

COPYRIGHT AGENCY LIMITED CORPORATE GOVERNANCE STATEMENT

26 November 2015

Preamble

Copyright Agency is a not for profit company limited by guarantee which manages collective licensing of copyright works on behalf of Australian and foreign creators and publishers. It has been appointed by the Australian government and the Copyright Tribunal to administer the statutory schemes in the *Copyright Act (1968)* for education, government and the print disabled, and has also been appointed to administer the Australian resale right scheme for visual artists.

The Board of Copyright Agency is responsible for the good order and the success and direction of Copyright Agency and to that end has adopted this governance statement.

1 FOUNDATION FOR MANAGEMENT AND OVERSIGHT

1.1 Role of the Board

The Board is responsible for the policy and strategic direction of Copyright Agency. Copyright Agency's core function is to license users of copyright material to make reproductions and communications of copyright works under appropriate provisions of the *Copyright Act 1968*, and to distribute money collected fairly and equitably to copyright owners and creators. The Board also has overarching responsibilities as the trustee of the revenue the company receives, including those listed in item 9 below.

The principal functions of the Board are to:

- a. set the long term goals and strategy for Copyright Agency and provide direction for the management of Copyright Agency;
- b. approve and monitor annual budgets and long term strategic plans;
- c. review progress against approved strategies, plans, performance objectives and budgets;
- d. review and monitor the management of monies held in trust by Copyright Agency for members and other rightsholders, including monitoring compliance with the particular trust obligations set out in Copyright Agency's Constitution;
- e. review, ratify and monitor systems for risk management, internal controls, codes of conduct and legal compliance;
- f. approve and monitor financial and other reporting;
- g. appoint and remove the Chief Executive;
- h. where appropriate and on the recommendation of the Chief Executive, ratify the appointment and removal of senior executives;
- i. determine the Scheme of Allocation for Copyright Agency's distributions;
- j. determine the remuneration for the Chief Executive and other senior managers;
- k. delegate specific powers and responsibilities to the Chief Executive and other managers for the day to day management of Copyright Agency;
- l. provide other input as required.

1.2 Role of the Chief Executive

- 1.2.1 Copyright Agency's Constitution authorises the appointment of a Chief Executive who will be authorised to manage Copyright Agency in accordance with the directions of the Board and with the strategy, policies and budgets approved by the Board to achieve agreed goals.

1.2.2 In addition, the Chief Executive is formally delegated by the Board to:

- a. authorise all expenditures as approved by the Board in the budget, subject to:
 - i. capital expenditure in excess of the limit set by the Board from time to time must be recommended by the Audit and Finance Committee;
 - ii. all payments to the Chief Executive, outside of contracted remuneration, must be authorised by the Chair; and
 - iii. Board approval of the appointment of all consultants where the relevant project and consultant are not specified in the current Board approved budget and the consultancy fees will exceed \$100,000 for the duration of the contract.
- b. execute contracts in accordance with the Board's delegated authority from time to time; and
- c. authorise the admission of members to Copyright Agency, in accordance with the procedures approved by the Board from time to time.

The Chief Executive must notify the Board of all contracts for the appointment of consultants which have been specified in the current Board approved budget where the fees exceed \$100,000 for the duration of the contract.

1.2.3 The Board will carry out an annual formal evaluation of the performance and remuneration of the Chief Executive and, if it sees fit, other senior executives.

1.2.4 A current or former Copyright Agency director shall not be eligible for appointment as the Copyright Agency Chief Executive until at least three years after he or she has ceased to serve as a director.

2 Board structure

2.1 The composition of the Board of Directors is prescribed by the Constitution. At the time of adoption of this statement, the Board comprised:

- a. one Author Director who is an author member of Copyright Agency and who is elected by the author members of Copyright Agency;
- b. one Publisher Director who is a publisher member of Copyright Agency and who is elected by the publisher members of Copyright Agency;
- c. two directors appointed by the Australian Society of Authors;
- d. two directors appointed by the Australian Publishers Association;
- e. up to two directors appointed by the other directors, one of which positions will normally be filled by the Chair if he or she is not already an independent director; and
- f. up to two other directors appointed by the other directors who are not members of the Australian Society of Authors or the Australian Publishers Association.

Eligibility

2.2 The following rules have been adopted for eligibility for appointment as directors on the Copyright Agency Board:

- a. A current or former Copyright Agency Chief Executive will not be eligible for election or appointment to the Copyright Agency Board until at least three years after he or she has ceased to serve as Chief Executive.

