INQUIRY INTO INTELLECTUAL PROPERTY ARRANGEMENTS

SUBMISSIONS OF APRA AMCOS IN RESPONSE TO THE FINAL REPORT OF THE PRODUCTIVITY COMMISSION

14 FEBRUARY 2017

INTRODUCTION

1. APRA AMCOS is extremely concerned by the Productivity Commission's report on intellectual property arrangements in Australia (**Report**). APRA AMCOS considers that the Report's recommendations and findings reflect a severe prejudice against creators. This approach is myopic in terms of economic policy, and disrespectful to the economic and cultural contribution of Australia's creators, some 90,000 of whom APRA AMCOS represents.

2. The findings and recommendations made by the Commission in respect of copyright law address a wide range of issues, but they have two things in common: they consider the rights already granted to creators to be unduly expansive, and they propose to reduce the ability of creators to license dealings with their works.

3. APRA AMCOS has already raised many of its concerns with Commission's approach to this inquiry in its submissions in response to the Draft Report, although those submissions (and those of the creative communities) were almost entirely disregarded. APRA AMCOS does not wish to repeat its earlier submissions here, but would be pleased to provide a copy and any further assistance as may be required. Rather, these submissions will comment on the following issues:

   (a) Safe harbours;

   (b) Geoblocking;

   (a) Contracting out of copyright exceptions;

   (b) Fair use;

   (c) Orphan works; and

   (d) Governance of collecting societies.

4. For those who deal with copyright on a daily basis – both the law and the commercial and political realities of industry – the errors made in the Report are glaring. The following three examples are illustrative:

   (a) On page 137, the Report states:

   > *Given the nature of licences, when consumers purchase physical copies of works, the rights of creators over the physical copy are 'exhausted' under the 'first sale doctrine', and consumers are able to freely deal with their physical goods as they see fit…"*

The concept of Exhaustion and the First Sale Doctrine are not present in the copyright law of Australia; they are creatures of American copyright law. The reference to "the nature of licences" is irrelevant. To the extent that consumers may deal freely with physical copies, it is because the rights comprised in the copyright are not being exercised.

(b) On page 139, the Report states:

> *The restrictions faced by consumers from contracting out arrangements can be accentuated by TPMs, as the Australian Digital Alliance observed: The problems created for consumers by the combined use of restrictive licensing and TPMs are demonstrated well by the example of the "closed environment" created by most digital music services. When consumers purchase, or rather license, music from an online music service they are routinely restricted (by both license and TPM) from transferring that music to devices that are not licensed for that particular service (eg non-Apple products for iTunes). This is in direct contravention of the individual's rights under s.109A of the Copyright Act…*

This assertion is mired in old download technology, ignoring the prevalence of digital music streaming services in recent years, in respect of which the comment is no longer true.

(c) On page 154, the Report states:

> *The Commission heard three main concerns about collecting societies. First, participants raised concerns about the licence fees charged to users by collecting societies, and in particular, increases in the charges for recorded music. The Association of Liquor Licensees Melbourne Inc. submitted: "… Copyright fees increased significantly in Australia in 2008 following an application by PPCA to the Copyright Tribunal of Australia. As a result, Australian businesses commence paying significantly more, up to 10 times more, for copyright than similar businesses in the USA, UK, Canada and European countries."*

APRA is astounded that the Commission saw fit to rely on submissions made by the Association of Liquor Licensees Melbourne (**ALLM**) as evidence for some its conclusions. APRA has had numerous dealings with ALLM, regarding APRA's nightclub licence scheme to which the ALLM is extremely opposed. On those occasions, APRA has requested information about what the ALLM is, and whom it represents. No such information has ever been forthcoming. The ALLM used to operate a website, which for many years listed its copyright campaign against APRA and PPCA as its sole objective. Its website no longer exists. Its statistics are fabricated, and its assertions are vexatious and designed to mislead. It has made virtually identical complaints to the ACCC, which have been dismissed. All of these points were brought to the Commission's attention in response to the Draft Report but the Commission makes no acknowledgment of this in its Final Report.

