

**Report of Review of Copyright Collecting
Societies'
Compliance with their Code of Conduct
for the Year 1 July 2015 to
30 June 2016**

The Hon K E Lindgren AM, QC

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Report of Review of Copyright Collecting Societies'

Compliance with their Code of Conduct for the Year 1 July 2015 to 30 June 2016

INTRODUCTION AND SUMMARY CONCLUSIONS

1. This report of the Code Reviewer, the Hon K E Lindgren, AM, QC, is the thirteenth annual report assessing the compliance with their voluntary Code of Conduct (Code) of the following eight collecting societies: Australasian Performing Right Association Limited ("**APRA**"), Australasian Mechanical Copyright Owners Society Limited ("**AMCOS**"), Phonographic Performance Company of Australia Limited ("**PPCA**"), Copyright Agency Limited ("**Copyright Agency**"), Audio-Visual Copyright Society Limited ("**Screenrights**"), Viscopy Limited ("**Viscopy**"), Australian Writers' Guild Authorship Collecting Society Limited ("**AWGACS**") and Australian Screen Directors Authorship Collecting Society Limited ("**ASDACS**"). This "Compliance Report" assesses that compliance during the period 1 July 2015 to 30 June 2016 (the Review Period).
2. AMCOS is administered by APRA. Therefore, the practice is adopted of referring to APRA and AMCOS collectively as "APRA/ AMCOS" except where it is necessary or convenient to distinguish between them.
3. Viscopy is administered by Copyright Agency. Therefore, the practice is adopted of referring to Copyright Agency and Viscopy collectively as "Copyright Agency/Viscopy", except where it is necessary to distinguish between them.

4. For the purposes of the review, each society reported to the Code Reviewer in respect of its activities covered by the Code during the Review Period. In some cases, their reports were accompanied by documents (in the cases of APRA/AMCOS and PPCA, voluminous documents) which provided the evidence for the statements made in the text of the report (Accompanying Underlying Documents).
5. The review and the opportunity to make submissions relevant to it were widely advertised: see the Appendix to this Report for the notice of the review and for details of the publication of the notice.
6. Certain organisations and individuals were individually notified by the Code Review Secretariat. The Secretariat has prepared and holds an alphabetical list of them. It is available for inspection on request, but is so voluminous that, in the interests of convenience, it is not attached to this Report.
7. During the Review Period, while there were some failures to comply with the Code, on the evidence before me, in the terms of Clause 5.2(f) of the Code, I am satisfied that the collecting societies generally complied with the requirements of the Code.
8. I again record my thanks to Kylie Toombs who constitutes the Code Review Secretariat for her considerable help to me in bringing this Report to a conclusion.

COMPLIANCE WITH CODE REQUIREMENTS OTHER THAN THOSE RELATING TO COMPLAINTS AND DISPUTES

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

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

General

10. As noted at [2] above, APRA administers AMCOS, and has done so under an arrangement between the two societies dated 1 July 1997.
11. APRA/AMCOS have previously reported comprehensively in respect of earlier years and have also previously provided details of the history and constitution of each society, as well as a history and copy of each licence scheme offered by the companies. The current report provided by APRA/AMCOS provides information covering the Review Period and where applicable, indicates where there have been no developments since the previous Code Review.

Legal Framework (Code, Clause 2.1)

12. APRA/AMCOS state that they have not changed any of the principal characteristics of their membership structures during the Review Period.
13. The APRA Board has six writer directors, elected by the writer members, and six publisher directors, elected by the publisher members.
14. The AMCOS Board is elected by the members of AMCOS.
15. Being directly elected by the membership, both Boards are representative and accountable. A list of the current Directors on the

APRA and AMCOS Boards was provided to the Code Reviewer in the Accompanying Underlying Documents.

16. Access to the following documents relating to the Review Period were provided by APRA/AMCOS:
 - APRA/AMCOS Review Period (an easy to read annual summary of both organisations' performance, achievements and initiatives) for the 2014/15 financial year (with link to website);
 - APRA Statutory Accounts for the 2014/15 financial year;
 - AMCOS Statutory Accounts for the 2014/15 financial year;
 - A diagram showing the overall management structure of APRA/AMCOS; and
 - APRA/AMCOS Privacy Policy.
17. The Constitutions of both APRA and AMCOS are available on the APRA/AMCOS website and a link to them was provided to the Code Reviewer.
18. As at 30 June 2016, APRA/AMCOS had 326 employees (including compliance staff) in Australia and an additional 25 employees in the APRA/AMCOS New Zealand office.
19. Finally, neither APRA nor AMCOS is a declared collecting society under the Act in respect of any of the statutory licences. Accordingly, neither is required to comply with the requirements of the *Guidelines for Declaration of Collecting Societies*. In practice, however, they say that they satisfy many of those requirements.

Members (Code, Clause 2.2)

20. As at 30 June 2016, APRA had 89,421 (Australian and New Zealand) members, comprising composers, authors and publishers. Of these,

87,041 were local writer members, and 629 were local publisher members. In addition APRA had 1,743 overseas resident writer members and 8 overseas resident publisher members. Most Australian and New Zealand composers and publishers are members

21. As at 30 June 2016, AMCOS had 16,054 (Australian and New Zealand) members, of whom 15,240 were writers and 529 were publishers. In addition AMCOS had 280 overseas resident writer members and 5 overseas resident publisher members.
22. As at 30 June 2016, APRA/AMCOS had 1,197 Aboriginal and Torres Strait Islander (ATSI) members which represented an increase of 4.3% during the Review Period. Although indigenous membership is still low, APRA AMCOS are committed to increasing awareness through their national indigenous membership strategy, overseen by their Aboriginal and Torres Strait Islander (ATSI) National Representative.
23. In their Report to the Code Reviewer, APRA/AMCOS claim that their relationships with their members remains at the core of their operations, and that communication with members is frequent. They further state that "Member Services" staff are expert in advising members on their relationship with APRA/AMCOS and on the music business generally and that members interact freely with APRA/AMCOS, having direct access to all levels of management.
24. Members, overseas affiliates, Board Directors and the media are able to log in to a secure section of the APRA/AMCOS website which provides a number of online services. Additionally, APRA/AMCOS produce a large amount of written material for members, which has been provided previously

25. Royalty queries to the Membership Department are logged in the Department's query tracking system that uses the companies' internal email to forward messages to all relevant staff. This system ensures that complaints made by members are also logged and forwarded to the Head of Member Services.
26. During the Review Period, the Writer Services Department engaged in email correspondence with writer members on 47,371 separate occasions. The Publisher Services Department sent 21,109 emails to publisher members. In addition, over 1,479,212 emails were sent to members as part of email broadcasts to the membership, which contained information including; event notices, payment advice and APRA/AMCOS publications.
27. Writer Services staff log member phone calls eight weeks per year; one week for APRA distribution related calls after each APRA distribution and one week for AMCOS distribution related calls after each AMCOS distribution. During the Review Period, Writer Services staff logged 1,179 phone queries following APRA distributions and 14 phone queries following AMCOS distributions. Further statistics relating to the number of contacts with members were provided to the Code Reviewer.
28. During the Review Period, a number of letters and emails of appreciation were received in relation to the service provided by the Membership Department. In addition, positive feedback was received in relation to the 'Live Chat' service provided on APRA/AMCOS's website.

International relations

29. APRA/AMCOS have an International Department that is responsible for the reciprocal representation agreements with other societies

administering performing and mechanical rights around the world. The International Department undertakes royalty distributions for performing rights to members. It also monitors the use of APRA repertoire overseas. It makes claims for missing payments and researches members' notifications and enquiries relating to overseas use and payments. The Department acts as the conduit for communications between APRA/AMCOS and their respective affiliated societies, the umbrella representative bodies CISAC and BIEM, as well as its dealings with WIPO

30. In the last financial year APRA distributed over AUD\$40.2m to members in twelve separate distributions, the highest international distribution amount in the organisation's history. The International Department is also responsible for the distribution of overseas mechanical rights income through AMCOS and it distributed over AUD\$890k to AMCOS members in four distributions over the last 12 months.
31. In the Review Period, APRA collected a record amount of over AUD\$38.3m for the use of Australian and New Zealand repertoire overseas. AMCOS collected over AUD\$828k.
32. In addition, during the Review Period, the International Department was involved in a number of regional and international activities.

Opt Out and Licence Back

33. As previously advised, APRA provides members with the opportunity to 'opt out' and request that their entire repertoire be assigned to them for all territories in respect of all or particular usages, or a 'licence back' of specific works for specific usages in Australia and/or New Zealand.

34. During the Review Period, APRA received and approved 9 licence back applications. No opt out applications were received during the Review Period. Further confidential details regarding these applications were offered to be provided to the Code Reviewer. A copy of all information and forms relating to opt out and licence back, including new plain English information guides, are available on the APRA/AMCOS website.
35. Also during the Review Period, the AMCOS Board approved a variation to the opt out provisions in the AMCOS Input Agreement, to offer increased flexibility to its members in the way in which they are able to withdraw rights from AMCOS for digital music services. For digital music services that operate internationally, AMCOS members are now permitted to withdraw their digital reproduction rights specifically in relation to nominated services, rather than for all services within particular categories of usage as was previously the case. That is, members can now notify AMCOS that they wish to negotiate directly with particular international digital music services, provided the member gives AMCOS adequate prior notice.

Member Benefits Program

36. APRA/AMCOS claim that they have developed an extensive program of benefits for their members that can assist with their careers as songwriters/composers. Information on the members' program is provided on the website.

Licensees (Code, Clause 2.3)

37. APRA/AMCOS have large licensing departments dedicated to liaising with licensees and potential licensees. The three main areas of licensing operations are: Public Performance Licensing, Media Licensing, and Digital & Recorded Licensing. Collectively, these three

licensing departments administer approximately 88,000 annual licensees representing approximately 110,000 businesses in Australia and New Zealand.

38. The fees paid to APRA/AMCOS by licensees vary according to the licence scheme applicable to the particular circumstances of use. The details of all major APRA/AMCOS licence scheme tariffs have been provided previously, as well as details of the value of each licence scheme as a whole.
39. APRA/AMCOS's website contains a Licensee section with standard information and materials in relation to the various licenses and with contact details for the relevant Licensing department.
40. The information made available to licensees and potential licensees differs according to the nature of the relevant licence. For example, sophisticated national broadcasters and telecommunications companies generally need less information than small business operators with less exposure to copyright law and with limited access to specialist legal advice. The information provided by APRA/AMCOS takes these factors into account.

Public Performance Licensing

41. The Public Performance Licensing Department administers the vast majority of licences with 60,027 annual licensees and 3,730 fixed term licensees, representing approximately 106,600 businesses across Australia and New Zealand. During the Review Period the department executed 13,242 new annual licences and 6,645 one-off event licences which included dance parties, festivals and music used in theatrical performances.

42. As part of the Australian Competition and Consumer Commission conditions of authorisation for APRA/AMCOS, licensees must have access to 'plain English' Licence Information Guides tailored to their industry type. They are able to complete licence application forms on-line and submit them for processing by the APRA Licensing Department. Links to each Licence Information Guide can be found on the APRA AMCOS website.
43. During the Review Period, the Public Performance Licensing and Finance (Credit Management) Departments engaged in approximately 720,000 contacts with licensees, including by letter, email and telephone calls. A breakdown of the statistics was provided to the Code Reviewer.

Media Licensing

44. The Media Licensing Department administers APRA/AMCOS' commercial and community radio and television broadcaster clients, along with the cinema and airlines licensees. In total, approximately 971 licensees were administered by the Department during the Review Period. The Department also administers production music (AMCOS-controlled Production Music is music specifically written and recorded for inclusion in all forms of audio and audiovisual productions). There were 882 Australian production music clients licensed during the Review Period who between them lodged 3,816 separate licence applications.

Digital and Recorded Licensing

45. The Digital and Recorded Licensing Department issues a range of licences relating to the reproduction of musical works in a wide variety of contexts, including; CD sales, digital download sales, video

on demand services, digital subscription music services, ringtones, business to business applications, dance schools and videographers. In total, 900 annual licences were administered during the Review Period and an additional 792 one-off licences issued.

46. The Digital and Recorded Licensing Department also licenses various online services including: user-generated content sites, online portals, on-demand streaming sites, webcasters, podcasters, online simulcasters and online production music usage. Generally, these licensees are aware of their copyright and licensing obligations. In total there were 289 online services clients administered by the Department during the Review Period.

APRA/AMCOS relationship with relevant trade associations

47. APRA/AMCOS state that they work hard at maintaining relationships with various bodies representing major licensee groups, including television and radio broadcasters, record companies, internet service providers, small businesses, hotels, restaurants, fitness centres and educational institutions, and that during the Review Period they have supported the activities of several of those bodies (including the Australian Hotels Associations and Clubs Australia) by way of sponsorships.
48. In addition, APRA/AMCOS claim to consult regularly with relevant trade associations in relation to the introduction of new licence schemes or material variations to existing licence schemes.

Tariff Reviews

49. During the Review Period, APRA/AMCOS concluded their negotiations with Live Performance Australia in relation to the licence schemes for

Promoted Music Events and Festivals. Since the new licence schemes went live on

1 January 2016, 50 National Event Promoters have entered into the Promoted Music Event Blanket licence scheme, with 8 outstanding, which represents an uptake of 86%. The expansion of the Festivals licence, which now includes both single and multi-day events and metropolitan and regional festivals, has meant that 55 promoters accessed this scheme, compared to a total of 35 for the same January to July period last year.

50. APRA concluded its roll out of the Restaurants and Cafes licence scheme. At 30 June 2016, of the 6,176 clients contacted, 5,873 had entered into the new licence agreement, a response rate of 95%.
51. APRA continued its roll-out of the amended Fitness Centres and Instructors licence scheme. As at 30 June 2016, 2,441 of the 2,995 clients contacted had signed the letter of variation, a response rate of 79%.
52. During the Review Period, APRA also continued its discussions with the hotel industry on a new simplified licence and tariff structure for hotels, taverns and bars. Negotiations, whilst positive and collegiate, have progressed more slowly than either party anticipated. APRA has signalled that it intends to conclude the consultation on 12 August 2016 and launch the licence scheme for new hotels on 1 September 2016 and to existing APRA hotel clients as their anniversary fall due. Key benefits of the new scheme include:
 - The proposed tariffs have been structured to produce a reduction of almost \$250,000 in annual background music fees across the hotel sector, providing significant savings for those hotels with existing high background music fees. Premises with

large counts of TVs in sports bars and at gaming venues, will have a capped background music licence fee of \$3,000.

- The replacement of seven licence schemes with a single all-in-one licence scheme.
- A consolidation of the various background music tariffs into five simple packages based on the most common combinations of music use in hotels that includes music used on devices such as MP3 players, with inbuilt discounts to the current stand-alone tariffs.
- The removal of the distinction between “small” and “large” TV screen sizes and that TV screens are only counted where the matched audio content is regularly audible from the screen or from an external sound source.
- The removal of the separate restaurant licence tariff.
- The inclusion of additional rights such as music on hold, music on your website, music in the workplace.
- Five nights of free music use per year are included under each of the five background music packages, which allows an hotelier to add any number of further TV screens at the premises on those nights for no extra cost.
- The inclusion of Racing TV screens in each Background Music Package for no extra cost and Keno, teletext and/or internal advertising where there is no audio music content are excluded.
- A consolidation of the separate live artists, featured recorded music and karaoke schemes into a simple standard-metric

featured music tariff structure, with an option of reporting on a per person attendance rate if the ticket price or admission is under \$35.

- A reduction and an early end to the phase-in of APRA/AMCOS' Recorded Music for Dance Use tariff, such that only CPI will be applied each year.

Pan Asian Licensing Project

53. The aim of APRA/AMCOS's Pan Asia licensing project is to co-operate with publishers in order to establish a simple one-stop shop for multi-territory licensing schemes for online usage, covering the largest number of Asian territories for the largest possible repertoire of musical works.
54. As previously reported, APRA/AMCOS' Pan Asia licensing project commenced in July 2013, when APRA/AMCOS entered into a Heads of Terms for licensing Universal Music Publishing repertoire on a Pan Asia Pacific basis for online and mobile services. "Peermusic" joined the initiative in July 2014 and "Hillsong Music Publishing" joined in June 2015. Regular Pan Asia Licensing distributions commenced in February 2015.
55. During the Review Period APRA/AMCOS entered into licence agreements covering 20 territories across Asia.

Disaster Relief

56. During the Review Period APRA/AMCOS continued its policy regarding Disaster affected licensees, which was introduced as a response to various natural disasters that occurred back in 2010. APRA/AMCOS' staff use online, print and broadcast media sources to remain actively

aware of possible areas that may be affected by disaster and monitor events closely to establish the appropriate course of action.

