

**Code of Conduct
for
Copyright Collecting Societies**

Amended: April 2008

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1. INTRODUCTION

1.1 Background

- (a) Collecting Societies in Australia provide a range of valuable services to both Members and Licensees. By administering copyright on behalf of Members, Collecting Societies:
 - (i) promote the creation and dissemination of copyright material;
 - (ii) represent the interests of creators and owners of copyright material;
 - (iii) make it easier for people to obtain permission to use copyright material;
 - (iv) streamline the process of collecting remuneration and/or licence fees for the use of copyright material; and
 - (v) reduce the transaction costs for both Members and Licensees associated with the use and exploitation of copyright material.
- (b) Each Collecting Society aspires to:
 - (i) achieve best practice in the conduct of its operations;
 - (ii) be responsive to the needs of Members and Licensees;
 - (iii) ensure transparency and accountability in the conduct of its operations; and
 - (iv) achieve efficiency in the process of allocating and distributing payments to Members.
- (c) In recognition of the services they provide, Collecting Societies expect that:
 - (i) Licensees and other users of copyright material will respect the rights of the creators and owners of that material, and in particular their right to receive fair payment for the use and exploitation of copyright material; and

- (ii) Licensees and other users of copyright material will use that material only in accordance with:
 - A. the terms of a licence or other permission; and/or
 - B. the *Copyright Act 1968*, the Copyright Regulations, any other applicable legislation, relevant decisions of courts or tribunals (including the Copyright Tribunal), and other binding legal requirements, conditions or guidelines.

1.2 Scope

This Code applies to those Collecting Societies that have agreed to be bound by the Code.

1.3 Objectives

The objectives of this Code are:

- (a) 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;
- (b) to promote confidence in Collecting Societies and the effective administration of copyright in Australia;
- (c) to set out the standards of service that Members and Licensees can expect from Collecting Societies; and
- (d) to ensure that Members and Licensees have access to efficient, fair and low cost procedures for the handling of complaints and the resolution of disputes involving Collecting Societies.

2. OBLIGATIONS OF COLLECTING SOCIETIES

2.1 Legal Framework

Each Collecting Society will comply with:

- (a) the *Corporations Act 2001* and the Corporations Regulations;
- (b) the *Copyright Act 1968* and the Copyright Regulations;
- (c) its Constitution;
- (d) the Attorney-General's Guidelines for Declared Collecting Societies (where applicable);
- (e) its obligations under the *Privacy Act 1988*, including the National Privacy Principles, or any Privacy Code that applies to the Collecting Society; and
- (f) any other applicable legislation, relevant decisions of courts or tribunals (including the Copyright Tribunal), and other binding legal requirements, conditions or guidelines that apply to the Collecting Society.

2.2 Members

- (a) The membership of a Collecting Society will be open to all eligible creators of copyright material, and to anyone who owns or controls copyright material, in accordance with the Constitution of the Collecting Society.
- (b) Each Collecting Society will treat its Members fairly, honestly, impartially, courteously, and in accordance with its Constitution and any Membership Agreement.
- (c) Each Collecting Society will ensure that its dealings with Members are transparent.
- (d) Each Collecting Society will provide a copy of its Constitution to a Member at the time that the Member first joins the Collecting Society, or at any time on request. A Collecting Society will also provide a copy of its Constitution to a potential Member on request.

2.3 Licensees

- (a) Each Collecting Society will treat Licensees fairly, honestly, impartially, courteously, and in accordance with its Constitution and any licence agreement.
- (b) Each Collecting Society will ensure that its dealings with Licensees are transparent.
- (c) Each Collecting Society will:
 - (i) make available to Licensees and potential Licensees information about the licences or licence schemes offered by the Collecting Society, including the terms and conditions applying to them, and about the manner in which the Collecting Society collects remuneration and/or licence fees for the use of copyright material;
 - (ii) to the extent it reasonably can, having regard to the complexity of the questions of fact and law necessarily involved, take steps to ensure that all licences offered by the Collecting Society are drafted so as to be plainly understandable to Licensees, and are accompanied by practical and suitable explanatory material; and
 - (iii) consult with relevant trade associations in relation to the terms and conditions applying to licences or licence schemes offered by the Collecting Society.
- (d) Licence fees for the use of copyright material will be fair and reasonable. In setting or negotiating such licence fees, a Collecting Society may have regard to the following matters:
 - (i) the value of the copyright material;
 - (ii) the purpose for which, and the context in which, the copyright material is used;
 - (iii) the manner or kind of use of the Copyright Material;
 - (iv) any relevant decisions of the Copyright Tribunal; and

- (v) any other relevant matters.

