

21 March 2018

Copyright Code Review
Director, Economic Research
Bureau of Communications and Arts Research
Department of Communications and the Arts
GPO Box 2154
CANBERRA ACT 2601

Via email: codereview@communications.gov.au

Dear Copyright Code Review Secretariat,

Draft Report: Review of Code of Conduct for Australian Copyright Collecting Societies

Live Performance Australia (LPA) welcomes the opportunity to comment on the Review of the Code of Conduct for Australian Copyright Collecting Societies (Draft Report). We have provided our views on the draft recommendations in our submission attached.

About LPA

LPA is the peak body for Australia's \$2.5 billion live performance industry. We represent licensees of both the Australasian Performing Right Association (APRA) and the Phonographic Performance Company of Australia (PPCA) for the public performance of musical works in Australia. Our Members include producers, promoters, venues, performing arts companies and festivals that collectively contribute a significant portion of royalty revenue collected for the public performance of music.

Summary of LPA Submission

- 1.** LPA supports the draft findings and recommendations proposed in the Draft Report.
- 2.** LPA further proposes to amend Clause 2.3 (b) to state that "Each Collecting Society will ensure that its dealings with Licensees are transparent, responsive and efficient."
- 3.** LPA has provided comments and suggestions in response to relevant discussion questions posed in the Draft Report.

LPA greatly commends the Review conducted by the Bureau of Communications and Arts Research (BCAR). The Draft Report, supported by wide consultation and thorough research, provides practical and effective measures for improving the clarity, transparency and governance of the Copyright Collecting Societies Code of Conduct (Code). The adoption of the Draft Report's recommendations is an important step for instilling confidence in a collective licensing system that is efficient, effective and fair for both copyright owners and users.

We look forward to working together with the Copyright Collecting Societies, particularly APRA and PCCA, to implement the recommendations proposed in the Draft Report.

Once again, we thank you for the opportunity to present this submission for consideration. We look forward to continuing to work with BCAR and the Department of Communications and the Arts on these matters.

Yours sincerely,



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LPA SUBMISSION

Draft Report: Review of Code of Conduct for Australian Copyright Collecting Societies

1. CLARIFYING THE CODE'S ROLE AND PURPOSE

LPA supports all findings and recommendations in the Draft Report aimed at clarifying the Code's role and purpose.

LPA proposes to amend Clause 2.3 (b) to state that "Each Collecting Society will ensure that its dealings with Licensees are transparent, responsive and efficient."

LPA submits that the adoption of Recommendations 1 and 2 are important for ensuring that the Copyright Collecting Societies are guided by the overarching principles to be fair, balanced and efficient both in their dealings with stakeholders and the outcomes they achieve. The adoption of these recommendations will provide licensees with greater confidence that the Collecting Societies are expected to balance the needs and rights of both copyright users and owners.

We also support the adoption of Recommendation 3 intended to provide greater clarity on the scope and application of the Code within the wider legislative context. This will provide licensees with clearer guidance when assessing their dealings with Copyright Collecting Societies against the expectations of the Code, as well as providing a clear understanding of the appropriate avenues for pursuing and assessing the handling of complaints or disputes that may arise.

LPA proposes that Clause 2.3 (b) be amended to ensure that the Copyright Collecting Societies' dealings with licensees reflect the purpose and objectives of the Code. We recommend Clause 2.3 (b) be amended to "Each Collecting Society will ensure that its dealings with Licensees are transparent, responsive and efficient." This amendment will help address licensee concerns regarding responsiveness and efficient processing of licence applications, as raised in LPA's previous submission (dated 29 September 2017).

2. ENCOURAGING GREATER TRANSPARENCY

LPA supports all findings and recommendations in the Draft Report aimed at encouraging greater transparency.

The recommendations proposed in the Draft Report provide practical and effective measures for improving availability and access to transparent information for licensees and other relevant stakeholders. LPA looks forward to working together with the Copyright Collecting Societies, particularly APRA and PPCA, to effectively implement the recommendations proposed and address the findings of the Draft Report.

We provide our comments and suggestions to the discussion questions posed in the Draft Report that are relevant to our membership below.

2.1 What information would licensees benefit from around how their licences are calculated?

Licensees require easy access to clear information about:

- the rationale or basis for the terms and rates of licence schemes;
- how each licence is applied and the fees calculated; and
- the standard procedure for processing licence applications.

Licensees in our industry depend upon clear and accurate licensing information for crucial business operations, such as forecasting budgets and securing music content for staging live productions. It is crucial to ensure that licensees have access to all the clear and accurate licensing information needed to avoid the significant negative impact of the licensing process being unclear, inconsistent, or onerous. Furthermore, providing transparent information provides confidence for licensees that they are engaging in an open and fair licensing process.

We have provided specific examples and suggestions on how access to clear and accurate information can be improved. The proposed suggestions primarily focus on licensing information that affects LPA's membership, being licences for live performance events administered by APRA.

Rationale or basis for the terms and rates of licence schemes

Licensees should be provided with background information on how licence schemes and their corresponding rates have been determined. This might include information about:

- whether the collecting society consulted with licensees or other relevant industry groups
- what factors the collecting society considered when setting licence fee conditions and rates (e.g. international comparisons, determinations of the Copyright Tribunal)
- rationale supporting the determination of licence fees and conditions.

