

**Report of The Triennial Code Reviewer
(The Hon Alan Robertson SC,
formerly a Judge of the Federal Court of Australia)
upon a Review of the
Operation of the Code of Conduct of the
Copyright Collecting Societies
of Australia**

Dated: 21 March 2022

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Introduction

1. Clause 5.3 of the Code of Conduct for Copyright Collecting Societies (as amended 1 July 2019) (the **Code**) requires that the Code will be reviewed “in 2021” and at least once within each subsequent three-year period. A link to the Code is at Appendix 1 to this Report.
2. This Triennial Review is of the operation of the Code, including recommendations for amendments of the Code. By cl 5.3:

At the completion of the period for the making of submissions, the Triennial Code Reviewer will prepare a report of the Review, and will make such recommendations as he or she considers appropriate in relation to the operation of the Code, including recommendations for amendments of the Code.

3. The Triennial Review is to be distinguished from the task of the Code Compliance Reviewer, whose functions are “to monitor and prepare *annual* reports on the level of compliance by Collecting Societies with the obligations imposed on them by this Code;” and as part of those functions, “to consider Complaints from Members or Licensees in accordance with clause 5.2 (c)” (sic).
4. By cl 5.1 (d) (i) of the Code, the Triennial Code Reviewer is required to be a person other than the Code Compliance Reviewer.
5. In relation to process or procedure, by cl 5.3 (b) of the Code:
 - “(b) For the purposes of a Review of the Code, the Triennial Code Reviewer will:
 - (i) invite written submissions on the operation of the Code and on any amendments that are necessary or desirable to improve the operation of the Code;
 - (ii) convene and publicise widely, during the period in which submissions may be made, one or more meetings that

Members, Licensees and the general public may attend to make oral submissions to the Review; and

- (iii) undertake such other consultations as he or she considers appropriate, including consultations of the kind set out in clause 5.2(a).
- (c) Each Collecting Society will inform its Members and Licensees in an appropriate manner that the Review is being conducted and that they may make submissions to the Triennial Code Reviewer.
- (d) The Triennial Code Reviewer will allow a period of at least two months for the making of submissions.
- (e) At the completion of the period for the making of submissions, the Triennial Code Reviewer will prepare a report of the Review, and will make such recommendations as he or she considers appropriate in relation to the operation of the Code, including recommendations for amendments of the Code.
- (f) The Triennial Code Reviewer will make a copy of the report of the Review available to:
 - (i) each Collecting Society;
 - (ii) the Commonwealth Department(s) responsible for the administration of the *Copyright Act 1968*;
 - (iii) each individual or group that made a submission to the Triennial Code Reviewer;
 - (iv) the Code Compliance Reviewer; and
 - (v) members of the public."

6. As defined in the Code:

"Collecting Societies means the copyright collecting societies that have agreed to be bound by this Code, being:

- (a) Audio-Visual Copyright Society Limited trading as Screenrights (ABN 76 003 912 310)
- (b) Australasian Performing Rights Association Limited (ABN 42 000 016 099)
- (c) Australasian Mechanical Copyright Owners Society Limited (ABN 78 001 678 851)

- (d) Australian Screen Directors Authorship Collecting Society Limited (ABN 80 071 719 134)
- (e) Australian Writers Guild Authorship Collecting Society Limited (ABN 38 002 563 500)
- (f) Copyright Agency Limited (ABN 53 001 228 799); and
- (g) Phonographic Performance Company of Australia Limited (ABN 43 000 680 704)."

"Licensee means:

- (a) a person granted permission by a Collecting Society to use copyright material;
- (b) a person entitled to use copyright material under a statutory licence in the *Copyright Act 1968*;
- (c) a person who requires a licence from a Collecting Society to use copyright material; and
- (d) for the purposes of this Code, people who are obliged to report resales and people who are liable to pay royalties under the *Resale Royalty Right for Visual Artists Act 2009*. "

"Member means a person who creates copyright material, or who owns or controls copyright material or a resale royalty right, and who is entitled to be a Member of a Collecting Society under its Constitution. This includes creators of copyright material, such as authors, publishers, playwrights, musicians, composers, artists, computer programmers, producers or broadcasters, as well as people or organisations to whom the rights in copyright material have been assigned or in whom they have become vested."

History

7. The Code was developed and adopted by Australian copyright collecting societies in 2002.
8. The first Triennial Report was issued by the Hon J C S Burchett QC in April 2005. Triennial Reviews were the subject of further reports issued by Mr Burchett in April 2008 and June 2011. The Hon Kevin Lindgren AM QC issued such reports in April 2014, with a Supplementary Report in October 2015, and in April 2017. At that time, before 2019, the same

Reviewer conducted both the Annual Review and the Triennial Review and was called simply the “Code Reviewer”.

9. On 23 September 2016, the Productivity Commission provided to the Government its *Report No 78, on Intellectual Property Arrangements*. That Report was publicly released on 20 December 2016. Recommendation 5.4 of that Report was:

“The Australian Government should strengthen the governance and transparency arrangements for collecting societies. In particular:

- The Australian Competition and Consumer Commission should undertake a review of the current code, assessing its efficacy in balancing the interests of copyright collecting societies and licensees.
- The review should consider whether the current voluntary code: represents best practice, contains sufficient monitoring and review mechanisms, and if the code should be mandatory for all collecting societies.”

10. In 2017, the Bureau of Communications and Arts Research (**BCAR**) undertook a review in consultation with the Australian Competition and Consumer Commission (**ACCC**).

11. The Terms of Reference of the review into the efficacy of the Code of Conduct for Australian Copyright Collecting Societies stated that its scope was as follows:

“Scope

The Bureau of Communications and Arts Research (BCAR), within the Department of Communications and the Arts, will review and report on the efficacy of the Code of Conduct for Collecting Societies (the Code).

In undertaking this review, the BCAR will assess the extent to which the Code promotes fair and efficient outcomes. This will include assessing:

- whether the Code is meeting its rationale and objectives, including promoting confidence and participation in the system,

and mitigating any potential market power issues where these occur in relation to collecting societies

- the extent to which the Code promotes transparency, accountability and good governance including by examining whether the Code contains sufficient monitoring and review mechanisms, and the extent to which the Code represents best practice in comparison with other domestic and international codes and guidelines.

Any other matters that are deemed significant and relevant to the scope of the review following stakeholder consultation may also be examined.

The review will then make findings and recommendations on ways to improve overall confidence in the system and how these could be implemented. Recommendations will address whether the Code should be made mandatory and whether objectives or provisions of the Code should be amended, taking into account additional compliance costs for affected parties.