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

57. The most recently audited financial statements are for the year ended 30 June 2015 and show that APRA/AMCOS' total combined net distributable revenue for the year was \$262.7m.
58. As previously reported, both APRA and AMCOS now distribute royalties quarterly, with the exception of the Performance Returns distribution, which is done annually.
59. APRA/AMCOS have a large Membership Department whose staff are trained to deal with members' (and others') enquiries, including in relation to distribution. The Boards of APRA and AMCOS both have a Membership and Distribution Committee that deals with, among other things, requests by members for distributions in relation to "unlogged performances". This committee also deals with complaints from and disputes between members. Members are strongly encouraged to resolve disputes between them using "Resolution Pathways"; an Independent Alternative Dispute Resolution facility

Distribution Rules and Practices

60. The APRA Distribution Rules were most recently updated in April 2016 to reflect a change to its distribution expenses relating to the YouTube service, from a variable rate to a fixed 10%, and the introduction of time-zone weighting for music used in radio advertisements.
61. The APRA Distribution Practices were updated in July 2015 to reflect the inclusion of digital radio stations in APRA's analysis of SBS Radio, and most recently in April 2016 to reflect the following:

- Board approved amendments to the analysis and payment of music used in advertising commercials broadcast on Australian and New Zealand Commercial radio and TV, and on SBS TV;
 - a change to the way in which members are asked to report sales of their ambient music and the resultant distribution process;
 - the replacement of the music video programme 'Channel V' with 'VHits' for analogous allocations, owing to the closure of the former; and
 - the addition of Netflix to APRA's Video on Demand distribution and the addition of Les Mills NZ to APRA's Streaming distribution.
62. The AMCOS Distribution Rules were updated in April 2015, to reflect Board approved amendments to AMCOS' distributions of digital service licence fees.
63. The AMCOS Distribution Practices were most recently updated in April 2016 to reflect the expanded distribution for YouTube works.

Investment in Systems Development

64. As previously reported, in 2014 APRA/AMCOS commenced a core system replacement project to ensure a best-in-industry service offering in the years ahead. APRA/AMCOS engaged Accenture Avanade to design and implement the Copyright Licensing Enterprise Facility (CLEF). The system will have copyright ownership structured around agreements, territorial share pictures and take into account member and society mandates for various right types for licensing, claiming and distribution purposes.
65. The project was initially due to be completed by November 2015, however the timeline has shifted to April 2017 to allow more time to develop testing regimes, undertake user acceptance testing, carry out training and perform data migration.

66. APRA/AMCOS report that in 2015, a new and improved Writer Member portal was implemented, with further enhancements continuing to be made, to bring new functionality and streamlined processes to writer members, including:
- the ability to register jingles;
 - the ability to register remixes;
 - improved notification for publishers and co-writers for newly registered works;
 - the ability to create a set list;
 - one process for Performance Reports (incorporating three previous processes: LPRs, OSLPRs and Set Lists); and
 - improved access to royalty and financial data.
67. APRA/AMCOS Publisher Members continue to transact with APRA/AMCOS via a direct connection to the current system, therefore a new interface is required in the move to CLEF. They report that they have engaged Accenture to undertake the work of creating a new web-based interface, the publisher portal, which is currently in development. Its development is a critical element of CLEF and the timeline has been structured to follow the implementation schedule of the CLEF project.

Collecting Society Expenses (Code, Clause 2.5)

68. The APRA accounts show that its operating expenses are deducted from total gross revenue.
69. Commission on revenue pays AMCOS's expenses. The commission rate depends on the source of the revenue.

70. According to the most recent audited financial statements, those for the year ended 30 June 2015, APRA achieved an expense to revenue ratio of 13.08%.

Governance and Accountability (Code, Clause 2.6)

71. The Annual Report of each of APRA and AMCOS contains the matters set out in clause 2.6(e) of the Code.
72. The relationship between APRA and AMCOS and their respective Boards of Directors is governed by each company's Constitution and Charter of Corporate Governance. The Boards have both established Audit and Governance sub-committees, which continue to meet at least five times a year and concentrate exclusively on issues relating to Corporate Governance.
73. The APRA/AMCOS management also have an internal Governance Committee, comprising the Chief Executive, Divisional Heads and the Director HR, which meets regularly to discuss matters relating to the day to day operation and management of the organisations. This Governance Committee deals with policy setting and other matters relating to Human Resources and Industrial Relations, risk management, infrastructure, general administration, and regulatory compliance.
74. APRA/AMCOS also have an internal "Staff Code of Conduct", which continues to complement the Code, as it sets out the standards by which staff are expected to treat one another.
75. APRA/AMCOS maintain financial records which are audited each year, and a statement by each company's auditors is included in its Annual Report.

76. As reported previously, APRA's membership, licensing, distribution and international arrangements are all the subject of an "authorisation" by the ACCC. APRA's current conditional authorisation was granted for a period of five years, expiring on 28 June 2019. In granting this and past authorisations, the ACCC confirmed that the conduct and arrangements for which APRA sought re-authorisation are likely to result in a public benefit which would outweigh the public detriment involved.
77. The ACCC conditions of authorisation require APRA to do the following:
- (a) publish a comprehensive plain English guide that outlines all of the licence categories individually and includes other specified information;
 - (b) take certain steps to increase awareness of the licence back and opt out provisions available, including publication of a plain English guide and launching an education campaign; and
 - (c) implement a revised ADR scheme to be managed by an independent facilitator. The scheme must offer informal resolution, mediation, expert opinion and binding determination to licensees and members. The scheme must incorporate a consultative committee to provide feedback and other advisory input to APRA and to the facilitator.
78. APRA claims that it has complied with all the conditions (including consultation with interested parties). It reports that this third condition incorporates the key features of APRA's existing expert determination process and the conditions which were imposed in 2010, including the ADR reporting requirements.
79. APRA states that it appointed Shirli Kirschner of Resolve Advisors as the Independent ADR Facilitator. It reports the formation and

maintaining of a Consultative Committee comprising an equal number of member and licensee representatives; and the design, implementation and trialling of the Licensee and Member ADR schemes in April 2015.

80. APRA considers that its authorisations by the ACCC and the conditions attached to those authorisations form an important part of its governance and accountability framework.

Staff Training and Development (Code, Clause 2.7)

81. APRA/AMCOS report that their staff at management level continue to be trained regarding the Code.
82. Divisional Heads meet on a weekly basis and discuss matters relating to policy and strategy development and assessment. At these meetings issues relating to service and staff performance and training are regularly tabled.
83. In addition, the wider senior management team meets in the week following each scheduled Board Meeting, providing a cross-departmental opportunity to discuss interaction with stakeholders and wider communities and of reviewing company policies. At these meetings, the Code (including the complaints procedures and the Review process) is regularly discussed.
84. Manager and Team Leader forums are held at which the Chief Executive and Divisional Heads address the middle and frontline management teams. They provide an opportunity for the latter to raise any concerns, suggestions or initiatives directly with the senior leadership, and for the Chief Executive to share information about business and membership trends and concerns, and to set

performance expectations. In addition, other members of the senior management team are invited to address these groups.

85. The Public Performance Licensing and Member Services Departments continue to hold staff training conferences annually.
86. Additionally, all departments in APRA/AMCOS also conduct regular departmental staff meetings that provide opportunities to discuss topics relevant to the Code, including: client service, conflict management, time management, and the procedures for identifying and dealing with complaints.
87. APRA/AMCOS also hold company wide staff briefings throughout the calendar year. The briefings focus on the respective needs and expectations of general staff, middle and senior management and also the expectations of the organisation. The focus of the training sessions has in the past covered the Code , ACCC authorisation, and the CLEF Project, as well as performance within and between departments and with external stakeholders
88. APRA/AMCOS have provided details of the induction and training sessions that they provide for staff. The Code and internal Staff Code of Conduct are central components of the induction program that all new staff attend when they become employed. As well as the induction sessions conducted by Human Resources, roles with a high level of client and/or member contact also receive additional training from within the relevant departments in relation to handling complaints and the complaints procedure.
89. During the Review Period, APRA/AMCOS have developed a brand blueprint, which further outlines their purpose, values and personality.

90. APRA/AMCOS also report that as part of their response to concerns raised by music customers during the ACCC re-authorisation process, they widened the channels by which members and licensees could contact APRA/AMCOS. The website now includes a "live chat" facility so that responses to urgent enquiries can be provided in real time. The staff who respond to live chat enquiries are required to attend two, two hour training sessions to understand the live chat service guidelines and ensure that the highest level of customer service is offered via this channel.
91. APRA/AMCOS assert that they are committed to taking a proactive approach to staff development and wellbeing, such internal programs include:
- Higher Education Assistance Program
 - Leadership Development Program
 - Mentoring Program
 - Buddy Program
 - In-house Training Programs
 - Employee Assistance Program
 - Purchased Leave Scheme
 - Seminars on resilience, stress management, work-life balance and dealing with change
 - Lunchtime yoga for staff members twice a week on the premises
92. Under the *Workplace Gender Equality Act 2012*, APRA/AMCOS continue to submit their annual report to the Workplace Gender Equality Agency (WGEA) outlining their performance against a set of standardised gender equality indicators. A copy of that report is available on the APRA/AMCOS website and, as required by the Act, staff and members were notified of the report in June 2016.

93. APRA/AMCOS' "wiki" facility and internal social networking tool named "YAMMER", continue to form the basis of staff training and are a key information source for all APRA/AMCOS staff. All new APRA/AMCOS staff are trained in accessing and using these resources. Policies relating to Client Service, Human Resources, Work, Health & Safety and Departmental Organisation & Function are housed on these facilities.

Education and Awareness (Code, Clause 2.8)

94. APRA/AMCOS state that they devote "considerable resources" to the education of members, licensees, industry associations and members of the public, regarding the matters set out at Cl 2.8 (a) of the Code. A list of the organisations and associations with which they have an ongoing relationship was provided to the Code Reviewer.
95. APRA claims that as Australia's oldest and largest collecting society (incorporated in 1926), it is in a position to have developed extensive materials and expertise in relation to education and awareness matters. Among the education and awareness initiatives in which APRA/AMCOS contributes and participates are the following:
- Various Grant Programs, Sponsorships, Competitions and Promotions
 - Indigenous Member Strategy
 - Aboriginal and Torres Strait Islander (ATSI) Music Office
 - Ambassador Program
 - Events
 - Member Advisory Group Development
 - Sounds Australia & Live Music Office; and
 - Various industry related organisations and programs
 - Seminars and public forums and working groups

96. In their report, APRA/AMCOS provide updates and information on their educational activities in detail under the headings "Member Education", "Licensee Education", "International Relations", "Government Relations" and "APRA/AMCOS Website & Social Media".

Complaints and Disputes (Code, Clause 3)

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

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

98. APRA/AMCOS report that they have kept their members and licensees updated with information regarding the Code, in particular by maintaining relevant information including a copy of the Code on their website.
99. In addition, also on their website, they invite any interested person to make submissions to the Code Reviewer as part of the annual compliance process.

Copyright Agency Limited ("Copyright Agency") / Viscopy

100. Since 2 July 2012, Viscopy has retained Copyright Agency to manage its services, under a services agreement. However, Viscopy remains a separate legal entity, with a separate board, membership, and international affiliations.
101. As in recent review periods, a joint Copyright Agency/Viscopy report was provided to the Code Reviewer in respect of the Review Period. Accordingly, this report by the Code Reviewer deals with both

collecting societies together. As noted at [3] above, reference is made to "Copyright Agency/Viscopy" except where it is necessary to distinguish between the two societies.

General

Copyright Agency

102. Copyright Agency is a company limited by guarantee and has more than 30,000 members. They include writers, artists, surveyors, publishers and other collecting societies.

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

- in accordance with its appointments under statute:
 - management of the statutory licences for educational and governmental use of text, images and print music, including negotiation, collection and distribution of fair compensation for content creators;
 - management of the statutory licences for people with disabilities (no compensation is paid under these licences); and
 - management of the artists' resale royalty scheme;
- in accordance with the authority of its members and foreign affiliates, and with the oversight of the Copyright Tribunal of Australia, formulation and management of 'voluntary' licensing arrangements, principally for the corporate sector; and
- in accordance with its agreement with Viscopy, management of Viscopy's services to its members and licensees.

104. Copyright Agency is declared by the relevant Minister, currently the Minister for Communications and the Arts, as the collecting society appointed to collect and distribute equitable remuneration under the

statutory licence in Part VB of the Act for “each owner of copyright in a work, other than a work included in a sound recording or in a cinematograph film”. The Part VB statutory licence is for educational use of text, images and print music, and for assisting people with a print or intellectual disability.

105. Copyright Agency is also declared by the Copyright Tribunal of Australia as the collecting society appointed to collect and distribute equitable remuneration under the statutory licence provided for by Div 2 of Part VII in relation to the government copying of published works (other than those embodied in sound recordings, films and television and sound broadcasts). And see [180] below.
106. As distinct from the statutory licences, Copyright Agency was engaged by the Minister, following an open tender process, to manage the scheme for the payment of royalties to visual artists under the Resale Royalty for Visual Artists Act 2009 (Cth) (“Resale Royalty Scheme”).
107. In addition, Copyright Agency formulates and manages voluntary licensing arrangements in accordance with the authority of its members and foreign affiliates.
108. Copyright Agency reports annually to the relevant Ministers in accordance with statutory obligations in the Copyright Act and the Resale Royalty for Visual Artists Act. Its annual reports are tabled in Parliament and are available on the Copyright Agency website.
109. Copyright Agency operates in accordance with the Attorney General’s Department guidelines for ‘declared’ collecting societies.

Viscopy

110. Viscopy is also a company limited by guarantee. It represents more than 10,000 artists and artists' estates and beneficiaries from Australia and New Zealand. Viscopy also represents more than 40,000 international artists and their estates and beneficiaries in the Australasian territory, through reciprocal agreements with more than 40 visual arts rights management agencies around the world.
111. As stated above, Copyright Agency provides services to Viscopy under the arrangement that has operated since 2 July 2012. Those services include management of the Viscopy licences for Australia and New Zealand, which are primarily licences for the reproduction and communication of art works by auction houses and public galleries. However, Viscopy remains a separate legal entity, with a separate board and membership.
112. Copyright Agency continues to maintain a visual arts unit with staff dedicated to managing relationships in the visual arts sector, including those with licensees, artists and people affected by the Artists' Resale Royalty Scheme.

Legal Framework (Code, Clause 2.1)

Copyright Agency

113. Copyright Agency states that during the Review Period it complied with its obligations under the legislation and other documents referred to in clause 2.1 of the Code.
114. On its website, Copyright Agency publishes the following documents related to governance:

- Constitution;
- Corporate Governance Statement;
- Customer Services Charter;
- Privacy Policy;
- Dispute Management Procedures;
- Complaints Management Procedures
- Code of Conduct for Copyright Collecting Societies
- the Attorney-General’s Guidelines for Declared Collecting Societies;
- the Attorney-General’s Declaration of Copyright Agency for Part VB of the Act; and
- the Copyright Tribunal’s declaration of Copyright Agency for Div 2 of Part VII of the Act.

115. Copyright Agency’s in-house legal team oversee compliance issues, monitors relevant legal and regulatory developments, and implements any necessary or desirable changes to its policies or practices.

Viscopy

116. Viscopy also claims that during the Review Period it complied with its obligations under the legislation and other regulatory documents referred to in clause 2.1 of the Code.

117. Compliance by Viscopy is also overseen by Copyright Agency’s in-house legal team.

Members (Code, Clause 2.2)

Copyright Agency

118. Copyright Agency membership is free and open to owners of copyright in works and their licensees and agents, as well as to holders of a resale royalty right. Applications for membership can be made online and are approved by the Board.
119. Visual artists are invited to become members of both Copyright Agency and Viscopy.
120. Copyright Agency states that it continues to adopt a range of policies and processes aimed at ensuring that its members are treated fairly, honestly, impartially, courteously, and in accordance with its Constitution and membership agreements. It has a "Service Charter", induction training for new staff and annual training for all staff on the requirements of the Code.
121. In its report to the Code Reviewer, Copyright Agency gives details of its communication with its members and potential members, including:
- information on the Copyright Agency website about membership, distributions of licence fees and payments;
 - broadcast and one-on-one communications about changes to membership, distribution or payment arrangements;
 - responding to enquiries in accordance with the Service Charter; and
 - secure online member accounts that enable members to review their membership, distribution and payment details.

Viscopy

122. Viscopy membership is also free and is open to all artists and other owners of copyright in artistic works, including the estates of artists.

123. The Copyright Agency and Viscopy websites invite artists to join both societies.

Survey of Copyright Agency and Viscopy members

124. Between April and June 2016, Copyright Agency and Viscopy members were surveyed regarding their satisfaction with member services. The first group surveyed were members who had received a payment in the last two years. The second group surveyed were members who had not received a payment in the last two years.