2.4 Distribution of Remuneration and Licence Fees

- (a) Each Collecting Society will maintain, and make available to Members on request, a Distribution Policy that sets out from time to time:
 - (i) the basis for calculating entitlements to receive payments from remuneration and/or licence fees collected by the Collecting Society (**Revenue**);
 - (ii) the manner and frequency of payments to Members; and
 - (iii) the general nature of amounts that will be deducted from Revenue before distribution .
- (b) Each Collecting Society will distribute payments to its Members in accordance with its Constitution and Distribution Policy.

2.5 Collecting Society Expenses

Each Collecting Society will deduct from its total Revenue:

- (a) the expenses of managing and operating the Collecting Society; and
- (b) any other amounts authorised by its Constitution. These may include, for example, the costs of promotional activities, educational programs, cultural funds, donations in support of creators and owners of copyright material, membership of industry associations, or other charitable purposes.

2.6 Governance and Accountability

- (a) The Board of Directors of a Collecting Society will be accountable to its Members.
- (b) Each Collecting Society will at all times maintain proper and complete financial records, including in relation to:
 - (i) the collection and distribution of Revenue; and

- (ii) the payment by the Collecting Society of expenses and other amounts described in clause 2.5.
- (c) Each Collecting Society will ensure that its financial records are audited at least annually.
- (d) Consistent with its obligations under the *Privacy Act 1988* and any applicable duty of confidentiality, a Collecting Society will provide a Member, on request, with reasonable information about that Member's entitlement to receive a payment from Revenue.
- (e) Each Collecting Society will include in its Annual Report information about:
 - (i) total Revenue during the reporting period;
 - (ii) the total sum and general nature of expenses and other amounts described in clause 2.5; and
 - (iii) the allocation and distribution of payments to Members in accordance with the Distribution Policy.

2.7 Staff Training

Each Collecting Society will take reasonable steps to ensure that its employees and agents are aware of, and at all times comply with, this Code. In particular, a Collecting Society will take reasonable steps to ensure that its employees and agents are aware of the procedures for handling complaints and resolving disputes set out in clause 3, and are able to explain those procedures to Members, Licensees and the general public.

2.8 Education and Awareness

- (a) Each Collecting Society will engage in appropriate activities to promote awareness among Members, Licensees and the general public about the following matters:
 - (i) the importance of copyright;

(ii) the role and functions of Collecting Societies in administering copyright generally; and

(iii) the role and functions of that Collecting Society in particular;

and will make information about these matters available, on reasonable request, to Members, Licensees and the general public.

(b) In deciding what activities are appropriate for the purposes of paragraph (a), a Collecting Society will take into account the following factors:

(i) its size;

(ii) the number of Members it has;

(iii) the number of Licensees it has;

(iv) the amount of Revenue it collects annually; and

(v) the possibility of undertaking activities jointly with another Collecting Society.

(c) Without limiting paragraph (a) or any other obligation in this Code, each Collecting Society will produce and make available appropriate information about the following:

(i) the eligibility criteria for membership of the Collecting Society;

(ii) the benefits of membership of the Collecting Society;

(iii) the responsibilities of Members under the Constitution of the Collecting Society and any Membership Agreement;

(iv) any policies and procedures of the Collecting Society that affect Members;

(v) the benefits to Licensees of obtaining a licence from the Collecting Society;

- (vi) the responsibilities of Licensees under a licence granted by the Collecting Society, and under the *Copyright Act 1968* and other applicable laws; and
- (vii) any policies and procedures of the Collecting Society that affect Licensees.

