# Submission to the Department of Communications & 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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We are writing in our individual capacity as academic experts in copyright law. Given the short timeframe for consultation, this submission is limited to identifying a few key issues to assist the Department and ACCC in its review. Our focus is on matters arising from the conduct of a single collecting society, the Copyright Agency Limited (CAL). CAL is the collecting society with which we have the most involvement - in our capacity as authors of copyrighted material (including over 100 books, law review submissions, scholarly articles and contributions to the popular press) and as users of the statutory licence (as university teaching and research academics using copyright-protected content in the course of our teaching). Our concerns largely arise from CAL’s special status as a ‘declared’ collecting society, and the particular interests and conflicts that have emerged under current governance and practice. Giblin is a member of CAL and has received payment from CAL for use of her work.

Our response is structured around Question 1, though aspects of the concerns we raise are relevant to other questions, particularly Questions 4 (‘Considering the differences in the way different collecting societies operate, is a framework in which a single code applies to all societies effective?’); 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?’); 9 (‘Should there be more guidance around the treatment of undistributed funds held in trust? If so, what specific issues should this address?’); 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?’) and 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?’).

**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 Code is not meeting the government’s original stated objective (of ensuring that collecting societies operate efficiently, effectively, and equitably). Nor is it meeting the Code’s stated objective of promoting ‘confidence in Collecting Societies and the effective administration of copyright’.[[2]](#footnote-2) Nor is the Code, by itself or in its regulatory context, capable of doing so, at least in relation to the ‘declared’ collecting societies Copyright Agency Limited and Viscopy.

BCAR’s Discussion Paper does not consider how the governance system established by the Code (and broader regulatory context) interrelates with the purposes of the statutory licences. Consideration of this issue is, however, within the scope of BCAR’s review. BCAR has been asked to consider the extent to which the Code promotes fair and efficient outcomes for both members and licensees, and meets its rationale and objectives, including promoting confidence in the system, especially in relation to the declared collecting societies. A primary role of the declared societies is the administration of the statutory licences. According to the 2015-2016 Annual Report, $111.1M of the $139M in fees collected by CAL in that financial year (80%) were payments collected under the education and government statutory licences.[[3]](#footnote-3) It is clear, therefore, that it is not possible to assess whether the Code promotes confidence in the system, without assessing whether the Code (in its regulatory context) is effective to promote the goals of the statutory licences. In particular, if there is a risk that the governance system established by the Code (in context) could work against the purposes of the statutory licences, then a rethink is required.

As the Australian Law Reform Commission has explained, the statutory licences in Part VA, VB and Part VII Div 2 are intended to facilitate the work of particular sectors: education and government,[[4]](#footnote-4) while ensuring appropriate remuneration for copyright owners and authors impacted by educational and government use. Indeed, the educational statutory licences were adopted ‘despite concerns that a statutory licensing scheme for educational institutions “might seem to favour the interests of education as against the interests of copyright owners”.’[[5]](#footnote-5) Thus, it is not appropriate to conceive of the management and distribution of public funds through the statutory licences as being purely private matters for member copyright owners. As UK Code Reviewer Sir Walter Merrick stated, ‘There are aspect of the functions of CMOs that can be characterized as public benefit or public services, rather than as purely commercial private sector transactions.’[[6]](#footnote-6) These matters affect whether the statutory licence is operating as intended, or whether it forces waste of scarce public resources.

Both the Code, and the regulatory framework, however, focus almost exclusively, on one set of stakeholders - namely, copyright owners.[[7]](#footnote-7) There is therefore a mismatch between the purposes of the statutory licences established in the Act and the governance structure, and the mechanisms by which these purposes are meant to be achieved.

Under current arrangements, Collecting Societies who sign up to the Code are required to act in the interests of their Members as a whole (and, to some extent, potential members).[[8]](#footnote-8) The Member-focused nature of the governance arrangements was underlined in the *Supplementary Report of the Code Reviewer* 28 October 2015. The Code Reviewer considered the *Copyright Act*, the collecting society constitutions, the Code, and the Attorney-General’s *Guidelines for the Declaration of Collecting Societies*. As the Reviewer concluded, ‘[u]ltimately, the legal duty of the directors of Copyright Agency and Screenrights, as companies limited by guarantee, is to act in the interests of their respective members as a whole’.[[9]](#footnote-9) In relation to distribution schemes, the Code Reviewer reasoned that the rights administered by the Collecting Societies are private rights, and that ‘it is a matter for the copyright owners whether they are content with the distribution policies’ of CAL and Screenrights.

