution Coordinator and is developing a Conflicts Management database. Its experience remains that the majority of these matters are not at all intractable, but are resolved once the parties are put in touch with each other and the relevant facts are exposed to examination. None of this year's matters has proceeded to mediation or expert determination.

Although there is never room for complacency about the observance and effect of a code of conduct, it is encouraging to note that none of the multiple claims has involved or led to any complaint against Screenrights.

There were, in the year under report, two further cases where disputes as to the entitlement to a distribution came up against a looming time bar. In that situation, Screenrights made a discretionary decision as a trustee to effect a payment while it was still possible to do so, relying on the best information it was able to obtain.

Phonographic Performance Company of Australia Limited ("PPCA")

During the year under report, PPCA received two complaints. One older complaint, referred to in last year's Code Review report, remained unresolved and may go to mediation. At issue is the appropriate tariff amount to be covered by a licence, and last year the Code Reviewer did not consider any obligation under the Code was called into question. That position has not changed.

The two complaints this year concerned the following matters:

1. A hotel in a regional town, with three bar areas, used one of them on one night a week as a nightclub. The Licensee complained that the applicable tariff (determined by the Copyright Tribunal in November 2007) was too high. After some correspondence, the complaint was not pursued further. No issue was raised under the Code.

2. This complaint also related to the new nightclub tariff. A city nightclub sought a reduction to 50% of the tariff on the basis it closed by 3 am. In a detailed response, PPCA pointed out that the Copyright Tribunal had set the rate after hearing evidence that many nightclubs operated during the same hours as the

complainant. This matter did not raise any issue under the Code, and PPCA's response appears to have been accepted.

Although not in relation to either of these complaints, the Code Reviewer did receive some correspondence from two persons, raising concerns, in the one case with respect to the distribution of PPCA royalty payments, and in the other with respect to a proposed new restaurant tariff.

It was not quite clear what the former set of concerns really were – no identified breach of the Code of Conduct was suggested; it was acknowledged that a senior executive of PPCA had given the writer a personal interview; and it was not alleged she had failed to provide in a proper and courteous manner any information to which her interlocutor was entitled, or indeed at all.

The second matter was precipitated by notices sent out widely by PPCA, inviting participation by representative organisations and by businesses in a process of review of PPCA's Restaurants and Cafés tariff. That the consultations so initiated were intended to be effective is perhaps confirmed by the fact that the proposed tariff has since evolved through a number of modifications of the original proposal. But, however that may be, the letter to the Code Reviewer was sent while the process was still ongoing, and it appeared to be written on the assumption that he could function as an alternative to the Copyright Tribunal in respect of the particular tariff review. He was requested "to call for the production of material relied on by PPCA in connection with its proposed tariff review." That is, of course, well outside his function. The letter highlights, as an inequity involved in the proposed tariff, its reliance on seating capacity, without acknowledging that – although APRA in a corresponding tariff settled upon attendances – this is precisely what the Copyright Tribunal did in fixing the PPCA Nightclub tariff.

It does not appear to the Code Reviewer that any breach of the Code is disclosed by the material submitted. If, of course, something of that kind is seen as emerging in relation to the Restaurants and Cafés tariff, which has not yet come into operation, the Code will provide a means for raising it. On the other hand, if the tariff itself is to be challenged on the merits, the Copyright Act has set up the Copyright Tribunal to deal with just such questions.

Comment

During the year under report, PPCA's licensors have gown to 741, its registered artists to 2,274, and its licensees to 52,640 as at 30 June 2009. Its current staff number is 32 on a full-time equivalent basis. In relation to such matters as the review of the Restaurants and Cafés tariff, it deals with substantial organisations including Restaurant & Catering Australia, Australian Hotels Association, Clubs Australia, Hotel Motel & Accommodation Association and RSL and Services Clubs Association, as well as with numerous individual businesses. Having regard to PPCA's activities, the number and nature of complaints in the year under report compels the conclusion that it has maintained a good standard of observance of the Code of Conduct in its dealings with licensees and others.

Viscopy Limited ("Viscopy")

During the year under report, Viscopy received the following complaints:

1. A member referred to a term of her agreement with Viscopy that she would receive copies of all materials reproduced under licence. Her complaint was that, despite telephone calls to Viscopy, this had "very rarely" happened. Viscopy promptly replied that some licensees had not supplied the material, despite agreeing to do so. It promised its best efforts, and it has amended its licensing system to incorporate automatic prompts so as to ensure follow-up in any case of a dilatory licensee. Viscopy's response appears to have been accepted.