5. The Commission's decisions to accept some, and disregard other, evidence demonstrates a willingness on the part of the Commission to make particular recommendations regardless of the material placed before it. For example, the Report argues that the copyright term is too long. The Commission considers that the commercial value of songs lasts from between 2 and 5 years following release, between 3.3 and 6 years for movies, between 1.4 and 5 years for literary works, and for 2 years for visual art. The

Commission argues that given there is little commercial value for creators in having protection beyond that period of time, there is little justification for the copyright term currently provided. The most troubling aspect of the claims in the Report is the implication that creators are being so overcompensated by consumers, so unduly rewarded in the form of copyright royalties, that the law needs to change. How can such an argument be presented without reference to David Throsby and Anita Zednik's 2010 study, *Do You Really Expect to Get Paid? An Economic Study of Professional Artists in Australia*, which found:

(a) The average total arts income of Australian professional artists was $27,700 (median $17,300). The mean income earned from activities outside the arts was $13,500, giving an average total income from all sources of $41,200 (median $35,000).

(b) More than half of all artists (56%) earned less than $10,000 from their creative income, and only 12% earned more than $50,000 from this source.

(c) 16% of all artists had incomes of less than $10,000 in total.

(d) Only about one-third of all artists are likely to be able to meet their minimum income needs from their arts work. Half of all artists are unable to meet their minimum income needs from *all* of the work they do, both within and outside the arts.

(e) More than half of the artists who live with a spouse or partner regard that person's income as important or extremely important in sustaining their creative work.

(f) Artists spent a little more than half of their working time on arts-related activities. A significant percentage of artists claim they would like to spend more time on arts work. The factors that prevent artists from spending more time on arts work are insufficient income and lack of work opportunities.

6. How does the Commission, charged with advising the Government on ensuring that the intellectual property system provides appropriate incentives for the production of creative works, and which purports to do so from an economic evidence-based approach, overlook such key economic evidence about the state of the creative industries? How can recommendations, which uniformly make it more difficult for creators to generate income, be made without addressing economic evidence demonstrating that professional artists are not being sufficiently remunerated to promote high-quality content? The recommendations made by the Commission unmistakably reflect its lack of concern to ensure that creators are appropriately incentivised. In an environment where professional artists simply cannot afford to dedicate their time to producing creative work, and where the average income disincentivises creative careers, it is less likely that copyright policy will achieve its objective of generating the creative content that society wants.

SAFE HARBOUR

7. The Report recommends the expansion of the safe harbour scheme to cover not just carriage service providers, but all providers of online services. APRA AMCOS opposes this recommendation, for the reasons set out in its submissions in response to the Commission's Draft Report.

8. The Safe Harbour regime was introduced in Australia because internet service providers sought protection against liability for copyright infringement for copies that were produced in their networks or services as a result of technical processes, and for copyright infringements committed by third parties using their services. The Safe Harbour regime was implemented to protect Carriage Service Providers (**CSPs**), entities whose activities were merely technical, automatic and passive in providing services to third parties.

9. That the Safe Harbour regime would apply only to CSPs reflects Parliament and industry's understanding at the time the relevant Bills passed. When the Senate debated the *Copyright Legislation Amendment Bill 2004* (which together with the *US Free Trade Agreement Implementation Bill 2004* introduced the changes), the term "Internet Service Provider" or "ISP" was used interchangeably with CSPs; a CSP and an ISP were one and the same.

10. The application of the Safe Harbour regime only to CSPs was deliberate. It followed the same rationale that motivated the Digital Agenda amendments in 2000, about which the Hon Daryl Williams MP stated: "Under the amendments, therefore, carriers and Internet Service Providers will not be directly liable for communicating material to the public if they are not responsible for determining the content of the material. This is a key underlying principle in the Government's approach to regulating the new technological environment. The reforms provide that a carrier or Internet Service Provider will not be taken to have authorised an infringement of copyright merely through the provision of facilities on which the infringement occurs." The intention has always been to provide safe harbour to persons who are not responsible for determining the content of the material being communicated.