The review will, where appropriate, draw on the work of previous inquiries into copyright, but only insofar as they relate to the operations and governance of collecting societies. This review will not include examination of the jurisdiction and decisions of the Copyright Tribunal, and whether or not specific licence fees or royalty payments are fair and reasonable."

12. In April 2019, the Final Report of the Review of Code of Conduct for Australian Copyright Collecting Societies was published.

13. Its recommendations were as follows:

"Clarifying the Code's role and purpose

Recommendation 1: Add explanatory text to the Code to clarify that it was established to provide greater protections for both members and licensees, and to facilitate collecting societies operating efficiently, effectively and fairly.

Recommendation 2: As a consequence of recommendation 1, the Code should be amended to incorporate an additional objective which states that the Code should facilitate efficient and fair outcomes.

Recommendation 3: Add explanatory text to the Code to clarify how it fits into the broader regulatory environment—particularly with respect to matters that can only be resolved by the Copyright Tribunal of Australia.

Encouraging greater transparency

Recommendation 4: Amend clause 2.3 to require collecting societies in response to a reasonable request, to make available to licensees and potential licensees:

- a. the methodology for calculating the licence fee applicable to that licensee or potential licensee, and
- b. matters taken into consideration in determining the licence fee to the extent that such information is not commercial-in-confidence and does not otherwise directly affect a commercial negotiation between the collecting society and the licensee or potential licensee.

The Code Reviewer is able to consider whether a request or a collecting society's response to it has been reasonable.

Recommendation 5: Amend clause 2.6 to require collecting societies to detail in annual publications, at an anonymised or aggregate level where appropriate, the accounting and distribution of licence revenue. This information is to be reported in a consistent format year on year. Categories for reporting should include, but are not limited to:

- a. classes of licensees from whom licence revenue is received,
- b. classes of members to whom licence revenue is paid,
- c. categories of copyright material copied/licensed in respect of which licence revenue is received, and
- d. domestic vs international payments of licence revenue.

Recommendation 6: Amend clause 2.4 to require collecting societies, in response to a reasonable request by a licensee or their representative, to provide detailed information about particular rights payments made pursuant to a licence. Such information should only be provided to the extent that it is not commercial-in-confidence and does not otherwise directly affect a commercial negotiation between the collecting society and the licensee or potential licensee. Such information is to be provided:

- a. on an anonymised basis, and
- b. where the collecting society can do so at a reasonable cost.

The Code Reviewer is able to consider whether a request or the collecting society's response to it has been reasonable.

Recommendation 7: Amend clause 2.4 to require that collecting societies:

- a. consult with members prior to making any substantive changes to their distribution policies, and
- b. publish 'plain English' guidelines on their distribution policy and make them available to members and licensees.

Recommendation 8: Amend clause 2.6 to require detailed additional annual reporting of expired undistributed funds, including:

- a. reasons why funds remain undistributed
- b. steps taken to locate and distribute funds to rightsholders,
- c. the uses for which funds are to be applied.

Recommendation 9: Amend the Code to require collecting societies to make available plain-English guidelines stating how expired undistributed funds will be allocated and spent by the collecting society, and how such expenditure will serve the interests of members.

Recommendation 10: Amend the Code to require the collecting societies to establish and maintain a consolidated online portal for the public dissemination of governance, financial and data information, including all documents relating to the collecting societies' compliance with the Code.

Strengthening governance arrangements

Recommendation 11: Clarify the role of the Code Reviewer with respect to assessing the complaints handling and dispute resolution processes of collecting societies by:

- a. incorporating the 2017 Explanatory Memorandum into the Code itself, and
- b. adding an explanatory note to the Code to clarify that the complaint and dispute resolution processes established by the collecting societies under the Code do not include a mechanism for the Code Reviewer to review licence fee pricing.

Recommendation 12: Amend the Code to include a new clause which provides that a collecting society may not unreasonably refuse a request from a licensee to engage in an ADR process in respect of a licensing dispute. Whether a collecting society has acted reasonably in

response to a request made pursuant to this clause is a matter for consideration by the Code Reviewer in their annual report on the collecting societies' compliance with the Code.

Recommendation 13: Amend clause 5.2 to require the collecting societies bound by the Code to report on their compliance with each of clauses 2.1—2.8 of the Code (and 2.9 of the Code for declared collecting societies) in their annual compliance report to the Code Reviewer pursuant to clause 5.2(b) of the Code.

Recommendation 14: Amend clause 5.2(b) of the Code to require annual compliance reports prepared by the collecting societies for submission to the Code Reviewer to be made public; where such reports include confidential or commercial-in-confidence information, or otherwise include information which identifies individual members or licensees, such information is to be redacted before publication. Individual complaints should not be published; however, appropriate summary information relating to all complaints received in the reporting year should be reported.

Recommendation 15: Amend Code to require collecting societies to notify members/licensees when the Code Reviewer finds that they have contravened the Code, options include:

- a. Notification of contravention of the Code published on the collecting societies' websites
- b. Report of any contraventions of the Code itemised in collecting societies' annual reports
- c. Report on dedicated online portal for Code compliance and governance materials.

Recommendation 16: Amend the Code to require collecting societies to establish and maintain a contraventions register to record all historical and future contraventions of the Code.

Recommendation 17: Amend Code to provide procedural steps for:

- a. requiring collecting societies to consider recommendations of Triennial Code Reviewer to make certain amendments to the Code within a specified time frame, including voting on whether to adopt recommendations,
- b. updating the Code to reflect the agreed amendments within a specified time frame (for example within 60 days),
- c. advising affected stakeholders of the amendments to the Code, including plain English explanation of impact of amendments, and

- d. reporting to the Triennial Code Reviewer on amendments made to the Code, including advising where any recommendation of the Triennial Code Reviewer as to amendment to the Code was not adopted, and the reason/s why.

Recommendation 18: Amend the Code to specify that, in circumstances where the collecting societies wish to make an amendment to the Code absent a specific recommendation made pursuant to the triennial review process, such amendments are to be made in a transparent manner and subject to consultation with licensees and members.

Recommendation 19: The Code should be amended to separate the administration of the annual review of compliance by collecting societies with the Code from the triennial review of the operation of the Code itself. The annual review would remain with Code Reviewer, but the triennial review would be conducted by a separate independent body/expert.

Recommendation 20: Amend the Code to require collecting societies to provide information to the Code Reviewer on steps taken to improve the capture and exploitation of data to achieve better business practices, to be assessed in the Code Reviewer's annual report on compliance with the Code by the collecting societies.

14. These recommendations were approved by the then Minister for Communications and the Arts (effective 1 July 2019).

15. As noted by Mr Lindgren in the report of his compliance review dated 13 December 2021, at [6]:

"A significantly revised version of the Code was adopted with effect from 1 July 2019, implementing recommendations of the review of the Code carried out by the Bureau of Communications and Arts Research (**BCAR** and **BCAR Review**)...."