It would not be surprising, under this structure, if other aspects of the public interest in copyright[[10]](#footnote-10) - the interests of the broader public, and the educational and government sectors intended to benefit from the statutory licences - were insufficiently accounted for. Unless there are effective mechanisms for stakeholders outside the Copyright Agency’s own members to hold the organization accountable, this risk is unlikely to be resolved.

Even if the quasi-public role of declared collecting societies is not accepted, there are a number of broad problems with the reliance on a governance structure which relies on membership to achieve the goal of efficient, effective, and equitable management of copyright in the context of declared collecting societies administering statutory licences:

1. First, Members do not have a unified set of interests, nor do they have access to sufficient information to determine how their interests are represented by, or affected by, the decisions of the Collecting Society. Individual authors’ interests are not the same as publishers’ interests, but these groups are constantly conflated in Copyright Agency annual reports and other documentation.
2. Second, the governance structure assumes a collecting society membership that, if not comprehensive or close to comprehensive, is at least representativeof the owners of copyright administered by these Collecting Societies. The membership of the Copyright Agency is far from comprehensive, and far from representative of the interests of the owners of copyright in materials copied by educational institutions and government. If the Copyright Agency acts to promote the interests of its Members as a whole, the Copyright Agency is likely to act contrary to the interests of non-member copyright owners.
3. Third, the Copyright Agency is an entity with its own interest in the maintenance, and expansion of its role in licensing public and private sector use of materials. The Copyright Agency’s interests in its own growth has the potential to conflict with the government’s interest in the efficient, effective, and equitable administration of copyright in circumstances where direct licensing could be more appropriate. This also raises competition concerns: the existence of the statutory licences and the increased commercial activities of the Copyright Agency have the potential to suppress competition in price, terms, and service. The regulatory structure has insufficient oversight to mitigate the impact on competition.

We develop each of these points in more detail below.

## 1. The interests of (active) Copyright Agency Members are far from uniform, but conflated in information produced by the Copyright Agency

Two core groups represented by the Copyright Agency are individual creators (including writers, journalists, illustrators, teachers and academics who are authors), and publishers (including book and newspaper publishers, and others who invest in, and own copyright but are not themselves human creators). The interests of these groups are sometimes congruent (they both want to sell books, for example), but can conflict. A significant academic literature shows that most authors lack bargaining power when negotiating with publishers,[[11]](#footnote-11) whether they are writers competing to have manuscripts accepted for trade publication,[[12]](#footnote-12) or academics whose professional imperatives to publish in prestigious journals or with prestigious publishers make them unlikely to bargain hard over the details of the contract. Terms vary. But our recent review of a sample of academic publishing contracts suggests that, in the case of books, contracts offered by academic publishers typically assign at least 80% of Copyright Agency payments to themselves. In the case of academic journal articles, full copyright assignment (with no royalty right to the author) is commonplace. Authors and publishers, in other words, compete for a share of the proceeds of creative endeavours.

Although the interests of authors and investors are distinct, the Copyright Agency typically conflates them in its reporting. The result is that authors are not in a good position either to assess the extent to which the Copyright Agency serves their interests, or the extent to which authors as a whole benefit from the statutory licence. This puts authors and members generally in a poor position to hold the Copyright Agency accountable, as assumed by the governance structure.

