

REVIEW OF AUSTRALIAN COPYRIGHT COLLECTING SOCIETIES

A REPORT TO

THE MINISTER FOR COMMUNICATIONS AND THE ARTS

AND

THE MINISTER FOR JUSTICE

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This document provides an electronic version of the report by Shane Simpson to the Hon Michael Lee MP, Minister for Communications and the Arts, and the Hon Duncan Kerr MP, Minister for Justice, that was published in June 1995. Mr Simpson's findings and recommendations in the Report are currently being considered by the Government.

Printed copies of the Report (ISBN 0 642 22909 0) are held by major Australian academic and community libraries, and by the various collecting societies.

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July 1995

FOREWORD

Copyright ensures that innovation, creativity and imagination are recognised and rewarded. For this reason, copyright is important for all Australians.

In *Creative Nation*, the Government's cultural policy statement, we made a commitment to develop an effective copyright regime which achieves a balance between:

- **rewarding creative Australians;**
- **increasing investment by the copyright industries; and**
- **maintaining access to materials for all Australians.**

As part of this commitment, the Government recognised the important role of the collecting societies who administer copyrights for the vast range of individual creators and other copyright owners in this country, and undertook to provide legislative and other support for these administrations where appropriate. The Government also commissioned Mr Shane Simpson to provide a report on the structure and operations of Australia's collecting societies.

Mr Simpson's comprehensive Review of Australian Copyright Collecting Societies is a milestone. It is the first report to address the activities of Australian collecting societies in such detail, and will be a useful contribution to the Government's policy development in this area. The report makes over 100 recommendations about the activities of Government and the various collecting societies. It is sure to be an important reference tool for academics, lawyers, copyright owners and users of copyright material who need to learn more about the collecting societies.

The report's recommendations will be considered by a working-group made up of representatives from the Department of Communications and the Arts, the Attorney-General's Department, the Department of Industry, Science and Technology, and the Treasury. The working-group will provide advice to the Government on appropriate responses to the recommendations. Collecting societies will also be actively considering the recommendations are particularly relevant to their operations.

On behalf of the Government, we are pleased to release this report and would welcome any comments on its content and recommendations.

MICHAEL LEE

Minister for Communications and the Arts

DUNCAN KERR

Minister for Justice

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1. INTRODUCTION TO THE REPORT

1.1. PURPOSE

1.2. METHODOLOGY

1.3. EXECUTIVE SUMMARY OF FINDINGS

1.4. SUMMARY OF RECOMMENDATIONS TO GOVERNMENT

1.1. PURPOSE

This Review is in fulfilment of the commitment made in the Government's cultural statement **Distinctly Australian**.

The terms of the brief were extensive; they may be summarised as follows:

- to describe how the major societies operate
- to examine their efficiency
- to examine their equity of operation
- to obtain information as to their impact on the cultural economy
- to make recommendations as to how relevant legislation may be amended to promote the efficiency of the societies and the public interest.
- to make recommendations as to the establishment of new societies

1.2. METHODOLOGY

Because the issues that had to be examined for this Report were so various in nature, a team of consultants were retained to provide their specialist knowledge. The issues of quality of management and accounting were examined by Ms Ann Moffatt of Technological Solutions Pty Limited; Associate Professor Dr Simon Sheather of the Australian Graduate School of Management examined the sampling techniques of APRA and CAL, and Mr Chris Doney, Manager of Computing Systems for the Australian Graduate School of Management examined the computing capabilities and efficiencies of the societies. (Acknowledgment is also due to Ms Julie Robb for her extensive assistance with the VISCOPY material.)

Examination of the societies was based in the first instance upon their responses to an extensive questionnaire. Thereafter, each member of the consultancy team met with senior management of the societies (sometimes on several occasions) and elicited further information. Each society was most helpful in responding to the team's extensive enquiries. As was agreed with the commissioners of the Report at the outset, there was no formal submission process and no public hearings by which the views of the public were obtained. An extensive range of industry bodies were contacted and asked if they wished to make a submission. Many did; several chose not to. Further, as a result of newspaper coverage of the Inquiry, some individuals and organisations made contact who had not been directly contacted. All of these views

were taken into account. In preparing the Report, extensive and detailed adjectival material is provided about the societies. This was seen as important because one of the rationales for the Inquiry was the absence of any readily available source of detailed information on the societies. **Whilst the terms of the consultancy contract are such that the Report is confidential to the IDC and the societies, it is recommended that the Report, or rather a version of it, be made publicly available.** Many of the concerns that the public has about collecting societies are based on no information or misinformation. To a great extent this is the fault of the societies themselves but it is to be hoped that the information provided herein will promote better informed comment and discussion.

1.3. EXECUTIVE SUMMARY OF FINDINGS

The procedures by which collecting societies operate are necessarily very complex. This is largely because of the complexity inherent in administering a wide range of rights on behalf of thousands of owners, for a wide range of uses and users. Achieving a satisfactory degree of accuracy in collecting, allocating and delivering the appropriate income to the appropriate rights owners, is an extraordinarily difficult task.

Given this complexity, all societies (throughout the world) must try to strike a balance between the administrative cost of achieving a perfectly accurate capture and delivery system and the maximisation of returns to rights owners. Generally, the societies make a determined effort to achieve this balance and the introduction of new Information Technology is assisting them to this end. The workings of each of the Societies was examined in detail and the procedures by which the data is captured, income is collected, allocations are made and distributions are performed, is generally both efficient and equitable. That is not to say that there are not alternative approaches possible as to each of these matters and it is clear that each of the societies is continually trying to improve their mechanisms. The degree of commitment of the senior staff to such improvement is also evident. The widespread belief that collecting societies are awash with unjustifiable undistributed funds was found to be without basis. The amounts vary according to the nature of the collecting scheme of each society and the stage of development of each society. Certainly, all are striving to minimise such sums and maximise the return to their members. One important qualification to this is the method by which such sums are redistributed and whether those methods are truly appropriate. As the Committee will see, the Report recommends that a greater proportion of the undistributables be allocated to the cultural purposes of the wider industry sector rather than merely redistributed as a windfall to future royalty recipients. The Report recommends important changes to the Copyright Act and the extension of the role of the Copyright Tribunal to cover all copyright licensing schemes. It also recommends the establishment of the position of Ombudsman for collecting societies - a role that must be independent of, not a creature of, the societies. Also recommended, is the establishment of a collecting society for the visual arts - one that is fully representative of the relevant rights owners. It is important that this organisation be established on a firm footing and to achieve this it has been recommended that it receive limited Government funding in its establishment phase, together with the repeal or amendment of s.135ZM.

1.4. SUMMARY OF RECOMMENDATIONS TO GOVERNMENT

[Chapter 1: Introduction To The Report]

(1) That this report, or rather a version of it, be made publicly available.

[Chapter 2: Introduction To Collecting Societies]

(2) That collective administration should be the preferred mid-way house between the exercise of individual exclusive rights and a compulsory statutory licence where mass usage requires that the community be given access to the rights on reasonable terms.

(3) That there be a multiplicity of societies so that individual societies can represent the disparate interests of the separate groups of rights owners.

[Chapter 13: Setting of Rates for Copyright Users]

(4) That the 1% limit (imposed in Section 152(8)) on fees payable by a broadcaster for the broadcasting of published sound recordings be repealed forthwith.

(5) That the half of one cent limitation (imposed in Section 152(8)) on fees payable by the ABC for the broadcasting of published sound recordings be repealed forthwith

(6) That the anomaly that negates the public performance right in sound recordings applying to the use of broadcasts (contained in sound recordings) in public venue (imposed by Section 199(2)) be repealed forthwith.

[Chapter 19: Foreign Distributions, Income And Societies]

(7) That there be a further review of the rules of collecting societies as they relate to relationships with foreign societies and conversely, the rules of foreign collecting societies as they relate to relationships with Australian societies.

[Chapter 21: Undistributable Monies]

(8) That the Attorney General reconsider the Guideline for Declared Societies which obliges them to pay undistributable sums into the general distribution pool after a certain period.

[Chapter 23: Taxation]

(9) That discussions be held with the Australian Taxation Office to rationalise taxation arrangements for the collecting societies.

(10) That tax exempt status be formally accorded collecting societies that are appropriately structured and administered.

[Chapter 30: Funding Of Cultural Or Benevolent Purposes]

(11) That all societies be encouraged to allocate a specific proportion of gross distributions and undistributable funds, to cultural purposes.

(12) That Declared Societies be required to allocate a specific proportion of gross distributions and undistributable funds, to cultural purposes.

[Chapter 31: Review Of The Copyright Act As It Affects Collecting Society Efficiency Or Equity]

(13) That Government should not consider the imposition of statutory licences where commercial voluntary licences, collectively administered, are effective.

(14) That section 135 ZM be amended or repealed so as to permit CAL to collect income in respect of artistic works at the same time as they are surveying educational institutions in respect of their use of literary works.

(15) That educational institutions be provided with a statutory right to reproduce artistic works (other than those already covered by "fair dealing") subject to the payment of equitable remuneration to the copyright owner.

- (16) That there be no statutory licence introduced to grant access to copyright material for the purpose of multi-media exploitations.
- (17) That further inquiry be made as to the matters raised by the Societies as to how the Copyright Act might be amended to improve their effectiveness and efficiency.
- (18) That the jurisdiction of the Copyright Tribunal be expanded.
- [Chapter 32: Jurisdiction And Role Of The Copyright Tribunal]*
- (19) That there be established the position of Ombudsman Of Copyright Collecting Societies.
- (20) That the definition of "licence" in section 136(1) be amended.
- (21) That the Tribunal have as wide a jurisdiction as possible in respect of licences and licence tariffs including the variation, approval and interpretation of all licensing schemes whether the relevant rights are administered under voluntary or statutory licence.
- (22) That the Tribunal have the right to review determinations of the Ombudsman.
- (23) That the procedures of the Tribunal be examined to see how matters might be dealt with, faster and more cheaply.
- Chapter 33: Trade Practices Issues And Collecting Societies*
- (24) That guidelines be drawn up and an approval mechanism instituted, by which those collecting societies which can demonstrate that their structures, procedures, functions and conduct is within those guidelines, are accorded the status of "Qualified Societies".
- (25) That such guidelines be drawn up in consultation with the Trade Practices Commission and the societies.
- (26) That Qualified Societies retain the protection of Section 51 (3) of the Trade Practices Act.
- (27) That a society's input agreement should not be in breach of section 45 if the society is Qualified and the output agreement should not be in breach of section 45 if it is either (a) statutory or (b) approved by the Copyright Tribunal.
- (28) That where there is a purported abuse of a Qualified Society's monopoly power, the prior certificate of the Attorney General be a pre-condition to raising section 46 (1) in legal proceedings.
- Chapter 34: A Copyright Collecting Society For The Visual Arts*
- (29) That VISCOPY be included in the National Cultural Strategy
- (30) That s.135ZM of the Copyright Act be immediately repealed.
- (31) Amendment to Part VB of the Copyright Act to provide a statutory licence for the reprography by educational institutions of artistic works which accompany text
- (32) That Government provide seed funding for the establishment of a collecting society for the visual arts.
- (33) That the Government commit to fully accountable seed funding for VISCOPY for a minimum of seven hundred thousand dollars over two years and a maximum \$1.1 million over five years, depending on the speed with which s. 135ZM is repealed and the statutory educational copying right is introduced.
- (34) That Government not treat its contribution to establishment costs as some species of loan but rather require that at break-even point, the Society be required to pay an amount equivalent to fifty percent of the Government's

grant into the Society's Cultural and Benevolent Fund and to spend the remaining fifty percent on informing the relevant rights owners about the Society and its services.

(35) That VISCOPY be declared as the copyright collecting society to administer the rights granted under the new statutory licence subject only to review of its Articles and Memorandum to ensure equity of membership, control and accountability and its compliance with the criteria set out in this Report for Qualified Societies.

(36) That no organisation have the ongoing right to appoint members to the board of the company. All members must have the right to board membership and no one organisation should have an automatic right to membership or control.

Chapter 35: New Technologies

(37) That, as a matter of urgency, further study be made of the impact of new technologies on copyright collecting societies and potential new methods of collection.

2. INTRODUCTION TO COLLECTING SOCIETIES

2.1. COPYRIGHT, CULTURE AND THE ECONOMY

2.2. TOWARDS A DEFINITION OF COLLECTING SOCIETIES

2.3. COLLECTIVE ADMINISTRATION

2.4. BENEFITS OF COLLECTIVE ADMINISTRATION

2.5. THE ROLE OF STATUTORY LICENCES, COLLECTIVE ADMINISTRATION IN A SYSTEM OF EXCLUSIVE RIGHTS

2.6. MULTIPLE SOCIETIES

2.7. NEW TECHNOLOGIES

2.8. THE DIFFICULTY OF BALANCE

2.9. RECOMMENDATIONS

2.1. COPYRIGHT, CULTURE AND THE ECONOMY

It is little wonder that there is much ignorance and misunderstanding about the purpose and operation of copyright collecting societies. Not only do they operate in an area of law that is little understood even by lawyers, they deal in rights, not things, and as such they challenge people's self-presumed right to what they want to do. This Report is founded upon the belief that copyright plays an essential role in any developed sophisticated society. If society is to recognise creativity, innovation and imagination, then copyright is the principal tool by which we accord that recognition. This is economically expressed by the award of a range of exclusive rights which grant the owner, the power of control and the right of commercial exploitation. At the end of the day, the rights of copyright are an **award** for innovation, creativity and risk taking. It is a recognition that both the culture and the economy of our community is dependant on encouraging and fostering these characteristics. So, fundamental to the existence of bodies established to grant and administer licences of copyrights, must be the belief:

- (i) that copyright is valuable, not merely in the sense of being worth money, but valuable in the sense that our community has chosen to confer on copyright a range of cultural, economic and personal values, and
- (ii) that the collective administration of some of those values is likely to contribute to the community's benefit.

2.2. TOWARDS A DEFINITION OF COLLECTING SOCIETIES

There is no single satisfactory definition of a collecting society except one that vaguely describes an organisation that 'administers copyrights or neighbouring rights on behalf of a group of owners and collects and distributes income in relation to the use of such rights'.

It is sometimes said that collecting societies are better described as being "licensing societies". This is not really accurate as some societies do not grant licences but, rather, administer rights that are granted compulsorily by statute. Indeed, when one looks at a range of collecting societies around the world, it is quickly evident that very few so-called collecting societies, can be accurately compared. Their differences are often subtle but important. "Oils ain't oils" and "Collecting societies ain't Collecting Societies". Even though the name of the society in one country might suggest that it is comparable with its Australian version, one quickly finds that it is likely to:

- administer a widely differing group of rights
- have different membership criteria
- undertake the task in a multitude of ways
- have varying purposes
- be government based, non-profit or completely commercial
- have come into existence by the initiative of different interest groups
- administer systems that are voluntary, whereas others are compulsory
- administer rights on an individual basis whereas others operate "blanket" licences
- have different techniques for identifying users
- have different techniques for identifying owners
- have different techniques for quantifying the amount of the payments
- have different legal structures
- have different reporting and audit requirements
- have different levels of commitment to local culture

For example, although it may be tempting to compare AMCOS with many of its European sister organisations, such comparisons are generally flawed: Most of them collect **all** of the mechanical income derived from records and distribute it to the copyright owners. In Australia, the Major music publishers insist on direct payment from the Major record companies of mechanical royalties payable in respect of the

manufacture/sale of records. This simple initiative thus removes from AMCOS the opportunity to collect, and thus amortise its overhead against, a greater gross income. It means that, for the Major publishers, the organisation is collecting only on the secondary sources of mechanical income (essentially, those which the Majors find uneconomic to collect for themselves or which the independent publishing companies would find uneconomic to collect at all).

In spite of the differences between societies, both within Australia and internationally, collecting societies do have three common features. All societies:

- (i) have machinery for the collection and distribution of income earned from the exploitation of copyrights;
- (ii) aim to advance the economic and creative interests of the owners that they represent; and
- (iii) fulfil their functions by means of collective administration.

2.3. COLLECTIVE ADMINISTRATION

A working definition of "collective administration" is a system of copyright administration whereby "... owners of rights authorise collective administration organisations to administer their rights, that is, to monitor the use of the works concerned, negotiate with prospective users, give them licences against appropriate fees and, under appropriate conditions, collect such fees and distribute them among the owners of rights." ["Collective Administration; Copyright And Neighbouring Rights, WIPO, Geneva 1990, para 8] The differences between collective administration schemes was most usefully summarised in the above WIPO report [para 217] which considers the differences from various viewpoints:

(1) The level of collectivisation:

The organisation may feature:

- (a) Collective representation, individualised authorisation, direct distribution;
- (b) Full collective administration, blanket licensing, distribution among right owners with certain "corrections"; or
- (c) Collective enforcement of rights, blanket licensing, no distribution among individual right owners.

(2) The right owners' freedom of choice between individual and collective ways of administration:

- (a) Right owners can choose freely (at least there is no legal obligation to choose collective administration, even if they may, in practice, have no other choice);
- (b) The law subjects the exercise of rights to the condition of collective administration (for example, in the case of "home taping"); and/or
- (c) The law also determines the only organisation through which the rights can be administered in a collective way.

(3) The scope of rights and right owners covered by collective administration:

- (a) The collective administration organisation may only administer its members' rights.
- (b) In the field determined by the law, the organisation administers the rights of non-members, too ("extended collective administration"), but they may renounce such administration, under certain conditions.
- (c) Extended collective administration without the possibility of renouncing it.

(4) The freedom of the collective administration organisation to set tariffs and other conditions of licenses:

- (a) Free negotiations but in the case of dispute, a court decides;
- (b) There are negotiations between the organisation and the users but any agreement can only be applied if a supervisory administrative body (for example, the Ministry of Culture) approves it;
- (c) The tariffs and other conditions are fixed by legal provisions.

The WIPO report then goes on to comment:

"218. With the examples referred to in the preceding paragraph, the "typology" of collective administration is far from being exhausted. They are, however, sufficient to illustrate that, when a reference is made to collective administration, it may mean ways and forms of such administration which differ in many important aspects. If, e.g., from the various types of administration mentioned above, a (I)(a)-(2)(a)-(3)(a)(4)(a) variant is taken, it is fairly obvious that what emerges is really an appropriate way of administering exclusive rights. At the same time, a (I)(c)-(2)(c)-(3)(c)-(4)(c) variant is only a very small step away from a non-voluntary license system. Actually, there is a need for a fairly great amount of benevolence for speaking even about that small step. Such schemes can be accepted, without serious doubts, only in cases where the minimum rules of the Berne Convention, the Rome Convention and national laws do not provide for unrestricted exclusive rights and, thus, such a restrictive form of exercising rights may be considered to be allowed."

2.4. BENEFITS OF COLLECTIVE ADMINISTRATION

It is an inherent feature of the system of copyright that it is based on the principle of granting exclusive rights to individual creators. For individual owners, it is often difficult to maximise the economic value of their rights and to protect those rights. The cost of doing so is often greater than the potential gain. Similarly, third parties who wish to use those rights must incur the trouble and expense of finding the appropriate rights owners, negotiating individual deals and administering and accounting to a plethora of such rights owners. As this study shows, the collective administration of copyright is often the most effective method of managing the rights, both for the owners of the rights and those who need access to them. Quite simply, collective administration is in the public interest.

For example, it is inconceivable to expect a university to obtain individual permissions from every author whose work is photocopied in that institution and it is unthinkable that the authors of those works should not be rewarded equitably for the reuse of their work. If music is to be publicly performed, it is reasonable to expect that the author of that music be rewarded for that use of his or her work, but it is unreasonable to expect each person who wishes to play music in public to identify, find and negotiate licences with each of those rights owners. The position is similar for schools who wish to record broadcasts for use in their teaching programs.

It is clear from this study that the collective administration of the individual rights of copyright, generally benefits both the owners of the primary property and those who would make secondary use of that property.

It is also clear from the study that the principal issue is not whether collective administration is in itself a good thing, but rather, whether it is being carried out in a way that is economically effective and equitable to all parties - the owners, the users and the community in general.

2.5. THE ROLE OF STATUTORY LICENCES, COLLECTIVE ADMINISTRATION IN A SYSTEM OF EXCLUSIVE RIGHTS

The international system of copyright, as reflected in the Berne and Universal Conventions, is based upon the granting of exclusive rights of control to copyright owners. It is generally a system in which the owner of each right has the right to control that right, territory by territory, term by term and use by use. It is ruggedly individualistic: The rights of copyright grant individual owners the right to determine whether these rights are to be exploited and, if so, the terms of exploitation. Collective administration is, and should be, an exception rather than the rule.

Philosophies aside, not all rights of copyright benefit from collective administration. Many exercises of the rights are best dealt with on a one-by-one basis.

The most simple indicator of this is that no group of Australian copyright owners has transferred all of their rights of copyright to a society for collective administration. This simple conclusion is in itself significant: Copyright owners make a decision as to what rights they are capable of administering personally, and which of their rights are best administered on a collective basis.

For example, composers, who choose to assign their public performance of the Small Rights to APRA, retain their individual control over licensing for the public performance of Grand Rights and for use in radio and television commercials. The reason is simple enough: the negotiation, collection and enforcement of public performance income in relation to Small Rights is most efficiently handled on a collective basis, whereas the other rights mentioned are quite easily administered on an individual basis. Similarly, the writer of a novel has no need of a collecting society to negotiate or monitor his or her relationship with a publisher but has an obvious need to such a resource if he or she is to obtain income from photocopying in schools. Such distinctions are easily drawn for every group of rights owners.

Further, where the rights owner chooses to maintain individual control of a right, it is usually where the would-be user has all the time necessary to locate the rights owner and negotiate the deal. It is not dealing in the exploitation of a mass of different copyright materials. Rather, it is dealing with the exploitation of a very limited number of copyright works (and owners), even though it may reproduce each of those works an enormous number of times. Because the number of rights owners is limited, the administration of the rights is simple enough.

In short, where the collecting society is administering a voluntarily transferred right, such transfer will only be made if the owner believes that it is in his or her best creative and economic interests to do so. This is one occasion when market forces is a useful indicator of value - at least to the owner. For those copyrights which commercially need to be the subject of mass use by a large number of would-be non-exclusive licensees, obtaining and administering the necessary rights on an individual basis is difficult, if not impossible. When the impracticability of granting individual

licences becomes apparent, it is sometimes suggested that the simplest response is to create a **statutory or compulsory licence**, in effect denying the control that any individual rights owner may have otherwise had. (Examples of this include the statutory licence permitting "cover recordings" which underlies the primary function of AMCOS and the statutory licences granted to educational institutions and which are administered by CAL and AVCS. For a description of the extent to which Australian societies administer statutory licences, see Chapter 6 of this Report.) The general attitude of WIPO to statutory licences is that they should be avoided wherever **collective administration** is feasible. In brief, it is considered that collective administration recognises that the individual copyright owner has the essential right to control usage - even though, for ease of administration, that individual may choose to license or assign that right to a representative organisation. When that right to control is taken away, all that one is left with is a "right to remuneration", which is a quite different concept to the full rights of copyright. Rather than knocking down the long established structure of individual rights which comprises copyright (by the implementation of a series of compulsory licences), it is preferable to maintain the existing regime but promote the ease and efficiency of access to copyright material by promoting and facilitating the collective administration of such rights. **Collective administration should be the preferred mid-way house between the exercise of individual exclusive rights and a compulsory statutory licence where mass usage requires that the community be given access to the rights on reasonable terms.** By way of example, the difficulties necessarily raised by the new world of Multi-Media, have inevitably again raised the suggestion that copyright has become an outdated concept. In other words, it is so hard to control the use of copyright work in this digitised, computerised environment, a cyber-world without borders and few police, that old concepts such as the personal ownership and control of copyright material should be discarded as a remnant of an increasingly irrelevant age. It is very doubtful that this response is in the interest of the general community, although it is certainly in the commercial interest of certain commercial would-be, rights-user groups. Factors to be taken into account when determining whether collective administration is appropriate include the following:

- Is there a public benefit in permitting non-owners easy access to the use of copyright material?
- How hard is it likely to be, to identify a rights owner in a timely manner?
- Is the cost of negotiating and executing an individual licence, likely to be uneconomic?
- Is the cost of administering and accounting for an individual licence, likely to be uneconomic?
- Is the negotiating power of the copyright owner so much less than the copyright user that collective negotiation is desirable to better ensure equality of bargaining power?

The existing collecting societies fall within these guidelines. As such, their **existence** potentially benefits:

- (i) those whose business depends upon access to rights individually owned but collectively controlled;
- (ii) the owners of the rights; and
- (iii) the educational, cultural and economic interests of the community at large.

Whether the existing Australian collecting societies in fact do provide those benefits, depends upon the efficiency and equity with which they operate. That is part of the subject of this Report. At the moment, anyone can establish themselves as a collecting society on the basis of voluntary licensing. There is no need for the approval of government. In principle, this is a good thing. It is inappropriate for the government to interfere with the right of copyright owners to form collectives for the administration of their rights on a voluntary basis. This does not mean however, that government should not be involved in that process: For example, audio-visual copyright owners would have faced an impossible task in setting up a copyright society without government intervention. In the view of AVCS and this Inquiry, without statutory authority, access to a substantially comprehensive repertoire would not have been achieved. Moreover, the role of the Copyright Tribunal is central in achieving a system in which equity can be achieved between owner and user. As is also recommended in the Report, the role of an independent ombudsman for collecting societies is another way in which Government can be usefully involved in the supervision of the societies.

2.6. MULTIPLE SOCIETIES

One of the concerns that was expressed to the Inquiry was that collecting societies hold positions of great power within their industry sector. Generally, each is in a monopoly position. As is discussed later in the Report, (see "Trade Practices") this is not necessarily a bad thing; it depends upon how that position is exercised. Given the frequently expressed concern about the power of societies, it is perhaps surprising that there is also a frequently expressed opinion that there are too many societies and that they would achieve greater efficiency by amalgamating and sharing administrative expenses. The views are in direct conflict. As is stated later in the Report, there is probably little cost advantage in the amalgamation of the existing societies. Rather, ***it is recommended that there be a multiplicity of societies so that individual societies can represent the disparate interests of the separate groups of rights owners.*** This is more likely to ensure the equitable representation of members' rights and promote a competitive environment.

2.7. NEW TECHNOLOGIES

The system of exclusive rights developed its philosophy in a pre-reprographic era, a time in which public education, information and entertainment was not so dependant upon reproductive technology.

With the development of new technologies has developed the need for more efficient ways of locating, negotiating, contracting and administering licences for the use of these rights. This has not just led to collective administration; it has led to the emergence and dominance of blanket licensing. The effective control of intellectual property rights in the digital age is one of the great conundrums facing the collecting societies.

The new technologies have led not only to greater ease and need of access to cultural materials, they have created new uses of such material and indeed, have themselves created new forms of such material. Not only has the invention been the mother of copyright, it may well provide the answer to the perfect collective, voluntary licensing system. To quote Professor Gunnar W.G. Karnell of Stockholm School of Economics: *"I have for many years nursed a dream about a world-wide collective society computer-net related to a data base containing individual conditions in detail for various uses of work reported to the system. It would contain different tariffs for uses in various countries adapted to local conditions, kinds of performances, reproductions etc. It would recognise sound sequences to identify works and registered right owners. It would contain modalities regarding payment, currency regulations etc. so that as soon as anything was identified the system would be able to produce a financial statement about costs for the handling of the right and about royalties due..."*

("Collecting Societies In The Music Business",
Reports presented at the meeting of the
International Association of Entertainment Lawyers,
Midem 1989, Cannes, Maklu Publishers, Antwerp, 1989, at p.21)

For the moment, most of the thought going into developing new forms of technologies to assist collecting societies is focussed on the capture of uses of intellectual property. This technology is not yet available except in unsatisfactory, prototype forms. Nevertheless, with the rapid growth in computing power, the other elements of Professor Karnell's dream are already almost realisable. There is every reason to believe that Information Technology will provide the solution to many of the problems that reproduction technology has created. Already, Information Technology has been widely implemented to undertake the complicated and detailed administration and calculation processes that are so central to the operation of every collecting society. What used to take hundreds of square metres of space for data storage now takes a few feet; what took weeks by hand now takes days by computer. The efficiencies permitted by IT are now evident in the societies - and they can be expected to increase. Professor Karnell's dream is in fact the almost irresistible future.

2.8. THE DIFFICULTY OF BALANCE

As already noted, the public interest demands that there be easy access to cultural material. As it is a feature of this era that access to processes of reproduction is easy, there is a public interest in being able to access the reproduction rights of that material. This is in conflict with our system of exclusive rights which acknowledges a public benefit in giving creators and makers rights in the fruits of their creativity and labour. Therefore a balancing of public interests is necessary. The primary functions of any collecting society are documentation, identification of use, collection and distribution. They are all enormously detailed procedures, time consuming and expensive to administer. Imagine the size of the documentation task that is required to properly document the hundreds of thousands of works which have a brief spark of commercial value and then remain forever in the so-called "dormant repertoire". Any system with administrative integrity must undertake the task but if it were to be truly "efficient" the society would only expend its efforts on the 15% of its repertoire that is active. Of course it can't, but such cost-efficiency factors keep arising in any examination of collecting societies. Another example of this is in the identification and distribution area. If every use of every work by every author was perfectly reported and perfectly recorded, it might be feasible to avoid instances in which a

disgruntled rights owner could complain that, "I know my work was copied/performed/etc but I didn't get any royalty. Something must be wrong with the collecting society!" Until technology gives us this capability to capture all information, such processes will be imperfect. Until then, we will have to rely upon sampling techniques, approximation techniques; a balance between the absurd cost of obtaining perfect records and the aim of getting as much money to as many of the right people as possible. Collection too, is an expensive and inherently inefficient aspect of collecting societies. If one could license just a limited number of users, the process would be easy. Similarly, if all licensees were fastidious in their self-reporting of uses, it would be easy. Instead, users quite understandably object to paying licence fees, or object to the quantum, or under-report their usage of copyright material, and all of this demands that the societies have an extensive obligation to the enforcement of their members' rights. It is the task of all collecting societies to tackle the challenge of administering their rights as efficiently as equity allows and as equitably as efficiency allows. This is the balance that determines whether a collective administration of rights is in the interests of the relevant rights owners. To permit interested parties to form an informed view as to the state of this balance, it is essential that collecting societies adopt an attitude of transparency to their administration. This is an aspect of their responsibilities that collecting societies throughout the world have generally been accused of failing. Accordingly this Report has taken the unusual approach of providing a large amount of adjectival material as to the administration of the Australian societies. As such, it is intended not only to satisfy the Government's requirements as set out in the brief, but also to provide a reference source for those who wish to know more about these bodies that are so important to the orderly administration of intellectual property in our modern society.

2.9 RECOMMENDATIONS

- That collective administration should be the preferred mid-way house between the exercise of individual exclusive rights and a compulsory statutory licence where mass usage requires that the community be given access to the rights on reasonable terms.
- That there be a multiplicity of societies so that individual societies can represent the disparate interests of the separate groups of rights owners.

3. HISTORICAL BACKGROUND

3.1. AMCOS

3.2. APRA

3.3. AVCS

3.4. CAL

3.5. PPCA

3.6. NEW COLLECTING SOCIETIES

3.1. AMCOS

In 1956 the various music publishing companies carrying on business in Australia incorporated a company under the NSW Companies Act called Copyright Owners Reproduction Society Limited (CORS). The Company was formed primarily for the general purpose of promoting and protecting the interests of parties owning or

controlling rights of mechanical reproduction in Australia and New Zealand.
Particular objectives of the Company were:-

- Representation on behalf of members in connection with any proposed legislation which may affect the interests of members. A particular objective was representation before the Spicer Committee of Inquiry which was set up in 1958 to make recommendations for a new Australian Copyright Act following enactment of a new UK Act in 1956.
- Liaison with other bodies representative of the various sections of industry and commerce involved in the use of mechanical rights.
- Dissemination of information to general industry and commerce involved in the use of mechanical rights.
- Dissemination of information of general industry benefit and interest to members.
- Liaison with similar associations on an international basis.

At this time the J. McFadden Agency was operating as agent for the music publishers in the licensing and collection of royalties for sundry usages of mechanical rights. With the advent of television marketed records and TV marketing companies, the role of the Agency became more important. After the formation of CORS, instead of the publishers meeting informally to direct the operation of the Agency, this function became treated as vested in the Council of CORS. These arrangements continued until the end of 1973 without ever being formally defined. On the 29th November 1973, CORS changed its name to Australian Music Publishers Association Limited (AMPAL) and at the same time adopted new Memorandum and Articles of Association. Under the new Articles specific powers were given to AMPAL and its Council to determine the terms and conditions "upon which licensing arrangements should be entered into by an agent for the members pursuant to any common form of authority given by the members to the agent", in order to formalise what had previously been the actual practice. As from 1st January 1975 AMPAL formed its own division called ANZ Music Copyright Agency for the licensing and collection of royalties in respect of sundry mechanical usages in Australia and New Zealand of the works of its members. Each member of AMPAL then executed a common form of "Appointment of Agent", although there was no compulsion of any kind upon members to do so, and members were free to decline to do so, whilst still remaining members of AMPAL. At the same time as the new agency was formed, the appointments of the J. Mc Fadden Agency were terminated, and the activities of that agency were assumed by the new agency. The responsibilities and duties of ANZ Music Copyright Agency included the licensing of mechanical rights and collection of royalties in respect of sundry mechanical usages; the supply of information to various members of the public and industry, particularly in regard to the identification of owners of copyright in particular works; and the direction of enquiries to the relevant music publishers. In 1979 the music publishers made an application to the Copyright Tribunal for a review of the royalty rate. For the hearing, an unregistered association comprising AMPAL and three other composer organisations was formed to present the case for the copyright owners to the Tribunal. After the Tribunal hearing, a

decision was made to form a Society along the lines of overseas mechanical copyright societies such as the MCPS in the UK. Accordingly, AMPAL established the Australasian Mechanical Copyright Owners Society Limited in 1979 as a company limited by guarantee (not a wholly owned subsidiary of AMPAL, as it is commonly described) and commenced business on the first working day of 1980. The funds existing in the ANZ Music Copyright Agency were then transferred to AMCOS.

There are currently 189 music publisher members of AMCOS.

3.2. APRA

The Australasian Performing Right Association Limited was incorporated in 1926. It is by far the oldest collecting society in Australia. It was established by the British Performing Right Society (PRS), together with a group of local music publishers. How it was initially funded is not clear from the old records maintained by the society. It is, however, clear that the government contributed no start-up funds. The most likely scenario is that loan capital was provided by the incorporators. It was established because it had become clear, worldwide, that the new technologies of sound recording and wireless telegraphy were making it impossible for songwriters and composers to exercise control or gain reward from public performances of their works. Writers and publishers had already formed central clearing houses to administer the performing right in the US (1909) and the UK (1911), and, indeed, had done so much earlier in Europe. These had worked well, and so the model was adopted in Australia.

3.3. AVCS

Being established in January, 1990, the Audio-Visual Copyright Society Limited (AVCS) is the most recently established of the major collecting societies. The initial impetus for the establishment of a copyright society in the audio-visual field was the lobby for the introduction of the educational copying scheme that became Part VA and Part VB, Copyright Act 1968 ("the Copyright Act"). The Society was formed specifically to seek the declaration of the Attorney-General as the collecting society under sections 135P and 135ZZB of the Copyright Act (and to expand its activities in the collective administration of rights, as appropriate, in the future). The Society was an initiative of the Australian Copyright Council, which co-ordinated early meetings of an informal committee of interest groups. These interest groups became the Society's promoters.

Those organisations were:

- * Audio Visual Distributors Association of Australia;
- * Australasian Mechanical Copyright Owners Society;
- * Australian Broadcasting Corporation;
- * Australian Film Commission;
- * Australian Record Industry Association;
- * Australian Writers Guild;
- * Federation of Australian Commercial Television Stations;
- * Federation of Australian Radio Broadcasters;
- * Film/Video Coalition;
- * Special Broadcasting Service;
- * Producers and Directors Guild of Australia; and
- * Screen Production Association of Australia.

As such, it is a classic model for the establishment of collective administration - one in which all of the relevant rights owners are involved. The incorporation

expenses were met by loans from the promoter organisations of \$1,000 each. The other establishment costs were met by way of gifts and loans in kind from the Australian Copyright Council and further financial loans from the promoter organisations ranging from \$350 to \$1,295. (Different amounts were contributed to reflect, in some measure, the scheme of allocation that would determine future distributions. As is described elsewhere in this Report, that scheme divides distributions between the owners of copyright in films, sound recordings, literary/dramatic works and musical works in unequal proportions). Loans from promoters totalled \$21,395. These loans were repaid from first collections in 1990 without interest.

AVCS states its mission as follows:

- The Society's purpose is to facilitate the equitable return of funds to audio-visual copyright owners.
- The Society promotes and defends the copyright system as the means of providing an incentive to creativity and investment in film and television.
- In pursuit of this goal, the Society acts on behalf of copyright owners in the collective administration of rights.

3.4. CAL

CAL had one of the longest gestation periods on record. Formed 1974, CAL did not commence operations until 1986. Its promoters were: The Australian Society of Authors, The Australian Book Publishers Association and the Australian Copyright Council.

The time lag was principally due to the fact that although the Copyright Act provided that educational institutions were obliged to pay for copyright uses, they refused to do so. Without compliance from the institutions, CAL had no money to collect or distribute. This situation was changed by litigation. The Australian Society of Authors and the Australian Book Publishers Association were responsible for the funding of two cases which gave CAL force and impetus. [Moorhouse v University of New South Wales, CAL v Haines [1982] and CAL v Department of Education [1985]]. These cases established a rate of equitable remuneration for copying under the statutory licence for education in the Copyright Act.

The establishment of CAL's offices in 1986 was funded by:

- (i) a bank overdraft facility from the Commonwealth Bank for \$105,000.00 with joint and several guarantees from twelve publishers;
- (ii) two interest bearing loans each of \$15,000 from the Australian Council; and
- (iii) a \$15,000 consultancy to AMCOS for multiple photocopying of sheet music.

All CAL debts including debts to the Australian Society of Authors, the Australian Book Publishers Association and the Australian Copyright Council were repaid with interest.

3.5. PPCA

The Phonographic Performance Company of Australia Ltd was incorporated in 1969. The impetus for the Company was the Copyright Act 1968 which introduced broadcast and public performance rights in sound recordings. The Company was established to license those rights and collect income from them. The organisations responsible for establishing PPCA were The Association of Australian Record Manufacturers, Actors' Equity and the Musicians' Union. Its initial funding came from small loans by EMI Australia Ltd (\$3,000) and Association of Australian Record Manufacturers (\$1,061). PPCA was established as a company limited by shares. Its original shareholders were CBS Records Australia Ltd ; Electronic Industries Ltd (Astor Records); PolyGram Records Pty Ltd; RCA Limited; EMI Records (Australia) Ltd; Festival Records Pty Ltd; W & G Record Processing Co Pty Ltd. Astor was taken over by PolyGram and W & G left the record industry. WEA Records Pty Ltd were allocated shares in June 1984.

An integral part of the arrangement was the establishment of the PPCA Trust which was to ensure payment of a percentage of PPCA collections to artists and musicians (through their representative unions) whether such artists performed on recordings or not.

3.6. NEW COLLECTING SOCIETIES

3.6.1. Blank-Tape Levy Collection

If a blank tape levy/tax is reintroduced to compensate for statutory licence permitting audio home taping, the money thereby collected will be administered by a new Declared Society, PACCS (the Private Audio Copyright Collecting Society). PACCS, has been established by AMCOS and ARIA for the purpose of administering the blank tape levy - to collect the fees and distribute them to copyright owners through existing societies. AMCOS will be responsible for making payments to the owners of copyright in the musical works and PPCA will be responsible for making payments to the owners of copyright in the sound recordings and to performers. Such distribution will be based on sampling, public performance and broadcast data and sales information. No consideration has been made by this Review, of the structure or intended function of PACCS but given that it will be a Declared Society and subject to consequent scrutiny, PACCS may well also be a suitable vehicle to administer the income derived from CD Rental remuneration (if and when that right is introduced).

3.6.2. Christian Music Copyright Collecting Companies

There are three agencies which have recently been established to collect royalties and grant licences in relation to church music. This is in spite of the fact that CAL offers a church music licence and that CAL licences are less expensive than its Christian competition. It is an interesting proof that where organisations see a niche, competition can follow. The societies are Christian Copyright Licensing Asia-Pacific Pty. Limited; Licensing (a division of MediaCom Inc), and Word of Life Pty Limited.

They act as agents, granting licences and collecting royalties on behalf of copyright owners, rather than collecting societies. (They do not take a licence or an assignment from the rights owners). All of them are very recently established in Australia and are

only just starting to issue licences. It is interesting to note that Christian Copyright Licensing is part of an American based, international organisation which has had extraordinary growth. As of May 1, 1994 its international figures were as follows:

<u>Territory</u>	<u>No. of Licence-holders</u>
USA	58,940
Canada	6,460
UK	11,300
Australia	2,540
New Zealand	428
Total	79,668

4. LEGAL STRUCTURE AND GOVERNANCE

4.1. STRUCTURE

4.2. EQUITY AND EFFICIENCY OF BOARD STRUCTURE

4.2.1. Board Size

4.2.2. Regular review

4.2.3. Voting mechanisms

4.2.4. Equality Of Voting Power In General Meeting - Hearing The Voice Of The Rights Owners

4.2.5. Ability Of All Members To Stand and Vote For Board Positions

4.2.6. Voting Power Of Board Members

4.2.7. Limitations Upon Re-Election Of Board Members

4.2.8. Remuneration Of Board Members

4.2.9. Frequency Of Meetings

4.2.10. Attendance At Meetings

4.2.11. Minutes Of Board Meetings

4.1. STRUCTURE

4.1.1. AMCOS and APRA

AMCOS and APRA have chosen to be to be non-profit companies limited by guarantee.

4.1.2. AVCS and CAL

AVCS and CAL are required by the Copyright Act (as Declared Societies) to be non-profit companies limited by guarantee.

4.1.3. PPCA

Only PPCA is structured as a company limited by shares. To some extent, the actual legal structure is merely an accident of history but nevertheless, it is appropriate that this accident now be repaired. When PPCA was first founded, there is little doubt that the original shareholders represented almost all of the relevant rights. They were merely setting up a company to control their own rights. Moreover, at that time, the radio and television stations were not paying any money for their use of the relevant rights. They agreed to provide the record companies with contra, in the form of advertising air-time. This time was purchased from PPCA by EMI and the money thus

obtained, was distributed amongst the members. It was really only with the Triple-M decision in the late '80s that the stations started to pay large amounts of money and the distributions of PPCA became significant. Although the legal structure of PPCA does not limit access to its services by all owners of relevant rights, there is no doubt that the control of the company itself (as opposed to the services delivered by the company) is firmly entrenched in the hands of the six largest record companies in the country. This is undesirable.

4.1.4. Declared Collecting Societies

As a declared collecting societies, AVCS and CAL operate within very specific parameters designed to ensure equity and accountability. These include specific legal requirements in the Copyright Act, Regulations and Government-approved Articles of Association, in addition to obligations at general law on public corporations and the law relating to trustees. Further to these legal requirements, they operate under the supervision of the Attorney-General, who may withdraw his declaration if satisfied that the society is not functioning "adequately" as a society. These stringent safeguards aimed at achieving an equitable, efficient and accountable administration, are appropriate to bodies charged with the administration of non-voluntary licences.

4.1.5. Conclusions As To Structures

If a collecting society is an absolutely commercial enterprise, it should be able to structure itself legally, as it wishes. It does not purport to be a representative organisation except for the purposes of the issuing of licences and administering those licences as a contractual agent for the owner. The satisfaction of the rights owners and rights users is a matter for contract. If they are not satisfied, they will not renew.

Collective administration organisations which purport to be organisations of and for their rights owners (and all of the five major Australian collecting societies come within this description) are best structured as companies limited by guarantee. This provides greater protection for the members whose rights are represented by the organisation in that it gives them access to all of the rights accorded to members by the Corporations Law, (including a right to board membership and thus a board voice; protection against oppression; the powers of the General Meeting etc). Also, it prevents observers forming the perhaps mistaken view that the shareholders will put their own self-interests before those of merely contractual members. After all, it is important that the form reflects the purported function. In a regime that is supposedly based on collective administration, it is inappropriate to deny the relevant rights owners access to membership and thus keep the control mechanisms of the legal structure in the hands of a few. If a monopolistic collective administration is to be given any special treatment in respect of the Trade Practices Act, it should allow open access to both the services **and** the control of the society. **PPCA would be well advised, and should be encouraged (although it cannot be forced), to alter its company structure to become a company limited by guarantee and allow company membership to be open to all relevant rights owners. The Guidelines For Declared Collecting Societies should be, with necessary amendments, be used as the model guidelines for all collective administration collecting societies.** The manner in which this may be encouraged by Government (including compulsory reporting procedures and the introduction of an Ombudsman function), is discussed later.

4.2. EQUITY AND EFFICIENCY OF BOARD STRUCTURE

4.2.1. Board Size

AVCS has eleven directors; APRA has 12; CAL has seven; AMCOS ten; PPCA did have six but this has recently been increased to nine (see below).

4.2.2. Regular review

The Articles and Memorandum of any company need regular review to ensure that they reflect the actual practice of the company and that they are promoting rather than hindering the objects of the company. The revision of the Articles undertaken by PPCA in 1993 was with the intention of bringing it more into line with the rules of the Declared Societies; APRA's changes to introduce postal voting and to give writers an equal voice on the board, are all the sorts of revisions that should be applauded.

4.2.3. Voting mechanisms

All societies which purport to be membership controlled (as opposed to the private commercial operations) should have voting mechanisms which promote the ability of members to have a voice in company affairs, notwithstanding that they may be geographically disparate and distant. The more limited the entitlement to speak and vote in company affairs, the greater the danger that power will be entrenched and that the interests of the entrenched will be favoured over the others who have a right, but not the means, to be properly represented. The ability to provide proxies does not adequately meet this need. All too often, the control of large parcels of proxies can result in the entrenchment of control in the hands of a few. A direct personal voice is provided by postal ballot. **All collecting societies should at least provide for postal ballot by rights owners/members.** None, other than APRA, do this. **It is also desirable that they consider the ways in which the new technologies can assist them to give voice to the rights of owners/members.** These may include the provision of fax transmission, electronic transmission such as e-mail, video conferencing and so on. These are all techniques which are presently technically available although not sufficiently utilised in most organisations (not just collecting societies).

4.2.4. Equality Of Voting Power In General Meeting - Hearing The Voice Of The Rights Owners

AMCOS

The voting entitlement to the Board of AMPAL is laid out in the Articles of the Association (Articles 30, 31, 32). In essence this provides that each Full Member's voting entitlement is calculated with reference to their APRA earnings for the previous financial year. This was adopted as a convenient means of comparing the relative value of the respective catalogues of copyright music controlled in Australia by each Member, and it was considered equitable that voting rights should be so related. However there is a stipulation that no Full Member (including associated or affiliated companies, or companies managed by the Member) shall control more than 20% of the vote. This is most important because otherwise, the largest members, who own or control numerous publishing companies, could completely dominate the control of the Society to the detriment of the smaller members. The 20% limit goes some way to ensuring equity in the governance of the Society.

APRA

The voting power of APRA members has been the subject of certain criticism. For those who are present at a meeting, a show of hands each member has one vote. However, on a poll, each member has one vote plus one additional vote for each complete \$500 allocated to him/her in the preceding financial year (see Art.41(b)), subject to the limitation that no writer or publisher can be entitled to more than 15% of the total voting entitlement of writers or publishers respectively (see Article 41(c) & (d)).

There is also a mechanism by which the aggregate votes available to publishers are equalised with the aggregate votes available to writers (see Article 40). This is designed to ensure a balance of power between writer interests and publisher interests within the Association.

All writer full members and publisher full members (except those who have received no royalty allocation during the two preceding financial years) have a right to vote for writer directors and publisher directors respectively. The method of voting, which is set out in detail in Articles 67 to 73, entails the choice of voting in person, by proxy or by post. Since the introduction of postal voting in 1992 the overwhelming majority of members who cast a vote do so by way of postal ballot. This change has gone a long way to overcoming the criticisms mentioned above. No longer, can a member turn up at a meeting with a bag full of proxies and be assured of winning the vote. Postal voting has given full voice to the members.

AVCS

A resolution put to a vote in a general meeting is decided on a show of hands unless a poll is demanded before or on the declaration of the result (Article 23 (a)). On a vote by show of hands, each member has only one vote (Article 27). In the event of an equality of votes, the Chairman has a casting vote in addition to his or her deliberative vote (if any) (Article 25). If a poll is demanded, the situation is quite different. In such case, Article 28 determines voting entitlements as follows:

- the votes of each member shall be based on the total amount properly allocated to that member in the preceding financial year as that member's share of moneys collected by the Society;
- every member shall have one vote plus one additional vote for each complete \$500 of that member's allocation during the preceding financial year
- despite sub-articles (a) and (b) no member is entitled to exercise more than fifteen per cent (15%) of the total votes available to members entitled to attend and vote at a general meeting.

CAL

All members have an equal vote, except for the election of directors, as only author members are eligible to vote for the election of the author director and only publisher members are eligible to vote for the publisher director.

PPCA

Each of the six member shareholders has one vote in general meeting.

4.2.5. Ability Of All Members To Stand and Vote For Board Positions

AMCOS

At AMCOS, the Board members are appointed by the foundation member, AMPAL. The practice is for the members of the board of AMPAL to be appointed to the board of AMCOS. Each year, 1/3rd of the board of AMPAL retires in rotation and their positions are offered for election at the AGM. Although the Articles do not require that board members be members of the Society, in its history, every member of the board of AMPAL has also been a member of AMCOS. The board structure reflects the fact that AMCOS is a publishers' organisation. It does not purport to represent writers although writers are obviously central to its very existence. This anomaly is discussed later in this Report. With this reservation, the fact that the board members of AMCOS are appointed by (and are basically identical to) the board of AMPAL, is not a matter for criticism because all members of AMCOS have access to membership of AMPAL and thus to AMCOS. (This may be compared with PPCA's situation where none of the rights owners (other than the Majors who are shareholders) can get access even through such a circuitous route).

APRA

The board members are elected solely by the members. Writers who are full members having a right to attend and vote at general meetings, vote to elect the six Writer Directors, of whom one is elected by the New Zealand writer members. Publishers who are full members vote to elect the six Publisher Directors.

In the case of writers, candidates for the board must be "writer full members". In the case of publishers, Directors must be the appointed representative of a "publisher full member".

AVCS

The first directors were appointed by the subscribers to the Memorandum of Association and held office until the first Annual General Meeting, held on 8 November 1990. Subsequently, all directors have been elected solely by members in general meeting except where casual vacancies were filled by the existing directors. In the latter event, that director holds office until the next Annual General Meeting. Board members do not have to be members of the Society.

CAL

CAL's Board of Directors is made up of two nominee directors appointed by the Australian Society of Authors; two nominee directors appointed by the Australian Book Publishers Association; one author member elected by the author members at general meeting; one publisher member elected by the publisher members at general meeting; and one independent director appointed by the other directors following the annual general meeting. Board members do not have to be members of the society. To

vote, a member must be present either physically or by proxy. No postal ballot is permitted.

The CAL model is interesting in that it is a mixture of appointed members and elected members. The organisations with the power of appointment are at least representative of relevant rights owners although it is noticeable that the Fellowship of Australian Writers and other representative organisations do not enjoy that privilege. **Now that CAL is reaching maturity it no longer needs the structural stability of guaranteeing the ASA and the ABPA appointed members with the majority of board positions, but it would be certainly sensible for those representative organisations to retain the right to nominate one member each.**

PPCA

The shareholders are each entitled to appoint one director. Each board member has one vote. Up until 1993, a board member has always had to be not only a subscriber to PPCA services but also a shareholder. This will change in 1994 when the company amends its articles to expand the board to provide representation to the union/performance/manager sector. At present, the Chair of the AMMF is acting as a pro-tem director and attending meetings. This is a welcome and desirable change which will permit greater transparency of governance. It is not however enough. **The governance of PPCA needs to be opened up so that the present subscribers to the services of PPCA are given the right to be true members. They should be given a vote as to board membership and thus a say in the controlling body of the organisation.** Until it does this, PPCA cannot be said to be acting in accordance with the normal principles of collective administration societies as recommended by WIPO.

