



AUSTRALIAN SCREEN DIRECTORS
AUTHORSHIP COLLECTING SOCIETY (ASDACS) SUBMISSION

Department of Communications and the Arts - Bureau of
Communications and Arts Research:
Review into the efficacy of the Code of Conduct for Australian Copyright
Collecting Societies

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Introduction

Established in 1995, the Australian Screen Directors Authorship Collecting Society (ASDACS) is a non-profit organisation that represents over 1000 screen directors within Australia and New Zealand. The primary purpose of ASDACS is to collect, administer and distribute income for screen directors (its members) that arise from secondary use rights both here and overseas.

As one of the eight Australian collecting societies that currently comply with the annual code of conduct review for copyright collecting societies, we welcome the opportunity to provide feedback on the review into the efficacy of the code of conduct for Australian Collecting Societies. Our response is outlined against the questions contained in the Department of Communications and the Arts - Bureau of Communications and Arts Research discussion paper below.

Response

Section 1: Overview of collecting societies

***Question 1:** To what extent is the Code meeting its original purpose: to ensure collecting societies operate 'efficiently, effectively and equitably'? If it is not meeting its original purpose, do the Code's stated objectives need to be revisited to better deliver on its purpose?*

The Australian Screen Directors Authorship Collecting Society (ASDACS) submits an annual report to the Code of Conduct for Copyright Collecting Societies. As a company limited by guarantee, ASDACS also complies with the annual reporting requirements of the Australian Securities and Investments Commission (ASIC) and, as a current member, the International Confederation of Societies of Authors and Composers (CISAC) annual reporting obligations.

In terms of ensuring operational 'efficiently, effectively and equitably', we find the current Code of Conduct for Copyright Collecting Societies reporting requirements are more than sufficient in ensuring organisational transparency to external parties. The requirement for the Code review to be overseen by an independent Code Reviewer (currently Honorable Justice Kevin Lindgren AM QC) ensures an arms-length, robust assessment of collecting society compliance.

***Question 2:** How effective is the Code in regulating the behaviour of collecting societies? Does it remain fit-for-purpose?*

ASDACS finds the Code of Conduct substantial in regulating the behaviour of copyright collecting societies and find the reporting requirements are still relevant and fit for purpose. The detailed reporting obligations covering all areas of copyright collecting operations (i.e. expenses, membership, governance), as well as measures to make the annual code review report public on our website each year ensures organisational transparency. Additionally, changes made by the Code Reviewer to the complaints reporting procedure have made reporting more robust and transparent.

Question 3: *Is there sufficient clarity as to how the Code interacts with the broader regulatory framework? Should the Code be modified to help parties better understand the broader legislative obligations of collecting societies?*

The Code requires that collecting societies report on their legal framework; however suggest the broader regulatory framework for collecting societies could be noted in the code reviewer's introduction on the annual code review report for further clarification.

Question 4: *Considering the differences in the way different collecting societies operate, is a framework in which a single code applies to all societies effective?*

ASDACS finds the current Code sufficiently covers operations that are relevant and applicable to all copyright collecting societies in Australia; a single code ensures consistency across all collecting societies. Additional regulatory framework for collecting societies declared under the act remains appropriate due to their additional statutory licensing responsibilities.

Question 5: *What have been the impacts of the internet on the collecting society business model?*

Legislation is yet to catch up with the growth of online video on demand services (Netflix, Stan) and user content services (YouTube, Facebook), allowing works to be exploited via these services without any obligation for online platforms to remunerate rightsholders for the use of their works (according to the 2016 CISAC global collection report for 2015 data, collection from digital use was just 7.2% of overall collections). Without collection management organisations to represent the interests of it's rights holders, and to negotiate / lobby on their behalf to ensure the ongoing revenue for the use of their work, rights holders are at risk of receiving little or no remuneration for the exploitation of their work on these platforms / services.

Question 6: *What administrative costs has digitalisation enabled collecting societies to reduce or avoid? How has digitalisation impacted on the way collecting societies collect and distribute funds?*

While the Internet has introduced challenges to copyright collection, positives indeed include advancements made with online distribution and collection systems, which has significantly reduced manual processing and related staffing costs, allowing greater returns to members through a reduced administration fee. Automated data matching has also meant increased accuracies in identifying works for royalty claims, maximising potential returns to our members. The collective management of works across all collecting societies has allowed efficiencies and advancements to be made.

Section 2: Addressing impediments to efficiency and effectiveness

Question 7: *Are additional measures needed to ensure licensees have greater transparency over how their licence fees are calculated? If so, how could this be achieved?*

ASDACS does not license works; however note that the Copyright Tribunal is the best mechanism to address any disputes in regard to license fees.

Question 8: *What additional measures may be needed to achieve greater transparency in the distribution of funds? How could these measures be implemented?*

Please refer to the answer under Q.9.