- b. Copyright Agency's Constitution requires that employed executives of an author representative body or association or a publisher representative body or another collecting society are not eligible for appointment to the Copyright Agency Board.
- c. The following circumstances are likely to present a conflict of interest for any potential director, and must be promptly notified to the Copyright Agency Board and to the Chief Executive if they apply to a potential director:
 - i. employment in an executive capacity by Copyright Agency, the Australian Society of Authors or Australian Publishers Association or any other collecting society within the last three years; and
 - ii. employment by a significant supplier or customer of Copyright Agency, including as a professional adviser to Copyright Agency.

Skills and experience

2.3 The Board has adopted the following policies for appointment of directors:

- a. The Board will develop and publish a list of desired criteria applicable to all Board positions which will allow self-assessment by potential candidates and the relevant appointing body.
- b. Directors appointed by the other directors will be selected to bring high level business and financial management skills and experience to Copyright Agency which are not otherwise represented by the other directors. That appointment will normally be considered and recommended by a committee appointed for that purpose.
- c. New directors will be encouraged to undertake a course offered by the Australian Institute of Company Directors or the Governance Institute, unless they have previously completed a similar course.

For other appointed directors, Copyright Agency's Board shall consult internally or with the relevant appointing body to ensure that those directors bring a balance of the relevant skills and experience necessary to ensure the effective functioning of the Board.

Chair

2.4.1 The Chair is elected by the other directors on a majority vote, usually at the Board meeting following the Annual General Meeting at which the former Chair retires and on the recommendation of a committee appointed for that purpose. It is considered desirable that the Chair be one of the independent directors and for that purpose the Constitution allows appointment of the Chair as an independent director, where he or she is not already appointed as such.

2.4.2 The key duties and responsibilities of the Chair include:

- a. to work with the Chief Executive to oversee implementation of the goals, strategy and policies approved by the Board;
- b. to facilitate clear communication between the Board and the Chief Executive;
- c. to chair and settle the agenda for Board meetings;
- d. leadership of the directors;
- e. to manage the process for review of the effectiveness of Board functions and the performance of individual Board members.

- 2.4.2 The maximum period for which a person may be elected as Chair is six years.
- 2.4.3 The Board may elect a "Chair Elect", up to six months prior to the end of the current Chair's term. The Chair Elect will in the normal course of events become the next Chair of Copyright Agency.
- 2.4.4 In the event of a casual vacancy in the position of Chair, the Chair Elect will assume the duties of the Chair for the remainder of that term

Individual Directors

- 2.5.1 The *Corporations Act 2001* imposes a number of duties on each director including that each director must exercise their powers and discharge their duties with care and diligence, in good faith and for a proper purpose. A director must not use their position or the information they gain as a director improperly to gain an advantage or for the detriment of Copyright Agency. In particular each director is expected:
- a. to use independent judgment;
 - b. to avoid conflicts of interest, and to disclose such conflicts of interest where they occur;
 - c. to protect the confidentiality of Board meetings and to otherwise protect Copyright Agency's confidential information, including information available to them electronically;
 - d. not to engage in conduct to bring Copyright Agency into disrepute; and
 - e. to attend and participate in Board meetings.
- 2.5.2 Copyright Agency shall ensure that each new director is offered a formal induction into the company as soon as practicable after his or her appointment or election.

2.6 Ethical and Responsible Decision Making

- 2.6.1 Each director shall:
- a. have full access to Copyright Agency's and related information in a timely, accurate manner, with reasonable assistance from the relevant staff; however, in the course of undertaking their duties, a director will not unreasonably interfere with the operations of the staff member or operations of Copyright Agency in this regard;
 - b. allocate sufficient time to enable their duties to be carried out; and
 - c. willingly express opinions and question the assumptions of management and other Board members.
- 2.6.2 While maintaining their fiduciary and confidentiality obligations to Copyright Agency, directors appointed by the Australian Society of Authors and Australian Publishers Association may report to their nominating organisations in general terms on Copyright Agency's activities, policy and direction and shall also keep Copyright Agency informed of the activities of their nominating organisation.
- 2.6.3 Wherever possible, each director and the relevant appointing bodies shall seek to minimise the potential for a conflict of interest. It is acknowledged that being a recipient or the employee of an organisation that is a recipient of Copyright Agency distributions is not regarded as a conflict of interest which would prevent participation in decisions of the Board. However, that status should be disclosed at Board meetings together with any other interest

which could materially interfere with the director's ability to act in the best interests of Copyright Agency.