For example, the [2015-2016 Annual Report](http://copyright.com.au/about-us/governance/copyright-agency-annual-report-2016/) (the most recent publicly available at time of writing) uses the term ‘content creators’ to refer to human content creators in combination with investors. Thus, when it reports that it ‘paid $115.5m to more than 9,600 content creators’, it actually means that it paid that money to a whole series of claimants in the copyright value chain, including educational, trade and journal publishers, teacher associations, religious associations, professional associations and sporting groups.[[13]](#footnote-13) Indeed, its definition of ‘content creators’ extends even to foreign collecting societies.[[14]](#footnote-14)

The Copyright Agency is certainly able to report on these interests separately, since it divides members into ‘creators’ (which, in this context, seems to be more in line with accepted usage of the term); ‘publishers’, ‘creator publishers’ and ‘collecting societies’.[[15]](#footnote-15) However, the bulk of its reporting conflates them.[[16]](#footnote-16)

Furthermore, the Copyright Agency clearly understands that the issue of how much of its revenues go to actual creators is a live one, since it does finally estimate that ‘individual non-staff creators received about 39% of the licence fees from schools and universities.’[[17]](#footnote-17) The report does not explain how this figure was calculated, but it does specify that educational publishing made up the most copied content in both schools and universities.[[18]](#footnote-18) A major report by the Australian Society of Authors has stated that ‘a number of large educational publishers are offering contracts that allocate all or a major portion of CAL payments to themselves.’[[19]](#footnote-19) Our more recent examination of academic book contracts, albeit from a relatively small sample, has similarly found that academic authors are typically left with an entitlement to just 20% of CAL revenues (and sometimes none at all). CAL’s figures are also difficult to reconcile with recent book industry research. If approximately 13,000[[20]](#footnote-20) individual creators were receiving payments from Schools and Universities’ licensing fees totalling $30M,[[21]](#footnote-21) this would suggest an average payment per creator of around $2300. But Australian authors (including educational authors) in 2014 reported receiving an average of $400 per year from CAL, and $4000 per year in publisher royalties.[[22]](#footnote-22) This suggests need for some substantiation or elaboration of CAL’s claim that 39% goes to individual creators (and perhaps who those creators are) - and also highlights the competing interests of publisher and creator members.

Under current practice, it appears to us that CAL’s practices reflect an imbalance of power within the diverse membership, and risk favouring investor members over creator members in at least two ways.

First, it appears that CAL determines its distributions via processes that include commercial negotiations with large investors.[[23]](#footnote-23) Large investors such as publishers are likely to have greater parity in their bargaining power with CAL than individual creators, who typically suffer from a high degree of information asymmetry. There is little transparency as to the calculation of distributions, but this process raises concerns that the interests of individual creators may not be treated as favourably as those of investors. That is particularly problematic because CAL income can be proportionally more significant to individual authors.

Second, CAL’s distribution procedures build in further advantage to organisational investors. For example, where there are multiple rightholders and CAL does not have information about the payment shares, it pays to one rightholder on the understanding that they will distribute to the other/s.[[24]](#footnote-24) What this means in practice is that, as CAL’s own figures demonstrate, the vast majority of revenues are paid to organisations.[[25]](#footnote-25) In 2015-2016, this included $55.5 million to which was linked some obliged to share with at least one other rightholder (who may be an individual creator), and a further $27.6 million which that they were solely entitled. Individual creators, by contrast, were paid just $6.6 million and $6.2 million (shareably and solely), totalling just 11% of the amount distributed for the year.

This approach contrasts unfavourably to that of the UK Copyright Licensing Agency, which directly distributes revenues to equally to publishers and authors via a set formula, and thus much more directly protects individual creators’ interests.[[26]](#footnote-26) It also contrasts unfavourably with the current practices of the PPCA, which operates a Direct Artist Distribution Scheme, providing an opportunity for principal Australian artists on eligible Australian sound recordings and music videos to obtain direct payment of a share (50%) of the net income collected by PPCA from the broadcast or public performance of those recordings and videos.[[27]](#footnote-27)

The potential conflict of interests among different groups of members, and between the Copyright Agency itself and its members, have become more acute in the context of current discussions around Australian law reform. CAL has been one of the loudest voices seeking to derail the introduction of a flexible exception such as fair use, which has now been recommended by some six independent committees over the last 20 years. Communications from CAL to its Members have argued that introduction of fair use would result in author members not receiving payments from schools and universities.