3. COMPLAINTS AND DISPUTES

- (a) Each Collecting Society will develop and publicise procedures for:
 - (i) dealing with complaints from Members and Licensees; and
 - (ii) resolving disputes between the Collecting Society and:
 - A. its Members; and/or
 - B. its Licensees.
- (b) The procedures developed under paragraph (a) will apply to any complaint about a matter covered by the Code which adequately identifies the nature of the complaint and the identity of the person complaining.
- (c) The procedures developed under paragraph (a) will comply with the requirements of Australian Standard ISO 10002-2006 – *Customer Satisfaction*. In developing its procedures, a Collecting Society will have particular regard to the following principles:
 - (i) The procedures should define the categories of complaints and disputes they cover and explain the way in which each will be dealt with.
 - (ii) Information on how to make complaints should be readily accessible to Members and Licensees.
 - (iii) Each Collecting Society should provide reasonable assistance to a Member or Licensee in the formulation and lodgement of a complaint.

- (iv) The procedures should recognise the need to be fair to both the person complaining and the Collecting Society to which the complaint relates.
 - (v) The procedures should specify by position who in the first instance will handle complaints on behalf of the Collecting Society.
 - (vi) The procedures should indicate time frames for the handling of complaints and disputes.
 - (vii) Each Collecting Society should provide a written response to a complaint that is made in writing.
 - (viii) Each Collecting Society should establish appropriate alternative dispute resolution procedures.
 - (ix) Each Collecting Society will ensure that adequate resources are made available for the purpose of responding to complaints and resolving disputes.
- (d) Each Collecting Society will regularly review its complaint handling and dispute resolution procedures to ensure that they continue to comply with the requirements of this Code.

4. PUBLICITY AND REPORTING

- (a) Each Collecting Society will:
 - (i) take appropriate steps to publicise this Code and the fact that it has agreed to be bound by it; and
 - (ii) make copies of the Code available to Members, Licensees and the general public on request.
- (b) Each Collecting Society will include in its Annual Report a statement about its compliance with this Code.

5. MONITORING, REVIEW AND AMENDMENTS

5.1 Code Reviewer

- (a) The Collecting Societies that have agreed to be bound by this Code will appoint a Code Reviewer with specialist expertise in administrative law, copyright law and/or licensing practices to perform the functions conferred by paragraph (c).
- (b) The Code Reviewer will be independent of the Collecting Societies and will have no association with any of them. Neither a lack of independence nor any “association” will, however, be inferred purely by virtue of that person having provided professional services to a collecting society of a kind that does not, or did not, relate to a matter covered by the Code. The Code Reviewer will be appointed for a minimum period of three years.
- (c) The functions of the Code Reviewer are:
 - (i) to monitor and prepare annual reports on the level of compliance by Collecting Societies with the obligations imposed on them by this Code;
 - (ii) as part of the functions under subparagraph (i), to consider complaints from Members or Licensees in accordance with clause 5.2 (c); and
 - (iii) to conduct a review of the Code in accordance with clause 5.3.
- (d) Each Collecting Society will contribute to the costs and expenses of the Code Reviewer as agreed from time to time.

5.2 Annual Compliance Monitoring and Reporting

- (a) For the purposes of performing his or her functions under clause 5.1(c), the Code Reviewer may undertake such consultations as he or she considers appropriate. Without limiting his or her discretion, the Code Reviewer may:
 - (i) call for submissions from Members, Licensees and the general public, and from groups representing them, on the level of compliance by Collecting Societies with the obligations under this Code;
 - (ii) convene meetings with such individuals or groups as he or she considers appropriate; and

- (iii) consult with the Commonwealth Department(s) responsible for the administration of the *Copyright Act 1968* and such other Commonwealth, State or Territory Government agency as he or she considers appropriate.
- (b) In addition to the consultations undertaken in accordance with paragraph (a), each Collecting Society will report annually to the Code Reviewer on that Collecting Society's compliance with this Code, including:
 - (i) its training of employees and agents in accordance with clause 2.7;
 - (ii) the activities it has undertaken under clause 2.8(a); and
 - (iii) the number of complaints it has received and how those complaints have been resolved.