11. Limiting Safe Harbour to such services has been the approach among European policy-makers, who have limited the scope of the Safe Harbour regime to activities of "a mere technical, automatic and passive nature, which implies that the information society service provider has neither knowledge of nor control over the information which is transmitted or stored."

12. Throughout its legislative history, the Safe Harbour scheme (and all law reform directed at an internet service provider's liability for copyright infringement) has been targeted toward protecting only those service providers who cannot be expected to have knowledge of the infringing activities taking place on its services. Such service providers are not necessarily limited to CSPs or ISPs. For example, it may well be that a University operating a passive computer network for the benefit of its staff and students would appropriately be protected.

13. However, the proposed extension of the Safe Harbour scheme to include persons who have control over and interest in the activities of its users (such as a social media website making available user generated content) would be contrary to that aim, and a betrayal of the stakeholders who made concessions in previous negotiations.

FAIR USE

14. The Report recommends that Fair Use be implemented in Australia, in place of the current Fair Dealing provisions. The Report suggests that Australia should follow the United States, South Korea and Israel in implementing a Fair Use regime, noting that those countries are world leaders in innovation.

15. The Commission's recommended changes would supposedly allow Australia to innovate as quickly and as successfully as those countries. Is it really plausible that the fundamental impediment to Australia innovating as successfully as those countries is a particular scheme of defences to copyright law? Perhaps the abilities of those countries to innovate successfully might be more connected to the way those countries treat education, or calibrate their tax laws, or promote a culture of innovation. For example, a more relevant explanation might be that South Korea spends a higher proportion of GDP on R&D than any other country on the planet, having in the last few years overtaken Israel (now in second place) and the United States (in fourth place).

16. The Report also selectively refers to those three countries as innovative role models, implicitly suggesting that Fair Use is a panacea that separates world leading innovation hubs from less innovative jurisdictions. There are other Fair Use jurisdictions, which the Report does not refer to – for example, Poland. It simply is not the case that a Fair Use regime would transform Australia into a world leading innovation hub. The selective use of those countries as precedents gives a misleading impression of the benefits to be had from implementing Fair Use, based on an assumption of causation that is unfounded.

17. The far more sensible inquiry into the UK's intellectual property arrangements, the Hargreaves Report of 2011, addressed the very point described above. When that Review visited Silicon Valley prior to finalising its report, they met with companies such as Google, Facebook and Yahoo, as well as with investors, bankers, lawyers and academics. There, they learned of some of the benefits that Fair Use had in the American innovation scene. The Review wrote: "Does this mean, as is sometimes implied, that if only the UK could adopt Fair Use, East London would quickly become a rival to Silicon Valley? The answer to this is: certainly not. We were told repeatedly in our American interviews, that the success of high technology companies in Silicon Valley owes more to attitudes to business risk and investor culture, not to mention other complex issues of economic geography, than it does to the shape of IP law."

18. Another example of employing dubious "evidence" to support this recommendation is Table 6.1 at page 170. That table is a superficial exercise in setting out differences between the Australian Fair Dealing and the US Fair Use systems. It provides illustrative scenarios and then marks each one with a red cross, designating that such activity is not permitted under Australian copyright law, and each one with a green tick or a "potentially fair use" in the column pertaining to American copyright law. First, the sources cited are organisations that have been actively lobbying for the introduction of Fair Use, and would stand to benefit from its introduction. Secondly, the assertions are at best simplistic, and plainly inaccurate at worst. The illustrative scenarios give us scant detail about the all-important purpose of activity, on which basis it will be determined whether a dealing is fair under Australian law. For example, the scenario of an election advertisement using a sample of a song used in an opponent's advertisement may well be a fair dealing if done for the purpose of criticism, or satire. Likewise, the scenario of "researchers accessing a database for text and data mining" may be a fair dealing if done for the purpose of research or study. Another scenario, involving a rapper "paying homage" to another well-known song by using the opening lyrics, could be a fair dealing in certain circumstances. In other circumstances, it is easy to see why the rapper should share with the other creator any rewards received for the work, proportionate to each contributor's contribution. Other scenarios are marked with a red cross, as though they are not permitted under the Australian Act, when in fact such activity would be covered by statutory licences, such as a teacher wanting to record a specific TV or radio news program for use in class, or a teacher copying a single chapter of a book for inclusion in a set of class materials, and so on. The table is profoundly misleading.