If a flexible exception such as fair use were to be introduced, it would mean that schools, universities and libraries would stop paying for uses that are ‘fair’ but happen not to fall within one of the existing legislated categories of fair dealing, and are not excluded by CAL’s existing limited set of agreed unremunerated uses. While the debate has been filled with heated rhetoric about the deleterious effects of such a change on ‘creators’, CAL’s lack of transparency in reporting - and merger of creator and investor interests - makes it impossible to make even a reasonable estimate of exactly *who* would lose *how much* if a flexible exception were to be introduced. We suspect that there would be little or no difference in the amount of money paid out to publishers and authors for uses of their works and that the main difference would be in what happens to the pool of unclaimed money which, at least between 2013 and 2016, has not been paid out to members but which CAL is instead using to protect its rents. If there was to be any other shift, given that most copying under the statutory licence is of educational materials,[[28]](#footnote-28) and given that existing contractual practice sees only limited royalties going to the authors of that kind of material,[[29]](#footnote-29) it seems that, even if CAL’s revenues would decline, the majority of authors would still lose little or nothing.

## 2. The membership of the Copyright Agency is far from comprehensive

Although CAL is a declared collecting society, which as a result of its declared status has the right to collect equitable remuneration for any and all copyright-protected materials falling within the statutory licences and used by the statutory licensees, the actual membership of the Copyright Agency is far from comprehensive. This raises fresh issues with a governance structure based on an obligation to act in the interests of its Members as a whole.

According to the 2015-2016 Annual Report, the Copyright Agency has ‘over 30,000’ members, including publisher members and associations (such as teacher associations). CAL collects payment for all uses of all materials in schools, universities etc (subject to a list of agreed exclusions): the material covered is not confined to those who would count writing as a significant or the most significant part of their occupation. ‘Anyone who owns or controls rights in published works or imagery that’s likely to be copied or shared’, however, is a potential member.[[30]](#footnote-30) Based on this description, a membership of 30,000 seems low.

Relevantly, the Australia Council for the Arts in 2009 estimated that there were approximately 7,600 practising professional writers in Australia, and the Department of Employment reported in 2015 that there were 27,500 ‘journalists and writers’ in Australia.[[31]](#footnote-31) Academic authors employed by Australian Universities are another important membership category, since they are obliged to publish their research, and their books and articles are commonly used in University courses. That makes most or all academics potential members of CAL. In 2016, there were there were 49,531 academic staff with research responsibilities employed by Australian universities. Additionally, Australia has approximately 2,600 surveyors (entitled to remuneration as a result of the *State of NSW v CAL* case[[32]](#footnote-32)), and, as of 2011, an estimated 9,500 photographers and 2,300 painters.[[33]](#footnote-33)

The fact that CAL’s membership does not appear to reflect even a majority of *professional* individual creators raises questions. It may suggest that the Copyright Agency has diligently sought out and informed owners that there is remuneration awaiting their collection, but that these owner do not wish to collect remuneration for such uses: in which case in its collection the Copyright Agency is acting inconsistently with those owners’ interests. Second, it could mean that the Copyright Agency has insufficient incentives to pursue potential new members: either because, under pre-2013 practices, money not collected is rolled over and then distributed to existing members, or because, under post-2013 practice, the money is retained for the Copyright Agency’s own purposes.

In summary, questions around differences in interests between existing members, potential members, and non-members whose work is used by the statutory licensees, raises doubt over whether a governance structure that relies heavily on the obligation to act in the interests of ‘the members as a whole’ could ever be effective in promoting the purposes of the Act or the statutory licences. A diverse and absent potential membership is unlikely to be an effective check on any potential abuse.

## 3. CAL sometimes acts in pursuit of its own interest, which can conflict with the interests of its members and licensees (and raise competition issues)

CAL, although a nonprofit entity, is nevertheless a company with around 100 FTE employees, including six employees on salaries of over $200,000/yr including two earning more than $300,000/yr.[[34]](#footnote-34) As an entity, CAL has its own interests that are distinct from, and sometimes conflict with, those of its members and with the broader public interest in copyright. For example, CAL has a demonstrable interest in maintaining and growing its middleman status in managing licensing to education and government even where direct licensing options are available - including where direct licensing could benefit owners. Increases in direct licensing should lead to a reduction in the overall scope of activities and pool of funds administered by CAL. CAL’s own interests may therefore run counter to the government’s objective of efficient and effective management of copyright.