2.7 Directors' Remuneration

2.7.1 The amount of remuneration for directors is determined by the company in general meeting.

3. Risk management

3.1 Copyright Agency has adopted a risk management policy and plan designed to identify, assess and manage risk. Copyright Agency has established and will continue to maintain internal control systems to monitor, audit and report on risk management strategies and any changes to its risk profile.

4. Meetings

4.1 Meeting frequency and location

4.1.1 The Board shall ensure that it meets between five and eight times each year, including a Board Retreat and a Board meeting held at the time of the annual general meeting

4.1.2 Board meetings are generally held at the offices of Copyright Agency.

4.2 Board minutes and documents

4.2.1 The minutes will contain a concise and accurate review of the discussion at the meeting and the resolutions adopted by the Board and will otherwise comply with the *Corporations Act 2001*. Directors who dissent from any decision taken may request that their dissension be recorded in the minutes.

4.2.2 A complete set of Board minutes is maintained at Copyright Agency's offices, which directors may inspect at any time. A complete set of documents prepared for each Board meeting including the agenda, agenda documents and any tabled documents will be made available to directors via iPads or other electronic device provided by Copyright Agency.

4.2.3 Former directors may, for a proper purpose, inspect Board minutes and other Board documents from the period during which they held office as a director of Copyright Agency.

4.3 Circulated Resolution

4.3.1 Any urgent decision can be dealt with by a circulated resolution.

4.3.2 Circulated resolutions must be signed by all directors other than those who have obtained leave of absence from Board meetings for the period that the resolution is to be circulated.

4.3.3 When the circulated resolution has been signed by all directors other than those to whom leave of absence is granted, the resolution will be entered in the minute book.

4.4 Absence from the Board

- 4.4.1 If a director is absent from two consecutive Board meetings without prior permission or for more than half of the Board meetings in any 12 month period, the other directors may resolve that he or she has vacated the office under article 39(c) of the Constitution.

5. Board Committees

- 5.1 The Board may establish committees and working groups to have oversight and make recommendations on areas of particular concern or interest to the Board. Each committee's role, responsibilities and membership are as agreed to by the Board from time to time.
- 5.2 The Board's standing committees are:
- 5.2.1 Audit and Finance Committee - the terms of reference of this committee shall include ensuring the integrity of financial reporting, oversight of Copyright Agency's auditors and the monitoring of management of Copyright Agency's trust fund. The Audit and Finance Committee shall be chaired by a director who is not the Chair of Copyright Agency's Board.
- 5.2.2 Cultural Fund Committee - the terms of reference of this committee shall include making recommendations to the Board as to the allocation of Copyright Agency's Cultural Fund, monitoring the acquittal of these funds, and reporting to the Board on the progress of funded projects.
- 5.2.3 Nominations and Governance Committee - the terms of reference of this committee shall include implementing a transparent process and criteria for new Board appointments including development of a skills matrix and oversight of Board induction and performance.
- 5.2.4 Remuneration Committee comprising as a minimum the Chair and the convenor of the Audit and Finance Committee, which shall meet at least annually and consider and make recommendations for the remuneration of the Chief Executive.
- 5.3 Board committee meetings are normally attended by the Chief Executive and other senior managers of Copyright Agency who provide secretariat functions and specialist input for that committee.
- 5.4 Copyright Agency's Board committees are usually appointed as advisory committees to make recommendations to the next meeting of the Board. The Board may, however, delegate a specific power to a committee, which delegation will not prevent the Board from exercising that same power, and which delegation may be altered or revoked by the Board at any time.
- 5.5 Minutes of Board committees will contain a concise and accurate summary of the discussion at the meeting and the recommendations of the committee, and will otherwise comply with the *Corporations Act 2001*.

6. Director's protection

- 6.1 The company will hold a complete set of Board papers which can be accessed by directors for a period of at least seven years.

- 6.2 The Board has the right to obtain independent professional advice including legal advice at the cost of Copyright Agency, in respect of matters relating to Copyright Agency's business.
- 6.3 The company will maintain Directors and Officers insurance for each director.

7. Board evaluation

- 7.1 The Chair will initiate an external review and evaluation of the Board's performance at least once in every three years, and the Board will ensure that provision is made for that review in Copyright Agency's budget for the relevant year.
- 7.2 The findings of this review will be discussed at a Board meeting within the following six months.

