

	<p style="text-align: right;">Date : 11/10/2007</p> <p><b>Australia: Code of Conduct for Copyright Collecting Societies</b></p> <p><b>Eve Woodberry</b>  President, Council of Australian University Librarians (CAUL)  IFLA, Durban, South Africa : 23 August 2007</p>
<b>Meeting:</b>	<b>153 Copyright and other Legal Matters</b>
<b>Simultaneous Interpretation:</b>	Yes
<p style="text-align: center;"><b>WORLD LIBRARY AND INFORMATION CONGRESS: 73RD IFLA GENERAL CONFERENCE AND COUNCIL</b>  19-23 August 2007, Durban, South Africa  <a href="http://www.ifla.org/iv/ifla73/index.htm">http://www.ifla.org/iv/ifla73/index.htm</a></p>	

What I have been asked to address today is the “Code of Conduct for Copyright Collecting Societies” in Australia. The purpose of the presentation is to draw attention to the Code and highlight the fact that codes of conduct can be a useful tool in the dialogue between collecting societies and libraries.

The structure of the presentation will be to

- consider why the code was developed
- consider the code itself including the review process
- Provide some concluding remarks on “the good, the bad and the ugly”

In Australia it is the Attorney General who has the power to declare a collecting society for the purposes of Parts VA and VB, which are the statutory licences sections of the Copyright Act.

The main collecting societies are the Copyright Agency Ltd (CAL) and Screenrights, but there are also a number of smaller more specialized collecting societies.

**Background**

The impetus for the development of the Code of Conduct followed the release of the recommendations from the Ergas Committee Report *Review of Intellectual Property Legislation under the Competition Principles Agreement*

“ the Committee believes that it is essential that appropriate mechanisms for reviewing the operation of societies be in place”

While CAL and Screenrights were already required to report annually to government, the smaller collecting societies were not as tightly regulated and the recommendation resulted in part from complaints received regarding their operation.

### **Introduction of the Code**

The Code was developed in 2001 and came into effect in July 2002 and has been adopted by eight societies:

- Audio-visual Copyright Society Ltd (Screenrights)
- Australasian Performing Right Association Ltd (APRA)
- Australasian Mechanical Copyright Owners Society Ltd (AMCOS)
- Australian Screen Directors Authorship Collecting Society Ltd (ASDACCS)
- Australian Writers' Guild Authorship Collecting Society Ltd (AWGACS)
- Copyright Agency Ltd (CAL)
- Phonographic Performance Company of Australia Ltd (PPCA)
- Viscopy Ltd (Viscopy)

The code itself is not a particularly long document (16 pages) and it applies to those Collecting Societies that have agreed to be bound by the code – it is not mandatory for a collecting society to adopt the code. For those that do, the code sets out minimum standards that the societies are required to comply with so that there is transparency in the provision of information to members and licensees regarding their operations.

#### **The code outlines:**

- the obligations of collecting societies
- defines procedures for complaints and disputes
- specifies a requirement for each collecting society to publicise the Code and
- outlines the procedure for monitoring, reviewing and amending the Code.

The **objectives** of the Code are specified as:

- To promote awareness of and access to information about copyright and the role and function of Collecting Societies in administering copyright on behalf of Members
- To promote confidence in Collecting Societies and the effective administration of copyright in Australia
- To set out standards of service that Members and Licensees can expect from Collecting Societies; and
- To ensure that Members and Licensees have access to efficient, fair and low cost procedures for the handling of complaints and resolution of disputes involving Collecting Societies

The Code also outlines what Collecting Societies **aspire** to

- Achieve best practice in the conduct of its operations
- Be responsive to the needs of Members and Licensees
- Ensure transparency and accountability in the conduct of its operations, and

- Achieve efficiency in the process of allocating and distributing payments to members

The **obligations** of the Collecting Societies are set out under the following headings:

- Legal Framework
- Members
- Licensees
- Distribution of Remuneration and Licence fees
- Collecting Society Expenses
- Governance and accountability
- Staff training
- Education and awareness

The code was not designed as a dispute resolution mechanism but as a tool for reporting on disputes and complaints. However one of the consequences of the development of the code has been the improvement in complaints handling by the collecting societies. The first review in 2003 found that six of the societies had implemented dispute resolution processes and complaint handling systems.