125. Approximately 2,800 members responded. The following summarises the results:

	Payment in last 2 years	No payment in last 2 years
Very satisfied	42%	31%
Quite satisfied	41%	31%
Neither	15%	32%
Quite dissatisfied	2%	3%
Very dissatisfied	0%	3%

126. For the respondents who were satisfied, the main reasons were:

- payments;
- efficient processes;
- professional assistance;
- clear communications; and
- advocacy for members.

127. For the respondents who reported dissatisfaction, the main reasons were:

1. no or inadequate payments;
2. complex processes;
3. inadequate response to request for assistance;
4. inadequate information available; and
5. disagreement with advocacy.

Licensees (Code, Clause 2.3)

Copyright Agency

128. Copyright Agency states that it has adopted a range of policies and processes aimed at ensuring that its licensees are treated fairly, honestly, impartially, courteously and in accordance with its Constitution and licence agreements. These include: a "Service Charter", induction training for new staff, and annual training for all staff on the requirements of the Code.
129. For the statutory licences for education and government, Copyright Agency mostly deals with bodies or departments representing a class of licensees (such as Universities Australia, Copyright Advisory Group to the COAG Education Council for most schools and TAFEs, the Department for Communications and the Arts for the Commonwealth) rather than individual licensees. There are also more than 1,000 individual licence agreements with other education providers.
130. Most aspects of the statutory licences are governed by the Act and the regulations under it. The major areas for negotiation are the amount of equitable remuneration, the manner of collecting information about usage of content under the licence, and the processing of that information to estimate correctly the "volume" of usage. Licensees participating in surveys of usage receive special training in order to complete the surveys.
131. Copyright Agency publishes information about its "voluntary" licences ("blanket" and pay-per-use) on its website and on the RightsPortal

website (*rightsportal.com.au*). In addition, it provides information about its licences through such channels as seminars, trade shows and publications and in response to specific enquiries.

132. Copyright Agency states that it continues to review regularly the terms of its voluntary licence agreements to ensure that they are expressed in plain language and correspond to its mandate from its members and reflect feedback from licensees.
133. New industry licence schemes are usually designed by Copyright Agency with the input of the relevant industry association.
134. Amendments to the Code sought by the NSW Department of Justice (NSW) and the Copyright Advisory Group to the COAG Education Council (CAG) were the subject of a report by the Code Reviewer that was published in late 2015.
135. In addition, governance arrangements and transparency of collecting societies has been raised by the Productivity Commission and in submissions to it, in connection with the Commission's current inquiry into intellectual property arrangements. Copyright Agency has provided information about these issues in its public submissions.
136. Copyright Agency has also provided information to the Commission about its practices in relation to matters set out in the UK Intellectual Property Office document *Guidance on the UK Regulations implementing the Collective Rights Management (CRM) Directive* (released in February 2016). Copyright Agency has also provided that information to the Department of Communications and the Arts.

Viscopy

137. Viscopy's licences have been managed by Copyright Agency since 2 July 2012 and cover reproduction, publication and communication of artistic works in a wide variety of contexts including print media, internet, merchandise, advertising, film and television. They cover 'one-off' uses, as well as uses of a range of works under 'blanket' annual licences. Customers include those in the government and corporate sectors and individuals.
138. Viscopy claims that its licences and agreements are drafted in plain language in order to be understood by licensees.
139. Viscopy also states that its licence fees and other licence terms are regularly reviewed and updated to reflect changing types of reproduction and customer needs.
140. The Viscopy website includes information for licensees and prospective licensees, including a searchable database of Viscopy members, information about licences and licence fees, and information about the circumstances in which a licence is not required.

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

Copyright Agency

141. On its website, Copyright Agency publishes its "Distribution Policy", a schedule of forthcoming distributions, and its deductions for its administrative expenses. It distributes in accordance with the Distribution Policy and its Constitution.

142. Policy compliance, quality control, quality assurance, and continuous improvement processes are built into Copyright Agency's distribution processing. These include routine independent internal review and management sign-off of key inputs, processes, and outputs and external audits for most statutory and some voluntary licence distributions.
143. Further, some Copyright Agency licence agreements provide that the external survey supplier be required to audit Copyright Agency's processed data before providing volume estimates: under some schemes the data is either audited by licensees or they are provided with a data file, setting out the works used.

Viscopy

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

Collecting Society Expenses (Code, Clause 2.5)

Copyright Agency

145. Copyright Agency reports that the administrative costs associated with managing the statutory and voluntary licence schemes are met from its revenue. In some cases, the deduction is a fixed percentage (eg for distribution of licence fees collected from overseas), but in most cases the deduction represents the actual cost relevant to the particular licence scheme.

146. Copyright Agency's Board of Directors must approve the society's annual operating budget and reviews it at each meeting of the Board.
147. Copyright Agency's Constitution allows it to deduct up to 1.5% of revenue for cultural or benevolent purposes. Its Board approves the amount to be deducted and allocated for these purposes. Copyright Agency publicly invites applications for cultural support. The Board approves the successful applications following a recommendation process by a committee of the Board.
148. Copyright Agency publishes information about deductions in its "Distribution Policy" and on its website. Members also receive itemised information about deductions with each payment. In addition, it publishes information about expenses, including the expense to revenue ratio for each financial year, in its Annual Report.

Viscopy

149. Under the Services Agreement between Copyright Agency and Viscopy, Copyright Agency receives agreed deductions from Viscopy's licensing revenue. In the Review Period this was:
 - 25% of fees from Viscopy's voluntary licence agreements and Screenrights;
 - 10% of statutory licensing remuneration collected by Copyright Agency for Viscopy members who are not Copyright Agency members; and
 - 10% of royalties collected from overseas via Viscopy's international partner organisations.
150. Since the Services Agreement with Copyright Agency commenced, artists have been encouraged to join both Viscopy and Copyright

Agency and there is a link from Copyright Agency's website to Viscopy's website to facilitate this.

Governance and Accountability (Code, Clause 2.6)

Copyright Agency

151. Under Copyright Agency's Constitution, its Board comprises directors elected by author and publisher members respectively, and directors appointed by the Australian Society of Authors and Australian Publishers Association. The current directors and the capacity in which they were elected or appointed appears on Copyright Agency's website.
152. The society's financial statements are audited annually. Information about revenue, expenses and distribution of licence fees is included in each Annual Report, together with the auditor's report and is made available to the public on Copyright Agency's website, as well as to members and to the Minister for Communications and the Arts. In addition, the Annual Report is tabled in Parliament.
153. Copyright Agency provides, on request, information to members about entitlement to payment, in accordance with privacy and confidentiality obligations.

Viscopy

154. Viscopy is governed by a non-executive Board of Directors which includes artist members and business experts from various professions. Viscopy's Directors are unpaid but are reimbursed out of pocket expenses incurred in connection with their attendance at meetings.

155. Viscopy's Constitution provides for its Board to have a minimum of seven directors. There is information about Viscopy's current Directors on its website.
156. Viscopy claims to maintain proper and complete financial records, including records relating to the collection and distribution of royalties and payment of expenses.
157. Viscopy's financial statements are audited annually by external auditors, the results being published in its Annual Report. The Annual Report and the auditor's report are available on Viscopy's website.
158. Copyright Agency provides, on request, information to Viscopy members about entitlement to payment, in accordance with privacy and confidentiality obligations.

Staff Training (Code, Clause 2.7)

Copyright Agency

159. Copyright Agency's procedures for making its staff aware of the Code include:
 - induction training for new staff members on the requirements of the Code;
 - policy documents implementing those requirements on the society's intranet; and
 - annual training for all staff on the requirements of the Code.

Viscopy

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

Education and Awareness (Code, Clause 2.8)

Copyright Agency

161. Education and awareness activities conducted by Copyright Agency for its and Viscopy's members, licensees and other stakeholders include:

- information on the corporate website and other websites managed by Copyright Agency;
- monthly eNews ('Creative Licence');
- Canvas eNews to visual arts stakeholders;
- social media channels, including Copyright Agency's Facebook pages and Twitter account;
- presentations at Copyright Agency events and other events;
- training for licensees participating in surveys of usage;
- engagement with industry and professional associations who represent members and licensees; and
- mainstream and specialist media (such as industry magazines and newsletters).

162. Copyright Agency also uses the above channels to provide information about:

- matters relating to membership, including eligibility, benefits, responsibilities, policies and procedures; and

- matters relating to licensing, including benefits, responsibilities, obligations under copyright law, policies and procedures.

163. Information on the website relating to membership includes:

- membership terms and conditions;
- licence participation (options for participating in 'voluntary' licence schemes);
- information about online member accounts, how to claim payments, and forthcoming distributions; and
- frequently asked questions.

164. Information on the website relating to licensing includes:

- licences available for various sectors (e.g. business, not-for-profit, education);
- pay-per-use licences; and
- works excluded from voluntary licences.

165. Copyright Agency has also provided funding to other organisations to conduct copyright education and awareness activities, including:

- the Australian Copyright Council;
- the National Association for the Visual Arts; and
- the Australian Society of Authors.

Viscopy

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

Complaints and Disputes (Code, Clause 3)

Copyright Agency

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

***LearningField* Subscription Service**

168. LearningField is an online subscription service for teachers and students, developed by Copyright Agency with a group of educational publishers and managed by Copyright Agency.

169. The LearningField team manages frontline customer support through a helpdesk tool called Zendesk. All users – school administration, teachers, students and parents are able to email us at support@learningfield.com.au where the ticket gets logged and tracked. Copyright Agency's first response to the customer is set at two business hours. Once the issue is resolved, the respondent is asked to rate the level of support they have received (good/bad) and provide a comment. Weekly monitoring occurs on open tickets, and satisfaction levels.

170. Publishers, school customers and others are also able to contact LearningField directly about any concerns or issues they may have. LearningField also conducts proactive customer engagement with regular face to face meetings with schools and publishers, and in-school training sessions.

Viscopy

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

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

Copyright Agency

172. The Code is available on the Copyright Agency website as is information about the Annual Compliance Review of its compliance with the Code, the Code Reviewer's annual Compliance Reviews and his triennial review of the Code itself.

173. Copyright Agency includes reference to its compliance with the Code in its annual reports.

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

Viscopy

175. The Code and information about how to participate in reviews of Viscopy's compliance with the Code are also available on the Viscopy website.

176. Of course, Viscopy's annual report to the Code Reviewer is itself directed to its compliance with the Code.

Audio-Visual Copyright Society Limited ("Screenrights")

General

177. Audio-Visual Copyright Society Ltd, trading under the name "Screenrights", was established in 1990 as the declared collecting society for purposes of the statutory licence for the copying and communication of broadcasts by educational and other institutions under Part VA of the Act ("Copying and Communication of Broadcasts by Educational and Other Institutions")(see s135P of the Act).
178. Screenrights also represents the owners of the copyright in sound recordings and cinematograph films (and works included in sound recordings and cinematograph films) for the purposes of the statutory licence in favour of educational institutions and institutions assisting persons with an intellectual disability under Pt VB Div 4 of the Act ("Reproduction and Communication of Works etc by Institutions Assisting Persons with an Intellectual Disability")(see s135ZZB of the Act).
179. In addition, Screenrights is the sole collecting society for the collection of equitable remuneration for the retransmission of free-to-air broadcasts under Pt VC of the Act. (see s135ZZT of the Act).
180. Finally, Screenrights is the declared collecting society in respect of television and radio broadcasts under the government copying scheme in Div 2 of Pt VII of the Act (Copyright Agency is declared in respect of published works for that purpose—see [105] above) (see s153E of the Act).
181. At 30 June 2016, Screenrights had 3,958 members and 1,326 licensees. It collects royalty payments from schools, universities,

vocational training bodies, government agencies, TAFEs, resource centres, retransmitters, and New Zealand schools and tertiary institutions, as shown in the following table:

Type of Entity	Number
Screenrights Members	3,958
Licensees	1,326
<i>Schools - Government, Catholic Systemic, Independent - Peak Bodies</i>	26
<i>Higher education including universities</i>	68
<i>Private Vocational Education/Training Organisation (inc ELICOS)</i>	31
<i>Government Agency</i>	354
<i>TAFE (including individual institutions and Departments representing multiple institutions)</i>	20
<i>Resource Centre</i>	9
<i>Retransmitter</i>	8
<i>NZ -- Tertiary</i>	27
<i>NZ – Schools</i>	781
<i>NZ – Resource Centre</i>	2

Legal Framework (Code, Clause 2.1)

182. Screenrights claims to have complied with the legal framework governing its operations and has made no changes to its Constitution or other documents relevant to the legal framework during the Review Period.

Members (Code, Clause 2.2)

183. Statistics in relation to the membership of Screenrights were set out under “General” above.

184. During the Review Period, in the interests of improving the information provided to and exchanged with members and the efficiency with which Screenrights deals with its members, the following changes were made:

- Screenrights added an additional information sheet titled **What are Deadline Royalties and how do they affect me?** This information sheet explains the concept of distribution years or distribution periods and the fact Screenrights that has a deadline of six years within which to distribute royalties for a title (Screenrights' Articles of Association provide for a 4 year distribution period plus an additional 2 years).
- Following the June 2015 deadline, Screenrights commenced the process of asking members to verify their warranties in the situation where a competing claim remained unresolved at the deadline and some or all of the deadline royalties had been paid to one of the members involved in the competing claim. Members who had received the royalties were asked to provide documentation to support their claim to the program. To assist with this process a new form titled **Paid Deadline Royalties Form** was created.
- Where a competing claim remains unresolved at the deadline the members involved may opt to share the royalties - without affecting their registrations - so the royalties are not forfeited. In the circumstance where members opt to share the deadline royalties a **Mutual Agreement to Share Royalties Form** was created which members use to instruct Screenrights of their decision and the shares they have agreed to.
- A **Competing Claim Resolution Form** for High Value competing claims was introduced. Under the Alternative Dispute Resolution

(ADR) Procedure for Competing Claims, members with High Value competing claims (i.e. royalties valued over AU\$10,000) may request either Mediation or Expert Adjudication. Both members must complete the form to indicate their preference.

- A review of the radio warranties forms was undertaken. Previously there were 14 radio warranty forms. The forms were updated and combined down to three warranty forms:
 - **Radio Warranty Form – Commercial Sound Recordings,**
 - **Radio Warranty Form – Musical Works and Associated Literary Works,** and
 - **Radio Warranty Form – Scripts, Commissioned Sound Recordings and Sound Recordings Other Than of Musical Works.**
- Screenrights introduced the **Series Registration Update Report**. In the circumstance where a member has registered a series but it is missing season and/or episode information based on information available to Screenrights, this information is added to the registration and the 'Series Registration Update Report' is generated for the member to sign and warrant that they hold rights to the additional seasons and/or episodes.
- Following screen industry consultation Screenrights introduced the **Express Resolution Process** (ERP) in September 2015. The ERP operates alongside Screenrights' existing Alternative Dispute Resolution Procedure for Competing Claims between Screenrights' Members.

The ERP is a set of nine presumptions that represent a starting position from which to determine the relevant rightsholder. The

presumptions draw on general principles of Australian copyright law, standard terms of industry agreed contracts and industry practice.

To support the ERP two new forms were created, these were:

- the **Express Resolution Evidence Submission Form**,
and
 - the **Clarification of Representation by Agent Form**.
- Along with the introduction of the ERP Screenrights' ADR Procedure for Competing Claims was updated to incorporate the ERP.
- Screenrights introduced a new policy whereby a member may request a review of a decision made by Screenrights under the ADR Procedure for Competing Claims or the ERP by an independent expert. The independent expert is arranged by an independent organisation, both external to Screenrights. Following a Screenrights decision, the member has 14 days in which to request this procedure by completing the **Independent Expert Decision Form**.
- In February 2016 the Alternative Dispute Resolution Procedure was amended lowering the threshold for Medium Value (\$1,000-\$9,999) competing claims from AU\$1,000 to AU\$500 effective 1 February 2016. Following the change, members with competing claims valued at AU\$500 or more will have access to the internal determination pathway under Screenrights' ADR Procedure for Competing Claims. This change was made to provide members with greater assistance in resolving their competing claims.

Licensees (Code, Clause 2.3)

185. During the Review Period, Screenrights updated application forms for licensees to reflect annual CPI based changes in rates.
186. As foreshadowed in last year's Report, on 16 October 2015, the Copyright Tribunal of Australia approved Screenrights' application for a revised declaration for government copies made under section 183 of the Copyright Act. Screenrights' new declaration adds the copying of audio-visual material transmitted over the Internet to Screenrights' existing declaration for copying of television and radio broadcasts. Screenrights is negotiating new agreements with government jurisdictions to collect equitable remuneration for the additional content covered by the new declaration
187. Also during the Review Period, Screenrights reached a new agreement with the TAFE Copyright Advisory Group on behalf of all TAFEs in Western Australia and one institute in NSW. The new agreement included a discount on the previous rate per student to reflect reduced copying of broadcasts by TAFEs. Other TAFEs elected to terminate their Remuneration Notices and are no longer covered by Part VA.
188. In addition, Screenrights reached a new agreement with Universities Australia on behalf of 39 universities. The new agreement covers the period 1 January 2016 to 31 December 2017, and includes a 3.5% increase in remuneration.
189. However, discussions with the NSW Department of Justice and the Copyright Advisory Group (on behalf of Australian schools and TAFEs) did not reach agreement on additional reporting. Screenrights has

undertaken to provide additional information in future Annual Reports as offered to them during discussions.