8 Respect rights of members, rightsholders and other stakeholders

- 8.1 The Board shall ensure that Copyright Agency's communications with members, other rightsholders and other stakeholders encourage their participation in governance, Copyright Agency licence schemes and other benefits offered by Copyright Agency. In particular the Board shall ensure that electronic communications are adopted in a manner which supports costs savings and accommodates members who are unable to receive emails.
- 8.2 The Board is committed to transparency and accountability in communications with its members, licensees and other stakeholders. In particular, it supports the voluntary *Code of Conduct for Australian Collecting Societies* and the reporting obligations it requires.

9 Trust Obligations

- 9.1 The Board has particular obligations in respect of the revenue collected by it on behalf of and held in trust for members. These obligations are described below and categorised as general obligations, voluntary scheme obligations, resale royalty obligations and statutory scheme obligations.
- 9.2 **General Obligations:** For all revenue, the company:
- is prohibited from transferring any part of it to members by way of a dividend, bonus or any benefit other than as a distribution to a member under a scheme of allocation or as a grant for cultural or social purposes; and
 - must keep separate accounts for monies received and monies paid for resale royalty, the statutory schemes and the voluntary schemes.
- 9.3 **Voluntary Scheme Obligations:** This refers to trust obligations in respect of revenue received on behalf of members generally under any licence scheme offered by Copyright Agency which is not a remunerated statutory scheme under the *Copyright Act 1968*. This includes revenue received from foreign CMOs, under press clip and corporate schemes, and from licensing visual art works both directly and under any service arrangement with Viscopy Ltd.

Licensing under voluntary schemes is done in reliance on the mandate of local and foreign rightsholders, and that foreign repertoire is acquired primarily via rights exchange

agreements with foreign CMOs. The key trust obligation of the Board in respect of voluntary licence schemes is that revenue may only be paid only for these three purposes:

- payment of reasonable expenses of operation and other amounts properly chargeable,
- for cultural and/or charitable purposes, up to and no more than 1.5% of total revenue from the voluntary schemes as the directors think fit; and
- allocation and distribution of the balance to “members in accordance with a method of entitlement to be fixed from time to time by the directors”.

9.4 **Resale Royalty Scheme Obligations:** This refers to trust obligations in respect of revenue received under the *Resale Royalty Right for Visual Artists Act 2009*. Most of the relevant obligations are set out in the agreement with the Commonwealth appointing Copyright Agency to manage the scheme, and the key obligations were included in the Constitution as a condition of declaration. For Resale Royalty revenue, the company:

- must not retain any portion for cultural or social purposes;
- may deduct only the proportion permitted by the Commonwealth government for its operating expenses;
- must hold resale royalties for at least six years in a separate fund if the relevant artists cannot be identified, contacted or where entitlement is disputed.

9.5 **Statutory Scheme Obligations:** This refers to trust obligations in respect of revenue received under the remunerated statutory schemes in the *Copyright Act 1968* for which the company is the sole organisation authorised by the Government or the Copyright Tribunal to receive remuneration payable by users (education and government) under those schemes.

This government granted monopoly carries additional fiduciary obligations on the part of the company and its directors. Those obligations are set out in the *Copyright Regulations*, as recommendations in the Attorney Generals Guidelines for declared societies and are confirmed in Copyright Agency’s constitution. The key obligations are:

- to adopt a consistent practice for attributing the receipts and expenditure to each financial year;
- to exercise reasonable diligence in the collection of equitable remuneration, having regard to the expenses likely to be incurred in such collection;
- to ensure that the Distributable Fund in respect of each Accounting Period (that is, the moneys available for distribution to members each financial year or part thereof) is allocated and distributed to the relevant members in accordance with a scheme of allocation adopted by the Board which meets specified criteria for allocation – currently addressed by the Distribution Policy and by obtaining the Board’s approval for each scheme of allocation;
- to pay allocations to members as soon as is reasonably possible after allocation;

- to create a separate Regulation Trust Fund in which the company must hold until expiry of the Trust Period (usually four years) monies:
 - to which a member is entitled where the member cannot be located;
 - to which a non-Member would be entitled if he were a Member;
 - the entitlement to which is disputed;
 - allocated to a Member where the amount of all accumulated entitlements is less than the minimum set by the directors from time to time;
 - for allocation at a later time where the Directors consider that the information available is insufficient or inaccurate to enable an equitable and accurate allocations; and
 - that the company is obliged to hold under arrangements with other CMOs;
- to minimise cross subsidisation of other licence schemes from revenue received under the statutory schemes.