This information could be included in plain English licensing guides that are easily accessible on the collecting societies website and awareness of this information (including direct links) provided by licensing agents at the point of contact.

Licence categorisation and fee calculation

As raised in LPA's previous submission to this Review (dated 29 September 2017), our membership has often raised the concern that there is a lack of transparent detail on the categorisation of events and calculation of licence fees that is easily accessible.

APRA has developed plain English licensing guides relevant to our industry. However, we believe further detailed information can be clearly and prominently provided that will help licensees

understand how individual event licences are applied and fees calculated. This might be effectively presented in a table matrix or FAQs, either by amending the current plain English licensing guides or creating a new guide. An example using a few sample APRA event licences has been provided which includes suggestions for the types of information licensees should be made aware of.

Example 1. Event Licences Matrix:

Licence Type	Special Purpose Featured Music Event	Music Performances with no admission fee
Tariff	<i>Currently provided</i>	<i>Currently provided</i>
Event Type	<i>Currently provided</i>	<i>Currently provided</i>
Event type Examples	<i>Currently provided for some licence types.</i> Concrete examples that clarify the types of events that fall under each licence.	<i>Currently provided for some licence types.</i> Concrete examples that clarify the types of events that fall under each licence.
Headline Rate	<i>Currently provided</i>	<i>Currently provided</i>
Fee Definitions	Important definitions and corresponding examples, including (but not limited to) definitions and examples of: <ul style="list-style-type: none"> • what revenue types are included/excluded under “gross box office receipts” (e.g. camping tickets? Meal vouchers? VIP bars/areas?) • do “ticket booking fees” have to be charged by a third party? • does an event’s “duration” include/exclude intermissions? 	Important definitions and corresponding examples, including (but not limited to) definitions and examples of: <ul style="list-style-type: none"> • what types of expenditure are included/excluded under “gross expenditure on music performers” (e.g. performance fee? travel allowance? transport costs?)
Treatment of Non-APRA works	How are Non-APRA works treated by this licence?	How are Non-APRA works treated by this licence?
Direct dealing	<i>Currently provided for some licence types.</i> All licence guides should have clear information on the option to deal direct.	<i>Currently provided for some licence types.</i> All licence guides should have clear information on the option to deal direct.
Terms and conditions	Any important terms and conditions applicable to this licence type.	Any important terms and conditions applicable to this licence type.
Responsibility	Who is responsible for or required to apply for and attain a licence? (e.g. venue, promoter, artist?)	Who is responsible for or required to apply for and attain a licence? (e.g. venue, promoter, artist?)
Fee distribution	Details of how fees collected are typically distributed under this licence.	Details of how fees collected are typically distributed under this licence.

Licensees should be able to access the above information about all licence types in one document or listed at one easy access point on the Collecting Societies' website. This information should not only be easily accessible on the Collecting Societies' website, but also awareness of this information (including direct links) provided by licensing agents at the point of contact.

A list of all the licences that a Copyright Collecting Society administers should be provided at one easy access point on each of their websites. This list should include access to a pdf copy of each licence available and their corresponding plain English guides or FAQs. Currently, APRA provides licence guides on their website. However, to the best of our knowledge a copy of the actual APRA licences is not available. It is LPA's understanding that licensees fill out an online event licence enquiry form and then the licence agreement chosen by the licensing agent is provided. To improve the transparency of this process for licensees, a copy of all licences administered by the Collecting Society should be listed at one easy access point on each Collecting Societies' website.

Licensees should always be informed whenever any changes are considered or introduced that may have a material impact on the application of licences or calculation of fees. We also recommend that Collecting Societies consult on any proposed changes with the relevant industry association or licensee community prior to their implementation.

Standard procedure for processing licence applications

Licensees should have access to information about the procedural steps for processing and assessing licence applications. This should include (but is not limited to):

- who is responsible for attaining a licence;
- key information and documents licensees should provide when submitting applications;
- steps and internal processes for assessing and approving a licence;
- timeframes for how long licensees can expect to receive responses from licensing agents during the application process;
- how long it typically takes to issue and approve a licence;
- typical timeframes for payment and billing.

This step-by-step information, from the point of application to licence approval and settlement, may be clearly provided in a flowchart format. We note that the process can differ between different licence types, with some approval processes being more complex than others, and therefore to ensure accuracy a number of flowcharts or procedural guides may need to be developed. Access to transparent information on the processing of licences is important for ensuring that licensees can be assured that a standard and impartial procedure for processing licences within a reasonable timeframe is followed.

This information should be easily accessible on the Collecting Societies website and awareness of this information (including direct links) provided by licensing agents at the point of contact.

2.2 What specific resources and information would it be most useful for collecting societies to make available on a consolidated online portal?

We support Recommendation 10 of the Draft Report and believe the resources and information listed in the Draft Report (p.26) to be included on the portal are appropriate. Additionally, we suggest including any governance or review documents regarding the Alternative Dispute Resolution schemes of the Copyright Collecting Societies.

3. STRENGTHENING GOVERNANCE ARRANGEMENTS

LPA supports all recommendations in the Draft Report aimed at strengthening governance arrangements.

The Draft Report provides practical and effective measures for strengthening the governance arrangements of the Code, which will result in clearer review and accountability processes. LPA believes implementation of the recommendations will have a positive impact on improving processes for determining Code compliance, provide incentives for complying with Code through increased stakeholder awareness and transparency, as well as improving the Code review processes to support greater accountability.