16. As a further matter of background, the ACCC made an authorisation determination dated 13 July 2020 on APRA's Application for revocation of A91367 - A91375 and the substitution of authorisation AA1000433 in respect of arrangements for the acquisition and licensing of performing rights and communication rights in musical works.

17. The ACCC decided to grant conditional authorisation to enable APRA to continue its arrangement for the acquisition and licensing of performing rights in musical works. This conduct had been previously authorised since 1999. The ACCC granted authorisation for a further four years, until 4 August 2024.

18. The ACCC said, at page 3:

“The ACCC has received a large number of submissions from interested parties on a wide range of issues associated with APRA’s arrangements. Concerns about APRA’s arrangements are clearly reflected in these submissions.

Licensees and relevant industry associations in particular have raised concerns about the level and structure of fees, the lack of transparency around licensing arrangements and the way in which APRA administers and enforces licences.

Concerns have also been raised, in particular by some smaller APRA members, that there is a lack of transparency around how licence fees are distributed and the system used to ensure that performers receive their rightful royalties.”

19. The conditions of authorisation are lengthy and detailed and are to be found here, from pages 100 of the determination:

<https://www.accc.gov.au/system/files/public-registers/documents/Final%20Determination%20-%2013.07.20%20-%20PR%20-%20AA1000433%20APRA.pdf>

20. An application was made by Nightlife Music Pty Limited to the Australian Competition Tribunal for review of that determination (ACT 1 of 2020) but the application was withdrawn on 7 August 2020:

https://www.competitiontribunal.gov.au/_data/assets/pdf_file/0003/79653/ACT1of2020-Direction.pdf

21. A current matter before the Copyright Tribunal, to which the written submissions to the Triennial Review refer, is an application, CT 4 of 2018,

by Copyright Agency under ss 113P, 113R and 153A of the *Copyright Act 1968* (Cth) to determine the methodology for ascertaining, and the amount of, equitable remuneration payable to it by the respondents, being 39 universities. The remuneration relates to the copying and communication of copyright works by the Universities under a statutory licence pursuant to s 113P of the Act for the period 1 January 2019 to 31 December 2024. See *Copyright Agency Limited v University of Adelaide (Interim Orders)* [2019] ACopyT 2 at [1].

Process

22. The process I adopted for this Triennial Review was to have notices published in the *Australian Financial Review* on 12 November 2021 and in *The Australian* on 13 November 2021. Second notices were published in those newspapers on 14 January 2022 and 15 January 2022 respectively. There was also a direct email distribution of the notice on 18 November 2021 to some 2500 stakeholders.
23. A copy of the notices is Appendix 2 to this report.
24. I am satisfied that each Collecting Society has informed its Members and Licensees in an appropriate manner that the Review is being conducted and that they could make submissions to the Triennial Code Reviewer.
25. In relation to the timing of the Triennial Review, the Review commenced in 2021 but was not completed in that calendar year, as probably contemplated by cl 5.3 (a) (i). I considered that it was appropriate, if not necessary, to await the Annual Compliance Review, and I have read the report of that Review by Mr Lindgren dated 13 December 2021.

26. As advertised in those notices, on 7 February 2022 I held a public meeting at which members of the Collecting Societies, their licensees and the general public had the opportunity to make oral submissions. COVID-19 restrictions meant that the meeting had to be held remotely, by means of Zoom. A link to that meeting may be found here:

<https://www.copyrightcodeofconduct.org.au/triennial-reviews>

27. The participants at that meeting were:

- **APRA AMCOS** (Australasian Performing Rights Association and Australasian Mechanical Copyright Owners Society)
- **PPCA** (Phonographic Performance Company of Australia)
- **Screenrights** (Audio-Visual Copyright Society Limited)
- **AWGACS** (Australian Writers Guild Authorship Collecting Society)
- **Copyright Agency** (Copyright Agency Limited)
- **CAG** (Copyright Advisory Group - Schools to the Australian Education Senior Officials Committee)
- Universities Australia (**UA**)
- Corrs Chambers Westgarth, as legal advisors to several stakeholders.

28. **ASDACS** (Australian Screen Directors Authorship Collecting Society) was unable to attend the public meeting but provided a short written submission before that hearing.

29. A written submission was provided by UA as well as a supplementary email submission dated 24 February 2022.

30. I granted an extension of time to CAG so that its written submission became due on 18 February 2022.

31. I therefore extended time for any entity which wished to respond in writing to the CAG written submission to do so by 9 March 2022, rather than the original date, 11 February 2022.

32. As noted in Mr Lindgren's Annual Review:

"543. The following submissions and responses to them...:

Submission by UA dated 26 July 2021

Response by Copyright Agency dated 9 August 2021

Submission by CAG provided on 6 August 2021

Response by Copyright Agency dated 20 September 2021

Submission by ADA provided on 6 August 2021

Response by Copyright Agency dated 20 September 2021

...

545.... were not directed to non-compliance with the Code as it exists, but were rather in the nature of complaints about the system of governance represented by a voluntary code of conduct, and would be appropriately addressed as part of the triennial review of the content and operation of the Code...."

33. Accordingly, the submissions and responses listed above were provided to me. However, as I requested, those parties produced and submitted to the Triennial Review those submissions and their current submissions as a composite whole.

34. A list of the written submissions I received is at Appendix 3 to this Report.

35. There is nothing self-evident in the Code indicating that its operation is deficient or that any amendments are necessary or desirable to improve its operation. I therefore proceed to consider the submissions.

Submissions

UA

36. UA submitted, as it had for many years:

“The Australian statutory licensing system is broken. The existing regulatory regime does not ensure accountability, transparency or fair conduct on the part of the declared collecting societies. To allow declared collecting societies to create their own voluntary Code of Conduct and then determine if they have complied with it is an inappropriate mechanism for ensuring accountability. As custodians of royalties collected from publicly-funded educational institutions under a legislated declaration, there must be more robust oversight of their operations.

In our view, the obligations that declared collecting societies owe both members and licensees regarding use of statutory funds, as well as the standards of transparency that the collecting societies are required to meet, should be mandated by Government at least partly on the basis that there is a clear market failure in the existing arrangements. Universities Australia would support a comprehensive transparency review into the declared societies as a first step in moving towards a mandated accountability system.

Universities Australia has continued at each opportunity to make submissions to this effect, including as part of the most recent Annual Compliance Review undertaken by The Hon Kevin Lindgren AM, SC.

While we recognise that the Annual Review relates to compliance with the Code, rather than oversight of the Code itself, we take the view that it is important at each opportunity to remind interested parties that the system of accountability for declared societies is, in general, not fit for purpose.”

