**Submission in response to Government’s Draft Report on Review 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 Draft Report, issued February 2018.

In summary, the ASA supports all the recommendations set out in the Draft Report.

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| **Draft recommendation 1**: Add explanatory text to the Code | We support this recommendation. |
| **Draft recommendation 2:** Amend the Code to incorporate an additional objective which states the Code should support efficient and equitable outcomes | We support this recommendation. |
| **Draft recommendation 3:** Add explanatory text on broader regulatory environment | We support this recommendation. |
| **Draft recommendation 4:** Amend code to require collecting societies to make available to members, licensees and potential licensees the methodology for calculating licence fees, including any modelling | We support this recommendation, provided that Copyright Agency’s ability to represent, and negotiate for, its creator members is not compromised.  We understand that licence fees are the subject of commercial negotiations between collecting societies and licensees (or groups representing licensees) and that the Copyright Tribunal has jurisdiction to approve or vary the fee.  Our members are not directly concerned with the calculation of licence fees, nor are they seeking such involvement. Their interest is in the development of policies in relation to the ***distribution*** of these fees, after the deduction of the collecting societies’ operating costs. (See response to Draft Recommendation 7 and following discussion question.)  From our members’ perspective, we would encourage Copyright Agency to negotiate for the best licence fee it reasonably can, while acknowledging that education must be affordable for Australian students. We understand that the licence fee paid by secondary schools is currently around $16.93 per full-time student. |
| **Discussion question:** What information would licensees benefit from around how their licences are calculated? What limitations are there in providing more information? | These questions are for licensees and collecting societies to answer. |
| **Draft recommendation 5:** Amend Code to require collecting societies to detail in their Annual Report, at an anonymised or aggregate level where appropriate, the accounting and distribution of licence revenues | We support this recommendation.  While this information is already provided in Copyright Agency’s Annual Report at a high level, our members have expressed interest in seeing a breakdown of this total amount, as discussed below. |
| **Draft recommendation 6:** Amend the Code to require collecting societies to provide more detailed information on particular rights payments on an anonymised basis at the request of a licensee | Not directly relevant to ASA members; licensees to respond. |
| **Draft recommendation 7**: Amend Code to require collecting societies to consult on the development of distribution policies in a process that includes affected stakeholders and that each society publish ‘plain English’ information on its distribution policy | We strongly support this recommendation and would be happy to participate in the consultation process.  While Copyright Agency already makes available significant information regarding distribution, we believe a ‘plain English’ summary is needed. |
| **Discussion question:** What information would stakeholders benefit from in relation to the distribution of funds and in what format? | We endorse the comments of Copyright Agency in response to this discussion question.  Our members would appreciate a simple and clear distribution policy which explains:   * how data is collected from educational institutions; * how many educational institutions are included in the sampling process; * total annual amount to be distributed per year; * total number of members being paid per year; * whether the overall payments and overall number of members being paid represent an increase or decrease from the previous year; * a visual representation of the spread, range and median of payments across members receiving payment for that year; * the percentage of the overall “pie” going to the top 10% of individual creators; * to the extent possible, the percentage of the overall “pie” paid to publishers, authors and illustrators respectively (We do not believe that Copyright Agency currently has access to all the information it needs to make these percentages available and we support ongoing efforts to persuade publishers to be more transparent about their income splits with authors); * amount of funds (in dollar terms and percentage) which are unable to be distributed. |
| **Draft recommendation 8:** Amend Code to require detailed additional reporting of undistributed funds, including:   1. reasons why funds remain undistributed; 2. steps taken to locate and distribute funds to rightsholders; and 3. the uses for which expired, undistributed funds are to be applied. | We support this recommendation.  We acknowledge much of this information is already provided by Copyright Agency, but our members have nonetheless reported uncertainty, suggesting that communication channels could be improved. For example, many of our members were not aware of the existence of the “Future Fund” until it was highlighted by media attention. |
| **Draft recommendation 9:** Amend the Code to require collecting societies to provide their members with plain-English guidelines stating how non-distributable funds will be allocated and spent by the collecting society, and how such expenditure will serve the interests of member | We support this recommendation.  The Code is currently silent on the use of undistributed funds and we support better transparency requirements on how undistributed funds are used once the trust period has expired. |
| **Discuss question:** What specific resources and information would it be most useful for collecting societies to make available on a consolidated online portal? | We endorse the Copyright Agency’s response to this discussion question. |
| **Draft recommendation 10:** Amend the Code to require collecting societies to establish an maintain a consolidated online portal for the public dissemination of specified governance, financial and date information, including all documents relating to Code compliance. | We support this recommendation. |
| **Draft recommendation 11:** Clarify Code Reviewers’ role | We support this recommendation. |
| **Draft recommendation 12:** Amend the Code to include a new clause which provides that a collecting society may not unreasonably refuse a request from a licence to engage in a ADR process in respect of a dispute over licence fee pricing | We support this recommendation although acknowledge that it is not directly relevant to our members. |
| **Draft recommendation 13:** Amend Code to require collecting society to report on their compliance with Code | We support this recommendation. |
| **Draft recommendation 14:** Publish annual compliance reports | We support this recommendation. |
| **Draft recommendation 15:** Amend Code to require collecting societies to notify members/licenses when they have breached the Code | We support this recommendation. |
| **Draft recommendation 16:** Amend the Code to require collecting societies to establish and maintain a contraventions register | We support this recommendation. |
| **Draft recommendation 17:** Amend Code to provide procedural steps for:   1. requiring collecting societies to consider recommendations of Triennial Code Reviewer to make certain amendments to the Code within a specified time frame; 2. updating the Code to reflect the amendments within a specified time frame; 3. advising stakeholders of the amendments to the Code, including plain English explanation | We support this recommendation. |
| **Draft 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 | We support this recommendation and would be available to assist Copyright Agency consult with our members, if required. |
| **Draft recommendation 19**: Separate independent expert to conduct triennial review (to annual review of compliance) | We support this recommendation. |
| **Draft 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 | We support this recommendation. As previously submitted, the ASA would welcome technological improvements in accurate data capture and supports Copyright Agency’s ongoing commitment to improve data collection. |

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

Kind regards

Juliet Rogers

CEO