19. The Report also makes the unfounded assertion that "evidence suggests the certainty of Australia's existing arrangements is overstated, with a lack of adaptability resulting in uncertainty." For a regime that is apparently uncertain, there is a remarkable lack of cases litigated on the parameters of the Fair Dealing provisions. For example, in the decade since the implementation of the fair dealing defence for parody or satire, there have been zero cases brought to test its boundaries. Rather than being uncertain, this is an example of a certain and prescriptive law changing the shape of the industry in the manner parliament desires, without causing creators to have to spend the time and money required to understand what is intended by an open-ended statute. But the Report disregards that evidence and attempts to make the argument that a regime that is open-ended by design is more certain than one which is prescriptive.

20. APRA AMCOS rejects the suggestion that any uncertainty caused by a flexible Fair Use system will be remedied by the wholesale importation of foreign jurisprudence into the Australian system. The American and Australian systems are notably different in many respects, and one cannot (and should not) rely on American precedent to make decisions about Australian copyright law. The Fair Use regime in American copyright law is undoubtedly more favourable to users of copyright materials than the Fair Dealing regime in Australian copyright law; but many aspects of American copyright law are significantly less favourable to consumers than their equivalents in Australian copyright law, including the American use of statutory damages as relief for infringement. Deferring to another jurisdiction is inappropriate, given clear differences between jurisdictions, economies and industries. And deferring to another jurisdiction in respect of certain aspects of its jurisprudence, and not others, is likely to distort the balance that is supposed to be present in copyright policy.

GEOBLOCKING

21. The Report recommends that the Copyright Act be amended to make clear that it is not an infringement for consumers to circumvent geoblocking technology, and that any international agreements that would prevent or ban consumers from circumventing geoblocking technology be avoided.

22. APRA AMCOS' starting point is that it is the prerogative of the copyright owner to determine how it wishes to deal contractually with its copyrights in different jurisdictions. There are many valid reasons why a company will want to offer different terms and charge different prices from jurisdiction to jurisdiction:

(a) content is often funded by advertising, product placement and sponsorship, which all must target local audiences and tastes;

(b) funding is dependent on an ability to demonstrate international income streams;

(c) there are different costs involved in operating in different jurisdictions;

(d) there are different tariffs and taxes, which can lead to price differences;

(e) currency fluctuations mean that, if consumers are purchasing from a different jurisdiction, a company's revenue would be unpredictable; and

(f) price discrimination enables a company to increase its sales to low-income countries whose consumers would not be able to afford a global price. Without price discrimination (which may at times have a negative impact on Australia) it is likely that the developing world would be deprived of modern content.

23. There are also efficiency benefits which arise from geoblocking. Collecting societies remain the most reliable means for creators to be paid for ongoing uses, and the distribution of royalties is made possible by knowing in which jurisdiction the product was consumed.

24. Circumventing geoblocking is also likely to discourage the proliferation of local content providers and local subsidiaries of international content providers, all of which are precisely the kinds of innovative businesses the Government seeks to encourage.

25. On a broader policy level, circumventing geoblocks has the potential consequences of marginalising minority languages and cultures, and discouraging investment in local content creation. Further, Australia stands to lose out on tax revenue if Australians are purchasing products under the guise of being based in a different jurisdiction.