37. Attachment A to the submission was UA's submission to the most recent Annual Code of Conduct Compliance Review. Attachment B was its

submission to the consultation on the Code of Conduct undertaken by the BCAR in August 2017.

38. In Attachment A, UA submitted that it did not consider that the existing regulatory regime, including the voluntary Code of Conduct, was capable of ensuring the requisite degree of accountability, transparency and fair conduct on the part of declared collecting societies. Nevertheless, it used the opportunity to highlight the following ways in which Copyright Agency had, in UA's view, failed to fully comply with both the letter and the spirit of the Code of Conduct in the 12 months to 30 June 2021, under the following headings.

Failure to adopt fair and reasonable policies, procedures and conduct in connection with the setting of licence fees

39. UA submitted, with reference to recent proceedings in the Copyright Tribunal, that it should not be necessary for universities (or other educational institutions) to engage in costly litigation in order to achieve a fair outcome with respect to statutory licence fees.

Failure to ensure that its dealings with licensees are transparent

40. UA submitted that quite apart from the unfairness of imposing a rate that has no connection with the amount of statutory licence copying actually occurring – and which increases each year regardless of any changed trend in copying – there was no transparency around the way in which Copyright Agency had set this rate. This became starkly apparent during the 2020 Copyright Tribunal proceedings against universities.

Lack of transparency and inappropriate dealings in respect to the use of statutory monies to fund advocacy

41. UA submitted that in the absence of flexible copyright exceptions, the education sector was required to pay under the statutory licence for uses that would cause no harm to rights holders, including the use of orphan works and freely available content for which no one expected payment. UA provided illustrations from evidence given in the 2020 Copyright Tribunal proceedings.
42. UA submitted it had for many years raised concerns regarding the way in which Copyright Agency used money received from the education sector to fund advocacy against sensible copyright reform. According to Copyright Agency's annual report, Copyright Agency spent \$500,000 on this activity in 2019-2020. No information was provided as to exactly how the money was spent other than that it was spent on "public awareness and advocacy".
43. As I have said, Attachment B was UA's submission to the consultation on the Code of Conduct undertaken by the BCAR in August 2017.
44. UA added to this submission by email dated 24 February 2022, using information from the 2020 Copyright Tribunal proceedings between Copyright Agency and the 39 UA member universities.
45. As to market failure, UA contended that Copyright Agency submitted to the Copyright Tribunal that the licence fees that were paid by non-UA higher education institutions could be taken into account by the Tribunal as setting a "market rate" for statutory licence copying/communication. It was apparent from the evidence however, UA submitted, that there was in fact no "negotiated" rate paid by these institutions: Copyright Agency simply set a rate (which had no regard whatsoever to how much, if any, statutory licensed copying/communication was occurring in each of these institutions),

and told them that that was what they had to pay. This amount was increased each year.

46. In UA's submission there was a fundamental disconnect between the "stated price" approach adopted by Copyright Agency and the reality of the way in which the statutory licence had increasingly become a licence of last resort as educational institutions relied more and more on direct commercial licences. UA submitted that Copyright Agency was able to operate in this way as a result of its monopoly position.

47. As to Copyright Agency's lack of transparency in its dealings with education sector licensees, this was also highlighted in the course of the Copyright Tribunal proceedings, UA submitted:

"For example, it was apparent from evidence before the Tribunal that the non-UA higher education institutions are provided with **no information whatsoever** as to the basis upon which CA "sets" the rate that they are required to pay for statutory licence copying/communication. It also became apparent that CA does not conduct surveys of copying/communication in most of these institutions, which raises serious questions as to how CA determines who to distribute payments to. Who is benefiting from these payments?"

48. UA submitted it should not be open to a declared collecting society to impose an unnegotiated "set price", and to distribute monies to copyright owners who had no necessary connection to the content that was copied/communicated. There should be, UA submitted, much greater transparency as to the rationale/methodology adopted by Copyright Agency when deciding what amount of remuneration it considered to be "equitable", as well as to the copyright owners who were benefiting from the monies received from educational institutions.

49. In relation to Copyright Agency's use of undistributed statutory licence fees, UA submitted there was a lack of public accountability regarding CA's use of "undistributed funds" - monies received from publicly

funded educational institutions which Copyright Agency was not able to distribute - to fund law lobbying, by Copyright Agency, against sensible law reform. UA submitted it was also concerned to note that Copyright Agency's 2020-21 Annual Report disclosed that it spent \$2 million of this money to fund its Copyright Tribunal litigation against not only schools and universities, but also media monitoring agencies.

CAG

50. CAG submitted, as outlined in submissions over many years, it had long-standing concerns about the lack of appropriate governance arrangements for declared collecting societies, namely Copyright Agency, and the practical consequences of these deficiencies. Specifically, the Code, and the mechanisms available for making changes to the code and ensuring compliance, still failed to adequately deal with concerns regarding:

1. abuse of market power by Copyright Agency to engage in rent seeking to such an extent that Australia had become a complete outlier when it came to licence fees charged; and
2. lack of transparency by Copyright Agency.

51. CAG submitted that, as it had noted in several submissions, neither the Code, nor the existing legislative framework applying to collecting societies, provided a mechanism to appropriately address the school sector's concerns or for Copyright Agency to be held to account. This was why at each opportunity, CAG continued to make submissions that a governance review was needed to address these ongoing issues. It was also for this reason that CAG saw little point in suggesting changes to the Code in circumstances where it was ultimately a matter for the collecting societies as to whether they would make those changes. CAG submitted that the reforms it suggested should

apply equally to all collecting societies. The submissions were made under the following headings.

Copyright Agency's ongoing abuse of market power to engage in rent seeking

52. CAG submitted that over many years, Copyright Agency had used its market power as a monopoly declared collecting society in a manner that had led to inequitable results under the statutory licence it was declared to administer.

53. CAG submitted that under Copyright Agency's administration, the statutory licence had been used to do the following, each issue being addressed in more detail in the written submission:

- Create a false market for the use of freely available internet material that no one ever expected to be paid for (and for which no one else in the world was paying), particularly by schools. Examples included educational resources on a health education partnership between Nestlé and the Australian Institute of Sport, bullying and mental health resources on the Kids Helpline website and resources that the copyright owner themselves had specifically marked as free to use in education.
- Require Australian schools to pay millions of dollars a year in licence fees for their use of works in circumstances where Copyright Agency would never be in a position to distribute the money to the rights holder (eg because it was unable to identify the owner of copyright in those works).
- Discourage publishers from directly licensing the rights available under the statutory licence in order to increase Copyright Agency's monopoly power (because schools were left with no alternative),

ensuring those publishers could get more money under the statutory licence than they could by licensing direct – only in Australia.