2. A licensing customer expressed dissatisfaction to a new Viscopy licensing representative about the "difficult and unfriendly" service previously received from her predecessor, and about the rates charged. It was explained to him that the predecessor had left Viscopy's employment, and the rates and an available discount were also explained. Appreciation was expressed, and several advertisements were then licensed – providing the proof of the pudding of satisfaction of the complaint.

3. A member complained of repeated requests from Viscopy for bank account details when payments were due. The request which precipitated this

complaint came from a new employee. Viscopy apologised and put in place a system for such requests to ensure they were not made where it already held the information.

Comment

Two of the above complaints arose out of administrative lapses, although one suggests a failure of attitude amounting to a breach of the Code by an employee no longer in Viscopy's employ. It should be borne in mind that the year was one of some upheaval, during which a new Chief Executive took up her duties and undertook an organisational review of all Viscopy's operations, leading to administrative restructuring accompanying a move to new premises in Chippendale. Viscopy at present has a staff of 6 (5.4 on a full-time equivalent basis) and expansion is planned during the next year. At 30 June 2009, Viscopy had 7,357 Australian and New Zealand members, 3,513 of whom were Australian Aboriginals. It represented approximately 80% of aboriginal artists.

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

During the year under report, AWGACS received no complaint.

Comment

At 30 June 2009, AWGACS had 976 members, an increase of 52 in the year. It did not employ staff, but it paid a service fee by agreement with the Australian Writers' Guild (AWG) for the provision of one full-time manager, one part-time (three days per week) data research and royalty distribution officer plus 20% of the time of the Executive Director of both AWG and AWGACS.

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

ASDACS received no complaint in the year under report – just the odd query or comment expressed in the language of friendly badinage.

Comment

Perhaps the small size of this society contributes to the good internal relations evinced by its records. At 30 June 2009, it had 437 members for whom a royalty income of $724,903 was received from European societies and one society in the USA. For most of the year, its only employee was its Executive Director, working part-time. However, from March 2009 it employed a research manager one day a week to set up a new website, and for the last month of the year the Executive Director became and continues a full-time employee. More complex international requirements and the new retransmission rights account for the latter change.

SUBMISSIONS

A number of responses were received following the advertisement of this review. Most do not call for separate discussion, but those which do have been or will be discussed in the appropriate sections of this report.

GOVERNANCE AND ACCOUNTABILITY

As was the case last year, it is unnecessary to repeat in this year's report the detailed explanation given in previous reports of the governance and accountability of the societies which have not undergone significant change.

STAFF TRAINING

To ensure that the Code is not merely a formal document filed with other documents, albeit important documents, of the societies, but a living influence on their conduct through their agents and employees, staff training in the obligations of the Code, particularly in respect of behaviour towards members and licensees, and in dealing with complaints and resolving disputes, is a topic on which the Code itself places special emphasis. Repeatedly, this review has found that where a failure has occurred, subsequent training has taken up the circumstances to teach a practical lesson and to improve a society's relevant procedures. This matter has been commented on more than once in the section discussing complaints and the actions resulting from them.

Each year (this year in March 2009), **CAL** carries out company-wide training in the obligations of the Code of Conduct. The Code is referred to in all employment contracts, and it and corporate compliance are the subject of a briefing on the first day of employment. Staff members are directed to the Code and to Complaints and Disputes procedures which are posted on the staff intranet. CAL has appointed a Complaints Officer from its Legal Department, to whom all complaints are to be referred. All new staff are required to read CAL's staff handbook, including the Code of Conduct as a policy to which they must adhere. The staff intranet is regularly reviewed to ensure it contains up-to-date links to the Code of Conduct and information about Complaints and Disputes procedures. To ensure compliance with procedures in a consistent manner, CAL's Complaints Officer meets regularly with internal departmental officers on the subject of the handling of complaints and disputes. The procedures themselves are also reviewed regularly to ensure they reflect CAL's current practices and comply with its Code of Conduct.

APRA's Licensing Services and Member Services departments each hold staff training conferences at least once (usually twice) in a year. In addition, there are monthly teleconferences with APRA's State based and New Zealand branches, and regular meetings of management staff and senior executives. During the year, APRA moved to new premises at Ultimo, and in connection with the move a review of the organisation occurred with workshops at which its aspirations for its services to members and licensees were discussed and reaffirmed.

The efficacy of APRA's training may be judged by reference to its complaints record discussed earlier. A submission to the Code Reviewer from the Australian Guild of Screen Composers commented on APRA's staff training, as follows:

> "Members [ie of the Guild] were aware that APRA/AMCOS offered staff training, and appreciated that APRA/AMCOS had an on-going commitment to staff training, not simply induction training. The benefits of the staff training offered by APRA/AMCOS ensured that members found in their dealings that the staff were always polite, professional, knowledgeable and accurate with the information they provided."