Evidence of CAL acting in furtherance of its own interests can be found, for example, in its conduct around the 2014 Code review. As part of that review, the NSW Department of Justice and the Copyright Advisory Group to the COAG Education Council (‘CAG’) had sought to obtain greater transparency about CAL’s payments to members. They were of the view that this would enable public institutions to negotiate more efficient licences directly with rightsholders.[[35]](#footnote-35) Technological improvements and concentration in publishing industries combine to make direct licensing ever more efficient, and could allow revenues to be distributed directly to authors and publishers without the administrative costs of the statutory licence. CAL was never intended to be the sole licensing gatekeeper for these materials - as demonstrated by the fact that voluntary licensing arrangements by schools and universities etc are permitted. Nonetheless, CAL resisted the request for greater transparency on the grounds that ‘the provision of this information would provide licensees with an unfair commercial advantage, undermining rather than promoting confidence in collecting societies.’[[36]](#footnote-36) That is, it viewed the possibility of more efficient direct licensing as competing with its own interests - although it would further the interests of at least some of its members and licensees, and although this is contrary to the aspirations for collecting societies as set out in the Code.[[37]](#footnote-37) It is by no means clear to us that it was intended for CAL to exploit its statutory monopoly by competing with its members and actively seeking to prevent more efficient voluntary licensing solutions.

CAL also has an institutional interest in derailing the introduction of a flexible copyright exception. Since 2013, we understand that CAL has been diverting all unclaimed revenues into a ‘Future Fund’ for advocating against proposed copyright reforms, particularly the introduction of a flexible exception.[[38]](#footnote-38) On our analysis, CAL would itself be a primary beneficiary of the defeat of fair use. That’s because most uses made pursuant to the statutory licences would still be remunerated in the event fair use was introduced. The ones that would no longer be remunerated would predominantly be the ones where rightholders cannot be found (often because they had no expectation of any financial benefit from the use), or where they are located but decline payment - ie the money CAL currently channels to its anti-reform fund. If fair use were to be introduced, it *would* reduce the overall pot of money for CAL to administer and charge fees on (and unclaimed revenues that it could divert to its own purposes). This suggests once again that CAL is taking significant actions further its own interests rather than those of its members.

CAL’s actions also conflict with its mission of identifying potential new members whose works have been used (and paid for by schools and universities) pursuant to the statutory licenses. For the last four years, CAL’s diversion of funds has given it a disincentive to locate creators entitled to revenues paid under the statutory licenses. This may provide some partial explanation for what seems to us to be a surprisingly small member base (see above). Neither of us, for example, had ever been approached by CAL to join, despite each publishing books and articles that are used in university courses for over 15 years. Giblin did finally join of her own initiative earlier this year, and discovered at that time that there was indeed a small amount of outstanding revenue owing to her, although she had never been alerted to its existence. It is unknown how much revenue attributable to the use of our work, and that of other academics, is being ‘rolled over’ into the anti-fair use fund.

## Conclusion

The Code’s objectives - indeed the whole way the Code is structured, as an instrument designed to ensure that collecting societies act in the interests of members - are certainly insufficient when dealing with a declared collecting society such as CAL, with its diverse membership, and the large number of non-members for whose materials remuneration is currently collected. A governance structure relying wholly on members holding the organization to account is unlikely to be effective, and, we would submit, on some of the emerging evidence, is not effective.

The Code – and the whole concept of relying on a Code of Practice – is also insufficient in light of the public interests which the statutory licences are designed to serve.

This suggests the need for stronger external oversight in order to ensure proper accountability. In light of practices that have developed, CAL needs to be more tightly regulated to ensure that its statutory power is not used to support improper purposes - and in fact to direct it to facilitate efficient licensing solutions between members and statutory licensees whether within or without the statutory licence framework.