- Require schools to pay when a teacher used an electronic whiteboard to display text in a classroom when schools say there was an exception in the *Copyright Act 1968* that permitted them to do so for free.

54. CAG recognised that most of these issues were likely to be outside the current review process. However, CAG took the view that it was important at each opportunity to state its position. CAG remained strongly of the view that a whole-scale governance review was needed and the governance arrangements applying to declared collecting societies (or at least to the statutory functions of those collecting societies) should be mandatory and subject to Ministerial and/or ACCC oversight.

Copyright Agency's ongoing lack of transparency

55. Since at least 2000, CAG submitted, it had also raised with successive governments concerns about a lack of transparency by collecting societies, particularly Copyright Agency. The Code and the existing legislative framework applying to collecting societies had proven inadequate to ensure that the interests of statutory licensees were taken into account or that the collecting societies were appropriately fulfilling their statutory function as declared collecting societies under the Copyright Act.

56. The Code sought to (emphasis added):

“facilitate efficient and fair outcomes for members and licensees by:

- (a) promoting **awareness of and access to information** about copyright or the resale royalty right or both and the role and

function of Collecting Societies in administering copyright or the resale royalty right or both on behalf of Members;

- (b) promoting **confidence** in Collecting Societies and the effective administration of copyright or the resale royalty right or both in Australia;
- (c) setting out the **standards of service** that Members and Licensees can expect from Collecting Societies...”

57. However, as far as the school sector was concerned, CAG submitted, the Code was not reaching those outcomes. The school sector did not have confidence that the statutory licence scheme administered by Copyright Agency was being effectively administered due to a lack of transparency and the issues earlier addressed.

58. There were three areas where a lack of transparency needed to be addressed, CAG submitted, each being addressed in more detail in the written submission:

- lack of transparency regarding how undistributed funds were used
- lack of transparency as to how Copyright Agency spent statutory funds
- lack of transparency regarding the extent to which authors benefitted from the monies paid by the education sector.

59. While Copyright Agency had taken some steps towards meeting some of CAG's requests both prior to and as a result of the Review by the BCAR, the amendments they had made fell short of the degree of transparency that CAG was seeking. CAG recognised the Code and the Code review process were unable to address all of CAG's transparency concerns. This was why CAG had not taken this opportunity to suggest amendments to the Code and instead suggested that a whole scale governance review was needed.

The urgent need for a governance review

60. CAG submitted the Code sought to:

“facilitate efficient and fair outcomes for members and licensees by:

(a) ensuring that Members and Licensees have **access to efficient, fair and low-cost procedures** for the handling of Complaints and the resolution of Disputes involving Collecting Societies.”

61. However, CAG submitted, neither the Code, nor the existing legislative framework applying to collecting societies, provided a mechanism for the education sector to have its concerns about abuse of monopoly power and lack of transparency addressed.

62. CAG submitted the existing Code and legislative framework applying to collecting societies was not sufficient. An appropriate regulatory framework for declared collecting societies should have at least the following features, CAG submitted:

- Legislative provisions which impose obligations on declared collecting societies with respect to licensees as well as to their members.
- Power for the relevant Minister to review and make determinations regarding the formal structure and conduct of declared collecting societies, including powers to review and require changes to a society's Constitution, distribution arrangements or reporting obligations.
- Mandatory guidelines that set out the information that must be provided in a declared collecting society's annual report. This should include, at a minimum, the information that CAG requested in its submission to the 2014 triennial code review: see Annexure C to the Supplementary Report of the Code Reviewer 2015.

- A requirement that there be a very clear separation between a declared collecting society's statutory functions and any commercial functions that the society may also exercise with respect to non-statutory licences. Further consideration should be given as to whether a form of operational separation is required in order to fully achieve this.
- Independent oversight of a declared collecting society's compliance with its statutory obligations, preferably by the ACCC.
- An update to the Guidelines for Declared Collecting Societies (**Guidelines**) to reflect the new statutory licensing arrangements following the enactment of the Copyright Amendment (Disability and Other Measures) Act 2017. This should be done in conjunction with a further consultation process to consider what should be included in the updated Guidelines.

63. CAG submitted it appreciated that this review had been established to review the Code, and to recommend changes to the Code that would improve the transparency and accountability of collecting societies. However, it was CAG's firmly held view that Australia's current regulatory framework was not sufficient and the problems identified in its submission were not capable of being addressed by simply making changes to the Code. It was for this reason that CAG had not suggested any changes to the Code on this occasion and instead suggested a full governance review.

64. CAG submitted that the shortcomings it identified could be addressed by:

- amendments to the legislative framework

- changes to the collecting societies internal governance arrangements
- creating a mandatory code of conduct for declared collecting societies (or at least to the statutory functions of those collecting societies) that is subject to Ministerial or ACCC oversight.

65. CAG submitted the Code had proved to be ineffective as a means of dealing with statutory licensee concerns. Whilst recent changes to the Code went some way towards addressing these concerns, the underlying issues remained and there was still a lack of an effective mechanism to hold collecting societies to account. That was perhaps not surprising given the Code was drafted by those who it was meant to govern and offered limited mandatory obligations for collecting societies to behave fairly towards licensees or to have regard to licensee interests.

66. CAG submitted it had also been acknowledged that the Code Reviewer had a limited ability to adjudicate complaints and disputes between the collecting societies and licensees. In the past, the Triennial Review process had also been ineffective to address CAG's concerns and had proved inadequate for undertaking a root-and-branch review of the kind that in CAG's view was warranted.

67. CAG remained strongly of the view that for the reasons it had given a mandatory code of conduct for collecting societies should be developed for declared collecting societies (or at least to the statutory functions of those collecting societies), and that it should be subject to Ministerial and/or ACCC oversight.

ASDACCS

68. ASDACS submitted the most recent government review of the Code as conducted from 2017 to 2018 by the BCAR comprehensively addressed these concerns and achieved a balance of further enhancing the transparency of the Copyright Collecting system, while maintaining the efficiency and privacy obligations of Copyright Collecting Societies through its 20 key recommendations approved by the then Minister for Communications and the Arts (effective 1 July 2019).

69. As noted in its submission to the BCAR, ASDACS reiterated that although voluntary, its experience had been that all Copyright Collecting societies readily complied with the comprehensive reporting standards set by the Code, as objectively overseen by an independent Code Reviewer.

70. In addition to the Code, ASDACS noted that Collecting Societies were subject to a wide range of robust transparency obligations which may include compliance with the International Confederation of Societies of Authors and Composers (CISAC) professional rules, the terms of international reciprocal agreements, application to the ACCC or Copyright Tribunal legislative process. In the case of declared societies that administer statutory licenses further compliance with the Attorney General's guidelines was also required.