To assist Collecting Societies in complying with this paragraph, the Code Reviewer will develop templates and/or guidelines for the preparation of reports.

- (c) The Code Reviewer may, subject to the terms of this paragraph, receive and consider complaints from Members or Licensees to the effect that a complaint made by the Member or Licensee to the Collecting Society under clause 3 of this Code was not addressed in the manner required by clause 3(c) of the Code.
- (d) Upon receipt of a complaint from a Member or a Licensee of the type referred to in paragraph (c) above, the Code Reviewer must:
 - (i) request of the complainant sufficient information and documentation as to the specific breaches alleged as may be required to elucidate the nature of the complaint;
 - (ii) provide the relevant Collecting Society with full details of the complaint as so elucidated and allow the Collecting Society a reasonable period within which to provide a response;
 - (iii) to the extent that the Collecting Society's response makes allegations against the complainant, provide full details of that response to the complainant and allow the complainant a reasonable time within which to reply to those allegations.

- (e) Having considered the views of both the complainant and the relevant Collecting Society under paragraph (d), the Code Reviewer must form a view on the merits of the complaint that the society failed to comply with cl 3 (c): - namely,
 - (i) whether it is wholly or partly justified;
 - (ii) whether it is wholly or partly unjustified; or
 - (iii) whether some other view is appropriate and if so, what view and for what reason

and inform the complainant and the Collecting Society of that view, making such recommendations as may be appropriate in the circumstances. If the Code Reviewer considers it appropriate, he or she may also report on that complaint in the annual report produced pursuant to paragraph (f).

- (f) Following his or her consultations, and consideration of the Collecting Societies' reports, the Code Reviewer will prepare annually a report on compliance generally by Collecting Societies with this Code. The Code Reviewer will make a copy of the report available to:
 - (i) each Collecting Society;
 - (ii) the Commonwealth Department(s) responsible for the administration of the *Copyright Act 1968*; and
 - (iii) each individual or group that made a submission to the Code Reviewer; and
 - (iv) members of the public.

5.3 Review and Recommendations for Amendment of the Code

- (a) This Code will be reviewed:
 - (i) following the expiry of two years from the Code coming into effect; and
 - (ii) at least once within each subsequent three year period.
- (b) For the purposes of a Review of the Code, the Code Reviewer will:

- (i) invite written submissions on the operation of the Code and on any amendments that are necessary or desirable to improve the operation of the Code;
 - (ii) convene and publicise widely, during the period in which submissions may be made, one or more meetings that Members, Licensees and the general public may attend to make oral submissions to the Review; and
 - (iii) undertake such other consultations as he or she considers appropriate, including consultations of the kind set out in clause 5.2(a).
- (c) Each Collecting Society will inform its Members and Licensees in an appropriate manner that the Review is being conducted and that they may make submissions to the Code Reviewer.
- (d) The Code Reviewer will allow a period of at least two months for the making of submissions.
- (e) At the completion of the period for the making of submissions, the Code Reviewer will prepare a report of the Review, and will make such recommendations as he or she considers appropriate in relation to the operation of the Code, including recommendations for amendments of the Code.
- (f) The Code Reviewer will make a copy of the report of the Review available to:
- (i) each Collecting Society;
 - (ii) the Commonwealth Department(s) responsible for the administration of the *Copyright Act 1968*; and
 - (iii) each individual or group that made a submission to the Code Reviewer; and
 - (iv) members of the public.

6. DEFINITIONS AND INTERPRETATION

6.1 Definitions

In this Code:

Constitution means the documents that establish and govern the operations of a Collecting Society. In the case of a Collecting Society that is incorporated, this would include the Memorandum and Articles of Association of the Collecting Society.

Licensee means:

- (a) a person granted permission by a Collecting Society to use copyright material;
- (b) a person entitled to use copyright material under a statutory licence in the *Copyright Act 1968*; and
- (c) a person who requires a licence from a Collecting Society to use copyright material.