4.2.6. Voting Power Of Board Members

At APRA, AVCS, CAL, AMCOS and PPCA, each board member has one vote (except that some of the organisations provide for the Chair having a casting vote where necessary).

4.2.7. Limitations Upon Re-Election Of Board Members

All of the organisations are obliged to hold annual elections. At CAL and PPCA, board appointments are made for one year periods. AMCOS, APRA and AVCS have a more desirable system whereby members of the Board are appointed for three year terms and retire in rotation each year. This provides a process for maintaining corporate memory amongst the board members whilst providing the opportunity to gain fresh blood (and get rid of the stale). None of the Societies place any limit on the revolving door of board membership. Although long term board membership can provide a degree of stability for an organisation, it can also produce stasis. ***It is recommended that amendment be made to the Articles of each Society so that no person can be a board member for more than a set period or a limited number of terms, without at least a year's rest. Collective administration societies should not allow procedures which promote the entrenchment of the power of individual board members.*** This is not to say that the interests of powerful rights owners will not be represented if their managing director has a period off the board. It may well be that another representative of that organisation will be elected or appointed for that period. When a board member sits at the board table, he or she is

not there to represent the views of his or her company but rather to act in the interests of all rights owners. If there is resistance by board members to the introduction of limited terms of board membership it is an indication of the acute need for such regulation. There is also an understandable resistance to this by some of the executives of societies. After all, training up new board members is time consuming and bothersome. However, a static board membership can be all too comfortable for executives and it is healthy for the good administration of collective administrations to have some disturbing new blood on the board, asking new questions, and giving new insights.

4.2.8. Remuneration Of Board Members

AMCOS and PPCA

None of the directors receive remuneration. This is appropriate as all present directors sit on the board as representatives of their employer companies.

APRA

The aggregate remuneration for the Board approved by the Association's members in general meeting is currently \$67,600. This amount is divided amongst the 12 Board members in approximately equal proportions, subject to a special allowance for the Chairman.

AVCS

By resolution of the Fourth Annual General Meeting held on 9 November 1993, the meeting approved a total of \$28,000 in remuneration for the Chairman and Directors for the financial year ending 30 June 1994. A small number of Directors have declined to receive remuneration.

CAL

Total remuneration for the Board in the 1992/1993 financial year was \$40,000.

Comment

Although the payment of external directors is accepted practice in commercial operations, the matter is more difficult in collective administrations.

Those organisations that do pay sitting fees to directors, average about \$5,000 each. This is modest enough, given their responsibility and the time that an active director should put into the affairs of the organisation beyond merely attending board meetings. **Whether directors who are employees of member companies should receive sitting fees at all, must be questioned.** As they are performing their function as part of their employment responsibilities it must be queried whether they should receive additional payment. Every dollar paid in directors fees is a dollar that is not available for distribution. To this end, the attitude of PPCA and AMCOS is quite proper.

It is certainly inappropriate that any paid employee of a collective administration society be paid a director's fee for sitting on the board of another

society. If such fee is paid, it should be paid through to the employee's society, to contribute to the expense that it incurs by providing that employee. If it is otherwise, societies and their senior employees are open to the accusation that they are merely sitting on one another's boards for their own personal gain; each contributing to the other's gain. Whilst there is absolutely no evidence of such motivation, the system of collective administration must avoid such speculation, however unfounded or cynical, if the collective interests are to be protected.

4.2.9. Frequency Of Meetings

The boards of all of the societies meet every six or eight weeks, which permits satisfactory control of Society affairs.

4.2.10. Attendance At Meetings

The board attendance records were examined. Although the societies are never short of a quorum, it is clear from a certain repetitiveness in the Apologies that their **governance would benefit from the introduction of a rule strictly limiting the number of absences in any year.** Each has, or has recently had, a couple of directors who clearly need to reassess their commitment or availability.

4.2.11. Minutes Of Board Meetings

The board minutes of the societies were inspected. Given their highly confidential nature, no comment is appropriate other than to note that all societies maintain their minutes of meeting in an appropriate and acceptable manner.

5. MEMBERSHIP

5.1. DEGREE TO WHICH THE SOCIETY REPRESENTS ALL OWNERS OF THE RELEVANT COPYRIGHT

5.2. METHODS USED TO INFORM OWNERS AS TO THE EXISTENCE AND FUNCTIONS OF THE SOCIETY AND ATTRACT AND ENLIST NEW MEMBERS

5.3. INFORMATION PROVIDED TO NEW MEMBERS

5.4. CLASSES OF SOCIETY MEMBERSHIP

5.5. NUMBER OF MEMBERS

5.6. ELIGIBILITY REQUIREMENTS

5.7. FEES AND/OR COMMISSION CHARGED TO MEMBERS

5.8. SERVICES TO MEMBERS (OTHER THAN COLLECTION AND DISTRIBUTION)

5.9. EQUITY IN BENEFITS OF MEMBERSHIP

5.10. ANNUAL REPORT

5.11. COMMUNICATION WITH MEMBERS

5.12. PROCEDURES PROVIDED TO DEAL WITH MEMBERS' INQUIRIES AND COMPLAINTS.

5.1. DEGREE TO WHICH THE SOCIETY REPRESENTS ALL OWNERS OF THE RELEVANT COPYRIGHT

It is a remarkable feature of the societies that such a high proportion of the relevant rights owners have chosen to become members. Some might say that this merely reflects the fact that there is no substantial competition; that there is "only one game in town". That argument only answers why the rights owner has joined that particular

society. On the other hand, the high proportion of owner representation clearly demonstrates that for the majority of the rights owners, collective administration of those rights is preferable to individual administration.

5.1.1. AMCOS

No definitive research has been undertaken to determine the exact percentage of ownership of musical works controlled by the Society. However the fact that virtually all music publishers in Australasia are members of the Society; virtually all music composers are members of APRA and have access to AMCOS membership through APRA; and that in many cases its affiliated societies overseas are operating as centralised licensing bodies and represent all works in that territory; would indicate that the vast majority of musical works come under AMCOS' mandate.

AMCOS only represents the works (or parts of works) controlled by its members, affiliated overseas Societies, writers who have executed the APRA authority, and print publishers who have executed the Schools Photocopying authority. AMCOS permits only publisher members. Many overseas mechanical collecting societies act for both authors and publishers and in years past, there were some writer members. There was apparently no resistance from writers when the Society's Articles were changed so that writers would be represented through APRA rather than directly, as individual members. Writers are not particularly disadvantaged by this because:

- the primary function of the society is to administer a statutory licence rather than to grant licences and in this, the interests of the publishers and the writers are one;
- writers can direct APRA to have all their mechanicals collected from AMCOS pursuant to the APRA-AMCOS agency agreement if they do not have a publisher; or
- writers can form their own publishing company to administer their own copyrights, and join AMCOS as a publisher member.

5.1.2. APRA

Clearly the Association could never claim to represent all people who claim to have written original musical works. Nor has it conducted research into the numbers of writers who do not join the Association. That said, APRA assumes, on the basis of the logs it receives from both radio and television stations, that the Association represents over 99% of all writers whose works are publicly disseminated. APRA is not aware of any music publishers who have failed to seek membership.

5.1.3. AVCS

The Society collects under the statutory licence for all relevant copyright owners. Where the owner is not currently a member, the Society holds the allocated funds in trust pending admission to membership. (Given the nature of the statutory licence that it administers and the youth of the society, it is not yet a matter of concern that AVCS does not have the extraordinary depth of owner-representativeness that the other societies have achieved.)

5.1.4. CAL

Although it administers a statutory licence, membership in CAL is voluntary. New member applications average thirty per month. The Society estimates that for education, it represents over 90% of copyright owners whose works have been copied.

5.1.5.PPCA

PPCA believes it represents copyright owners of over 95% of recordings. In a report by Price Waterhouse to MIAC in 1992, it was estimated that about 7% of record business was not captured in ARIA statistics (which are also used by PPCA). Since then, a number of new members have joined PPCA thereby increasing coverage. There has been criticism made of PPCA that artists cannot subscribe to its services. It is beyond the scope of this Report to survey artists to determine if this is so, but according to the Company, it has never refused an individual who is a relevant rights owner. The confusion may arise from the various degrees of copyright ownership that are possible and the effect that this has on eligibility. For example, in most record deals, the owner of all copyright in the sound recording is the record company. In such a case, the artist is not an owner and therefore not eligible. In other cases, where the artist has negotiated a proportion of the copyright in the sound recording, he or she has granted an exclusive licence over that share in favour of the record company. In such a case, the record company still has effective control over 100% of the record. In the third situation, the artist owns all copyright and licenses it to the record company. In such a case there is no doubt that the artist has the right to join PPCA and, subject to its licence agreement with the record company, deal direct. Indeed examples were provided of individual acts who had been admitted. From 1993, primary artists were able to register (although of course, this does not mean "join") and receive 20% direct. Where those artists do not have a third party record label, such artists are entitled to direct payment of the relevant distributable sum. All of this would seem somewhat of a stop-gap (albeit welcome) measure until the introduction of a genuine performers' copyright. The payment of 20% is in fact in excess of the quantum agreed between the peak international bodies representing musicians and singers, and IFPI. That agreement says that where the record company owns the rights, 33.5% of the money from **broadcast** revenue is to be paid through to performers. Because the artificial 1% cap on broadcast revenue would result in an unduly low payment to performers, PPCA does not limit the percentage payment to just broadcast income.

5.2. METHODS USED TO INFORM OWNERS AS TO THE EXISTENCE AND FUNCTIONS OF THE SOCIETY AND ATTRACT AND ENLIST NEW MEMBERS

If a society is to equitably represent relevant rights owners it must be diligent in informing those rights owners not only that it exists, but also what it does and can do for those rights owners. If it does not, it becomes a club for the privileged insiders. In order to be truly open, it must inform.

5.2.1. AMCOS

AMCOS is a collecting society for music publishers. Anyone operating as a music publisher could be expected to know of AMCOS and AMPAL. It does not spend a lot of money in maintaining a corporate profile, although it does advertise in trade journals and directories; attend and present seminars; sponsor awards at industry

events such as the RIANZ Music Award and a Tamworth Song Writers Award; give lectures at educational institutions; and appears to be consulted by the media as the voice of the music publishing industry. The Society publishes informative booklets and brochures. **It would benefit from more of them, so that members and users of the Society had a clearer picture of the surprisingly diverse range of its sundry operations. Distribution of this material is unfocussed and the excellent printed material needs wider dissemination.**

5.2.2. APRA

The Association does not actively enlist new members. It does place advertisements in music industry trade publications advising of its existence and role. The Association's Membership Department also plays an active role in industry seminars and conferences explaining the services provided by the Association. That said, however, most of the writers who apply for membership do so through learning by word of mouth of the Association's role.

5.2.3. AVCS

The Society identifies the television and radio programs copied under the educational copying scheme through sample surveys and reports from record-keeping institutions. Relevant rights holders are identified from various sources, notably from information on program suppliers provided by broadcasters. After assessment of their eligibility to claim, the Society then contacts potential claimants and invites them to membership. Every potential claimant identified by the Society is sent:

- (i) a letter initiating contact;
- (ii) a brochure on the role of AVCS; and
- (iii) a brief explanation of the broadcast copying scheme.

In addition, the Society has published general information in the newsletters of relevant industry organisations, accepts invitations to speak at seminars and distributes its excellent newsletter widely to members and non-members. The documentation provided potential claimants, is clear and sufficient. It informs the recipients of their potential claim and invites them to contact the Society. In the very early phase of its operations the Society hosted a meeting in Sydney and one in Melbourne and spoke at a small number of meetings organised by industry associations. The members of some industry bodies were contacted directly by mail and articles describing the Society's operations were prepared for various newsletters. The educational activities were on a very small scale. The Society then narrowed its focus and concentrated on identifying potential claimants and contacting them directly. Priority was given to explaining the scheme to beneficiaries presently entitled to the funds held on trust over general education programs to the industry at large. This cautious approach has been a responsible one for a fledgling organisation but **AVCS is now at a stage of development at which it should undertake a series of national seminars, in co-operation with its sponsor organisations, to explain and promote its role to its potential members, to increase awareness and understanding of AVCS within that group.**

5.2.4. CAL

CAL's main efforts in recruiting new members are in contacting those non-members whose works have been copied in the sample surveys of copying CAL conducts. This is certainly a cost effective way of approaching the problem because unless there is

identified income, there is little point in being a member. However, if more eligible persons were members it would make the task of tracking down payees more simple and efficient. A number of comments made to this inquiry suggested that there was insufficient knowledge in the writing community about the functions of CAL and it seems that this ignorance has created a cynical impression of the Society's function. Although CAL issues a number of informative and clearly expressed brochures about its operations, conducts membership drives using mail-outs, seminars, and has written articles in various publications, it would seem that it needs to do more to inform both relevant rights owners who are not members and those members who do not receive payments. Much of the negative comment about the Society is ill-informed. The problem indicates an absence of a marketing strategy by which information on the Society is to be disseminated, rather than any darker design. CAL is now developing a marketing strategy and has recently appointed a Public Information Officer to address these matters. When entering a new licensing area CAL conducts targeted membership drives. For example, since it has been involved in negotiations to licence government and corporate copying, it has been targeting business and professional publications for membership.

5.2.5. PPCA

PPCA makes no public efforts to attract new company members. The members are the shareholders, and shareholding is tightly held.

As for attracting new subscribers to its services, until recently, PPCA has made little or no effort. PPCA's argument is that the majority of independent labels in Australia are distributed through its members and that record companies understand what the public performance broadcasting right is, and how PPCA operates. This confidence is not reflected in the views of some independent labels as expressed to the Inquiry. (PPCA's response to this is that it has written to the distributors of independent labels asking them to advise as to which labels the distributor can represent to PPCA and which it cannot. If it cannot, PPCA has asked the distributor to ask the label to contact PPCA direct.)

PPCA has agreed to pay a percentage of such collections through to performers and the Company has placed numerous newspaper advertisements inviting eligible performers to apply. Unlike all of the other societies, there is no comprehensive information kit supplied to owners who may be interested in subscribing to the Company's services. The Company publishes a pamphlet on sound recording and one on music video. These explain briefly what PPCA is, describe the legal position and pose and answer the questions most frequently asked by the public. These are useful, but **the Company would do well also to produce printed material on the functions, methods, aims and performance of PPCA.** It must be said, that as a private company, PPCA has no legal obligation to produce such material. However, as a company providing collecting society functions, such material should be readily available. Much of the adverse publicity that PPCA has attracted in recent times has been because of its failure to make available to the relevant public, any useful, informative material on its purpose, functions and manner of operation. PPCA would be well advised to hire a public communications consultant.

5.3. INFORMATION PROVIDED TO NEW MEMBERS

5.3.1. AMCOS

New members receive the published pamphlets mentioned above and the membership agreement. **More information is desirable.**

5.3.2. APRA

The Association provides new members with extensive information. New writer members are provided with extensive written information. This includes useful material on the history and services of APRA, the basic rights of copyright in general and the performance right in particular.

The following written information is provided to new publisher members:

- (i) covering letter
- (ii) user guide for contract and title registration procedures
- (iii) standardised forms for the registration of contracts and titles
- (iv) specifications for title registration by diskette
- (v) live performance return notifications
- (vi) jingle reporting form

In addition, many new members attend one or other of APRA's membership offices and receive personal advice on a variety of matters relevant to their membership.

5.3.3. AVCS

Members receive a document entitled "Information for Members - Extracts from the AVCS Corporate Plan". This is a most impressively informative document and is a model of its type. All societies would do well to supply its new members with such a detailed and readable document. In addition, the Membership Agreement incorporates a copy of the Memorandum and Articles of Association.

5.3.4. CAL

New members are provided with information about the structure of CAL, how sampling surveys operate and when distributions are made. This information is contained in the letter and materials they receive. These include the Membership Application and explanatory letter, CAL's Memorandum and Articles and various brochures and newsletters. The package is comprehensive and useful.

5.3.5. PPCA

New licensors are supplied with a copy of the "input agreements", together with a letter explaining the method of distribution. Nothing else. **The Company recognises the value of a comprehensive "new member's kit" and is taking steps to develop one.**

5.4. CLASSES OF SOCIETY MEMBERSHIP

It is important to examine whether a society offers various classes of membership. Differentials of class may act positively or negatively. They may indicate an effort to maintain power in the hands of one class of members to the detriment of another. On the other hand, they may indicate that the society has attempted to open up its membership to a group of rights owners beyond the primary owners.

5.4.1. AMCOS

The Society has three types of membership: Foundation Members, Publisher Members and Associate Members. Although the Articles provide for the category "Associate Member", there has never been a member admitted as an Associate. There is now only one Foundation Member - AMPAL. All other members are Publisher Members. **The time has surely come, to do away with the class of Associate Member. It is functionally redundant. Similarly, the role of Foundation Member should be abolished.**

5.4.2. APRA

The Association has essentially two classes of membership: full and associate.

Full members are sub-categorised into "writer full members" and "publisher full members", the only difference being that writer full members vote for writer directors while publisher full members vote for publisher directors.

Associate members (who comprise unincorporated publisher members and heirs and successors to writer members) enjoy exactly the same rights, entitlements and privileges as full members except the entitlement to attend and vote at general meetings. This is reasonable.

It should additionally be noted that members who fail to earn any royalty allocation for two successive financial years cease to be entitled to notice of, or to attend and vote at general meetings until they do earn an allocation. This too, is reasonable.

5.4.3. AVCS

AVCS has just the one class of membership.

5.4.4. CAL

CAL has two general classes of membership: publisher and writer. Members have the option of either Full Membership (participation in all licence schemes, both voluntary and statutory), or Statutory Membership (participation in statutory licence schemes only). In response to members' requests, CAL has also recently introduced a Restricted Membership (participating in selected licence schemes). Agents (such as literary agents or the Media Entertainment and Arts Alliance may join to collect and distribute fees on behalf of the authors they represent.

5.4.5. PPCA

As already noted, PPCA makes a distinction between being a member of the Company and a subscriber to the services of that Company.

Although the Articles of the Company allow for there to be different classes of shareholders, with different rights attaching to that class membership, there is only the one class of shares issued in the Company.

As for subscription to its services, those who license PPCA to collect on their behalf, do so on the same terms. The "Input Licence Agreement" is standard.

5.5. NUMBER OF MEMBERS

5.5.1. AMCOS

The Society has a slowly growing number of members. This fairly static membership is not surprising, given that the number of music publishers is itself fairly static.

1993	189
1992	180
1991	178
1990	185
1989	185
1988	180
1987	173

5.5.2. APRA

The numbers and growth of members in APRA is as follows:

MEMBERSHIP

AS AT	WRITERS	PUBLISHERS	SITs *	TOTAL
1 JULY 1984	6267	198	183	6648
1 JULY 1985	6750	201	187	7138
1 JULY 1986	7504	207	192	7903
1 JULY 1987	8039	208	198	8445
1 JULY 1988	8741	213	204	9158
1 JULY 1989	9400	216	207	9823
1 JULY 1990	10403	222	215	10840
1 JULY 1991	11192	229	219	11640
1 JULY 1992	12209	237	222	12668
1 JULY 1993	13966	241	228	14435
1 APRIL 1994	15166	252	228	15646

* Successors in title

MEMBERSHIP FIGURES

(July 1984-April 1994)

TOTAL MEMBERSHIP

(July 1984-July 1993)

**FULL MEMBERS ASSOCIATE MEMBERS
ELECTED ELECTED**

(July 1984-July 1993) (July 1984-July 1993)

5.5.3. AVCS

As at June 30th, 1994, there were 112 members. Each year shows a creditable growth of membership:

1990	6
1991	8
1992	11
1993	33

5.5.4. CAL

CAL does not keep records of its membership numbers from year to year. However, current membership levels are:

	<u>Authors</u>	<u>Publishers</u>
Full	855	970 (representing 4846 agencies /imprints)
Statutory	2	16 (representing 108 agencies/imprints)
Restricted	0	3 (representing 140 agencies/imprints)

The numbers above do not show the full extent of representation as:

- The above agencies and imprints indirectly represent hundreds of thousands of rights owners.
- CAL's membership also includes around 12,000 journalists who are members of the Media, Entertainment and Arts Alliance; and
- Publishers are members on their own behalf and on behalf of their authors.

Total Membership as at 8 April 1994 was 17,810.

5.5.5. PPCA

PPCA membership has been, not surprisingly, fairly static. (After all, it already represents in excess of 95% of owners.)

1983	17	1984	17
1985	15	1986	15
1987	15	1988	15
1989	16	1990	16

1991	16	1992	19
1993	22	1994	28

These members in turn represent over 800 labels which, between them, (as licensees or agents), control nearly all sound recordings commercially released in Australia.

The most recent and important development is that artists can now register for direct distribution. As of December 1993 there were 562 individual artists registered and PPCA expects this to be over 1,000 by December 1994.

5.6. ELIGIBILITY REQUIREMENTS

It is important to consider the eligibility criteria when gauging the equity of access to the societies.

5.6.1. AMCOS

All that is required for membership of AMCOS, is evidence of being a bona fide music publisher. This is not difficult. Writers who form their own company to administer their own copyrights are eligible provided they are prepared to perform the usual administrative functions of a music publisher. Many have chosen to do so.

5.6.2. APRA

The eligibility requirements for membership are as follows:

- (i) for writers: Evidence of the public performance or broadcasting of at least one composition;
- (ii) for publishers: Evidence of bona fide music publishing activities - usually satisfied by proof of ownership or control of publishing rights in relation to at least 12 commercially recorded or published compositions.

Successors in title are elected to associate membership upon proof of their entitlement.

5.6.3. AVCS

The Articles of Association provide that a person is eligible for admission as a member if the person is either:

- (i) an owner of a relevant copyright, or
- (ii) the agent of such a person.

["relevant copyright" means the copyright in a work, sound recording or cinematograph film within the meaning of Section 30 of the Copyright Act as it applies to the relevant act.

"relevant act" means the doing in Australia of the acts which, but for sub-sections 135E(1), 135F(1) 135ZS(1) and 135ZT(1) of the Copyright Act, would be an infringement of the copyright in any particular relevant copyright.]

Any person who is eligible for membership may apply to the board for admission to membership. The application must be made in writing, signed by the applicant, and must be made in such form as is determined by the Board.

The Board may require any applicant to supply such evidence of eligibility as the Board considers reasonably necessary but when the Board is satisfied that the applicant is eligible, the Board **must** admit the applicant as a member. This is not discretionary.

To be eligible for membership, the applicant must sign a warranty that the applicant is a relevant copyright owner or the agent of a relevant copyright owner.

Royalties for the copying of musical works are distributed with the assistance of APRA and AMCOS. Musical collecting societies must sign different Notification Schedules. The Notification Schedule signed by APRA for the composer/lyricist provides that the composer/lyricist are the owners of the relevant copyright in the musical works registered with APRA and that APRA is an agent for the composer/lyricist in respect of the relevant copyright. AMCOS also collects in the capacity of agent.

Whilst this may all seem complicated when formally set out as above, its operation is quite straight forward.

5.6.4. CAL

Membership applicants must be either an author or publisher copyright owner or the agent of the owner of copyright in a literary work. CAL adopts an inclusive approach to membership and relies on the representations of membership applicants in determining their eligibility for membership.

5.6.5. PPCA

Members must be the owners or licensees of the broadcast and public performance rights in protected sound recordings or music videos for the territory of Australia. Artists must be the primary artists performing on a recording (so thus, paid session musicians cannot register).

5.7. FEES AND/OR COMMISSION CHARGED TO MEMBERS

5.7.1. AMCOS

AMCOS does not charge joining fees or membership fees but deducts a set percentage from the gross revenue. Only AMCOS works on this set commission basis. (Worldwide, unlike performing rights societies which deduct their actual administration costs prior to distribution, mechanical rights societies traditionally deduct certain standard percentages. As the WIPO Report notes, throughout the world these administrative deductions average between 15% and 25% [par 66].)

Until 30th June 1992 the standard rate of commission was 7.5% of gross receipts. From that date, the rate was increased to 12.5%. This means that AMCOS has one of the best administration cost to distributed sums ratio. This is particularly impressive

seeing that it is not permitted by its members to collect mechanical royalties that publishers receive direct from the major record companies.

Inter-society collections (including collections on behalf of APRA members) are charged at rates of 15% for mechanical usages and 20% for synchronisation licences only. This reflects the greater amount of administration required.

Audit receipts and schools' photocopying income are commissioned at the standard rate but specific costs associated with these activities are deducted from the gross receipts.

For two quarters only in 1993, a commission of 3% was charged on collections by AMCOS New Zealand for the work undertaken in co-ordinating the collection and distribution of royalties from the major record companies.

AMCOS New Zealand charges 5% for facilitating advertising licences.

No commission has been charged to date for collection of music video royalties from major record companies but, in future, such income will be commissioned.

The rates are set by the Board after consideration of the financial factors affecting the cost of collection and the financial state of the Society. It is worth noting that the income of the companies represented by the directors of the Society is directly affected by any deduction/commission by the Society. This serves as an effective review mechanism to ensure that the Society's rates of commission are as low as possible. (The directors represent approximately 90% of the Australasian music copyrights.)

5.7.2. APRA

There are no joining or membership fees charged by the Association. The Association is entitled to deduct from its royalty distribution:

- its expenses of and incidental to the conduct, management and operation of the Association (Article 93(a));
- contributions to staff superannuation funds (Article 95(a)(i));
- such sums as the Board determines proper for the purpose of promoting the use and recognition of members' works (Article 95(a)(ii)).

There is also provision for the Board to establish a reserve fund (Article 95 (b)), but the Board has not regarded the establishment of such a fund as necessary.

5.7.3. AVCS

There are no joining fees, there are no annual membership fees and no percentage commission is charged on income collected. There are no membership fees of any kind.

The Society is entitled to charge a fee should a member exercise their right to inspect the Society's records under Article 65. Article 65 (c)(iv) provides that the member must undertake to pay "such reasonable fee as may be necessary to defray the cost to the Society of such inspection". This Article is consistent with Guideline 25 of the Attorney-General's Guidelines. Notwithstanding its entitlement to do so, the Society does not charge a fee for such access.

5.7.4. CAL

CAL does not charge joining fees or membership fees. No commissions are charged on income collected but deducts its running costs from its annual gross revenue.

5.7.5. PPCA

There are no joining or membership fees and no set commission is charged. Administration costs are deducted from gross revenue.

5.8. SERVICES TO MEMBERS (OTHER THAN COLLECTION AND DISTRIBUTION)

5.8.1. AMCOS

AMCOS provides the following services to its members:

- (i) Negotiation on behalf of music publishers and composer of the industry agreements - the AMPAL/AMCOS /ARIA Mechanical Copyright Agreement, the ARIA/AMPAL/AMCOS Music Video Agreement, the Schools Photocopying Agreement;
- (ii) Representation on behalf of members in connection with any proposed legislation which may affect the interests of members;
- (iii) Raising with Government in Australia and New Zealand any matters of concern to music publishers and composers;
- (iv) Working with Government to promote stronger copyright laws and bilateral copyright arrangements throughout other countries in the region;
- (v) Enforcement of members' rights through litigation and the Music Industry Piracy Investigations Unit;
- (vi) International representation through membership of committees of BIEM, CISAC and the International Copyright Coalition;
- (vii) Researching ownership and referring users to the appropriate members;
- (viii) Forum for discussion of industry matters, seminars and training sessions for members and their staff;
- (ix) Facilitation of advertising licences in New Zealand;
- (x) Providing a presence for the music publishing industry in New Zealand;
- (xi) Liaison with representatives of the various sections of industry, commerce and education involved in the use of reproduction rights;

(xii) Liaison with similar associations on an international basis;

(xiii) Dissemination of information of general industry benefit and interest to members such as:

- changes in copyright administration - new agreements etc.;
- an overview of international copyright issues;
- international licensing trends and copyright conventions;
- feed-back from copyright users concerning new technologies and the copyright issues involved;
- changes in government attitudes to copyright;
- statistics on copyright usages.

5.8.2. APRA

The Association provides seminars, workshops and publications, which provide information to members not only on APRA-related matters, but on matters relevant to music industry issues generally. It also seeks to represent the voice of writers and, to a lesser extent publishers (because they have their own industry body), on general copyright issues.

Although some submissions to the inquiry were critical of APRA's use of litigation in enforcing its licensing and distribution function, the Association sees that one of its important services to members is in defending the value of the music performing right in the Copyright Tribunal.

5.8.3. AVCS

AVCS does not purport to provide services to members beyond its administration of the educational copying scheme under Part VA of the Copyright. Given its stage of development, this is not surprising nor a matter for adverse comment.

The Society has apparently not yet been approached by members to perform any additional services. There is certainly room for the expansion of AVCS' collecting activity. The Society is willing to administer voluntary licence schemes sought by members and new statutory licence schemes and considers itself to be the appropriate licensing, collection and distribution mechanism for owners of copyright in audio-visual works.

There are no legal restrictions on expanded operations flowing from the Copyright Act or Attorney-General's Guidelines. The Society's Memorandum and Articles of Association do not preclude the Society from expanding its operations in the administration of rights for owners of copyright in films, sound recordings and underlying works.

Amendments to the Articles of Association would be required to admit to membership any other classes of rights holders beyond the owners of the relevant copyright in films, sound recordings or underlying works (for example performers). Depending on the nature of any statutory amendments, further changes to the Articles of Association might be required to comply with specific features of any legislation or requirements for the declaration of the Society under non-voluntary licence schemes introduced in the future.

5.8.4. CAL

CAL's principal services to members (beyond collection and distribution) are educational. The Society provides members with information about relevant developments in technology and use of copyright works. Members also experience difficulty understanding the more technical aspects of the sampling process and CAL has begun a program of free seminars for members addressing this. Moreover, the education and the advice it gives to licensees and other members of the public about copyright and the limits of copying under CAL licences, is intended to encourage them to respect the rights of CAL's members.

Because many members are unsure if an infringement of copyright has occurred (under CAL licences, some copying is permitted and it is difficult for someone not entirely familiar with the licence terms to make this assessment), CAL will also assess infringement evidence for members and, where the infringement is by a licensee, attempt to arrange a settlement for the member concerned.

CAL runs litigation with its members where it is of strategic benefit to the interests of copyright owners (either to minimise infringement or to encourage infringing institutions to take licences). It also lobbies government for amendments to the Copyright Act, which would benefit its members.

CAL also acts as a first contact point for members with copyright problems and is able to refer them to other bodies better able to assist them.

CAL conceives, develops, implements and markets new forms of licence for institutions that infringe copyright.

5.8.5. PPCA

The company litigates to enforce member's rights and runs test cases to establish those rights. (For example, the "MMM case" in the Copyright Tribunal to set broadcast licence fees payable by commercial broadcasters.)

5.9. EQUITY IN BENEFITS OF MEMBERSHIP

None of the societies offer services or benefits to individual members that are not offered to all other members. In the case of AVCS and CAL, both as trustees, and under the Guidelines for Declared Collecting Societies issued by the Attorney-General's Department, each Society has an obligation to operate their scheme in an "even-handed" manner for current members, prospective members (those currently

entitled to a distribution) and future members (beneficiaries from future distribution periods).

5.10. ANNUAL REPORTS

5.10.1. APRA, AMCOS, AVCS and CAL

These societies publish acceptable annual reports.

5.10.2. PPCA

PPCA only produces the minimum report required by law. They are only in the form of accounts. **The company would do both itself, the public and its subscribers, a considerable benefit if it produced a public document which was more generally informative and accessible.**

5.11. COMMUNICATION WITH MEMBERS

5.11.1. AMCOS

AMCOS publishes an interesting occasional newsletter.

5.11.2. APRA

In 1993, the Association began publishing a high quality Year-Book which has numerous articles of interest to the music community.

The Association also publishes a very informative newsletter called *APRAP* to its members. The newsletter is published about 3 or 4 times a year.

5.11.3. AVCS

The Society publishes a newsletter entitled *Off the Air*. It is circulated free of charge to members, licensees, potential claimants, industry associations and others. It is available on subscription to libraries at \$25 for four issues. The newsletter is published irregularly, depending on the progress of events that form the subject of its reports.

5.11.4. CAL

Since 1988 CAL has published an informative newsletter, which is distributed to member licensees and the general public. Since 1991, the newsletter has been published bi-annually.

5.11.5. PPCA

The company does not have a newsletter for those who subscribe to its services. Although there is an ARIA newsletter, the Company must acknowledge that the news that is relevant to ARIA members is not necessarily the same as that which is relevant

to subscribers to the services of PPCA. **The interests of the subscribers would be well served by the introduction of some regular channel of communication such as a newsletter (or some other method). It would give the Company a means of informing rights owners of its operations.**

5.12. PROCEDURES PROVIDED TO DEAL WITH MEMBERS' INQUIRIES AND COMPLAINTS.

Transparency of operation is essential to the healthy collective administration of rights and this requires that complaints and requests for information be dealt with speedily and without prevarication. Where complaints made are misinformed, every effort must be made to correct the misinformation. This is best done by full and ready disclosure rather by adopting a defensive attitude.

5.12.1. AMCOS

There are no codified procedures. Complaints in the main are directed to the Chief Executive for resolution.

5.12.2. APRA

The Association has a Membership Department consisting of 3 full-time staff in Sydney and officers in Auckland, Melbourne, Brisbane, Adelaide (part-time) and Perth (part-time). This department is generally the first point of call for a member with a query or complaint. If the query is, however, of a more specialised nature (for example, concerning a royalty allocation deriving from Australia or overseas) the member may be referred to, or request, a particular person from within the Distribution or Documentation departments. If queries are unsatisfied or if a complaint emerges then the Association's Company Secretary or Chief Executive become involved.

Submissions to the Inquiry indicate that, in spite of its efforts, APRA falls down in the manner in which it deals with complaints. In an organisation of this size, a more formal complaints procedure would seem to be called for. **The Association would be well advised to consider implementing a system whereby the handling of complaints is made more systematic and formally supervised manner.** This would also more easily permit reflection as to how the system might be improved, in often small but important ways.

5.12.3. AVCS

Enquiries and complaints are responded to individually by the Chief Executive or the Corporate Solicitor. It is a small organisation and this somewhat personal approach is appropriate.

5.12.4. CAL

Most members' complaints and inquiries are due to a misunderstanding of CAL's role and operations. Therefore, providing members with clear summaries of CAL's

operations is one of its priorities, and most inquiries and complaints are resolved by the provision of this information.

The Membership Department is the focal point for member's inquiries concerning CAL's operations, and it co-ordinates the responses of CAL's various departments to the members' inquiry.

5.12.5. PPCA

Complaints and enquiries are directed to the Executive Director, the General Manager and the Administration Manager. Examination of such correspondence indicates that the PPCA has been deficient in the manner in which it has dealt with some complaints or requests for information about its operations. It has had a defensive approach to such matters and this approach has only acted to inflame criticism and cynicism as to its operation. **This has been a weakness of PPCA and must be remedied if the Company is to achieve effectively its representative role.**

6. RIGHTS AND LICENCES ADMINISTERED BY THE COLLECTING SOCIETIES

6.1. AMCOS

- 6.1.1. Licensing Of Musical Works Into Records
- 6.1.2. TV Blanket Licences
- 6.1.3. Production Music Licences
- 6.1.4. Mechanical & Video Blanket Licences
- 6.1.5. Radio Station Blanket Licences
- 6.1.6. Music Videos for Retail Sale
- 6.1.7. Special Event Video Blanket Licences
- 6.1.8. Dance School Blanket Licenses (Audio Mechanical)
- 6.1.9. Synchronisation Clearances
- 6.1.10. Importation
- 6.1.11. Statutory Licences For Educational Copying
- 6.1.12. Schools Photocopying
- 6.1.13. Blank Tape Levy

6.2. APRA

6.3. AVCS

6.4. CAL

6.5. PPCA

6.1. AMCOS

AMCOS is concerned primarily with the administration of the right to reproduce a musical work in a material form - the right to make reproductions of the musical works controlled by its members and those of its affiliated Societies.

The Copyright Act grants the owner of copyright certain exclusive rights over his or her musical work under section 31(1)(a). AMCOS is the exclusive licensee in Australia and New Zealand in respect of the **reproduction right** of musical works which are under its control. AMCOS licenses the reproduction right and collects the "mechanical royalty" for those musical works that it controls on behalf of its publisher

members. AMCOS remits the royalty to the relevant music publisher which then distributes it to the composers according to the terms of their agreements.

AMCOS also has reciprocal agreements with most equivalent collecting societies around the world. On the basis of these agreements AMCOS is authorised to collect royalties on behalf of foreign rights owners who have not entered sub-publishing agreements for the territory of Australia and New Zealand. Australian composers who are members of APRA and are not represented by a local publisher can sign an authority which permits APRA to use AMCOS as its agent to collect the mechanical income. (see para 7.1.1.)

6.1.1. Licensing Of Musical Works Into Records

The principal exercise of this right involves the licensing of reproductions of musical works onto "records" (as defined in the Copyright Act - including CDs, cassettes, MIDI files, etc.).

- Section 55 of the Copyright Act 1968 provides for the **statutory licence** under which records of musical works can be made in Australia.
- Section 55(1)(d)(ii)(A) provides that the manner of payment of the mechanical royalty can be in a manner agreed between the manufacturer and the copyright owner or, failing such agreement, determined by the Copyright Tribunal under section 152B.
- Section 55(1)(d)(ii)(B) provides that if no such agreement or determination is in force - the manner of payment can be according to that prescribed by the regulations.
- Section 55(6)(a) provides that the amount of the mechanical royalty can be agreed between the manufacturer and the copyright owner or, failing such agreement, determined by the Copyright Tribunal under section 152A.
- Section 55(6)(b) provides that if no such agreement or determination is in force - it will be an amount equal to 6.25% of the retail selling price of the record. This prescribed rate is the benchmark for all rates and agreements entered into by the Society.

On the basis of Section 55(1)(d)(ii)(A) and Section 55(6)(a), AMCOS, AMPAL and ARIA entered the Mechanical Copyright Agreement, dated 24 April 1990. This agreement regulates the manner of payment of the royalty and fixes the royalty rate.

The current Mechanical Copyright Agreement ends on 31 December 1994. It sets out the quantum and the payment machinery of the mechanical licence royalties payable by the six major record companies which account directly to the music publishers for the licensing of records. These transactions do not utilise the services of AMCOS. This is a most important distinction to draw. Most of the mechanical copyright societies in Europe, collect **all** of the mechanical income payable to the publishers from the record companies - irrespective of the size of the record companies making the payment. In Australia however, AMCOS does not have the right to collect the vast

bulk of mechanical income, (ie the mechanical income which flows from records sold by the Major record companies). Rather it only collects everything that is unprofitable for the publishers to collect individually.

The other ARIA members ("non-Majors") account to the music publishers for mechanical royalties through AMCOS. Non-ARIA members execute an agreement with AMCOS with the same essential terms and conditions as the Mechanical Copyright Agreement.

As the operation of the Agreement serves to grant credit to record manufacturers, AMCOS has recently set up new procedures for licensing new companies who have no credit history. These new companies are treated in a similar manner to "sundry" customers - people looking to license works for small runs and one-off recordings. They are invoiced on the basis of manufacture and their licence is not valid until paid.

The Mechanical Copyright Agreement is an illustration of the results of the intense negotiating that precedes an industry agreement between record companies and music publishers. In many aspects of the agreement, the music publishers have allowed for and reduced royalties, in return for other advantages.

It is a useful model of the value in having a basic royalty set by the independent decision maker (Copyright Tribunal) and then allowing the industry to negotiate away from that minimum. This ensures a level of equity while allowing the industry parties to negotiate other terms. Negotiation undertaken in which both parties know that either of them can go to the independent decision maker if either is unreasonable, ensures that the negotiation is commercially efficacious.

The weakness of this negotiation system is that all relevant interests are not directly involved. Neither the performers nor the composers, the primary producers of the industry, have a seat at the negotiating table when this, one of the most important agreements in the music industry, is settled. It is all very well to say that the publishers represent the views of the writers and that the record companies represent the interests of the performers, but the argument is specious. The commercial interests between publisher and writer, and record company and performer, are as different from one another as the commercial interests between composer and performer.

6.1.2. TV Blanket Licences

Licences issued to television stations (including free-to-air, cable, satellite and subscription) to reproduce musical works for the purposes of broadcasting are an extension of the "ephemeral" provisions of the Copyright Act.

The licence permits the station to make reproductions of musical works for the purposes of broadcasting across a network and to retain copies of the programs in which the music is incorporated beyond the statutory limits. The licence is only for the territory of Australasia.

The sheer volume of copyright music recorded into TV programs has led to representatives of broadcasters and copyright holders working to achieve efficient methods of licensing. There are two reasons for this co-operation:

- If the large amount of daily music uses were subject to individual clearances on each separate musical work, it would require an unacceptably high level of administration costs.
- It would be difficult for individual writers and publishers to monitor the use of their music on all TV stations in the various regional locations.

It is in this context that publishers have authorised AMCOS to grant licence agreements to the ABC, SBS and all commercial television stations throughout Australia, authorising the reproduction of music into the soundtracks of programs produced or commissioned by the station. The stations are required to submit to AMCOS cue sheets detailing all reproductions made.

Although there seems little complaint about the efficiency of the operation of the AMCOS TV blanket licence system, it would seem a corollary of the criticism that the Federation of Commercial Television Stations ("FACTS") has against APRA, (namely that the calculation of a blanket fee based on gross turn-over of the TV station is inequitable and that the Society abuses its monopoly position) that if FACTS were to succeed in its actions against APRA scheduled for later this year, its existing arrangements with AMCOS may also be reviewed.

6.1.3. Production Music Licences

Production Music is a convenient yet inexpensive source of "off the shelf" background music for film, audio-visual productions and commercials. There are many sources of production music and AMCOS is just one.

AMCOS administers a simple and effective licensing scheme for licensing the rights to reproduce the musical work as well as the right to reproduce and broadcast the sound recordings in the Production Music Libraries distributed by members of the Society. Some of the Society's members licence AMCOS to administer their production music libraries for them. Others don't. It is merely a service that AMCOS offers all of its members should they wish to take advantage of it.

All that is required is the submission of the standard Licence Application/Cue Sheet and the payment of the licence fee indicated on the AMCOS Rate Card. AMCOS then ensures that the appropriate royalties flow back to the publishers for on-payment to the composers.

6.1.4. Mechanical & Video Blanket Licences

These blanket licences cover clients that distribute background music audio recordings to retail shops or music video compilations to hotels and clubs, in flight audio programs, radio syndication companies etc.

6.1.5. Radio Station Blanket Licences

These licences primarily cover the use of production music recordings in commercials. They also allow radio stations to make copies of recordings of musical

works and retain them beyond the limits of the ephemeral provisions of the Copyright Act.

6.1.6. Music Videos for Retail Sale

AMCOS/AMPAL and ARIA entered an agreement last year to license the reproduction of musical works in music videos for retail sale. It is an interesting agreement in that it illustrates the complexity and detail of these intra-industry agreements and the extraordinarily stubborn manner in which they are negotiated.

6.1.7. Special Event Video Blanket Licences (Synchronisation)

This is a licence administered by the Society on behalf of its members and the members of ARIA to cover the use of musical works and sound recordings in videos made of private and domestic events (such as weddings and birthday parties).

6.1.8. Dance School Blanket Licences (Audio Mechanical)

This licence scheme was set up in 1993 to enable dance schools to make audio recordings of musical works for the purpose of instructing students.

6.1.9. Synchronisation Clearances

These include:

- Audio visual productions such as a feature film, documentary or corporate video.
- Student Film or Video Licences.
- Synchronisation clearances which allow students to use musical works in films or videos as part of a course of instruction.
- Sundry Uses
- Demonstration tapes, compilation tapes made by educational institutions, audio only component of Karaoke and backing tapes, etc.

6.1.10. Importation

AMCOS licenses the importation of musical works embodied in imported recordings.

6.1.11. Statutory Licences For Copying Broadcasts In Educational And Other Institutions

AMCOS is responsible for distribution of payments due to its members for the copying of musical works and associated lyrics from programs broadcast on television and radio in Australia pursuant to statutory licences for educational institutions contained in Part VA, and for other institutions under Part VB, of the Copyright Act.

(AVCS is responsible for administering the scheme and payments to member music publishers are made through AMCOS.)

6.1.12. Schools Photocopying

Reproducing sheet music by reprographic reproduction and transcribing music and lyrics in graphic form are also an exercise of the right of reproduction. Part VB of the Copyright Act provides a **statutory** licence for educational institutions to make copies of print materials for educational purposes in certain circumstances, subject to equitable remuneration.

Print music publishers usually control these rights on behalf of the copyright owners. AMCOS has been appointed by its members to license educational institutions to photocopy sheet music and to transcribe music and lyrics for educational purposes.

AMCOS also has an agreement to offer **voluntary licences** to educational institutions which extend the **statutory rights** granted under Part VB. These voluntary licences enable educational institutions to make a limited number of copies from original sheet music that they have purchased.

The benefit of the Agreement is that schools do not have to approach individual publishers to negotiate permission to photocopy their works, which, although required by law, they had not been doing prior to the introduction of the scheme. If schools wish to photocopy beyond the terms of the agreement, for example for a combined schools festival, AMCOS will research the ownership and refer the request to the relevant rights holders. This was requested by educational authorities for the effective musical education of their students. The limits of the licence were a compromise to protect the interests of sheet music publishers, wholesalers and retailers and to place clearly defined and realistic limits on copying of sheet music in schools.

6.1.13. Blank Tape Levy

AMCOS has authority from its members to collect payments from any future blank tape remuneration scheme to compensate from losses due to domestic reproductions of musical works.

6.2. APRA

Subject to the exception of "grand rights", the Association administers the rights of public performance, broadcasting and transmission to subscribers to a diffusion service which subsist in the musical works (and in any accompanying words, protected as literary works) written or published by members or by the members of affiliated societies. These are the rights that subsist in works pursuant to sec. 31(1)(a)(iii),(iv) & (v) of the Copyright Act.

The term "grand rights" refers to a number of exclusions from the rights assigned. These are set out in the definition of "performing right" in Article 3 of APRA's Articles of Association, but may be summarised as:

- the right to perform or broadcast a dramatico-musical work, an oratorio or long choral work, or a work in association with ballet;
- the right to perform a work in a dramatic context.

6.3. AVCS

The Society administers the statutory scheme under Part VA and Part VB of the Copyright Act whereby educational institutions and institutions assisting intellectually handicapped persons in Australia can copy programs from a television or radio broadcast for their educational purposes or for the purpose of assisting intellectually handicapped persons provided that:

- (i) the institution signs a Remuneration Notice under Section 135G or section 135ZU of the Copyright Act, undertaking to pay equitable remuneration to the Society for copies of broadcasts made;
- (ii) pays equitable remuneration to the Society in accordance with the Remuneration Notice and agreement with the Society; and
- (iii) complies with the other requirements of the Copyright Act and Regulations.

The right licensed by the scheme is the right to make a copy of a program broadcast on television or radio including:

- (i) the cinematograph film together with any other underlying work incorporated in the program directly from a television broadcast; and
- (ii) the sound recording together with any other underlying work incorporated in the program directly from the radio.

The Part VB scheme in favour of institutions assisting intellectually handicapped persons extends to "item to item" copying - copying from pre-recorded audio-visual items such as purchased records and video cassettes (sections 135ZS and 135ZT). Further references in this document to the Part VA scheme should be read as including a reference to relevant sections of the Part VB scheme.

The owner of the right is the person who, but for the statutory licence, would be entitled to bring an action for copyright infringement or would be entitled to offer a voluntary licence to an educational institution to copy the broadcast or audio-visual item.

The statutory licences provided in Part VA and Part VB of the Copyright Act define the full extent of the Society's current collections.

6.4. CAL

CAL has been approved since 1 July 1990 by the Attorney-General to administer the **statutory** licence for educational institutions to reproduce works or parts of works in Part VB of the Copyright Act 1968.

There are only 25 educational institutions in Australia which copy under the statutory licence.

The bulk of CAL's educational licences are **voluntary** ones because, at the time of negotiating licences in 1988, the statutory licence for education under the (then) s.53B of the Copyright Act was impracticable due to its full records keeping requirements. When the Copyright Act was amended in 1989, the parties chose to remain with the then current voluntary licences.

CAL has also negotiated an agreement with the Commonwealth government for the administration of photocopying under s.183 of the Copyright Act.

6.5. PPCA

PPCA administers broadcast and public performance rights which vest in sound recordings and music videos under s. 83 and 85 of the Act.

The exclusive right in s. 85 is rendered a statutory licence by section 108, section 109 and s.152. This allows "broadcasters" and public venues to play any sound recording provided it gives an undertaking to the copyright owner (or it's licensee ie. PPCA) to pay a fee for such use. If agreement cannot be made, the Copyright Tribunal has the jurisdiction to make an "order". (See s. 152).

7. LEGAL BASIS OF ADMINISTRATION

7.1. GENERAL

7.1.1. AMCOS

7.1.2. APRA

7.1.3. AVCS

7.1.4. CAL

7.1.5. PPCA

7.2. POSSIBLE FUTURE AREAS OF EXPANSION

7.2.1. AMCOS

7.2.2. AVCS

7.2.3. CAL

7.2.4. PPCA

7.1. GENERAL

It is important to know the basis upon which a society controls the rights of its relevant rights owner. Some act as agent, others as licensees and one, as assignee. That said, the basis upon which a society acts, may vary not only from society to society but, within a society, from right to right. Sometimes the relationship is exclusive; others, non-exclusive.

No one basis is inherently better than any other. It is sometimes said that demanding an assignment of rights rather than a mere licence, is an abuse of power. There is little substance in this argument. The important factor which must be considered is how easy it is for the owner of a relevant right, to recover ownership/control of the right. For example, it may be that a non-exclusive licence with an unduly long notice period is far less fair than an assignment with a short notice period requiring reassignment.

Many of the societies have chosen to adopt non-exclusive relationships with their members. Given that the Societies are mindful of the anti-monopoly provisions of the Trade Practices Act, the move towards non-exclusive licensing is an effort to appease the major monopolistic fears. It is however, not the best solution. The problem is one that needs to be dealt with in a more systemic way.

7.1.1.1. AMCOS

The Membership Agreement and Supplementary Agreements enumerate the rights granted to the Society by its members as follows:

The **exclusive licence** to authorise:

- (i) the making of records of the Works; this does not apply to records made by any of the so-called "Major" record companies as listed in the Annexure to the membership agreement or as varied from time to time by mutual agreement.
- (ii) the making of reproductions, other than advertisements, of the Works for the purposes of broadcasting within the prescribed territory;
- (iii) the making of videogrammes, other than advertisements, of the Works for any purpose, including sale to the public;
- (iv) the importation of records and videogrammes, other than advertisements, of the Works into the prescribed territory for the purposes of sale or hire or distribution to the public or any other purpose which would contravene section 37 or section 38 of the Act;
- (v) the making of cinematograph films of the Works for purposes other than broadcasting within the prescribed territory; subject to the proviso that the Society shall in all cases refer any application for a licence to the Licensor, which shall be entitled at its discretion:
 - to withhold permission for the grant of a licence;
 - to grant the licence itself directly to the applicant; or
 - to instruct AMCOS as to the terms subject to which a licence may be granted.
- (vi) the broadcasting of sound recordings (but not the musical works) which constitute Library recordings (Production Music); and
- (vii) the reproduction of Library recordings (Production Music).

The agreement also serves to appoint the Society as **sole agent** to:

- (a) claim and receive any sums which may be or become due in respect of the Works pursuant to any scheme, legislative or otherwise, providing for the payment of any levy, tax or royalty upon recording equipment, tape or any other medium of reproduction and intended as compensation or payment for the private recording of copyright material;
- (b) audit any record maker pursuant to any contractual authority conferred upon the Society, whether jointly with another party or otherwise, and to receive and distribute in accordance with such methods of entitlement from

time to time fixed by the Society's Board of Directors any sums found to be due and owing in respect of the Works pursuant to such audit.

(c) claim and receive any moneys due in respect of musical works and associated lyrics copied pursuant to statutory licences for educational institutions contained in Part VB of the Copyright Act, 1968 and to issue licences to educational institutions to make multiple copies of up to the whole of a separately published work; the whole of one or more parts of a work; and transcriptions of works; for educational purposes under the terms of voluntary licences negotiated by AMCOS.

The reciprocal agreement with affiliated foreign Societies provides that each one of the contracting Companies entrusts to the other, "the management of the rights of any method of recording and mechanical reproduction of the works of the repertoire of the other Company and the circulating in any form or in any place of the recordings and reproductions thus produced in the respective operating territory of the contracting Companies".