71. All societies made distribution policies and procedures, constitution, annual reports, complaints procedures and information sheets (i.e. undistributed funds, licensing, membership policies) publicly available through their websites, as well as the new website specifically for the Code of Conduct for Copyright Collecting Societies:
<https://www.copyrightcodeofconduct.org.au>.

72. ASDACS therefore questioned the need to move to a legislative model, mandatory guidelines with further oversight by the ACCC (whether specifically applied to declared societies or adopted more broadly to all Copyright Collecting societies) which would primarily serve to increase associated administrative costs (as on charged to Collecting society members) with little more to gain over and above the high level of compliance to the extensive reporting standards already set in place.

Screenrights

73. Screenrights submitted that the submissions made by UA and CAG aligned with their historical unwavering positions on the Code, unmoved even following significant amendments to the Code. UA and CAG continued to object to the voluntary nature of the Code and, incorrectly in Screenrights' view, characterised the declared societies as holding a monopoly position. These points were raised and carefully considered in the context of the recent review of the Code by the BCAR which resulted in a set of recommendations which Screenrights supported in full and worked with other collecting societies in implementing. The result was a revised Code effective from 1 July 2019. Screenrights particularly disputed the suggestion that it held a monopoly position given the authority of the Copyright Tribunal to determine the amount of that equitable remuneration when it cannot be agreed and that the same content was available via other means such as catchup television, video on demand services and the like.

74. Screenrights also responded specifically to comments made by UA in Attachment B of their submission of 8 December 2021, being their response to the Productivity Commission Review of the Code of Conduct of Collecting Societies in September 2017. At page 16, UA suggested that the fact that resource centres offered streaming access to educational content may be resulting in "indiscriminate use" which

in turn led to price increases out of proportion to educational benefit. With respect, Screenrights submitted, utilising technology to improve access was precisely how schools and universities were getting better value for the licence fees paid which had not in fact increased significantly particularly when compared to the dramatic increase in use.

Copyright Agency

75. Copyright Agency submitted it was a not-for-profit private company, with more than 38,000 members, who included writers, artists and publishers. It was appointed (declared) by the Minister to manage the education statutory licence in the *Copyright Act*, and by the Copyright Tribunal to manage the government statutory licence, for text, images and print music. It was also appointed by the Minister to manage the artists' resale royalty scheme. It provided detailed annual reports to the Minister, which were tabled in Parliament and published on its website. It followed the government Guidelines for Declared Collecting Societies. There were provisions in the *Copyright Act* and *Copyright Regulations* regarding governance of declared collecting societies. The factors for equitable remuneration under the education statutory licence were set out in the *Regulations*. This obligation meant that, in some cases, Copyright Agency may need to seek a determination from the Copyright Tribunal if it was unable to secure equitable remuneration for rightsholders through negotiation.

76. Copyright Agency submitted that UA and CAG both criticised the Code, but neither was seeking amendments to it. Both UA and CAG acknowledged they had raised most of the claims previously, including in the review of the Code by the BCAR. They had not identified which of the claims in their submissions to the Triennial Code Reviewer had not been raised previously.

77. The claims that were new to Copyright Agency (but may have been made elsewhere) were CAG's claims regarding payments made in 2019. Copyright Agency submitted it did not understand the basis of those claims given the agreement CAG negotiated with Copyright Agency in 2018.

78. Copyright Agency submitted it did not have a 'monopoly position' in relation to statutory licences: it was appointed by the Australian Government to manage a statutory scheme that removed rightsholders' entitlements to set their own terms or decline to license; licensees may apply to the Copyright Tribunal to determine data collection arrangements and equitable remuneration if these were not resolved by negotiation; and licensees may (and did) enter into direct arrangements with copyright owners. It submitted that neither UA nor CAG was in an inferior bargaining position as both represented almost the entirety of their sector and both were well-resourced, including in their use of the services of external law firms. In any event, a key element of statutory licences was that any affected party could apply to the Copyright Tribunal if negotiations on fees or data collection did not result in an outcome. This had occurred recently regarding fees and data collection from universities, and regarding data collection from the school sector.

79. There was nothing improper in a party making an application to the Tribunal for a determination of matters that were not resolved by negotiation. That was the Tribunal's role. Copyright Agency had an obligation to take steps to secure equitable remuneration for rightsholders.

80. Copyright Agency submitted it was not in a position to 'create a false market': it was appointed by the Australian Government to

manage a statutory licence that provided for equitable remuneration to content creators for the lost opportunity to license on their own terms or decline to license; and the Copyright Tribunal could determine equitable remuneration, in accordance with the factors in regulation 73(2) of the *Copyright Regulations*, if the parties did not reach agreement on payment.

81. Copyright Agency submitted it did not understand CAG's claim regarding fees paid in 2019 as, inter alia, the upfront fixed fee per student for 2019 (\$15) was agreed by CAG and Copyright Agency in 2018; and there was no agreement about any proportions of that fee being attributable to material that teachers: acquired from online sources; provided insufficient information about in surveys; or communicated to students on a screen (e.g. from a central server).

82. Copyright Agency submitted it was not in a position to 'require schools to pay millions of dollars a year' for anything; the school sector did not 'pay millions of dollars a year in circumstances where Copyright Agency would never be in a position to distribute the money to the rights holder'; the statutory licence in Australia's copyright legislation was broader than licensing arrangements in other countries; Copyright Agency informed content creators about how statutory licensing arrangements worked in practice (including data processing protocols agreed between CAG and Copyright Agency); Copyright Agency was not in a position to 'require schools to pay when a teacher displays a text work in a classroom'; Copyright Agency provided very detailed information in its annual reports; it seemed unlikely that Copyright Agency had spent more on advocacy than CAG; and as a declared collecting society, Copyright Agency

must take reasonable steps to secure equitable remuneration for rightsholders.

83. Copyright Agency submitted it was concerned that the UA submission inaccurately or incompletely represented the evidence that was before the Tribunal, in a matter where the Tribunal had not yet delivered its determination.

84. As to CAG's claims regarding 'lack of transparency regarding undistributed funds', Copyright Agency submitted that this issue was addressed by the 2017 BCAR review of the Code. All the recommendations in the BCAR report were implemented, including provisions in the Code relating to undistributed funds. Copyright Agency submitted it provided information about undistributed funds and amounts held in reserve in its annual reports. CAG submitted that it was seeking more information than Copyright Agency was required to provide under the Code because it wanted to reduce the copyright fees paid by the education sector:

"Greater transparency regarding the distribution of statutory licence funds – particularly undistributed funds – would provide CAG with a more equal footing to negotiate a fair licence fee based on the fact that a large percentage of what is being copied should be treated as non-remunerable or of nominal value."