Member means a person who creates copyright material, or who owns or controls copyright material, and who is entitled to be a member of a Collecting Society under its Constitution. This includes creators of copyright material, such as authors, publishers, playwrights, musicians, composers, artists, computer programmers, producers or broadcasters, as well as people or organisations to whom the rights in copyright material have been assigned.

6.2 Interpretation

- (a) Where there is any doubt about the intent or scope of this Code, it should be interpreted in the light of the objectives set out in clause 1.3.
- (b) Where this Code requires a Collecting Society to make information or documents available on request, such request is generally satisfied by making the information or documents available on a website. Where a person requiring the information or documents advises that they cannot access the Internet, the Collecting Society should take reasonable steps to satisfy their request in another way.

TABLE OF AMENDMENTS TO THE CODE OF CONDUCT

Amendment Date	Clause	Amendment
April 2005 Following agreement by the societies	5.3(a)(i)	(a) This Code will be reviewed: (i) following the expiry of two years from the Code coming into effect; and
April 2005 Following triennial review Of the Code of Conduct	2.3(c)(ii)	“Each Collecting Society will: ... (ii) to the extent it reasonably can, having regard to the complexity of the questions of fact and law necessarily involved, take steps to ensure that all licences offered by the Collecting Society are drafted so as to be plainly understandable to Licensees, and are accompanied by practical and suitable explanatory material; and”
May 2007 Following agreement by the Societies	Clause 5.1	Amend paragraph (c) to read as follows: (c) The functions of the Code Reviewer are: (i) to monitor, and prepare annual reports on, the level of compliance by Collecting Societies with the obligations imposed on them by this Code; (ii) as part of the functions under subparagraph (i), to consider complaints from Members or Licensees in accordance with clause 5.2 (c); and (iii) to conduct a review of the Code in accordance with clause 5.3.

	<p>Clause 5.2</p>	<p>Insert new paragraphs after paragraph (b) as follows and renumber the current paragraph (c) as (f):</p> <p>(c) The Code Reviewer may, subject to the terms of this paragraph, receive and consider complaints from Members or Licensees to the effect that a complaint made by the Member or Licensee to the Collecting Society under clause 3 of this Code was not addressed in the manner required by clause 3(c) of the Code.</p> <p>(d) Upon receipt of a complaint from a Member or a Licensee of the type referred to in paragraph (c) above, the Code Reviewer must:</p> <ul style="list-style-type: none"> (i) request of the complainant sufficient information and documentation as to the specific breaches alleged as may be required to elucidate the nature of the complaint; (ii) provide the relevant Collecting Society with full details of the complaint as so elucidated and allow the Collecting Society a reasonable period within which to provide a response; (iii) to the extent that the Collecting Society's response makes allegations against the complainant, provide full details of that response to the complainant and allow the complainant a reasonable time within which to reply to those allegations.
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		<p>(e) Having considered the views of both the complainant and the relevant Collecting Society under paragraph (d), the Code Reviewer must form a view on the merits of the complaint: – namely,</p> <ul style="list-style-type: none"> (i) whether it is wholly or partly justified; (ii) whether it is wholly or partly unjustified; or (iii) whether some other view is appropriate and if so, what view and for what reason <p>and inform the complainant and the Collecting Society of that view, making such recommendations as may be appropriate in the circumstances. If the Code Reviewer considers it appropriate, he or she may also report on that complaint in the annual report produced pursuant to paragraph (f).</p>
<p>April 2008 Further reviewed following triennial review of the Code of Conduct</p>	<p>Clause 5.2 (e)</p>	<p>(e) Having considered the views of both the complainant and the relevant Collecting Society under paragraph (d), the Code Reviewer must form a view on the merits of the complaint that the society failed to comply with cl 3 (c): – namely,</p>
<p>April 2008 Following agreement by the Societies - replacement of superseded Australian Standard</p>	<p>Clause 3 (c)</p>	<p>(c) The procedures developed under paragraph (a) will comply with the requirements of Australian Standard ISO 10002-2006 – <i>Customer Satisfaction</i>.</p>