Under the AMCOS/APRA agreement, AMCOS is appointed as the **agent** of APRA to collect mechanical royalties in respect of compositions written by APRA members who do not have publishers and who would otherwise have no means of collecting their mechanical royalties.

AMCOS argues that status of **exclusive licensee** allows AMCOS to issue licences for users seeking to make reproductions and negotiate terms with the major record companies - make industry agreements etc. Certainly, as exclusive licensee, AMCOS can join with the publisher in pursuing legal actions to protect members' rights. In any event, there seems little discontent with the exercise of this exclusivity, either by owners or users of rights, and there is no apparent evidence of abuse of that position.

In respect of the Schools Photocopying Agreement, AMCOS is appointed **sole agent** to collect moneys due under Part VB and is authorised on a non-exclusive basis to license the reproduction of works in graphic form beyond the limits of the statute. This is sufficient to enable AMCOS to negotiate blanket licences for the photocopying of sheet music in educational institutions which extend the statutory rights, as requested by educational authorities. It will also enable AMCOS to enter into agreements with tertiary educational institutions for the photocopying of sheet music.

In contract, AMCOS' authority to issue the Schools Photocopying Agreement is **non-exclusive**. Moneys collected by CAL from educational institutions other than schools are paid to AMCOS members through the Society, as agent.

Although the status granted to the Society by its publisher members is described as "exclusive licensee" or "sole agent", the membership agreement provides certain conditions which allow the copyright owner to exercise discretion as to whether particular licences are to be granted and their terms and conditions. In any area where the "moral rights" of the composer could be affected, the licence is referred back to the copyright owner. For example, if AMCOS is approached to issue a licence for the use of music in an advertisement it will get approval from the publisher owner before granting such licence.

Territorial restrictions in the membership agreement mean that if users wish to exploit musical works beyond the territory, they may be required to enter into negotiations with the copyright owners directly. For example, AMCOS issues a blanket licence to television stations to reproduce the AMCOS repertoire for the purpose of broadcasting within the territory only. Many program makers negotiate world-wide rights directly with the copyright owners.

The membership agreement authorises AMCOS to license the reproduction of musical works into "records". This does not extend to the collection of royalties from the major record companies by AMCOS. The companies listed in the Annexure to the membership agreement represent the major record companies and the majority of mechanical royalties generated.

Equity Of Service Availability

Although there are no services provided by the Society that are not **available** to all members, services such as the licensing of musical works in advertisements in New Zealand are not **used** by all members. Those who use the service, pay for the service by way of a commission. The fee for facilitating licensing of musical works in advertising in New Zealand is currently 5%. All commission rates are set by the Board after consideration of the cost effectiveness of the relevant service. The New Zealand situation exists because few of the major publishing companies have offices in New Zealand and AMCOS is responding to the needs of users as well as acting in the interests of its members.

Members are treated identically in the types of services that are offered. As to the terms, changes made for individual members, flow on to all other members. The danger for AMCOS in permitting greater degrees of flexibility is that if the most powerful members use that flexibility to keep profitable collecting functions to themselves, whilst leaving AMCOS with only the sundry (and less profitable) functions, the very viability of the organisation is endangered. Moreover, the smaller members will still need AMCOS to offer the full range of services to them and they will inevitably pay more for these services because of the larger members doing the most profitable collection functions in-house.

Right To Regain Control Of Copyrights

Copyright owners have the right to resign their membership and regain control of their copyrights. Article 9 of the Society's Articles of Association states that "any member may by not less than 12 months notice in writing to the secretary expiring on the 30th of June determine his membership and his membership shall cease accordingly at the expiration of such period of notice provided that the Board may in its absolute discretion accept shorter notice and/or a different expiry date." Also, members may withdraw all or part of their repertoire from the Schools Photocopying Agreement and AMCOS is obliged to notify licensees of such exclusions.

Membership Agreement Redraft

AMCOS is presently in the process of reviewing and redrafting its membership agreement. The Board has already indicated that the Society will be moving towards a non-exclusive licence for the rights relating to the reproduction of the sound recordings and the broadcast right in sound recordings of Production Music. This will give the record company or user of Production Music, the right to negotiate a lesser rate with the publisher than that offered by AMCOS.

7.1.2. APRA

The Association administers its rights as **assignee**. It is the only society that becomes the owner rather than remaining a licensee.

The Association deals with tens of thousands of music users, many of whom are reluctant to accept their obligations to copyright owners under the Copyright Act. As an assignee of the rights, it is procedurally easier to commence enforcement proceedings against music users which fail to obtain licences. (If it were otherwise, APRA would be obliged to join writers and/or publishers as co-plaintiffs in any infringement proceedings.) Such a procedure would hinder, and add significantly to the costs of, the licensing process and the enforcement process.

Strictly speaking, the Association does not operate under any statutory licence. It is doubtful, however, that there is any practical difference between the voluntary licence regime under which APRA operates and a statutory licence. Even if it were so inclined (which it is not, since the whole purpose of an organisation like APRA is to facilitate the **granting** of licences) APRA could not refuse to grant a licence to any party who is prepared to comply with the reasonable terms of a licence or licence scheme. This is so because of both s. 157 of the Copyright Act and s. 46 of the Trade Practices Act.

To all intents and purposes the Association accordingly regards itself as operating subject to a statutory licence.

The rights are **exclusive**, except in the case of rights obtained under agreements with the two US societies, ASCAP and BMI, which are **non-exclusive**. (It should be noted, however, that most US-originating works are subject to control by an Australian sub-publisher. They are therefore subject to the assignment that such publishers make in favour of APRA.)

Right To Regain Control Of Copyrights

If a member wishes to resign membership, the Articles provide that 3 years' written notice must be given (Article 9). This provision is required because APRA grants blanket licences for forward periods and is thus contractually bound to continue, for a reasonable period, to be able to license members' works. It should be noted that the 3-year period may be waived at the Board's discretion. The only instances of which the Chief Executive was aware of members wishing to resign their membership have occurred in the case of members wishing to join a foreign society, (because they were

moving to another country) and in such instances the Board has always waived the 3-year period.

There is also provision in the Association's Articles of Association, for APRA to decline rights. Thus, in 1993 there was a change to the definition of grand rights in the Articles of Association made by APRA's membership. This change effectively broadened the range of exclusions from the assignment made by members to APRA. In effect, the Society returned these rights to its members.

The rationale for the change to was that a writer or publisher should reasonably be able to determine whether or not to approve or prohibit the use of a work in a stage show (for example a stage show built around the career or works of a particular artist - the so-called "tribute shows"). There are, in such a context, important economic and moral rights considerations to be taken into account which are inappropriate to a collecting society.

It is important to note that the above return of rights was made to all members generally. There are no instances of the Association returning rights to a particular member to exercise.

Equity Of Service Availability

The terms for all members are identical and all of the Association's services and functions are available to all members. Members, of course, avail themselves of services to vastly different degrees.

7.1.3. AVCS

At the moment, AVCS operates only under the **statutory licence** in Part VA of the Act.

As it is presently merely administering a statutory licence, the Society does not, in the strict sense, administer **rights**. The Society administers the **funds** under the Copyright Act for the owners of the right in the film, sound recordings and the underlying works in programs copied from a television or radio broadcast in the capacity of a trustee.

Under the Membership Agreement, the applicant for membership appoints the Society as **agent** for the collection of funds under Part VA of the Copyright Act and the relevant clauses of Part VB. In fact, the Society has received legal advice that it holds the funds under the more stringent fiduciary relationship of **trustee** rather than those of a mere agent. Accordingly, the Society does not rely on this appointment of agency.

The Society operates on an **exclusive** basis. Section 135Z of the Copyright Act provides that the statutory licence does not affect the right of the owner of the copyright to grant a licence authorising an educational institution to make a copy of a broadcast, film, sound recording or underlying work without infringing that copyright. A similar section exists for Part VB (section 135ZZF).

- In spite of this, the Society does not attempt to regulate or control the ability of its members in any way to deal directly with licensees of the Society or any persons who wish to use the members' copyright. In practice however, there are no examples of rights owners granting individual licences to institutional users. One can assume that this indicates that the scheme works to the advantage to both the owners and the users.

Right To Regain Control Of Copyrights

A relevant copyright owner or agent does not contract with the Society for a set period of time. By becoming a member of the Society, the claimant is simply able to receive a distribution of royalties collected for the use of the right under the statutory licence.

Article 11 of the Articles of Association of the Society provides that any member may resign from membership of the Society by giving not less than one year's notice in writing (or such shorter period of notice as determined by the Board of the Society).

Upon resignation of membership of the Society, the relevant copyright owner:

- (i) would not be able to claim any further payments of royalties collected by the Society until it became a member of the Society again;
- (ii) is not able to prevent educational institutions from copying broadcasts off-air under the non-voluntary licence scheme in the Copyright Act; but
- (iii) would be able to exercise its rights under section 135Z and section 135ZZF of the Copyright Act to grant individual licences to educational institutions authorising copies to be made. As noted above, the relevant copyright owner can exercise this right while a member of the Society.

For the moment, this is all somewhat theoretical. All members would be aware that unless they are members, it is not practicable for them to collect the income they may be due from the institutions.

7.1.4. CAL

CAL does not take an assignment of rights nor does CAL have an exclusive agency. The reproduction right is essential to CAL's members in conducting their primary business and therefore an assignment of rights is not practicable. CAL acts as **agent** for its members' reproduction rights, other than the right to reproduce in volume form.

Equity Of Service Availability

For ease of administration, CAL prefers to use standard form agreements, however if a particular term of the standard form agreement is unacceptable to an individual member and an amendment will not impede the efficiency of CAL's licensing or other operations, then CAL will make the amendments required. An example is the difficulty some members such as government departments and agencies have with Clause 12 of the membership agreement. It is noted that CAL intends undertaking a general review of its membership conditions later in 1994, taking into account both substantive matters (including Clause 12) and the simplification of language.

Right To Regain Control Of Copyrights

Copyright owners have the right to resign their membership and regain total control of their copyrights. The membership agreement provides that a member must give 6 months notice of an intention to withdraw the licence from CAL. This is reasonable.

CAL is considering a "transactional permissions licence" which will allow each member to set their own fees for licensing document delivery and anthology compilation licences. This move is to be commended. The more flexibility that can be built into licences, the greater the control that members have over their rights whilst at the same time having the benefits of collective administration.

7.1.5. PPCA

PPCA acts only as a **non-exclusive licensee**.

In practice, the broadcast/public performance right is without exception left to PPCA to administer.

The non-exclusive licensee relationship was chosen to avoid Trade Practices problems. This was a key basis upon which PPCA obtained an Authorisation from the TPC in the 1980's.

Given that the rights of PPCA are non-exclusive, if an individual owner were to so choose, it could enter an individual deal with, say, a radio station, for the right to play its record. What faster way could there be, to find radio airplay oblivion, than to approach a radio station to negotiate an individual licence!

Rights owners are not restricted by the Company's rules in entering independent deals in respect of the relevant rights. They are restricted in the sense that PPCA (like the other collecting societies) is the only collective organisation which administers the relevant right in Australia.

Equity Of Service Availability

The input agreement through which membership is obtained is a standard document. Copyright owners can choose to licence PPCA to administer any one or all of the broadcast or public performance rights in sound recordings or music video.

Given the standard terms of the "input agreement" the services rendered to all subscribers are the same - but of course the rights of control in relation to the company itself, are far from the same. Only the shareholders can exercise that privilege.

Right To Regain Control Of Copyrights

Under the agreement, five years notice must be given before a subscriber can withdraw a licence. This is a long notice period but reflects the term of the licence with the broadcasters.

7.2. POSSIBLE FUTURE AREAS OF EXPANSION

Each of the societies were asked to consider the rights that it administers in light of foreseeable statutory amendments, to see whether the society would be the appropriate licensing and collection mechanism. (For example, performers protection/copyright, record rental, etc.). Those societies which foresaw a possible extended role were as follows:

7.2.1. AMCOS

The introduction of a CD Rental right would certainly demand a full review of AMCOS' company and membership documentation but AMCOS sees itself as an appropriate Society to oversee that rental right.

7.2.2. AVCS

The collective administration of copyright in all areas on behalf of all owners of copyright in audio-visual works is within the Society's charter.

The Society is willing to administer voluntary licence schemes sought by members and new statutory licence schemes and considers itself to be the appropriate licensing, collection and distribution mechanism for owners of copyright in audio-visual works. As matters stand, it undoubtedly is. After all, it is the society with expertise in the medium and has reasonable (albeit imperfect) coverage of the relevant rights owners.

7.2.3. PPCA

For PPCA, the main issue is that of the "information super highway". PPCA is, in effect, responsible for licensing the communication of sound recordings to the public. It argues that new technologies necessitate the introduction of a broad based communication right and that PPCA is the appropriate body for use of such rights on a collective basis. (This is a matter dealt with by the Copyright Convergence group and is not within the present terms of reference.)

8. GEOGRAPHICAL JURISDICTION

8.1. AMCOS

8.2. APRA

8.3. AVCS

8.4. CAL

8.5. PPCA

8.1. AMCOS

The Society's jurisdiction extends to Australia, New Zealand, Fiji, Papua New Guinea, Solomon Islands, Christmas Island, Cocos (Keeling) Islands, Cook Islands, Irian Barat, Niue (Savage) Island, Norfolk Island, Tokelau (Union) Islands, Western Samoa.

A New Zealand branch office was established in 1987. It currently employs three people - branch manager, licensing officer, office manager.

AMCOS has only one Australian office. It is in Sydney. While it may be desirable to have a permanent presence in at least the other capitals, it is not economically viable given the sundry nature of its collections. Not only are the majority of record companies based in Sydney, as time goes by, and the telecommunications revolution rolls on, the expense of branch offices becomes harder to justify.

In those territories where AMCOS does not have an office it licence- exports to them from Australia and New Zealand. It is the Society's view that in territories such as PNG and Fiji, the copyright laws do not provide an adequate level of protection to justify the establishment of an office. It is tackling these problems in conjunction with the Department of Foreign Affairs. (Most of these other territories do not have manufacturing facilities.)

The cost effectiveness of purporting to service subsidiary territories such as Fiji, Papua New Guinea, Solomon Islands, Christmas Island, Cocos (Keeling) Islands, Cook Islands, Irian Barat, Niue (Savage) Island, Norfolk Island, Tokelau (Union) Islands, Western Samoa, must be questionable. It has not been the subject of examination by this Report, but **the question must be asked, whether the Australian and New Zealand rights owners are subsidising the servicing of the subsidiary territories without receiving a corresponding benefit from them.**

8.2. APRA

As has already been noted, the Association obtains an assignment of performing rights from its members which is unlimited as to territory. The Association's "active" jurisdiction, however (in the sense of those countries where it has the responsibility of actually administering the rights) comprises Australia, New Zealand, Papua New Guinea, Fiji and a number of small Pacific Islands. **The cost effectiveness of administration of the subsidiary territories must be subject to the same comments as applied to AMCOS (see 8.1).**

Besides its Australian offices, the Association maintains offices in New Zealand only. The details are as follows:

- Auckland: (92 Parnell Road, Auckland), 5 full-time staff (General Manager, Accounts Clerk, Licensing Officer, Re-assessments Officer and Membership Officer)
- Wellington: (Riddiford House, 150 Featherston Street, Wellington), 1 full-time staff (licensing officer) and one part-time consultant.

Until early 1993 the Association maintained an office in Fiji. From that date, however, responsibility for administration of rights was handed over to a locally owned performing right society, the Fiji Performing Right Association. APRA continues to provide assistance to this new society in the area of royalty distribution. One must ask whether it is time for AMCOS to also hand over its Fiji jurisdiction to this local society.

The Association has never had an operational presence in PNG owing to the fact that PNG does not have a copyright law.

The Association has personnel located in several capital cities around Australia, as follows:

- Melbourne: (46 MacFarlan Street, South Yarra), 5 full-time and one part-time staff (Deputy Licensing Manager/Office Manager, 2 Licensing Officers, 1 Membership Officer, one typist/receptionist and one part-time Compliance Officer). The Compliance Officer assists in verifying figures provided to APRA by live and disco licensees by attending the venues on selected nights to count attendances and check entry fees;
- Brisbane: (38 Hartley Street, Spring Hill), 3 full-time and one part-time staff (2 Licensing Officers, one Membership Officer and one part-time Compliance Officer);
- Adelaide: (Suite 9, 30 Kensington Road, Rose Park), 2 full-time and one part-time staff (1 Licensing Officer, one part Membership Officer/ part-clerical assistant and one part-time Compliance Officer);
- Perth: (36 Kings Park Road, West Perth): same personnel configuration as Adelaide.

8.3. AVCS

The Society operates solely within Australia, although its members who are owners of relevant copyright in Australia, their exclusive licensees or agents, may be resident abroad.

The Society has an arrangement with APRA permitting the occasional use of APRA's interstate offices when AVCS staff are visiting those cities.

The addresses of those offices are published by AVCS in its newsletter to provide a local point of initial contact for members and educational institutions. Enquiries are referred to the AVCS office in Sydney. To date, no enquiries have been made through the APRA interstate offices and one may assume that this sharing of facilities assists the efficiency of the administration of the Society rather than acting as a real point of local contact for clients.

While it may be argued that it is desirable to maintain offices in larger population centres to facilitate communication with members and licensees of the Society, the cost would not be justified at its present level of operations. **If such a stage is reached, the Society should be encouraged to continue its present policy of sharing facilities with APRA (or some other society) so as to minimise the expense).**

8.4. CAL

CAL's territory is also restricted to Australia. Although CAL staff regularly travel interstate to conduct sampling, training, inspections of licensees and copyright seminars it is not presently considered that the additional expense of operating interstate offices is justified. Given its present information gathering and licensing methods, CAL operates effectively from its centralised administration. If however it was to undertake the administration of a wider range of rights, this may need to be reviewed.

8.5. PPCA

The geographical jurisdiction of the Company is Australia. It does not represent New Zealand rights owners (as do APRA and AMCOS). It does not maintain any offices outside of Sydney and all employees are Sydney based.

The company retains part-time inspectors throughout Australia to investigate what music is played at various premises. These inspectors are paid only on a commission basis (they are not 'employees').

9. RELATIONSHIP TO ALL OWNERS OF RELEVANT RIGHTS

9.1. AMCOS

9.1.1. Mechanicals

9.1.2. Synchronisation

9.1.3. Schools Photocopying Agreement

9.2. APRA

9.3. AVCS

9.4. CAL

9.5. PPCA

It was important to determine the degree of representativeness that the society exercised on behalf of **all** owners of the relevant rights (not just its members).

9.1. AMCOS

9.1.1. Mechanicals

Generally speaking, AMCOS does not collect on behalf of non-members. The only exception is when AMCOS receives money from foreign affiliates due to an Australian composer, who is a member of APRA but has not executed the authority for AMCOS to collect mechanicals, and is not represented by a publisher. In these instances AMCOS passes the money on without deducting commission. It then advises the Society who sent the royalties in error that AMCOS does not control the work, that it has passed the royalties on to the correct owner in this instance, but that it does not wish to receive further royalties for the work in question. This is completely appropriate as to process and conduct.

9.1.2. Synchronisation

Occasionally, AMCOS is approached to issue synchronisation clearances for non-members' works. The Society does not grant synchronisation clearances for non-members' works without prior written authorisation. Commissions and fees are generally the same as those that would apply were the party a member of AMCOS or of an affiliate society.

9.1.3. Schools Photocopying Agreement

Under the Schools Photocopying Agreement, AMCOS collects on behalf of non-members who have authorised it to include their repertoire in the Schools Agreement. These may be small local publishers who publish sheet music for the educational market or foreign publishers who are not sub-published for this territory. The AMCOS repertoire is so extensive that it cannot be defined in a directory which is supplied to schools, but rather is defined by exclusion. If works appear in the sample that are controlled by publishers that have not authorised AMCOS to include their repertoire in the agreement, AMCOS identifies these owners of copyright, makes payment to them, explains the statutory provisions and the background to the voluntary licence and asks them to execute and return an authority and indemnity.

There is provision for these publishers to indicate to AMCOS that they do not wish to participate in the licence. In that case AMCOS will then notify all its licensees under the provisions in the Agreement that those publishers' works are not included in the AMCOS Schools' Agreement. Their works may be able to be copied under the more restrictive terms of the statutory licence and the publisher would then have to obtain payment from CAL.

This approach to non-members works being copied under the AMCOS agreement was the only way of establishing a coherent and workable agreement that the educational authorities would accept and comply with, as they considered the statutory limits, as they applied to sheet music, too restrictive for their educational needs.

9.2. APRA

Clearly the Association could never claim to represent all people who claim to have written original musical works. Nor has it conducted research into the numbers of writers who do not join the Association. It is safe to assume, however (on the basis of the logs that it receives from both radio and television stations) that the Association represents over 99% of all writers whose works are publicly disseminated. APRA is not aware of any music publishers who have failed to seek membership.

9.3. AVCS

The Society collects under the statutory licence for all relevant copyright owners, whether or not they are members of the Society. Where the owner is not currently a member, the Society holds the allocated funds in trust pending identification and admission to membership.

Given that the Copyright Act grants the right, the role of AVCS is to identify and locate the relevant copyright owners to allow payment of royalties collected on their behalf under the relevant scheme.

The Society had very few members in its establishment years and most collections were on behalf of non-members. As the membership base of the Society increases, the proportion of royalties collected on behalf of non-members is diminishing. Given the way that the statutory scheme has been set up, there will always be the situation where royalties are collected on behalf of programs where the rights are controlled by a non-member. It is the role of the Society to identify these rights holders and advise them of the royalties held and invite them to membership of the Society so that they can claim the royalties held on their behalf.

There has been criticism made of AVCS (and it is to be expected of any collecting society operating a non-voluntary licence) that it has no obligation on it to notify non-member owners for whom they have collected, that it is holding money for them. Owners have to both know that AVCS exists and to ask if they are a distributable author.

There is no foundation for this fear. Given that locating and paying relevant copyright owners is a central function of any copyright society, the declaration of the Attorney-General could and should be revoked should any declared society cease adequately to fulfil that identification function. The Society actively seeks out relevant copyright owners to invite them to claim and the success of these efforts is shown by its increasing number of members. A large part of the Society's resources are devoted to this task which is regarded by the Board of Directors and management as an absolute priority. The process of attracting new members is described later.

9.4. CAL

Unlike AVCS, CAL does not licence copying or collect revenue in respect of non-members works. Where copying of non-members' works is discovered in the sample, it records it and then seeks to trace and contact the non-members and inquire if they want to become a member and accept the fees. In this manner, CAL builds up its membership and repertoire.

The logic of the system that CAL must administer is, (as the submission received from St Johns Ambulance Australia described it), "serpentine". The statutory licence allows educational institutions to copy, within certain limits and subject to certain conditions. The institutions pay a "per student" rate for this statute-granted right. CAL collects all of this money but the rules under which it operates, forbid it to distribute to owners who are not members. This has certainly raised the ire of certain rights owners who do not want to join CAL, but have been advised that certain copying of their work has occurred and that, accordingly, a certain allocation of the moneys collected, is payable to them - but only if they join. That said, it must be made clear that CAL is acting properly.

CAL is legally obliged to ensure that moneys which it collects are only paid to members. The legal obligations imposed on CAL regarding the collection of moneys collected from licensees under statutory and voluntary licences are as follows:

(i) Statutory Licences:

Pursuant to a notice in the *Gazette* dated 13 June 1990, the Attorney General declared CAL to be the collecting society for the purposes of Part VB of the Act, for *each owner of copyright in a work* other than a work in a sound recording or a cinematograph film.

In order to be declared an approved society, CAL was required to satisfy certain prerequisites set by the Attorney General under section 135ZZB (3) of the Act. In particular, the Attorney General had to be satisfied that CAL's distribution rules complied with the Regulations to the Act [in particular regulation 23JM(1)(g)]. The effect of this regulation is that CAL can only distribute a share of the distributable amount, to its members. If the copyright owner or their agent declines to join CAL, their potential share of the distributable amount is held on trust [regulation 23JM(1)(g)(ii)(A)&(B)] until the copyright owner joins CAL or for a period of four years, whichever first occurs [regulation 23JM(1)(i)]. If the copyright owner or their agent does not join CAL by the expiration of the trust period, their potential share will be returned to the distribution pool.

(ii) Voluntary Licences:

The funds collected under voluntary licences are outside the regime of Part VB of the Act. *The voluntary licences between CAL and users do not contain a licence to copy all works. CAL only licenses users to copy works by CAL members.* (For example, St Johns Ambulance Australia is not a member and its works are not licensed under the voluntary schemes.) Accordingly, the obligations of CAL as to the application of the funds collected by it as licence fees, are obligations owed solely to the Society's members.

If the sampling reveals that a non-member's work has been copied, CAL approaches the non-member and invites the owner to become a member and offers payment of that part of the distribution which would be allocated if that person were a member. (For example, Australian Consolidated Press received such an invitation but has chosen not to join.)

The money is not collected on behalf of all rights owners whose works are copied. It is collected on behalf of all owners who are, or who become, members of CAL. Essentially, the Act proscribes the statutory licence and who is eligible to be paid.

CAL would be well advised to review the correspondence that it presently sends to non-members who are identified as having had works reproduced. Their letters and the "Remittance Advice" are inadvertently misleading as to the nature of the process.

It is important for rights owners to be made aware that they cannot prevent the institutions from copying their material under the statutory licence and in any event, it is impossible for individual rights owners to supervise mass photocopying to ensure that the terms of the statutory licence is not exceeded. Without blanket licensing, users will not obtain individual permission to copy and infringements of copyright will occur. The benefit to copyright owners of blanket licensing is that payment can be obtained for otherwise unremunerated copying. The benefit to all rights owners in

requiring that payments are made by only to members of the collective administration is that it acts to increase membership of the Society and thus, reduces the administration overhead of the Society.

9.5. PPCA

PPCA does not purport to represent all owners of the relevant rights. It represents only its contracted members. The money collected and distributed by PPCA is only in relation to the copyrights owned or controlled by its contractual non-exclusive licensors.

As with AMCOS and APRA, there is nothing to stop the owners of relevant rights setting up another collecting society or negotiating their rights individually - except that at the moment, it is not commercially practicable. Accordingly, PPCA is the only collecting society collecting on behalf of the relevant rights owners.

10. SERVICES OR BENEFITS TO RIGHTS USERS

10.1. GENERAL

10.1.1. AMCOS

10.1.2. APRA

10.1.3. AVCS

10.1.4. CAL

10.1.5. PPCA

10.2. LICENSEE INDEMNITY

10.2.1. AMCOS

10.2.2. APRA

10.2.3. AVCS

10.2.4. CAL

10.2.5. PPCA

10.1. GENERAL

10.1.1. AMCOS

AMCOS acts as a central clearing house, enabling the copying of music to be authorised swiftly, efficiently and economically without the need to enter into the labyrinth of copyright clearance. It also:

- provides a representative body for the recording industry and others to negotiate industry agreements.
- provides users of copyright material with educational material to inform them of their copyright obligations and how to fulfil them.
- processes label copy and sales reports from a variety of the smaller record producers and produces Prescribed Notices, as required by statute, at no charge.

- provides a forum for copyright users for them to make representations concerning mechanical rights administration.
- provides a "user pays" service to research copyright ownership for advertising agencies, film-makers etc.
- does research and referrals of print music, grand rights and synchronisation requests from educational institutions and other community users free of charge.

10.1.2. APRA

The benefit provided by the Association to licensees is the benefit of being able to obtain a one-stop blanket licence to perform or broadcast all of the musical works they could conceivably want to use. APRA effectively guarantees to broadcasters and other music users non-exclusive access to the entire repertoire of the world's music. (The users of that music may of course rail against the amount that they pay for that use, but that is another matter.)

In a narrower sense, many members of the public from time to time become involved in music performances, for example through involvement with schools or community groups. APRA is able to either steer the inquirer to the relevant copyright owner or to grant a licence for the performance itself.

The Association seeks, (through seminars, workshops and publications) to actively provide information to licensees not only on APRA-related matters, but on matters relevant to music industry issues generally. It also seeks to represent the voice of writers and, to a lesser extent publishers (because they have their own industry body), on general copyright issues. It is certainly the most vocal music industry association in these regards.

The Association also provides to licensees whatever information they may require concerning the works within APRA's repertoire.

10.1.3. AVCS

Within the general administration of the educational copying scheme, the Society responds to queries and provides information about copyright obligations. Where licensees require permissions from copyright owners for activities outside the scheme (for example a licence to copy a purchased or hired video cassette) the Society provides contact details, if it is able to do so, to facilitate seeking that permission.

10.1.4. CAL

The prime service that CAL provides is the provision of practical access to legal copying at a reasonable cost. Without CAL licences, institutions would either continue to infringe copyright or contact each copyright owner of every work they copy to seek permissions. By obtaining a payment for use for copyright owners, CAL helps ensure and maximise, public access to copyright works.

It also provides:

- telephone advice in relation to particular copying problems they may have;
- referral to members for individual arrangements if they want to copy more than the limits of the licence;
- brochures explaining licence terms and summaries of the copying provisions of its licences;
- conducts copyright training seminars in connection with the sample surveys of copying;
- provide speakers to address licensees about copyright.

10.1.5. PPCA

PPCA sees its sole service as providing effective one-stop licensing for those who wish to use sound recordings.

- To this end, it provides:
- telephone advice in relation to public performance arrangements;
- referral to members for special event arrangements (or organising the special event arrangement as the agent);
- pamphlets on public performance and music video;
- provide speakers to address licensees about public performance rights.

10.2. LICENSEE INDEMNITY

It is important to licensees that they be assured that the licensor has the right to grant the licence and the right to collect the money in respect of the licence. Where the right is granted by an organisation acting as an agent, licensee or assignee, the issue is very simple. There is a direct relationship between membership of the organisation and the rights of the organisation.

In the cases of the statutory licences administered by CAL and AVCS, the societies don't grant the rights, the statute does. As to whether the societies have the right to collect, their status as Declared Societies guarantees their right to collect.

As for AMCOS, the mechanical licence too is granted by statute. However, it has the right to collect, only on behalf of its own members.

The situation becomes more difficult when the societies and their licensees choose to move away from the statutory licence and negotiate voluntary licences. Both CAL and AMCOS do the majority of their work through voluntary licences because the strict terms of the statutory licence are inconvenient to both parties.

10.2.1. AMCOS

AMCOS members warrant that they control the relevant rights in the works that AMCOS licenses and they agree to indemnify AMCOS if they are in breach of that warranty.

In the Schools' Photocopying Agreement, AMCOS offers an indemnity to participating schools copying under the licence. In terms of print rights, AMCOS members and other publishers who have authorised AMCOS to include their repertoire in the schools' agreement cover most published musical works which are copied in schools. However the "AMCOS repertoire" is so wide, it is defined by exclusion. It is impossible to provide licensees with lists of works as the repertoire is constantly changing and growing. There is provision to notify licensees that certain works/catalogues are not included under the voluntary licence. Those works may still be copied under the more restrictive limits set out in the statute. Most of those few publishers who initially refused to be included in the scheme are now participating. Educational representatives insisted on the inclusion of the following indemnity:

Clause 9 Indemnity.

9.1 Provided the Participating Schools have substantially complied with the terms and conditions of this Agreement, AMCOS hereby agrees to indemnify and keep indemnified the Minister and participating Schools and each of them from all actions suits claims, demands, verdicts, judgements, costs, charges and expenses, legal and otherwise, and of any kind which has arisen or may hereafter arise as a consequence of or arising out of any Owner or any other person claiming under or by virtue of the Owner claiming, taking action, proceeding or making demand against the Minister or any Participating School for infringing or allegedly infringing the copyright vested in said Owner in respect of any Copies made by a Participating School, and provided that the Minister promptly notifies AMCOS of any such actions or suits.

9.2 This indemnity shall apply in relation to any Copies made pursuant to this agreement notwithstanding the Owner of the copyright in the Works alleged to be infringed or the licensee of such Owner may not have authorised AMCOS to act as his agent but it shall not apply to those Works which AMCOS has notified the Minister are excluded from the Agreement under clause 11.

10.2.2. APRA

Licensees of the public performance right have historically not been provided with an indemnity. According to the Association, the principal reason for this is that the licensees have not requested one. Some broadcast licensees have more recently been provided with an indemnity.

The indemnity issue is a difficult one for the Association, because:

- (a) the Association must grant blanket licences (they are demanded by licensees); but
- (b) the Association can never lay claim to representation of **all** writers' works from around the world at any given time.

The best that the Association can really do is to make accurate and fair representations about the practical comprehensiveness of its repertoire. This is probably satisfactory while there is only the one performing rights society representing writers and publishers in Australia.

10.2.3. AVCS

The Society offered indemnities to licensees in certain of its early contracts in relation to the period prior to the commencement of their licence agreement.

Copying of television and radio broadcasts by educational institutions was widespread prior to the introduction of the broadcast copying scheme in 1990. Due to the complexity of rights administration in film and television programs, it can be assumed that the majority of the copies made by educational institutions infringed copyright. Understandably, the fear of such illegal conduct and its repercussions still prevailed notwithstanding the introduction of Part VA of the Copyright Act.

The Society believed that compliance with the new procedures might be enhanced if they dispelled the institutions' fears associated with their previous, unlawful broadcast copying. Accordingly, AVCS acceded to the requests of the educational representatives and provided an indemnity in respect of unlawful copying made before the introduction of the statutory scheme.

Upon the commencement of the scheme in Part VA of the Copyright Act, the agreements entered into by the Society with educational institutions made provision for an indemnity as follows:

- (i) The indemnity related to copies of broadcasts from television and radio made by the educational institutions for their educational purposes during a limited period prior to the commencement of the broadcast copying scheme ("Past Copies"). For example, the period for schools was from 1 July 1984 to 30 June 1990 (the commencement date of the agreements). Other educational institutions that entered into an agreement with the Society at the commencement of the scheme were offered a similar indemnity period.
- (ii) The educational institution paid the Society remuneration for the Past Copies. For example, the agreement between the Society and the school sector provided that a fee of \$0.30 for each enrolled student of the schools for 1989 (the year prior to the commencement date of the agreement) was paid for the Past Copies.
- (iii) The Society offered to indemnify the educational institution which paid the amount for the Past Copies against any claims arising from the Past Copies.
- (iv) The educational institution was not able to make any further copies of the Past Copies.

The agreements with the university sector including the indemnity provision expired on 31 December 1993 and the schools agreement containing the indemnity will terminate on 30 June 1994.

The most recent agreements with the university sector, which commenced on 1 January 1994, did not contain an indemnity provision. Similarly, the schools agreement, which is currently being negotiated, will not provide an indemnity to the educational institutions for copies not coming within the limits of the statutory licensing scheme.

It is significant to note that as the funds collected under the indemnity provisions of the Society's early contracts related to a period prior to commencement of the scheme, they are not funds collected pursuant to Part VA of the Copyright Act. In accordance with law, the funds are kept separate from funds collected under Part VA as trustee. On legal advice, the funds are held first, to meet claims arising under the indemnity provisions of the Society's contracts and secondly, may be employed for the benefit of the membership as a whole.

Notwithstanding the indemnity granted at the introduction of the scheme, the Society has taken the view that, as it does not acquire rights under licence from licensors, it is not appropriate that it offer any form of indemnity to licensors. Given that the institutions have now had ample notice of the existence of the scheme and ample opportunity to avail themselves of the statutory licence mechanism, it is difficult to see why licensors need any such indemnity or expect AVCS to give one. The statute provides the mechanism for institutions to copy lawfully and AVCS merely facilitates institutions to benefit from it.

10.2.4. CAL

CAL provides an indemnity to its licensors for copying within the terms of its licence. Depending on the type of licence, this indemnity varies between an indemnity against actions for copyright infringement by CAL's members and an indemnity against actions for copyright infringement by all copyright owners.

10.2.5. PPCA

The Company does not offer any indemnity to licensees of any of its relevant rights.

11. IDENTIFICATION OF COPYRIGHT OWNERS

11.1. AMCOS

11.1.1. Identification And The Record Licensing Process

11.1.2. Other Uses

11.1.3. Overseas Department

11.1.4. Schools Photocopying Licence

11.1.5. Off-air Copying

11.1.6. Design Of The Process

11.1.7. Systems Review

11.2. APRA

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11.1. AMCOS

The process of establishing correct copyright ownership for musical works is a critical part of AMCOS' operations. The Society works on the principle that it only invoices for the use of a musical work when it can establish that the work falls under its control.

11.1.1. Identification And The Record Licensing Process

The procedure for licensing non-Major record companies for the use of musical works on records is as follows:

- (i) The record company issues an inquiry notice ("label copy") to AMCOS in respect of every record first released for sale to the public in Australia prior to the release of the record. The inquiry notice lists the composer and song details; proposed release date; catalogue number; format; and dealer or retail price.
- (ii) In the event that the record company is unable to provide the composer details, AMCOS offers a service on a "pay per use" basis to research the work and determine the composer information. Without knowing the identity of the composer it is very difficult to determine the copyright owner for Australia. Some of the reference material used in the research process are CD Roms containing information on all works appearing on the BillBoard chart, the CAE (Compositeur-Auteur-Editeur) listing compiled by SUISA, access to the AEROS database (Australian Electronic Record Ordering System) and numerous directories, books and journals. However the greatest research resource in the company is the extensive musical knowledge of the research staff. Within the company it has experts covering most genres of music.
- (iii) When AMCOS has the full label copy, the information is entered into the computer.

(In the past, the label copy has been provided on paper. AMCOS' biggest clients are now providing the information on computer disc. AMCOS has written software which allows the record companies to enter the label copy into their own IBM PC compatible computers. The information is recorded onto a disc which is sent to AMCOS. The record company uses the information to build up their own database of

their repertoire. The information and unique catalogue numbers generated from this exchange also provides a simplified way for the record company to later provide sales figures on disc.)

(iv) After AMCOS has input all the label copy details, a check is made to see if the song information is contained in the AMCOS database. The database contains ownership information on some 350,000 works. It has been built up from works previously licensed by AMCOS and from information supplied by the publisher members.

(v) It is being continuously updated as catalogues change hands. AMCOS is notified when an agreement expires and the rights are acquired by another of its members. Members send AMCOS details of new agreements with song listings. From APRA the Society receives copies of the General Agreement Registration Forms ("GARF") and copies of all local writer registration forms. AMCOS also has on-line access to the APRA database, which is extremely useful in cross-checking composer/writer/publisher details.

(vi) AMCOS compiles the information from the inquiry notices, including publisher details as indicated by its database, into the form of a "circulation report" which is distributed to publisher members. Publishers indicate on the circulation whether they own particular works, whether they maintain or relinquish an ownership claim and the percentage of the work they control. The circulation process is the historical method for AMCOS obtaining ownership details and it remains the main way of finding ownership of new songs. The circulation process lets the publisher know what AMCOS is licensing on their behalf. Details of works where 100% ownership is not known, are circulated amongst the members.

(vii) If any dual claims arise (more than 100% of a work being claimed by two or more publishers) the work is put "into suspense" until the dispute is resolved. Reports of all works with dual claims are sent to the relevant members on a quarterly basis.

(viii) After receiving the publishers' responses to the circulations, AMCOS issues the record company with a royalty rate advice ("RRA") which indicates: the composer and song details; where a work is controlled by AMCOS, the publisher and percentage claimed; works not controlled by AMCOS; format; royalty rate; retail or dealer selling price; and the royalty payable per unit.

(ix) Any musical works (or parts thereof) which are not claimed by a publisher member are thoroughly researched before an RRA is issued with entries under the heading "works not controlled by AMCOS". Occasions arise when AMCOS is given the incorrect composer or title details or publishers fail to identify works as being part of their repertoire.

(x) At the same time that AMCOS issues the record company with a royalty rate advice, the music publishers who have made claims for works in the circulation are issued a Prescribed Notice. There is a statutory requirement that record companies issue a Prescribed Notice to the copyright owner. The Prescribed Notice contains essentially the same details as the RRA and notifies the publisher that AMCOS will be collecting royalties on their behalf in respect of the listed works and is an opportunity for the publisher to amend any details.

11.1.2. Other Uses

The above outlines the procedure for most record companies licensing musical works embodied in records.

For small companies and individuals ("sundry" clients), blanket licence uses, student films, demos, etc. the details are provided in a slightly different manner, but the process of identification involving research staff, database inquiries and circulation to the publishers is essentially the same. Production Music ownership is usually supplied by the publishers. Production Music cue sheets are researched using printed catalogues and direct contact with the publishers.

11.1.3. Overseas Department

The overseas department operates as a publisher in its own right, representing (on a reciprocal basis) works controlled by affiliated societies overseas but not represented by a sub-publisher locally. In this role it licenses the Major record companies as well as AMCOS clients. Some of the identification procedures utilised are:

- referral to listings of works on microfiche sent to AMCOS by some Societies (updated at regular intervals);
- receipt of specific instructions from a Society to collect mechanical royalties for particular works;
- listings of member details and works from APRA;
- replies received from Societies in response to AMCOS requests for information regarding specific works - usually per fiches internationales, but sometimes by advice/letter;
- establishing the original publisher(s) and/or composer(s) membership of a particular Society by referral to the current CAE listing;
- discussion and negotiation with AMCOS's Australian publisher members in respect of the works that they partly or wholly control on behalf of overseas publishers.

11.1.4. Schools Photocopying Licence

The distribution is based on data from a nation-wide statistical sample of all photocopying done by schools which was commissioned by CAL and designed by AGB McNair.

Under the sample, certain schools are selected from three states each year and are required to keep records of all photocopying for one term. Under this random stratified sample, schools are selected according to the system (government, catholic, independent), type (primary or secondary), location and size. The number of schools selected gives the most effective cost to accuracy ratio for the sample.

The raw data supplied by AGB McNair is processed by CAL and supplied to AMCOS, which edits the data by correcting references and determining which works under the category of "music" come within the AMCOS licence. For example, music tutorials which are excluded from the AMCOS licence are treated as books and included in the CAL distribution. Similarly, there may be many musical works which have been wrongly classified.

The edited data is then supplied electronically to AMCOS which matches the titles to known ownership details and prints out lists of the titles for circulation. The data for distribution used by AMCOS is supplemented by records of copying of instrumental parts by regional libraries in one school system, as the sheet music purchasing policy for this system is different to other systems in that orchestral sets are not purchased by individual schools but rather by regional libraries.

11.1.5. Off-air Copying

Titles of programs copied off-air in educational institutions which appear in the sample conducted by AVCS are processed by APRA to determine the musical works appearing on those programs. This data is provided to AMCOS electronically and matched to ownership details on its database. Titles that are not matched are placed on a circulation list. AMCOS enters new ownership details on the basis of the information circulated and researches unmatched titles. Moneys due to titles of which ownership details cannot be found are returned to AVCS.

11.1.6. Design Of The Process

The process of circulating lists of works used in record production was a natural evolution of the practice used by the major record companies to identify copyright ownership. The circulation process has been the basis for ascertaining ownership information since the beginning of the Society. This process (inquiry notices by the Majors, circulation reports from AMCOS) also allows the publishers to monitor activity in the marketplace. Similar societies overseas have had a process of registration of all works by their members. However, as AMCOS is a relatively new entity with limited resources it was not cost-effective or practicable to process the huge volume of catalogue ownership information required to create an instant database. Unlike European and American Societies it has never operated as a centralised licensing body.

The sample used in the **Schools Photocopying Agreement** was developed by CAL, the Australian Education Council and AGB McNair, due to the practical failure of the full record keeping requirements under the statutory scheme. The initial sample was implemented in 1988. The next sample period was from 1991 to 1993. A new sample cycle was commenced in 1994 and will continue until the end of 1996.

11.1.7. Systems Review

Review is an ongoing process. The distribution key for the photocopying licence was reviewed by the Board as recently as December last year when it was recommended that the same principles be applied to the distribution of moneys collected by CAL for

the photocopying of sheet music under licences with educational institutions other than schools.

Furthermore, AMCOS is working with its members, the record companies, and computer consultants to come up with standards for Electronic Data Interchange (EDI) which will change the whole nature of the process of owner identification. AMCOS is also currently undertaking a feasibility study with APRA with a view to developing an industry database and instituting joint mechanical and performing rights registration procedures.

Record Clubs now provide AMCOS with copies of the Prescribed Notices issued by the originating record companies and the Board has approved the Society using this information as the basis for preparing new Prescribed Notices circulating the production details.

International standards for the documentation of copyright ownership have been the subject of long and tortuous negotiations, but there are indications that standardised procedures will be agreed to shortly.

Schools Photocopying Agreement - Amendments to the sampling process are required from time to time to improve the accuracy of the data and the identification of works for distribution. For example, where a musical work is included in a collection of works, schools had been supplying the name of the collection only, which meant that it was difficult to identify the actual work copied and therefore the relevant copyright and print right owners of the work. Participants in the sample are now instructed to place both the name of the collection and of the work in the record forms to ensure the work is correctly identified. Amendments to the sample are designed by the independent statistician to ensure the maximum cost efficiency to accuracy ratio.

The Schools Photocopying Agreement sample was reviewed prior to the commencement of the latest cycle to assess and review the accuracy and utility of the data. However, making significant amendments to the sampling process would require a renegotiation of the schools licences. The administrative burden placed on schools for the term they are selected to keep records of their copying is such that it is a major point of negotiation in the licences. Any extension of the sample would be met with resistance from licensees and from the relevant unions.

11.2. APRA

Owner identification has two aspects: The registration of title details from those represented by the Association and the logging of performances by licensees.

11.2.1. Registration of title details

Members of the Association, and affiliated societies, provide the Association with information relating to the works that they have written or which they control. This information is essentially as follows:

- the title of the work;

- the duration of the work;
- an indication of whether the work is instrumental only or has lyrics;
- the names of the composer(s) and, if applicable, the lyricist(s) of the work;
- the publisher(s), if applicable, of the work;
- the proportions, in percentages, in which each party is to share in royalty allocations accruing to the work;
- if known, and if applicable, the performer who has recorded the work.

Writer members generally provide this information on index cards. Smaller publisher members do likewise, while larger publishers now provide the information either on computer diskette or on-line.

These works are thus added to the Association's existing data base of titles. This data base currently consists of approximately 600,000 titles and 200,000 cue sheets on computer file and approximately 2 million titles on cards.

When a music return, or log, is then received from a licensee, the titles appearing in the log are matched against the title file data base and a performance credit is entered against the work (depending, obviously, on the kind of performance involved). If the work cannot be identified it is referred to the Association's Research Department for investigation and, hopefully, identification.

11.2.2. Logging of performances:

The information used by the Association to identify those writers and publishers who are entitled to receive a royalty allocation is provided in all but one instance by licensees. The exceptions referred to above relate to the area of live performances in venues such as hotels, restaurants and nightclubs, where the information analysed for distribution purposes is provided by the Association's own members, i.e., those who perform their own compositions live, and to the reporting of music written or licensed to accompany advertisements on radio or television.

ANALYSIS BY REVENUE SOURCE

REVENUE SOURCE ANALYSIS

ABC TELEVISION 52 weeks p.a.

AUSTRALIAN COMMERCIAL TELEVISION 169 weeks p.a.

NZ NATIONAL TV (TV1) 26 weeks p.a.

NZ NATIONAL TV (TV2) 26 weeks p.a.

NZ NATIONAL TV (TV3) 26 weeks p.a.

SBS (CHANNEL 0/28) 12 weeks p.a.

AUSTRALIAN COMMERCIAL RADIO 400 weeks p.a.

ABC RADIO ('METROPOLITAN' STATIONS) 35 weeks p.a.

ABC RADIO (2JJJ) 12 weeks p.a.

ABC RADIO (FINE MUSIC) 13 weeks p.a.

ABC RADIO (RN) 26 weeks p.a.

AUSTRALIAN COMMUNITY RADIO 24 weeks p.a.
 (Local content only)
 SPECIAL BROADCASTING SERVICE (2EA/3EA) Varies according to language.
 NZ NATIONAL RADIO NETWORK 13 weeks p.a.
 NZ CONCERT RADIO NETWORK 13 weeks p.a.
 NZ IBA RADIO 42 weeks p.a.
 NZ COMMERCIAL RADIO 48 weeks p.a.
 NZ STUDENT AND MAORI RADIO 13 weeks p.a.
 (Local content only)
 FIJIAN BROADCASTING CORPORATION 6 weeks p.a.
 (Local content only)
 ABC CONCERTS 100%
 PROMOTER CONCERTS 100%
 ANSETT 100%
 (Local content only)
 QANTAS 100%
 AUSTRALIAN CINEMA Sydney Cinema Guides
 NZ CINEMA 100%
 (Local productions only)
 LIVE PERFORMANCE NOTIFICATIONS Submitted by
 (Other than concerts) members and
 affiliate societies.
 REGISTERED CLUBS 10 clubs p.a.
 NZ SYMPHONY ORCHESTRA CONCERTS 100%

11.2.3. Design Of Procedures

In cases where a sample survey is adopted, the survey has generally been designed by AGB-McNair.

In its essentials, the title registration process has been in force for many years. In its technical aspects, however, it is continually evolving. For example, it has only been within the last three years that all new works notified by writer members have been entered straight into the computer data base. Until then, only "active" works (i.e., those that received performance credits) were so entered. Similarly, the on-line title registration facility was established approximately two years ago.

The logging system has, in its essentials, been in operation for many years. It is, however, constantly being improved and up-graded. For example, in Distribution 29 (applicable to the financial year 1991/92) the roster of weeks of Australian commercial radio analysed for distribution purposes was increased from 104 weeks to 400 weeks (an increase of 300%). This was made possible because APRA's IT Department devised an automatic title matching system which enabled radio stations to provide their logs on diskette rather than in hard copy. This was duly negotiated with FARB and has apparently proven to be an extremely successful project.

Insofar as title registration is concerned, the process has evolved over time as the logical response to the problem of dealing with the registration of tens of thousands of

new works each year and the performance of hundreds of thousands of works each year. The information gathered this way is inevitably incomplete. It is a compromise, a balancing effort between accuracy and comprehensiveness of information on the one hand and cost efficiency on the other. The processes involved are complex and interlocking. Ultimately the Board is responsible for devising them after considering the views and recommendations of management.

11.2.4. Systems Review

The title registration system is under regular but informal review. Each of the logging plans is kept under constant review by APRA's Distribution Manager, while those which involve sample surveys are reviewed every two years by AGB-McNair. AGB's recommendations have been invariably accepted by the Board and implemented.

The Association has no present plans to change the ways in which it identifies those who should receive a royalty allocation, but there is an appreciation of the fact that, with the proliferation of broadcast media outlets there will be greater pressure on the logging system. Associated with that is a belief that the automatic sound monitoring and identification processes currently under development in the US and Europe ultimately hold the key to solving those problems.

11.3. AVCS

There are two processes to determine which broadcasts are copied off-air from television or radio under the statutory licensing scheme - the record keeping system and the sampling system.

The process of obtaining information from record keeping institutions as to the copies of television and radio broadcasts that are made from records supplied on a quarterly basis is set out in Section 135K (2) of the Copyright Act and in Regulation 23C.

The process of obtaining information from sampling institutions was devised by AVCS and AGB McNair. AGB McNair had devised a sampling procedure to monitor print copying for CAL which had been operational for a number of years prior to the commencement of the educational copying scheme under Parts VA and VB of the Copyright Act. As educational institutions had already participated in this system and it was effective, it was logical to apply it to monitor broadcast copying with some modifications.

The information provided by the educational institutions enables AVCS to determine:

- which broadcasts have been copied in institutions using the record-keeping system, and
- which programs have been copied by the sampling institutions as an estimate of the actual copying of all educational institutions participating in the sampling system.

Program information then assists the Society to ascertain which owners of rights in these programs should receive distributions.

11.3.1. The Record Keeping System

If an educational institution signs a Remuneration Notice undertaking to pay equitable remuneration to the Society based on the record keeping system, the educational institution must attend to the following:

- (i) Complete the following forms for every copy of a television or radio broadcast made by the educational institution:
 - (a) If the educational institution makes the copy for its own educational purposes, it must complete Schedule 1 to the Record Keeping Agreement.
 - (b) If the educational institution makes the copy for or on behalf of the educational purposes of another educational institution which has signed a Remuneration Notice, it must complete Schedule 2 to the Record Keeping Agreement; and
- (ii) Submit the forms to the Society quarterly together with the equitable remuneration for copies declared in the forms.