26. Finally, APRA AMCOS challenges the evidence on which Commission has apparently founded its recommendations with regard to geoblocking. Referring to evidence from 2012 quoted in the CHOICE submission, the Commission concludes at page 142 of the Report:

> "*The evidence supports the finding that the use of geoblocking technology is widely imposed on Australian consumers and it frequently results in Australian consumers being offered a lower level of digital service (such as a more limited music or TV streaming catalogue) at a higher price than in overseas markets*."

27. At page 143 of the Report, the Commission then quotes from the Australian Parliament's House of Representatives Standing Committee on Infrastructure and Communications 2013 report *At What Cost? IT pricing and the Australia tax* as follows:

> "*Music: Across more than 70 products Australian prices were, on average, 52 per cent more expensive, while the median difference was 67 per cent.*"

This leads the Commission to find that:

> "*Although hampered by a lack of comprehensive data, survey analysis submitted by participants to the inquiry showed systematic price discrimination against Australian consumers across a range of copyright-protected categories.*"

28. APRA AMCOS submits that even if this evidence was reliable 4 or 5 years ago, it is no longer accurate today. In 2017, most Australians access their music online by way of subscription streaming services. The market leader in Australia (by some margin) is the Spotify service. The catalogue of music offered on the Australian Spotify service is not more limited than in other jurisdictions, although it is curated to reflect Australian tastes and encourage consumption of Australian music. If consumers are willing to put up with intermittent advertising, access to the Spotify service in Australia is free. A premium Spotify subscription (with no ads) costs Australian consumers AUD$11.99 per month. **Table A** below shows Spotify's monthly pricing in a number of different jurisdictions around the world, converted to USD based on current exchange rates.[1] **Table B** shows Spotify's pricing in the different jurisdictions expressed as a percentage of consumers' average disposable income in each jurisdiction.[2] The tables speak for themselves:

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[1] http://www.xe.com/

[2] https://stats.oecd.org/Index.aspx?DataSetCode=NAAG#

TABLE A

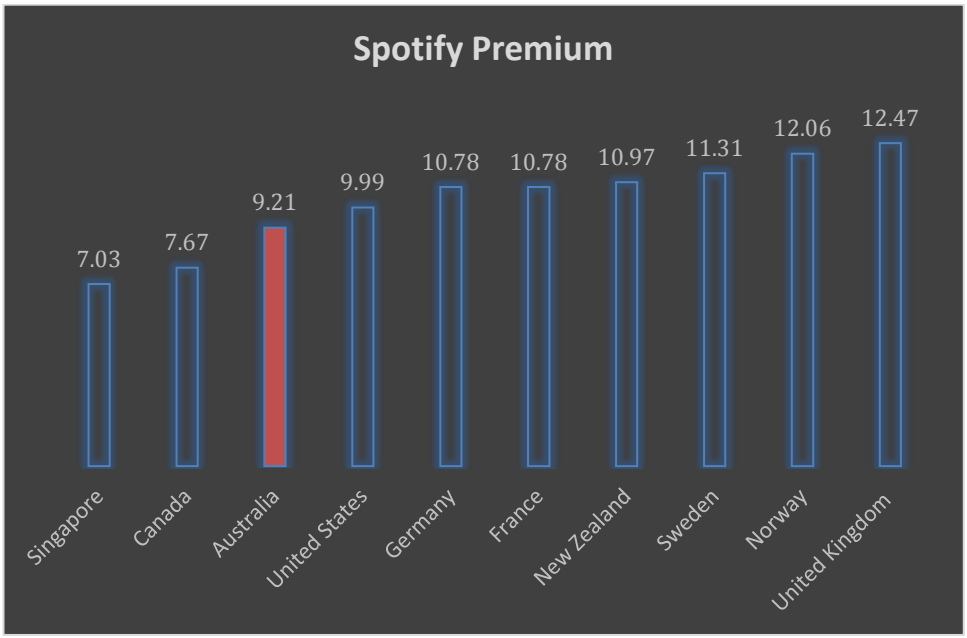
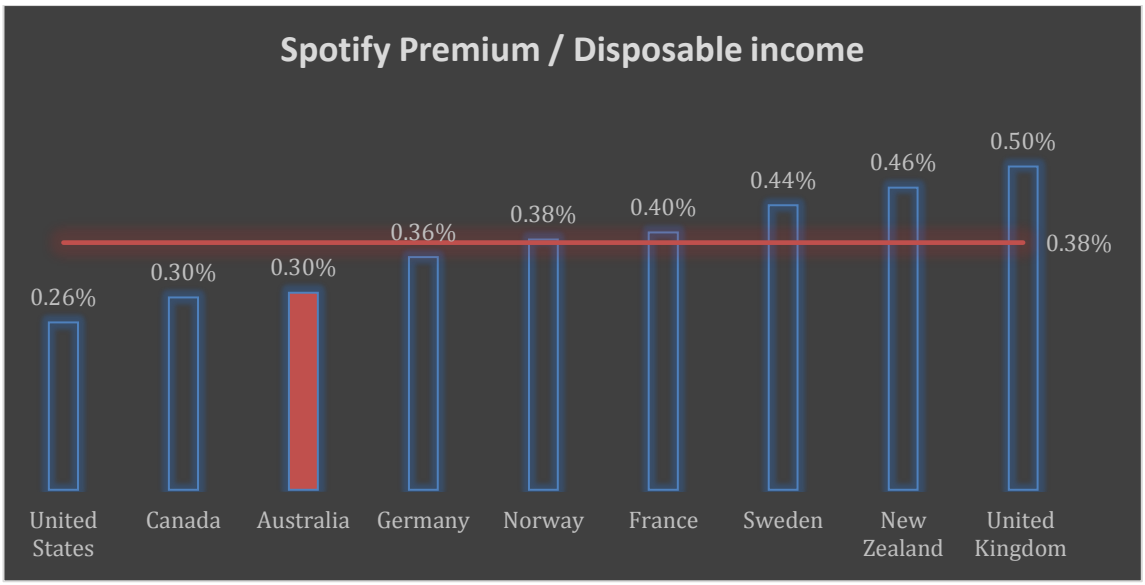


TABLE B



CONTRACTING OUT OF COPYRIGHT EXCEPTIONS

29. The Report recommends that the Copyright Act should be amended to make unenforceable any part of an agreement restricting or preventing a use of copyright material that is permitted by a copyright exception.

30. APRA AMCOS considers that, as a matter of law, a licensor cannot enforce that part of an agreement that licenses a licensee to deal with a work in a manner that is permitted in any event under the legislation – unless the licensor is providing something beyond what

is already permitted by law. Without providing that something extra, there is no consideration flowing from the licensor.

31. APRA AMCOS would never, for example, seek to prevent a licensee from relying on the fair dealing exception for the purposes of parody or satire. However, there may be instances where the particular arrangements provided for in the legislation do not suit the licensee, and the parties wish to agree on arrangements that accord with their specific circumstances. To amend the legislation to prohibit provisions referable to a copyright exception would be confusing when commercial practice is to negotiate terms that suit both parties. APRA AMCOS considers that these matters are better dealt with under Consumer Law and the law of unfair terms. For example, section 29(1)(n)(ii) of the Australian Consumer Law prohibits a person from making a false or misleading representation concerning a requirement to pay for a contractual right that a person has under a law of the Commonwealth.

ORPHAN WORKS

32. APRA AMCOS is open-minded to sensible reforms to enable the unlicensed use of orphan works where diligent attempts to locate an author have failed.

33. It is worthwhile to note that an effective practical antidote to orphan works has always been the thorough and comprehensive maintenance of information relating to copyright interests, such as that compiled over the course of more than 90 years by APRA AMCOS in conjunction with its international affiliates. It is such an endeavour that has prevented orphan works from becoming a significant issue in the music industry.