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

190. There was one update to Screenrights' Distribution Policy during the Review Period, approved on 23 September 2015. The update relates to the Australian Educational Service (Pt VA); the Australian Retransmission Service (Pt VC); and the Australian Government Service (s183) and was made to Clause 10.1 of the Policy, as detailed below:

Policy para.	Impact of addition / amendment to the Policy
10.1	<p>A subset of records is used for the purpose of researching and identifying artistic works in copied and communicated programs for royalty distribution. These are the survey records.</p> <p>The distribution policy has been updated to allow for the subset of records to be extracted from resource centre records in cases where survey records are not available. The impact of this amendment limits the number of programs requiring research to a reasonable amount to maintain a fair and efficient distribution.</p>

191. The effect of, and reasons for, these amendments and additions are as follows:

- Each year Screenrights researches copied and communicated programs to identify which paintings, drawings, engravings, sculptures, photographs and other works of artistic craftsmanship (artistic works) appear within the programs. This research is used to facilitate remuneration of the rightsholders in the identified artistic works for the copying and communication of their copyright.

- For the purposes of this research Screenrights uses survey and record-keeping data. This keeps the number of programs requiring research to a manageable level and means that royalties for artistic works can be distributed cost-effectively.
- Screenrights is in the process of phasing out the educational surveys. The alternative source of records that can be used for distribution purposes are the resource centre records of copying and communication. The resource centre records are vast and growing. It would not be practical or cost effective to use all of these records for the purposes of researching and identifying artistic works.
- This amendment to the Distribution Policy introduced a sample of these resource centre records in circumstances where the survey data is not available. Viscopy was supportive of the amendment to the policy.

Collecting Society Expenses (Code, Clause 2.5)

192. Screenrights reports that its expenses for the year ended 30 June 2016 were approximately 14.9% of gross revenue. This figure is unaudited and the audited figure will be in Screenrights' Annual Report. A detailed summary of Screenrights' expenses to collections ratios will be found in Screenrights' Annual Report for the financial year 2015/2016, where a comparison with the years 2013/2014 and 2014/2015 will be depicted. This report will be available in September 2016.

Governance and Accountability (Code, Clause 2.6)

193. Screenrights' Annual Report for 2015-2016 will be available in September 2016, including the audited accounts as at 30 June 2016.

Staff Training (Code, Clause 2.7)

194. Screenrights has taken steps, including through staff training, to ensure that all staff are aware of and comply with the Code. A copy of this year's training materials was provided to the Code Reviewer.
195. In addition, Screenrights reports that it has arranged training sessions to familiarise staff with its ADR procedures and complaints handling procedures. The relevant information is available on Screenrights' website.
196. To complement such formal staff training, relevant matters are raised in regular staff meetings and other staff training meetings, such as training in relation to Screenrights' Privacy Policy.

Education and Awareness (Code, Clause 2.8)

197. Screenrights continues to promote and provide information about Screenrights on its website, which is reviewed and updated regularly.
198. In addition, Screenrights has promoted its role and functions as a collecting society by sponsoring and participating. through speaking engagements, market stalls or providing attendees with hardcopy marketing material about Screenrights at the following events:
- 37°South Market at Melbourne International Film Festival 30 July – 2 August 2015
 - Big Screen Symposium (NZ) 10 - 11 October 2015
 - Screen Production and Development Association Summit (NZ) 12 - 13 November 2015
 - Screen Forever (run by Screen Producers Australia) 17 - 19 November 2015

- Net-Work-Play Australian International Documentary Conference 28 February – 2 March 2016
- Screen Edge Forum (Auckland, NZ) 18 May 2016

199. Also, the *Off the Air* newsletter, which continues to be distributed to members and interested stakeholders via a subscription based email system, promotes the importance of copyright, the role and functions of other collecting societies, as and the role and functions of Screenrights itself.

Complaints and Disputes (Code, Clause 3)

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

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

201. Screenrights publicises the Code and refers to its undertaking to be bound by it, and makes the Code available on its website for downloading by members and licensees and other interested persons.

202. Screenrights includes a statement in its Annual Report (under “Governance”) on its compliance with the Code.

203. Of course, Screenrights’ annual report to the Code Reviewer is itself directed to its compliance with the Code.

Phonographic Performance Company of Australia Ltd (“PPCA”)

General

204. As stated in previous reports, PPCA was established in 1969 by the owners of copyright in sound recordings, with the object of issuing blanket licences for the broadcast and public performance of copyright-protected sound recordings and music videos.

205. Further, the Constitution of PPCA makes clear that its objects are focussed on the exercise and enforcement of copyright in respect of the communication rights and public performance rights in (a) sound recordings; and (b) music videos that embody sound recordings, or soundtracks which, if made as a sound recording, would be a sound recording.

206. PPCA is not a declared collecting society under the Act.

Legal Framework (Code, Clause 2.1)

207. PPCA reports that neither its Constitution nor its Privacy Policy were changed during the Review Period.

Members (Code, Clause 2.2)

208. PPCA is a company limited by shares, the shares still being held equally by the remaining three of the six founding members. The three members are ineligible to receive any dividend, and they receive remuneration only on the same basis as other licensors, in line with PPCA’s “Distribution Policy”.

209. As a result, whereas other collecting societies represent the interests of their “members”, PPCA represents the interests of “licensors” (ie the owners or exclusive licensees in respect of copyright in sound recordings).
210. PPCA’s relationship with licensors is governed by the terms of its standard “Input Agreement”, rather than by PPCA’s Constitution. The Input Agreement allows PPCA to sub-license on a non-exclusive basis, and to create blanket public performance and broadcast licensing schemes for the users of sound recordings (particularly, small businesses).
211. Similarly, PPCA has “registered artists” rather than “artist members”. The payment made available to Australian featured artists under the PPCA Distribution Policy is on an ex gratia basis and does not depend on ownership of copyright by the artists.
212. As at 30 June 2016, PPCA had 2,071 licensors representing major record companies and independent copyright owners. The number of registered artists was approximately 3,645.
213. Both the Distribution Policy and the Input Agreement were subject to amendment during the Review Period. The Distribution Policy was amended as at 1 March 2016 to reflect changes to PPCA’s Direct Artist Distribution Scheme. The Input Agreement was amended in August 2015 to clarify PPCA’s licensing of the Audiovisual Streaming right, the Digital Content Rental right and the On-demand Offerings right.
214. PPCA reports that it increasingly receives queries relating to registering as a licensor by telephone or email. PPCA generally refers the applicant to the relevant section of the website and the related

on-line registration form (<http://www.pcca.com.au/labels/register-as-a-licensor/>).

215. In addition, enquiries from artists about registering with PPCA are mostly received by email, in which case again they are directed to the relevant area of the website and the on-line registration form (<http://www.pcca.com.au/artists-at-home/register-as-an-artist/>).
216. The PPCA website includes "FAQ" sections for both licensors and artists, to assist in the explanation of the services provided by PPCA. During the Review Period, PPCA emailed its registered artists and licensors several times, including for:
- announcing the call for expressions of interest for Indie Week 2016;
 - advising of the Copyright Tribunal's decision in regard to the Commercial Radio Simulcast Licence Scheme; and
 - conducting a short survey of its Licensors in order to gain a better understanding of its user base.

Licenses (Code, Clause 2.3)

217. At 30 June 2016, PPCA had over 56,000 businesses licensed for the public performance of protected sound recordings and music videos. By volume, this remains the largest sector of PPCA's licensing activity and is managed by the largest team of staff (the Public Performance Licensing Department).
218. PPCA also has in place communication licences for those offering other services (including broadcasters and linear and customer-influenced streaming services).
219. During the Review Period, PPCA concluded its discussions with the ABC in relation to the implementation of new licensing arrangements.

In addition, it concluded its consultation with the Community Broadcasting Association of Australia (CBAA) in relation to licence terms for broadcasting and simulcasting. The roll out of new licences for its members is almost complete.

220. In conjunction with APRA, PPCA continued its consultation with the local council sector regarding the implementation of a joint licensing scheme for this sector. Information regarding the consultation was posted on the PPCA website. The consultation period is ongoing at this stage, although little interest has been demonstrated by the sector.
221. In a further joint licensing initiative PPCA has joined with ARIA, APRA AMCOS, Copyright Agency and Viscopy, to provide, together with Early Childhood Australia, a simplified single licence for early learning providers¹⁵
222. The PPCA website contains extensive information on its standard public performance licence schemes, including descriptions of tariff categories and costs of the relevant licences (tariff sheets). The website also contains information on the range of broadcasting and digital licences available (including the application process) and a range of FAQs covering matters both specific to PPCA and on copyright more generally.
223. Licence applications, incorporating licence terms, may be submitted (a) online, (b) via a downloadable application form, (c) using PPCA's hard copy application form, or (d) by phone.
224. PPCA's Public Performance tariffs generally increase on 1 July every year by an amount equivalent to the CPI. By 1 April each year PPCA writes to relevant key industry associations that it has been able to identify, advising them of the proposed increase and inviting them to

contact PPCA if they wish to consult about the proposal. This year, those notification letters were issued on 29 March.

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

225. PPCA reports that it maintains and makes available on its website its Distribution Policy, which sets out how it collects licence fees for the use of sound recordings and music videos, and allocates and distributes payments to licensors who have authorised PPCA to issue licences on their behalf. The Distribution Policy also incorporates details of the Direct Artist Distribution Scheme. As indicated above, this is an *ex gratia* arrangement under which featured Australian artists may register to receive payments directly from PPCA, regardless of whether they have retained copyright in the sound recordings on which they feature.
226. As advised above, the Distribution Policy was amended on 1 March 2016. Two changes were made.
227. The first was a change to the treatment of held earnings for 'lost artists'. Previously, after being held for a period, these artists' earnings were paid to the copyright owner that controls the relevant recording. The policy was changed to treat these earnings in the same way as 'lost licensors' i.e. the amount of the payment will be rolled into the next year's overall Distributable Amount; and this additional amount will proportionally increase each pool and be allocated to licensors and registered artists on the basis of the year's usage logs.
228. The second change was to allow featured Australian artists on all recordings to register for a direct payment under the Artist Direct Distribution Scheme. Previously, featured Australian artists could only register if the majority of the featured artists on the recording

were Australian citizens or residents for tax purposes. This change was communicated to Licensors and Registered Artists in the autumn *On The Record* newsletter.

229. In addition to being available on the website, the Distribution Policy is also provided to each new licensor together with the Input Agreement. An information sheet on the Direct Artist Distribution Scheme is provided to each registering artist as part of the artist registration pack. The information sheet describes the overall scheme as outlined in the Distribution Policy, and advises that the Policy (and all other policies) can be viewed on the PPCA website, or supplied on request.
230. PPCA undertakes an annual distribution for the financial year ended 30 June, which is made prior to 31 December in each calendar year.

Collecting Society Expenses (Code, Clause 2.5)

231. PPCA's operating expenses are deducted from total gross revenue, yielding a surplus available for allocation and distribution in line with PPCA's Distribution Policy.
232. PPCA's Annual Report for the year ended 30 June 2015 (published during the Review Period) showed that the expense to revenue ratio was 32%. The expense ratio was unusually high during the 2014/15 period as Tribunal references, initiated more than a year apart, both were subject to hearings during 2015/16.

Governance and Accountability (Code, Clause 2.6)

233. PPCA's financial records are audited annually.

234. Reports of the Board of Directors and of the external auditors are published in the Annual Report which is available on the PPCA website, and which contains the information specified in the Clause 2.6(e) of the Code.
235. In addition, a Finance Committee appointed by the Board continues to meet regularly to review interim financial accounts, and the outgoings and expenses contained in them.
236. The PPCA Board, committees and relevant managers are also provided with PPCA's "Competition and Consumer Compliance Guidelines" and "refresher" presentations are held periodically.
237. In accordance with PPCA's Constitution (rules 6.2(b) and 6.2(c)) PPCA conducts regular elections to fill the positions for both Licensor and Artist Representative directors. At each meeting of the PPCA Board, directors are reminded of their obligations and duties.
238. The PPCA Management Team meets each week to discuss operational and strategic matters.

Staff Training (Code, Clause 2.7)

239. PPCA's practice of providing staff at the commencement of their employment with a number of key documents, including the Code, the PPCA Privacy Policy and the PPCA Complaints Handling and Dispute Resolution Policy, continued to be followed during the Review Period.
240. Members of the Licensing Department meet at least once each month, with individual licensing teams meeting more often. At these meetings, staff are reminded of PPCA's obligations under the Code and of the various other PPCA policies.

241. A document containing standard responses to frequently asked questions is provided as a resource to the Licensing Department.
242. During the Review Period, Licensing Department staff attended training sessions on the new document management system as well as updates to the account management system.
243. The Distribution Department also meets periodically for staff training and process review purposes.
244. Departmental managers continue to be provided with copies of any complaints received so that they can be discussed and reviewed at team meetings.
245. Staff training sessions on the Code for the Licensing, Credit, Enforcement and Distribution departments are held regularly.
246. PPCA maintains an intranet which serves as a repository for all key policy documents, including the Code. Staff are encouraged to review the intranet regularly.
247. At the most recent 'Code of Conduct' refresher training meetings, a session was also held on the changes to the Privacy Policy.
248. During the Review Period, new staff were sent to external courses dealing with customer service / telephone skills.

Education and Awareness (Code, Clause 2.8)

249. In addition to communications previously outlined, PPCA reports that it meets regularly with licensees and key licensee representative bodies. It distributes explanatory materials (either by mail,

distribution at specific industry events, placement in trade publications, or publication on the website), and publishes a quarterly newsletter, *In The Loop*, which is forwarded to each licensee with the periodic licence renewal documentation.

250. PPCA itself is a corporate member of several licensee representative bodies, details of which are given in the Accompanying Underlying Materials (vol 2, tab 35).
251. During the Review Period, PPCA wrote to approximately 5,927 businesses advising them of the licensing obligation relating to the use of protected sound recordings, and the convenience of the PPCA licence. The information pack supplied to them includes notification of the operation of the Code.
252. PPCA states that it continued to meet with artists and licensors to educate them on the role and function of PPCA, presented at seminars and panel discussions, and distributed explanatory materials.
253. PPCA regularly issues a newsletter, *On the Record*, to artists and licensors.
254. PPCA uses Facebook and Twitter to communicate directly with registered and potential artists and licensors, keeping them informed of PPCA news, issues and initiatives, as well as providing the latest music industry information to help aspiring artists, managers and music industry professionals. PPCA continues to post 3-4 times per week on both Facebook and Twitter. PPCA currently has 1,951 "likes" on Facebook and 1,640 "followers" on Twitter.
255. Awareness of PPCA is enhanced through its sponsorship and support of the following prizes and cultural organisations:

- the Australia Music Prize (the AMP)
- Sounds Australia
- the PPCA Performers' Trust Foundation
- Music Matters
- The Arts Law Centre of Australia
- The Australian Copyright Council
- the ATSI office
- the Australian Independent Record Labels Association (AIR)
- Support Act Limited; and
- the Australia Songwriters Association Awards.

256. PPCA runs a 'Patron Program' in order to inform artists, record labels and businesses about PPCA activities. PPCA remains in close contact with its patrons in order to keep them apprised of all issues impacting PPCA, in order to allow them to disseminate that information across their contacts in the artist community.

257. PPCA's website is a source of information for music users and copyright owners, and is updated regularly.

Complaints and Disputes (Code, Clause 3)

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

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

259. PPCA publishes notification of the process for the annual review of compliance with the Code on its website and in its newsletter, *In the Loop*.

260. Of course, PPCA's annual report to the Code Reviewer is itself directed to the issue of its compliance with the Code.

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

General

261. The Australian Writers' Guild Authorship Collecting Society states that there have been no substantive changes to their practices since the last reporting period in 2015, outside of its ongoing issues with domestic collection and distribution with Screenrights previously raised with the Code Reviewer.
262. The number of members of AWGACS at 30 June 2016 was 1540 members, an increase of 73 since the last report.
263. AWGACS is not a declared society under the *Copyright Act* (Cth) 1968, but elects to submit voluntarily to the Code of Conduct for Collecting Societies.
264. AWGACS is a member of CISAC (the International Confederation of Societies of Authors and Composers). Therefore, AWGACS submits to the International Best Practice Guidelines. AWGACS is considered a "developing society" in CISAC terminology, reflecting the number of its members, level of collections, age and infrastructure. AWGACS reports to CISAC extensively on an annual basis.
265. AWGACS confirms that it does not deal with licensees and that it collects and distributes secondary royalties only.