When the Society receives the record forms from the record-keeping educational institution, it examines the record forms to ensure that:

- (i) All of the details to enable a program to be identified are contained in each form, such as the broadcast date, channel, time of broadcast, segment of broadcast (if the program is not copied for its entire duration), program and episode title and category of program;
- (ii) the details provided by educational institutions about the broadcast are consistent with the information provided to the Society by the broadcaster and the television guides; and
- (iii) the details provided by educational institutions are consistent with information provided by the institution on a previous occasion. For instance, if an educational institution advises the Society that the copy is of a program broadcast on an earlier date and the educational institution has not previously declared the original broadcast copy, the Society will demand an explanation from the educational institution and outstanding remuneration if necessary.

In each instance, if the information supplied by the educational institution is inadequate, the Society will contact the educational institution and seek that the situation be remedied to accord with its obligations under the Copyright Act and agreement with the Society.

The information on the copies of broadcasts made by educational institutions participating in the record keeping system is entered into the database.

11.3.2. The Sampling System

If an educational institution signs a Remuneration Notice to pay equitable remuneration to AVCS based on the sampling system:

- (i) the educational institution must complete the following forms for the period of the survey:

- (a) The educational institution must sign a television/radio broadcast form for every copy of a program copied from television or radio.
- (b) If a program is copied by an educational institution but is subsequently destroyed within a period of 14 days from the broadcast date without being used for the educational purposes of the institution (that is, it has not been shown to any students) in accordance with section 135F of the Copyright Act, the educational institution must complete the Preview Copy Form.
- (c) Members of the academic and relevant administrative staff of the educational institution must sign a form entitled 'Survey Verification Form'. The member of staff will mark the form to indicate whether or not he/she has made any broadcast copies in the preceding week.
- (d) The Survey Verification Form is a checking mechanism to ensure that every member of staff who makes copies of television and radio broadcasts remembers to complete the Television and Radio Broadcast forms.
- (ii) The forms are collected by a field auditor of AGB McNair who attends the educational institution on a regular basis. Initially, the Field Auditor goes to the institution on a weekly basis for the first month of the sample period and then every fortnight for the remainder of the survey.
- (iii) The Field Auditor has contact with a representative designated by the educational institution known as the 'Copyright Records Officer'. This person is nominated to supervise the conduct of the sample in the educational institution.
- (iv) If the Field Auditor notices that there are omissions or gaps in the forms at the point of collection, the Field Auditor will not take the forms but rather will leave them to be duly completed.
- (v) If the Field Auditor experiences any difficulties in compliance by the educational institution with the requirements of the sampling system at any point of the survey, the Field Auditor will advise AGB McNair who in turn will advise the Society.
- (vi) If the problems are of a minor nature, officers of AGB McNair will ensure that compliance is maintained. However, if there is any real concern that an educational institution or even an individual member of staff is not complying with the legal requirements of the sampling system, the Society will contact the educational institution and member of staff involved and resolve the difficulty to ensure compliance with the legal requirements.

The Field Auditor forwards the forms to AGB McNair on a weekly (for the first month) and then a fortnightly basis for the duration of the sample. After preliminary analysis, AGB McNair forward the forms to the Society.

- (vii) The Society then scrutinises the forms to ensure that they have been completed correctly.
- (viii) If the Society has any concerns as to the information provided by the educational institution in the forms, the institution is contacted by AGB at the Society's request.
- (ix) The information as to the copies of broadcasts made by the educational institution participating in the sampling during the survey period is entered by the Society into its database.

11.3.3. Criticisms Of The Sample Processes

The Society has received few criticisms in the past in respect of the sampling techniques which it has adopted. Criticisms are occasionally voiced by individual teachers and administrators in educational institutions selected to participate in the sample who naturally would prefer to avoid the obligation to complete copying forms, but these criticisms are answered by AVCS and the educational authorities in training sessions.

The sample has been designed to place the minimum burden on institutions that is possible while preserving the integrity of the scheme. AVCS' experience has been that teachers and administrators recognise this and are co-operative, diligent in meeting their obligations and sympathetic to the legitimate claims of copyright owners. There is strong support for the sampling scheme from educational authorities and teachers' unions.

The only criticism of the sampling techniques raised by a member of the Society (to the recollection of the Chief Executive) related to the fact that sampling is not necessarily undertaken in educational institutions across all viewing areas in each State at any given time.

The member argued that curricula may vary between states and some programs are not broadcast nationally but only on a state basis. The criticism was given very careful consideration and discussed at some length with AGB McNair. In the event, it was determined that the considerable cost to all members, and the additional burden on educational institutions, of extending the sample to all viewing areas at any one time could not be justified by the additional copying data likely to be obtained.

11.3.4. Identification of Copyright Owners

Once the Society determines which programs have been copied by educational institutions throughout the accounting period, it must identify and locate the owners of the relevant copyright in the films, sound recordings and literary or dramatic works incorporated in the programs.

The Society obtains a monthly report from the public television broadcasters (namely ABC and SBS) on a regular basis throughout the accounting period. These reports provide a list of all programs which have been broadcast on either the ABC or SBS throughout the previous month together with details as to the supplier of the program to the broadcaster. The address and contact of the supplier of the program is sometimes provided or is obtained by the Society from a number of sources including its own database and published Australian and overseas reference books.

If the monthly reports from the ABC and SBS omit the supplier details for specific programs, the broadcasters are asked to provide this information on an individual basis.

To date, the commercial broadcasters have been more reluctant than the public broadcasters to supply the Society with details as to the supplier of a program. Although the Society is currently seeking the additional support of these broadcasters,

it supplements the information provided by the commercial broadcasters with information from its own database, the APRA database and published reference books and trade journals to obtain details of potential claimants.

This information is entered into the AVCS database.

AVCS then writes to each supplier of a program to ascertain if they are the owners of the relevant copyright in the films or literary or dramatic works incorporated in the program. If they can claim the royalties, the Society forwards a membership agreement and notification schedules (or warranty) for completion. If the supplier contacted is not the owner, exclusive licensee or agent for the owner or exclusive licensee of the off-air copying right, the Society will then write to the person referred to by the original supplier contact. This process continues until the Society is able to identify and locate the correct claimant.

Some broadcasts are copied by educational institutions that were copied in previous accounting periods and in such instances, the Society will simply contact the member to determine if the relevant rights are still held.

The owners of the relevant copyright in the musical works are identified by APRA and AMCOS. The acquisition of cue sheets for all programs broadcast on television and radio to identify the owners of copyright contained in programs copied from television would be an enormous task for the Society to undertake. The more cost-efficient and effective approach has been to utilise the database of APRA which already contains this information.

Details for all programs copied under Part VA are entered into the APRA system to match information from cue-sheets already stored. Most of these programs can be matched immediately with some requiring further research into the cue-sheet files not entered into the system with a small amount remaining unidentifiable where APRA does not have any cue-sheet information.

After the allocation of royalties in the musical works as described later, the APRA system identifies the owners of the performing rights in the musical works.

APRA collects the royalties for local unpublished writers in the capacity as agent for the relevant copyright owner. Published works (both local and foreign) and unpublished foreign works are distributed through AMCOS. The procedures for this distribution are still being developed.

To date, the Society has not identified owners of relevant copyrights in programs copied from radio. Understandably, the identification process has proved difficult and the amounts of money available for distribution are very small.

11.4. CAL

11.4.1. Identification process

The data processing to determine the royalty payments to copyright owners is performed over a 12 month period. The full process occurs over the following phases:

(i) Sample survey

CAL retains an independent statistician, AGB McNair to:

- (a) Design the sample survey in co-operation with licensees;
- (b) Select the institutions and terms of survey;
- (c) Co-ordinate the data collection;
- (d) Liaise with CAL and the sampled institutions; and
- (e) Provide auditing of the record keeping, and CAL's data entry to provide statistical and data analysis.

The survey of copying has two purposes:

- To establish the volume of pages copied, thereby enabling the licence fee to be calculated;
- To objectively identify what has been copied and the volume of copying of the particular copyright works in order to distribute the fees to the copyright owners, according to the copying of their works.

In schools, AGB McNair draws a sample which builds over 5 years. The data is weighted year by year to recognise the partial nature of the sample that is drawn in a particular year. Therefore, although the survey is an annual process, and national estimates of copying volumes are provided annually, each year's sample is an element of a five year national sample cycle. The partial nature of annual estimates is dealt with by calculating rolling averages of yearly copying volumes over the period of Agreements. For example, the first Schools Agreement commenced in 1988 and was completed in 1991, while the second Schools Agreement runs over the period 1992-1996. Distribution is conducted according to each year's sample data.

National surveys are also conducted for Universities and TAFEs. Over the period of the national survey, representative numbers and types of institutions are included to participate in the survey.

(ii) Data Processing

AGB McNair field auditors remain in constant contact with each institution to ensure that reasonably reliable data is supplied to CAL for its distribution. AGB field auditors visit the institution every 1-2 weeks.

Five fully qualified and experienced librarians/researchers are employed at CAL to clean, research and validate each and every bibliographic citation of copying provided by the staff at each institution. Various databases and resources are utilised to research the records and complete deficient or illegible citations.

Because the research of the records is a specialised task, CAL also employs two full time data entry personnel to enter the records, which are then fully audited by the data researchers. AGB McNair also completes its independent audit to verify CAL's research and data entry.

(iii) Distribution

The completed records are then further processed so that recipient allocation can occur. Identical records are compiled and the correct recipient researched and identified.

11.4.2. Training

Staff representatives from each institution participating in the sample survey are contacted and attend a briefing session prior to the survey period. The briefing sessions held throughout the country are an important part of the conduct of the survey. They are normally one day seminars conducted by a representative from AGB McNair, a senior representative from CAL and representatives from the relevant educational systems and institutions.

At each briefing session, a representative from the peak body introduces the system and discusses the need for the co-operation of each sample participant. The representative from the peak body explains how the institutions are required by the terms of their licence agreement to co-operate in the survey and that as a whole the education system is in favour of the sampling process continuing. The participation of a representative from the educational system being sampled is crucial to the level of co-operation obtained from the institutions.

The senior representative from CAL discusses the terms of the agreement between CAL and the relevant educational institution and the role and operation of CAL. The role of the CAL representative is to motivate the staff of the sample institution or faculty into willing co-operation by explaining the importance of the survey to authors and publishers. The CAL representative also explains copyright, discusses what CAL is, explains the copying limits under the licence, and answers questions about copying practices. However, because it is important that the photocopying habits of the staff of the institution do not change simply because the institution is being surveyed, the CAL representative explains that CAL provides an indemnity during the period of the survey for any copying which exceeds the limits of the licence. A package explaining what CAL does and is, together with a copy of the latest issue of CAL's newsletter, the copying limits, and some general information on copyright and CAL, is presented to the representatives from the institutions.

The representative from the statistician, AGB McNair explains the importance of accurate sampling and the need for the support of all staff if the results of the sample are to be of use. Also presented is a detailed description of the sample procedure. AGB McNair documents are explained to the institution representatives. The photocopying record form is discussed in detail, with the AGB McNair representative discussing and providing examples for each column required to be completed by the institution. Organisational details are also discussed, for example the location and number of photocopying machines used by staff. Several common issues are also

dealt with, (such as, that the "no. of pages copied" column refers to the number of pages of the original material which is copied and that the most important title information is the name of the publication rather the name of the article itself in regards to newspapers and periodicals).

A package from AGB McNair is also provided to each attendee. The kit explains the recording scheme and provides guidelines for staff members. Copies of the documents, forms, and signs to be utilised in the survey process are included in this kit. A copy of the 1994 University kit is provided with this Report.

Business cards for the CAL and the AGB representative are provided for each attendee and all are invited to make enquires either prior to, or during the survey period, or at any other time that information is required from CAL. A 008 telephone number is provided for their use. In addition AGB McNair field auditors remain in constant contact with the institution during the survey period to ensure that the data collection processes progress as smoothly as possible. AGB field auditors visit the institution to place the survey material just prior to survey commencement and thereafter every one to two weeks to collect the records at which time the records are checked for accuracy and advice can be given.

11.4.3. Common Criticism

There is a common criticism made of CAL, that there is no obligation on it to notify non-member owners for whom they have collected, that they have money for them. It is said that owners have to both know that CAL exists and to ask if they are a distributable author.

CAL is well aware of this criticism. However, although there is no legal obligation on CAL to do so, it is the finding of this Review that the Society makes strenuous effort to identify, locate and contact either the author or publisher of any work appearing as having been copied in a CAL sample.

CAL uses a number of resources ranging from CD Rom Databases to reference works, library catalogues to telephone books to locate individual publishers or authors. CAL also has a policy of co-operating with authors and publishers organisations and centres across Australia in efforts to raise the awareness of CAL amongst the literary community generally. As publishers are generally easier to locate than authors, CAL attempts to locate publishers first. When the publisher returns a Membership Form and an Undertaking and Indemnity, undertaking that it is the copyright owner of the stated works and that it will distribute fees to any other copyright owner entitled, CAL distributes to that publisher.

Where CAL's researchers are unable to locate publishers they make an effort to track the author down, especially when there is a large amount of money owing. (It would be an inappropriate waste of members' funds to spend much effort on tracking down non-members who are owed only small sums.) A number of examples of such efforts to identify relevant rights owners (or to find those who were identified) were considered. What was apparent, was that CAL often has to play the role of a private investigator to track down the appropriate author and publisher. Companies fold,

authors change houses, cities and State, published information is often incomplete or sometimes, simply wrong. All of this must be sifted.

At the end of the day, CAL's drive for membership can only be successful if it tracks down parties to whom money is owed and if those parties want to join.

11.4.4. Review of Record-Keeping System

This process is reviewed on an on-going basis and was substantially reviewed at the time of negotiating new agreements with universities. Amendments are designed by the management of the Society.

11.4.5. Review of Sampling System

The sampling system is reviewed on an on-going basis by AGB McNair and the Society. More systematic reviews are performed twice a year:

- (i) when drawing the sample and selecting the educational institutions which will be representative of all participating sampling institutions for the subsequent year; and
- (ii) when analysing the results of the sample and calculating the equitable remuneration which is due to the Society from educational institutions which participate in the sampling system.

The last major review of the sampling system by AGB McNair and the Society was at the time of preparing the sample for universities which moved to this system as from 1 January 1994. Due to the different needs of universities for broadcast material depending upon their curriculum, the Society introduced tiered groups to represent the low, medium and high copiers. AGB McNair devised a sample by which universities from each sample group will participate in the survey during 1994.

Besides the review process already outlined, the Society and AGB McNair will review the sampling procedure to ascertain if amendments are required if the Society receives any suggestions from educational institutions or if problems arise that can be resolved by a change in procedure.

11.5. PPCA

Distribution for classical music is done on market share based on audited sales data collected by PPCA's auditors. For non-classical sound recordings, logs are supplied by APRA. APRA warrants that its logs are based on a sample in excess of the minimum sample base standard. It is important to note that APRA logs contain information as to performers as well as writers.

APRA logs are supplied to PPCA for a fee. Upon receipt of the logs PPCA:

- (i) checks each entry in the APRA logs and
- (ii) converts the entries into

- (a) protected and unprotected titles (PPCA only collects on protected recordings);
- (b) artists and record company;
- (c) country of origin groupings; and
- (iii) allocates identification numbers to titles for future use and internal reference.

The contract with APRA is in place for another two years. This year PPCA will add video play lists that it compiles itself, to the data.

The cost of identification of relevant copyright owners seems extremely modest. It would appear that the co-operative arrangement with APRA to buy their data, is most cost effective.

In earlier days, before PPCA started to receive useful income flow, the costs of log supply was high in comparison to the distributable amounts. (1983-\$16,500; 1984 \$16,500; 1985 \$13,400). The Board ceased to purchase them. In 1993 the system was resumed. It represents a cost of only 3% of even the present distributable amount. In between 1986 and 1992, distributions were based on members' audited sales figures. These figures were provided in commercial confidence to PPCA's auditors who calculated each owner's entitlement. In 1993 the cost was \$35,000 (paid to APRA). This does not include the in-house cost associated with the processes outlined above (which are estimated to be no more than \$15,000). This should decrease as the work done on the APRA logs are re-useable in future years.

PPCA intends that with the increasing coverage of the ISRC code (developed by IFPI and administrated by ARIA in Australia), logs will be directly sourced by PPCA. Cost of collection of such data will be minimal, accuracy perfect and thus the current substantial work done by PPCA on APRA supplied logs will be no longer needed. (Indeed, the PPCA hopes to reverse the present deal and offer its data to APRA as it should be suitable for APRA (as it also includes composer details). The system will also be suitable for much of PACCS needs.)

11.5.1. System Review

The present system has only operated since 1993. No review is planned for next 2 years. The previous system was reviewed in 1991 and as a result it was decided:

- (i) to adopt airplay distribution logs and
- (ii) to distribute a percentage share direct to all Australian artists who register.

Planning and design of procedural change is done by PPCA staff with computer consultants. (The sampling system is presently provided by APRA, so PPCA's task is only to check and correct rather than ensure statistical accuracy.) It is subject to the approval of the Finance Committee.

[See too, Chapter 15, "APRA And CAL Sampling Schemes"]

12. LICENSING ACTIVITY

12.1. AMCOS

12.1.1. AMCOS' blanket licence activity

12.1.2. AMCOS' individual licence activity

12.2. LICENSEES BY USE AND STATE/TERRITORY

12.2.3. Qantas

12.2.4. Stellar Sound

12.3. APRA

12.4. AVCS

12.4.1. Licences By Type And Territory

12.5. CAL

12.5.1. Schools

12.5.2. Universities

12.5.3. TAFEs

12.5.4. Other Non-profit Educational Institutions

12.5.5. For-Profit Educational Institution

12.5.6. Adult Education

12.5.7. Media Monitors

12.5.8. Churches

12.5.9. Commonwealth Government

12.6. PPCA

12.7. RELATIONSHIPS WITH LICENSORS

When one considers the amount of licensing activity performed by the societies, one cannot help but be impressed. The huge volume of legal and administrative processing that is carried out by the societies is indicative of the how important it is that the relevant sectors of the community have ready access to copyright material through efficient procedures. It is impossible to conceive of how this volume of licensing could be achieved, other than by collective administration of rights.

When one considers the amount of licensing carried out, it is clear that the collective administration is an efficient and cost effective mechanism for both licensors and would-be licensees. There will always be disputes as to whether one party is paying too little or too much for particular rights. That is at the heart of commerce. What cannot be disputed, is that the societies provide a valuable function within society by permitting access to, and therefore promoting use of, copyright material.

12.1. AMCOS

An **Individual Licence** is defined as a single production (such as a record release or a film production) having a specific royalty liability for which an invoice is raised.

A **Blanket Licence** is defined as a licensed client whose royalty liability is either a specific agreed amount or a percentage of revenue which is then distributed across the total number of works used. The royalty liability is not directly related to the number of works used. Blanket licences are issued to the following sorts of licensees:

- Television Stations

- Radio Stations
- Recording Studios
- Production Companies
- Background Music Audio Recording Suppliers
- MIDI Computer Disc Suppliers
- Music Video Compilation Suppliers
- Dance Schools
- Wedding Video Operators

12.1.1. AMCOS' blanket licence activity :

1991-92				
1992-93				
Licence Type	Individual	Blanket	Individual	Blanket
"Sundry" Mechanical	408	533		
"Special" Mechanical	9,143		9,968	
Synchronisation Licences	106		108	
Mechanical/Video				
(% of Gross)		90		110
TV Blanket Licences				
(incl. ABC/SBS)		62		69
Radio Blanket Licence		106	112	
Production Music Licences	6,745		6,461	
Special Event Video Licences		150	120	
Dance School Licences				
			45	
TOTAL	16,402	408	17,070	456

12.1.2. AMCOS' individual licence activity :

AMCOS issues licences for the following number of works annually:

Licence Type	1991-92	1992-93
Sundry Mechanical	5,306	7,304
Special Mechanical Agreements	174,226	174,583
Synchronisation Licences	622	290

Mechanical/Video (% of Gross)	4,135	7,373
TV Blanket Licences (incl. ABC/SBS)	49,953	136,821
Radio Blanket Licence Agreements	7,658	8,062
Production Music Licences	23,186	29,393
TOTAL	265,086	363,826

12.2. LICENSEES BY USE AND STATE/TERRITORY

It should be noted that the following figures represent the actual business address of the licensee to whom a licence was issued. Virtually all licences issued allow usage within the territory of Australia as a whole and are rarely limited to the state or territory indicated. Information is provided for the 1993-94 financial year:

SYNCHRONISATION CLEARANCES

(Excl TV Blanket Licences & Production Music)

NSW	52%
VIC	26%
SA	12%
WA	5%
QLD	5%

STUDENT FILM & VIDEO LICENCES

NSW	5%
VIC	5%
WA	36%
QLD	54%

MECHANICAL & VIDEO BLANKET LICENCES

(% of Gross Revenue)

NSW	42%
VIC	43%
SA	3%
WA	6%
QLD	6%

SPECIAL EVENT VIDEO BLANKET LICENCES

NSW	34%
VIC	26%
SA	7%
WA	17%

QLD	16%
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DANCE SCHOOL BLANKET LICENCES

NSW	12%
------------	-----

VIC	35%
------------	-----

SA	15%
-----------	-----

WA	6%
-----------	----

QLD	32%
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TV BLANKET LICENCES

A. NETWORK STATIONS

1989-90

1990-91

1991-92

1992-93

N S W	V I C	Q L D	S A	W A	T A S	N T	TOT AL
3	3	3	3	2	2	0	0
3	3	3	3	1	0	0	11
3	3	3	3	3	0	0	15
3	3	3	2	2	0	0	13
	3	3			0		13

B. NETWORK AFFILIATES

1989-90

1990-91

1991-92

19 92 - 93 N S W	1 2 A C T	V I C	5 Q L D	S A	W A	N Z	TO TAL
6	1	6	2	2	2	1	14
4	3		8	1	1		15
8	3		17	1	1		36
	3		23				45

C. INDEPENDENT

1989-90

1990-91

1991-92

199 2- 93 NS W	VI C	QL D	2 S A	TA S	N T	TOTA L
3	4	2	3	2	1	15
	4	2	3	2	1	15
	1	2	3	2	1	11
	1		3	2	1	9

3			3			
2						
2						

COMMERCIAL RADIO STATION BLANKET LICENCES

Breakdown is by number of licences issued rather by percentage:

1990

1991

1992

1993

	V I C	Q L D	S A	W A	T A S	N T	T O T A L
NSW/ ACT	2	2	8	7	5	1	110
42	2	5	8	9	5	1	113
42	3	2	8	8	5	1	106
36	2	5	8		4	1	104
40	3	2					
	1	4					
	9						

NARROWCAST RADIO STATION BLANKET LICENCES:

Information is only available for 1993 Calendar year

NSW/ACT	4
VIC	2
WA	1
TAS	1

MUSIC-ON-HOLD

	1991	1992	1993
NSW/ACT	2	2	1
VIC	2	2	0
QLD	1	0	0
SA	0	3	0
WA	4	1	1
TAS	0	0	0
NT	0	0	0
TOTALS	9	8	2

PRODUCTION MUSIC LICENCES

(Breakdown By State/Territory)

	1989-90	1990-91	1991-92	1992-93
NSW	2049	1841	2048	2335
ACT	90	72	102	87
VIC	1389	1423	1494	1601
QLD	858	731	692	748

WA	738	806	942	900
SA	519	376	458	430
NT	36	22	17	25
TAS	94	60	84	76
TOTAL	5773	5331	5837	6202

NEW ZEALAND BLANKET LICENCES

Television	6
Radio	52
Background Music	1
Inflight Video	1
Inflight Audio	2
Midi Imports	1
Special Events	1
Music On Hold	2
Video Shows	1

AMCOS has the most complex pattern of licensing of all the societies because it deals with the greatest range of different licences. Its function as a "sundry rights" licensor is illustrated in the following breakdown of its licensing activities. The volume of its licensing and the diverseness of its licensing indicates that it is fulfilling a function that its individual members would be hard-pressed to provide as efficiently or for such a cost, without the benefit of collective administration.

Licensing of records:

1991-92 9,143	1992-93 9,968
Number of Works	
174,226	174,583
Number of Licences (SR)	
408	533
Number of Works	
5,288	7,304

SP Clients - "Special Recordings" - are record makers that are under licence agreements which allow for the payment of royalties to be made quarterly in arrears on units sold rather than units produced. These clients are issued with a Royalty Rate Advice which provides details of the value of the royalty payment applicable for each production. The number of actual clients operating under such agreements is as follows:

1991-92	40	1992-93	42
----------------	----	----------------	----

SR clients - "Sundry Recordings" - are all record makers that are required under the terms of their licence to pay royalties on the total number of units produced. The total number of these clients are as follows:

1991-92	408	1992-93	533
----------------	-----	----------------	-----

SYNCHRONISATION CLEARANCES

(Excl .TV Blanket Licences & Production Music)

1990-91	123
1991-92	106
1992-93	42
1993-94	19 (to date)

Figures for the above types of licences are falling due to the fact that publishers are issuing licences directly for most synchronisation clearances involving theatrical, non-theatrical and video rights.

STUDENT FILM OR VIDEO LICENCES

1992-93	66
----------------	----

PRODUCTION MUSIC LICENCES

These are issued to any audio or audio-visual production which utilises any of the recordings contained in the Production Music Libraries distributed by members of the Society.

1991-92	6,745
1992-93	6,461

The apparent drop in licences issued for the 1992-93 financial year was due to the fact that multiple territories and licence categories can now be included on a single licence for a client.

TV BLANKET LICENCES

1989-90	40
1990-91	45
1991-92	60
1992-93	67

MECHANICAL & VIDEO BLANKET LICENCES

(% of Gross Revenue)

1988-89	27
1989-90	36
1990-91	38

1991-92	50
1992-93	90
1993-94	110

Radio Station Blanket Licences

1990	110
1991	113
1992	106
1993	104

Special Event Video Blanket Licences (Synchronisation)

1991-92	120
1992-93	150

Dance School Blanket Licenses (Audio Mechanical)

1993-94	45
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Music-on-Hold

1991	9
1992	8
1993	2

12.2.3. Qantas

Qantas approached the Society in 1988 to secure a blanket licence due to the large volume of production music used. A per 30 second rate was negotiated which is CPI linked. The client is able to report usage on a quarterly basis.

12.2.4. Stellar Sound

Another high volume user of production music. An agreement was negotiated to commence in September 1989 which charges this client the same rate as a metropolitan radio station.

12.3. APRA

The Association currently has the following licences in place:

- (i) Public performance - Australia: 19,043 (for 34,424 venues)
- (ii) Public performance - New Zealand: 904
- (iii) Radio broadcasting - Australia: 352

- (iv) Radio broadcasting - New Zealand: 93
- (v) Television broadcasting - Australia: 42
- (vi) Television broadcasting - New Zealand: 7
- (vii) Diffusion - Australia: 3
- (viii) Diffusion - New Zealand: 9

Blanket licences are granted to all licensees except casual permits for the performance of particular named works.

The following numbers of works were allocated royalties in the Association's last two complete distributions:

Distribution 30(a) - 1 July 1992 to 31 December 1992 72,762 works paid

Distribution 30(b) - 1 January 1993 to 30 June 1993 100,768 works paid

(A proportion of works paid in 30(a) will also have been included in 30(b).)

The breakdown requested is really only relevant to the area of general public performances licences and in this respect the breakdown is as follows:

<i>State</i>	<i>Licences</i>	<i>Venues</i>
NSW	7,127	13,751
Vic	3,930	6,337
Qld	3,409	6,281
SA	1,766	3,312
WA	2,165	3,573
Tas	545	964
NT	16	30
ACT	85	176
<i>Total</i>	<i>19,043</i>	<i>34,424</i>

12.4. AVCS

Most of the Society's collection scheme agreements are for terms exceeding one year. The Society does not issue any short-term licences or agreements for use of individual works only.

All agreements that AVCS has with educational institutions are by their nature blanket licences to the extent that they allow an individual educational institution to copy any television or radio program for educational purposes.

For AVCS' purposes a blanket licence is one with an entire education sector (for example, each of the state education departments or state TAFE commissions). An "individual" AVCS licence is one with a stand-alone educational institution.

The following table details the breakdown as to the number of blanket licences and individual licences currently held by AVCS in the educational sector.

EDUCATIONAL SECTOR	BLANKET	INDIVIDUAL
Universities	0	46
Schools	31	5
TAFE	6	31
TOTAL	37	82

12.4.1. Licences issued by AVCS by type and territory

The number of blanket licences and individual licences held by AVCS, by State or Territory, are as follows:

STATE / TERRITORY	BLANKET	INDIVIDUAL
National	3	1
Queensland	8	8
NSW	4	16
Victoria	3	41
Tasmania	3	5
South Australia	4	3
Western Australia	4	5
ACT	4	2
Northern Territory	4	1
TOTAL	37	82

12.5. CAL

As discussed earlier, CAL only grants blanket licenses or licences to copy the works of its members. It does not grant licences in respect of non-members' rights. Licences are currently granted to educational institutions, quasi-educational institutions; churches; media monitor services and Commonwealth government bodies. CAL eventually intends to licence other types of users also.

As at 26 July 1994, CAL holds 1,546 licences. All of CAL's licences are ongoing, terminating and being renegotiated again at various times. It is therefore probably more useful to present a list of the numbers of each type of current licence:

12.5.1. Schools

All schools in Australia are licensed via either the Education Department of their state, the Catholic Education Office in each state, the Association of Independent Schools in each state, the Seventh Day Adventist Association in each state, the Christian Schools Association or the Christian Parent Controlled Schools Association. The number of school licences is **32** which incorporates approximately 9,950 schools and 3.1m students.

12.5.2. Universities

Most of the universities in Australia are licensed through a Head Agreement with the AVCC and an individual agreement with each university. There are **39** universities (licensed by the AVCC). There are 2 universities licensed through the E Scheme and 1 on the Statutory Licence.

N T	NS W	A C T	V I C	Q L D	S A	W A	T A S
1	11	2	8	7	3	4	2

12.5.3. TAFEs

In all states but Victoria, there is one Head Agreement for all TAFE colleges with the appropriate government department of that state. In Victoria there are **30** individual agreements with each Victorian TAFE.

12.5.4. Other Non-profit Educational Institutions

The Society's E Licence Scheme is available to non-profit educational institutions that do not fit into one of the categories above, e.g. Bible Colleges, Hospitals, preschools, Police Academies, Skillshares, Health and Nursing Colleges, Secretarial and Business Colleges and some Specialist Colleges. There are **490** E Licences.

N T	NS W	A C T	V I C	Q L D	S A	W A	T A S
6	18 4	5	1 1 7	10 0	3 4	3 6	8

12.5.5. For-Profit Educational Institution

The T Licence Scheme is available to profit run educational institutions that do not fit into one of the categories above, e.g. English Language Colleges, Private Tutors, Commercial Business, Travel Colleges, Speech and Drama Colleges and some private company training such as Ansett Australia. There are **63** T Licences.

N	NS	A	V	Q	S	W	T
---	----	---	---	---	---	---	---

T	W	C	I	L	A	A	A
T		T	C	D			S
1	26	0	7	16	5	8	0

12.5.6. Adult Education

CAL holds licences with **7** adult education organisations.

N	NS	A	V	Q	S	W	T
T	W	C	I	L	A	A	A
T		T	C	D			S
	4				1		1

12.5.7. Media Monitors

CAL has **13** Media Monitor licences.

N	NS	A	V	Q	S	W	T
T	W	C	I	L	A	A	A
T		T	C	D			S
	4	2	3	1		2	1

12.5.8. Churches

There are **724** church licences held by CAL. A number of these are group licences so that in effect CAL licenses approximately 2,500 churches.

N	NS	A	V	Q	S	W	T
T	W	C	I	L	A	A	A
T		T	C	D			S
2	19 9	10	1 5 5	10 4	1 2 8	1 0 0	26

12.5.9. Commonwealth Government

All Commonwealth Government departments have agreed to pay CAL for the copying of CAL members' works under s.183 of the Copyright Act. There are current negotiations with State Government departments but none are presently participating with CAL.

12.6. PPCA

All licences issued are blanket licences. The company issues 13,000 current annual licences.

There are four main types of blanket licenses:

- public performance of sound recordings

- public performance of videos
- broadcast of sound recordings and
- broadcast of videos. (For types of users see tariff sheets attached.)

By these blanket licences, users are given access to in excess of 500,000 individual works. The geographical distribution of licences granted is not surprising:

NSW	5,600
VIC/TAS	3,250
WA	1,100
QLD	1,500
SA	1,350

12.7. RELATIONSHIPS WITH LICENSORS

The Inquiry received four submissions from individuals and organisations who expressed dissatisfactions with the manner in which certain societies sought to effect licences. These particularly related to CAL, APRA and PPCA. Basically it was alleged that the agencies "do not provide proof of their bona fide right to collect fees" and that they do not properly or adequately describe who they are, or the basis upon which they are empowered to collect or the extent of the repertoire that they represent.

This may indicate that either the written material made available to intended licensors or the training of the field operatives is deficient. (The quality of the available printed material has already been discussed.) However, the initial interaction between a collecting society and a business person who probably knows nothing about copyright or collecting societies, is very likely to be fraught with suspicion and hostility. The collecting society is viewed as yet another impediment to the business making a profit.

13. SETTING OF RATES FOR COPYRIGHT USAGES

13.1. THE PROCESS BY WHICH THE SOCIETY SETS THE RATES OF FEE/ROYALTY

13.1.1. AMCOS

13.1.2. AVCS

13.1.3. APRA

13.1.4. CAL

13.1.5. PPCA

13.2. EQUALITY OF FEES PAID FOR THE USE OF RIGHTS

13.2.1. AMCOS

13.2.2. APRA & PPCA

13.2.3. AVCS & CAL

13.3. DEGREE OF GOVERNMENT CONTROL OVER THE LICENSING PROCEDURES

13.3.1. AMCOS

13.3.2. APRA

13.3.3. AVCS

13.3.4. CAL

13.3.5. PPCA

13.4. PUBLISHED MATERIAL AS TO RATES AND HOW RATES ARE STRUCK

13.4.1. AMCOS

13.4.2. APRA

13.4.3. AVCS

13.4.4. CAL

13.4.5. PPCA

13.1. THE PROCESS BY WHICH THE SOCIETY SETS THE RATES OF FEE/ROYALTY

13.1.1. AMCOS

Mechanicals

The backbone of the Society's licensing is the compulsory licence provisions of the Act and the prescribed rate set down in Section 55(6)(b) of the Copyright Act. after representations from ARIA, the Board negotiated with ARIA to translate the statutory rate into a more workable payment regime. The 6.25% of retail set down in the Act therefore became 10.6% of a "Published Price to Dealers" (PPD).

The basis for charging for other uses which may not qualify for the statutory rate but are of a like nature - such as royalties on imports - is the 6.25% of retail or 10.6% of PPD. For uses such as demos, educational reproductions etc. a notional retail price is set which relates to comparable product available commercially and the statutory rate is applied.

In New Zealand the statutory rate and provisions of the Copyright Act are similar but not identical.

(i) Synchronisation Clearances And Advertising (Excl TV Blanket Licences & Production Music)

All synchronisation rates and advertising rates are as quoted by the copyright owner. This is not within the discretion of the Society.

(ii) Student Film & Video Licences

The AMCOS Board has fixed the rate for these licences at \$10.00 per 30 seconds plus a \$10.00 service fee.

(iii) Production Music Rate Card

Rates for the various categories included in the AMCOS Production Music Rate Card are set by the management of the Society and subject to review by the Board. The published rates are varied each year according to changes in the Consumer Price

Index. These rates are open to negotiation between users and the management of AMCOS.

(iv) TV Blanket Licences

(a) Commercial TV Stations:

Original licence agreements were structured according to a "Rate Card" negotiated with the Federation of Commercial Television Stations (FACTS). In order to facilitate administration of the licence agreements, the Society negotiated new agreements commencing 1 July 1989 which established annual lump sum fees. These fees had a direct correlation with total amounts previously collected under the "Pay-per Usage" system. The lump sum amounts were varied annually according to the CPI.

Smaller regional stations that were not affiliated with any of the major networks were given the option to continue with a "Pay-per-Usage" system or pay a lump sum that was based on a pro rata percentage of the network amounts based on the population reach of the station.

(b) ABC & SBS:

These agreements were negotiated between representatives of the organisations and subject to approval by the relevant Boards.

(v) Radio Station Blanket Licences

These rates are negotiated with the radio industry body FARB (Federation of Australian Radio Broadcasters). The fees are based on the broadcast population of each station. There are four station types with each type licensed at a set fee.

1. Stations in Sydney or Melbourne
2. Stations in Adelaide, Perth or Brisbane
3. Stations in other cities having populations in excess of 150,000
4. Stations in other cities or towns

(vi) Narrowcast and Community Radio Stations

Presently under review, these stations were initially licensed for the same rights as commercial stations and charged at the rate applied to type 4 stations.

(vii) Music Videos For Retail Sale

The rate of 6.5% of Published Price to Dealers was set after negotiation between AMCOS/AMPAL and ARIA.

(viii) Mechanical (% Of Gross Revenue) Blanket Licences

The benchmark rate of 6.25% of the retail price is used in setting the rates for uses such as background music, in-flight audio services etc. The rate is levied on the gross income generated by the usage.

(ix) Video (% Of Gross Revenue) Blanket Licences

Music video compilations to clubs, in-flight music video programs etc. Similar to above but the rate is 5% of gross income to reflect the reduced rate as per the industry agreement.

(x) Special Event Video Blanket Licences

Rates for these blanket licences were negotiated between the Society and ARIA. The revenue derived is split with ARIA. The system provided a means whereby licensees could avoid infringing copyright and the copyright owners would receive some remuneration for the usage.

(xi) Dance School Blanket Licences

This licence fee structure was authorised by the AMCOS Board.

(xii) Schools Photocopying Agreement

The per-student annual fee for the rights granted under the voluntary print licence for schools was negotiated with the National Council of Independent Schools and the Australian Education Council Working Party on Copyright (now known as "MCEETYA", the Ministerial Council On Employment Education Training And Youth Affairs).

The rate was renegotiated in 1990 based on results of copying undertaken in schools for the first two years of the scheme. The rate is adjusted annually by reference to the annual percentage change in the average of all states of the all-groups CPI.

(xiii) Sundry Licences And Fees

Sundry and miscellaneous fees, for example research fees, are set by the management after negotiation with the user and subject to the approval of the Board.

Efficiency and fairness of process

The Society sees itself as a means of facilitating the use of copyright material without encumbering copyright owners and users with costly and time consuming administration. The process of negotiating royalties and fee structures is, on the whole, fair and reasonable with very few examples of objections from users. Such licensing systems actually encourage the authorised use of copyright material by creating ease of access and thus maximising the returns to the Society's members.

The efficiency and fairness of the Schools Photocopy Agreement flows from copyright owners receiving meaningful remuneration from photocopying in schools.

Photocopying had been occurring unchecked for many years. However, it is difficult to obtain accurate data of the quantum of copying of sheet music that does occur in schools. To implement a system like the CAL schools licence where the sample data from year to year is used to determine not only distribution but also the per-page rate based on the volume of copying undertaken during the sample period, would require the sample to be reworked to give a more accurate view of music usage in the various schools systems. The expense involved in creating and implementing an additional sample which related specifically to music use would be so great as to render the administration of the licence uneconomic. Reference to the Copyright Tribunal may be useful if the parties were unable to agree on a rate, however, the problem with obtaining reliable evidence about the extent of copying remains.

13.1.2. AVCS

Under section 135H and 135J the equitable remuneration payable by a body administering an educational institution is determined by agreement between the administering body and the collecting society or, failing such agreement, by the Copyright Tribunal on the application of either of them. [Section 135H relates to payments by institutions operating under a Records Notice and section 135J relates to payments by institutions operating under a Sampling Notice.]

To date, all remuneration payable to the Society has been determined by agreement. No application has been made to the Copyright Tribunal by the Society or administering bodies.

History

(a) Universities

The first agreement concluded by the Society was signed in mid 1990 with the Australian Vice-Chancellor's Committee and the Australian Committee of Directors and Principals (AVCC/ACDP). The AVCC/ACDP represent universities. That agreement was a Head Agreement incorporating, as a schedule, the individual agreements subsequently signed with all but one of the universities represented by the AVCC/ACDP.

The universities elected to participate in the statutory scheme by furnishing the Society with a Records Notice. Under the record-keeping system, institutions pay equitable remuneration assessed by reference to the number of copies made and the duration, in minutes, of those copies. Each instance of copying is to be reported. [Note that the Society has no control over the election of the institution to furnish a Records Notice or Sampling Notice and, indeed, over whether the institution furnishes a Remuneration Notice at all.]

The agreements with universities embodied the principle of payment for use. Under these agreements the amount of equitable remuneration was a rate per minute, varying according to the nature of the program copied. The rates were:

Television:

Category B (General): \$2.50 per minute

Category C (Ephemeral): \$0.75 per minute

Category A (Special): \$4.50 per minute

Radio:

\$2.50 per fifteen minutes or part thereof.

These rates are adjusted in accordance with increases in the Consumer Price Index.

The royalty for most television programs was \$2.50 per minute. This included documentaries, educational programs and feature films.

The royalty was 75 cents per minute for news, sport, series and serials, current affairs and light entertainment. This lower rate recognised that some programs are ephemeral in nature and are likely to be shown in class only once or only a few times over a short period. Early discussions were held on the feasibility of charging different rates according to the length of time the institution retained the copy but this was abandoned as being administratively cumbersome.

Provision was also made for special cases, for example programs made specifically for the educational market or having a significant potential for sale as an educational program. In such cases the Society could nominate the program as being in the highest payment category and inform the educational institution of this nomination. The rate for these special cases was \$4.50 per minute.

One university elected a sampling system. This agreement calculated payment using a time-based sample at the standard rates.

(b) Primary and secondary schools

Agreements for the school sector were concluded with Departments of Education, most Catholic Education Offices, Associations of Independent Schools in each State and Territory and with the Christian Community Schools Ltd, Christian Parent Controlled Schools Ltd and the Australian Conference Association Ltd. Most of these were signed in September 1990.

Early negotiations revealed that the parties had significant differences of opinion on the rate of equitable remuneration and the appropriate method of calculation of that rate. For reasons including certainty in budgeting, schools representatives insisted that rates of remuneration be fixed over a four year period. The Society was obliged to accept this proposal in the initial phase of its operation in the interests of bringing the scheme into operation without delay and because it did not have the funds to apply to the Copyright Tribunal to have the rate set by arbitration.

The Recitals to the fixed rate agreements with schools state:

"F. The parties differ as to the proper basis of calculation of equitable should be payable for copying after the termination of this remuneration and have reached this agreement without prejudice to the rights of either party to claim that a different remuneration agreement. "

Under the current agreements, a rate of 50 cents per student in the first financial year (1990/91), 70 cents per student in the second year, 90 cents in the third year and \$1.00 in the fourth year was adopted.

On 30 June 1993, the Society gave twelve months notice of its intention to terminate these agreements. The Society is currently negotiating with schools' representative with a view to concluding new agreements to commence on 1 July 1994. The Society is aware that schools in general copy a great deal more television, expressed in minutes per student, than TAFE colleges and universities. The schools' representatives have indicated that payments calculated in the same manner as payments calculated in TAFE colleges and universities are likely to result in annual fees that are beyond their capacity to pay and will not be accepted. Although the negotiations have not been concluded, the Society is discussing methods of determining equitable remuneration that differ from those in place in the tertiary education sector.

(c) Technical and Further Education Colleges

Most TAFE systems entered into agreements on the sampling system with an annual fee per student. The fee is determined from the level of copying in the previous year as revealed by sampling procedures. Some colleges on an individual basis have entered into record-keeping agreements on the model of the university agreements. Again, the rates for calculation of remuneration are the standard per-minute rates.

Current University and TAFE Sampling Agreements

New agreements were negotiated for the university sector with the Australian Vice-Chancellors Committee last year. These agreements commenced on 1 January 1994. Under these agreements, like those with TAFE colleges operating under sampling, equitable remuneration is determined by applying the standard per-minute rates used in record-keeping institutions to the level of copying per student determined under the sample surveys.

Universities are grouped into strata depending on whether they are assessed to be high, medium or low copying institutions. Details of copying in institutions selected within each sample period are aggregated to establish the annual fees for the institutions in the group. Aggregates of the three categories of program (corresponding to Category B, Category C and Radio in the existing agreements) are calculated and then divided by the total number of students in each of the relevant institutions (expressed as equivalents of one full time student or "EFTSU"). This is used to calculate the average number of minutes copied annually per student within each group. Annual fees for each group for the copying in the year subsequent to the relevant sample year are calculated by applying each group's average to the standard per-minute rates. Note that the Category A per-minute rate does not apply to sampling agreements.

Annual fees for universities for 1994 were fixed by agreement, by reference to past copying practices under record-keeping. The rates are:

Strata Rate per EFTSU

IA \$2.73

IB \$1.47

II \$0.75

III \$0.25

The annual fees in the TAFE sector for 1994 have not been finally calculated. For 1993 they were:

For New South Wales: \$1.31

For Queensland: \$0.78

For other States: \$1.07

Current Record-Keeping Agreements

Agreements under the records system are similar to the initial agreements entered into with universities in 1990. The rates have been adjusted in accordance with increases in the Consumer Price Index. The rates for the 1994 year are:

Television:

Category B (General): \$2.77 per minute

Category C (Ephemeral): \$0.83 per minute

Category A (Special): \$4.98 per minute

Radio: \$2.77 per fifteen minutes or part thereof.

Efficiency and fairness of process

The negotiated agreement on rates under both the sampling and record-keeping systems is efficient and fair in principle. In practice, the record-keeping system is inherently suspect as a mechanism for determining equitable remuneration to copyright owners.

The preferred method of achieving the payment of equitable remuneration from large and diverse educational institutions would be through a Collection Scheme Agreement that is based on a sampling system. While the records system is based strictly on payment for usage, in a large and diverse educational institution there is an

inherent danger of under-reporting of usage of copyright material. Moreover, the administrative burden of full record keeping, is one that the institutions could well do without.

Accordingly, *it is recommended* that consideration be given to the repeal of the present system of record-keeping provided by the Copyright Act in relation to the educational use of audio-visual materials .

13.1.3. APRA

The Association generally seeks to negotiate new licence schemes with bodies representative of licensees, for example: the Federation of Australian Radio Broadcasters, the Federation of Australian Commercial Television Stations and the Cinematograph Exhibitors Association. If no agreement can be reached, either the Association, a licensee or the organisation representative of licensees may apply to the Copyright Tribunal (see ss. 154 and 157 of the Copyright Act).

In APRA's view the process is efficient and fair. It requires both sides to advance arguments in favour of their case and to have those arguments adjudicated upon by an independent tribunal. There are obvious costs to be taken into account but they are an equal factor for both sides. Although parties to Tribunal cases tend to be legally represented, there is power for the Tribunal to dispense with the rules of evidence (s.164(b)), and proceedings are required to be conducted with as little formality, and with as much expedition, as a proper consideration of the matters before the Tribunal permit (s.164(c)). That said, they remain very formal.

APRA to date has been the most frequent litigant before the Tribunal, and currently has two references under s.154 before it. Over the years a relatively straightforward procedure governing the making of submissions and the provision of evidence has evolved. This procedure seems to work satisfactorily for APRA.

13.1.4. CAL

Educational Institutions

For schools, universities, TAFEs, adult education, open learning and other non-profit educational institutions, the rate was set by the Copyright Tribunal in 1985 and has since been indexed according to CPI rates. This rate is currently about 3 cents per copy page, although this has been discounted in various agreements in the course of negotiations in exchange for administrative savings.

(i) Profit run Educational Institutions

As these institutions are not educational institutions for the purposes of the Copyright Act, a higher rate was offered by CAL in the contracts with them and accepted by each individual profit run educational institution. This rate is between 3 and 9 cents per copy page.

(ii) Commonwealth Government Rates

The Commonwealth Government has a special statutory licence under s.183 of the Copyright Act. The rates were negotiated over a period of four years between the Attorney-General's Department for the Commonwealth Government and CAL. This rate is 1 cent per page for newspapers, 4 cents per page for magazines, 5 cents per page for books and 12 cents per page for journals.

(iii) State Government Rates

An agreement has not yet been entered into with any of the State Governments but they have agreed to pay the same rates that were negotiated with the Commonwealth Government.

(iv) "Worship" Licences

The fee is currently 50 cents per congregation member plus \$47 administration fee with a minimum fee of \$87 each year. This rate is a result of negotiation between individual churches and CAL. CAL has some doubts about the cost efficiency of the church licence and whether these rates are too low.

(v) Media Monitor Organisations

This rate was negotiated between Media Monitors Pty Ltd (a company that has subsidiaries in each State) and CAL over a period of many years. The rate is 5% of their invoiced fees to their customers or 6 cents per page for newspaper and magazine articles. Copying of journal articles is priced at a percentage of subscription price due to the wide variation in subscription costs for journals. These rates have been accepted by other media monitor companies.

(vi) Corporations

CAL has not yet concluded any licence agreement with any corporation, although it has commenced negotiations with a significant number of companies. The Society has sent out a draft licence which provides for at a payment per equivalent full-time employee. This rate is still under negotiation.

Equity of process

As rates are set by negotiation with the licensee groups, this process seems to be the most efficient and fair process available. CAL's first rate, the rate per page for copying by educational institutions was set by the Copyright Tribunal in 1988. The rates negotiated since then have taken that rate as a base rate.

This is a useful model of rate setting: a governmental mechanism locating a fair base and leaving it to the parties to negotiate the actual rate.

13.1.5. PPCA

Licence fees for the broadcast of protected sound recordings are set in negotiations with the following:

Broadcaster

	<u>Negotiated with</u>
ABC	ABC direct
SBS	SBS direct
Commercial Radio	
* FARB Members	FARB
* Non-FARB Members	Individual Radio Stations
Commercial TV	FACTS
Community Radio	
* CBAA Members	Members of CBAA
* Non CBAA Members	Individual Radio Stations
Satellite & other Broadcasters	Individual Broadcasters

Public Performance fees are increased annually to reflect the increase in the consumer price index. Six months notice of intending increases are given to the various associations in accordance with the requirements of undertakings given to the Trade Practices Commission.

Equity and Efficiency of process

PPCA was of the view that their system of setting public performance rates is efficient in that it is done annually and mainly through relevant associations e.g. AHA, RCA. The PPCA believes that the rates are too low and they are only increasing by CPI. (The company argued that this provides certainty to users, but also gives them the ability to negotiate if desired. Users can easily forecast annual costs from PPCA. It noted that is rare that it received a complaint about the quantum of fees.)

PPCA was also of the view that the broadcast fees are inadequate and inequitable. In this, the company is undoubtedly correct. The artificially low fee broadcasters pay PPCA (under s.152) simply means that the fees are unfair to copyright owners. (For instance in the UK broadcasters pay PPCA's equivalent between 2% and 5% of turnover.) PPCA is negotiating much higher rates with new broadcasters. This will substantially increase income in the future.

Broadcasters are in no need of the protection offered by the present cap. They are sufficiently well represented to be able to negotiate market rates without the protective arm of government interfering in that process. Experience has shown that the best way of setting rates is by inter-parties negotiation with access to the Copyright Tribunal to determine matters that cannot be resolved in that way. ***It is recommended that the ceiling on the broadcast fee payable pursuant to section 152 be removed forthwith.***

13.2. EQUALITY OF FEES PAID FOR THE USE OF RIGHTS

13.2.1. AMCOS

In general the royalties and fee structures are the same for all users. Occasionally, subject to Board approval, charitable bodies are given access to copyright material on a free or reduced rate basis.

Advertising and synchronisation licences negotiated through the Society are set at the rates stipulated by the copyright owner.

The use of Production Music is subject to negotiation. Factors taken into consideration when licensing include:

- Medium of exploitation
- Territory for clearance
- Volume of music used
- Frequency of the usage i.e. TV series
- Market forces i.e. comparison to cost of commissioned and/or published music
- Production budget
- Client involved e.g. charity

13.2.2. APRA & PPCA

At APRA and PPCA, all licensees falling within an identifiable class to which a licence scheme applies, pay according to the formula for payment set out in that licence scheme. A summary of all of the APRA's existing licence schemes is provided in the materials accompanying the Report.

Although this may be seen as inflexibility, it is difficult to see how they could cost effectively do it any other way. Indeed, given that so many licensees are commercial competitors, it is probably important that each licensee falling within an identifiable class, be dealt with in exactly the same way.