GOVERNANCE OF COLLECTING SOCIETIES

34. The Report recommends that the Government strengthen the governance and transparency arrangements for collecting societies. In particular, it says the ACCC should undertake a review of the current Copyright Collecting Societies' Code of Conduct, assessing its efficacy in balancing the interests of copyright collecting societies and licensees. Further the review should consider whether the current voluntary Code represents best practice, contains sufficient monitoring and review mechanisms, and should be mandatory for all collecting societies.

35. APRA AMCOS notes that these recommendations were not in the Commission's draft report and were therefore not the subject of detailed submissions from APRA AMCOS or the other Australian copyright collecting societies. Furthermore, APRA AMCOS understands that the Commission chose not to consult with the current independent Code Reviewer, the retired Federal Court judge the Hon. Dr Kevin Lindgren AM, QC, in relation to its recommendations.

36. APRA AMCOS has no significant concerns about strengthening the governance and transparency arrangements for collecting societies; in fact, APRA AMCOS considers its governance and transparency arrangements to be best practice. However, APRA AMCOS is unable to understand the basis for the recommendation, and objects to any implication that its operations are in any way substandard. The following sets out APRA AMCOS's experience with the Code, and then comments on the role that the ACCC already plays in APRA AMCOS's governance.

37. The Code addresses a number of aspects of the relationship between societies, members and licensees, setting minimum standards for the societies' conduct. For a society, an essential element of complying with those standards is maintaining detailed records of its operations, for the sake of independent external review, which is then annually published by the Code Reviewer. The Code Reviewer's reports survey every single complaint made against each collecting society, and comment on whether the complaints reveal a breach of the Code by the society. The Code requires each society to report to the reviewer on its own compliance, including:

(a) its training of employees and agents to ensure that they are aware of, and at all times comply with, the Code, and in particular that they are aware of the procedures of handling complaints resolving disputes and are able to explain those procedures to members, licensees and the general public;

(b) the activities it has undertaken to promote awareness among members, licensees and the general public about the importance of copyright; the role and function of collecting societies in administering copyright generally; and, the role and functions of the particular society; and

(c) the number of complaints it has received and how those complaints have been resolved.

38. Additionally, the Code Reviewer is empowered to call for submissions from members, licensees and the general public on the level of compliance by collecting societies with their obligations under the Code. Each year, the Code Reviewer has ensured that wide advertisement of the review, and of the opportunity to make submissions, has taken place.

39. A significant exposition of the Code's effectiveness in creating such a harmony between the societies and their members and licensees is in the dramatic reduction of complaints received. Since the Code has been implemented, the reviews have shown a significant decrease in the number of complaints made, leading to a plateau. In 2003, 52 complaints were recorded; in 2004, 42; in 2005, 31; in 2006, 22; in 2007, 24; in 2008, 21; in 2009, 12; in 2010, 9; in 2011, 6; in 2012, 7; in 2013, 11; in 2014, 7; in 2015, 14; and in 2016, 5. The 2016 reporting year, being the most recent on record, marked the lowest number of complaints received in any year since the inception of the Code. In respect of each of the complaints made in respect of that period, the Reviewer considered each to have been resolved satisfactorily. These are unambiguous indications of a system working well.

40. The Commission's primary concern with the collecting societies appears to be that there is a lack of transparency, in particular relating to distributions to members. Each society, of course, has different distribution rules and practices, but in each case, distribution rules are determined by the society's Board and are publicly available. The distribution rules of the declared societies are subject to the jurisdiction of the Copyright Tribunal.

41. The Commission seems to be under the misapprehension that licensees of collecting societies are entitled to know precisely to whom (and even in what amount) their licence fees are distributed – of course this is not the case. Distributions are made under a contract between the society and its members. Licence fees are paid under contracts between the society and licensees. Licence fees are paid either in consideration for the right to use the product in question, or as compensation for the compulsory licence to use copyright material. The notional bargain is complete when the licensee receives the goods or services.