Legal Framework (Code, Clause 2.1)

266. AWGACS asserts that it has met all of its obligations with regard to the relevant obligations under this clause and that there has been no change since the previous Review.

267. AWGACS's Constitution is available upon request. It is made available on the AWGACS section of the Australian Writers' Guild (**AWG**) website.

Members (Code, Clause 2.2)

268. As noted above, the number of members of AWGACS as at 30 June 2016 was 1,540 members, an increase of 73 during the Review Period.

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

270. Membership remains available to all scriptwriters.

271. AWGACS states that it has received no complaints from its members about any of its obligations under the Code.

Licensees (Code, Clause 2.3)

272. Clause 2.3 of the Code does not apply to AWGACS because AWGACS is not a licensor of copyright material.

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

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

274. AWGACS distributes to its members monies that it collects on their behalf from other collecting societies. This is in accordance with its Constitution and its Distribution Policy as determined by its Board of Directors.

275. The Distribution Policy is made available to AWGACS's members upon request and is also published on the AWGACS section of the AWG website.

276. The AWGACS financial year is a calendar year. In the calendar year ended 31 December 2015, AWGACS:

- collected \$2,053,224.63 (distributable in the following calendar year, 2016); and
- distributed \$949,578.91 from prior years' collections.

Collecting Society Expenses (Code, Clause 2.5)

277. AWGACS states that it deducts from each calendar year's royalty collections the "standard operating costs for that year".

278. AWGACS also deducts 5% of gross royalties received as a "cultural levy" to be directed towards appropriate activities in support of its members. It sponsors the Annual AWGIE Awards for scriptwriters, which is run by the AWG.

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

Governance and Accountability (Code, Clause 2.6)

280. The Board of Directors of AWGACS comprises five directors, of whom two are elected by the Board of the AWG (which itself is democratically elected by and from writers who are members of the AWG), two are elected by the AWGACS members from among the AWGACS membership, and one is, ex-officio, the AWGACS/AWG Executive Director.

281. The audited annual accounts for calendar year 2015 were presented to members at the AGM and included: details of total revenue, the total amount and general nature of expenses, and the allocation and distribution of payments to members.
282. As previously stated, AWGACS voluntarily submits to the extensive governance and accountability reporting measures and reviews of CISAC.

Staff Training (Code, Clause 2.7)

283. During the Review Period, there was one noteworthy appointment, to the position of "Collections and Distributions Officer" within AWGACS. The appointee was advised of AWGACS's obligations under the Code.
284. Existing AWGACS employees remain aware of the Code and of its requirements and particularly of the society's Complaints Handling Procedure.

Education and Awareness (Code, Clause 2.8)

285. As a small "developing" society, AWGACS itself focuses on the education of scriptwriters and relies on larger societies and the Australian Copyright Council to contribute to the promotion of the importance of copyright and of collecting societies in general in Australia. Internationally, its membership of CISAC is directed to the same purpose.
286. AWGACS considers that it seeks to increase awareness among its members and the scriptwriting community by advertising in print, via "Storyline" (the journal for performance writers, with a print run of approximately 3,000).

287. It also contributes via sponsorship of the two largest events for scriptwriters, the Annual AWGIE Awards and the National Screenwriters' Conference. In March 2016, AWGACS attended this Conference and operated a stall where members and non-members can access information, ask questions of an AWGACS staff member, and sign up to become members.
288. AWGACS promotes awareness of scriptwriting royalties to members and the industry via electronic bulletins and website materials.
289. In addition, AWGACS provides an individual advice service to members and to the industry on copyright and related issues.
290. AWGACS's foundation documents are available internationally to other collecting societies, via the CISAC portal, and domestically via the AWGACS website.
291. AWGACS continues to respond individually to all telephone and email questions from members, potential members and the general public about the society's purposes and practices.

Complaints and Disputes (Code, Clause 3)

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

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

293. The Code is posted on the AWGACS section of the AWG website and is made available to members and potential members upon request.

294. Calls for submissions to the Code Reviewer are made on the society's website in accordance with the requirements of the Code.
295. Of course, AWGACS's annual report to the Code Reviewer is itself directed to the issue of its compliance with the Code.

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

General

296. Established by the Australian Directors Guild (ADG), the Australian Screen Directors Authorship Collecting Society Ltd (ASDACS) was incorporated as a company limited by guarantee in 1995. ASDACS collects and distributes secondary royalty income for screen directors, which arises from the screening of their work both internationally and domestically.
297. As has been previously noted, ASDACS is not a declared collecting society under the Act.
298. As at 1 July 2015, ASDACS had 899 members. By the end of the Review Period on 30 June 2016, membership had grown to 942 – an increase of 43 members.
299. ASDACS is a member of CISAC and abides by CISAC professional rules and standards, including the submission of an annual finance declaration and completion of an annual professional rules questionnaire.
300. ASDACS reports that if continues to be administered by the ADG through a services contract but continues to be legally governed

by a separate board and acts in accordance with its own constitution.

301. ASDACS further states that it continues to work closely with the ADG with the aim of promoting fair remuneration for screen directors. This is in alignment with the broader international Writers & Directors Worldwide continuing campaign for fair remuneration for authors, from which ADG / ASDACS has garnered further support.

302. ASDACS employs one full-time staff member and two newly appointed part-time staff. An external database technician and a legal adviser continue to be employed on a consultancy basis.

Legal Framework (Code, Clause 2.1)

303. ASDACS reports that there were no changes during the Review Period.

Members (Code, Clause 2.2)

304. ASDACS reports that there was no change to its membership rules or procedures during the Review Period.

Licensees (Code, Clause 2.3)

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

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

306. ASDACS reports that its international royalty income for the 2015 calendar year totalled \$957,042. Additionally, a small amount of

domestic retransmission royalty revenue totalling \$1,782 was received from Screenrights

307. A total of \$24,481 bank interest earned on ASDACS income over 2015 will also be distributed to members in accordance with its constitutional rules.

Collecting Society Expenses (Code, Clause 2.5)

308. ASDACS' members received the full amount of gross royalties that it received from reciprocal collecting societies internationally for their works, less the following amounts:

- **Administrative fee: an** administrative fee of 26% which covers ASDACS' operational expenses;
- **Membership fee:** a membership fee of 10%, waived for members of the Australian Directors' Guild (ADG), as well as the Directors and Editors Guild of New Zealand (DEGNZ); and
- **Cultural Purposes Fund:** a cultural fund fee of 4%; In 2015, this amounted to \$38,278, which was granted to the ADG for the support and promotion of directors in accordance with the ASDACS Constitution. Among many ADG activities, this was put toward the annual ADG Awards. A separate report on ADG's cultural funding was provided to the Code Reviewer as part of ASDACS compliance report.

309. The same fees will be introduced on domestic royalties received from Screenrights for their works under the Australian Retransmission Scheme from 1 January 2016. These fees were previously waived.

310. The increase is to cover an increase in associated administration costs and to accord with CISAC professional rules that specify administration fees applied to royalties due to other societies must be the same as those applicable to its own members.
311. Members were notified of the introduction of fees on Screenrights income from 1 January 2016 by a letter circulated via the ASDACS' enews.

Governance and Accountability (Code, Clause 2.6)

312. The ASDACS board reviewed the ASDACS Articles of Association during the review period. Minor amendments were made in consultation with an external legal firm and lodged with both CISAC and ASIC. A copy of the amendments was provided to the Code Reviewer as part of ASDACS compliance report.
313. At its Annual General Meeting, six members were appointed to the ASDACS Board, including four ADG members and one DEGNZ member. The newly elected directors re-appointed the one non-member as the specialist director in finance.

Staff Training (Code, Clause 2.7)

314. During the Review Period, the two newly appointed part-time staff members received training by the full-time ASDACS staff member.

Education and Awareness (Code, Clause 2.8)

315. The ASDACS website and regular enews updates (*News from the Chair*) are used to keep members informed of its work and progress. The ASDACS website also continues to promote the importance of copyright and makes detailed references to the nature of copyright as

administered by collecting societies in Australia and overseas, addressing the functions and policies of ASDACS in particular. ASDACS's social media (Twitter, Facebook and LinkedIn) have also been further developed and will serve as another vehicle to keep ASDACS members and international partners updated.

316. ASDACS also continues to use the regular newsletter of the ADG for broader awareness campaigns for screen directors. It provides sponsorship and cultural support through the ADG to enhance its visibility to the wider film and TV community.

Complaints and Disputes (Code, Clause 3)

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

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

318. ASDACS publicises the Code and its adherence to it on its website and in all relevant information documents provided to members and potential members.

319. The Code is posted on the ASDACS website in a comprehensive area called "Governance", where those interested can also find:

- the latest Report on Compliance;
- the 2014 Triennial Review of the Operations of the Code; and
- the 2016 Call for Submissions.

320. Members can download those documents or obtain hard copies upon request to the ASDACS office.

321. Of course, ASDACS's annual report to the Code Reviewer is itself directed to the issue of its compliance with the Code.

COMPLAINTS AND DISPUTES

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

General

322. APRA/AMCOS deal with complaints and disputes in paragraphs 9.1 – 9.14 of the text of their report to the Code Reviewer and in a separate volume of Accompanying Underlying Documents. My observation on previous years' Compliance Reports applies again: "allowing for the fact that no doubt a collecting society has an interest in the way in which it describes complaints and its dealings with them, it must nonetheless be said that APRA/AMCOS's report in both respects to the Code Reviewer is commendably detailed and, apparently, frank".
323. In their covering letter to me enclosing their report and Accompanying Underlying Documents, APRA/AMCOS observe that they received a total of five new complaints during the Review Period, which they note is the lowest number of complaints received in any twelve month period since the inception of the Code.
324. For the purposes of their report, APRA/AMCOS have applied the distinction between "complaints" and "disputes" to which I referred (at [28] – [38]) in my Report upon a review of the operation of the Code of Conduct, dated 30 April 2014.

325. The APRA/AMCOS "Complaints Procedure" document is in the "Complaints" volume of the Accompanying Underlying Documents (the Complaints Volume). This document tells prospective complainants how to make a complaint.
326. APRA/AMCOS state (at [9.3]) that they have included all documents and correspondence that have been dealt with as complaints during the Review Period. As in previous years, they request that the names and any other means of identifying the complainants be kept confidential, and offer to address the complaints in further details in a meeting with me if I so require, but I do not.
327. The five new complaints referred to were all complaints by licensees. There were no complaints by licensees carried over from the previous review period.
328. APRA/AMCOS report that they received no new complaints by members during the Review Period. They report further states that all complaints from the previous review period have been resolved, with the exception of one matter which has been referred as a "dispute" to the external Independent Alternative Dispute Resolution service provider referred to earlier.
329. APRA/AMCOS say that for the purpose of the review, and internally, they have adopted a broad approach to the definition of "complaint". However, where they have been unsuccessful in their attempt to grant a licence to a user of music and the matter is referred to their external solicitors, the matter is not treated as a complaint unless there is in fact a complaint regarding the conduct of their employees or of the external solicitors.
330. As at 30 June 2016, there were 373 ongoing general infringement matters under the management of the Public Performance Licensing

Department. Of these, 273 were under the management of APRA/AMCOS's external solicitors. This represents a substantial increase on the figures as at 30 June 2015 which were respectively 166 and 41, which were themselves a significant increase on the figures as at 30 June 2013 (94 and 15 respectively).

331. In their report to me at [9.8], APRA/AMCOS note the increase and state that it results from a bulk referral of infringement matters arising from the restaurant tariff review. The Society offered to provide more information regarding the activities of external solicitors (including litigation commenced during the Review Period) upon request by me.

332. Where a licensee refuses to pay invoices issued by APRA/AMCOS, the matter is pursued by their Finance Department, and, if necessary is referred to external mercantile agents. As at 30 June 2016, 298 licensees were under the management of APRA/AMCOS's Australian external mercantile agent, while 168 were under the management of APRA/AMCOS's New Zealand external mercantile agent. I note that the Australian figure represents a significant decrease as against the figure (346) as at 30 June 2015, and a small increase in the New Zealand figure as at 30 June 2015 (139). APRA/AMCOS do not characterise these matters as "complaints" unless a complaint is made regarding the conduct of their Finance Department or of the mercantile agent. They report that there were no such complaints during the Review Period. APRA/AMCOS have offered to make available to me further information regarding the activities of the external mercantile agents if I so require.

333. As was noted at [325] of last year's compliance report and has been noted again above, APRA/AMCOS launched a new independent ADR facility on 31 March 2015 called "Resolution Pathways". Details of it can be found at www.resolutionpathways.com.au.

334. APRA/AMCOS's account of its ADR facility given at [327] and [328] of last year's compliance report, is in substance repeated in its report in respect of the Review Period.
335. As I noted at [329] of last year's compliance report, under the terms of APRA's Authorisation from the ACCC, the ADR facility's resolution facilitator must submit an annual report to the ACCC detailing those disputes notified to her under the facility. A copy of the independent resolution facilitator's annual dispute report to the ACCC for the year ended 31 March 2016 is included at Tab 3 of the Complaints Volume. That report records that there were seven disputes in the period 1 January 2015 to 31 December 2015, and that all were "resolved with positive feedback". Two of the seven disputes were licensee disputes and five were member disputes. APRA bore the costs of the ADR facility in the period 1 January 2015 to 31 December 2015.

Complaints by Licensees

APRA/AMCOS Licensee Complaint 1

336. A licensee complained concerning the conduct of an APRA staff member, asserting that APRA was insisting upon the licensee's having a class of licence which was not the appropriate class. The licensee complained of "bullying" by the APRA staff member. The email correspondence forming part of the Accompanying Underlying Documents seems to support the complaint.
337. Senior management within APRA discussed the issue and APRA's Director of Public Performance Licensing telephoned the licensee to discuss the matter.

338. An officer within APRA's Senior Compliance & Review Liaison wrote a detailed letter dated 1 February 2016 to the complainant explaining that in relation to the screening of films in Australia, a separate licence was required from APRA in relation to the public performance of the music, as distinct from the licence granted by the film distributor for the screening of the film.
339. APRA, "as a gesture of good faith", offered a full refund of licence fees previously paid totalling \$660 (including GST) and proposing the issue of a different class of licence.
340. In addition, the staff member concerned was counselled.
341. The licensee appears to have accepted the solution of the issue of an annual cinema licence with licence fees calculated as proposed by APRA, coupled with the refund of licence fees paid in previous years, as a satisfactory resolution of the complaint.
342. APRA considers the complaint to have been resolved and on the evidence it does seem to have been.
343. I note that the licensee's complaint was received by APRA on 19 December 2015, just before Christmas, and was resolved by 22 February 2016 – a satisfactorily short period.

APRA/AMCOS Licensee Complaint 2

344. The complainant is a licensee. There has been conflict between him and APRA over an extensive period. His attitude to APRA and its staff is one of generalised hostility. Communications from him to APRA have been aggressive, offensive and insulting (and at times obscenely abusive).

345. The complainant is a promoter of dance music events. APRA states that it has often had to correspond with him in connection with his failure to comply with the terms of his licence, such as by failing to return box office information to APRA or to pay fees, or by disputing the basis on which fees have been calculated.
346. APRA reports that the complainant has made false allegations that he has been harassed and bullied by APRA staff, and that in fact he has made inappropriate and aggressive comments to APRA staff, including junior staff.
347. In late 2015, APRA felt compelled to refer the matter to its external solicitors and subsequent correspondence took place between them and the complainant.
348. The licensee complained about the taking of this course as itself constituting intimidation. The tone of his correspondence with APRA's solicitors seems, however, to have been more moderate. Nonetheless, the complainant appears to have ongoing grievances, one of which is that the APRA repertoire is not sufficiently reflected at the events that he promotes to warrant the application to him of APRA's standard terms.
349. APRA has offered counselling to its staff who have been the recipients of abusive correspondence from the complainant and staff have been instructed that if the complainant attempts to contact them, they are to refer him to APRA's external lawyers.
350. APRA reports that its external lawyers continue to correspond with the licensee in relation to the issues that he has raised, as well as in relation to the ongoing management and administration of his event licensing.

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

351. I see no alternative in the immediate future except for that course to be pursued. It may be that APRA and the complainant can, through the good offices of APRA's solicitors, arrive at a more stable relationship. It is to be hoped that they can, since it is unsatisfactory that in the longer term the relationship between them should have a firm of solicitors as an intermediary.
352. There is no obviously better way of dealing with a complainant of this kind than the course that was followed by APRA.