13.2.3. AVCS & CAL

Both AVCS and CAL have had to show considerable flexibility in their attitude to setting rates. In both societies there is a considerable difference in the rates charged between various types of educational sector for the use of the same rights. In other words, within each educational sector, licensees will pay the same amount for the same use of rights but there may be differences between sectors. This has been partly necessary in order to establish the remuneration system at all. Persuading the sectors to participate has demanded this flexible attitude.

13.3. DEGREE OF GOVERNMENT CONTROL OVER THE LICENSING PROCEDURES

There is no specialised Government control over the quantum of rates or the manner in which they are set. Two mechanisms are relevant however: (i) The Trade Practices Commission Authorisation procedure, and (ii) the Copyright Tribunal.

13.3.1. AMCOS

On 30 December 1977 the Attorney-General, Senator Peter Durack, requested that the Copyright Tribunal hold an Inquiry in relation to the royalty payable in respect to records in order to determine an equitable statutory royalty for the compulsory mechanical licensing system. At the preliminary hearing on 6th November 1978, leave was given to the Australian Copyright Owners (ACO) to present a case on behalf of the Fellowship of Australian Composers, the Composers Guild of Australia, and the Australian Music Publishers Association Ltd, and to the Australian Record Industry Association. The Copyright Tribunal published a report detailing its findings, entitled "Report of the Inquiry by the Copyright Tribunal into the Royalty Payable in Respect of Records Generally." The ACO was successful in gaining an increase in the royalty rate.

AMCOS was also a party to the application by the Private Audio Copyright Collecting Society Limited (PACCS) for the determination of a rate for remuneration under Part VC of the Act. The hearings were abandoned after the Blank Tape Royalty legislation was declared unconstitutional by the High Court.

13.3.2. APRA

The Association has on several occasions initiated proceedings under s.154 of the Copyright Act. These cases have related to:

- the ABC - on two occasions: 1981 and 1992
- the SBS - in 1981
- discotheques and dance clubs - in 1992
- aerobic classes - in 1993
- Australian commercial television stations - in 1993.

The Association has been a respondent to an application under s.157 of the Act on one occasion, at the suit of FACTS in 1993.

13.3.3. AVCS

The Tribunal has not been involved with any of AVCS' rate setting. It has been by negotiation.

13.3.4. CAL

The Copyright Tribunal can be used by CAL or licensees for the setting rates for statutory licences (either educational or government) but not for other licences.

In Copyright Agency Limited v Department of Education of N.S.W. and Ors. 1985 the per page rate for copying in education was set. CAL also took action against the Australian National University, University of New South Wales and University of Technology, Sydney in 1989 to establish a page rate for copying of academic journals in universities. That action was settled prior to hearing.

13.3.5. PPCA

Only PPCA has the benefit of a Trade Practices Commission Authorisation. Its important appearance in the Copyright Tribunal was the FM MMM case which set the present broadcast performance rate. No party has taken PPCA to the Tribunal.

13.4. PUBLISHED MATERIAL AS TO RATES AND HOW RATES ARE STRUCK

13.4.1. AMCOS

The prescribed rate as set down in the Copyright Act is referred to in the AMCOS brochure "A Guide to Mechanical Rights and the Concept of Copyright". This is always included in information forwarded to inquirers.

Record companies who are members of ARIA are informed of rates and changes in any agreements by their industry association. Non-ARIA companies entering into full agreements are given the "Guide For The Payment Of Mechanical Royalties". Sundry applicants are provided with a Mechanical Copyright Licence Application which contains all relevant information on rates.

Rates applicable to synchronisation clearances are not published as they are set by negotiation.

Rates for the use of Production Music are published on the AMCOS Production Music Rate Card which is available on request. The rate card indicates that rates are subject to negotiation.

Rates for the Special Event Video Licence are also published and available on request as part of an information package.

Rates for commercial television broadcasters are set out on the FACTS rate card and are distributed to stations by FACTS.

13.4.2. APRA

All existing licence schemes are available to the public in printed form. Similarly, if any member of the public wishes to be supplied with a copy of a Tribunal decision, it

is supplied. If any licensee falling within a particular licence scheme has queries concerning the origin of the scheme or the rationale for charges, there was evidence that the Association makes an effort to explain those things and, if required, to provide the inquirer with copies of documents that may be relevant, (for example, correspondence with some representative body with whom negotiations may have been conducted).

13.4.3. AVCS

The Society publishes the rates and how they are struck, in various publications including the Information for Members booklet and the newsletter.

13.4.4. CAL

Information as to the rate per page in licence schemes generally is available. However, many of CAL's actual payment rates are confidential between CAL and the licensee concerned. CAL is the only Society that maintains this confidentiality. The rationale for this apparent failure of transparency is that these are commercially negotiated and therefore commercially sensitive.

13.4.5. PPCA

Published tariff rates are available to the public on request. These are sent with letters to prospective and renewing licensees.

RECOMMENDATIONS

* that consideration be given to the repeal of the present system of record-keeping provided by the Copyright Act in relation to the educational use of audio-visual materials. * that the ceiling on the broadcast fee payable pursuant to section 152 be removed.

14. PROCESSES/TECHNIQUES USED TO QUANTIFY ROYALTIES

14.1. AMCOS

- 14.1.1. Licensing Of Records
- 14.1.2. Television & Radio Licences
- 14.1.3. Production Music - Studios
- 14.1.4. Schools Photocopying Licence
- 14.1.5. Overseas Societies
- 14.1.6. Mechanical & Video (% Of Gross Revenue) Blanket Licences
- 14.1.7. Music Videos For Retail Sale
- 14.1.8. Synchronisation Clearances
- 14.1.9. Student Film & Video Licences
- 14.1.10. Special Event Video Blanket Licences
- 14.1.11. Dance School Blanket Licences

14.2. APRA

14.3. AVCS

- 14.3.1. Distributable Amount

- 14.3.2. Allocation of Royalties
- 14.3.3. Process Review
- 14.3.4. Frequency Of Distributions

14.4. CAL

14.5. PPCA

14.6. TRAINING SUPPLIED TO PARTICIPANTS IN SAMPLING PROCESS

14.6.1. AMCOS

14.6.2. APRA

14.6.3. AVCS

14.6.4. CAL

14.6.5. PPCA

14.7. ALLOCATION OF PERCENTAGES BETWEEN THE VARIOUS COPYRIGHT OWNERS

14.8. DETERMINATION OR APPROVAL OF SAMPLING SYSTEM USED BY THE SOCIETY

There are a number of different techniques by which the societies determine how much each rights owner will receive. Some are one-off licences where the rights owner will receive the negotiated fee, less whatever administrative fee is payable. Most, however, are blanket licences where the fee is much more complicated to determine.

One of the most common complaints about collecting societies seems to stem from the rights owner's lack of understanding of how his or her royalty cheque was arrived at. It is very simple when the transaction is a one-off licence. We can readily understand that a negotiation has taken place and that a particular fee has been agreed upon. However, when the size of the licensing transaction is necessarily huge, such as the photocopying needs of educational institutions or the public need for live performance of music, it is economically inefficient to account to rights owners on a strict pay-for-use basis. All that one can reasonably expect is a process which is equally fair (or unfair) to all owners of the relevant rights. This demands that the process be statistically cogent.

Unfortunately, statistic-based schemes are difficult for the uninitiated to understand. They are also not particularly easy to describe with simplicity. For this reason, there is much adverse comment about the allocation processes used by societies which require the use of sampling techniques.

14.1. AMCOS

14.1.1. Licensing Of Records

After being issued with an RRA, the record company is required to supply AMCOS with sales reports on or before the sixtieth day from the end of each accounting period. The accounting periods are three month periods ending on 31 March, 30 June, 30 September and 31 December. The sales reports indicate the quantity sold of each format of a particular catalogue number for the accounting period and the nominated retail or dealer price. Some clients provide their sales reports on disc.

AMCOS generates an invoice on the basis of the information in the sales reports and the RRA. This indicates the total royalty payable. The companies pay the royalties to AMCOS.

The AMCOS computer allocates the money to each work taking into account:

- number of units sold;
- selling prices;
- the number of tracks on the record; and
- the appropriate royalty rate.

All money allocated to that work is then divided up amongst all the owners of the work according to their percentage ownership.

Small companies and individuals wishing to license musical works for release onto records are referred to as "sundry clients". They are required to submit a Mechanical Copyright Licence Application with details of the works to be released. They too are issued an RRA but they are invoiced on the basis of the number of units manufactured. Payment is expected before the product is sold or distributed. Royalties are paid out to the copyright owner according the same process outlined above.

14.1.2. Television & Radio Licences

Network Television:

Networks are issued with a blanket licence invoice every quarter in arrears. This licenses Network Stations and their Affiliates for the use of Published and Production Music in programs and promos made by them; and Network Stations only for the use of Production Music in advertisements produced by them.

Cue sheets detailing all uses of music covered by the agreement are required to be submitted to AMCOS as soon as is practicable, but in no case later than six weeks after production. Essentially, distribution is based on three months worth of cue sheets divided into that quarter's payment.

Until this year AMCOS received and entered cue sheets from each station. All program cue sheet information is now provided to AMCOS by APRA on disc.

For each work, the duration of each separate music cue is entered. Each 30 seconds of music or part thereof, is recognised as one unit. The computer sums the total number of units raised in all productions for a particular blanket licence and divides the total into the blanket licence amount. Each unit is thereby allocated a dollar amount on a pro rata basis.

Production Music usages in promos and advertisements attract a double weighting.

Unaffiliated Television Stations:

Unaffiliates are issued with a blanket licence every year in advance. This licenses these stations for the use of Published and Production Music in programs, promos and advertisements.

The reporting and distribution calculations of cue sheets are treated the same as for Network Stations.

Television Pay-Per-Use

Affiliated television stations are required to pay for every usage of Production Music in advertisements on a per 30 second unit basis. The rates for these usages are outlined in the FACTS rate card. All other FACTS member stations that do not elect to enter into a blanket licence agreement with AMCOS are required to pay for all usages of Published Music in programs and promos and Production Music in programs, promos and advertisements on a per 30 second unit basis.

ABC & SBS

ABC & SBS licences apply to radio and television. Invoices are issued to the ABC every six months and to SBS annually. Cue sheet information is supplied on disc by APRA and royalties are distributed accordingly.

Commercial Radio Stations

Commercial radio stations are issued with a blanket licence yearly in advance. This licenses the stations for the use of Published and Production Music in programs, Production Music in advertisements and provides for an extension to the ephemeral right.

Information on the use of Production Music in commercials is supplied to AMCOS on disc from APRA. Each 30 seconds of music or part thereof, is recognised as one unit. Six months' worth of licence fees is divided into the total number of units represented. Subsequently, the number of units attributed to each work determines the royalty pay out.

Narrowcast and Community Radio Stations

Fees received from these stations are minimal and have been pooled with the commercial radio distribution.

14.1.3. Production Music - Studios

For standard pay-per-use clients, Production Music is licensed on a per 30 second unit basis or part thereof (known as one unit). The royalty rate applicable is dependent on the "Licence Type" and "Territory" applied for in respect of each production.

Studios that are making reproductions of Production Music are required to enter into a Production Music Licensing Agreement with AMCOS. (Clients that are authorising

these reproductions may also enter into an Agreement.) For each production using Production Music, the Licensee must submit a cue sheet within 28 days after the reproduction has occurred. This Licence Application/Cue Sheet notifies AMCOS of the party to be invoiced, and details the "Licence Type" and "Territory for Clearance" applied for and the works, including durations, used in each production.

For each production, Production Music ownership is determined and the total duration of music for each separate music cue is entered. The computer converts the durations to 30 second units and multiplies the number of units for each work by the rate according to the "Licence Type" and "Territory". These rates can be found on the Production Music Rate Card. There is also a \$5.00 service fee payable on licences granted for each separate production.

An invoice is generated and forwarded to the appropriate party. Upon receipt of moneys, the computer flags this invoice as ready for distribution. Royalties from these productions are distributed quarterly.

There are some clients who pay royalties on a percentage of gross revenue basis, for example, Music on Hold operators. Their agreement grants a non-exclusive licence to reproduce and distribute and/or import and distribute Production Music audio recordings in Australia. For these productions, a royalty equal to 10% of their gross revenue and a service fee for each separate production is paid. This applies irrespective of the duration of music used. For each activity a Licence Application/Cue Sheet is completed. These cue sheets, along with copies of invoices issued to the Licensee's client/s and a statement showing royalties and licence fees payable in respect to these photocopying licence may not have been contemplated in the grant of print rights. The question of allocation is somewhat complicated owing to the variety of contracts and commercial arrangements that prevail in the market-place.

14.1.4. Schools Photocopying Licence

The distribution of the share of photocopying fees under the AMCOS schools' licence is governed by a resolution of the AMCOS Board which adopted a report by the Print Committee. (The Print Committee is made up of AMCOS members who specialise in print or have large print catalogues, together with major retail representatives, who meet quarterly to review the schools agreement, discuss issues affecting sheet music and make recommendations on print matters to the AMCOS Board.)

It was noted that two separate rights holders are affected by the scheme: (a) in the underlying musical work and (b) in the published edition. The owner of print rights, i.e., the owner of copyright in the published edition and the print arrangement, is entitled to a share to compensate for lost sales. The owner of copyright in the underlying work is also compensated as the income from the right to print and sell copies of the work (or arrangement) in question. Those recipients may in turn be obliged to account to writers/arrangers or other publishers under the terms of their agreements. A distributor or sales agent is not entitled to a share in the distribution. If the publisher owns both the print rights and the copyright in the underlying work or arrangement, they are entitled to payment based on the full page rate.

A control list of titles which occur in the sample is circulated to AMCOS members who make claims in those two categories of ownership. Where no claim is made in one of those categories or for a whole title, it is placed on hold and researched. If the titles are published by an overseas publisher who is not sub-published for this territory, the relevant overseas publisher is paid directly.

The standard commission and expenses are deducted from fees collected and then the remaining pool is divided into the total number of pages copied appearing in the data to obtain the page rate for distribution for the year in question.

It was resolved by the Board that the distribution be 50% to the print-right owner and 50% to the owner of copyright in the underlying work or works. The print right owner is taken to be the holder for Australia of the exclusive reproductions, are submitted to AMCOS which uses this information to distribute the royalties.

14.1.5. Overseas Societies

Enquiries listing details of the proposed recording are received from major record companies and AMCOS Licensing Department. These are checked for possible claims, then details of the recording are entered into the computer and claims are lodged with the Record Company/AMCOS Licensing Department.

Prescribed Notices are received from the Record Company/AMCOS indicating the works it controls, price of recording, rate payable per track etc. These details are added to the information already registered.

When quarterly royalty statements are received from the Major Record Companies, the sales for each catalogue containing works controlled by AMCOS are keyed in and the computer calculates the amount that the Society should receive. If this differs from the amount the Society is being paid, AMCOS requests an amendment from the Record Company.

Detailed royalty statements accompany remittances to affiliated Societies.

14.1.6. Mechanical & Video (% Of Gross Revenue) Blanket Licences

A similar system to that used for the TV Blanket Licences is used for this category. Moneys received from these blanket licences are distributed according to cue sheet information supplied from the clients. It is a requirement of virtually all licence agreements that clients supply lists of musical works reproduced in each reporting period.

It is, however, not possible to obtain complete information from some licensees and while every effort is made to distribute according to actual usage the only practical solution in some cases is by way of a sampling procedure. Between 2,500 and 3,000 works are used for each reporting period derived from a cross-section of clients that exhibit a programming list representative of other licensees in the same category.

14.1.7. Music Videos For Retail Sale

The major record companies provide AMCOS with summarised statements of payments due to copyright owners from the reproduction of musical works in music videos for retail sale. AMCOS checks and collates the information, draws cheques and forwards them on to its members.

Non-major record companies account to AMCOS for music videos in the same way as for records.

14.1.8. Synchronisation Clearances

Fees received are paid directly to the copyright owner. Note - the fee is set by the copyright owner.

14.1.9. Student Film & Video Licences

Moneys are collected according to the AMCOS Board approved rate of \$10.00 per 30 seconds and distributed to copyright owners on an "as used" basis.

14.1.10. Special Event Video Blanket Licences

This income is shared with ARIA as the licence includes the right to reproduce the sound recordings. It is not feasible to get title and composer details from these licensees.

14.1.11. Dance School Blanket Licences

These licences are a recent innovation. No title and composer details are supplied.

Distribution processes have been developed by the AMCOS staff and are reviewed by the Board. The process of distribution is based on the principle that payment should be linked to usage. Practical considerations dictate that it is not possible to distribute moneys from uses such as Special Event and Dance School licences on this basis. In these cases the cost of determining royalties attributable to each work used would be greater than the distributable amount.

Where data is supplied from elsewhere - for example AVCS, CAL, or APRA, AMCOS quite reasonably, relies on their methodology.

14.2. APRA

The process by which income is quantified is very complex. It is described in the Association's published Distribution Rules. Special attention should be given to the flow chart and accompanying explanatory guide prepared specially for this Review and which are provided in the supporting material to the Report.

The distribution system involves a great number of interlocking and quite complicated processes. No one person has been responsible for devising all of these processes.

Ultimately the Board is responsible for a system which has evolved over a considerable period of time.

Distributions are made twice-yearly: in May/June for the six months to the preceding 31 December, and in November/December for the six months to the preceding 30 June. The system, substantially in its present form, has been in place for three years, but core aspects of the approach to distribution have been in place for many years.

The last major review of the overall system was conducted in 1992. That review involved a five-stage process:

- (i) the publication to the membership of a discussion paper;
- (ii) the receipt and analysis of members' comments and submissions;
- (iii) the making of decisions by the Board.
- (iv) The Board's decisions were published to members in the Association's newsletter.
- (v) The decisions were implemented.

14.3. AVCS

The scheme of allocation was devised by the Chief Executive of the Society and approved by the Board of the Society. It has been in existence since the commencement of the statutory licensing scheme.

14.3.1. Distributable Amount

Regulation 23J(2) of the Regulations provides that the distributable amount is the amount of equitable remuneration received by the Society that is attributable to that period (in accordance with the practice of the Society).

For funds receivable from institutions under the sampling scheme, this includes amounts referable to the accounting period whether or not actually received in that period. The Society will include sums attributable to the period but received after the end of the period without deduction of operating expenses or other deductions where these amounts can be determined when the accounts are prepared.

For funds received from record-keeping institutions, the amounts are accounted on a cash receipts basis. This is done because the amount that will be received after the close of the period cannot be determined at year end to permit accounting on an accrual basis.

At the end of each accounting period, the gross sum collected (including any interest earned on the investment of these moneys) is determined and deductions for the following purposes are calculated in accordance with Article 13 of the Articles of Association:

- (i) the payment of all proper and reasonable expenses of and incidental to the conduct, management and operation of the Society;
- (ii) special purposes (including cultural or charitable purposes) as the Board thinks conducive to furthering the interests of the Society; and
- (iii) a reserve to meet the anticipated future obligations of the Society.

The sum remaining after the deductions in accordance with Article 13 is the Distributable Amount for the relevant accounting period. (To date, AVCS has not established any general reserve, although it has made provisions in the accounts for specific purposes in accordance with generally accepted accounting principles.)

Scheme of Allocation

Article 14 (a) provides that the distributable amount in respect of an accounting period is to be divided in accordance with the scheme of distribution determined by the Board for that accounting period having regard to:

- (i) the nature and value of the relevant copyrights;
- (ii) the effect of copying on the value or potential market for the relevant copyrights; and
- (iii) the need to safeguard incentives for the future production of relevant copyrights.

Distribution Categories

In the Scheme of Allocation determined by the Society in accordance with Article 14(a), there are three "Distribution Categories" in relation to television programs and three in relation to radio programs.

For television programs, the Distribution Categories are:

- (i) "Category A Program" means a program notified as such to the Society by an owner of the copyright in the program or its representative being a program:
 - (a) principally intended to be used for educational purposes; or
 - (b) having a significant potential market for sale as an educational program, and accepted by the Society as being a Category A program. There are only twelve Category A programs and the Society identifies them by title.
- (ii) "Category B Program" means any program not falling within the definitions of Category A Program or Category C Program.
- (iii) "Category C Program" means a program classified by the Society as being:

* news

* current affairs (magazine style current affairs)

- * series
- * serials
- * sports programs
- * advertisements

For radio programs, the Distribution Categories are:

- (i) "Music program" means a broadcast consisting principally of music
- (ii) "Talk program" means a broadcast consisting principally of talk, literary works or dramatic works, notwithstanding that music may be included in the program.
- (iii) "Music/Talk" means programs featuring both music and talk.

In relation to allocations from the Samples Fund, television programs will be classified only as Category B or Category C. Those programs that are included in Category A for the purposes of the Records Fund will be regarded as Category B programs for the purposes of the Samples Fund.

The IBNR Fund

An allocation (in past accounting periods equalling ten percent of the Distributable Amount) is made to a separate fund known as the Incurred But Not Reported Fund (IBNR) in accordance with the Guidelines For Declared Societies.

Unlike the Records or Samples Fund, the Society does not allocate royalties from the IBNR fund to a particular program copied by an educational institution under the statutory licence or film or literary, dramatic or musical work incorporated in a program. Allocation of royalties for the exercise of the relevant copyright in a particular program will be made when a relevant copyright owner makes a claim that is accepted by the Society in accordance with the Scheme of Distribution or when information becomes available to identify the potential share.

Distributions anticipated from this fund include:

- (i) payment to a member of a share of the Distributable Amount being a share already paid mistakenly to another member. Any amount mistakenly paid to the non-entitled member will be off-set against any entitlement that an overpaid member may have in the future under Article 15(e)(iii) of the Articles of Association.
- (ii) payment to a relevant copyright owner not otherwise specifically provided for such as an owner of copyright in an artistic work included in a broadcast or footage and stills included in a broadcast (other than a news broadcast).
- (iii) payment to correct errors, including data entry errors.

(iv) payment based on late records submitted by a record-keeping institution for the relevant accounting period after allocation has been made to the Records Fund. (This paragraph restates the distribution policy but in fact is not applicable as the practice of the Society is to include late returns in the accounting period in which they are received).

(v) payments for ad hoc claims from members. For example, payment to a copyright owner who could establish substantial copying not disclosed in samples. In such cases the Society would require evidence of substantial copying either obtained by the Society itself or from independent investigation.

A smaller percentage is likely to be allocated to the IBNR fund in future accounting periods as the ten percent allocation is likely to prove to be in excess of requirements. Quite properly, a conservative sum was determined in the early years of operation when the likely allocations from the fund were difficult to estimate.

Records and Samples Funds

After allocation is made to the IBNR fund, the Distributable Fund is divided into the Records Fund and the Samples Fund.

The allocation to the Records Fund is that percentage which reflects the proportion of the total equitable remuneration received for the period under the statutory scheme from institutions operating under a Remuneration Notice based on the record-keeping system. Similarly, the allocation to the Samples Fund is that percentage of the total equitable remuneration received for the accounting period from institutions operating under a Remuneration Notice based on the Sampling System.

14.3.2. Allocation of Royalties

Article 15 of the Articles of Association of the Society provides that the Board of the Society must determine for each accounting period the entitlement of a person to a share of the distributable amount under the scheme of distribution. In exercising this power, the Board must take all reasonable steps to ensure that any person's entitlement to a share of the distributable fund is determined equitably and accurately. In making this determination, the Board can consider all relevant matters including the extent to which the copying of the relevant copyrights has occurred as disclosed by records or samples. In practice, the extent to which the copying of the relevant copyrights has occurred (as disclosed by records or samples) is the only criterion considered in determining the allocation.

The Society must ensure that no owner is unduly advantaged or disadvantaged by the maintenance of the IBNR fund. Accordingly, the Society should devise a procedure whereby owners who have a percentage of their earnings deducted for IBNR purposes have the balance of that money paid through to them incrementally during the next two to four years.

Division by program

The records in each fund are collated so that the total number of minutes for each program title and episode can be determined.

Subsequent to the abovementioned calculation, the following processes must be undertaken:

- (i) discounting the incidental advertising and "non-program" components (including community service announcements, program promotions and station identifications) in programs copied from commercial television.
- (a) The Society obtained information from the Australian Broadcasting Tribunal (as it was then known). For instance, a sixty minute program on a commercial television station will generally only contain 45-48 minutes of actual program matter. The effect of failing to discount advertisements and non-program material is to assume a longer duration for programs broadcast on commercial stations and thereby give a bias or weighting to them in favour of programs transmitted by public broadcasters.
- (b) The duration of non-program material on the ABC and SBS is substantially less than on the commercial stations. The non-program matter and advertising also takes place at the end of a program and is not likely to be copied by an educational institution when copying the program in question.
- (c) To address the imbalance between levels of non-program matter on public and commercial television, certain percentages of 'minutes copied' from programs broadcast on commercial television are deducted.
- (d) A sliding scale of percentages takes into account that a ten minute segment has been copied which may not contain any advertisements at all compared to a full one hour program which is likely to contain up to 12-15 minutes of non-program matter. The Society discounts all copies of a program made from commercial television broadcasts which exceed ten minutes in length by twenty percent to the nearest whole minute. The Society limits the discount to twenty percent to reflect the minimal amount of non-program matter which is not discounted from public television broadcasts. The factoring has the effect of increasing the notional rate per minute for all programs copied as revealed by the sampling records.

This process is only applied to the Sampling Fund. It does not apply to the Records Fund as the record-keeping agreement provides that the institution will deduct the minutes of non-program matter in its calculation of the duration of the copied program. In the records fund there is a direct correlation between the minutes for which royalties are collected and the minutes for which royalties are paid.

- (ii) **nil allocation** - for the 1993 accounting period, the Society determined that no royalties should be allocated to a very small number of copied broadcasts as it would be impossible to distribute these funds if allocated. Circumstances in which a nil allocation was made include reports from institutions that did not identify a program title or transmission date and subsequent inquiry failed to elicit this information.
- (iii) **"points" calculation** - each minute of copying recorded under the record-keeping or sampling system is multiplied by a certain "factor" depending on

the Distribution Category of the program (whether Television A, B or C or Radio) to arrive at a tally of "points".

(a) The following categories of programs have been attributed the following points:

Category C three points per minute

Category B ten points per minute

Category A eighteen points per minute

Radio ten points per fifteen minutes

(b) The ratio of 3:10:18:10 is the ratio of the copying rate for Distribution Category C, B and A television programs and radio respectively.

(c) The different weightings or "points" reflect the different collection rates described elsewhere in this Report.

(d) The total Records Fund is divided by the number of points in total to establish an amount of money per point.

(e) The value of one point in the Records Fund for the previous three distribution periods has been as follows:

1991	0.2152
1992	0.2068
1993	0.2223

(e) The Samples Fund is similarly divided by the number of points in total to establish an amount of money per point. The value of one point in the Samples Fund for the previous three distribution periods has been as follows:

1991	3.3735
1992	1.8455
1993	1.9602

Division by work/subject matter

Once an allocation per program title has been established, allocation is then made to the various copyrights subsisting in the programs. The division as between the copyrights in films, sound recordings, literary and dramatic works and musical works is as follows:

(i) Television Programs:

* as to the copyright in films 70%

* as to the copyright in literary and dramatic works 22.5%

* as to the copyright in musical works 7.5%

(ii) Music programs on radio:

* as to the copyright in musical works 33 1/3%

* as to the copyright in sound recordings 66 2/3%

[Note that the reference to sound recordings is a reference to the recording embodying the musical work and not the recording of the program as a whole.]

(iii) Non-music programs on radio:

* as to the copyright in the sound recording 50%

* as to the copyright in literary and dramatic works 50%

(iv) Music/talk programs on radio:

* as to the copyright in sound recordings of music 25%

* as to the copyright in the musical works 25%

* as to the copyright in literary and/or dramatic works 25%

- as to the copyright in the sound recording (comprising the program) 25%

If a program copied from a television broadcast does not contain a literary or dramatic work, the royalties allocated to this work will then be allocated to the owner of the relevant copyright in the film. Examples of this are found in game shows broadcast on television.

Any royalties allocated to a work or subject matter incorporated in a broadcast copied under the statutory scheme which is in fact in the public domain (and therefore not entitled to the benefit of the Part VA licence) will be deposited in the trust account and dealt with in accordance with Article 16 of the Articles of Association.

The allocations for music copyright owners are set aside by the Society and distributed with the assistance of APRA. AVCS supplies to APRA a list of all programs copied, showing program title, episode information, broadcast date and broadcast channel. APRA then undertakes an identification process from its database and cue-sheet files.

The APRA system then allocates credit points to each musical work contained in each program in accordance with its standard weighting system, namely:

(i) Duration of work - points are awarded for each second of a work's duration; and

(ii) Type of music use - points for 'featured' music remain at 100% with points for 'background' and 'theme' music being reduced by 25%.

Each musical work in every identified program will then have an allocation of credit points which will be divided pro-rata into the distributable amount referable to this pool to end up with a dollar amount due to copyright owner of the musical work. The

result of this approach is that the total money available for musical works is pooled and then shared pro-rata, according to the number of credit points each work has accrued. In this way, a one minute work in a category C program will earn the same amount as a one minute work in a category B program.

14.3.3 Process Review

Review of scheme of distribution

The scheme of distribution is reviewed on a regular basis by the Society and the Board. Since the formulation of this policy, it has been reviewed on the following occasions:

- * 28 May 1992
- * 23 July 1992
- * 10 December 1992
- * 19 January 1994

Review of distribution policy

The Scheme of Distribution is under constant review and was last amended on 19 January 1994. Amendments to the distribution policy are made by the Board of Directors after consideration of recommendations by management.

14.3.4. Frequency Of Distributions

The allocation process is performed annually. Once completed, the Society will distribute to its members as soon as the member guarantees to the Society that it is the relevant copyright owner.

Article 70 (a) of the Articles of Association of the Society provides that the royalties allocated to a program shall be distributed as soon as is reasonably possible once it is ascertained that the member is the relevant copyright owner or its agent.

For this reason, the Society may distribute royalties to its members several times in respect of the one distribution period as:

- (i) the member may be subsequently referred to the Society as being an interested party in the program; and
- (ii) the member provides additional warranties to the Society.

Each time a member receives a payment of royalties from the Society, the member receives a distribution statement. The distribution statement is the same for each of three distribution periods.

14.4. CAL

The Society prefers to negotiate with educational sectors to use a sampling system rather than full record keeping. Its sampling system is a form of record-keeping by rotation, wherein a sample of representative institutions is drawn to keep records for short periods. This system allows the Society to be continually monitoring the particular educational sector without the need for major administrative procedures to be put in place in each individual educational institution on a permanent basis. The results from this on-going sample can then be extrapolated across the whole sector for the purpose of determining what level of usage of copyright material is occurring within that sector.

It is believed that sampling creates a climate that assists in achieving the Society's objective of full and accurate disclosure of copying practices.

The sample survey which CAL operates in education has been operational since 1988. Given that any sampling method is an inconvenience and an annoyance to those being sampled, CAL has made a genuine attempt to create a system that is equitable, cost efficient and administratively acceptable to licensees. By and large, they have succeeded.

Criticisms of the sampling techniques adopted are generally made by individual authors or by smaller regional publishers. These criticisms centre on the fact that CAL's sample is a sample and may therefore miss some works, particularly works less frequently copied. Another criticism is that the survey for schools and TAFE institutions rotates among states. In each year, two or three states are sampled. It would be too costly, in proportion to revenue, for CAL's school sample to include every state each year.

There was discussion in 1992-1993 about the representation of various states in the survey. The first survey cycle for schools was completed at end 1991 and for 1992, the survey was redesigned to include Queensland more frequently, which is neither a large or a small state.

The process was last reviewed in July 1993. No changes were recommended. A new computer system is being implemented and once that computer system is fully operational, its performance and the performance of the distribution will be reviewed.

AGB McNair advised in and developed the initial process for distribution with CAL. Arthur Andersen was retained to consult in preparing the specification for the computer systems for distribution and to ensure that a proper audit trail was structurally instituted. Subsequently, the CAL Board of Directors have determined the total distribution pool. That is used as a basis to calculate the price per copied page. The present system has been in use since 1989.

The amount each copyright owner receives from the distribution is determined by the number of pages of their works recorded as having been copied in the previous year's sample survey of copying. Separate pools for each licence group are established and the total number of pages recorded as having been copied in the sample survey for that licence is divided into the pool. This determines the payable rate per page for that

year. For example, in 1993 the total schools pool was \$6,029,751.34; the total number of pages was 1,342,388 and the per page payment rate was \$4.492.

The per page rate for each pool is multiplied by the number of pages of each copying record of the member's works. The royalty payable for each copying record is added to arrive at the total due to the copyright owner.

In the past, independent reviewers such as Arthur Andersen have considered the distribution process. Ongoing testing and implementation is be undertaken by CAL's computer consultants, Sequel, and CAL's in-house highly trained programmers and computer administrators.

14.5. PPCA

The method of distribution is as follows:

- (i) All licensees are requested to supply to the PPCA details of all protected sound recordings and music videos which have been released in Australia.
- (ii) All local artists who have performed as major artists, (not session musicians who have been paid fees as backing musicians,) are requested to register all recordings on which they perform with the company.
- (iii) At the present time, PPCA obtains from each licensee the wholesale sales value of protected classical recordings as a percentage of total protected sound recordings sold by them during the year ended 30 June.
- (iv) The Company purchases from APRA their weighted logs compiled by them for the year ended 30 June.

(v) The net distributable revenue is then allocated as follows:

(a) 12.5% is paid to the PPCA Performers Trust;

- (b) an amount equal to the percentage of classical music sales collected in item (iii) is allocated and paid to the copyright owners on a sales percentage basis.
- (vi) the balance is then allocated on the basis of the logs. The funds are distributed as follows:

<u>Australian Recordings</u>	<u>Overseas Recordings (protected)</u>
20% to the appropriate Australian artist (or split across group or part of group if registered	100% to record company
80% to record company (or if no artist registered 100% thereof to record company).	

This allocation system was devised by the company staff. It is based on the English company's (PPL) method of distribution and on an IFPI/FIM/FIA arrangement.

As a result of an internal review which took place in 1991, the method of distribution was changed to the current method in 1993. Under the previous method, distribution was made only to the PPCA Trust and the record companies. It was based on the reported sales value of protected sound recordings. The gross payment was made to

the Company's auditor who calculated each rights owners' royalty entitlement and prepared the cheques.

This present method of distribution should be formally reviewed by the undertaking of a systems audit by a suitable firm of accountants (rather than internal staff) after the December 1994 distribution. Two years of operation will have given all participants an opportunity to have informed views as to the strengths and weaknesses of the new system.

14.6. TRAINING SUPPLIED TO PARTICIPANTS IN SAMPLING PROCESS

It is important that persons working within organisations which are being sampled, receive training which not only helps them to fulfil the mechanical functions that are required of them but also gives them an understanding of why it is important that they fully participate. Training makes the data gathering more accurate.

14.6.1. AMCOS

Schools Photocopying Agreement - Day long training sessions are provided to the Principals and Copyright Records Officers from the schools selected for the sample by AGB McNair and representatives from the three collecting Societies, CAL, AMCOS and AVCS. On-going training, monitoring and assistance are provided by AGB McNair field auditors during the sample period.

14.6.2. APRA

APRA does not have field personnel working in the sampling area. This is outsourced.

14.6.3. AVCS

Every educational institution which participates in the sampling system is provided with training prior to the survey taking place. As the survey periods are generally for a term (ten or so weeks), training is provided in each educational sector several times throughout the year.

The training is in the format of a seminar for the duration of approximately four or five hours. Training seminars are conducted in each State where the survey is being undertaken. These seminars are generally attended by two representatives from each individual educational institutions participating in the seminar, namely the person who will be responsible for the actual sample process in the institution (known as Copyright Records Officer) and a person occupying a management position. The Society recognised the importance of the total commitment from the managerial staff of an educational institution to the successful operation of the sample process. It is for this reason that the agreements between the Society and licensees demands that this dual attendance at the seminars is compulsory.

The Society conducts combined training seminars with Copyright Agency Ltd for all schools and for TAFE Colleges as far as possible. The training sessions are conducted on a joint basis with CAL as the sample is in respect of both print and off-air broadcast copying. It is in the interest of the sampling system to conduct such joint samples wherever possible to reduce the frequency with which an educational institutions is required to comply with the record-keeping obligations of the sample. As the university sector has only been participating in the sampling system since the beginning of 1994, any training sessions for universities are being conducted primarily by the Society individually. They are conducted on the campuses of the relevant universities.

The importance with which the Society regards such training sessions is reflected by the fact that they are attended by either the Chief Executive, the Business Affairs Manager or the Solicitor of the Society.

The Society seeks to impress upon attendees at the training sessions the critical importance of the role of the sample to the overall functioning of the Society and more importantly, the payment of royalties to owners of rights for the use of their material. It is important that attendees at the training session understand the correlation between payment of royalties to authors of audio-visual material and the creation of additional educational resources.

At each training session:

- (i) the introduction of the broadcast copying scheme in the Copyright Act and the role of AVCS in administering the scheme;
- (ii) the agreement between AVCS and the administering body administering the educational institution;
- (iii) the rights and obligations of the educational institution under the agreement, the Copyright Act and Regulations; and
- (iv) the allocation, identification and distribution process which flows from the information supplied during the sample period.

Representatives of AGB McNair, the independent survey authority contracted by AVCS to conduct the survey, also attend the training seminars. The AGB McNair representative explains every form which is to be completed during the sample period and the purpose of every form. The attendees are advised of the timetable for the sample and every step of the process.

14.6.4. CAL

Staff representatives from each institution participating in the sample survey are contacted and attend a briefing session prior to the survey period. The briefing sessions held throughout the country are an important part of the conduct of the survey. They are normally one day seminars conducted by a representative from AGB McNair, a senior representative from CAL and representatives from the relevant educational systems and institutions.

At each briefing session, a representative from the peak body introduces the system and discusses the need for the co-operation of each sample participant. The

representative from the peak body explains how the institutions are required by the terms of their licence agreement to co-operate in the survey and that as a whole the education system is in favour of the sampling process continuing. The participation of a representative from the educational system being sampled is crucial to the level of co-operation obtained from the institutions.

The senior representative from CAL discusses the terms of the agreement between CAL and the relevant educational institution and the role and operation of CAL. The role of the CAL representative is to motivate the staff of the sample institution or faculty into willing co-operation by explaining the importance of the survey to authors and publishers. The CAL representative also explains copyright, discusses what CAL is, explains the copying limits under the licence, and answers questions about copying practices. However, because it is important that the photocopying habits of the staff of the institution do not change simply because the institution is being surveyed, the CAL representative explains that CAL provides an indemnity during the period of the survey for any copying which exceeds the limits of the licence. A package explaining what CAL does and is, together with a copy of the latest issue of CAL's newsletter, the copying limits, and some general information on copyright and CAL, is presented to the representatives from the institutions.

The representative from the statistician, AGB McNair explains the importance of accurate sampling and the need for the support of all staff if the results of the sample are to be of use. Also presented is a detailed description of the sample procedure. AGB McNair documents are explained to the institution representatives. The photocopying record form is discussed in detail, with the AGB McNair representative discussing and providing examples for each column required to be completed by the institution. Organisational details are also discussed, for example the location and number of photocopying machines used by staff. Several common issues are also dealt with, such as that the "no. of pages copied" column refers to the number of pages of the original material which is copied and that the most important title information is the name of the publication rather the name of the article itself in regards to newspapers and periodicals.

A package from AGB McNair is also provided to each attendee. The kit explains the recording scheme and provides guidelines for staff members. Copies of the documents, forms, and signs to be utilised in the survey process are included in this kit.

Business cards for the CAL and the AGB representative are provided for each attendee and all are invited to make enquires either prior to, or during the survey period, or at any other time that information is required from CAL. A 008 telephone number is provided for their use. In addition AGB McNair field auditors remain in constant contact with the institution during the survey period to ensure that the data collection processes progress as smoothly as possible. AGB field auditors visit the institution to place the survey material just prior to survey commencement and thereafter every one to two weeks to collect the records at which time the records are checked for accuracy and advice can be given.

14.6.5. PPCA

No training is given or necessary. PPCA relies entirely on the APRA sampling.

14.7. ALLOCATION OF PERCENTAGES BETWEEN THE VARIOUS COPYRIGHT OWNERS

One area of complaint amongst society members is the allocation of various weightings to particular types of rights or uses. The basic systems of income allocation used by APRA, PPCA and AVCS, have at their core, such weightings.

It is not suggested that weightings in themselves are improper. Nor is it the function of this Report to comment as to whether the present weightings are fair. However societies must be very careful as to the methods by which they come to these weightings and how they vary them. Suggestions that various weightings have been influenced by the personal interests of key board members were made but unproven. Other submissions indicated resentment that members had been insufficiently consulted when weighting changes were made.

Confronted with this, societies should not merely reject the criticism as unfounded but rather, acknowledge that these decisions have a great influence on large sectors of their membership and accordingly, that such decisions must be made with an abundance of caution. **No change should be made to weighting systems without prior notification of the membership and particular notification of all members who will be peculiarly affected. Those members should be given full explanation of the changes mooted and given an opportunity to comment. The advice of an independent statistician should be obtained, and certainly, no board member who is likely to benefit from the proposed changes should be permitted to vote in relation to the change.**

14.6. DETERMINATION OR APPROVAL OF SAMPLING SYSTEM USED BY THE SOCIETY

Given that the fairness of the sampling system is one of the greatest concerns of all rights owners and rights users, **the societies which use sampling, should retain an consultant that is independent of the society and any survey company that is on retainer, to give an opinion as to the validity of the sampling techniques adopted. Such review process should take place every three to five years.**

It is not sufficient to leave such an important matter to the good will of the society's staff or the staff of the survey company which devises and/or carries out the sampling tasks.

As is discussed elsewhere in this Report, the Copyright Tribunal has the jurisdiction to approve or vary (or decline to do either) a licence scheme. But s.154 does not give a member of a society the power to take a grievance about weightings to the Tribunal. It's jurisdiction is limited to the determination of what is reasonable as between a licensor and a licensee. It does not extend to a determination of what is reasonable as between a collecting society and its members.

15. APRA & CAL SAMPLING SCHEMES

15.1. APRA'S SAMPLING SCHEMES

15.1.1. Television

15.1.2. Radio

15.1.3. Non-Broadcast Categories

15.2. CAL'S SAMPLING SCHEMES

15.2.1. Non-sampling errors

15.3. SAMPLING ERRORS

15.4. SUMMARY

The Inquiry investigated the statistical aspects of the sampling schemes used by APRA and CAL. These are the two societies which rely most heavily upon sampling.

15.1. APRA'S SAMPLING SCHEMES

The report entitled "APRA Sampling Systems", which is supplied with this Report, was provided by APRA. It explains the sampling used by APRA as part of its administration of the Performing Right in copyright music for Australia, New Zealand and Fiji.

Statistical sampling, rather than a complete census, is generally used to estimate the number of times each piece of music is performed or broadcast. The royalty payments to copyright owners are made on the basis of these estimates. Effective sampling schemes of both the total amount of copyright material (to determine total royalties due) and the mix of material (to allow accurate distribution of royalties) are needed in order for these estimates to be reliable.

APRA categorises the media by which music can be broadcast or performed as:

- (i) Television, including the three major network stations, the ABC and regional stations.
- (ii) Radio including commercial radio stations, the ABC and community (or public) radio.
- (iii) Non-broadcast categories including live performances, dance clubs, films and in-flight entertainment.

APRA's report describes in detail the sampling schemes used in each of these three media. Comments on these schemes appear below.

15.1.1. Television

A 100% analysis (or complete census) is undertaken of all fully networked programs shown on the 3 commercial networks and the ABC. Local programming is analysed from a sample of programming logs collected for a predetermined number of weeks in each year. Due to the relatively small number of television stations and the extensive sampling, this scheme is likely to result in an accurate estimate of both the total amount of copyright works broadcast, and the mix of material used.

15.1.2. Radio

Obtaining an effective sampling scheme for the use of copyright material by radio stations is more complicated than television, since there are many more radio stations than television stations. This means that an accurate sampling scheme for radio has to be much more extensive and sample from a much larger number of sources. The sampling scheme used with commercial radio and for ABC radio is such that there is a better than 95% chance that a work broadcast 100 times per year will be included in the respective sample.

The most challenging area in radio in which to obtain accurate estimates of the number of times a work is broadcast is Community (or public) radio. Due to the nature of local radio, a relatively large number of works are broadcast a small number of times. Since the total APRA licence fees in this area are small, totalling around \$200,000, the cost of an accurate sample would be larger than the total licence fees. APRA has thus adopted the strategy of sampling the 12 community radio stations with a current annual licence fee of \$5,000 or more. This system appears reasonable as a way of balancing sampling costs against potential royalties.

15.1.3. Non-Broadcast Categories

Concerts and the in-flight audio programs on Qantas and Ansett receive a 100% analysis. Royalties payments are based only on those films showing in cinemas in Sydney at the time.

The most difficult areas to in which obtain an accurate sample in this category are discos or dance clubs and clubs or hotels with live artists, because of the large number of potential venues. In this case an estimate of the total royalties due can be obtained by estimating hours of performance. Obtaining an accurate estimate of the mix of material is more difficult, due to the large number of venues. For live artists, the mix of material is estimated by equal weighting of two sources;

- radio logs, since it is considered that the mix of music at these venues is comparable to music played on the radio.
- logs provided by performers.

Given the diversity of venues, this system would seem to be a reasonable way of determining the mix of royalties.

15.2. CAL'S SAMPLING SCHEMES

The reports entitled "The 1993 Copyright Review Study", "The 1993 School Copyright Study" and "The 1993 TAFE Copyright Study" were provided by CAL. These materials are in the materials accompanying the Report. These reports explain the sampling schemes used in tertiary institutions, schools and TAFE colleges across Australia. The purpose of the sampling is two-fold, namely:

- (i) To estimate the volume of copying of copyright materials, since this is the basis of the licence fees paid to CAL; and

- (ii) To provide CAL with an information base from which it can distribute licence fees collected to copyright owners on the basis of the number of copies made.

Effective sampling schemes are needed in order for these estimated volumes to be reliable.

The material provided by CAL discusses the reliability of the estimates from the School, TAFE and University samples. Comments on these schemes appear below.

Estimates of the total amount and mix of copyright material reproduced by photocopying presents a much more difficult problem than music royalties. This is because the total amount of material broadcast by radio or television is determined by the existing capacity, i.e., 24 hours a day, so the total use of copyright material from any one source can be estimated with precision. In addition, there are a limited number of users of copyright material (limited by the number of television or radio stations, or the number of performance venues), and this number can be estimated fairly precisely.

Within institutions, every photocopier is a potential user of copyright material, and the use of each might vary from essentially nothing to continuous use. In these circumstances it is very difficult to assess with any degree of accuracy the total use of copyright material. In addition it is likely that there will be more diversity between photocopy machines than between electronic media or live performances, since the diversity of the source material (written material) is so great, and use will vary enormously between institutions eg., between a public library and a tertiary institution. This means that a sampling scheme based on one institution may not be able to be applied with confidence to another institution, unless it has a similar range of materials and users.

15.2.1. Nonsampling errors

CAL has in place a number of initiatives to minimise nonsampling errors, that is, errors which may introduce bias into the samples collected. These initiatives include:

- (i) Training staff at institutions included in the sample about what is required of them.
- (ii) Checking for discrepancies between the amount of copying recorded on photocopying record forms for each machine with that taken from each machine's counter. Discrepancies of more than 10% are investigated.
- (iii) Comparing the percentage of copyright material copied across institutions in order to detect under reporting.

15.3. SAMPLING ERRORS

The situation in which CAL operates is much more complex than that facing APRA. In particular in APRA's case, it is relatively straightforward to estimate the total volume of copyright material being broadcast and thus to obtain an accurate estimate of the total royalties due. Thus the issue for APRA is to determine the split of total licence fees into royalties due to the various copyright owners. This breakdown

should be able to be estimated with reasonable accuracy by the existing sampling schemes. Since in APRA's case, there are a limited number of sources from which copyright music can be broadcast or performed and the provision of programming logs is a relatively straightforward task. Thus, for example, standard calculations can be used to calculate the probability that a work broadcast 100 times per year is included in the sample taken.

In contrast, CAL is faced with the fact that there are a very large number of photocopiers in schools, TAFE colleges and universities on which multiple copies of an enormous variety of copyright material are made. In this situation, the assumptions behind the standard probability calculations are invalid and a more complex probability model would need to be developed in order to calculate the probability that a particular type of copyright material is included in the sample. (See accompanying material for a detailed discussion of this issue).

In CAL's case the licence fees paid by educational institutions is based on an estimate of the number of pages copied per student. Thus, it is important that such estimates are relatively precise. In the case of schools, the total volume of licensed copying per student in 1993 was 111 pages. The relative standard error of this figure was calculated by AGB McNair to be 3.4%. (See accompanying material which also contains the result for TAFE colleges). Thus, we can say with 95% confidence that the total volume of licensed copying per student was somewhere between 111 ± 7 pages, that is, between 104 and 118 pages. At the request of the Inquiry, these calculations were also performed for the university samples since, from the comments above, it cannot be assumed that the amount of copying is the same in these different segments.

15. 4. SUMMARY

The sampling schemes used by APRA appear to be soundly based, and should provide a relatively precise estimate of the total amount of copyright material used, and the mix of the material.

Due to the inherently greater potential for copying and the greater diversity of the material, estimating both the total amount of material and the mix is much more difficult for CAL. They appear to have put in place effective measures to minimise nonsampling error, but it is recommended that calculations should be undertaken to estimate the precision of the estimate of copyright material usage per student for universities.

16. COLLECTION OF REVENUE

16.1. GROSS SUMS COLLECTED

16.1.1. AMCOS

16.1.2. APRA

16.1.3. AVCS

16.1.4. CAL

16.1.5. PPCA

Collecting societies are big business. In 1994, they will collect approximately \$85,000,000. The collection pattern indicates that this figure will continue to increase. This is a blunt indicator of the importance of societies in the cultural economy of Australia.

16.1. GROSS SUMS COLLECTED

16.1.1. AMCOS

1993	\$12,484,303
1992	\$9,894,281
1991	\$10,352,562
1990	\$8,492,156
1989	\$7,583,602
1988	\$6,643,112
1987	\$4,656,430

16.1.2. APRA

The breakdown of income for the last five years was as follows:

Year	Radio	TV	Public Perf	Financial	Overseas	TOTAL
\$	\$	\$	\$	\$	\$	\$
1993	12,669,030	18,359,919	8,345,415	1,578,969	6,413,756	47,367,089
1992	12,438,807	18,684,389	7,863,618	2,572,609	6,136,369	47,695,792
1991	11,566,820	19,956,915	6,844,042	3,933,983	5,218,912	47,520,672
1990	10,506,616	18,961,575	6,703,775	5,189,590	4,591,590	45,953,157
1989	10,155,667	15,528,895	6,062,630	3,891,331	3,197,064	38,835,587

16.1.3. AVCS

The growth of AVCS is readily apparent from the following table which shows the gross revenue collected as a result of agreements between AVCS and educational institutions in accordance with Part VA and Part VB:

1994	\$5,387 343 (est)
1993	\$4,457,374
1992	\$3,982,040
1991	\$2,151,164
1990	NIL

16.1.4. CAL

1994	10,900,000 (est)
1993	9,000,000
1992	7,800,000
1991	5,000,000
1991	2,600,000
1989	4,500,000
1988	4,700,000

16.1.5. PPCA

The following figures differ from published figures as they include interest income:

Year	Income	\$millions
1984#		.506
1985#		.394
1986#		.489
1987#		.704
1988#		.977
1989#		1.192
1990#		1.345
1991		1.616
1992		1.806
1993		2.224

Possibly understated by investment income.

17. ENFORCEMENT

17.1. PERCEIVED ACCURACY OF REPORTING

17.1.1. AMCOS

17.1.2. APRA

17.1.3. AVCS

17.1.4. CAL

17.1.5. PPCA

17.2. POLICING OF RIGHTS BY THE SOCIETY

17.2.1. AMCOS

17.2.2. APRA

17.2.3. AVCS

17.2.4. CAL

17.2.5. PPCA

17.1. PERCEIVED ACCURACY OF REPORTING

17.1.1. AMCOS

The audit program has proved to be very successful in discovering under-payments by licensees - which underlines the need to have a regular audit process. Confidentiality requirements of its agreements prohibited revealing details of an audit of any particular company. However the following table shows returns to the Society from audits:

1993	\$95,675
1992	\$5,989
1991	\$40,023
1990	\$471,943
1989	\$421,029
1988	\$66,945
1987	\$177,908

The sampling system for the Schools' Photocopying Agreement has many checks in terms of the monitoring of photocopying machines and the pages copied from the meter readings. The meter readings are correlated to the records of copying kept.