42. The transparency which collecting societies strive towards (and have as an obligation under the existing Code) properly relates to the process and methodology of the society's distributions, both of which, in the case of APRA AMCOS, are detailed in its Distribution Rules and Distribution Practices. However, it is utterly inappropriate that the principle of transparency under the Code be extended to the point that licensees become entitled to know the precise amounts distributed to copyright owners. APRA AMCOS does publish information regarding the amounts that are distributed from different sources, each year. To provide more information would be to breach the confidentiality obligations that APRA AMCOS owes to its members and licensees and violate the privacy rights of those same groups. How much individual copyright owners get paid for the use of their material is confidential and private financial information. Furthermore, in many instances to reveal the amount collected or distributed in more granular detail would be to reveal commercial in confidence information about licensees' revenue and market share.

43. To a large extent, APRA AMCOS is already subject to significant (and welcome) scrutiny from the competition regulator, as well as the Copyright Tribunal. APRA has applied for and been granted consecutive authorisations from the ACCC. Each authorisation involves a thorough audit of APRA's operations, and a comprehensive public consultation. The most recent authorisation, in 2014, was granted for 5 years – being the longest authorisation ever granted to APRA. The ACCC is also entitled to involve itself in any annual Code compliance audit, and any triennial Code review.

44. It is essential to factor into this discussion the Copyright Tribunal, a specialist Tribunal established under the *Copyright Act* to prevent rights-holders such as APRA AMCOS from abusing their position. A licensee or person desiring a licence has a statutory right to apply to the Tribunal for a determination of reasonable terms on which a licence should be granted. The Tribunal is specifically required to take into consideration competition considerations. In proceedings concerning voluntary licences and licence schemes, the Tribunal must, if requested by a party to the proceedings, consider relevant guidelines (if any) made by the ACCC. The Tribunal may also make the ACCC a party to the proceedings (if the ACCC asks to be made a party and the Tribunal is satisfied that it would be appropriate to do so). When the Tribunal has made an order in relation to a licence scheme, a person who complies with the terms is in effect deemed to have the necessary licence. Accordingly, collecting societies cannot unreasonably refuse a licence or unreasonably impose its terms.

45. APRA AMCOS submit that its operations are heavily scrutinised on a regular ongoing basis, as well as from time to time when particular issues arise that involve other government commissions. APRA AMCOS welcomes any meaningful opportunity to improve its practices, but cannot understand the basis for the Report's recommendation, especially in light of the Report's own findings that:

(a) collecting societies' payments-expense ratio is not significantly different to that of collecting societies overseas (noting that APRA AMCOS at 12.4% is actually outperforming the international comparator PRS for Music at 13%, in this respect); and

(b) all of the societies have been found, over more than a decade now, to generally comply with the Code.

46. In respect of making the Code mandatory, again APRA AMCOS cannot understand the justification for the recommendation. All the major collecting societies sign up voluntarily to the Code. Putting to one side that the mere making of the recommendation

implies that there is a problem with the societies' governance, or with their compliance with the Code, what practical problem is the Commission trying to solve?

CONCLUSION

47. APRA AMCOS considers the Report, in so far as it relates to copyright at least, to be unhelpful to achieving the objectives set out in the terms of reference. The Report relies on flawed evidence to support the conclusions it apparently always intended to reach. APRA AMCOS either objects to the recommendations, or struggles to understand the basis on which they are made.

48. APRA AMCOS urges the Government to disregard the Report's partisan findings and recommendations. Rather, the Government should consult and engage with reasonable individuals on all sides of the debate to discuss sensible options to renew aspects of copyright law so as to promote innovation while ensuring that adequate incentives are offered to creators.

49. To that end, APRA AMCOS re-iterates its willingness to work with the Government to provide whatever support is required to progress a sensible agenda for copyright reform, as opposed to the recommendations in the Commission's Report.

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