**Submission in response to Review into the efficacy of the Code of Conduct for Australian Copyright Collecting Societies**

The Australian Society of Authors (ASA) is the peak organisation representing Australian writers and illustrators. We are pleased to have the opportunity to respond to the Bureau of Communications and Arts Research’s Discussion Paper.

The ASA was instrumental is setting up Copyright Agency Limited (Copyright Agency) more than 40 years ago. Many of our members are also members of Copyright Agency and receive payments from that collecting society. This submission is confined to observations about Copyright Agency, as it is the only collecting society about which we have sufficient knowledge to make comment.

Below, we set out answers only to those questions posed in the Discussion Paper where we feel we can make a meaningful contribution.

1. **General Comments**
   1. Payments from Copyright Agency are an important revenue stream for our members. Some of our educational authors report that they receive a greater income from Copyright Agency than they do from royalties. Educational writers, in particular, regard fees from Copyright Agency as essential to earning a living.
   2. We don’t see the monopolistic nature of Copyright Agency as negative given the efficiency of a single collecting society administering an entire class of rights. One of the purposes of the Code is to balance the effect of market power and we think it is fulfilling this purpose.
   3. Our members would welcome faster payment; namely a shorter lead time between usage and payment. Our members have also expressed interest in knowing the percentage of fees distributed to publishers as compared to authors and illustrators.
   4. The withholding by Copyright Agency of around 1.5% of fees to support the Cultural Fund is supported by the ASA. Project funding received by the ASA out of the Cultural Fund benefits our members enormously. For example, our Mentorship Program (supported by the Cultural Fund) has resulted in a number of books being published. We greatly value the Cultural Fund, believe it provides much needed opportunities to Australian creators and wish to see it continue.
2. **Response to Questions Posed in Discussion Paper**

***In response to Questions 6, 7 and 8:***

***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?***

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

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

The sampling of copying in educational institutions and extrapolation of results is not well understood by our members.

Copyright Agency conducts surveys of usage in a sample number of schools and universities each year. Surveying is not comprehensive and not always a reliable method of capturing information about use in schools. Inevitably, the analysis of copying is based on a small portion of *actual* copying being done. Partly because Copyright Agency must rely on sampling, payments to our members may fluctuate significantly from year to year and this is an area of concern to them.

We acknowledge the difficulty in recording copying, notably the administrative burden on teachers in schools, and the complexity of determining payments to rightsholders. The ASA would welcome new technologies which can more accurately capture usage, without increasing administrative costs. We understand that Copyright Agency is in discussions with educational representatives to improve data collection in the future. The ASA wholeheartedly supports this.

Ongoing education by Copyright Agency of its members on sampling protocols and data collection measures would be welcomed.

The Code requires collecting societies to:

* ensure its dealings with members are **transparent** (clause 2.2(c)) and
* maintain a Distribution Policy setting out required information (clause 2.4).

The Code also requires declared collecting societies to include certain information in its Annual Report (clause 2.9).

The ASA supports these transparency requirements and is satisfied with the obligations as currently drafted in the Code, with one exception which is outlined below in response to question 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?***

The Code is silent on the use of undistributed funds. We recognise that it is up to each collecting society’s board of directors to determine the ways in which undistributed funds will be used for the overall benefit of its members, however, we suggest that past controversy on use of these funds may have been avoided with better disclosure.

The ASA supports improved disclosure on how undistributed funds are used once the trust period has expired. Copyright Agency’s Distribution Policy, which is available on its website, states that these amounts are applied to maintain the indemnity fund and to offset deductions for operating costs.

From the perspective of members, the Distribution Policies of collecting societies must be as simple, comprehensible and easy to read as possible. The Code could be improved by specifying that the Distribution Policy must provide accessible and summarised information, to increase members’ understanding. We believe this would promote greater confidence in collecting societies.

We strongly disagree with the Productivity Commission that undistributed monies should be returned to statutory licensees. This would undermine the intention of the system of collective licensing. Difficulties with distribution of monies doesn’t actually affect or displace the licensee’s enjoyment of copyright material.

Our preference is that undistributed funds be used in cultural programs, however, we acknowledge that ultimately use of these funds is a matter for the Copyright Agency Board.

***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?***

We are not persuaded that the purpose of the Code is to balance the interests of members and licensees. The Code regulates the behaviour of collecting societies and sets out standards of service that both members and licensees can expect.

We note that collecting societies exist fundamentally to act in the best interests of the rightsholders they represent.

There are already dispute resolution mechanisms in place for both members and licensees and the role of the Copyright Tribunal is to ensure licence fees are fair and reasonable.

***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 key policies and procedures, such as the distribution of funds and use of non-distributable amounts?***

Two Board members of Copyright Agency are appointed by the ASA, providing for an author’s (ie member’s) voice to be represented at Board level.

The ASA would support the Code actually stating that collecting societies must act in the best interest of their members, although we note that directors of Copyright Agency are legally required to act in the best interests of their members in any event.

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

On balance the ASA is of the view that the Code should remain voluntary rather than mandatorily prescribed. There is already high compliance with the Code so it is not clear to us how prescription would improve outcomes. The independent Code Reviewer has found all participating collecting societies to be generally compliant with their Code obligations over the past 15 years.

Self-regulation is advantageous because it allows for flexibility to respond to changes in the industry environment and imposes lower costs of compliance.

1. **Conclusion**

Overall, the ASA believes the Code of Conduct promotes transparency, accountability and good governance and continues to be fit for purpose.

Please do not hesitate to contact us if we can provide any further information or assistance.

Juliet Rogers

CEO