85. Copyright Agency submitted that for the negotiations that led to the current four-year agreement, CAG had all the data from all the surveys in schools. That data was one input into the complex and sophisticated commercial negotiations that led to the agreement. CAG agreed to an upfront fixed fee that represented the value to the school sector of being able to copy and share content, from the world, in circumstances that would otherwise require a licence. Information about distributions had no bearing whatsoever on that value to licensees. Nevertheless,

Copyright Agency submitted that it provided a lot of information in its annual reports about how licence fees were distributed and any licence fees that remained unpaid.

86. As to the submissions directed to 'issues with the current governance framework', Copyright Agency submitted CAG had not raised any issues relating to the Future Fund other than those considered by the BCAR in its 2017 review of the Code. Copyright Agency had not 'spen[t] millions of dollars of public funds received from schools, universities and government on public relations campaigns and advocacy'.

87. Copyright Agency submitted the 'operational separation' sought by CAG would disadvantage content creators by increasing administrative costs. CAG had submitted that the Code was 'ineffective as a means of dealing with statutory licensee concerns', but had elected not to propose any changes to the Code.

APRA

88. APRA highlighted that the Code sought to regulate through a single document a number of societies whose activities, purpose, and stakeholders were very different. Some societies, like APRA and PPCA, had large numbers of small licensees as well as larger corporate and institutional licensees. Others, like Copyright Agency and Screenrights, had fewer licensees but their licensees were large national institutions that paid significant industry sums. Some were required to report annually to the Commonwealth government, others operated under authorisation from the ACCC. Each had very different membership bases, with different needs and concerns. What was shared was an understanding that for small rights, that is, copyrights used *en masse*, collective administration served the interests of owners and users alike. Users of large numbers of copyright works or materials could not

reasonably be expected to deal with individual rightsholders; nor could rightsholders reasonably extract value from the product of their labour if they were required to negotiate arrangements with the many thousands of businesses and institutions that wished to use those copyrights.

89. APRA submitted the Code remained an integral part of its governance framework. It guided its dealings with both members and licensees and continued to form an important part of its induction and compliance training for all staff. The annual review and complaints process provided a critical reflection point for APRA each year, which regularly led to systematic changes or improvements in its organisational practices. APRA's experience was that the annual review process conducted by the Code Reviewer had been thorough and fair each year.

90. APRA noted that the Code was subject to a comprehensive review by the BCAR in 2018 and that the societies implemented all of the recommended changes arising from that process. APRA acknowledged that the CAG and UA were of the view that the recommended changes ought to have gone further but respectfully disagreed. APRA submitted that the Code (as amended in 2019) was fit for purpose and delivered on its policy objectives. APRA's view was that the submissions of CAG and UA as part of this Triennial Review process did not warrant further wholesale changes to the Code, rather they were better characterised as a dispute between those organisations and Copyright Agency and would perhaps be better dealt with in a different forum.

PPCA

91. PPCA did not support the contention or proposal that societies declared under the Act adopt a mandatory or legislative model,

potentially under mandatory guidelines issued by the Minister and then overseen by the ACCC. In its view the relatively recent comprehensive review of the Code by the BCAR addressed those concerns and, in its recommendations (all of which were implemented with effect from 1 July 2019), appropriately balanced issues of transparency with the need for the societies to remain efficient and meet the reasonable privacy expectations of their members.

92. PPCA submitted it actively participated in the initial establishment of the Code and each subsequent Triennial Review, and was assessed under the independent compliance review process conducted each year since the Code's inception.

93. PPCA's view was that the Code had consistently met its stated objectives, and those objectives continued to be appropriate, particularly in light of the broader governance context in which the societies operated. PPCA complied with not only the Code, but the *Corporations Act*, the *Competition and Consumer Act*, the *Copyright Act* and all other legislation applicable to Australian companies. PPCA also complied with its Constitution and the terms of all its agreements, including those with licensees, its licensors, and other societies. Its activities were further constrained by the jurisdiction of the Copyright Tribunal. PPCA submitted the Code was but one of many instruments that informed the decisions made and behaviour adopted by PPCA. It could not be considered without reference to the broader regulatory and governance framework. In the case of the declared societies that administered statutory licences there was an additional overlay of compliance with the relevant Government guidelines.

94. All participating societies (including PPCA) made their distribution policies and procedures, constitution, annual reports, complaints procedures and information sheets (eg 'undistributed funds') publicly

available through their websites, as well as the new website specifically for the Code of Conduct for Copyright Collecting Societies:
<https://www.copyrightcodeofconduct.org.au>.

95. Taking all those factors into account, together with the demonstrated pattern of positive compliance, PPCA rejected the suggestion of a need to move to a legislative model, mandatory guidelines and further oversight by the ACCC (whether specifically applied to declared societies or extended to all Copyright Collecting societies) which would primarily serve to increase associated administrative costs. Such an unnecessary additional impost would reduce the net amounts available for distribution to creators and those who invest in them with, in PPCA's view, no increased benefit given the existing high level of compliance by all participating societies and the reporting standards already in place under the existing Code.

Consideration

96. I have already referred to the previous reviews of the Code. I regard the relatively recent review by the BCAR as particularly significant given its scope, the number and range of its recommendations and the uncontroversial proposition that the Code was amended to give effect to those recommendations.

97. As I have said, there is nothing self-evident in the Code indicating that its operation is deficient or that any amendments are necessary.

98. I have also noted that none of the submissions made to me suggests amendments to the Code.

99. Nevertheless some of these submissions emphasise the objectives of the Code, suggesting implicitly that the objectives of the Code are not always pursued in its administration.

100. I therefore recommend that there be an express statement in the Code that the provisions of the Code must be interpreted and applied, and any power conferred or duty imposed by them must be exercised or carried out, in the way that best promotes the objectives. Such a provision is modelled on, for example, s 37M(3) of the *Federal Court of Australia Act 1976*, which has proved useful. What I recommend would be a stronger version of cl 6.2 (a) of the Code which is an interpretation provision only.
101. Another theme in the submissions made to me is that the Code is defective because it is not mandatory. It is useful to be clear about what the status of the Code is. By cl 1.2, the Code applies to those Collecting Societies that have agreed to be bound by it.
102. In my view, while the Code so applies, it creates powers and duties. So the submission seems to me to be a policy position rather than a proposition about the operation of the Code. I therefore agree with the proponents of this view that the complaint lies outside the scope of the Triennial Review.
103. I reach the same conclusion on the related submissions that the Review processes under the Code are, by their nature, flawed and that the administration of the Code and the review of it should be conducted by a body such as the ACCC. In my opinion, in the abstract and divorced from a specific complaint about the operation of the Code, these submissions reflect no more than a policy position which must be taken up elsewhere.
104. Next I should say something about the relationship between the Code and the role of the Copyright Tribunal.