1. Kimberlee Weatherall is a Professor of Law at the University of Sydney. Rebecca Giblin is an Associate Professor of Law at Monash University. We both volunteer our time on the Board of the Australian Digital Alliance, and have provided feedback on its submission. This separate submission represents our views in our individual capacities as copyright law experts and university employees. [↑](#footnote-ref-1)
2. Code of Conduct for Australian Copyright Collecting Societies, 1.3(b). Notably, the Government’s objective for the Code, referred to in BCAR’s Discussion Paper, is not repeated in the Code itself. As the Code is a voluntary code, drafted by the Collecting Societies, this mismatch is not surprising. [↑](#footnote-ref-2)
3. Copyright Agency Annual Report 2015-2016, page 8 Table 4. [↑](#footnote-ref-3)
4. Australian Law Reform Commission, *Copyright and the Digital Economy* (ALRC Report 122), 185. [↑](#footnote-ref-4)
5. Ibid, 187, citing Copyright Law Committee, *Report on Reprographic Reproduction* (1976) (‘the Franki Report’), [6.63]. [↑](#footnote-ref-5)
6. Sir Walter Merrick, Independent Code Review, Sir Walter Merricks, 2014 <http://www.britishcopyright.org/files/2914/7009/7773/ICR_Report_2014.pdf>, at 12. [↑](#footnote-ref-6)
7. Although as noted further below, this is a homogenous group. [↑](#footnote-ref-7)
8. There are in addition some protections, reflected in the Act, Regulations, and Attorney-General’s Guidelines, to safeguard ‘the interests of those who are entitled to participate in the distribution’ (ie copyright owners): *Supplementary Report of the Code Reviewer*, [21]; [28]; *Guidelines for the Declaration of Collecting Societies,* [23] and [24] (requiring impartiality and even-handedness as between current members and qualified persons). [↑](#footnote-ref-8)
9. *Supplementary Report of the Code Reviewer*, 28 October 2015, [38]. [↑](#footnote-ref-9)
10. We have written elsewhere regarding the nature of the public interest in copyright. In using this phrase, we do not intend to describe only non-authorial or non-copyright owner interests. Rather, the public interest in copyright must take into account both authors, *and* users and others: see Rebecca Giblin and Kimberlee Weatherall, If we redesigned copyright from scratch, what might it look like? In Rebecca Giblin, Kimberlee Weatherall (Eds.), *What if we could Reimagine Copyright?*, (pp. 1-23). Acton: ANU Press 2017. [↑](#footnote-ref-10)
11. See, for example, Richard Caves, *Creative Industries: Contracts between Art and Commerce* (Harvard University Press, 2000); Ruth Towse, ‘Copyright and Artists: A View from Cultural Economics’ (2006) 20 *Journal of Economic Surveys* 567. [↑](#footnote-ref-11)
12. According to one published author, large publishers in Australia receive 4000-5000 unsolicited manuscripts every year: <http://www.ian-irvine.com/on-writing/the-truth-about-publishing/>. He advises: ‘As a beginning writer, if a respectable publisher offers you a book contract, sign it. The chance may not come again. As a novice, you’re not worth much to a publisher, so you have little power to negotiate. If you demand a lot of changes to a contract, or cause interminable delays, the publisher may withdraw the offer and go to the next writer on their list. After all, a writer who causes trouble before the contract is signed is bound to be an even bigger pain afterwards.’ [↑](#footnote-ref-12)
13. Copyright Agency Limited, *Annual Report 2016*, 25. [↑](#footnote-ref-13)
14. The table at page 25 of CAL’s 2016 Annual Report explains the source of the $115.5m, described on page 3 as having ‘paid $115.5m to more than 9,600 content creators.’ [↑](#footnote-ref-14)
15. Copyright Agency Limited, *Annual Report 2016*, [16.1]. [↑](#footnote-ref-15)
16. Ibid, [12.7]; [12.8]. [↑](#footnote-ref-16)
17. Ibid, 28. [↑](#footnote-ref-17)
18. Ibid, 14-15. [↑](#footnote-ref-18)
19. Australian Society of Authors Report, *Educational publishing in Australia: what's in it for authors?* (2008). [↑](#footnote-ref-19)