APRA/AMCOS Licensee Complaint 3

353. This complaint related to a problem arising out of email addresses. APRA emailed a licensee in relation to the licence from APRA that the licensee held in her capacity as a fitness instructor. That email was wrongly sent to the general enquiry email address of her other employer, because the licensee's contact details in APRA's records had been incorrectly updated with that email address.
354. That had happened when APRA had previously emailed the licensee and received a "bounce back" email from her correct email address. The bounce back advised that the licensee was out of the office and all emails for her should, in her absence, be directed to the general enquiry email address. It was in response to that direction that APRA then sent its email to the general enquiry email address of her employer.
355. The licensee complained. On 20 August 2015, APRA wrote to the licensee apologising and advising that its records in relation to her had been corrected. She was offered a refund of one month's licence fee.

356. The licensee did not respond to that offer.
357. APRA staff were counselled regarding the importance of ensuring that APRA's records were kept up to date with correct contact details for all licensees.
358. APRA considers the complaint to have been resolved, and I see no reason to disagree.

APRA/AMCOS Licensee Complaint 4

359. A licensee complained on 4 August 2015 over the increase in licence fee from that of the previous year for a Restaurants & Cafes licence. The complainant asserted that the amount being demanded by APRA was \$275.00 which was more than 200% above the 2014 licence fee. The complainant pointed out that her bar/restaurant operated only seasonally– in winter.
360. APRA wrote a letter on 20 August 2015 responding in detail, pointing out, among other things, that the new licence scheme was developed in consultation with the Restaurant & Catering Australia industry body. The letter from APRA also explained why both an APRA licence and a PPCA licence was required.
361. As a gesture of good faith, APRA offered the licensee a discounted licence fee of \$185.00 (instead of \$275.00) for the first year of the new licence scheme.
362. The complainant responded to the effect that she would cease using music completely and remained disappointed that no seasonal licence fee option was available.

363. Accordingly, APRA cancelled the licence. It noted the issue concerning a seasonal licence fee as something for further consideration in connection with future tariff reviews.

364. APRA considers the complaint to have been resolved and I see no reason to disagree.

APRA/AMCOS Licensee Complaint 5

365. A licensee failed to pay licence fees. Fees for two years were outstanding. On 26 May 2015 APRA sent her an email demanding payment. The matter was referred to APRA's mercantile agents, but they had no greater success.

366. They filed a statement of claim in the Local Court of New South Wales on 7 January 2016. APRA obtained judgment by default on 23 February 2016. Unfortunately, those responsible were unaware that the licensee had written to the mercantile agents on the preceding afternoon agreeing to enter into a plan to pay by instalments on the basis that the proceeding be withdrawn.

367. On 29 February 2016, the licensee complained.

368. APRA's Chief Financial Officer liaised with the mercantile agents and arranged for the judgment to be set aside and for all interest, costs and fees to be written off, so that the only amount payable by the licensee was the amount of the outstanding licence fees.

369. APRA reports that the licensee was "pleased" with this outcome and continues to adhere to the arrangement for payment by instalments.

370. APRA considers the matter to be resolved and I see no reason to disagree.

Copyright Agency Limited (“Copyright Agency”) / Viscopy

371. Copyright Agency has recorded in a table “Matters regarding services for Members and Licensees of Copyright Agency and Viscopy in 2015-16 that may be regarded as complaints as defined in Australian Standard ISO10002-2006 – Customer Satisfaction”. Clause 3.2 of that document defines “complaint” as an “expression of dissatisfaction made to an organisation, related to its products, or the complaints-handling process itself, where a response or resolution is explicitly or implicitly expected”.

372. Twenty-one of these are recorded in the table which is reproduced below:

	Who	Issue	Resolution
1	CA member	Member telephoned to express his disapproval for the deduction made for the Cultural Fund, and the way the Fund is allocated. His view is that the Fund should only be offered to emerging creators, and he sought information about recipients of the Fund.	Copyright Agency emailed Member with information about the Cultural Fund.
2	V members (three art centres)	Members did not receive remittance advices (statements) with payments.	Member Services team identified the reason for payments being made without an accompanying statement, apologised to the members, and emailed the statements. Systems and processes were reviewed to avoid future payments without statements.
3	CA member	Member complained about the amount it received this year compared to last.	Email to member with explanation of basis of the payment.

	Who	Issue	Resolution
4	CA member	Member complained that a company licensed by Copyright Agency had infringed her copyright in an article she had written.	Copyright Agency reviewed the licensing arrangements with the company, arranged for the licence to be cancelled given the company's circumstances had changed, and advised the member, who was satisfied with the outcome.
5	V member	A Viscopy member received a royalty payment for a work that wasn't his. The payment was for use of a photograph in schools (under the statutory licence managed by Copyright Agency), attributed to a photographer with the same name. The member was concerned that the correct rights holder had not received payment, and expressed frustration that misidentification frequently happens to him because he has a common name.	The member refunded the royalty amount for payment to the correct rights holder.
6	V member	Member did not receive a remittance advice (statement) with a payment.	The missing statement was issued to the member. Systems and processes were reviewed to avoid future payments without statements.
7	Art market professional	The art market professional reported art resales using the online form on the resale royalty website. The information he had supplied did not appear correctly on the dashboard of his online account: he reported the artists as deceased, and the dashboard showed 'living'. He was concerned he was in breach of his warranty that information provided by him was correct.	The issue arose because of a technical error that has now been remedied. The Visual Arts team emailed the art market professional to thank him for bringing the issue to the Team's attention, that it was now resolved, but would be included in the complaints report.
8	CA member	A publisher member complained that illustrators who had received payments from Copyright Agency had not passed the publisher share in accordance with their contractual obligations.	Copyright Agency phoned then emailed the member, advising Copyright Agency was reviewing its communications regarding sharing of payments.
9	CA member	Company policy to move all members across to EFT payments. The member wants to still receive her payments by cheque and will consider legal action if we withhold her payments.	A Copyright Agency staff member called the member on 21 and 23 March.

	Who	Issue	Resolution
10	CA member	Member complained about Copyright Agency's delay in providing claim information, resulting in a delayed payment to the member.	Copyright Agency apologised in writing to the member and reviewed its systems and processes to avoid similar issues arising in the future.
11	CA licensee	Copyright Agency received a letter from solicitors for a licensee, claiming that action taken by a CA member to restrict access to that member's content resulted in a breach of CA's licence with the licensee.	The matter is the subject of ongoing commercial negotiation between Copyright Agency and the licensee.
12	CA member	The member complained that he was unable to get the information he sought about the Careers Fund grant, after having tried for three days.	Copyright Agency emailed the member the information he sought.
13	CA member	The member (a publisher) has a longstanding dispute with another member (an author) about entitlement to receive Copyright Agency allocations for a series of titles. As a result, there are allocations held in suspense pending resolution of the dispute. Copyright Agency indicated that it would release payments held in suspense on receipt of signed contracts. The author, however, claims that there was a subsequent oral agreement to vary the terms of the written contracts, so that the author (and her co-author) would receive 50% (between them) rather than 20% (as stipulated in the written contract). The publisher acknowledges a conversation with the author, but denies there was an agreement to vary the written contracts.	Copyright Agency has now made arrangements to pay the publisher an amount representing 80% of the allocations held in suspense, made up partly of funds released from suspense (50%), and the remainder (30%) as a discretionary payment.
14	V member	The member emailed to complain about the content of a seminar arranged by Copyright Agency Viscopy.	Copyright Agency Viscopy emailed the member to explain the thinking behind the seminar and selection of presenters.
15	CA member	The member complained of difficulty with accessing and using the online application form for Cultural Fund grants.	The member received assistance with completing the application process, and was satisfied with the outcome.

	Who	Issue	Resolution
16	CA member	The member, a journalist who has written columns on copyright reform, emailed to express his disagreement with Copyright Agency's advocacy position on copyright reform.	The email was brought to the attention of the CEO and Director of Communications.
17	CA member	The member emailed in response to a request for her bank details that she wished to continue to be paid by cheque, and objected to providing bank details. She subsequently phoned, complaining about the delay in responding to her email.	Copyright Agency phoned her, apologised for the delay in response, and sent a follow up email about payments of allocations for her works.
18	V members (three art centres)	Under Viscopy's distribution policy, allocations less than \$10 are accrued rather than paid. In the June 2016 Viscopy distribution, a large number of very small value allocations were paid, mostly to art centres, because of technical issues with the payment system.	The technical issues in the payments system are being addressed. Communications are also underway with the foreign collecting society that is the source of most of the small allocations, with a view to reviewing the way that society provides payments to Viscopy.
19	CA and V member	The member contacted the Viscopy licensing team about Australian architectural photographs licensed by a foreign collecting society for inclusion in a German publication. She says the copyright is owned by the architect's family, not the photographer, and licensing requests should be directed to the architect's family.	The Viscopy licensing team has taken steps to take these circumstance into account in future licensing requests.
20	CA member	A longstanding dispute between this member and two other CA members about entitlement to receive CA allocations has been referred by CA to an independent expert for determination, in accordance with CA's dispute allocations policy. The member phoned Copyright Agency about why the determination had not yet been made.	Copyright Agency explained, by phone, that the determination was expected soon, following resolution of some issues associated with the documentation. The determination was subsequently provided to the parties.
21	V members	Two Viscopy members contacted the visual arts team because they had not received remittance advices (statements) with payments.	Remittance advices were not sent with payment because of some problems in the IT system. Advices were subsequently provided and the system problem resolved.

373. Supporting documents were supplied in the Accompanying Underlying Documents.

Copyright Agency/Viscopy Complaint 1

374. The complaint was made in a telephone conversation. It is correct that on 14 July 2015 Copyright Agency emailed the complainant explaining the legal basis for a setting aside of up to 1.5% of licence fees for “special purposes (including cultural and/or charitable purposes)”: Copyright Agency’s Constitution, Articles 73(b) and 75(b)(iii). The email also directed the complainant to Copyright Agency’s website where there is information about guidelines for funding and past recipients of Cultural Fund allocations. The email also referred the complainant to other publicly available documents.

375. The email concluded by inviting the complainant to contact the CEO of Copyright Agency if the complainant would like any further information.

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

376. The complaint appears to have been handled adequately.

Copyright Agency/Viscopy Complaint 2

377. Three art centre members of Viscopy complained that payments made to them were not accompanied by any remittance advice explaining what the payments were for. The three payments were of different kinds: a Resale Royalty payment, a Viscopy payment, and a John Fries Award payment.

378. Each complainant was sent by email the relevant remittance advice/payment statement for the amount paid.
379. It is asserted in the table that the reason that the failure to send associated remittance statements was identified, and an apology was made to the three complainants. According to the table, "systems and processes were reviewed to avoid future payments without statements".

Copyright Agency/Viscopy Complaint 3

380. This complaint related to digital copying as distinct from photocopying. In his first email (dated 23 June 2015) the complainant asserted that he had received in the previous year \$2,103 for the making of 444 photocopies of a certain work, yet only \$7.24 for the making of a digital copy of the work. The complainant said that he assumed that that single digital copy would have been made by the teacher then made available to the teacher's students electronically. The complaint was put in this way: "[w]ith the school that photocopies we receive a reasonable compensation, but the school that copies electronically pays \$7.24".
381. The complainant continued by suggesting particular class sizes and school sizes which, if photocopies had been made, would have generated a much larger payment. He said:
- "Over the past decade we have seen the payments received from CAL decline from the \$5 – 10 000 range (with one year \$40 000) while the number of schools who use our programs has more than doubled. The increase in the number of schools would statistically indicate that the payments that we receive should have increased substantially. I suspect that this decline is not due to less copying of our materials, but due to the form of copying (i.e. the transfer from photocopying to digital copying)."
382. Copyright Agency's Policy Director replied on 3 July 2015 explaining the way in which amounts distributed are calculated.

383. The complainant responded on 25 August 2015, essentially making the same point as he had made originally, and continuing:

"A solution to this data collection problem would be to have teachers specify the number of students that will access each upload that they make. This would be pretty simple in that it is just a matter of knowing which classes they are going to make it available to and the number of students in those classes.

This would provide a much fairer and more accurate method of determining the basis for distributing payments than some formula which guesses at the amount of usage each upload gets."

In this email the complainant stated that in the last payment received from Copyright Agency, he received \$5.64 for an electronic upload, and \$1,719.37 for hard copy.

384. Copyright Agency reports that it does in fact collect information about the number of individuals in the intended audience. Copyright Agency has provided to me a spreadsheet in relation to the payment of \$5.64 (it was actually \$5.92), and makes the point that the member's assumption that this was for an electronic upload was wrong. Copyright Agency has explained the way in which the amounts of the payments were arrived at. This is quite complex.

385. Copyright Agency reports that since sending the spreadsheet to the member, it has amended its template with a view to avoiding misunderstandings of the present kind.

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

386. Copyright Agency accepts that it would have been helpful to the member if it had supplied to him information of the kind now supplied to me. I agree.

Copyright Agency/Viscopy Complaint 4

387. An author of an article complained that a company which held a licence from Copyright Agency had exceeded the terms of its licence by “selling [her] article commercially, along with the work of many other authors”. The terms of her letter of complaint implied that she accepted that the company had a licence from Copyright Agency to reproduce her article for educational and training purposes, but she complained that in fact the company had reproduced her article in a journal for commercial gain.
388. The complainant noted that the company’s website stated that it had over 7,000 subscribers to its newsletter. The complainant asserted that the newsletter appeared to involve direct copying of articles from various journals around the world, assembling them into a newsletter (electronically and in hard copy), disseminating the newsletter to at least 7,000 subscribers, and charging the subscribers. The complainant suggested an amount of revenue that the company might be deriving from the charges it made to the subscribers to the newsletter.
389. The complainant asked Copyright Agency to investigate her complaint in accordance with its complaints procedures and, if it should find her complaint sustained, to terminate the licence granted to the company.
390. There was considerable correspondence between Copyright Agency and the company. This led to an acceptance by the company that its licence was to be cancelled by Copyright Agency.
391. Copyright Agency reported to its member that the licence in question was an “educational licence” that had been granted to the company

as an “educational institution”, but that Copyright Agency had concluded, as a result of its investigation, that the company was not eligible for such a licence.

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

392. The complaint appears to have been handled satisfactorily. IT was, of course, a complaint about what a licensee was doing, not a complaint against Copyright Agency. The investigation appears to have been carried out diligently (between the making of the complaint on 25 September 2015 and Copyright Agency’s report to the complainant on 19 November 2015). The member appears to have obtained the remedy that she sought.

Copyright Agency/Viscopy Complaint 5

393. On 29 September 2015, a member of Viscopy, who had what might be described as a fairly common name, complained that he had received as part of the September 2015 distribution a royalty payment of \$51.58 for a work that was not his. In fact, the royalty was a Copyright Agency statutory royalty for a photograph by a photographer with the same name, that had been detected in Copyright Agency’s “schools survey”.

394. The complainant expressed frustration that mis-identification happens fairly often because he has a common name.

395. On 9 October 2015 the complainant refunded the amount to Viscopy, which will pay it to Copyright Agency, which will hold it on trust pending identification of the correct rightsholder.

396. Viscopy reports that it has not been able to identify the correct rightsholder. However, notes have been entered into the member’s

account cautioning against incorrect allocations to him in the future. In addition, the notes caution against granting licences in respect of works bearing his name.

Copyright Agency/Viscopy Complaint 6

397. This complaint was another one about receipt of a payment without any associated statement or remittance advice. The payment was made to a deceased Estate by Electronic Funds Transfer (EFT) on 6 October 2015.
398. The complaint prompted Copyright Agency/Viscopy to check the statements issued for the September 2015 distribution and this revealed that a total of 35 members (including estates of members) had not received remittance advices.
399. The absent remittance statements were issued to the Estate in the particular case on 27 October 2015 and to the other recipients to whom such statements had not been sent.

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

400. It is recorded that "the member was happy", and the email correspondence suggests that this is correct. However, the final note dated 27 October 2015 by the Visual Arts Administrative Assistant states:

" ... the issue of why the Viscopy payments IT system did not print a full suite of statements requires further investigation. The issue is scheduled to be sent to our technician so he can fix the issue for future distributions. A checking system is also required to be implemented by Member Services so that in future the number of statements issued matches the number of members who have received a payment in the distribution."

Copyright Agency reports that it has instigated a manual procedure for the provision of statements pending resolution of the IT issue (see also Copyright Agency/Viscopy Complaint 21 below).

Copyright Agency/Viscopy Complaint 7

401. A complaint was made by an art market professional who is registered with Copyright Agency for the purposes of the Resale Royalty Scheme. The complainant had reported two resales using the form provided on the website. In both cases he had reported the artist as deceased and had provided the year of death. However, due to an IT problem, the data was handled incorrectly and the artist appeared on his "dashboard" as living rather than as deceased.
402. The complainant's concern was that when submitting the "web form" he had warranted that the information provided in it was correct, but due to the IT error, the information appearing in Copyright Agency's database was incorrect.
403. Internally, Copyright Agency had the web form "repaired", and the historical data was corrected so that the complainant's (correct) response to the question in the form now appears as submitted.
404. Copyright Agency reported all of this to the complainant who expressed thanks for the "prompt and courteous response".