### **Monitoring, Review and Amendments**

The part of the Code which is worthy of further consideration is section 5 which deals with **Monitoring, Review and Amendments**, as it is this part of the process which enables libraries and other major customers of collecting societies to express their views on compliance with the code by members and contribute to amendments of the Code.

#### ***Code Reviewer***

The process of Review and Amendment is managed by a Code Reviewer who is appointed by the Collecting Societies that have agreed to the Code. The Code Reviewer has expertise in administrative law, copyright law and/or licensing practices.

Who should appoint and fund the Reviewer has been raised as an issue by licensees as the current process of the collecting societies appointing and funding the Reviewer is considered to lack impartiality.

The functions of the Code Reviewer, who to date has been a retired member of the judiciary, are specified as:

- To monitor and prepare annual reports on compliance
- To consider complaints from Members and Licensees; and
- To conduct a review of the Code every 3 years.

A further issue of concern for licensees is that the annual compliance monitoring and reporting process does not require the Code Reviewer to consult. The section in the Code say only that “the Code Reviewer *MAY* undertake such consultation as he or she considers appropriate” and that “the Code Reviewer *MAY* call for submissions / convene meetings/ and consult with government departments”.

The impact of this is that changes can be made to the Code without consultation. An example of this is that in May 2007, the statement that the code reviewer should be independent of the

collecting societies has been removed, though on a positive note the option of members and licensees complaining directly to the Code Reviewer was inserted.

### **Concluding remarks**

The code is a mix of good and bad, I am not sure about “ugly”.

### **The good:**

Despite the optional nature of complying with the Code, the majority of Collecting Societies have agreed to be bound by it.

Since the code came into being all of the societies have implemented dispute resolution processes and complaints handling procedures.

While the language in the Annual Compliance Monitoring and Reporting section only specifies that the Code Reviewer “may” call for submissions, to date he has chosen to do so as part of the annual process.

The monitoring and review processes have resulted in increased transparency regarding the operation of the Collecting Societies and provide an opportunity for libraries and other interested parties to provide input into the review process, but only regarding compliance with the Code.

There has been a reduction in complaints as reported in the annual review, particularly against the smaller societies and APRA in particular.

### **The bad:**

The Code is not mandatory

The annual review of compliance by the Code Reviewer does not require the Reviewer to seek submissions as part of the Review. It is only the triennial Review and Amendment of the Code which requires the Code Reviewer to consult widely and invite submissions on the operation of the Code and on “any amendments that are necessary or desirable.”

The Code Reviewer is selected and paid for by the Collecting Societies and as of May 2007 the Reviewer is not required to be independent of the collecting societies.

The Reviewer depends on the information provided by the societies to perform his annual review. Each review to date has concluded that there “has been no significant breach of the Code by any of the Collecting Societies”.

I would not go as far as to say the Code of Conduct has improved relations between libraries and collecting societies in Australia, in fact I would doubt that there has been any discernible change in relations since the Code was implemented. What it has done is provide a framework which outlines expectations on both sides and against which some evaluation can occur.

***References:***

Collecting societies' voluntary code of conduct; joint government and industry initiative to tackle IP crime. Virginia Morrison and Mary Pollatos, Australian Copyright Council, 22 April 2002.

Code of Conduct for Copyright Collecting Societies

[http://www.copyright.com.au/code\\_of\\_conduct.htm](http://www.copyright.com.au/code_of_conduct.htm)

Code of conduct for copyright collecting societies (the "code"), Naomi Messenger, Arts Law Centre of Australia online, [http://www.copyright.com.au/code\\_of\\_conduct.htm](http://www.copyright.com.au/code_of_conduct.htm)

Copyright collecting societies: proposed code of conduct. Canberra, ACT; ALIA, 2003

<http://alia.org.au/advocacy/submissions/code.of.conduct.html>

Ergas Committee report

Review of Intellectual Property Legislation under the Competition Principles Agreement

[http://www.ag.gov.au/www/agd/agd.nsf/Page/Publications\\_ErgasCommitteereport-September2000](http://www.ag.gov.au/www/agd/agd.nsf/Page/Publications_ErgasCommitteereport-September2000)