20. This number is derived from Table 12.11 in the CAL 2016 report, being the 3057 individual creators paid directly, plus the ‘>10,000 contracted writers and illustrators who received payments from publishers’. [↑](#footnote-ref-20)
21. These figures are derived from Tables 12.9 and 12.10 in the CAL 2016 Report, 27-28. [↑](#footnote-ref-21)
22. David Throsby, Jan Zwar and Thomas Longden, ‘Book Authors and their Changing Circumstances: Survey Method and Results’, Macquarie Economics Research Papers No 2/2015 (September 2015), available at <http://www.businessandeconomics.mq.edu.au/our_departments/Economics/econ_research/reach_network/book_project/authors/BookAuthors_WorkingPaper_2015.pdf>, table 10 at page 22. It is possible that individual creators *other* than writers of books are receiving the bulk of the CAL payments (although this is not discernible from CAL’s reporting). [↑](#footnote-ref-22)
23. See discussion under point 3 below. [↑](#footnote-ref-23)
24. Copyright Agency Limited, *Annual Report 2016*, 24. [↑](#footnote-ref-24)
25. This occurs despite the fact that the Distribution Policy states that creators will receive payment (with an obligation to on-pay) where the Copyright Agency is aware that two or more members are entitled to share an allocation but has no information on the share payable to each. [↑](#footnote-ref-25)
26. [https://web.archive.org/web/20160721052848/http://www.cla.co.uk:80/about/where\_the\_licence\_fees\_go](https://web.archive.org/web/20160721052848/http%3A//www.cla.co.uk%3A80/about/where_the_licence_fees_go). [↑](#footnote-ref-26)
27. See the Phonographic Performance Company of Australia Limited Distribution Policy, available at <http://www.ppca.com.au/IgnitionSuite/uploads/docs/PPCA%20Distribution%20Policy%20-%20March%202016.pdf>. [↑](#footnote-ref-27)
28. Copyright Agency Limited, *Annual Report 2016*, 14-15. [↑](#footnote-ref-28)
29. See previous discussion under point 1; Australian Society of Authors Report, *Educational publishing in Australia: what's in it for authors?* (2008). [↑](#footnote-ref-29)
30. See the Copyright Agency Limited’s website at https://www.copyright.com.au/membership/join-us/. [↑](#footnote-ref-30)
31. See <http://lmip.gov.au/default.aspx?LMIP/EmploymentProjections>. [↑](#footnote-ref-31)
32. See eg <http://www.smh.com.au/business/180k-pay-packet-not-enough-to-stem-shortfall-of-surveyors-20150714-gicggy.html> [↑](#footnote-ref-32)
33. These figures are reported by the Australian Bureau of Statistics in its *Arts and Culture in Australia: A Statistical Overview 2014*, available at [http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4172.0main+features232014](http://www.abs.gov.au/ausstats/abs%40.nsf/Lookup/4172.0main%2Bfeatures232014). The figures are from the 2011 Census. [↑](#footnote-ref-33)
34. See Copyright Agency Limited, *Annual Report 2016*, 40. These figures do not include incentive payments. According to surveys by Payscale, the figures reported by the Copyright Agency place Copyright Agency’s CEO salary in the top 10% of CEO salaries in Australia (including for-profit entities). [↑](#footnote-ref-34)
35. BCAR, *Discussion paper: Review into the efficacy of the Code of Conduct for Australian Copyright Collecting Societies,* 18. [↑](#footnote-ref-35)
36. See Copyright Agency Limited, 'Proposal for Amendment to Code of Conduct Regarding Reporting' (13 November 2014), 4. (https://static-copyright-com-au.s3.amazonaws.com/uploads/2015/04/Code-amendment-proposal-2014-11-13.pdf.) [↑](#footnote-ref-36)
37. Code of Conduct for Australian Copyright Collecting Societies, 1.1(b). [↑](#footnote-ref-37)
38. See Copyright Advisory Group to COAG Education Council, *Submission to the Department of Industry, Innovation and Science Consultation on recommendations from the Productivity Commission’s Inquiry into IP Arrangements*, 4 (https://www.industry.gov.au/innovation/Intellectual-Property/Documents/Copyright-Advisory-Group-to-COAG-Education-Council.pdf). [↑](#footnote-ref-38)