In the training sessions, the importance of the sample and the accuracy of the data is emphasised to encourage schools to comply. The collecting societies take a co-operative rather than a big stick approach, as the system could be sabotaged if an unco-operative school wished to. The sanction of having to keep records for a further period should be enough to ensure the data is reasonably accurate.

7.1.2. APRA

Insofar as the broadcasting right is concerned, the level of compliance is extremely high. The vast majority of licensees are scrupulously accurate in the information provided. No licensing department is required, although the Association has a full-time Licensing Officer to ensure compliance with existing licence schemes and, increasingly, to notify the vast number of new licensees in areas such as narrowcasting of their legal obligations.

In the area of public performance, the position is quite different. The Association currently has 19,043 licensees covering 34,424 premises, and it is APRA's experience is that many licensees take advantage of a self-reporting system to under-report relevant details in order to minimise their fees to APRA. In this area, audit and enforcement is essential.

On the other hand, submissions were made to the Inquiry arguing that it was unreasonable for APRA to demand to see the books of a venue to check the correctness of the licence fee calculation. It is difficult to see how else such matters can be verified. If the venue has a particular objection to disclosing its books in

commercial confidence, one can only suggest that the licensee should be prepared to pay for an independent auditor to do the task. It is doubtful that this would appeal, given the extra expense involved.

17.1.3. AVCS

Historically, the Society has had concerns with the accuracy of the reporting of broadcast copying under the record-keeping system. However, the Society now believes that any risk of under-reporting by the remaining three universities and seven individual TAFE Colleges has substantially diminished because these educational institutions are aware of the relative ease for the Society to be in contact and to regularly inspect their premises to check on compliance with the record-keeping obligations. Only time will tell.

AVCS is confident that the records provided by schools during the survey process are accurate given the high level of co-operation received from educational authorities and the schools themselves. In any event there is little motivation for under-reporting because the schools are aware that the sample is only relevant for the distribution process (that is, the identification of programs that have been copied) and has no relationship to the calculation of remuneration to be paid to the Society for the schools.

Although AVCS is reasonably satisfied with the level of compliance in sampling TAFE colleges, AGB McNair have expressed to the Society their concerns about the standards of reporting from time to time. As an example, in their report on the 1992 sample AGB McNair observed that "while the data quality was of a minimally acceptable standard there are sufficient signs that the volume of audio visual copying is still somewhat underestimated". The Society and AGB McNair have continually monitored the sample and made some amendments to the procedures. Both organisations have observed a significant improvement in reporting standards over time.

17.1.4. CAL

Both the statistician, AGB McNair and CAL, are of the opinion that licensees regularly under report actual usage.

Sample results have consistently demonstrated that in education, copying of copyright works constitutes 10% of all copying. For this information to be derived, staff are required to record all copying whether copyright or not. This recorded usage is then compared to the photocopier meter reading usage.

The monitoring of the photocopier meters systematically demonstrates under reporting. Whether this is of copyright works or not is indeterminable. However, if the proportion of copyright works against all copying is constant with the reported figure of 10%, then substantial under reporting does occur.

Auditing of records against meter readings takes place, as does comparison of overall volumes of copying against matched institutions to try to ensure that recording of copying, and copying itself is not suppressed during the sample period.

However, the recording of the sample data is still basically an honour system. CAL relies on the co-operation of each staff member and each sampled institution. Therefore, the derivative that 10% of all copying is of copyright works may in itself be lower than the actual. Both AGB McNair and CAL have received many anecdotal reports both from staff at the sampled institutions and from AGB McNair field auditors that support this view.

17.1.5. PPCA

PPCA believes that its broadcast licensees are accurate in reporting. Given that this is based largely on the company's experience with the public performance right as exploited by broadcasters, this view is probably correct. After all, that is also the experience of APRA.

As to non-broadcast users, PPCA is experiencing the same under-reporting faced by every other collecting society. However, its staff are trained to ask appropriate questions, the answers to which provide a good indication of whether the user is telling the truth. For example, when a restaurant owner is asked how many seats he or she has (a matter that every restaurant owner knows well), hesitation in answering suggests that a spot check is called for.

17.2. POLICING OF RIGHTS BY THE SOCIETY

17.2.1. AMCOS

Where possible, audit provisions are inserted in licensing agreements entered into by AMCOS. There is certainly an active program of auditing record manufacturers.

AMCOS and ARIA have recently established an anti-piracy unit known as MIPI (Music Industry Piracy Investigations) to investigate and prosecute infringements of members' copyright rights.

The Society's legal officer, in conjunction with the Anti-Piracy Officer, investigates all reports of unauthorised usages of AMCOS controlled works.

In the schools agreement, AMCOS investigates all reports of alleged infringements in schools and also reports them to the relevant peak bodies. It also analyses the data to see if there are any irregularities which could indicate that the limits were being exceeded. However, sample schools are offered an indemnity during the sampling process to ensure that all copying is accurately reported. Like CAL, it is more through education and support that the Society seeks to enforce the agreement. The educational institutions would not agree to the inclusion of rights of inspection in the agreement, although compliance with the agreement has become part of the audit program of the relevant Education Ministries.

For Production Music, an incentive scheme was introduced in 1989 for recording studios. In return for reporting every reproduction of Production Music that occurred at their studio, AMCOS would rebate the service fees applying to all clearances resulting from such reports. This turned out to be so successful that AMCOS was rebating thousands of dollars a year. It has since been discontinued.

Finally, AMCOS regularly participates in seminars where the rights of its members are outlined to users, as are the repercussions for failing to comply with copyright obligations. This educational function is a useful method of promoting compliance through promoting respect for members' rights.

(a) Enforcement litigation

At AMCOS, no fighting fund or budget line as such exists, and the relevant provision should be made.

The Board determines which cases are pursued. Among the factors that the Board take into account are: the severity of the infringement, the nature of the party and the circumstances of the unauthorised activity, the likelihood of any defences being raised, the probability of success, the value of the publicity for the action and the costs of taking the action. Examples of such litigation were reviewed. They were seen to have been prudently selected and were generally cost effective.

17.2.2. APRA

(a) Enforcement mechanisms

Insofar as the public performance right is concerned, the Association maintains a Licensing Department consisting of the following personnel:

<p>HEAD OFFICE STAFF General Licensing Manager Secretary to Department Licensing Representatives - NSW (2) Compliance/Reassessment Supervisor Compliance Field Representative Client Services Clerk Client Services/Data entry Clerk Filing Clerk MELBOURNE BRANCH OFFICE STAFF Deputy General Licensing Manager Licensing Representative - Victoria (2) Compliance Field Representative General Secretary</p>
<p>BRISBANE OFFICE STAFF Licensing Representative - Qld (2) Compliance Field Representative General Secretary ADELAIDE OFFICE STAFF Licensing Representative - SA Compliance Field Representative General Secretary PERTH OFFICE STAFF Licensing Representative - WA Compliance Field Representative General Secretary</p>

The task of the Licensing Department is two-fold:

- (a) to ensure that those who are not licensed but should be, do in fact take out a licence, and
- (b) to ensure that those who hold licences, properly comply with conditions relating to the supply of information relating to, for example, the amount of admission charges or the expenditure on live artist entertainment.

The Association also maintains an in-house law firm (Faulkner and Associates) to handle the majority of infringement actions. Given the work load, this is a cost effective mechanism.

(b) Enforcement litigation

Because APRA takes an assignment rather than a mere licence, it is able to sue infringers in its own name. This may not make the Association popular but it is ultimately in the benefit of its members.

APRA, being by far the biggest society, commences an enormous number of actions throughout its territory. In the past two years, (which may be taken as representative of practice over the past 10 years) the APRA Legal Department has:

- (a) opened 217 new files relating to infringements of the Association's copyright;
- (b) commenced proceedings in the Federal Court of Australia in 26 matters.

A selection of cases during the last two years were examined. They were found to be generally cost effective.

(c) Litigation funding and policy

The Association does have a budget line by which anticipated costs of litigation form part of the Association's normal administration costs and are budgeted for accordingly.

The Association has no written, or indeed fixed, policy in relation to the matter. Generally, however, the Association will sue an infringer where the prospective licence fees are significant (in excess of \$500 per annum) or where some particular point of principle is at stake.

17.2.3. AVCS

The Society has undertaken (and continues to undertake) measures to demand and seek compliance with legal obligations by educational institutions which have entered into agreements with the Society, including the following:

(a) Contact with Administering Bodies

The Society has regular contact with the major administering bodies of educational institutions including the AVCC for the university sector, the Australian Education Council Working Party on Copyright for school sector and the various government departments for the TAFE sector. The Society has a policy of continually informing these bodies of any non-compliance by individual institutions and seeking immediate and prompt redress.

For instance, the original agreement between the Society and the AVCC in respect of universities required the Society to advise the AVCC of those universities which did

not comply with the record-keeping requirements on a quarterly basis. Each quarter, the Society would inform the AVCC of those universities which had not forwarded returns and payments by the due date. As the university agreements were being re-negotiated last year, the Society had many meetings with representatives of the AVCC whereby compliance was a major issue in the negotiation process.

The new agreement between the Society and AVCC provides that the AVCC undertakes to use its best endeavours to ensure that the universities comply with the agreement with the Society and the Copyright Act and its accompanying regulations. Further, the AVCC has undertaken to advise the Society of any fact, matter or circumstance which is relevant to the non-compliance by a university with the agreement with the Society or the Copyright Act and regulations.

(b) Emphasis on Sampling System

The Copyright Act enables an educational institution to elect to participate in the broadcast copying scheme on the basis of a record-keeping or sampling system. The election lies with the educational institution.

All of the university sector (excluding one institution) from the commencement of the scheme to 31 December 1993, operated on the record-keeping system. Because AVCS believes that record-keeping tends to lead to under-reporting, it focused much of its attention and resources during 1993 to move the university sector onto the sampling system. This program was successful, with all of the universities, excluding two) participating in the sampling system from 1 January 1994.

(c) Inspections

Although in the past the Society has conducted inspections in a number of universities by the powers conferred upon it under Section 135L of the Copyright Act, it has not been able to conduct systematic inspections due to the number of record-keeping institutions. However, as the number of such institutions is now far more manageable (there are currently only two universities and several TAFE Colleges in Victoria and Tasmania which operate under the record-keeping system), the Society can more efficiently exercise this power if necessary.

(d) Review of Records by Record-Keeping Institutions

The Society scrutinises each record forwarded to it from a record-keeping institution. If the institution has not completed the form or if there are any inaccuracies on the face of it when compared to television guides or earlier information supplied by the institution, the Society seeks that the inaccuracies or inconsistencies be clarified or corrected.

If the educational institution is late in providing its records and payment of remuneration calculated from the records, the Society seeks that interest, set under the agreement, be paid.

(e) Review of Records by Sampling Institutions

With regards to records provided by sampling institutions during the sampling period, the survey authority AGB McNair monitors receipt of records and advises the Society if there are any concerns as to the operation of the survey. Once the survey is completed, the Society receives the records and scrutinises them to ensure that all of the information which is sought has been provided.

Representatives of educational institutions participating in the training seminars are advised that if the institution does not comply with the requirements of the sampling system for the duration of the sample, serious consequences can result, including:

- (i) the need to undertake the survey again during the subsequent sample period with AVCS and AGB McNair costs being reimbursed;
- (ii) a breach of the agreement between the Society and the educational institution; and
- (iii) the copies of television and radio broadcasts not being protected by the statutory licence and therefore amounting to infringing copies.

In the past when the Society has been concerned as to the compliance by an educational institution with the sampling procedures, it has taken the following steps:

- (i) statutory declarations as to copying were required from every member of staff of an educational institution; and
- (ii) one educational institution was required to undertake the sampling process on a second occasion reimbursing the Society of the costs of such further sample.

(f) Copies of Broadcasts to be Kept on Premises

As many homes have video cassette recording machines, current licensing agreements of the Society require that all copies of broadcast material be kept on the premises of the educational institution unless they are loaned to staff or students. This facilitates any inspection process which may be undertaken by the Society under the Copyright Act or the agreement between the Society and the educational institution.

(g) Student Audits

Current agreements contain an acknowledgment by the educational institution that the Society may conduct an audit of its copying practices through students of the institution.

During the period of the survey in sampling institutions, a number of students in each sampling institution are approached by a representative of AGB McNair to keep a diary of any audio-visual material shown in class in return for a fee. The students are not advised of the purpose of the audit.

The student audit provides the Society with a valuable indicator of the amount of audio-visual material which is being used as an educational tool in a particular

educational institution. It may also indicate areas within the institution where staff need to be reminded of their obligations under the sample scheme.

More importantly, as representatives of an educational institution are advised at the training seminar conducted prior to the sample of the existence of the student audits, it acts as an incentive to a member of staff to comply with the sampling requirements and duly complete the forms for every copy of a broadcast made.

Student audits have also been conducted in record-keeping universities. Results of these audits were raised in the context of the negotiations with the AVCC in response to the initial argument of the Committee that the record-keeping system was operating adequately.

The Society does not conduct student audits in primary or secondary schools.

(h) Enforcement litigation

To date, the Society has only instituted legal proceedings on one occasion to recover payment of a debt (that is, unpaid remuneration under an agreement) and interest on the debt from an administering body administering educational institutions.

AVCS has threatened to bring such proceedings against many other licensees under Section 135N of the Copyright Act from time to time but on each occasion, upon receipt of a letter of demand by the Society, the outstanding remuneration was paid without the need for further action by the Society.

The Society has not sued educational institutions which participate in the broadcast copying scheme for infringement of copyright in circumstances where copies of television and radio programs are made outside the ambit of Part VA or Part VB of the Copyright Act for the following reasons:

- (a) the Society has recognised that the administrative burden inherent in the record-keeping system provides the greatest opportunity for educational institutions not to comply with the legal requirements of the system and not declare all copies of broadcasts made to the Society;
- (b) all institutions in the university sector (excluding one) originally elected to participate in the Part VA scheme on the basis of the record-keeping system together with a number of individual TAFE Colleges in Victoria and Tasmania;
- (c) the Society elected to pursue a strategy of negotiation with the administering bodies of educational institutions which operated under the record-keeping system to persuade them of the benefits of the sampling system and the dangers of the record-keeping system, including the likelihood of legal proceedings for infringement of copyright;
- (d) the strategy referred to in paragraph (c) was successful as all institutions in the university sector (with the exception of two) entered into sampling agreements with the Society which commenced from 1 January 1994. Since this date, one of the institutions which renewed its record-keeping agreement has sought to move into the sampling system; and

(e) the strategy was less successful in some of the TAFE institutions in Victoria and Tasmania due to the low copying practices of some of these institutions as a result of their curriculum. Nevertheless, a number of individual colleges have sought sampling agreements. Not surprisingly, although perhaps optimistically, AVCS does not maintain a budget for litigation nor have a policy as to what cases it would take on.

17.2.4. CAL

In CAL's major education licences, CAL does not have the right to inspect licensee's premises. Therefore, CAL relies on reports of infringements from parents, teachers or other concerned parties. In CAL's other licences, inspections are permitted and do take place. CAL argues that education and motivation of licensees is the best means of compliance.

Electronic monitoring of digital copying may well ameliorate the problem in future. In the meantime, CAL has been advised by its statistician that active steps to improve awareness are more appropriate than more stringently policing and monitoring the copiers. More stringent monitoring has proved counter-productive.

Enforcement litigation

In its administration costs, CAL provides a budget for conducting legal cases and also maintains a legal indemnity fund as part of its reserves. CAL's policy is to fund cases that will assist its licensing efforts; are of strategic benefit to the interests of copyright owners; which support its current licences or which deal with flagrant infringement of the rights of CAL's members.

CAL has been involved in a number of major legal actions since the commencement of operations. A selection of these were looked at. They were generally well chosen and cost effective.

17.2.5. PPCA

Each licence renewal includes a re-assessment form wherein licensees are asked to report any changes to their company. When there is a strong suspicion that a venue is not reporting or is under-reporting, an inspector visits the premises to verify the position. Once a specific problem is recognised appropriate correspondence is generated and if necessary (and as a last resort) legal action is undertaken. There have been numerous enforcement cases during the last two years. They are an important part of the PPCA enforcement regime.

PPCA has a budget for legal costs incurred in enforcement proceedings. (In 1993, \$60,000 was budgeted and \$76,000 was spent.) Its policy is to litigate every case of infringement, except in rare circumstances.

18. DISTRIBUTIONS TO COPYRIGHT OWNERS

18.1. MECHANICS OF THE DISTRIBUTION PROCESS

18.1.1. AMCOS

18.1.2. APRA

18.1.3. AVCS

18.1.4. CAL

18.1.5. PPCA

18.2. FREQUENCY OF DISTRIBUTIONS

18.2.1. AMCOS

18.2.2. APRA

18.2.3. AVCS

18.2.4. CAL

18.2.5. PPCA

18.3. PROPORTION OF SOCIETY'S GROSS INCOME DISTRIBUTED TO MEMBERS

18.3.1. AMCOS

18.3.2. APRA

18.3.3. CAL

18.3.4. PPCA

18.3.5. Conclusion

18.1. MECHANICS OF THE DISTRIBUTION PROCESS

18.1.1. AMCOS

The computer distribution system produces lists of amounts payable to copyright owners.

Cheques are prepared in a separate computer process and reconciled to the detailed statements of royalties owing. Cheques and royalty statements are either couriered, collected or mailed to publisher members. Bank drafts in the appropriate currency are drawn for the overseas Societies after the deduction of withholding tax. One cheque, supported by individual statements, is drawn for all the APRA members.

18.1.2. APRA

Insofar as the mechanics of payment are concerned:

- (i) payments are made by cheque;
- (ii) the cheques are computer-generated;
- (iii) each semi-annual distribution currently involves about 6,500 cheques.

Up until 1992 members only received a full statement explaining their royalty allocation if they requested it. As from 1992 all members have received a full statement of domestic royalty earnings, and as from 1993 details of any foreign earnings accruing to a member have been integrated with domestic royalty statements. This is one of the most important and welcome reforms of recent years. For too long, APRA was subject to criticism that it provided a royalty cheque but no means by which a member could see how that sum had been derived. This opaqueness of accounting to members inevitably leads to suspicion - whether or not it is well founded.

18.1.3. AVCS

Members resident in Australia are paid by cheque. Cheques are not computer written. Members resident abroad are paid either by international bank cheque or direct transfer to their nominated bank account. Most payments are in Australian dollars. To a small number of countries (for example, Russia) distributions have been made in U.S. dollars.

Each time a member receives a payment of royalties from the Society, the member receives a distribution statement.

18.1.4. CAL

Because of the statutory licence with it administers, and the number of copyright owners involved, CAL has the most complicated distribution mechanism of all societies:

After the sampling process, the distribution process begins. Statements for each owner recipient are printed and:

- (i) Statement(s) over \$50.00 are sent to each recipient along with an Undertaking and Indemnity and any statements still outstanding from prior distributions. Statements from each distribution are held until the total royalty payable exceeds \$50.00.

The recipient then checks the statement and deletes those works if any for which they are not able to claim the royalties. CAL will then issue an amended statement.

- (ii) Australian authors and publishers have not agreed on a standard royalty split for photocopying fees, but deal with them in the subsidiary rights clauses of their contracts. CAL therefore distributes the total royalties for a work to one copyright owner and requires that the copyright owner shares the fees with the other copyright owners for that work, according to their contracts. For example, if the author is a member, CAL will distribute the total fees to the author and ask the author to account to the other copyright holders (such as the publisher or illustrator). If the author is not a member and the publisher is, the total royalty is paid to the publisher with the same requirement to account to the other copyright owners. Royalty Recipients are required to sign an Undertaking and Indemnity in which they undertake to distribute the correct share of the royalties to the other copyright owners in accordance with any contract they have or, in the absence of express terms in their contracts, in accordance with general copyright law principles.

- (iii) In completing the Undertaking and Indemnity the recipients are required to:

- (a) Fill in their name and address in the spaces provided.

- (b) Check each item on the statement(s) listed on the Undertaking and Indemnity to ensure they are the copyright owner of each work shown.

- (c) Calculate the amount they are entitled to claim and write it in the appropriate spaces provided.
- (d) Sign and return the completed form to CAL.
- (iv) Upon receipt of the completed Undertaking and Indemnity, CAL will:
 - (e) confirm the membership status of the recipient;
 - (f) check that the amount claimed is correct;
 - (g) transfer any amounts not claimed to returns for further research and distribution to the correct recipient; and
 - (h) draw a cheque for the amount claimed by the Finance Department and send it to the recipient.

18.1.5. PPCA

All by cheques which are printed by computer. In 1993 there were 114 cheques. No other means of distribution is used.

18.2. FREQUENCY OF DISTRIBUTIONS

To some extent, the value of the royalties distributed depends upon the frequency of the distribution and the promptness with which money is transferred to and from foreign sister organisations.

18.2.1. AMCOS

Mechanical Royalties
Synchronisation Clearances
Student Film & Video Licences
Production Music
Music videos for retail sale

Commercial TV Blanket Licences	Quarterly to AMCOS members and to AMCOS Societies Department. AMCOS Societies Department distributes bi-annually to affiliated Societies.
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Mechanical & Video (% of Gross Revenue) Blanket Licences
Radio Station Blanket Licences
ABC & SBS

Bi-annually.

Schools Photocopying & AVCS

Annually

18.2.2. APRA

Distributions are made twice-yearly: in May/June for the six months to the preceding 31 December, and in November/December for the six months to the preceding 30 June. This is a welcome improvement over the previous system of annual distribution. Increasing computer power will eventually allow APRA to account to members on a

quarterly basis of required although there is likely to be some resistance to this from publisher members, for whom this will mean double administration, given that they only account to their writers on a six monthly basis.

18.2.3. AVCS

The allocation process is performed annually. Once completed, the Society will distribute to its members as soon as the member guarantees to the Society that it is the relevant copyright owner.

Article 70 (a) of the Articles of Association of the Society provides that the royalties allocated to a program shall be distributed as soon as is reasonably possible once it is ascertained that the member is the relevant copyright owner or its agent. For this reason, the Society may distribute royalties to its members several times in respect of the one distribution period.

18.2.4. CAL

CAL makes an annual distribution (in July) to its members whose works appear as having been copied in the sample survey conducted in the previous calendar year. Given the necessary complexity of its processes, for the moment it is reasonable that distributions be made once a year, but is acknowledged by the Society as desirable, that it move to six monthly distributions as soon as possible.

18.2.5. PPCA

The distribution is made annually. This is because of the timing of its receipt of the logs from APRA and the additional work that must be done to those logs to ensure their accuracy for PPCA distribution purposes. The Company executives intend the Company to move to quarterly payments in line with normal record industry practices as soon as the data can be processed within that time frame and within acceptable cost parameters. This will depend on the development of new technologies to facilitate the capture of uses (in particular the introduction of the International Standard Recording Code).

18.3. PROPORTION OF SOCIETY'S GROSS INCOME DISTRIBUTED TO MEMBERS

18.3.1. AMCOS

Gross revenue includes amounts which have been invoiced but not paid and are therefore not available for distribution.

It will be noted that 1991 showed a considerable drop in the % Gross Revenue Distributed and that the % Gross Distributable rose abnormally in 1992 (and to a lesser extent in 1993). This is due to the introduction of the new computer in the Overseas Department in the 1991 period. This meant that no payments were made to overseas owners during 1991 and these payments were made in the subsequent periods.

**Year % Gross Revenue % Gross Revenue % Gross Distributed Re
Unpaid Invoices Distributable**

1993	81.20%	4.00%	85.20%
1992	82.60%	8.90%	91.50%
1991	68.50%	7.10%	75.60%
1990	74.50%	4.20%	78.70%
1989	65.90%	10.15%	76.05%
1988	70.80%	13.20%	84.00%
1987	65.40%	3.20%	68.60%

Commission rates are outlined elsewhere. However the Society also retains interest, management and service fee income and is reimbursed for specific costs related to record company audits and Schools Photocopying costs. In recent years the Society has introduced a number of "pay-per-use" fees for research and other purposes and revenue raised from these sources offsets the cost of providing the service.

It will be noticed that only AMCOS retains these incomes. Other societies pass them on to their members. AMCOS however, is the only society that works on a set commission rather than taking its expenses out of the gross. It is therefore appropriate that it retain these sources of income as they are merely one of the factors that the board takes into when striking the commission rate for members. The Board is responsible for setting a rate which allows the Society to operate efficiently, but since any money not distributed is money foregone by the publishers - including those represented on the Board - they exercise great care to see that apart from running costs, and any specific needs of the Society, all money is distributed.

Any extraordinary expenditure by the Society requires Board approval. The policy of AMCOS is not to distribute gross income less administration expenses, but rather to arrive at a commission rate which achieves essentially the same end. (This is one of the classical, if quaint, differences between the mechanical and public performance collecting societies throughout the world.)

18.3.2. APRA

In 1992/93, 88.39% of the Association's gross income was distributed to members (including the members of affiliated societies). This is a remarkable figure. (The WIPO Report indicates that the "administrative costs of the performing rights organisations are, in general, around 20-30% of the amount of royalties collected. There are, however, certain societies which keep their costs below 20%, and there are still others which are more expensive".)

1989	87.3%
1990	86.95%
1991	87.31%
1992	88.82%
1993	88.39%

18.3.3. CAL

Percentage of Gross Income distributed was:

1994	75.8% Projected
1993	75.2%
1992	78.8%
1991	78.2%

It is the goal of the Society (reflected in its 5 Year Plan), to increase this percentage to 80% by year ended June 1999.

As distributions take into account the Society's five year sampling and distribution cycle. Sensibly, monies are also retained to ensure that the Society is able to meet its administrative financial commitments as and when they fall due. Moreover, from 1994, CAL's administrative deductions will include an allocation for cultural purposes of up to 1% of collections.

The percentage distributed in 1993 was lower than usual because of the \$2 Million Indemnity Reserve which was set up in September 1993. This sum is made up of monies that were undistributable over the five year national sample cycle. It is the policy of the Society to run down the general reserves (ie other than the Indemnity Fund) over the term of a national sample cycle.

It is recommended that the Society reassess the mechanisms by which it retains and eventually distributes its reserves. Whilst an Indemnity Fund is a sensible and desirable safeguard, in relation to the currently held reserves, there does not appear to be in place a mechanism whereby yesterday's or today's members do not subsidise the members of tomorrow. There must be instituted a system whereby those who contribute to reserve funds are assured of receiving their rightful share of those funds, albeit on a delayed basis. Equity of member treatment demands this.

18.3.4. PPCA

The percentage of income available to copyright owners is very low. This must be addressed. (It is the subject of further later discussion.)

Year	% available to Copyright Owners
1984	0
1985	24.30
1986	17.98
1987	32.43
1988	39.55
1989	47.79

1990	40.95
1991	31.87
1992	41.56
1993	47.00

One other point must be made in relation to PPCA distributions. In section 14.5 of this Report it was noted that the distribution is divided according to whether the recording is Australian or overseas. While the allocation in respect of local recordings is divided between the PPCA Trust and the record company, 100% of the royalty in respect of overseas recordings is paid to the record company. This does not mean that 100% of the allocation to foreign records is remitted overseas. This is a common misconception.

All distributions relating to overseas recordings are paid to the local company that represents the overseas owner in Australia. A large portion of that money remains in Australia (but to go into detail about this is beyond the scope of this Report). More significant, is the fact that 40-50% of the recordings are non-protected overseas recordings (predominantly those from the USA). Of the remainder, 45% is Australian and 55% is other (mainly UK). This is a very similar breakdown to that which applies to record sales in Australia.

18.3.5. Conclusion

One of the most useful indicators of efficiency of a collecting society is the percentage of its collected revenue that is eventually distributed to its members. The above figures provide that base information.

Whether the percentage retained by a society to cover its costs is reasonable, depends on a wide range of factors. One must look to the range of rights administered by the society; the complexity and exactness of the system of identification, collection and distribution; the general level of activity of the society in the welfare of its members; the existence of artificial income caps (such as PPCA's 1% cap); the age of the society, and so on. These are the sorts of matters that are the subject of description and comment in other parts of this Report.

It is the view of the Inquiry that Australian collecting societies, for the most part, are administered in a highly efficient and cost effective manner. Whilst it is tempting to gauge efficiency by comparing local figures with those of overseas organisations, this must be treated with caution as the societies display huge variations in the factors raised in the above paragraph. It is very difficult to compare like with like as the societies all have distinguishing characteristics which affect the validity of direct comparisons. That said, one can look at the general figures given in the WIPO Report and compare APRA's distribution performance with its overseas counterparts and say that its members get one of the highest returns in the world (see WIPO Report, para 48). Similarly one can say that the percentage charged by AMCOS for its administrative costs is one of the lowest - particularly impressive given that it does not have the advantage of performing the centralised licensing functions which allow

many of its overseas counterparts a much higher gross collection. The percentage distributed by CAL is comparable to the few organisations with similar levels of activity. There are no comparable overseas organisations to compare to AVCS. Only PPCA is an exception.

PPCA's position is discussed at length in Chapter 24. Its low percentage distribution to members has been the subject of considerable adverse comment. Moreover, the WIPO Report commented that the "administrative costs of organisations representing performers' and phonogram producers' rights do not usually exceed 10-15%" (WIPO Report, para 153). That said, the Company has provided projections that indicate that if the artificial 1% ceiling was abolished, the percentage of revenue spent on administration would be less than 10%. Notwithstanding the comments made in chapter 24 as to the administration of the Company, there is no doubt that the single most important factor for PPCA's apparently appallingly low percentage of income distributed to members, is the artificial ceiling placed on its income.

To emphasise the importance of the need to consider the particular factors which affect efficiencies, one can compare the situation of PPCA (mentioned above) with that of CAL. Without the artificial ceiling, it would cost PPCA no more, to collect a much greater gross. The payments would be received from the same parties and payments would be made to the same parties. All that would change is the quantum of the payments. There are no extra administrative costs involved. In contrast, given the nature of the cumbersome identification and quantification process which is the lot of any collecting society administering photocopying, when CAL increases its gross income it does not necessarily mean that it thereby gains great efficiencies.

19. FOREIGN DISTRIBUTIONS, INCOME AND SOCIETIES

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19.5. DEDUCTIONS BY THE OVERSEAS SOCIETY PRIOR TO AUSTRALIAN REMITTANCE

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19.5.2. APRA

19.5.3. CAL

19.6. EFFICIENCY OF FOREIGN SOCIETIES IN REPRESENTATION OF LOCAL SOCIETY

19.6.1. AMCOS

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19.6.3. CAL

19.7. THE PRINCIPLE OF NATIONAL TREATMENT

19.8. ROLE OF UMBRELLA ORGANISATIONS

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19.9. STANDARDISATION OF DOCUMENTATION WITH OVERSEAS SOCIETIES

19.9.1. AMCOS

19.9.2. APRA

19.9.3. AVCS

19.9.4. CAL

19.10. USE OF ELECTRONIC DATA TRANSFER AND PROCESSING BETWEEN SOCIETIES

19.10.1. AMCOS

19.10.2. APRA

19.10.3. CAL

19.11. RECOMMENDATION

19.1. AFFILIATION WITH INTERNATIONAL NETWORK OF COLLECTING SOCIETIES

One of the extraordinary features of APRA and AMCOS, is that they have developed a very sophisticated web of affiliations which stem not only from common membership of international copyright conventions but also from reciprocal contracts. CAL has started to develop such reciprocal arrangements and AVCS is both too young (and perhaps too unusual), to have yet developed such alliances.

19.1.1. AMCOS

AMCOS is affiliated to an extensive network of foreign societies with which it has reciprocal arrangements.

Although AMCOS is affiliated to overseas **mechanical** agencies, payment for copying under the schools' **photocopying** licence for foreign publishers who are not

sub-published for this territory cannot be made to the foreign societies. Such payments must be made directly to the foreign publisher. This is because these societies do not represent their publishers for print rights and therefore cannot collect on their behalf. To AMCOS' knowledge, only Germany and Austria have schemes where schools may copy sheet music under statutory licence.

AMCOS is entering a reciprocal agreement with the German collecting society VG-Musikedition concerned with the administration of reprographic rights of sheet music in schools so that it may make payments to German publishers through them.

19.1.2. APRA

APRA is affiliated to a very extensive network of international societies. These societies are linked by a pro forma reciprocal agreement. The effect of the agreement is essentially that in return for a reciprocal exchange of national repertoires each society undertakes to properly administer the repertoire of the other and to apply the principle of national treatment in accounting for royalties.

19.1.3. AVCS

The Society is not affiliated with an international network of collecting societies or any individual societies.

There are only two organisations outside of Australia, of which the Society is aware, which deal with educational recording, namely Educational Recording Agency Ltd of the United Kingdom and Suissimage of Switzerland and these organisations do not operate in a way that is similar to AVCS. For good reasons (which were supplied to the inquiry) AVCS has chosen to not enter reciprocal agreements with these societies.

19.1.4. CAL

CAL is a member of the International Federation of Reproduction Rights Organisations ("IFRRO") and an associate member of CISAC (International Confederation of Societies of Authors and Composers).

CAL has direct reciprocal arrangements with eleven foreign societies.

19.1.5. PPCA

The Company has no affiliation with similar foreign organisations. As it distributes no income to foreign societies, it does not receive any.

19.2. TERMS UPON WHICH OVERSEAS DISTRIBUTIONS ARE MADE AND RECEIVED

19.2.1. AMCOS

- (i) Schools Photocopying royalties are distributed direct to the overseas copyright owners when there is no sub-publisher in Australia.

(ii) Other royalties are distributed only to collecting societies except in special circumstances where the overseas society permits direct distribution to the copyright owner.

No distributions are made to collecting societies with whom AMCOS does not have reciprocal agreements. Like CAL, in its dealings with those countries, AMCOS subscribes to the WIPO principle of national treatment in copyright collections and distributions, (that is, it accords foreign rights owners the same rights as it accords national owners). Accordingly, income collected on behalf of foreign owners is treated the same as local owners.

The exception to this is the timing of payments. Reciprocal agreements with affiliated societies specify distributions must be at least semi-annually in March and September. In late 1990 the AMCOS Overseas Department began computerisation of its royalty processes which caused delays in remittances overseas. These have been progressively reduced and it is anticipated that distributions will comply with the agreement terms by October 1994.

The rate of income paid to and from AMCOS is dependent upon the reciprocal agreement with the foreign society. As the WIPO Report notes:

"Although bilateral agreements contain the principle of equal treatment of nationals and foreigners, this principle is not necessarily followed when it comes to deductions. In certain cases, the deduction from royalties due to foreigners is higher than the one from royalties due to nationals (e.g., sometimes from nationals' royalties, 5%, and from foreigners' royalties 10 to 25% is deducted depending on the bilateral contracts)." [para 67]

19.2.2. APRA

The rights administered by the Association are recognised in the countries of all societies with which APRA has reciprocal agreements.

Payments of the writer shares of performing right royalties are made via the collecting society of which the writer is a member. Payments of the publisher shares are made via the collecting society of which the publisher is a member where the publisher has no sub-publisher in Australia. If the publisher does have a sub-publisher in Australia, the publisher share of the royalty is paid to that local sub-publisher.

In a few exceptional circumstances the writer share of royalties is paid directly to the writer, for example, where the writer member of an affiliated society lives in Australia, or conversely, where an APRA writer member lives in another country.

Except for the timing of payments, the terms upon which the Association collects and accounts to foreign affiliates are precisely the same as those upon which the Association collects on behalf of its own members. The Association has a contractual (and, it considers, a moral) obligation to give equal treatment to the works of foreign and local works.

Although the same semi-annual time periods that apply to the distributions to local members apply to the distributions to affiliated societies, payments are actually made about three months after those to local members.

19.2.3. AVCS

Any distribution of royalties by the Society to the relevant copyright owners or their agents who reside outside Australia are made directly to the owner of the rights or their agent.

AVCS collects remuneration from educational institutions for the copying of all broadcasts from television and radio. The Society then distributes the royalties collected to any entity which warrants that it is entitled to the royalties either as the relevant copyright owner or the agent (in the manner outlined above) irrespective of whether the holder of the rights or the agent resides in or out of Australia.

Before a distribution is made to a member not residing in Australia, the claimant must undertake the same process noted above as any claimant residing in Australia, namely:

- (i) sign a Membership Agreement;
- (ii) complete a warranty for the film or literary or dramatic work or both;
 - (iii) complete a warranty by the owner or exclusive licensee of the relevant copyright where an agent is appointed to collect the royalties; and
- (iv) provide copies of agreements to support the warranties where necessary.

The Part VA scheme, like the other societies, and consistent with Australia's obligations under the Berne Convention, is predicated on the principle of national treatment rather than reciprocity.

19.2.4. CAL

Distributions are made on exactly the same terms as they are made to Australian copyright owners. CAL only makes overseas payments through affiliated societies.

At present, all CAL's agreements with overseas collecting societies are reciprocal collection agreements. However, in the past this was not always the case, [e.g. CAL's first agreement with CCC (USA)]. Although the agreements are all reciprocal collection agreements they are not all reciprocal distribution agreements but instead are repertoire swap agreements.

Repertoire swap agreements are entered into by CAL and other societies when the fees collected by each society are roughly equivalent and of an insignificant amount, and the cost of transferring and distributing the fees would exceed the amount of the fees concerned. The works for which those fees are collected are excluded from the distribution and, as a consequence, the per page fee in the distribution is slightly higher.

All countries with which CAL has an agreement provide a right for authors and publishers to receive remuneration for photocopying of their works. An example of where Australian rights are more extensive than in the foreign country is by comparison with the USA where much multiple copying for educational purposes is a fair dealing and not remunerable. However, CAL does distribute royalties collected in Australia for copying in education to US rights holders.

On the other hand, it is also a common problem for CAL that foreign law, particularly in the European Community and Nordic Countries provides more extensive rights than Australian law.

19.2.5. PPCA

Only local owners are entitled to participate in the direct distribution scheme. Internationally, this is very common with societies administering the public performance right in sound recordings. Most of these organisations use the so-called category B agreement by which

"no payments are transferred between the contracting organisations; all the income remains in the country where it is collected and is used in accordance with the rules of the organisation of that country (it is either used for social or cultural purposes or is distributed to the performers of the country in order to compensate them for the remuneration they are entitled to in other countries but do not receive)." [WIPO Report, para 159]

19.3. COMPARISONS OF OVERSEAS REMITTANCES AND RECEIPTS

The following information reflects only the **direct** remittances overseas. It is not possible to determine what proportion of a society's entire distribution is remitted to overseas copyright owners as no society is in a position to know what proportion of fees Australian companies remit to their overseas principals for the copying of foreign works in Australia.

19.3.1. AMCOS

In 1993, 18.3 % of the distribution was remitted overseas. In stark contrast, 1.42% was received. This is not as bad as may first appear. All the big European societies (with the exception of MCPS in the United Kingdom) have agreements with their writers which provide that, in most cases, 50% of the mechanical income flows directly to the writers and 50% via their publishers. The societies then assign AMCOS the right to collect the writer's 50% share for Australia.

On the other hand, Australian writers who have a publishing deal (which is almost every Australian writer whose works are exploited overseas), receive all their royalties via their publisher and its sub-publishers around the world. AMCOS receives royalties on behalf of a member when one of its works are exploited in a foreign territory in which the publisher has no sub-publisher.

Another factor in the imbalance of payments relates to the practice of writers in some territories (including the United States and Britain) to structure themselves so that they can collect their mechanical royalties directly from their society. (Centralised licensing, which is not the practice in Australia, makes this feasible.) If such writers do not enter a sub-licensing deal for Australia, AMCOS will collect the income on their behalf. The reverse scenario is uncommon because most Australian writers use the services of a publisher to collect all royalties, particularly in the major markets of the United States and Britain.

19.3.2. APRA

(i) Amount Distributed To Overseas Copyright Owners

The following is a table showing, for the past 5 years:

- (a) the total amount distributed by the Association to foreign copyright owners, via affiliated collecting societies;
- (b) the proportion of the Association's total royalty distribution for each year accounted for by such amounts:

Year

Payment to Foreign Societies	A\$ Proportion of Net Distributable Revenue	%
1989	13,706,680	39.77
1990	14,911,165	35.50
1991	15,280,212	35.64
1992	14,992,506	34.97
1993	13,962,658	32.97

(ii) Collection Income Received From Overseas Sources

By contrast, the receipts are considerably less, (although it has certainly risen). Against the dollar figure for each year is the proportion of total revenue accounted for by such income.

Year	Amount Proportion of	Total Income
1989	3,197,064	8.23%
1990	4,591,601	9.99%
1991	5,218,912	10.98%
1992	6,136,369	12.87%
1993	6,413,756	13.54%

Extensive information was provided to the Inquiry showing the growth in revenue received by the Association from individual societies around the world over the past few years.

19.3.3. AVCS

(i) Collection Income Paid To Overseas Sources

To date, the Society has remitted the following amounts overseas to owners of rights residing outside of Australia from the three distribution periods. (This occurs only where the owner of the relevant copyright or the agent of the owner of the relevant copyright resides outside Australia):

1991	\$198,254		
1992	\$204,965		
1993	\$2,275		
TOTAL	\$405,494		

As noted before, the Society has remitted the above sum of \$405,494 overseas to owners of rights residing outside of Australia. This sum represents the following percentage of the royalties collected by the Society for the following three distribution periods:

DISTRIBUTION PERIOD	% of Distributable Amount	% Remitted Overseas	% Remitted Overseas of Amounts Distributed to Date
1991	9.6	19.8	
1992	6.9	18.0	
1993	0.1	3.4	
TOTAL	4.7	18.3	

There is no material difference in the way in which Australian and non-Australian owned copyrights are administered and accounted.

(ii) Collection Income Received From Overseas Sources

No money has been received from overseas sources. Again, this is an illustration of the inequitable result of the interpretation given to the principle of "national treatment".

19.3.4. CAL

(i) Collection Income Received From Overseas Sources

Amounts collected from overseas are gradually increasing:

1994	\$30,000
1993	\$18,000

1992	\$19,000
1991	\$7,000

Prior to June 1990 collections were minimal and amounts not easily available.

(ii) Collection Income Paid To Overseas Sources

The proportion of direct remittances from CAL to overseas copyright owners are as follows:

Distribution Year	Percentage
1989	0.00%
1990	0.01%
1991	7.16%
1992	1.80%
1993	7.26%

In return, CAL has received virtually nothing from overseas. CAL has fee exchange agreements with only the UK and the USA.

19.3.5. PPCA

All payments are made to Australian resident companies and people. "Non-protected" sound recordings are deleted by PPCA staff when processing the logs.

19.4. DEDUCTIONS BY THE LOCAL SOCIETY PRIOR TO OVERSEAS REMITTANCE

Inquiry was made of the societies as to whether any sums were deducted by the society, (other than tax), before such payments are made. There is a suggestion that a proportion of the income presently remitted to foreign copyright owners should be retained for the development of the local industry.

19.4.1. AMCOS

AMCOS make no cultural deductions. It believes that the principles of national treatment and the absence of such provisions in its BIEM standard reciprocal agreements, forbid this. The Society was not aware of any of the major foreign societies which made cultural deductions from mechanical royalties before remittance.

19.4.2. APRA

In general, 1.25% of the sums remitted to foreign societies are deducted for the promotion of Australasian works (see above). In some cases such societies permit APRA to deduct 10% where they themselves deduct 10%.

It should be noted that there is a strong international push in performing rights societies to reduce the sums deducted for "national cultural purposes" by societies. APRA is very much a part of that push, along with the US, UK and Canadian societies. The 10% figure deducted by several European societies is considered to be a grossly excessive subsidy of European culture by writers and publishers from the English-speaking countries.

APRA is opposed to any suggestion that the 1.25% which is currently deducted should be increased. It argues that such a move would run directly counter to the interests of Australasian writers and publishers who gain significant royalty income from abroad and to the Association's attempts to increase foreign (i.e. export) earnings. The logic of this argument is difficult to recognise when the figures seem to clearly indicate that a greater proportion of the Association's distribution is exported than is received from foreign sources. (See "National Treatment" following.)

19.4.3. CAL

As CAL deducts its operating expenses before declaring a distribution pool, the deductions from fees due to local copyright owners and fees distributed overseas are the same. The Society believes that to make separate further deductions from the fees due to overseas rights holders is in this context unjustifiable.

19.5. DEDUCTIONS BY THE OVERSEAS SOCIETY PRIOR TO AUSTRALIAN REMITTANCE

19.5.1. AMCOS

Commission is deducted according to the reciprocal agreement and withholding tax relevant to the country paying the royalty.

19.5.2. APRA

The principal deductions made by the foreign societies are "Cultural deductions". It is important to note that APRA's complaints in this area have to do with the **quantum** of the deductions rather than the principle of the deduction.

19.5.3. CAL

All societies deduct their operating costs. The societies in the UK and the USA, which are the only societies with which CAL has fee distribution agreements, do not make general cultural deductions from fees collected for foreign copyright owners.

19.6. EFFICIENCY OF FOREIGN SOCIETIES IN REPRESENTATION OF LOCAL SOCIETY

19.6.1. AMCOS

Although AMCOS acknowledged that there are some societies that are not as reliable as others, the main societies of Europe and North America, where most accountable activity takes place, are seen as being generally satisfactory.

The problems it does have are shared with the other societies and are addressed in international forums such as BIEM and CISAC.

19.6.2. APRA

The Association has serious concerns with the manner in which certain European societies collect and distribute royalties. The Association provided the Inquiry with detailed information about its concerns with regard to overseas practices and its efforts to overcome them. APRA has done extensive analyses, on a country by country basis, of the various discriminatory royalty regimes. It was agreed that this be kept confidential although if the Government wishes to discuss these matters with the Association directly, it is prepared to do so. Suffice it to say, that it is of considerable concern in an environment of "national treatment". The important matter to note is that APRA are actively attempting to address these problems:

- it has raised its concerns within the various CISAC committees on which it sits;
- it has attempted on a bilateral basis to change the approaches or rules adopted by certain societies; and
- most recently, it has joined with the societies from the other English-speaking countries to present a united approach to certain European societies in order to achieve reforms.

The fact remains that many of the overseas societies either have discriminatory practices or are inefficient. There are several complaints from local rights owners that they have not received income from overseas performances that should have returned substantial income. That this is so, is not APRA's fault and all it can be expected to do, is efficiently follow through with the relevant enquiries on behalf of the local owner. This it appears to do.

Again, it indicates the problems inherent in the principle of "national treatment".

19.6.3. CAL

Most collecting societies in the reprography field are at a very early stage of development, so very few of them have many licences. The Society's principal dissatisfaction arises from the variations in sampling techniques adopted and the difficulties this poses for distribution of the foreign fees in Australia.

19.7. THE PRINCIPLE OF NATIONAL TREATMENT

The Berne Convention, of which Australia is a signatory, is based on the principle of "national treatment". In other words each member country must accord every other member country the same rights that it accords its nationals. One cannot say, let's treat a foreigner's royalty entitlement any differently to that of a national. Given that this philosophy was developed by countries which exported more copyright material than they imported, it was perhaps a somewhat sophisticated colonialism of intellectual property. This is particularly so given that some of the European societies have been notoriously discriminatory in the barricades to reciprocity that they have built up over the years. Nevertheless, Australia is a signatory to the Berne Convention and with it comes the philosophy of "national treatment".

Even a cursory glance at the above figures shows that in relation to the relevant rights, Australia is a nett importer of copyright material. Perhaps what is surprising is that the societies do not remit a greater proportion of their income to overseas societies. This should not be a matter for surprise. The amounts actually remitted are far greater than is indicated by the figures drawn from collecting societies.

Most of the overseas companies have established local corporate entities who licence the repertoire of their foreign related companies. Thus the local company receives payment from the collecting society as the licensee for the territory and the amounts thereby collected go to defining the profit of the local company. Where these are wholly owned by overseas corporate entities (as is the case with all of the large record companies and most of the large publishers), a considerable proportion of the nett profit of the local company is remitted to its foreign parent.

This imbalance of income sent to and received from foreign sources indicates that Australian societies and Government need to reassess the societies' present attitudes to foreign distributions. It is all very well for a society to say that it is part of an international structure of collection and distribution which is based on the principles of National Treatment (or some other cant). It must be remembered however that these inherently disadvantage smaller countries such as Australia and that many foreign societies have distribution rules which disadvantage Australian owners. It would be much fairer to all owners if there were to be a system by which remittances to foreign owners took into account not only the discriminatory practices of particular foreign societies but also the need to support the development of the local industry. Being hugely respected by the overseas societies for the efficiency with which we collect and remit out money is a self-deceiving measure of success.

It is recommended that there be a further review of the rules of collecting societies as they relate to relationships with foreign societies and conversely, the rules of foreign collecting societies as they relate to relationships with Australian societies.

19.8. ROLE OF UMBRELLA ORGANISATIONS

19.8.1. AMCOS

Like APRA, AMCOS is a member of CISAC. It is also a member of BIEM which is the umbrella organisation for mechanical rights societies.

	CISAC	BIEM
1993	\$7,362	\$4,467
1992	\$6,887	\$6,167

Through these, Australian rights owners are represented at international copyright forums. They are also co-ordinate the drafting and negotiation of standard form international agreements; development of new documentation and distribution formats; exchange of information between Societies. AMCOS is also planning to join The International Federation of Reproduction Rights Organisations (IFRRO).

19.8.2. APRA

The umbrella organisation for music rights societies is CISAC. The annual subscription payable is an amount equal to 0.070% of gross royalty collections.

Principally, CISAC provides a forum for societies from around the world to meet and discuss common issues. The Confederation itself has a number of committees which deal with particular kinds of issues, for example the Legal and Legislation Committee which reviews and advises of relevant legal developments around the world. The Confederation also operates a number of regional committees, including the Asia-Pacific Committee on which APRA sits and which, with an annual budget of approximately A\$650,000, has provided (and continues to provide) vital assistance to authors and composers in the region in the establishment and operation of new collecting societies.

19.8.3. CAL

CAL is a member of IFRRO. The annual fees are calculated as a percentage of collections, presently A\$10,000 per annum. IFRRO provides a forum for discussion and consideration of the international consequences of issues facing copyright owners.

19.8.4. PPCA

PPCA is not a member of any international umbrella society although, as noted elsewhere, it pays ARIA's membership of the International Federation of Phonogram Industry ("IFPI"). This payment has been the subject of considerable controversy. IFPI carries out a wide range of activities on behalf of its members including extensive anti-piracy/bootleg policing. Its activities also include promoting the establishment of broadcast and performance rights and negotiations with union bodies as to the distribution of broadcast and public performance income.

19.9. STANDARDISATION OF DOCUMENTATION WITH OVERSEAS SOCIETIES

Efficiency of operating procedures requires that there be reasonable standardisation of documentation between societies.

19.9.1. AMCOS

The Society has an impressive degree of standardisation. The documents include:

- (i) Fiche Internationale
- (ii) Composers Authors and Publishers Register (CAE) maintained by the Swiss Society (SUISA). This documentation is constantly referred to in the administration of Society collections.
- (iii) BIEM - IFPI Standard Contract For The Phonographic Industry 1975 (amended in 1980, 1985, 1988, 1989, 1992) is used as a model for mechanical collecting societies. On the basis of a BIEM standard contract, AMCOS and other collecting societies, such as The Harry Fox Agency in the United States, use standard forms for notification regarding product being exported royalty free.
- (iv) BIEM - provides a standardised agreement which is used as a model for reciprocal arrangements entered into by affiliated mechanical rights societies.

19.9.2. APRA

APRA has an impressive degree of standardisation. Clearly there has been much international work carried out to establish this degree of standardisation between affiliated societies. The most important standardised documents shared with affiliated societies are:

- (i) BIEM/CISAC Documentation and Distribution guide for non-theatrical music (small rights) CT/88/880
- (ii) BIEM/CISAC International Distribution and Documentation Regulations CT/88/1200
- (iii) BIEM/CISAC Royalty Distribution tape layout "E - 3" CT/86/296
- (iv) BIEM/CISAC Royalty Distribution tape layout "F" (Films) CT/78/45.537
- (v) WWL (World Works List) file layout
- (vi) CAE (Composer, Author, Editor(Publisher)) file layout
- (vii) Title registration format/Fiche Internationale
- (viii) Cue Sheet
- (ix) Contract notifications in respect of General Catalogue and Specific Work agreements

(x) Unidentified work Query Lists (Incoming and Outgoing)

19.9.3. AVCS

AVCS has no standardisation of documents with overseas organisations. This merely reflects its stand alone status. With the development of more audio-visual societies, this will surely change.