105. Comprehensive *statutory* provision is made for the Tribunal in Part VI of the *Copyright Act*. That Tribunal has a statutory responsibility to hear and determine applications made to it under the *Copyright Act*. For example, it has a statutory power under s 113R(2)(b) of the *Copyright Act*, on application made to it, to determine the amount of the equitable remuneration that the body administering an educational institution undertakes to pay a collecting society for licensed copying or communicating. Regulation 73(2) sets out the matters the Tribunal must have regard to in determining the amount of that equitable remuneration.
106. Costs of proceedings in the Tribunal are subject to the control of the Tribunal: see s 174 of the *Copyright Act*.
107. In these circumstances, complaints about the formality of Tribunal proceedings, their cost and the delay inherent in that process do not seem to me to be matters relating to the operation of the Code or properly the subject of recommendations on a Triennial Review. A code applying to those who have agreed to be bound by it does not displace or qualify a statutory regime which does not adopt that code as it exists from time to time or otherwise give effect to it.
108. I therefore do not accept as a complaint going to the operation of the Code the submission that it should not be necessary for educational institutions to engage in costly litigation in order to achieve a fair outcome with respect to statutory licence fees. At that level of generality, I am not satisfied that there has been a failure to adopt fair and reasonable policies, procedures and conduct in connection with the setting of licence fees. Of course, resort to the Tribunal is necessary where the parties have not reached agreement. But the Code cannot mandate agreement.

109. Turning to the submission that there should be much greater transparency as to the rationale/methodology adopted by Copyright Agency when deciding what amount of remuneration it considered to be "equitable", it was not suggested that this could or should be achieved by amendment to the Code. In any event the factual basis for the submission was not sufficiently detailed or specific. On the material before me I am not persuaded that there has been a lack of transparency as submitted.

110. As to licence fees and the submission that there was no transparency around the way in which Copyright Agency had set this rate, again it was not suggested that this could or should be achieved by amendment to the Code.

111. In any event, as recognised in the relevant recommendations of the BCAR, that information could not be provided where it directly affects a commercial negotiation between parties not in an unequal bargaining position. On the material before me, I am not persuaded that there is a relevant inequality of bargaining position.

112. As to the submission that there was a lack of public accountability regarding Copyright Agency's use of "undistributed funds", I note the terms of cl 2.6 (g) of the Code:

"2.6

...

(g) Each Collecting Society will provide detailed annual reporting of expired undistributed funds, including:

(i) the reason/s why funds remain undistributed to rightsholders;

(ii) the steps taken to locate rightsholders and distribute funds to; and

(iii) detailed information on the allocation and use or proposed use of the funds by the Collecting Society for which funds are to be applied.”

As I understood it, it was not submitted that this obligation had not been complied with. I also note that it was not suggested that this provision should be amended. I am not persuaded that there has been a lack of accountability as to the use of undistributed funds as submitted.

113. Speaking generally, where proceedings are pending in the Tribunal, and awaiting determination, it is not possible for the Triennial Reviewer to assess the force of small extracts of evidence given to the Tribunal. The context is missing. On the present Review, it was not said that those extracts were uncontroversial. I am not in a position therefore to draw conclusions as to the operation of the Code from those extracts.

114. For future Triennial Reviews, it seems to me that the submitting entities should be as specific as possible in their contentions that the operation of the Code has failed or fallen short in some way. Where there is factual material to support any such contention, that should be provided to the Reviewer and, if necessary, tested. Further, where a submitting entity contends that there is an amendment, or more than one amendment, that is necessary or desirable to improve the operation of the Code then that entity should identify and articulate the amendment, or the amendments, for which it contends.

115. I report on this Triennial Review accordingly. For the reasons I have given, I make the recommendation in paragraph [100] above.



Alan Robertson
21 March 2022

Appendix 1

The Code of Conduct for Copyright Collecting Societies may be found here:

https://static1.squarespace.com/static/5c454daba2772c47f0dcd6ea/t/5d19b719f226fb0001dcca03/1561966369817/Code_of_Conduct_July_2019.pdf

Appendix 2

Review of Code of Conduct for Copyright Collecting Societies Notice by the Triennial Code Reviewer

By this Notice, the Triennial Code Reviewer, the Hon Alan Robertson SC, **invites written submissions** on the operation of the Code of Conduct for Copyright Collecting Societies and on any amendments that are necessary or desirable to improve the operation of the Code.

This triennial review, to review the Code itself, is separate from the annual review of the Copyright Collecting Societies' compliance with the Code.

The Code is to be found here: <https://www.copyrightcodeofconduct.org.au/code>

Written submissions may be made to the Triennial Code Review Secretariat, Suite 704, 4 Young Street, Neutral Bay NSW 2089 or by email to TriennialCodeReviewSecretariat@gmail.com.

The period allowed for the making of written submissions is three months, ending on **Friday 11 February 2022**.

Written submissions should preferably be typed and must include the name, postal or email address, and contact telephone number of the person or organisation making the submission.

Written submissions should be prepared so that they may be made publicly available. Any material in a submission which is confidential should be clearly identified.

The Triennial Code Reviewer will convene the following meetings that Members, Licensees **and the general public** may attend to make oral submissions to the Review:

- **Monday 7 February 2022** from 10 AM at the offices of APRA AMCOS, 16 Mountain Street, Ultimo and by video conference. Details on how to connect will be provided by the Secretariat on request.
- If required, a further meeting on **Friday, 11 February 2022** from 10 AM at the offices of APRA AMCOS, 16 Mountain Street, Ultimo and by video conference. Similarly, details will be provided on request.

If you wish to make a written or oral submission, please inform the Triennial Code Review Secretariat by email to: TriennialCodeReviewSecretariat@gmail.com by no later than Friday, **4 February 2022**.

After Friday, 11 February 2022, the Triennial Code Reviewer will prepare a report of the Review, and will make such recommendations as he considers appropriate in relation to the operation of the Code, including recommendations for amendments of the Code.

The Hon Alan Robertson SC
Triennial Code Reviewer
12 November 2021

Appendix 3

Submissions Received

Submissions

1. UA dated 8 December 2021
2. ASDACS dated 2 February 2022
3. CAG – Schools received 18 February 2022
4. UA Supplementary email submission dated 24 February 2022

Submissions in Reply

1. Screenrights dated 9 March 2022
2. Copyright Agency received 9 March 2022
3. APRA dated 9 March 2022
4. PPCA dated 8 March 2022