Screenrights, too, engages in regular staff training in relation to the obligations imposed by the Code, complaints and dispute resolution. At regular staff meetings, particular issues are raised and appropriate training given. In the past year, there were two training sessions for new staff, two reviewing conflicts involving members and one for member services staff. The procedures for the handling of complaints and for alternative dispute resolution were reviewed to ensure that complaints handling was in accordance with the relevant Australian Standard. New staff members were provided with copies of the complaints handling and dispute resolution procedures.

Documents provided by **PPCA** to all employees include the Code of Conduct, Privacy Policy and Complaints Handling and Dispute Resolution Policy. Employees are encouraged to ask questions and make suggestions regarding the processes implementing these documents, with a view to their improvement. Departmental staff meet regularly to review PPCA's systems and for further training. In the past year, additional specific training was given in matters including the Code of Conduct, and staff were also sent to external training including in customer service. A written report on one such training session held on 29 May 2009 emphasised the value of a complaint as "feedback" that may assist in the improvement of procedures.

Viscopy holds a monthly team meeting dedicated to the discussion of the obligations arising from the Code and to the monitoring of the society's compliance with them. A new induction policy will ensure that new staff are made familiar with the Code from the very beginning of their employment. The first of a new annual series of training and refresher courses for all staff, to ensure they remain up-to-date with the Code and with complaints handling procedures, was scheduled to be held before the end of this calendar year.

The special positions of the small societies, **AWGACS** and **ASDACS**, which have already been stated, put normal staff training measures out of the question. For them, the question is whether their Chief Executives understand the Code and its place in their operations, and observe its requirements. The Code Reviewer is satisfied that they do.

EDUCATION AND AWARENESS

Copyright Collecting Societies are essential links between the legal rights of copyright created, in the public interest and in fulfilment of internationally accepted obligations, by the Australian Parliament and the economic fruits Parliament intended those rights to yield. Without efficient means of collection, the rights would be barren. Therefore it is important that the many who provide or use copyright material should recognise and understand the role of the collecting societies; and accordingly, by the Code of Conduct, cl 2.8, the societies accept obligations to promote awareness about the importance of copyright and the role and functions they perform. In deciding what it can do, a particular society is entitled to take account of its size, membership, the number of licensees it has, its revenue and the possibility of acting jointly with another society.

The societies have traditionally taken a very broad view of their role in relation to copyright; without attempting an exhaustive statement, they have involved themselves in fostering emerging creators of copyright material; in various awards; in seminars, booklets and other means of educating people in copyright developments; and in special projects such as Viscopy's assistance to aboriginal artists or Screenrights' assistance to educators through *enhanceTV*. Societies have also included in their Constitutions and Distribution Rules specific power to allocate a percentage of moneys collected to enable them to make special grants.

The smallest of the societies, **ASDACS**, allocated in the year under report $24,000 to a Cultural Fund which supported research and other activities of the Australian Directors Guild, particularly in connection with retransmission rights. It also keeps its members advised of developments in copyright law as they affect films and directors.

The other small society, **AWGACS**, deducted 5% of gross royalties received as a cultural levy used to support a writer's right to retain the script portion of retransmission royalties. It sponsored an award at the annual AWGIE Awards on 15 August 2008. AWGACS has also promoted its own role and functions through publications of the Australian Writers' Guild, at the AWGIE awards and at a screenwriters conference.

Viscopy, in the period under report, played a prominent part in the debate about a visual artists' resale royalty. It will be recalled that CAL was also involved, as were APRA and Screenrights. Viscopy maintains a copyright education program for artists, students and art organisations, and it continues to receive a Commonwealth grant towards the cost of its educational work in remote aboriginal communities. It published in March 2009 an attractively got-up Copyright Guide to assist its aboriginal members and potential members. It provided, during the year, 33 copyright education workshops and seminars covering all States and the Northern Territory. In a new initiative, APRA and the Arts Law Centre of Australia participated with Viscopy in the Western Australian section of this program.

PPCA, throughout the year under report, engaged in meetings and activities with numerous bodies representative of a wide range of its licensees. It sponsored (with others) events such as the National Aboriginal and Torres Strait Islander Awards and National Campus Band Competition and it presented an award at the National Songwriting Awards. Through activities of this kind, it made known the availability to recording artists of its services in collecting royalties, and it promoted Australian performers. In its annual report for the previous year, PPCA emphasised its assistance to the Songroom, a not-for-profit organisation providing music in schools, but it also reported a number of other activities directed to the support of music in Australia as well as its commitment to the Code of Conduct.