19.9.4. CAL

CAL shares no documentation but is prominent in efforts through IFRRO to establish a technical committee to develop standardised distribution documentation. CAL chaired the international committee which developed a standard reciprocal contract between Reproduction Rights Organisations (RROs). This contract is now in widespread use by IFRRO members.

19.10. USE OF ELECTRONIC DATA TRANSFER AND PROCESSING BETWEEN SOCIETIES

As information technology improves it is an obvious efficiency to introduce electronic data transfer and processing between societies. The societies were asked about their use of such tools and evaluate them.

19.10.1. AMCOS

Electronic data transfer is not presently available but discussions have commenced with several of the larger Societies with a view to implementation as soon as practicable.

19.10.2. APRA

APRA is highly advanced in this. The following EDI functions are now in place and practised between affiliated societies:

- World Works List: a directory of all societies' repertoires showing musical works and the copyright owners;
- CAE file: a list of all writer and publisher members of all societies, including pseudonyms;
- "E" Royalty: for reporting recipient societies' members' distribution earnings in Radio and General categories;
- "F" Royalty: as for 'E3', but reports Cinema and Television earnings;
- Unidentified Works Lists: reports works which earned royalties but the ownerships of which are unknown.

- English-language Cue Sheet Index: provides cue sheet data exchange between US, UK, Canadian and Australian societies.

The last two are relatively new, and their success is yet to be quantified. The others have been in place for many years, and their effectiveness varies between societies. When the specifications are properly implemented, they are all extremely valuable tools which vastly reduce the effort and expense of identifying works, owners and royalty earnings.

19.10.3. CAL

The Society is evaluating its preliminary efforts and EDT will be introduced when the integrity of the data can be assured.

19.11 RECOMMENDATION

That there be a further review of the rules of collecting societies as they relate to relationships with foreign societies and conversely, the rules of foreign collecting societies as they relate to relationships with Australian societies.

20. DISTRIBUTIONS TO NON-MEMBERS

20.1. AMCOS

20.2. APRA

20.3. AVCS & CAL

20.4. PPCA

Collecting societies are generally membership based organisations. The larger the membership, the larger is likely to be the repertoire of rights that is administered and, accordingly, the larger the cost efficiencies. It is therefore generally in the interest of the organisation to insist that payments are made only to members. After all, that is a great incentive for joining.

Further, apart from societies that merely administer statutory licences, they are also essentially licensing organisations and as such, can only license the rights of their members. Accordingly, they can only collect for and distribute to, their members.

20.1. AMCOS

For AMCOS this matter only arises in respect of the Schools Photocopying Agreement. The controlling publishers of works not claimed in the circulation lists are identified on the basis of the publisher/title details in the sample data. If works have previously been copied under the scheme, the Society will have details of the ownership already. If an unknown work is not sub-published in this territory AMCOS can obtain mechanical ownership details from its equivalent societies in the relevant countries. AMCOS also has a research department that has access to the APRA database and CAE indexes (Compositeur/Auteur/Editeur) on CD-ROM. The international department, responsible for distribution to foreign societies and for distributing foreign income to its members, also assists with this research.

There is no difference in the way members or non-members are treated for the purposes of the schools print agreement, except that non-members do not receive circulation lists of titles.

20.2. APRA

The Association grants blanket licences for the use of any and all works within its repertoire. In return it receives blanket licence fees which are then allocated across the works reported as having been performed. If the writer credited with a particular work cannot be identified as a member of APRA or of an affiliated society, the steps taken are described below:

(i) The shares attributable to overseas writers who cannot be positively identified as members of a society are credited, where possible, to the society of the original publisher of the work. Where this is not possible, moneys are paid into the '**APRA Unallotted Composer Shares**' account, to be redistributed in the next distribution.

(ii) Non-member shares for **local** writers are credited to a special account, following which the Membership Department attempts to locate the writers concerned (a minimum earning of \$500 per writer is applied for economic reasons). Such writers are invited to apply for APRA membership. Upon election, the amounts in question are released for payment.

Any unpaid moneys are re-distributed in the next distribution.

(iii) The shares attributable to non-member publishers are credited, where possible, to the writers of the work. Where this is not possible, moneys are paid into 'APRA Unallotted Publisher Shares' account, to be redistributed in the next distribution.

(iv) In accordance with international practice, foreign works for which owner details cannot be fully identified by APRA are credited where possible in accordance with the "Warsaw Rule" (reflecting a resolution adopted by CISAC at a meeting held in Warsaw) which states:

"If at the time of distribution there is no documentation available for a work that has been performed or broadcast, but if one of the writers is identified as a member or copyright owner belonging to a sister-society, the total royalty payment for this work must be forwarded to this sister-society. The receiving society will carry out the distribution according to the documentation available to it."

20.3. AVCS & CAL

Neither Society distributes to non-members.

Article 70 (a) of the Articles of Association of the AVCS provides that where the owner of the relevant copyright is not a member of the Society royalties shall be distributed to that person or that person's agent as soon as is reasonably possible after the relevant copyright owner or its agent becomes a member of the Society.

Similarly, under its articles of association, CAL may only make distributions to members. Although CAL does not distribute to non-members, it make substantial efforts to identify and trace non-members whose works appear in the sample so they

may be given the option of joining the society and collecting fees. These efforts are described elsewhere in this Report.

20.4. PPCA

PPCA only makes distributions to members. (It does not collect on behalf of non-members.)

21. UNDISTRIBUTABLE MONIES

21.1. AVCS

21.1.1. Undistributed Money Where Owner Unidentified Or Located

21.1.2. Trust Fund

21.1.3. Amount Involved Each Year

21.1.4. Dealing With The Undistributable Funds

21.2. AMCOS

21.2.1. Use Of Undistributed Money Where Owner Unidentified Or Located

21.2.2. Dealing With The Undistributable Funds

21.3. APRA

21.4. CAL

21.4.1. Undistributed Money Where Owner Unidentified Or Located

21.4.2. Amount involved each year

21.4.3. Dealing With The Undistributable Funds

21.4.4. Accounts

21.5. PPCA

21.6. CONCLUSION

One of the common criticisms of collecting societies is that they are awash with undistributed money and that they have no incentive to make full distributions because they benefit from the interest. These sorts of comment are based on an absence of hard information but where an anecdote is based on stories on untold wealth and corporate deception, they gain a currency that is often beyond their worth.

Accordingly, it was important that the Inquiry examine whether there were vast pools of undistributed monies and what was done with the undistributables.

21.1. AVCS

21.1.1. Undistributed Money Where Owner Unidentified Or Located

The Society's main difficulty is in identifying and locating the relevant rights owners for payment. The identification process is quite slow, especially in the early years when potential claimants are not familiar with the operation of the Society.

Although the distribution process appears straightforward, it often takes a considerable period of time before the Society can identify, locate and obtain signed documentation from the claimant to enable distribution to take place for the following reasons:

- (i) the main source of information for identification comes from the broadcaster of the program. The broadcaster's only dealings are with the licensor of the broadcast or transmission rights. As the broadcast right is not the right administered by the Society, the original source of information provided by the broadcaster may not be the relevant copyright owner or its agent and further research is often required;
- (ii) the complexity of ownership, licensing and general administration of all of the variety of rights involved in the creation and exploitation of material broadcast on television, namely feature films, documentaries and television-produced programs means that claimants are often not aware as to the specific rights held by them and those assigned or licensed away to other parties;
- (iii) most agreements in respect of production of audio-visual material simply deal with the traditional markets of theatrical, non-theatrical rentals and sales, home video, and broadcast rights. As these agreements do not specifically deal with the off-air copying right, many claimants are under the misapprehension that they are entitled to the royalties on the basis of the non-theatrical or broadcast rights held. Substantial analysis of production and licensing agreements must be undertaken by the claimant and the Society;
- (iv) if a distributor cannot claim the rights as exclusive licensee, the Society needs to identify and locate the rights holders earlier in the chain of title, often back to the producer. However, a production company is often only established to produce a film and is wound up relatively soon thereafter. In these circumstances, it is difficult to ascertain the appropriate owner of the rights;
- (v) some participants in the chain of title of a program reside outside Australia and cannot communicate to the Society in English; and
- (vi) notwithstanding the fact that many claimants could be paid a substantial amount of royalties, there is a marked reluctance to undertake the necessary work to identify and warrant rights which is an obvious prerequisite before payment. This is the case despite considerable and persistent communication from representatives of the Society.

21.1.2. Trust Fund

Section 135P (3) of the Copyright Act requires the rules of the Society to provide for the holding on trust of amounts for relevant copyright owners who are not its members.

Thus Article 16 of the Articles of Association of the Society provide that the Society shall manage a trust fund consisting of monies from each accounting period where:

- the member cannot be located;
- the relevant copyright owner is not a member;
- there is a dispute as to the person entitled to be paid any money; or
- the money allocated to a member is less than \$10.00.

If a period of four years lapses from the date of the allocation of these funds to the trust account, the money must be transferred from the trust fund and treated in like manner to collections received in that year. Article 16 provides that the Board of the Society has a discretion, if it is satisfied that special circumstances exist which justify the retention of those monies in the trust account, to hold the monies for a further period of no more than two years (unless distribution becomes possible prior to this date).

The period of four years for the distributable amount for the first accounting period (that is, the period from commencement of the scheme to 30 June 1991) will lapse on 30 June 1995.

21.1.3. Amount involved each year

As noted above, the Society has not currently resolved that any money collected is not able to be distributed. The distributable amounts for each of the accounting periods which are currently in the Article 16 Trust fund are as follows:

DISTRIBUTION BALANCE AS AT PERIOD 30th June 1994

1991 \$1,013,722

1992 \$1,779,588

1993 \$3,282,517

TOTAL \$6,075,827

21.1.4. Dealing With The Undistributable Funds

At this stage, it is likely that the Board of Directors will recognise the existence of the above mentioned factors as amounting to special circumstances to justify the retention in the trust account of any undistributed money for the 1991 accounting period for a further period of two years. This is sensible. The important task for the Attorney General to devise a coherent plan to use these undistributable funds in manner which is not merely providing a windfall to identified owners of other, irrelevant works. It is too easy to say that the Society should simply pay the undistributable funds back into the distribution fund, after a certain time. That is simple but it unduly benefits existing members instead of acting to the benefit of the whole class of Australian rights owners. This is not a criticism of the Society. It is merely complying with the requirements made of it under the Guidelines.

21.2. AMCOS

21.2.1. Use Of Undistributed Money Where Owner Unidentified Or Located

As might be expected of a society which is principally concerned with sundry licensing, there are numerous ways in which undistributable income can arise:

- (i) There are occasions where AMCOS can identify ownership at the time of licensing but can no longer determine ownership at the time of distribution.

(ii) If publisher loses a catalogue, but does not inform the Society, they may be paid in error.

In these instances the publishers return the money to AMCOS. Any such money is put into a "Control Account". Details of works held in Control are regularly circulated to members.

(iii) The Board has approved a scheme whereby records imported on an indent basis (that is, small quantities to fulfil specific customer requests) do not require the importer to provide full details of the works imported.

(iv) It is also not uncommon for audits to demonstrate that a record company may owe royalties but may not be able to attribute the money to particular works.

(v) Special Event and Dance School licensees are not required to provide details of musical works reproduced.

(vi) In the sample data used for the distribution of schools' photocopying moneys, sometimes it is impossible to identify a work at all, even after going back to the school to obtain further information. Those pages are not taken into account in determining the page rate. An example of the difficulties sometimes faced is where the work is "unknown" by author "unknown" and publisher "unknown", or a public domain work without information about the print arrangement, (e.g. "Amazing Grace", author "unknown", publisher "unknown"). Where there are some details about the work, but ownership is unknown, the moneys allocated to this title are placed on hold and researched, as described elsewhere in the Report.

(vii) There are also titles where the publishers are in dispute as to who controls the rights (referred to as "dual claims"). These are also placed in suspense until the Society is advised how the dispute has resolved.

It may be a surprise to many, that given the complexity of its sundry licensing, AMCOS has a very small amount of undistributable income. It is quite clear that the Society does not claim for works which it does not control and does not actively seek to accrue money in "Control Accounts".

NET TRANSFER TO CONTROL

1994 to date \$184,133

1993 \$281,847

1992 \$164,584

1991 \$51,593

1990 \$11,172

Ex Indents, Audits, Special Events

1993 \$13,772

1992 \$17,227

1991 \$155,739

1990 \$14,504

21.2.2. Dealing With The Undistributable Funds

The apportionment of any unidentified moneys is at the discretion of the Board.

Moneys which are identifiable by song and transferred to Control accounts remain in those accounts and the details are circulated to members. To date no money has been transferred from the Control Account for any other use by the Society.

Where moneys are collected for which no practicable method of specific distribution is available, the Board has in the past authorised apportionment of the moneys on the basis of similar uses of works released by the record company. Money from the Schools Photocopy Agreement in suspense is held for 6 years, after which it is placed back in the distribution pool.

The Board has in three cases approved the application of certain specified unidentified moneys for special industry and Society requirements:

- (a) royalties received for indent records to be made available to pay for development of a new computer system;
- (b) fees arising from Special Event licensing to be made available to fund anti-piracy action; and
- (c) unidentifiable audit income of \$90,000 was put towards extraordinary costs incurred by the Society in connection with the Prices Surveillance Authority's Inquiry into the music industry.

To date, costs for both the computer development and the anti-piracy fund have been met from Society revenue and no apportionment of unidentified moneys has been made to cover them. It is further noted that the accounts of the Society (quite properly) include an accrued liability to on-pay all unidentified moneys after deduction of the standard 12.5% rate of commission.

21.3. APRA

Different procedures come into operation when the owner of a work cannot immediately be identified or can be identified but not located. Procedures also vary according to the source of the use/earnings and the value. In all cases unidentified works are rigorously checked against numerous reference points including the CISAC "World Works List", music industry journals etc. Those still unidentified are then dealt with as follows.

(i) Works from affiliated societies included in distributions:

- (a) TV or film works are further researched with the overseas society concerned. If, after 2 years, the cue sheets are still outstanding, an "average" cue sheet is compiled using the episodes of the same series where the music used is consistent.
- (b) Other works (value of \$50 or more) are circulated to publishers and societies. Any performances remaining unclaimed after 6 years are deleted unless there has been a subsequent performance.
- (ii) Local works assumed to be written by APRA members but not registered. The values of such performances (with minor exceptions) are placed in a royalty adjustment account and are paid out when identified. This account is cleared by adding remaining monies to the subsequent distribution but

replenished with the earnings of all relevant works from the subsequent distribution.

(iii) Registered works in which one or more copyright owner is a non-member of any society. Local works are treated similarly to (ii) above. The writer share of overseas works is normally paid to the society of the original publisher, but if not published (or the publisher is not a member) then treatment is as per (ii) above. Non-member publisher shares are, where possible, paid to the writers of the work or, if not, treated as in (ii) above.

(iv) Unresolved disputes between interested parties stay in suspense accounts until resolved. On occasions monies are paid out against a member's indemnity.

(v) Identified owners with no known address.

Lists of such members are regularly circulated with newsletters etc. as well as individual research through managers, booking agents, other band members etc. Mailouts are also made to last known addresses and advertisements placed in local and national newspapers. After 6 years such amounts as remain are paid to the NSW Government under the provisions of the Unclaimed Monies Act.

UNDISTRIBUTED FUNDS AT YEAR ENDED 30TH JUNE	1993	1992
	\$	\$
1. Royalty adjustment and suspense accounts	108,717	433,645
2. Items in dispute, unidentified concert promotions, reversionary interests	528,258 551,198	
3. Overseas Societies Distribution suspense accounts: items in dispute/not identified	479,579	479,846

21.4. CAL

21.4.1. Undistributed Money Where Owner Unidentified Or Located

CAL is not able to identify or locate a payee at the time of distribution in two cases:

(i) Where the work copied has been successfully identified from the information supplied on the sample record (or CAL feels that the work may be identified with further research), however, it has not been possible to locate the payee/recipient. These fees are held pending further research of the copyright owners identity. If research has not identified or located a copyright owner at the expiry of six years, these fees are rolled into the general distribution fund;

(ii) The copyright information supplied on the sample record is inadequate to allow identification of the copied work or no copyright information has been supplied. Prior to 1994, these fees formed CAL's distribution fund known as Distribution B. From 1994, these fees will be treated in the same way as the fees in (i) above.

(As to the practice of rolling the undistributed funds back into the distribution, see comments at 21.1.4 as to need for Attorney General to reconsider this system.)

21.4.2. Amount involved each year

The figures provided below provide a total for the monies discussed above. All figures include both the royalties set aside for further research and the unidentified copyright material.

Distribution	
Year	\$'000
1990	228.0
1991	451.7
1992	363.9
1993	770.1
Total	1,813.7

21.4.3. Dealing With The Undistributable Funds

Where CAL considers further research will identify or locate the copyright owner for a work, the fees are held by CAL in the royalty account pending further research of the records and eventual distribution.

Until recently, where the information supplied to CAL was inadequate to identify a copyright owner, the money allocated for that copying was set aside for distribution under Distribution "B". This distribution scheme for otherwise undistributable fees has been disbursed to bodies representing copyright owners for purposes that foster and protect the interests of copyright owners generally. The policy and operation of the scheme was established by the directors in 1989. Its purpose was to apply undistributable monies for the general benefit of copyright owners. The directors also took into account that many collecting societies in Europe make distribution to author and publisher bodies only, without making individual distributions.

The 'unknown' copyright owner pool has remained steady at around 5% but, due to increasingly sophisticated research techniques and the accumulation of research data, the percentage is decreasing. However, as CAL's total distribution pool has increased, equitably allocating increasingly large sums of money through Distribution "B" became a strain on CAL's resources.

In accordance with advice from CAL's legal counsel, CAL's directors have recently determined that cultural and educational allocations will be an amount equal to 1% of collections. This allocation will be an administrative expense and not part of the quantum of the distribution fund. (The statutory licence allows a 1% cultural deduction.) The unknown copyright owner pool will remain in escrow for six years at which point if research has not identified the copyright owner it will be rolled back into the distribution fund.

The following payments have been made from unidentifiable funds in the years 1990-1993:

Recipient	\$'000's
Australian Copyright Council (1990-93) (to support author and licensee advice services)	160.0
Australian Book Publishers Association	
(1990-93) (for copyright related projects of benefit to publishers)	360.0
Australian Society of Authors (1990-93) (used for purchase of premises)	360.0
National Book Council (reading campaign)	10.0
Western Institute Foundation (copyright essay prize)	5.0
Gus O'Donnell Biannual Prize Trust (essay prize)	10.0
Australian Journalists Association (Qld branch) (to fight copyright infringement action)	3.0
Education Lending Right (financial support for lobbying)	26.8
Centre for Copyright Studies (ANU)	180.0
CAL Database Establishment (to improve services to members)	69.9
NAVA non-recourse loan (to assist in establishment of VISCOPY)	14.0
Total	1,198.7

21.4.4. Accounts

CAL maintains an account into which all licence revenues are paid and from which it draws moneys for operational expenses and distribution moneys claimed by members. Undistributed moneys are also held in this account but are accounted for separately.

The Attorney-General's guidelines for collecting societies declared to administer the statutory licence, require CAL to hold any undistributable moneys collected under such licence in a trust account. Moneys in this account are invested by a funds manager in securities authorised under the Trustee Act 1925. Moneys are transferred from this account to a separate account to cover operational expenses.

Undistributed monies that have been collected under the statutory licence are held for a period of four years and then rolled back into the distribution pool for redistribution to copyright owners.

Royalties calculated from monies collected under the voluntary licence schemes (most of CAL's licence schemes are voluntary schemes) are held for six years. At the expiry of this period the royalties are also rolled back into the distribution pool.

21.5. PPCA

All of PPCA's is either expended on administration or distributed. There are no undistributed sums.

21.6. CONCLUSION

Contrary to rumour, there are no unreasonably large sums of money that are retained by the societies as **undistributable** funds. Certainly AVCS has an amount that is unduly high given the over-all scale of its operations but that is entirely explicable given its early stage of development. If similar proportions were evident in five years time there would be cause to reconsider its procedures.

Similarly, CAL has a large undistributable pool, but this is inevitable given the nature of rights that it is administering. Photocopy records will always contain imperfections and this is more often a reflection of those who fill in the records rather than the Society's ability to process them.

RECOMMENDATION

- That the Attorney General reconsider the Guideline for Declared Societies which obliges them to pay undistributable sums into the general distribution pool after a certain period.

Recommendations as to how undistributable sums might be dealt with are discussed further in "Cultural Functions".

22. ACCOUNTS

22.1. AMCOS

22.1.1. Summary of Assets and Liabilities

22.2. APRA

22.2.1. Summary of Assets and Liabilities

22.3. AVCS

22.3.1. Summary of Assets and Liabilities

22.4. CAL

22.4.1. Summary of Assets and Liabilities

22.5. PPCA

The accounts of all the Societies have been audited for each of the last 10 years for which they have been in operation. None of the accounts presented have been qualified. Audited annual accounts are available to members and non members.

The information available in audited annual reports is an aggregated summary of income and expenditure, profit and loss and does not provide a picture of **how** revenue is derived and **how** expenses are incurred. To obtain a more complete picture of the operation of the Societies from a financial viewpoint more detailed income and expenditure reports were reviewed against the objectives and strategic plans of the enterprise and an understanding of the administrative procedures in operation.

All the Societies made detailed accounting information available to the Review, but some asked that it be treated in the strictest confidence as they considered it could be misinterpreted by uninformed observers. Without access to this more detailed information it is extremely difficult to make an informed decision about the efficiency of the Societies with respect to their collections, administration and distributions of

funds. Besides being accurate and clear, it is important for the sake of achieving a reputation for ethical operation, that the accounts be available not only to members but also, to the wider community. The impact of collecting societies is such that the commercial and cultural interests of the general community demand such openness and transparency.

It is recommended that to increase accountability, all Societies should have in place a procedure for annual budgetary approval and ongoing authorisation of day to day expenditures. They should also be required to make available more detailed accounting information to members on request.

More comment on the costs and efficiency of collection, administration and distribution will be made under "Administrative Expenditure" .

22.1. AMCOS

Accounts for 1983 to 1993 were provided and have been reviewed. The accounting year is July 1st to June 30th. The accounts are well presented with explanatory notation where appropriate.

AMCOS accounts are audited annually by KPMG Peat Marwick.

A copy of the audited AMCOS accounts is supplied to all members and affiliated Societies and is also lodged with the Australian Securities Commission where it is available to the public. There is no policy of public supply upon request.

22.1.1. Summary of Assets and Liabilities

Year Total	Assets Total	Liabilities	Retained profits
1986	2.329	2.202	.127
1987	3.560	3.403	.157
1988	4.636	4.394	.242
1989	5.947	5.555	.392
1990	6.632	6.158	.474
1991	8.031	7.694	.337
1992	9.409	9.328	.081
1993	8.859	8.559	.300

(All amounts in \$ millions)

22.2. APRA

Accounts for 1983 to 1993 were provided and have been reviewed. The accounting year is July 1st to June 30th. The accounts are well presented with explanatory notation where appropriate.

APRA accounts are audited annually by KPMG Peat Marwick and have never been qualified. The accounts are furnished to those members entitled to attend and vote at

General Meetings (of whom there are currently 8,087) in the printed form, examples of which were provided to the Review.

The accounts are regarded as documents on the public record and are available to anybody. The reason they are only provided in the first instance to members entitled to attend and vote at meetings is that the cost of printing and providing them to all members would be substantial, without any real corresponding benefit to those who earn no income from the Association. This is sensible.

Note: APRA's controlled entity Music Management & Investment Pty Ltd was established at the recommendation of Peat Marwick as a service company in order to provide APRA's administration and distribution services. This was investigated to the satisfaction of the Inquiry and found not to give rise to any concern. It was wound up on the 30th June 1994. (See also "Taxation".)

22.2.1. Summary of Assets and Liabilities

Year Total	Assets Total	Liabilities	Retained profits
1983	16.557	17.410	(.853)
1984	19.152	19.069	.830
1985	23.057	23.057	0
1986	31.957	31.957	0
1987	34.444	34.444	0
1988	30.988	30.988	0
1989	34.980	34.980	0
1990	41.775	41.775	0
1991	41.997	41.997	0
1992	34.010	34.010	0
1993	30.733	30.733	0

(All amounts in \$ millions)

22.3. AVCS

AVCS was established in 1990. Accounts for 1990,91,92 and 1993 were provided and have been reviewed. The accounting year is July 1st to June 30th. The accounts are well presented with explanatory notation where appropriate.

AVCS accounts are audited annually by KPMG Peat Marwick and have never been qualified. Internal audits are conducted throughout the year.

All members of the Society receive a copy of the audited accounts as part of the Annual Report which is provided to members with the notice paper for the annual general meeting.

A copy of the Annual Report and financial statements is also provided to the Attorney-General in accordance with section 135R of the Copyright Act. Under that provision the Attorney-General must cause a copy of the report to be laid before each

House of the Parliament within 15 sitting days of that House after receipt of the report(135R(2)).

Copies of the Annual Report and audited accounts are made available by AVCS to any person, on request, and are also available through publication in Hansard.

In addition to its reporting to members, a copy of the auditors report and financial statements are furnished to the Attorney-General in accordance with section 135R of the Copyright Act. The Attorney-General must cause a copy of the report to be laid before each House of Parliament within 15 sitting days of that House after the receipt of the report (section 135R(2)).

22.3.1. Summary of Assets and Liabilities

Year Total	Assets Total	Liabilities	Retained profits
1990	0	.058	(.058)
1991	5.145	5.082	.063
1992	8.079	7.927	.152
1993	10.587	10.412	.175

(All amounts in \$ millions)

22.4. CAL

Accounts for 1983 to 1993 were provided and have been reviewed. Until July 1990, the accounting year was January 1st to December 31st. They are now based on a financial year. The accounts are well presented with explanatory notation where appropriate.

CAL's accounts are audited annually by Camphin Boston & Co and have never been qualified. The accounts are also subject to monthly internal audits carried out by external auditors as directed by the board Audit Committee. Those accounts are also provided to the Attorney General's Department in accordance with s.135ZZD. The accountability levels is very high.

Audited accounts are mailed to all members with the notification papers for the AGM. CAL's audited accounts are available to all non-members on request.

22.4.1. Summary of Assets and Liabilities

Year Total	Assets Total	Liabilities	Retained profits
1983	.0008	.076	(.075)
1984	.001	.133	(.132)
1985	.0	.176	(.176)
1986	.031	.289	(.289)
1987	.015	.218	(.203)
1988	.080	.059	.021

1989	.068	.011	.057
1990	.201	.128	.073
1991	.621	.576	.045
1992	.744	.778	(.34)
1993	.899	.925	(.26)

(All amounts in \$ millions)

NOTE: CAL holds considerable cash amounts that are not reflected in the above table. At 30th June 1993 these amounted to \$21.2 million.

This accumulation of monies in the cash reserve was due to a number of factors. Some of the retained surplus was due to the manner in which indemnity fees were distributed and some due to provision the payment of tax. Both matters are now satisfactorily resolved. The reserves will be run down and the cash will be distributed over the next few years.

22.5. PPCA

PPCA was formed in 1969. Annual accounts (financial statements) for the years 1983 to 1993 were provided and have been reviewed. (The accounting year is July 1st to June 30th.)

22.5.1. Translucency Of Information

At first glance, the annual accounts appear to be presented in a fairly standard form. However, when specific amounts are tracked from year to year, especially transfers of monies between PPCA and ARIA, these are difficult to follow through without access to further information. Similarly, the size and reason for bad debts is difficult to follow. This latter is particularly significant in the earlier years when the size of the bad debts seems unreasonably large for the type of enterprise under review.

All further financial information requested, was provided to the Inquiry. It was concluded that some of the anomalies were due to inadequate detail or explanation in the annual accounts and some were due to previously unfound errors. Thus it would be difficult for reasonable conclusions to be drawn on the accounts without access to the additional information provided to the Inquiry. What is more, from 1989, the format of the annual financial statements was changed and only summary accounts were provided (although it is stressed that these comply with the relevant corporate law requirements). This makes any analysis of the accounts from the annual financial statements even more difficult.

It is recommended that the format of the PPCA annual accounts be changed such that more information is provided. The best way to do this would be to provide more informed notes to the accounts.

(More detail and additional comments on these matters are provided in the Chapter - "Administrative Expenditure".)

22.5.2. Auditors

PPCA's accounts are audited annually by Deloitte Touche Tomatsu and have never been qualified. Deloitte also audit ARIA accounts. As the two sets of accounts are so inter-related, it would seem sensible that both accounts are audited by the same firm. However, it is for that very reason that they should be audited by separate firms.

It is recommended that, to preserve the separation, accountability and integrity of both organisations, (PPCA and ARIA,) different auditors be appointed for each entity.

PPCA's audited accounts are mailed to all members. PPCA's audited accounts are made available to non-members on request and are also left on display at the reception desk.

22.5.3. Summary of Assets and Liabilities

Year Total	Assets Total	Liabilities	Retained profits
1983	.169	.305	(.136)
1984	.318	.349	(.031)
1985	.268	.268	.0
1986	.322	.322	.0
1987	.430	.430	.0
1988	.677	.677	.0
1989	.890	.890	.0
1990	.925	.925	.0
1991	1.011	1.011	.0
1992	1.308	1.308	.0
1993	1.910	1.910	.0

(All amounts in \$millions)

23. TAXATION

23.1. INCOME TAX

23.2. SALES TAX

23.3. WITHHOLDING TAX - AMOUNT OF TAX GATHERED FROM FOREIGN COPYRIGHT OWNERS

23.4. AMCOS

23.5. APRA

23.6. AVCS

23.7. CAL

23.8. PPCA

23.9. RECOMMENDATIONS

23.1. INCOME TAX

Taxation arrangements for each of the collecting Societies vary greatly. Some arrangements are governed by the nature of the enterprise and the rules of incorporation but it would seem that the time is right for an approach to the Australian Taxation Office (ATO) for a consistent ruling to cover all Societies. This ruling may involve a change in articles of association or method of incorporation or the Copyright Act itself, but it would seem inappropriate to treat monies collected by the Societies differently. These past differences have led to innovative and often complex taxation minimisation procedures, and high consultants fees. This would seem inappropriate when the objective of each Society should be to maximise distributions to members who in turn pay tax on their receipts.

The collecting society should be seen (and treated) as a conduit of money to the rights owners - owners who will have a tax obligation in respect of that income. This is certainly the view taken by the ATO in respect of some of the Societies, but not all. This divergence of approach is undesirable. It will be necessary for the ATO will be to understand the complex and divergent methods of the Societies and to understand that, notwithstanding these differences, their underlying purposes are the concurrent.

Considerable time and expense has been spent by the societies in clarifying their tax position. AVCS and CAL have favourable (and sensible) rulings from the Australian Tax office which recognises that receipts under the Part VA scheme are the corpus of the trust administered by Society and therefore not income for tax purposes. Amounts allocated to cover administration costs become subject to taxation at the point of allocation and these are offset by the allowable expenditure incurred. Only interest on the funds is treated as income and taxed in the Society's hands (less allowable deductions). That Ruling was obtained only after considerable expense was incurred in obtaining professional advice and after lengthy negotiations with the Australian Tax Office. Further, any change in the Society's practices is likely to necessitate obtaining a further ruling. Resources allocated by the Society to establish its tax position from time to time reduce the amount payable to copyright owner beneficiaries.

PPCA has received tax advice that no income tax is payable if all net proceeds are distributed to copyright owners within 6 months of the end of each tax year. Similarly, APRA has received counsels' advice that the fees and royalties collected on behalf of owners is not taxable in the hands of the Society but that the income from interest and any investments is taxable (although the administration costs of the Association are deductible).

The important principle is that collecting societies are conduits for royalties payable to authors, composers and other copyright owners. Insofar as a society is simply a conduit for the flow of funds between copyright users and copyright owners, it is appropriate for income tax to be levied solely in the hands of the ultimate beneficiary of those funds where the tax status of that beneficiary (for example tax exempt members) and any allowable deductions can be taken into account.

It is recommended that discussions be held with the Australian Taxation Office (ATO) to rationalise taxation arrangements for the collecting societies. Generally,

it would make sense for it to be recognised that the monies which the societies collect are held on trust for members and thus are not subject to tax. The amounts allocated to cover the administration costs become subject to taxation at the point of allocation, and these are off-set by the allowable expenditures incurred.

It is recommended that tax exempt status be formally accorded collecting societies that are appropriately structured and administered. This would be fair and equitable and would eliminate the allocation of member's funds to re-confirming its position from time to time. Tax exempt status would be particularly helpful to new societies who are still establishing their procedures.

23.2. SALES TAX

Sales tax is paid on all purchases. The societies have no sales tax exemption.

23.3. WITHHOLDING TAX - AMOUNT OF TAX GATHERED FROM FOREIGN COPYRIGHT OWNERS

The societies withhold taxes on overseas distributions in accordance with the relevant reciprocal agreement between Australia and the country concerned. (New Zealand 15%, other countries with double taxation agreements with Australia mainly 10%, countries with no double taxation agreement at rates advised by the Taxation Department.) As the figure below show, the amounts of tax collected are increasing annually.

AMCOS believes that it is anomalous that the rate of withholding tax between Australia and New Zealand is higher than between Australia and many other countries and between New Zealand and many countries. AMCOS and the music publishers are based in Australia so royalties from New Zealand attract a 15% withholding tax, notwithstanding they may be remitted on to the USA or Europe. If the royalties were sent directly from New Zealand to those countries there would only be a 10% withholding tax. This is a sore point with some music publishers.

23.4. AMCOS

AMCOS enjoys no tax relief or tax exempt status.

1993	1992	1991	1990	1989
\$203,497	\$112,918	\$67,261	\$91,731	\$68,708

23.5. APRA

When making distributions to foreign copyright owners, APRA deducts and pays withholding tax, as required by law

Tax payments from royalties collected in Australia and New Zealand over the past 5 years is considerable as shown in the table below.

Year Australia	A\$ NewZealand	A\$ TOTAL	A\$
1989	1,399,212	280,556	1,679,768
1990	1,447,783	301,392	1,749,175
1991	1,454,028	302,089	1,756,117
1992	1,456,168	289,386	1,745,554
1993	1,384,519	284,522	1,669,041
TOTAL	7,141,710	1,457,945	8,599,655

23.6. AVCS

AVCS enjoys no form of tax relief or tax exempt status. The Society has obtained a tax ruling from the ATO as to its tax position.

AVCS believes that tax exempt status would be fair and equitable and would eliminate the allocation of member's funds to reconfirming its tax position as changes are made.

YEAR ENDING 30 JUNE ROYALTY WITHHOLDING TAX PAID

1994 (to date) \$40,346

1993 NIL

1992 NIL

1991 NIL

1990 NIL

23.7. CAL

CAL has received a very favourable tax ruling from the ATO.

CAL treats its income from collections and any interest accrued from that income as a "trust fund" administered by CAL. The funds utilised by CAL and shown in their accounts are budgeted amounts taken from that "trust fund" annually to administer the enterprise. Under the ruling, amounts allocated to cover administration costs become subject to taxation at the point of allocation and these are offset by the allowable expenditure incurred. Any residual at the end of the year is transferred back into the "trust fund". Thus CAL makes no "profit". By this method CAL pays no tax. Moneys distributed to members are paid directly from the "trust fund".

CAL withholds tax on overseas distributions in accordance with relevant reciprocal agreements between Australia and the country concerned. All distributions to date have been to the Copyright Licensing Agency in the UK. In all cases 10 percent withholding tax was deducted at the point of remittance and paid to the ATO. Amounts involved are as follows :

Distribution

Year

	Amount of Tax (A\$ '000's)	
1993		11.1
1992		14.1
1991		11.5
1990		2.9
1989		0.1

23.8. PPCA

The issue of withholding tax does not apply to PPCA because all distributions are made to Australian resident copyright owners or Australia resident agents/licensees of overseas copyright owners.

23.9. RECOMMENDATIONS

That discussions be held with the Australian Taxation Office to rationalise taxation arrangements for the collecting societies.

That tax exempt status be formally accorded collecting societies that are appropriately structured and administered.

24. ADMINISTRATIVE EXPENDITURE

24.1. SUMMARY OF ADMINISTRATIVE EXPENDITURE AND PROPORTION OF INCOME AVAILABLE FOR DISTRIBUTION TO MEMBERS.

24.2. AMCOS

24.2.1. Staff summary

24.3. APRA

24.3.1. Staff summary

24.3.2. Premises

24.3.3. Other

24.4. AVCS

24.4.1. Staff summary

24.4.2. Premises

24.5. CAL

24.5.1. Staff summary

24.5.2. Premises

24.6. PPCA

24.6.1. The Business Plan

24.6.2. Profit And Loss

24.6.3. Bad Debts

24.6.4. Administrative Costs In Proportion To Funds Distributed To Owners

24.6.5. Inter-relationship Between ARIA And PPCA

24.6.6. Staff Costs

24.6.7. Premises

24.6.8. Abnormal Item

24.6.9. Further Review

24.7. RECOMMENDATIONS

The administration of the enterprises under review varies considerably from excellent to very poor. It is difficult to summarise the findings overall as the administration of each entity varies with the amount, source and method of collection and distribution. These elements have also varied over time and administrative procedures have similarly varied as the enterprise changes and matures or as key executives have changed the culture of the enterprise.

A well administered enterprise should have clearly stated goals and objectives which are easily available to, and meet the approval of, all stakeholders. In the case of the Collecting Societies the stakeholders are the Members, the Board, the employees, and the general public.

A strategic plan should specify how these goals and objectives are to be achieved. The way in which they are to be achieved should be reflected in clearly defined organisation charts and operational procedures which include authorisation procedures, and job descriptions which define the responsibilities and authorities of each staff member. There should also be review and auditing procedures to ensure that objectives are being met and to provide for a process of continual improvement as the economic, technical and cultural environment in which the enterprise operates changes.

As part of this review, the extent to which these procedures are in place has been evaluated and comment made where there are perceived deficiencies plus recommendation for improvement.

Because the administration of the enterprises is so different recommendations made, where appropriate, relate to a specific collecting agency.

One key element on which a useful comparison should be able to be made is the proportion of collections that are distributed to members. This is largely dictated by the proportion of collection revenue spent on administration, although maturity of the enterprise, the actual dollar amount collected, and policy decisions on the amount of funds to be distributed each year or retained for future distributions also affect the amount distributed.

Figures for administrative expenditure as a proportion of total revenue over the last 10 years are provided as part of the summary information for each enterprise. A comparison of the 1993 expenditure is given below. These comparisons should be treated with caution until the reason for the differences are fully understood by reading the summary for each enterprise.

24.1. SUMMARY OF ADMINISTRATIVE EXPENDITURE AND PROPORTION OF INCOME AVAILABLE FOR DISTRIBUTION TO MEMBERS.

Society Income	\$millions	% Administrative Expenditure %	Other Expenditure	% Available to Copyright Owners
AMCOS	12.484	14.780	.95	85.20
APRA	47.400	10.540	1.07	88.39
AVCS	4.457	16.000	4.00	80.00
CAL	9.000	24.800	0	75.20
PPCA	2.204	53.00	0	47.00

All the collecting Societies have a declared objective to improve the proportion of collections to be distributed to members. In some cases this will be achieved increasing administrative expenditure whilst increasing collections at an even higher rate. In other cases there is an objective to reduce administrative expenditure.

24.2. AMCOS

AMCOS appears to be now a well administered enterprise.

The purpose and objectives of the Society are clearly stated in easily understood form in a number of brochures available to members, potential members, staff and the general public. These brochures include details of Copyright matters in general and other associated bodies and their relationship to AMCOS.

The current strategic plan, which should be the basis for the achievement of these objectives is little more than a budget with notes attached. When questioned about the content and format of the Strategic plan, the Chief Executive, Mr Jeremy Fabinyi, stated that the environment in which AMCOS is operating has many uncertainties which make the development of a detailed strategic plan difficult and somewhat irrelevant until the outcome of some crucial issues is known.

The AMCOS submission lists 3 crucial issues to be resolved this year the outcome of which could have far reaching effects on the operation of the Society.

- AMCOS states that the results of negotiations of the new industry agreements between AMCOS and ARIA (the Australian Recording Industry Association), and AMCOS and RIANZ (the Recording Industry Association of New Zealand) will have a major impact on the music publishing industry and the operation of AMCOS.

- There is still uncertainty about government plans, mooted for July 1994, to repeal the importation provisions of the Copyright Act.
- A feasibility study is underway to examine ways in which AMCOS could further co-operate with APRA to introduce more efficient systems for the administration of royalties. AMCOS believes that the results of this study will have far reaching effects.

AMCOS should produce a strategic plan each year for the following year at least, and possibly the following 3 years. This plan should restate the goals and objectives of the Society, the economic, technical and social environment in which AMCOS is likely to operate and any assumptions made.

If there are several likely scenarios, separate plans showing different assumptions should be prepared with an indication of the most likely scenario.

The plan should be the basis of the operating budgets for the next 3 years for Board approval and the targets and objectives for each operating division of the Society. From this plan should flow changes in business procedures and job descriptions and personal objectives for each staff member.

AMCOS has provided some very good organisation charts and workflow diagrams. Visits to the Society showed that the establishment is well organised and staff functions are well defined. There are appropriate, regular, ongoing audit and review procedures in place to ensure that processes in operation are maintained at an optimum level.

The proportion of the Society's gross income expended on administration and other overheads, and available for distribution to members is listed below for the last 7 years. This expenditure seems appropriate for the operation under review. A more detailed breakdown of this expenditure has been reviewed and all individual components seem appropriate.

Summary of administrative expenditure and proportion of income available for distribution to members

Year Income	\$million s	%Administrative Expenditure %	Other Expenditure	% available to Copyright Owners
1987	4.656	15.13	1.63	68.60
1988	6.643	11.70	2.57	84.00

1989	7.584	13.81	1.85	76.05
1990	8.492	15.17	2.22	78.70
1991	10.353	16.32	4.33	75.60
1992	9.894	18.93	4.26	91.50
1993	12.484	14.78	.95	85.20

(Note that the above figures do not add up to 100% because AMCOS works on a system whereby set percentages are deducted for administrative charges. Some years, the charges have been slightly in excess of actual costs and some years, less. The abnormally large percentage available for distribution in 1992 and to a lesser extent in 1993, was due to the computerisation of the Overseas Department in 1991-1992 which meant that no royalties were paid overseas in 1991. These payments were caught up in the subsequent periods.)

24.2.1. Staff summary

Staff salary costs budgeted for the year end June 1994 are \$.728 million. Numbers of staff employed in the last 5 years are shown in the table below.

Year	Full-time staff	Part-time staff
1989	14	4
1990	16	6
1991	19	2
1992	20	3
1993	21	4

AMCOS does not own premises but rents appropriate office space in North Sydney and in New Zealand.

Abnormal item

AMCOS has contributed one third of the formation expenses of PACCS. The amount contributed by AMCOS to date is \$.134 million. The start date of PACCS has been delayed but due to government assurances that legislation will be enacted the debt is held in the AMCOS accounts under Sundry Debtors. These costs will be recouped from PACCS' first year's income.

24.3. APRA

APRA is an exceptionally well administered enterprise.

The purpose and objectives of the Association are clearly stated in easily understood form in a number of brochures available to members, potential members, staff and the general public.

APRA's current strategic plan is excellent. It contains all the elements of a good working document including the background environment in which APRA is operating, statistics of past performance indicators and clearly defined, measurable plans for achieving current objectives.

APRA has also provided excellent workflow diagrams which would be equal to the best to be found in Australia today.

Visits to the Association showed that the establishment is well organised and staff functions are well defined. There are appropriate, regular, ongoing review procedures in place to ensure that processes in operation are maintained at an optimum level.

APRA also experiments with new procedures for increasing collections. One current initiative is that of reviewing overseas TV program guides to identify the occasions for possible use of members' works. Although costly, this procedure has proved extremely cost effective and APRA is currently establishing a department to carry out this new method of collection.

There is a high level of use of Information Technology to reduce costs and improve quality of service to members. There are impressive audit procedures in place.

The one area of concern is the high dependence on the knowledge and skills of key staff. APRA has several initiatives in place to ensure that the effect of the exposure to this dependency is minimised.

- APRA ensures that most key staff can fulfil more than one function. Staff regularly undertake jobs other than their own to ensure that they are able to fulfil other functions.
- APRA ensures that staff morale is high. That this initiative is successful is evidenced by the fact that staff career episodes are much longer than those in equivalent enterprises. In addition, if staff do leave they often return to APRA.
- Jobs are structured in work-groups with a great deal of autonomy and responsibility for a complete function. Members check each others' work and there are impressive audit procedures in place.

The proportion of the Society's gross income expended on administration and other overheads, and available for distribution to members is listed below for the last 10 years. This expenditure seems appropriate for the operation under review. A more detailed breakdown of this expenditure has been reviewed and all individual components seem appropriate.

Summary of administrative expenditure and proportion of income available for distribution to members

Year Income	\$millions	%Admin Expenditu re %	Other Expend iture *	Nett Distrib ution %
1984	20.1	9.32	3.40	87.28
1985	23.8	8.98	3.73	87.29
1986	29.5	7.76	4.26	87.98
1987	35.9	8.26	4.13	87.61
1988	34.6	10.47	2.74	86.79
1989	38.8	9.81	2.89	87.30
1990	46.0	9.74	3.31	86.95
1991	47.5	10.76	1.93	87.31
1992	47.7	10.03	1.15	88.82
1993	47.4	10.54	1.07	88.39

- includes tax and cultural deduction

24.3.1. Staff summary

Staff salary costs budgeted for the year end June 1994 are \$3.92 million. Numbers of staff employed in the last 5 years are shown in the table below.

Year	Full-time staff	Part-time staff
1989	72	9
1990	77	11
1991	86	8
1992	88	5
1993	94	9

24.3.2. Premises

APRA owns its premises in Australia and New Zealand. There is no mortgage on either premises. The Australian premises are valued at \$3.800 million and those in New Zealand at \$.335 million.

In Sydney, APRA sub-lets part of its premises to AVCS at market rate rental. 70 sq. metres is made available to Export Music Australia as an in-kind contribution towards the industry export drive. In Auckland, APRA sub-lets part of its premises to AMCOS at market rental rate.

As a matter of equity, it is important that APRA develop procedures by which the funds which are expended on such capital assets are amortised over a long period so that the rights owners of a few years do not pay for such long term investments while the owners of later years reap the benefits. There are no such procedures in place yet and this must be addressed.

24.3.3. Other

APRA provides information from its computer system to AVCS, AMCOS and PPCA. All pay negotiated rates for the service.

24.4. AVCS

AVCS appears to be a well administered enterprise.

The purpose and objectives of the Society are clearly stated in easily understood form in a brochure available to members, potential members, staff and the general public.

The current strategic plan, which should be the basis for the achievement of these objectives, contains good background material including all relevant support documents such as the Society's Mission Statement, Acts under which it operates, Memorandum & Articles and comment on the prevailing Economic and Political environment. However, the plan itself, seems more like a statement of objectives and policy than a plan of how these will be achieved with well defined, measurable goals and targets. A detailed budget was also provided.

AVCS' Chief Executive, Ms Susan Bridge, commented that in these uncertain times it is difficult to provide a more comprehensive Strategic plan.

AVCS should produce a strategic plan each year for the following year at least, and possibly the following 3 years.

- **This plan should restate the goals and objectives for the Society, the economic, technical and social environment in which AVCS is likely to operate and any assumptions made.**
- **If there are several likely scenarios, separate plans showing different assumptions should be prepared with an indication of the most likely scenario.**
- **The plan should be the basis of the operating budgets for the next 3 years for Board approval and the targets and objectives for each operating division of the Society. From this plan should flow changes in business procedures and job descriptions and personal objectives for each staff member.**

The operation of AVCS is simpler than that of the other collecting Societies under review and the enterprise is newer. Discussions with the Society showed that the establishment is well organised.

In the paper on projects for 1993 there was a plan to install a comprehensive computer system. Development estimates for the initial specification varied from \$.008 million to \$.250 million. This initiative is currently suspended until a more detailed specification has been prepared. Some simple computer systems are in place but there is a need for a more comprehensive system.

The proportion of the Society's gross income expended on administration and other overheads, and available for distribution to members is listed below for the last 5 years. This expenditure seems appropriate for the operation under review. A more detailed breakdown of this expenditure has been reviewed and all individual components seem appropriate.

Summary of administrative expenditure and proportion of income available for distribution to members

Year Income	\$millions	%Admin Expenditure	% Other Expenditure % available	to Copyright Owners
1990	.058*	0	0	0
1991	2.151	13	2	85
1992	3.982	15	3	82
1993	4.457	16	4	80
1994	6.214	12.75	0.08	87

* This amount was borrowed to establish AVCS.

24.4.1. Staff summary

Staff salary costs budgeted for the year end June 1994 are \$0.373 million. Numbers of staff employed in the last 4 years are shown in the table below.

Year	Full-time staff	Part-time staff
1990	1	0
1991	3	0
1992	5	8
1993	7	1

24.4.2. Premises

AVCS is located in the same building as APRA and rents appropriate premises from APRA.

24.5. CAL

CAL appears to be an exceptionally well administered enterprise. In addition to the statutory annual audit, monthly internal audits are carried out by CAL's external auditors as directed by the board audit committee.

The purpose and objectives of the Agency are clearly stated in easily understood form in a number of brochures available to members, potential members, staff and the

general public. CAL has just appointed a Public Relations specialist to increase understanding of CAL's role and purpose amongst CAL's constituents and the general public. This is a positive initiative.

The current strategic plan is excellent. It includes background information detailing the environment in which CAL is to operate over the next 5 years and statements of objectives and policy with measurable goals and targets. It also provides detail of future areas of potential collection opportunities such as the continuing education enterprises of Australian Universities and areas of threat including the new technological distribution facilities available through the Internet.

CAL's strategic plan is reflected in the objectives for each department. Progress on departmental objectives is updated every two weeks by the department Manager in a report to the Chief Executive. The report is used in a progress meeting of all Managers and the Chief Executive, who form the Management Committee. Every two months, Department Managers prepare a more detailed report which is sent through the Chief Executive to CAL's Board.

Departmental objectives also form the basis of duty statements for each staff member, these in turn form the basis of staff performance evaluations.

CAL operates a well co-ordinated, open enterprise where staff are well informed of enterprise objectives and progress towards those objectives. Although individual duties are well specified, staff are encouraged to be flexible and assist other members when work overloads occur.

Being a newly established, fast growing enterprise, CAL Chief Executive has chosen not to delegate his authorities to other executives at this stage, although managers participate in authorising expenditures and decision making. Audit procedures are rigorous but not onerous, as befits a "young" enterprise.

CAL's operations include several innovative administrative and accounting processes such as the capitalisation of all software costing over \$500. Software costing under \$500 is expensed.

The proportion of the Agency's gross income expended on administration and other overheads, and available for distribution to members is listed below for the last 3 years. This expenditure seems appropriate for the operation under review. A more detailed breakdown of this expenditure has been reviewed and all individual components seem appropriate.

NOTE: CAL has an objective to reduce administrative expenditure to 20% of income by the year ended June 1999. This will be achieved by a combination of economies of scale and increased efficiencies, in particular from already installed Information Technology.

Summary of administrative expenditure and proportion of income available for distribution to members

Year Income	\$millions	% Administrative Expenditure	% available to Copyright Owners
1991	5.0	21.8	79.2
1992	7.8	21.2	79.8
1993	9.0	24.8	75.2
1994*	10.9	24.2	75.8

* Projected amount.

24.5.1. Staff summary

Staff salary costs budgeted for the year end June 1994 are \$.9256 million (exclusive of bonuses, superannuation contributions, leave loading and other benefits. The amount inclusive of such amounts is \$1.075 million.

Numbers of staff employed in the last 4 years are shown in the table below.

Year	Full-time staff	Part-time staff
1990	7	0
1991	13	0
1992	20	0
1993	26	0

24.5.2. Premises

CAL rents appropriate premises from National Australia Trustees Ltd.

24.6. PPCA

PPCA has had a varied history. From the information reviewed it would appear that the company was poorly administered during the period to 1990. The reason for this conclusion is the overall lack of information available for that period to explain significant poor performance indicators such as:-

- the high cost of administration in the years 1984-1990 compared with the proportion of income available for distribution to members, (the declared purpose of the enterprise.)