Question 9: *Should there be more guidance around the treatment of undistributed funds held in trust? If so, what specific issues should this address?*

All collecting societies make their constitution, distribution rules and practices, as well as their annual accounts and annual reports publicly available. Should more guidance measures be introduced around the distribution of funds and treatment of trust funds, ASDACS request that these continue to be to the interest and benefit of its members.

Question 10: *How could safeguards be strengthened to improve reporting and financial record keeping by collecting societies? What would be the impact of more robust reporting obligations?*

ASDACS annual accounts are made available to ASIC, CISAC, the Code Review and are publicly made available on our website. As a smaller collecting society that does not license works, we find the current reporting obligations are more than sufficient. We note that for collecting societies that do license works, transparency measures should be balanced against the privacy obligations they have to their members.

Question 11: *How effective is the Code in facilitating efficient, fair and low-cost dispute resolution for members and licensees? What alternative models could be considered to provide these outcomes?*

All collecting societies have complaints procedures and report on any formal complaints received to the Code Reviewer on an annual basis; which, as the BCAR discussion paper notes, has seen a significant reduction in complaints overall. We note that ADR processes are available through both Screenrights and APRA, with the Copyright Tribunal a further mechanism for unresolved disputes. ASDACS has no resistance to the further transparency and streamlining to ensure consistency and affordability across these mechanisms.

Question 12: *Does the Code Reviewer have sufficient powers to make collecting societies accountable for their compliance with the Code? If not, what alternative monitoring and review processes could be introduced to improve outcomes for members and licensees?*

ASDACS finds the Code Reviewer sufficient in making copyright collecting societies accountable - having brought in changes to the complaints process, as well as new provisions (clauses 2.9 and 2.3d) as noted in the BCAR discussion paper. As a retired federal Judge and former head of the Copyright Tribunal, ASDACS is confident the current Code Reviewer has the qualifications in assuring the compliance of copyright collecting societies, as well as raising any concerns around the power that he has to implement further change.

Question 13: *Does the Code adequately balance the interests of members and licensees? If not, what criteria could be used to assess whether that balance is achieved?*

ASDACS does not receive income from statutory licenses and primarily collects income that arises from the rights of directors, from the international screening of its member's works. The monies held in trust are not derived from licensees and are derived from income that cannot be allocated or distributed as benchmarked by the Attorney General's guidelines (i.e. un-contactable members, money in dispute, unidentifiable works/directors). The income ASDACS collects is derived from the rights of directors and therefore ASDACS maintains any expenditure from the trust should continue to be of benefit to its members.

Question 14: *Does the Code need to be improved to better ensure collecting societies act in the best interests of their members? How could members be given a greater say in a collecting society's keep policies and procedures, such as distribution of funds and use of non-distributable amounts?*

To ensure ASDACS acts in the best interest of its members, our constitution mandates that the elected board of directors is comprised of its members (screen directors). Members are also invited to the ASDACS AGM whereby they have membership rights to vote on constitutional changes. ASDACS complaints policy gives members the opportunity to raise concerns and provide feedback. We also report on our activities to our members on a quarterly basis. A set of guidelines and best practices (as already exists) regarding the treatment of non distributable or distributable funds that is in the best interest of it's members ensures consistency across all societies, whilst keeping administrative expenses to a minimum.

Section 3: Regulatory approaches—international and domestic precedents

Question 15: *What would be the costs and benefits of prescribing the Code under the legislation? What factors should be considered and which are most important in weighing the costs and benefits?*

All eight copyright collecting societies in Australia voluntarily opt into the independently assessed Code review and comply with its reporting measures. Therefore, ASDACS does not see the benefit or need for a legislated approach, particularly when a mandatory model would see an increase in associated costs. As an alternative, ASDACS would suggest modifications be made to the current Code review to address any perceived inefficacies of the Code.

Question 16: *Which international regulatory models, or aspects thereof, could best meet the objectives of improving the fairness and efficiency of copyright collecting societies? How feasible is the introduction of these models in Australia and what would be the impact on collecting societies, members and licensees?*

Internationally, ASDACS currently comply with CISAC's professional rules for dramatic, literary and audiovisual societies, as well as the terms of our international reciprocal agreements. Whilst ASDACS has no issue with further alignment with the European Directive and/or WIPO standards, we note that this could potentially see a duplication of reporting measures and / or conflict with current international reporting obligations. Further, the European Directive is ultimately aimed at creating standards across 28 European states; whereby Australia already has a common standard as set by the Code that is aligned with Australian regulations.

Question 17: *Are there features of other domestic industry codes that could be adopted to improve the fairness and efficiency of Australia's collecting societies?*

As pointed out in the BCAR discussion paper, the copyright collecting sector is non-competitive – therefore we do not think the domestic models exemplified are necessarily relevant or suitable for the non-profit copyright collecting sector.

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