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

405. This complaint was handled in an exemplary fashion. The complaint was made on 9 November 2015, the website corrected on 16 November 2015, Copyright Agency's report to the complainant was made on 16 November 2015, and again on that date the complainant's email of thanks was received.

Copyright Agency/Viscopy Complaint 8

406. On 14 December 2015, a publisher member of Copyright Agency complained that two illustrators who had received a payment from Copyright Agency had not forwarded the publisher's share on to it. The complainant asserted that both illustrators had been confused by the notice received from Copyright Agency, and had claimed that they thought that the total payment was theirs.
407. One illustrator accepted that there had been an error and undertook to forward to the publisher its share. The other illustrator consulted a lawyer and gave a "vague negative response" and questioned the publisher's entitlement. She also claimed not to have the capacity to pay the publisher's share and that it would have to be taken out of her future royalties which would mean a long wait for the publisher.
408. The publisher's letter of complaint continued:

" ... there appears to be two systems or standards of action regarding royalties – one which is automatically paid to the correct recipients directly and another in which the author/illustrator is paid direct under the old system and must pay on to other rights holders.

This is a very unsatisfactory circumstance, especially when we (CA) went to some much expense and trouble to set up a system for direct payments to the various rights holders under recorded agreed shares."

409. Copyright Agency responded on 17 December 2015, first by telephone and then by email. The Policy Director of Copyright Agency undertook to review the Society's communications to illustrators "to try and make it clearer when they have an obligation to share payments", but that the Society did not "have the functionality to 'split' allocations for images, in accordance with contractual arrangements, in the way [Copyright Agency] can for text". It stated: "We are looking again in the new year at how we allocate for images,

as there are a number of respects in which we think it could be improved”.

410. In April 2016 Copyright Agency trialled an online questionnaire for image creators about images in respect of which they have retained some entitlement to Copyright Agency payments. This was based on the process used by the United Kingdom Design and Artists Copyright Society, and on a process that Copyright Agency itself had used to garner information from contributors to newspapers and magazines.

411. Copyright Agency has in train a further questionnaire to be administered in late 2016 or early 2017. It has also devised a form of email to be sent to the proposed recipients of forthcoming distributions. The email will refer recipients to the Distribution Schedule which itself will refer them to a one-page information sheet which contains the following under the heading “Sharing Payments”:

“We send recipients a payment summary and a payment spreadsheet with each payment. These indicate if you need to check your obligation to share a payment with others (for example, under a publishing agreement).”

Copyright Agency/Viscopy Complaint 9

412. As part of the implementation of a policy to move all members across to EFT payments, Copyright Agency wrote to a member on 9 March 2016, informing her of that policy, and seeking details of her bank account by means of completion and return of a form. As well, the Society sought verification of the member’s identity by way of a scanned copy of her photo ID, drivers’ licence, passport or NSW photocard.

413. The member replied on 14 March 2016 by a handwritten letter stating:

"While I appreciate that the electronic world speeds up processing and reduces costs, not everyone is willing or able to embrace this technology.

I do not use email or electronic banking and I do not want my payments made electronically. I want to received my payment by cheque in the post.

I particularly object to your last paragraph threatening to withhold payment unless I comply with your demands. If payments are withheld I will take legal action against Copyright Agency."

414. According to the Table set out earlier, the member was called by telephone on 21 and 23 March.

415. A Copyright Agency officer had several telephone conversations with the member. A file note dated 26 July 2016 records the result of a telephone conversation as being that the member had agreed to provide Copyright Agency with details of her bank accounts on condition that Copyright Agency telephoned her prior to transferring funds into any of the accounts, in which telephone conversation she would advise when, and into which bank account, payment was to be made.

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

416. It will be important that Copyright Agency ensure that the "prior telephone call" condition is observed.

Copyright Agency/Viscopy Complaint 10

417. A publisher member received a payment from Copyright Agency and on 29 March 2016 asked Copyright Agency to supply "the title breakdown for the ... notification so our accounts can allocate this correctly".

418. The next day, 30 March 2016, Copyright Agency replied, not responding to the enquiry, but advising the member that a distribution from TAFE had missed the payment deadline for March

and so would be paid to the member on Friday, 22 April, for which the publisher member would receive a formal remittance advice at that time. However, the Copyright Agency officer enclosed "payment lines in the interim as requested".

419. The member asked how the March deadline could have been missed, since the member had completed the form and returned it as soon as it had been received.

420. Copyright Agency responded to the effect that the claim form had actually gone out to members after the March payment deadline.

421. Predictably, the member found this explanation "totally unacceptable". By email dated 30 March 2016, the member's officer explained that she needed to submit monthly accounts and that it would not look well for Copyright Agency for her to inform her directors, as she would have to do, that revenue did not match entitlements because Copyright Agency had sent out the form of report after its cut-off date. The officer of the member sought Copyright Agency's assurance that all future reports would be sent at least three days before the deadline.

422. No further correspondence between Copyright Agency and the member was supplied in Copyright Agency's compliance report to the Code Reviewer, but there is a note (at page 48) as follows:

"Copyright Agency staff subsequently contacted [the publisher member] to advise that we were reviewing our internal processes to ensure this did not occur again."

An email to the complainant dated 1 April 2016 states:

"Our Member Services Manager has taken on board your feedback ... to improve the timing of the distribution to ensure we allow time for members to be able to claim before the scheduled monthly payment date."

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

423. To my mind, there remained some outstanding questions. Was Copyright Agency prepared to give the three day undertaking sought, and if so, was it fact given, and if so in what form? If it was not given, why not and what reasons for the non-giving of it were supplied to the publisher member?
424. I referred these questions to Copyright Agency, which, in response, reports that the circumstances of the March TAFE distribution were atypical and that Copyright Agency's current scheduling process "takes into account members' need for a reasonable time (at least three days) to submit claims before a payment date." Copyright Agency publishes on its website the payment dates and the dates by which claims need to be returned.

Copyright Agency/Viscopy Complaint 11

425. This complaint was made by the solicitors for a licensee in a seven-page letter dated 7 April 2016.
426. Shortly, the complaint was that action taken by the member of Copyright Agency had restricted access by the licensee to that member's content with the consequence that the terms of the licence granted by Copyright Agency had been breached. In effect, Copyright Agency's member had put Copyright Agency in breach of its contract with the complainant.
427. Copyright Agency includes in its report to the Code Reviewer the letter from the licensee's solicitors, but the only further information that it provides is the comment in the Table:

"The matter is the subject of ongoing commercial negotiation between Copyright Agency and the licensee."

428. In response to a question by me, Copyright Agency provided some, but not much, further information. This was to the effect that the Society has been engaged with the licensee for many months in an effort to resolve the outstanding issues between the parties. Apparently the negotiations have involved the CEO of Copyright Agency and other senior executives of the collecting society.
429. Copyright Agency reports that considerable progress has been made since the complaint was made and that the parties have now reached agreement on many of the key issues. It is explained that the time taken to address the issues raised in the complaint has not resulted from a lack of diligence but is due to the complicated nature of the arrangements and the challenging commercial issues. Copyright Agency expresses the hope and expectation that agreement will be finalised soon on terms that are acceptable to both sides. The correspondence with the licensee is described as being “commercially sensitive and confidential”.

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

430. I see no reason to intrude further into these sensitive commercial negotiations but require Copyright Agency to report further on the matter for the purposes of next year’s Compliance Report.

Copyright Agency/Viscopy Complaint 12

431. By email dated 11 April 2016 at 3:15pm, an individual claimed that for two days he had been trying to get answers to “a few simple questions” about the “Career Fund Grant ... with no result or anyone offering to take a message”.
432. In forthright terms he concluded his email:

"If the administration of this Career Fund is conducted in way [sic] similar to the inability to answer requests from clients on the number given by the Copyright Agency then I think it best not to waste any further time applying."

433. Within half an hour, Copyright Agency replied apologising and providing information on how to reply for a grant from the Career Fund.

434. There followed a series of emails between the complainant and Copyright Agency which were cordial enough. These culminated in an email from the complainant dated 12 April at 3:22 pm stating:

"Dear xxx, thanks. This sounds fine. I'm eighty pages into my new novel so I'll be able to fulfil all requirements."

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

435. The complaint was handled in an exemplary fashion. It was resolved efficiently, quickly and courteously.

Copyright Agency/Viscopy Complaint 13

436. This complaint arose out of a dispute between a publisher member and an author member about their respective entitlements to funds held by Copyright Agency in respect of books co-written by the author member and published by the publisher member.

437. The publisher member complained by email dated 28 April 2016 that Copyright Agency had promised in December 2015 that payment would be made to the publisher member early in the new year.

438. The written contract between them provided for the publisher member to take 80%, but the author member asserted, while the publisher member denied, that there had been a subsequent oral

agreement to the effect that the percentage was to be 50% to the publisher and 50% to the authors.

439. On 6 May 2016 the publisher member wrote to Copyright Agency complaining in strong terms about its handling of the matter.
440. The dispute between authors and publisher remains unresolved, but Copyright Agency decided to pay the publisher an amount representing the 80% that it claimed, made up partly of an amount released from the funds held in suspense (50%) and the remainder (30%) as a discretionary payment by Copyright Agency out of its reserves.
441. Copyright Agency's decision was conveyed to the complainant by email dated 25 July 2016, and on 2 August 2016 the publisher wrote to Copyright Agency acknowledging receipt of the payment.

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

442. The logic underlying the solution is clear and sensible: even on the author member's version, the publisher member was entitled to 50%, and even on the publisher member's version the author was entitled to 20%.
443. It took too long, however, for Copyright Agency to arrive at that solution. The publisher member complained that the allocation should have been paid by Copyright Agency since mid-2015, and that since that time, Copyright Agency had been in possession of the signed contracts. According to the correspondence, in December 2015, Copyright Agency had promised that the payment would be made early in 2016 but nothing happened until further complaints by the publisher member in late April/early May 2016. As noted above, payment was made on or about 25 July 2016.

Copyright Agency/Viscopy Complaint 14

444. Viscopy held a forum under the title, "Voice of the Artist". A member complained that it was "bizarre and outrageous" that the first "listing" was "The Rise of the ... Curator".
445. Within three days, Viscopy replied explaining the reasoning that underlay the forum and the selection of presenters.

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

446. Viscopy's response was prompt and informative. Complaint 14 was handled satisfactorily.

Copyright Agency/Viscopy Complaint 15

447. A member of Copyright Agency complained that she was experiencing difficulty in accessing and using the online form of application for a grant from the CREATE Career Fund.
448. Copyright Agency responded promptly to the member's correspondence. Unfortunately, there was a misunderstanding at one stage which led the officer at Copyright Agency to refer the member to a different website from the one at which she had been experiencing difficulty. The member understood that Copyright Agency was referring her to an inappropriate form.
449. Ultimately, on 17 May 2016, Copyright Agency sent to the complainant the CREATE Career Fund application form and offered to receive the application by way of a hard copy filled out by hand and posted back to Copyright Agency which would then upload the information for the member into the computerised grants system.

450. The complainant responded on 20 May 2016: "That's fine thanks". There was subsequent cordial correspondence between Copyright Agency and the complainant.

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

451. The various emails from the member were responded to promptly and helpfully.

Copyright Agency/Viscopy Complaint 16

452. A journalist member of Copyright Agency strongly disagreed with the position taken by the society in opposing the introduction into Australian copyright law of a "fair use" exception to the infringement regime.

453. In an email to Copyright Agency dated 20 May 2016, the journalist stated that he was "ashamed" to have Copyright Agency purport to represent him on the issue, was "embarrassed" by the quality of a certain report that had been obtained by Copyright Agency from PricewaterhouseCoopers, and was "dismayed" by what he described as "the one-sided presentation of the newsletter" to which Copyright Agency had provided a link. He concluded: "How about actually engaging with the issues? Linking to one of your member's articles would be a start".

454. Copyright Agency has provided a copy of a newspaper article written by the journalist in support of a US-style "fair use" exception and a copy of a response by the Chief Executive Officer of Copyright Agency that was also published in the press.

455. Copyright Agency reports that it invited the journalist to meet to discuss the issues, but that a meeting has not occurred.

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

456. This case is one of diametrically opposed views on copyright law reform that are firmly held by Copyright Agency and the journalist respectively. I do not see the journalist's grievance as a "complaint" of the kind to which the Code is directed.

Copyright Agency/Viscopy Complaint 17

457. A Viscopy member made a complaint on 28 April 2016 to which was attached a lengthy email from her of May 2014-nearly two years earlier. In substance, the complaint was that Viscopy was insisting on being supplied with details of a member's bank account so that payment could be made to her by EFT, whereas the member had said that she was unwilling to provide those details and had insisted on being paid by cheque.

458. In her email of 18 May 2014, the complainant had asked several questions directed to challenging Viscopy's right to decline to pay by cheque and to insist on paying by EFT.

459. Apparently, someone at Viscopy replied to the letter of May 2014 advising the member that Copyright Agency would continue to pay her by cheque, and in her email of 28 April 2016 the member said: "[n]othing has changed". She asked for a "letter over an appropriate senior signature" answering the questions that she had raised in her letter of May 2014, and confirming that Copyright Agency would continue to pay her by cheque.

460. The member called Copyright Agency on 18 May 2016, complaining about not having heard back. According to a Copyright Agency internal note of that date by the Member Services Officer, the member had telephoned several times requesting that Copyright Agency write to her formally explaining why the payment could not be made by cheque.
461. The file note recorded that the Member Services Officer had informed the complainant that the query had been forwarded to Copyright Agency's legal officer and that Copyright Agency would get back to her as soon as possible. The complainant expressed herself to be "extremely angry and upset with Copyright Agency" and did "not want to keep chasing [Copyright Agency] for a resolution".
462. The next day (19 May 2016), Copyright Agency's Director of Policy wrote a letter apologising and explaining the circumstances that had led the society to move to paying by EFT. The email continued:
- "If we continue to pay you by cheque, we would need to make special arrangements (as it is not part of our standard processes), so there may be a delay in making a payment and there may be a different deduction for operating costs to that for payments by EFT."

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

463. Copyright Agency's handling of the matter seems to me to have been deficient. The original complaint was made by the member's lengthy letter dated May 2014 but there was no attempt to grapple with the points raised in it until the letter written by the Director of Policy on 19 May 2016.
464. I assume that agreement was reached between the member and Copyright Agency for payment to be made either by cheque or EFT – Copyright Agency's report does not say.

Copyright Agency/Viscopy Complaint 18

465. Under Viscopy's Distribution Policy, allocations of less than \$10 are accrued rather than paid. In the June 2016 distribution, however, this policy was not adhered to. Indeed, thousands of small value royalties, nearly 2,500 of less than \$1, were paid to members.
466. According to an internal file note relating to three art centre members of Viscopy which complained on 24 June 2016, art centres "received large volumes of tiny value royalties, many less than \$1, for onward payment to their artists, as well as larger than normal statement lengths that were difficult to print".
467. Art centre members also complained also about the length of the PDF statements, particularly in view of the tiny amounts being paid. A request was made for a summary or a reformatted statement, rather than the 128-page statement that had been received and was too large for printing.
468. Under the heading "Resolution", Viscopy reports that a technician was to be engaged to repair the "accrue functionality", although the technical issues had not been resolved as at the date of the file note (which, oddly, is 13 July 2015).
469. Viscopy's report notes that the main source of the tiny value royalties is its French sister organisation (ADAGP) and that an enquiry would be made as to why the royalty values were so low and as to whether a more effective manner for receiving and distributing royalties might be arrived at.
470. In a supplementary report, Viscopy reports that in the September 2016 distribution, a manual task was performed so that artists attached to an art centre would not receive a payment for \$10 or

less. As well, the formatting of the statements was fixed so that their layout was improved and their length reduced.

471. The supplementary report states that the manual workaround is an interim solution while Viscopy waits for the payment system to be upgraded in order to automate the function.

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

472. The problem relates to technical matters and seems to be in the course of being resolved. Viscopy officers are to meet with representatives of ADAGP in October 2016 and this issue is on the agenda for discussion.

Copyright Agency/Viscopy Complaint 19

473. The complainant was a member of both Copyright Agency and Viscopy. The member was the estate of a deceased architect and the complaint made was that photographs of buildings designed by the deceased architect had appeared in a German publication, apparently under licence granted by Viscopy's "partner in Germany".
474. The complaint was that copyright in the photographs resided with the deceased and therefore with his estate, and that Viscopy's German partner was not authorised to license the use of the photographs. The reason why the copyright was said to be owned by the estate was that the deceased had commissioned the taking of the photographs. Viscopy reports that in response to the complaint, the photographs were removed from the licence administered by Viscopy's German counterpart society.
475. The photographer had also died. Viscopy arranged a meeting with representatives of the estates of the deceased architect and the

deceased photographer “in order to better understand the nature of the compliant and how best to resolve”. Viscopy’s report states: “the action points from this meeting will be addressed in detail in the coming months”.