PPCA has power to deduct 2.5% of its Australian repertoire pool each year for charitable or educational purposes. Because of the complexity of establishing the precise amount attributable to Australian repertoire, the figure for the year under report has not yet been ascertained, but it is estimated that PPCA will donate approximately $180,000 including a number of payments already made to the Songroom, Australian Music Prize, Torres Strait Islander awards, the National Campus Band Competition and the Arts Law Centre of Australia.

Screenrights sends to members and others an informative monthly newsletter *Off the Air*. It continues to produce its online resource for schools, *enhanceTV*, to which over 14,000 educators subscribed as at 30 June 2009. It has also produced a new explanation of the NZ schools licence, *Copy TV for Teaching*, and a new brochure for use in sample surveys, *Educators, You Can Copy TV and Radio for Teaching*. It provides training sessions in the obligations arising from the Copyright Act for Universities, TAFEs and schools. Screenrights also provides sponsorships to

promote educational and film industry objectives and supports numerous activities in all of these areas.

CAL, too, establishes relationships with industry bodies and supports and participates in a range of industry activities. It maintains a periodic magazine *CALendar*, containing interesting and very relevant articles, and an extensive website covering copyright issues and providing information about itself. The website was redeveloped and launched anew in April 2009. It is updated regularly. CAL distributes informative publications and regular media statements and it offers seminars and forums on particular issues. Seminars were held in major capital cities in September and October 2008 and May 2009. In the year to 30 June 2009, CAL allocated from its Cultural Fund $1,354,732 in assistance for creators. CAL maintains close contact with various industry bodies including the Australian Publishers' Association, the Australian Society of Authors and the Media Entertainment and Arts Alliance. CAL provides information also on an individual basis in response to a constant stream of enquiries from members, licensees and the general public about questions related to copyright and its activities.

APRA maintains a continuing relationship with a large number of associations and organisations, and through its links with them it promotes copyright and the role of collecting societies including its own. Its staff regularly speak at seminars, giving specialised advice to the music industry and to users of music. As was pointed out earlier in a different connection, in the year under report APRA hosted 193 events attended by 8,320 members. These events included information sessions, workshops and presentations on particular subjects. APRA staff also attended 123 industry association events, and sponsored annual awards nights of state and national branches of key industry organisations such as the Australian Hotels Association, Clubs Australia and Restaurant & Catering Association. APRA presented music awards and distributed a profusely illustrated newsletter *APRAP*. APRA is committed to the education, protection and promotion of Aboriginal and Torres Strait Islander creators of music and has established an office in Darwin to this end. On numerous issues, APRA has cooperated with governmental enquiries, research and projects related to copyright. APRA has recently launched and continues to work on a new website with major additional capabilities to assist the relations of members and licensees with APRA and with each other. The website contains a vast amount of information about copyright, the activities of APRA and AMCOS and the composers of works in the APRA repertoire. APRA and other collecting societies

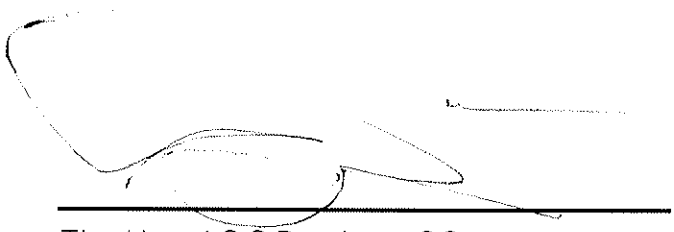
contribute to the operations of the Australian Copyright Council. APRA sets aside each year 1.25% of distributable revenue to fund a broad grants program covering projects and organisations promoting music. In the year to 30 June 2009, over $543,000 was so allocated. In May 2008, the APRA board reviewed its grants program and decided to phase in over 3 years an increase to 1.75% of distributable revenue.

As in previous years, the foregoing summary remarks concerning the activities, with respect to the topics of education and awareness, of the various societies are not intended to be exhaustive, but to explain the Code Reviewer's satisfaction that the obligation imposed by the Code in this respect has been fulfilled.

CONCLUDING REMARKS

This report is now submitted to the societies and to the Attorney-General's Department of the Commonwealth of Australia. As stated earlier, copies will also be sent to those persons who made submissions.

Dated this 30th day of November 2009.



The Hon J C S Burchett, QC
Code Reviewer