476. In a supplementary report Viscopy states that it has consulted with the representatives of the estate of the deceased photographer. It reports:

“The matter of excluding works of the [photographer] repertoire is not as straight forward as initially envisaged and requires further research. When Viscopy has come to a clear view on the copyright status of the commissioned photographs, further engagement with the estate of [the architect] on the matter will be required.”

Copyright Agency/Viscopy Complaint 20

477. This “complaint” relates to a dispute between authors and an association of professionals. An expert determination by senior counsel and a supplementary expert determination by the same senior counsel were obtained.

478. I have not been able to detect any “complaint” against Copyright Agency.

Copyright Agency/Viscopy Complaint 21

479. This complaint was another one about the absence of a statement or remittance advice in relation to a payment made by Viscopy. On 30 March 2016 a solicitor for the executors of the will of a deceased member wrote to Viscopy asking for details of payments, the last of which was for \$725.74 made on 24 March 2016, for which the solicitor enclosed a receipt.

480. Copyright Agency responded promptly and helpfully on 4 April 2016. This elicited a response from the solicitor of the same date expressing gratitude and confirming the address to which statements should be sent.

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

481. In substance the complaint is the same of those Complaint Number 6 discussed earlier and I repeat my comment made under Complaint 6.

Audio-Visual Copyright Society Limited ("Screenrights")

General

482. Screenrights reports that it reviews regularly its Complaint Handling and Dispute Resolution Procedures.

483. In the Review Period, it dealt with over 1.3 million individual claims and 6,848 competing claims were open and published on Screenrights' member portal called "MyScreenrights". Throughout the Review Period 2,974 competing claims were closed.

484. In its report to the Code Reviewer, Screenrights reports on the following changes that have been made to its procedures for resolving disputes between members.

- **Introduction of the Express Resolution Process (ERP)**

485. Following screen industry consultation (which is summarised in a document entitled "Express Resolution Process Consultation Timeline Summary" which is Appendix E to its report), Screenrights introduced the Express Resolution Process (ERP) in September 2015. The ERP

operates alongside the society's existing Alternative Dispute Resolution Procedure for Competing Claims between Screenrights' Members.

486. Screenrights describes the ERP as a set of nine presumptions that represent a starting position from which to determine the relevant rightsholder. The presumptions draw on general principles of Australian copyright law, standard terms of industry agreed contracts, and industry practice. Screenrights' preliminary assessment indicates that the ERP delivers an effective mechanism by which members can provide evidence supporting their claims, particularly low value claims. Screenrights reports that the ERP has resulted in the timely resolution of many competing claims.

2. Updates to the ADR Procedure for Competing Claims

487. During the Review Period, Screenrights' ADR Procedure for Competing Claims was updated to incorporate the ERP in September 2015 and the "Member Request for Independent Expert Decision" and the "Screenrights Initiated Expert Decision Policy" in February 2016
488. In February 2016, the ADR Procedure for Competing Claims was further updated to lower the threshold for Medium Value (\$1,000-\$9,999) competing claims down to \$500. Accordingly, members with a competing claim of \$500-\$9,999 would have access to the internal determination pathway.
489. Clause 3.6 of the ADR Procedure for Competing Claims was amended to allow an independent organisation, rather than Screenrights, to appoint an independent expert under the "High Value Pathway for Expert Adjudication".

3. Introduction of the Member Request for Independent Expert Decision and the Screenrights Initiated Expert Decision Policy

490. On 21 January 2016, Screenrights introduced a new policy according to which a member may request a review of a decision made by Screenrights under the ADR Procedure for Competing Claims or the ERP. The review is by an independent expert appointed by an independent organisation.
491. The new policy is called the "Member Request for Independent Expert Decision". This new policy was used only once in the Review Period, and the expert confirmed Screenrights' initial decision made under the ERP. Screenrights suggests that the fact that only one member appealed a Screenrights decision means that its members generally accept Screenrights' decisions made under the ADR Procedure for Competing Claims or the ERP.
492. On 1 February 2016, Screenrights introduced a further new policy called the "Screenrights Initiated Expert Decision Policy" according to which Screenrights may elect that an independent expert chosen by an independent organisation decide an issue where Screenrights is called upon to make an internal decision under the ERP or the ADR Procedure for Competing Claims.
493. Seven competing claims (of which 6 related to the same title) were referred to an expert under this procedure in the Review Period. Screenrights may elect to send a competing claim to an expert for decision in situations where Screenrights considers that the matter is complex or where it does not have the internal resources available to make the decision, or where it is of the view that, taking into consideration the interests of all concerned, it would be preferable for the decision to be made externally.
494. A copy of the ERP, the ADR Procedure for Competing Claims, the Member Request for Independent Expert Decision, and the

Screenrights Initiated Expert Decision Policy are attached as Appendix E to Screenrights' report to the Code Reviewer.

495. Screenrights continues to publicise on its website procedures for dealing with complaints by members and licensees and for resolving those disputes.

Particular Complaints

496. Screenrights reports that it did not receive any formal complaints during the Review Period.
497. It refers, however, to its report for the previous review period in which it reported that AWGACS had sent correspondence to Screenrights indicating that litigation was imminent.
498. Screenrights now reports that on 3 March 2016, The Australian Writers' Guild (AWG) and AWGACS commenced litigation against Screenrights in the Federal Court of Australia, and that Screenrights filed its defence on 1 July 2016.
499. On 4 July 2016 the applicants requested further and better particulars of the defence and Screenrights states that it is in the process of responding to that request. In the proceeding there is a direction that the parties are to issue notices to produce by 5 August 2016.
500. The court has referred the parties to a mediation before a Registrar of the Court in September 2016 and the proceeding is listed for further directions before Justice Jagot on 11 October 2016.

501. Screenrights reports that in the interests of transparency, it keeps its members, licensees and stakeholders informed of developments in the litigation, via the News section of its website.

Phonographic Performance Company of Australia Ltd ("PPCA")

General

502. PPCA reports that it is committed to handling and resolving complaints equitably, and that all employees are provided with information on the society's established policy, and are encouraged to ask questions and review related processes regularly. It reports that its policy document relating to complaints is available on its public website and its internal intranet site, and is also provided for new employees as a hard copy document as part of their induction package.

503. A complaints officer who oversees the complaints process has access to all other PPCA employees in order to address any issues raised.

504. As noted at [448] of my report on the previous review period, the complaints policy incorporates provision for mediation, neutral evaluation and conciliation options.

505. Importantly, PPCA reports that all complaints are recorded in a complaints register database and reviewed for identification of any recurring issues. Individual complaints and the process for handling them are reviewed annually.

506. Seven complaints were received during the Review Period of which four related to public performance licences; two were reports of venues that appeared to be using music without holding a PPCA

licence, and one related to a contractual dispute between a song writer and a music publisher.

507. Behind Tab 41 of Folder 2 of the Accompanying Underlying Documents, PPCA has provided a Complaints Log and the underlying documents relating to the complaints received.

PPCA Complaint 1

508. PPCA was informed on 22 September 2015 that two establishments appeared to be running group fitness classes without holding a PPCA licence. PPCA contacted both venues. One replied that it was in fact using "PPCA free" music and therefore did not need to hold a licence. The other took out a licence but closed shortly afterwards.

PPCA Complaint 2

509. A licensee complained in forthright terms on 2 October 2015 that he had received a renewal invoice whereas the licence that he had had in the previous year was for a one-off event. PPCA reports that the complainant's initial application had made it clear that the licence was required for a one-off event and that the licence should have been flagged in PPCA's computer system so that a renewal invoice would not be issued.
510. PPCA wrote on 8 October 2015 apologising and noting that the overwhelming majority of PPCA licences operate on a rolling basis, renewing annually, in consequence of which PPCA issued thousands of renewal invoices every month. However, PPCA's letter acknowledged that some licences like that held by the complainant were for a limited purpose only and should be flagged so as not to renew automatically.

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

511. The complaint, while clearly justified, was dealt with expeditiously and satisfactorily in my view.

PPCA Complaint 3

512. A disc jockey licensee complained that he was still receiving invoices despite having sold the business in question.

513. PPCA's records did not reveal that PPCA had previously been advised of the change of ownership. It immediately cancelled the licence and provided the complainant with a credit note and a statement confirming a nil balance on the account. PPCA contacted the new owners who took out a licence. The complaint was made on 6 November 2015 and was resolved in the manner indicated by email dated 10 November 2015 – a prompt resolution.

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

514. This was one of those cases which hardly qualify as a complaint. The complainant stated in his email of 6 November 2015: "I keep getting sent invoices for payment. Please take me off your records, it would be greatly appreciated". In other words, the complainant had had previous opportunities to advise PPCA that he had sold his business, and seems to have accepted that this was so, but that he had not previously advised PPCA of the change.

PPCA Complaint 4

515. PPCA was informed that sound recordings were being played in a café, apparently without a PPCA licence being held. PPCA

acknowledged receipt of the notification with thanks and placed the café business on its "prospect list".

516. Subsequently, the owner of the café confirmed that music was being played. PPCA sent a form of application for licence to him.

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

517. This is another instance of a situation which hardly qualifies as a complaint, at least a complaint against PPCA. The informant wrote: "These people have no licence to play music in public, artists are struggling, they don't need these sought [sic – this sort] of behaviour of what this café is doing. They ... should be accountable".

PPCA Complaint 5

518. A restaurant owner complained to PPCA arising out of a telephone conversation with a member of PPCA's Enforcement Team. The complainant, not a native English speaker, asserted that the PPCA staff member had mocked the complainant for the complainant's lack of fluency in English. The complainant asked to have a different staff member assigned to assist the complainant complete the form of application for a licence.
519. The email of complaint was dated 11 February 2016 and PPCA replied on 12 February 2016 apologising for the poor experience that the complainant had had, and offered to have someone contact the complainant to answer his questions and assist in the finalisation of his application for the licence. PPCA reports that an application for licence form was subsequently submitted.

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

520. It was most unfortunate that the complainant perceived the staff member's conduct in the way complained of, but an appropriate apology was made and the complaint appears to have been resolved.

PPCA Complaint 6

521. An American songwriter contacted PPCA. He had entered into a distribution agreement with a music publisher with offices in Australia. He complained that he had never received any royalty accounting or payment under the arrangement.

522. The American Society of Composers, Authors and Publishers (ASCAP) advised PPCA that it believed that APRA may have paid royalties to the publisher.

523. PPCA reports that it was unsure what the complainant was seeking from PPCA in relation to what appeared to be a contractual dispute. PPCA explained to the songwriter that it represented the owners of rights in sound recordings and recording artists, and suggested that it was more appropriate for the complainant to contact APRA. I note that the email of complaint was dated 3 April 2016 and that PPCA replied in the manner indicated on 4 April 2016.

524. PPCA reports that it has received no further correspondence from the complainant.

PPCA Complaint 7

525. In May 2016 a café owner telephoned PPCA to say that he was not sure why he needed to hold two licences with different licence fees. The Complaints Officer was not available at the time and a message was taken. The Complaints Officer tried to contact the café owner several times but was unsuccessful.

526. Subsequently, a licence application was received and a payment plan settled with PPCA's Legal/Enforcement Team.

Two other matters

527. Finally, it should be noted that in addition to the seven complaints referred to above, PPCA received three emails to its "Complaints" email address regarding the cessation of internet simulcasting by regional radio stations.

528. Also in addition to the seven complaints referred to above, in three instances PPCA found it necessary to commence proceedings for copyright infringement, debt recovery or breach of contract.

Copyright Tribunal of Australia matters

Subscription Television Licence Scheme

529. As advised in previous reports, on 17 September 2012 PPCA referred a subscription television licence scheme to the Tribunal (CT1 of 2012). The hearing took place in April / May 2015 and final written submissions were lodged by both parties about a month later.

530. On 22 April 2016 the Tribunal delivered its decision which, due to confidentiality considerations, was not made public and was available only to external counsel for the parties based on specific

confidentiality undertakings. The Tribunal allowed counsel a period in which to report back on any concerns about confidentiality, which the Tribunal would take into account in settling the final public version of the decision.

531. On 13 May 2016 the Tribunal published that version:

<http://www.austlii.edu.au/au/cases/cth/ACopyT/2016/3.html>.

532. The decision laid down the mechanics for calculation of the licence fee but called for further submissions on certain issues.

533. On 19 June 2016 PPCA filed an application in the Federal Court seeking a review of the Tribunal's decision. The parties agreed that that application should not be progressed while the Tribunal process continued. Licensees are continuing to pay licence fees on the basis of the expired agreement on the understanding that any necessary adjustments will be made once the scheme is finally settled.

Commercial Radio Broadcasters Simulcast Licence Scheme

534. As reported previously, on 25 September 2013 PPCA referred to the Copyright Tribunal of Australia a proposed "Commercial Radio Broadcasters Simulcast Licence Scheme". In December 2013 the Tribunal made orders establishing interim arrangements to allow broadcasters to simulcast their broadcast services online during the interim period pending delivery of the final decision by the Tribunal.

535. The hearing took place in March/April and June 2015. In August 2015 the Tribunal delivered what it described as "interim conclusions" :
<http://www.austlii.edu.au/au/cases/cth/ACopyT/2015/3.html>.

536. The Tribunal called for further submissions. A further hearing confined to the evidence of experts in economics took place in early

April 2016. On 22 April the Tribunal published further Reasons for Judgment:

<http://www.austlii.edu.au/au/cases/cth/ACopyT/2016/2.html>.

537. At the time the Tribunal ordered that the parties confer and inform it of the further steps necessary to finalise the matter.
538. Following a period of negotiation, the price, terms and implementation steps were agreed between the parties and final orders for the implementation of the scheme were made in July 2016. PPCA expects that the necessary steps to calculate the relevant licence fees and to release the funds from the trust account into which the interim payments had been made will be completed by October 2016.

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

539. AWGACS reports that its complaints handling procedure and dispute resolution procedure were developed in line with the requirements of the Code, the requirements of CISAC, and the Australian Standard AS4269-1995 (Complaints Handling).
540. AWGACS reports that during the Review Period, it received no requests from members for either Procedure document or any complaint from a member or affiliate.
541. Its ongoing dispute with Screenrights is addressed in the Screenrights section of this report above.

Australian Screen Directors Authorship Collecting Society Ltd (“ASDACS”)

542. ASDACS reports that during the Review Period no formal complaints were lodged with it. It maintains a Complaints Register so that if any complaints had been received during the Review Period, they would have been identified

This report is now submitted to the societies and to the Department of Communications and the Arts of the Commonwealth of Australia.

Dated this 26th day of October 2016

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

The Hon K E Lindgren, AM, QC
Code Reviewer

APPENDIX TO REPORT

Review of Code Compliance For the Year to 30 June 2016

Notice of the Review, with an invitation to make submissions by mail to the Code Reviewer at a specified address or by email by 31 July 2016, was given by the Societies to their members, and by the Code Review Secretariat to the licensees of the various societies or to bodies representing large classes of licensees, as well as to other interested persons, names and addresses having been supplied by the societies. The Notice was published in an advertisement in *The Australian* newspaper on 4 June 2016 and it was also placed on the websites of the societies. It was in the following terms:

The Code Reviewer

Suite 704, 4 Young Street

Neutral Bay NSW 2089

Email: codereviewer@gmail.com

COPYRIGHT COLLECTING SOCIETIES CODE OF CONDUCT CALL FOR SUBMISSIONS 2016

Each of the copyright collecting societies, Australasian Performing Right Association Limited ("APRA"), Australasian Mechanical Copyright Owners Society Limited ("AMCOS"), Phonographic Performance Company of Australia Limited ("PPCA"), Copyright Agency Limited ("Copyright Agency"), Viscopy Limited ("Viscopy"), Audio-Visual Copyright Society Limited ("Screenrights"), Australian Writers' Guild Authorship Collecting Society Limited ("AWGACS") and Australian Screen Directors Authorship Collecting Society Limited ("ASDACS"), subscribes to a code of conduct. In its original form, the Code came into effect in July 2002.

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

Compliance by participating collecting societies with the Code's standards of conduct is the subject of an independent annual review. The Code Reviewer for this purpose is former Federal Court judge and former President of the Copyright Tribunal of Australia, The Hon Kevin Lindgren AM, QC. He is currently reviewing the Societies' compliance with the Code during the period 1 July 2015 to 30 June 2016.

The Code allows for interested parties to make submissions to the Code Reviewer concerning a collecting society's compliance or non-compliance with the Code. Accordingly, should you wish to make such a submission to Dr Lindgren, please do so in writing to the following address by no later than **31 July 2016**.

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

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

Email: codereviewer@gmail.com