Year	% available to Copyright Owners
1984	0
1985	24.30
1986	17.98
1987	32.43
1988	39.55
1989	47.79

1990	40.95
1991	31.87
1992	41.56
1993	47.00

- the level of bad debts was much higher in the years to 1991 than would be expected from a similar enterprise:

Year	Debt as a % of revenue
1983	4.5
1984	3.5
1985	2.4
1986	3.2
1987	2.2
1988	1.4
1989	1.3
1990	1.9
1991	2.1
1992	0.7
1993	0.04

- the high degree of interrelation of ARIA and PPCA financial transactions, especially in the area of inter company loans.

Note: This detail is impossible to derive from publicly available records such as PPCA and ARIA annual reports.

Year	Bal. owing by ARIA to PPCA at start of year	Bal. owing by PPCA to ARIA at st	IF PI fees paid by ARIA reimbursed by PP	Man. fees paid by PPCA reimbursed by ARIA	Net payment made by PPCA to ARIA	Net payment made by ARIA to P	end of year	Bal. owing by PPCA to ARIA at en
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		ar t of ye ar	C A			P C A Bal. owing by ARIA to PPCA at		d of ye ar
1982	0	0	.035	.035	0	0	0	0
1983	0	0	.008	0	0	.011	0	.019
1984	0	.019	.056	0	.094	0	.019	0
1985	.019	0	.005	0	.012	0	.026	0
1986	.026	0	.057	0	0	.031	0	.062
1987	0	.062	.058	0	.127	0	.007	0
1988	.007	0	.071	0	.209	0	.145	0
1989	.145	0	.150	0	.234	0	.229	0
1990	.229	0	.193	0	.141	0	.177	0
1991	.177	0	.265	0	.129	0	.041	0
1992	.041	0	.242	.111	.312	0	.222	0
1993	.222	0	.276	.187	0	.140	0	.007

(Table presented in format provided by PPCA. All figures in \$ millions rounded to nearest \$1000)

It is obvious, after discussion with PPCA's current executives and a detailed analysis of company records made available to the Inquiry, that the information from which to draw reasoned conclusions is not available in printed or computerised form or in the current corporate memory. (The current executives were appointed in 1990 and advised that records on take-over were poor or non-existent.)

This review has therefore concentrated on an analysis of administrative processes from 1991 to date.

24.6.1. The Business Plan

Given the very poor corporate 'health' of PPCA in the period up to 1990, the progress made since then, towards putting the company on a more business-like footing, has been good. However, there is still more work to be done to bring the administration of the company to a satisfactory level.

The strategy of the current Executive Director is to increase revenue, to 'revitalise' licensing and, to a lesser extent, to reduce costs. Whilst these are good goals, and indeed the number of licenses has increased impressively from 4000 in 1990 to 13,000 in 1994, the written corporate management plan presented to the Inquiry of **how** these broad objectives are to be achieved is poor. The plan revealed to the Inquiry, which comprises one A4 page, is little more than a mission statement and a statement of objectives. The executives state that they have the "how" part of the plan in a number of documents but not in one document. The executives refused to show the Inquiry these documents. Certainly the business plans revealed to the Inquiry were insufficiently detailed.

It was stressed many times to the Inquiry that the PPCA's budgets and targets are overseen by the Finance Committee which is made up of experienced financial controllers. They should require no less a standard than is required of them by their own controllers.

It is imperative that the Company have a have a corporate plan which details achievable, measurable tasks with target dates, cost consequences and fall-back procedures if increased revenue targets are not achieved. (See society recommendation at 24.4.) **It is recommended that the Finance Committee of the Company obtain from the executives not only budget and target documentation but also full corporate plan (including "how" details) on an annual basis.**

Such a corporate plan would form a good basis for budgeting and review of performance against subsequent income and expenditure.

24.6.2. Profit And Loss

In a review of the profit and loss statements for the last 5 years there is considerable room for improvement in at least four important areas:

- (i) The actual content of each cost line varies from year to year so comparisons, and therefore future budget projections, are difficult to identify. Also, as the composition of each cost line is not documented, changes, either for better or worse, are difficult to analyse.

Further effort be made to keep the composition of each cost line constant or at to least document the content and reason for change of each line.

- (ii) Some items included together in specific cost categories seem inappropriate. For example the "sundry account" included pirate copies of records purchased to support litigation (a cost of business), together with expenditures for courtesy flowers and birthday cakes (staff benefits). (It was stressed by the executives that the latter two items were in the correct account.

The Inquiry does not agree with this. Where such expenditures are placed in the accounts of a record company is neither here nor there, but **because of the high level of transparency required of a collecting society, staff amenities and benefits must be clearly identified rather than put into sundry or miscellaneous accounts.)**

(iii) PPCA and ARIA expenditures are very closely intermixed.

It is imperative that all ARIA and PPCA accounts are kept separately (which they are) **and all joint expenditures, where made, are clearly apportioned at the time of expenditure.**

Written documentation on the apportionment of all items must be completed, kept up-to-date and regularly reviewed by the Finance Committee.

(iv) In the accounts before 1991 it is difficult to identify ARIA and PPCA costs. Since 1991 an apportionment of costs has been made but it is not clear that the apportionment is appropriate. In some cases there is a basis for justification, such as the floor area occupied by ARIA and that occupied by PPCA. However, for example, it is not clear how 'shared' areas are treated.

PPCA must ensure that written procedures are put in place such that expenses for PPCA and ARIA are appropriately apportioned. It would also aid the executive memory and future budgeting if the reasons for the apportionment were to be clearly documented.

24.6.3. Bad Debts

The Finance Committee reviews bad debts monthly.

PPCA's provision for bad debts was clearly inadequate in the early years of the review period. However, in the last 2 years, when bad debts have been better controlled, the provision has been over conservative. Although an over-provision for bad debts has no effect in the long term, in the short term it serves to withhold funds that could otherwise be available for distribution earlier.

Year	Actual bad debts	Provision for bad debts as shown in balance sheet
1983	.018	.0
1984	.019	.0
1985	.012	.0
1986	.017	.017
1987	.017	.010
1988	.013	.023
1989	.016	.038
1990	.027	.050

1991	.035	.066
1992	.013	.060
1993	.001	.054

All figures given in \$ millions rounded to nearest \$1000.

PPCA must ensure the provision for bad debts is in line with current experience.

24.6.4. Administrative Costs In Proportion To Funds Distributed To Members

PPCA's administrative costs are still high in proportion to funds distributed to members.

SUMMARY OF ADMINISTRATIVE EXPENDITURE AND PROPORTION OF INCOME AVAILABLE FOR DISTRIBUTION TO MEMBERS

Year Income	\$millions	%Admin Expenditure	% available to Copyright Owners
1984#	0.506	100.00	0
1985#	0.394	75.70	24.30
1986#	0.489	82.02	17.98
1987#	0.704	67.57	32.43
1988#	0.977	60.45	39.55
1989#	1.192	52.21	47.79
1990#	1.345	59.05	40.95
1991	1.616	68.03	31.87
1992	1.806	58.44	41.56
1993	2.224	53.00	47.00

Possibly understated by investment income.

NB: These figures differ from published figure in that they include income from interest.

The % available to copyright owners in the above table is possibly lower than given in the table. Only the 1993 figure has been reconciled fully.

Even though the strategy of PPCA's executive is to increase revenues such that the proportion of expenses is lowered, and understanding that it is often necessary to 'spend money to make money', it would seem that administrative expenses could be reduced.

It is recommended that PPCA makes an effort to reduce administrative costs to 30% of revenue in the 1995/96 year. This will only be achievable if PPCA stops paying the IFPI fees on behalf of ARIA and if the Company achieves its present 10% target (to be achieved without changing the IFPI arrangements). (NB: By the Company's own figures, eliminating the IFPI payment would reduce the

administrative costs to 39.9%. Thus the company's 10% reduction target, together with non-payment of IFPI by the Company, would achieve the 30% goal.)

(As recommended later in this Report, if the artificial 1% ceiling is lifted, the Company calculates that administrative costs will be reduced to approx 10%).

Once PPCA has developed an appropriate business plan and an achievable budget, staff duties will need to be reviewed to fit the plan and individual duty statements including quantifiable, measurable personal goals be set by negotiation with staff. It is understood that staff do have duty statements but it is imperative that these are consistent with the corporate strategic plan and budget. A process of continuous staff appraisal and regular formal performance reviews against target and a set of written procedures which document PPCA's business processes will complete the administrative process. Again, it is understood that elements of this procedure are in place. The need now is for consistency with well documented plans. **It is recommended that personnel and administrative procedures are put in place consistent with higher levels of corporate plan.**

24.6.5. Inter-relationship Between ARIA And PPCA

There has been much comment, both publicly and in this Report, about the financial and administrative interrelations between ARIA and PPCA. The Executive Director of PPCA is also Executive Director of ARIA and several staff serve both enterprises. Office space and many administrative services are shared. Although it would seem likely that before 1991 the division of costs and duties between the enterprises was not 'fairly' apportioned and it was highly likely that ARIA was the beneficiary of that arrangement, it is equally clear that the current Executive Director of PPCA is making every effort to fairly apportion costs. There are two significant areas where it is considered that improvement should be made:

- (i) Currently, PPCA pays the annual subscription to the International Federation of the Phonographic Industry (IFPI). "The main objective of IFPI is to promote, defend and develop the rights of its members.... IFPI represents the sound and video recording industries in dialogue with governments, international organisations and other similar bodies." Source: IFPI promotional material.

The amount paid by PPCA in the period 1982-1993 as shown in the table of inter-company loans, column 4, is around \$1.416 million. Indeed, it would appear that in the years 1983 and 1985 part of the IFPI fee was paid by ARIA.

In 1993 the subscription paid to IFPI was \$.276 million. The amount is likely to increase in 1994. It is the opinion of this Review, given the low proportion of income to members, there is a real question whether it is appropriate for PPCA to pay the IFPI membership fee for ARIA. If PPCA's expenses to distribution ratio were better, the matter might not be of such significance but this is not the case. The Company's rationale for the current arrangement is that the IFPI has agreed to spend the money "in the Asia-Pacific market to establish copyright laws obviously including public performance and broadcast laws and eradicate piracy. IFPI also promotes the improvement of the international conventions such as the Rome And Phonograms

Convention, to establish new rights such as broadcast/communication and anti-piracy rights for the benefit of record producers and thus performers. Indeed, one of the most realistic ways that we are to obtain better broadcast or public performance rights in Australia will be through the initiatives of IFPI with the WIPO secretariat. Additionally, the IFPI Groups in the Asia-Pacific region, such as IFPI Hong Kong and Singapore, have set up the equivalent of PPCA and do pay, to licensees of Australian repertoire in those territories, public performance and broadcast income relevant to the exploitation of Australian materials in those territories."

It is strongly recommended that PPCA establish a dispute resolution mechanism to resolve whether PPCA should have paid and should continue to pay any of the IFPI fee and if so, what proportion.

The committee which decides this should be made up of the two artists representatives, the representative of the Managers Forum, a senior staff member and the Company Chairman. Given the inherent potential for conflict of interest in this decision it is important that persons directly connected with ARIA have the ability to inform the decision but not determine it.

This decision should be reviewed annually in accordance with the proportion of IFPI work in the Asia-Pacific region that is directly related to performance and broadcast rights as opposed to the other rights of phonogram producers and performers.

It is further recommended that no further IFPI payments be made by PPCA until such process is completed.

(ii) The PPCA Executive Director has a much higher profile as head of ARIA than as head of PPCA. Indeed ARIA has a much higher profile than PPCA. This serves to reinforce the generally held opinion that he and his staff spend most of their time promoting ARIA whilst PPCA bears their costs. This is used (unfairly) as a "reason" why PPCA distributions to members are very low when compared with other collecting societies.

It is recommended that the PPCA Chief Executive makes every attempt to publicise PPCA and his role as Executive Director of both PPCA and ARIA.

Loans between PPCA and ARIA are difficult to follow through the annual accounts. Further detail of inter-company loans was provided. This showed that at the end of the review period PPCA owed ARIA \$6,894.

A letter from PPCA's auditors dated 28th March 1994 states that all inter-company loans between PPCA and ARIA have now been repaid. In his covering letter on this issue, the Executive Director of PPCA stated "There are no projects on hand now or in the foreseeable future where ARIA would seek such loans and, in any event, such loans would be subject to PPCA board approval (which board now includes artists and artist management)."

It is strongly recommended that the complex inter-company loan situation between PPCA and ARIA built up over the past 10 years not be allowed in the

future and that amounts are repaid as they occur, or at least at the end of each month.

24.6.6. Staff Costs

Staff salary costs budgeted for the year to June 1994 are Numbers of staff employed in the last 5 years are shown in the table below. Comparison with the other societies shows these to be high for the nature of the company and the amount collected and administered.

STAFF SUMMARY

Year	Full-time staff	Part-time staff
1989	6	0
1990	7	1
1991	8	2
1992	7	3
1993	9	4

The salaries of the following staff are paid in part by PPCA and in part by ARIA as shown. The Review makes no comment as to the appropriateness of these proportions. (The effect of the artificial ceiling on income has been noted elsewhere.)

Position	% PPCA	% ARIA
Executive Director	50	50
General Manager	85	15
Administration Man	80	20
Secretary to Exec Dir.	50	50
Secretary to GM & AM	80	20
Receptionist	50	50
Lic Dept. Manager	100	0
6 Clerks		
(some part time)	100	0

24.6.7. Premises

PPCA rents the 9th floor and part of the 8th floor of 263 Clarence Street.

Subtenants are:-

- The Australian Electronic Retail Ordering System Pty Ltd
- The Australian Record Industry Association
- Music Industry Piracy Investigations

There are no sub-tenant leases in place. Rent is determined on the basis of floor area occupied.

At least a memorandum of understanding should be entered between the companies to cover the sub-lease cost reimbursement procedure.

24.6.8. Abnormal Item

As mentioned under the administrative costs for AMCOS, the formation expenses of PACCS, (The Private Audio Copyright Collecting Society) were shared between AMCOS and ARIA. Although an analysis of ARIA accounts and expenditures is outside the terms of reference of this Inquiry, because of the close inter-linking of ARIA and PPCA accounts, and the significance of the amount, well in excess of \$.350 million, assurance was sought from PPCA that any expenditure on the establishment of PACCS by PPCA has now been repaid by ARIA. That assurance was provided, in writing, and it is in accord with the current status of inter-company loans as outlined above. Findings are that there is a high degree of certainty that any such payments made by PPCA have been repaid by ARIA in the years 1991-1993. However, such assurances cannot be given by the Inquiry for the period before 1990.

24.6.9. Further Reporting

During the course of the Inquiry there have been many discussions with PPCA executives about ways in which the administration of the Company might be improved. The Company has been made aware of certain problems that were not appreciated by it, prior to the Inquiry process.

The Chief Executive and General Manager of the Company suggested that, in an effort to achieve greater transparency, the Company was prepared to provide voluntary annual reports to the Attorney General's Department, in the same manner and to the same level of detail as the Declared Societies.

It is recommended that the Government seek a written undertaking from PPCA to make voluntary annual reports and that the undertaking expressly require the Company to confirm that the further written documentation/plans required in this Chapter 24, have been done and approved by the board.

24.7. RECOMMENDATIONS

- That the Government seek a written undertaking from PPCA to make voluntary annual reports and that the undertaking expressly require the Company to confirm that the further written documentation/plans required in this Chapter 24, have been done and approved by the board.

25. LONG TERM FINANCIAL INVESTMENTS AND ARRANGEMENTS

25.1 THE PRINCIPLE

25.2. OWNING PREMISES

25.3. RESERVES

25.4. INDEMNITY FUNDS

25.1 THE PRINCIPLE

It is a recurrent theme of this Report that all collecting societies must implement procedures which ensure that members of today do not subsidise members of tomorrow. Where money that would have been available for distribution is spent on long term investments or other arrangements, members have a right to ask, "What arrangement is being made so that I am not deprived of my rightful share of the distribution?"

For example, in the late '80s, APRA bought a small building of commercial offices for an investment. Some might say that a society has no business being in the real estate rental industry, others would say that the Association controls an enormous amount of money at any one time and that it is prudent financial management to invest it in a manner likely to maximise its value to members.

The fact that the building was bought at the height of the real estate boom and that its value subsequently decreased considerably, together with the difficulty of obtaining commercial tenants during the recessionary period, is merely an example of the dangers of any speculative investment. No criticism is made of the fact that the investment lost money. The question is a larger one than that.

The members who were to receive distributions in the year of purchase were, in effect, deprived of a proportion of their income. When the investment is eventually realised, what arrangement will or can be made to ensure that they are compensated for that loss of income? When an investment such as this losses money over a period, those losses are met by those who are members in the year of the loss. How are or can they be compensated, when the investment eventually turns a profit? Is it really a lottery that simply benefits those who happen to be members at the time that the investment is realised?

It must be stressed that the Chief Executive and Company Secretary are determined that the Association will never again enter such investments. The reason of choosing the example of the APRA investment is merely that it is a useful, and already well-known, example of a difficulty that can potentially face all organisations that have a flux of membership.

25.2. OWNING PREMISES

As shown in Chapter 25, only APRA owns its own premises. This is not necessarily a matter of criticism. Indeed, it is the dream of many non-profit organisation to own its own premises and smote the problems of ever-escalating rents. The question is the same as that posed above. If several million is paid for a building in one year, how does that affect the distribution otherwise receivable by the members in that (and subsequent) years?

25.3. RESERVES

It makes very good corporate sense for any company, whether a collecting society or not, to hold reserves to ensure its survival in the event of unfavourable contingencies. Some of the comments made to the Inquiry suggested that it was somehow improper that collecting societies should maintain capital reserves rather than distributing as much as they could. This view is short-sighted.

It has been a criticism of CAL that it retained high levels of income in its early years. It is the finding of this Inquiry that this retention was well-advised until the board could be sure that the Society's future was certain. Now that it is so, the Society is distributing the reserves over a full sample cycle. Again, this is an example of the general criticism that future recipients of distributions receive a wind-fall at the expense of past would-have-been recipients.

25.4. INDEMNITY FUNDS

The point made above, need not be laboured. If the society provides on-going indemnities for users, maintaining an indemnity fund is a sensible precaution. It is appropriate for any self-insurer to take such precaution. That said, the societies must strive to implement mechanisms whereby the sums retained for indemnity purposes are fed back to the correct owners after a set period. The principle may be likened to that which underlies the royalty retention system used by record companies to protect themselves from paying artist royalties in respect of records that are returned.

26. THE USE OF INFORMATION TECHNOLOGY BY AUSTRALIAN COLLECTION SOCIETIES

26.1. GENERAL FINDINGS

26.2. COMMENTS

26.3. STRATEGIC PLAN

26.4. STAFFING

26.5. SECURITY AND BACKUP

26.6. CAPACITY PLANNING AND BUDGETS

26.7. TRAINING AND DOCUMENTATION

26.8. QUALITY OF SERVICE

26.9. REVIEW OF COLLABORATIVE DATA BASES AND I.T. SERVICES

Each of the five major collecting societies were visited to determine their use of Information Technology. After the initial visits and talking at some length with staff

responsible for the computing within each organisation, the specialised Information Technology requirements were determined. Factual data on computer usage was decided to be best collected from a survey of Information Technology usage, designed by the review committee and answered by people from each Society.

Substantial effort went into creating a survey which would highlight the extent that technology was seen as part of core business, what budget priorities existed, what investment had been made in technological infra-structure (hardware, software, people and networking), as well as probing various aspects of "good management" practice. With respect to the latter, issues of security, organisational backup, staff training and user satisfaction were addressed.

The optimal result from the survey was to get the Societies to respond to questions on all the above issues in a simple way that would provide accurate answers. The survey was designed to "catch" issues that were missed in the initial meetings, and to cross reference each Society's use of Information Technology with the current understanding of their organisational needs.

26.1. GENERAL FINDINGS.

The most important finding from the investigations was that the Societies saw that Information Technology (IT) was critical to their operation. Most had invested in quality equipment and personnel to maintain their computing systems. All had an ongoing commitment and annual budget to support their IT operations. This differed from the frequently held misconception that IT was a peripheral tool in the societies. Rather, the truth is that each Society is a data processing operation, addressing the needs of legal contracts and producing accounting results.

The investigation examined whether each society was managing its IT areas well, whether their investment in data was secure and whether each society effectively uses IT to address the needs of its members. It was considered whether there has been a sufficient investment in IT, whether it is configured to make use of national and international networked information resources, whether the commercial operation is kept secure and whether each society monitors the quality of IT service they provide. A comparative view of the results for critical IT activities is listed below.

Society	IT Staff	IT Budget	Network	Security	Service Levels
APRA	5	Annual	No	Excellent	Self-regulated
AVCS	0	Annual	LAN	Good	None listed
AMCOS	3	Annual	LAN	Excellent	Self-regulated
CAL	2	5 year plan	LAN	Excellent	Self-regulated
PPCA	0	Annual	No	Good	Self-regulated

26.2. COMMENTS

Of all societies surveyed, CAL have the strongest IT operation in place and have a clear strategy of organisational development. All Societies had invested in equipment and software appropriate to their current needs, though there was a common thread that "if we invested more in IT then we could collect more in royalties". The factor which was not clear from any of the societies, was how to determine how much to invest in IT (or how many royalties to attempt to collect) as the classic problem of "diminishing returns" becomes a limiting factor in determining the appropriate level of IT investment.

No organisation had connected to AARnet to make use of information bases (eg. Library catalogues or international music/film publishing databases) or to exchange information, though AMCOS and APRA are investigating whether a joint venture database is economically feasible. Future use of AARnet by CAL, AVCS and AMCOS is under consideration at this time. AMCOS was actively pursuing AARnet access and is probably connected to the international network by now.

Whilst the societies all worked towards collecting royalties for their members, all had developed their IT operations independently. The chance of being able to exchange data easily between societies pursuing similar goals is not ruled out, but will require planning quickly if this is a joint objective. Already most societies have substantial investment in specific databases and data formats to suit their specific needs. As investment in individual projects continues, flexibility to adapt existing systems to adopt or supply data to other societies will diminish.

The basic fact that no common index exists to uniquely identify work between societies, let alone between societies across countries, means that urgent attention is required to stop divergence and duplication of database efforts. It is recognised that this would be an enormous task.

All organisations realised that their databases were critical to their survival. To this end, the societies employed reasonable care with backup practices. All systems employed password protected user accounts, though only two (APRA and CAL) stated that they utilised password ageing to automatically expire their system's security passwords. Whilst operations remain confined "in house", existing security measures are adequate.

26.3. STRATEGIC PLAN

All organisations should have their IT staff write their own mission statement. There should then be discussions how the role that the IT staff sees matches the organisational goals that are set by the chief executive. This is worth doing regularly to ensure that IT efforts continue to be focussed on primary organisational business goals. The rate of change in the IT area is such that technological leverage to solve problems needs constant review.

The idea of developing IT systems to be able to collaboratively share data, or to have one computing centre providing IT services to several collecting Societies should be discussed in open forum. For this to be effective, each Society will

require careful organisational strategic review to ensure that core business interests are protected, whilst attempting to maximise economies of scale arising from collaborative efforts.

The absence of a strategic plan from most societies implied that to date each society operated on a solitary basis, adopting new technologies upon demand of the internal users. This is sub-optimal because IT areas can easily get warped away from primary organisational goals through incremental decisions which appear reasonable in isolation.

Therefore, there exists the need for an organisational IT strategy for each society, which is reviewed annually in conjunction with the entire organisational strategy. The importance a strategic plan to ensure continued growth and a smooth development path cannot be over stated.

26.4. STAFFING

AVCS and PPCA must look seriously at appointing someone to be responsible for maintenance and development of their IT operations. There is a need for a single person to take responsibility for IT issues in each society. AVCS seem to share the responsibility across existing staff and PPCA use external contractors to good effect, however whilst data processing is critical to core business, it is prudent to ensure that at least 2 people understand the systems design, can keep the system operational in the short term and have a relationship the organisation which is long term. The risk of losing the entire IT staff, either through resignation or misadventure, must be managed and minimised.

The recurrent education of key organisational personnel in the IT area should be budgeted for, probably on a bi-annual basis to ensure technological advances are learnt and incorporated into the organisation as appropriate.

26.5. SECURITY AND BACKUP

It is recommended that all organisations adopt an internal practice of changing user passwords on a 30 day interval. Ex-employee accounts should be immediately made secure by application of a new password. All issues of security and database access be thoroughly checked by every organisation before connecting to any external network, especially AARnet.

Although backup procedures described for all societies was thorough, **off site archives of databases and on site use of fire resistant storage for backup media should be employed.**

26.6. CAPACITY PLANNING AND BUDGETS

When IT is recognised to be core business, it is essential that budgeted expenditure appear before the organisational executive and that an indication of capacity expansion accompany the budget to keep the board abreast of real costs in the IT area. **It is recommended that a detailed annual budget (as is done by all societies now)**

but with a 3-5 year projection of cost areas - depreciation - new purchases etc. be included in reports to the board. The budgets will be supported by the strategic IT plans. Board members will then be able to see current costs and future projected costs, whilst understanding the strategic directions intended.

26.7. TRAINING AND DOCUMENTATION

The importance of systems documentation, if only to leave an audit trail in case of disaster, needs more attention by all organisations. Whilst it occurs, it is generally reported as "at the direction of the User" etc. **A central reference point for all organisational documentation should exist which holds a master copy of all materials. This should be the responsibility of a single person and the organisational executive needs have confidence that any aspect of the operation could be learnt from reference to the documentation stored.** Much of this need not be locally written except where an application has been written specially and is probably therefore unique.

26.8. QUALITY OF SERVICE

Most responded that the organisation was small enough to cope with service issues on the spot. Whilst this is good service, it does not allow for users to sit and put on paper what they would like changed to improve quality. The issue here was not *maintaining* existing service levels, rather asking for suggestions of how to improve the existing service levels. It appeared that no organisations had asked their members/clients what could be improved in the service levels currently offered. This should be addressed, probably in conjunction with the next dividend distribution and could be as simple as a short 1 page, 3 - 5 question survey to ensure that members expectations are being addressed.

Feedback from members on levels of service expected is important to keep IT focussed on the goals which are not only important to internal staff, but are also important to the Society members.

26.9. REVIEW COLLABORATIVE DATABASES AND INFORMATION TECHNOLOGY SERVICES.

There is undoubtedly scope for some societies to share databases, probably share basic equipment and also share the cost of computing staff to keep systems operational. The issue of sharing what at first glance appears to be operations and data critical to each business is not too far fetched to be easily dismissed. Economies of scale in shared resources would mean that IT would cost each society less, thus allowing them to collect more material at current cost levels and in turn allow the return of greater dividends to their members. Thus, this is one way of addressing the issues of diminishing returns experienced by all societies.

The second advantage is that collaborative IT services should reduce the risk of being dependant upon a single person for the operational stability of the entire organisation. With a larger IT department servicing more than one society, the investment in a

larger IT staff will allow for skills sharing between computer staff. This is not possible in the current small computer areas of individual societies.

Having databases built around a uniform system would allow each participating society to search for references on a wider scope across multiple databases as required. Access to a national collection of copyright references across all sections of the industry, must be more beneficial in tracking royalties payable to individual members than the disjoint current arrangement. Note that this is NOT a concept of a single database, but rather a collection of databases, as required, centrally administered and available to all.

The end result of this is to out-source the IT functions around data entry, storage and manipulation. This would allow each society to then concentrate on the business of royalty collection, free from the issues of technology, but remaining in control of funding and service levels provided by the IT service centre.

So the major advantages with the collaborative approach would be in reduced costs, reduced risk and ability to search on a wider scope without having the ongoing responsibilities of IT management.

The start-up costs for the above are significant. Major costs would stem from the differences inherent to each society and their established market niche. However the problems are solvable, (in fact have already been solved by each individual society) and the concept of centralised services are not new to the IT industry. The issues arising from a centrally administered resource, critical to an organisation have been successfully resolved (eg. company payroll / account out-sourcing) for some time. Assurances would be required to protect ownership of data and current investments.

The real issues are whether the cost of establishment for a centralised national database service would return sufficient benefits to be worth pursuing. **An open forum discussion on this topic would be a first low cost step in a feasibility study.**

27. MERGER OF SOCIETIES - ARE THERE TOO MANY?

27.1. STRUCTURAL AND FUNCTIONAL VARIANTS

27.2 MERGER OF PUBLIC PERFORMANCE RIGHTS

27.3. MERGER OF MUSIC COMPOSITION INTERESTS

27.4. CO-OPERATION NOT FUSION

27.5. OWNERSHIP OF THE SOCIETIES

27.6. COLLABORATIVE VENTURES

Users of copyright who must seek licences from the relevant copyright owners (or the societies that represent those owners) often voice their discontent as to the difficulty of dealing with disparate owners and societies, and call for a streamlining of that process.

One must ask whether the present system of maintaining several independent collecting societies is administratively efficient, in other words, whether the rights presently administered by the societies would be just as (or more) efficiently administered by combining one society with another. One must also question whether the alternatives are practicable.

It is the answer to the latter question that really determines the issue.

27.1. STRUCTURAL AND FUNCTIONAL VARIANTS

Overseas collecting societies display a wide range of structural and functional possibilities. The possibilities may be summarised as follows: The societies may:

- (i) represent one right, and only one class of owners relevant to that right;
- (ii) represent one right, but all owners relevant to that right;
- (iii) represent one category of rights, but only one class of owners relevant to those rights;
- (iv) represent one category of rights, but all owners relevant to those rights;
- (v) represent several categories of rights, but only one specific type of right owner; or
- (vi) represent several categories of rights, and all owners relevant to those rights;

The society may also be, in effect, a joint venture of separate societies which band together for discrete, mutually advantageous purposes but maintain separate identities for all other purposes.

Perhaps the greatest determinant of society type, is 'accident of history' - social, political and technological. It is really only in countries in which copyright is newly introduced, that one has the opportunity of creating a collective administration based on rational principles of efficiency.

As was shown in Chapter 3 of this Report, the Australian societies have developed in a piecemeal fashion over many years, in response to different needs and as the initiative of various pressure groups. As a result, it is no wonder that they reflect a wide range of structures, functions and interests. For example, using the categories provided above, they may be described as follows:

AMCOS: Type (iii)

APRA: Type (ii)

AVCS: Type (ii)

CAL: Type (ii)

PPCA: now Type (ii) but was, until recently, Type (iii)

Although the above classification of the local societies may be subject to some debate, it is clear that none of them are Types (iv), (v) or (vi). It is the latter groups which make up the "super-societies" which exist in some overseas countries. It is also these latter groups that copyright users would prefer (particularly those in the newly emerging multi-media industry) as they are more likely to be able to offer a "one-stop shop" for licensing.

Accordingly, the existing societies were examined as to the possibility of efficient and compatible merger.

27.2. MERGER OF PUBLIC PERFORMANCE RIGHTS

One possibility for merger would be APRA with PPCA, as both license public performance rights. (This would create a type (iv) society.)

Neither is interested in such fusion and each represents a group of owners with separate legal and commercial interests. Certainly the experience of those European societies which collect both rights, is not a particularly happy one. (In Europe, there would appear to be a belief amongst the sound recording copyright owners that the writer/publisher interests dominate the collecting organisations and tend to treat them as "second class citizens" and that the publisher/composer interests are in essential conflict of interest with those of the record companies.)

There is no real likelihood of fusion between APRA and PPCA. The likelihood of record companies wanting to be a part of an organisation with publishers and composers on the board, is at best, remote. On the other hand, the publishers and composers would fear that their interests would be dominated by those of the record companies. Why would the membership of APRA wish to merge at this stage given the very sophisticated operation already working on their behalf. Merger happens between societies when members see mutual advantage. It is not driven by user convenience.

27.3. MERGER OF MUSIC COMPOSITION INTERESTS

The more obvious possibility for merger is AMCOS and APRA because they essentially represent the same sectors of the industry. (This would create a type (v) society.) Certainly, in some other countries, the mechanical right is also administered by the same organisation that administers the performing right.

It would be technically feasible for APRA to administer the mechanical right in musical works, but it would require:

- (a) a policy decision on the societies' members in favour of such a change (which is, at the moment unlikely);
- (b) significant changes to computer systems in order to administer the right in accordance with industry standards.

The factors in favour of such a move are probably a saving in overheads such as office accommodation and computer hardware, together with a marginal saving in

staff costs. An intangible factor in favour of the move is probably a reduced level of public confusion about the role of collecting societies.

One factor working against such a proposal is undoubtedly the short term cost of integrating mechanical right licensing and distribution systems onto the APRA platform.

As discussed elsewhere in this Report, AMCOS and APRA are increasingly sharing information and resources but it is unlikely that a complete merger would bring significant economies to the operations of either organisation. In brief, given that:

- the societies cater to different user groups;
- the rights administered are completely different;
- those rights are owned by different parties; and
- mechanical right royalties and performing right royalties are licensed and accounted for in different ways.

None of these factors however, would prevent merger if the members of both societies so wanted. But is it desirable, anyway? Fusion would only result in a larger administration, and a more powerful, monopolistic, control of rights. Certainly, the European societies which administer both the reproduction and performing right have become large bureaucracies and are no longer models of efficiency.

27.4. CO-OPERATION NOT FUSION

There is a reasonable level of co-operation between the societies. As noted elsewhere, APRA provides log functions for PPCA, AVCS' distribution to music copyright owners is effected through AMCOS and PPCA, and AVCS' and AMCOS' sampling in educational institutions is conducted largely by CAL. (It is also foreshadowed that VISCOPY would contract CAL's services for this purpose.)

There is no inclination within the societies to merge, as opposed to co-operate. Given that each collecting society represents different copyright owner groups and different rights this is hardly surprising. It is valuable that each group of rights owners have an organisation that represents its particular interests.

As to the members interests, it is the experience of the multi-right European societies, that there would be the possibility of subjugation of one group of rights owners over a smaller group, conflict between members as to the size of distributions made to each class of membership and the possibility of cross-subsidies.

As to the public interest, this is more likely to be served if such conglomerations are avoided. Such "super-societies" would be likely to have bargaining power which is unduly in excess of the sum of their parts and this would have important Trade Practices disadvantages.

That said, as discussed in the previous chapter, there is considerable scope for increased Information Technology co-operation. Given the already foreseeable demands of the multi-media industry, this co-operation may not only be efficient, it may well become essential.

27.5. OWNERSHIP OF THE SOCIETIES

The other feature that must be remembered when gauging the practicability of society merger is that the societies are independent legal entities controlled by their members. Unless the Government were to undertake a most radical upheaval of the present law, there is no way that the societies can be forced to merge - or even co-operate. They do co-operate, when and if they perceive it to be in the interest of their members. That said, societies exist for the efficient administration of rights on behalf of the rights owners; they do not exist, as a primary purpose, to promote the interests of the users of those rights. That, is a desirable but merely secondary effect.

27.6. COLLABORATIVE VENTURES

Although society mergers are unlikely, it is certainly desirable that societies give thought to the ways that greater inter-society co-operation might improve the complexity and expense of the present licensing system. These possibilities would certainly be increased if the societies were to co-operate in the development of collaborative Information Technology services to achieve a collaborative data base. (See section 26.9 of this Report.)

Once there is a collaborative data base, it is a very small step to collaborative licensing. Both of these things would achieve real efficiencies for users of copyright although there would undoubtedly be substantial costs in establishing such a venture - a cost that presently would have to be met by the rights owners, not the rights users. The owners will have to be persuaded that the long term efficiencies would make such a changes cost-efficient. That is a matter for a separate study.

28. ROLE OF SOCIETIES IN PROMOTING LAW REFORM AND FORMULATION OF GOVERNMENT POLICY

- 28.1. AMCOS**
- 28.2. APRA**
- 28.3. AVCS**
- 28.4. CAL**
- 28.5. PPCA**

All of the societies, except the PPCA, recognise that they have an important role in representing the interests of their members and potential members, in promoting debate on law reform issues and making representations to Government and related authorities.

28.1. AMCOS

AMCOS has played an important role in lobbying for retention of the import provisions of the Copyright Act; in lobbying and designing legislation to implement a blank tape levy to compensate copyright owners for lost revenue from home taping; and working for legislation to control CD Rental. It has also been working with the Department of Foreign Affairs and Trade to implement stricter copyright regimes throughout the region promote respect for copyright.

Recent submissions made on behalf of music publishers include those to the Copyright Convergence Group; to a request by the Attorney-General's Department on the question of the US government's proposal to postpone the meetings regarding the proposed Protocol to the Berne Convention and the Possible Instrument for Performers; responses to a submission made by the National Council of Libraries and Information Services to amend the Copyright Act; and to proposals put by the Australian Tape Manufacturer's Association.

28.2. APRA

As befits its responsibility as the largest collecting society and the representative of the largest number of rights owners, the Association plays an active role in the determination of government policy in areas relevant to the interests of its members. It does this by way of submissions to relevant government departments and inquiries, and by maintaining an on-going dialogue with government officers.

For example, it has made submissions to government, or to relevant inquiries, on the subjects of:

- the Blank Tape Royalty
- parallel importation rights
- moral rights
- rental rights
- convergence with communications technologies

28.3. AVCS

The Society has made submissions on the following issues in the current financial year:

- To the Attorney-General's Department on copying of audio-visual works in libraries, in response to the submission of the Australian Council of Libraries and Information Services (ACLIS);

- To the Minister for Justice and relevant members of Federal Parliament in all political parties on the need to urgently pass the Copyright Amendment (Re-enactment) Bill;
- To the Minister for Justice on the copying of audio-visual works by government departments and more generally for the services of the Crown; and
- To the Copyright Convergence Group on the implications of new technologies for copyright industries.

AVCS hosted a public meeting in May to discuss the need for a blank tape levy to compensate owners of copyright in audio-visual works for domestic copying.

28.4. CAL

CAL's role is not limited to licensing, collecting and distributing fees, but extends to promoting copyright law reform in areas relevant to its members.

One of the reasons for CAL's establishment in 1974 was to provide a united voice for authors and publishers in protecting their rights. CAL perceives an important element of its role to represent its members in consultations with government and in pressing for amendments to the Copyright Act that promote its members' interests. Examples are the amendments to the Act in 1989 introducing Part VB. More recently, CAL has been involved in negotiations with the Government in relation to the amendment of s.183 of the Copyright Act to provide the option of a sample scheme for government photocopying, submissions to the Copyright Convergence Group, and submissions in response to those made by ACLIS (Australian Council of Libraries and Information Services) to amend the Copyright Act.

28.5. PPCA

The Chief Executive of PPCA is aware of the range of issues relevant to the Company's licensing base and the welfare of the relevant rights owners. The principal issues of focus for the Company are: the lifting of the 1% ceiling on the fees that PPCA can charge; the impact of new technologies; and anomalies in the Copyright Act (including issues relating to protected-non protected recordings, the playing of radios in public places and the synchronisation of recordings in film).

29. EDUCATIONAL ACTIVITIES

29.1. EDUCATIONAL ACTIVITIES UNDERTAKEN AND PLANNED

29.1.1. AMCOS

29.1.2. APRA

29.1.3. AVCS

29.1.4. CAL

29.1.5. PPCA

29.2. CONCLUSION

29.1. EDUCATIONAL ACTIVITIES UNDERTAKEN AND PLANNED

Since their earliest days, collecting societies have always played an educational role. Sometimes this role is merely within the industry sector in which their relevant rights are created, and sometimes this commitment is made to a wider sector. In general, such educational activities are to be welcomed for they benefit not only members, but also all owners and users of the relevant rights and indeed, the public in general.

Each of the societies, with the exception of AVCS and PPCA have embraced the need to provide educational programs. Certainly those provided by AMCOS, APRA and CAL are extensive, not only in quantum but also in geographical coverage. AVCS and PPCA are both young societies and have had more pressing establishment priorities, but both now should be in a position to tackle this role to the benefit of the owners and the users of their relevant rights.

29.1.1. AMCOS

AMCOS is viewed by the public as the first point of inquiry for issues involving the reproduction of music. Hundreds of telephone and written inquiries are dealt with each week.

The external educational activities of the Society include:

(a) Public speaking and liaison

- Speaking at music industry seminars, colleges of advanced education, universities and conservatoria, media colleges, film schools and providing workshops at national music festivals.
- The production music department at AMCOS visits clients such as television stations, radio stations and recording facilities on a regular basis. The production music department has also been directly involved in speaking at various music industry functions and organising industry-specific seminars. For instance, APRA and AMCOS were involved in holding a joint seminar at the APRA offices in August 1991 where more than 40 television stations from around Australia attended.
- The print music consultant also conducts a national training program for schools and other music users. This usually coincides with attendance at AGB McNair training sessions for sample schools. This year, he is also a guest speaker at seminars to be held at various state capitals conducted by the Australian Copyright Council on music and copyright and copyright for choirs, orchestras and ensembles.
- Numerous conference papers are presented by society staff and articles on copyright and AMCOS are written for newsletters of industry publications.

- AMCOS has organised Print Music Trade Fairs for educational users (Brisbane 1989, Sydney 1990 and Perth 1991).

(b) Educational literature:

The society publishes an extensive number of information brochures and packages which are distributed to the public free of charge.

- In the audio and/or video reproductions area, publications include: Mechanical Copyright Application & Guide; Import Application & Guide; Special Event Video Licence & Guide; Information for Churches; Information for Dance Schools; Guide to Music Reproduction & the concept of copyright.
- The production music department has produced literature regarding copyright obligations and reporting procedures in response to the needs of clients and potential users.
- The Print Committee of AMCOS has prepared copyright guidelines on the use of sheet music for a wide range of music users. These guidelines are similar to the "Code of Fair Practice" published by the UK Music Publishers' Association in that they seek to give a practical interpretation to fair dealing principles in photocopying sheet music. These, together with the booklet "Music Copyright for Schools", which explains the AMCOS schools agreements and other music copyright issues for schools, are distributed nationally free of charge. AMCOS also deals with hundreds of general telephone inquiries about print music copyright each week. They undertake copyright research for the general public, usually free of charge, and refer people requiring permission to the relevant publisher.
- There is also print & reprographic right information relating to: Amateur Musical Societies; Eisteddfods; Music Students; Private Music Teachers; Sheet Music for Choirs, Churches and community groups; Sheet Music for Orchestras, bands etc; Reprographic Licensing Agency List; Copying for liturgy under the educational licences.

These guidelines are regularly updated and guidelines on other topics are being prepared.

29.1.2. APRA

The Association runs seminars and workshops for its members regularly in all state capitals and throughout New Zealand. The Association also publishes a newsletter to its members and helps with other educational functions run by organisations such as the Australian Guild of Screen Composers. These activities are in addition to the normal day-to-day activities of the membership department. (It was noted in that regard that the department currently handles between 30 and 50 telephone inquiries per day from members or applicants for membership.)

The Association provides no formal educational activities for non-members but has expended a total of \$129,000 over the past 5 years in running seminars and workshops for its members.

29.1.3. AVCS

In the very early phase of its operations the Society hosted a meeting in Sydney and one in Melbourne and spoke at a small number of meetings organised by industry associations. The members of some industry bodies were contacted directly by mail and articles describing the Society's operations were prepared for various newsletters. The educational activities were on a very small scale.

The Society then narrowed its focus and concentrated on identifying potential claimants and contacting them directly. Priority was given to explaining the scheme to beneficiaries presently entitled to the funds held on trust - over general education programs to the industry at large.

The Society does, however, accept occasional invitations to speak at seminars and workshops, notably the series of seminars conducted by the Australian Copyright Council.

As the Society has had to focus its attention upon the establishment of proper facilities for the operation of the broadcast copying scheme in the earlier years, it is understandable that it has not had the time or staff resources to provide a comprehensive program of educational seminars or events for its members and non-members. This is an area of service that the society must now look at developing.

29.1.4. CAL

CAL both undertakes educational activities itself, and funds other bodies to undertake such projects. It requires the bodies to whom it provides funding to undertake projects of benefit to authors and publishers generally, not only to CAL's current membership because it expressly recognises that as a young society, its membership is not yet completely representative of its constituency.

CAL has provided funding for a large number of educational activities in the last five years. Most of these have been undertaken by bodies such as the Australian Society of Authors, the Australian Book Publishers Association and the Australian Copyright Council. These organisations make an annual report to CAL on the use of their funds. CAL has strict criteria for these funding purposes.

It is useful to note that one of the Society's recent projects was the Sampling Seminars for Members. These seminars were held as a consequence of members' misunderstanding of CAL's sampling procedures and explained to members why the sample was structured in its current form. Seminars were held in Sydney, Melbourne and Perth. Further seminars on the topic will be held in Brisbane and Sydney later in the year. (The Sydney seminar in August will introduce members to the new licence for corporations.) The target audiences for the seminars are CAL's members and other interested persons. No fee is charged for admittance.

CAL has also provided funding to establish the Centre for Copyright Studies at the Australian National University. One of the Centre's functions is to invite a visiting fellow to undertake lectures and media interviews in an effort to raise the awareness of CAL's members and others of issues in copyright protection.

CAL receives many requests for speakers from groups such as libraries, fellowship of writers, Rotary, church groups, (etc). CAL also participates in the seminars conducted by the Australian Copyright Council.

29.1.5. PPCA

PPCA has no written educational policy. To date, its educational services have been limited to internal staff training, sending educational material on copyright law to licensees and potential licensees, and the core work of responding to numerous telephone enquiries about public performance rights and the role of PPCA. The Executive Director also speaks at a number of conferences and seminars. To date, the Company has not arranged seminars and workshops of its own. It is intended to remedy this later in 1994. (Subjects planned, include: registration and distribution; copyright issues in the face of new technologies; the Copyright Convergence Report; the Moral Rights Paper.) This initiative is welcome.

The PPCA provides a questions and answers pamphlet on the use of sound recordings and another on the use of music videos. These are intended to answer the questions most commonly asked by the public.

The Company's staff take a huge number of telephone enquiries every year, mainly from the recipients of a letter from PPCA informing them of licensing needs. **The Company is proud of the educational value of this telephone advice but it may reduce the enormous number of calls (and consequent staff time) if the Company were to initiate a regular external education program targeted at the greatest body of callers and the most commonly arising issues.**

29.2. CONCLUSION

All of the societies would benefit from a formal review of their educational programs. APRA, CAL and AMCOS have certainly made considerable efforts but it appears that these efforts are reactive, rather than part of an educational strategic plan.

Such a review would consider the educational needs, not only of their members, but those of related sectors. Such programs assist members directly and also assist non-members to better understand the function and benefits of collecting societies and are an important means of reducing the suspicion about collecting societies that often stems from ignorance or misinformation. Moreover they have the effect of increasing the community knowledge of copyright related issues - an aim that is integral to the interests of all copyright owners and users.

30. FUNDING OF CULTURAL OR BENEVOLENT PURPOSES

30.1. AMCOS

30.2. APRA
30.3. AVCS
30.4. CAL
30.5. PPCA
30.6. COMMENT
30.7. CULTURAL AND SOCIAL SUPPORT ROLE FOR
COLLECTING SOCIETIES
30.8. CULTURAL AND CHARITABLE PURPOSES FUND
30.9. FUNDING THE CCPF

It was important to learn whether the societies applied funds to purposes other than the general headings of Administration, Education and Distribution, such as general cultural purposes, awards, prizes, benevolent purposes and the like.

All of the societies were asked whether they intended to develop a greater cultural role. They were also asked whether there were any government initiatives which would assist the society in performing this more expansive role.

Government cultural agencies such as the Australia Council were generally perceived as being irrelevant to the interests of the great majority of PPCA, AMCOS and APRA members. Their major source of funds is the popular music industry (including film music) - a sector of Australian culture in which the Australia Council has never played more than a token role.

Apart from that consideration, the music publishers on the board of both APRA and AMCOS see these societies as having an essentially commercial nature. AMCOS has never played a cultural support role (other than that flowing directly from its primary functions) and APRA is apparently cutting back on its contributions. This is hardly surprising as, over the last few years, the income of the music publishers has dropped and local managements have been under considerable pressure to achieve maximum collections. As controllers of these societies, they have little or no interest in supporting wider cultural purposes.

There is little communication between collecting societies and state or Federal funding bodies and there have been no discussions to promote a greater understanding of one another's role or to promote within the societies, a recognition of any more expansive cultural responsibility.

30.1. AMCOS

The Board assesses each proposal but generally considers this to be the role of the members rather than the Society. The Society has no written policy concerning the allocation of funds for cultural purposes.

That said, it has donated money to a limited number of purposes that may be described (somewhat broadly) as cultural purposes: Export Music Australia, Music New Zealand, Music New Zealand Forum, RIANZ Silver Scroll Award. These purposes would be described more accurately, as promotional rather than cultural.

30.2. APRA

APRA provides a considerable amount of money to cultural purposes. A breakdown of the Association's expenditure on cultural grants etc. from the 1.25% deduction referred to earlier, for the years 1992/3 and 1993/4 is provided in the materials accompanying this Report.

It is interesting that the WIPO Report notes that the "majority of (performing rights) organisations make use of the possibility of deducting not more than 10% from all royalties collected for cultural and social purposes. In certain cases, the percentage of the deduction is only 2, 3 or 5% but it is more frequently 10%."

The Society has no written policy concerning the allocation of funds for cultural purposes. The policy is a general one, simply, that the Board must consider that the purpose promotes the use or recognition of the members' works. It should be added that in recent years the Board has moved away from projects that have tended to benefit individual members (for example, assisting with commissions) in favour of projects that have a wider benefit for the membership at large. The Board is also considering giving a greater emphasis to the promotion of Australasian music abroad rather than just in Australia and New Zealand.

30.3. AVCS

The Regulations to the Copyright Act and the Attorney-General's Guidelines provide that gifts for cultural or benevolent purposes may not exceed a certain percentage of royalties attributable to an accounting period as stated in the Articles of Association (which are, in turn, approved by the Attorney-General).

Article 13 of the Articles of Association of the Society provides that such a sum as the Board considers proper may be set aside for special purposes (including cultural or charitable purposes) as the directors think conducive to furthering the interests of the Society but is not to exceed one per cent of receipts under Part VA and Part VB for that accounting period.

The Society does not see a significant role for itself in promoting culture through direct grant assistance or other general support. It does not regard itself as being well placed to select recipients for direct grants, nor does it consider it appropriate that it should seek to use funds held in trust for individual copyright owners for such purposes.

\$9,500 has been allocated by the Society from 1992 and 1993 distribution periods as follows:

(a) 1992: Encore concert: \$3,750

(b) 1993: Encore concert: \$3,750

Australian Copyright Council: \$2,000

The donation to the Australian Copyright Council was a contribution with several other organisations towards the cost of hosting a delegation from the National Copyright Administration of China. Given the Copyright Council's initiating role in founding the society, this would be churlish to criticise, but it illustrates the need for the development of appropriate policy.

The society has no policy by which benevolent or cultural allocations are to be made.

To date, the Society has not considered that the interests of the Society and its members and potential members can be furthered by allocating any substantial funds to cultural or charitable purposes. Given that the Society has been in existence for a relatively short period of time, it was undoubtedly important that the film and television industry recognise that the Society is channelling all of its resources into maximising the remuneration received for the use of audio-visual works by educational institutions while minimising deductions from the amounts collected to enable the largest possible sum to be distributed to the relevant copyright owners.

That said, **the IBNR fund and the unidentified owners' trust fund is a very rich source of funds to which no one owner (except the actual owner) has real claim. It is to these funds that the society should look for the funding of its benevolent and cultural purposes. Rather than sending them back to a class of owners as a windfall, they would be an important source of funding for organisations that service those classes of owners** (such as the Australian Copyright Council, the Arts Law Centre of Australia to name but two).

30.4. CAL

In the years 1990-1993, CAL allocated 5% of its total distribution for education and cultural purposes. In 1994, this "Distribution B" scheme is discontinued. An amount up to 1% of revenue will be allocated from operations expenditure for cultural purposes.

CAL funds the Centre for Copyright Studies at the Australian National University and has recently established a Copyright Advancement Fund, to be administered by the National Book Council.

CAL is the only Society with a carefully articulated cultural policy. It is an excellent document which provides a framework by which such funding decisions can be made.

30.5. PPCA

PPCA says that it provides no money for cultural purposes and has no publicly available written policy in this regard. That said, it does pay 12.5% of the distribution to the PPCA Trust.

The Trust Deed provides that performers, either individually or as a class may apply for funds for the following purposes:

- (i) performance at concerts or for charitable institutions such as hospitals or homes for the aged; or

- (ii) scholarships for the promotion and encouragement of musical and theatrical education; or
- (iii) the promotion and encouragement of the performing arts to the general public; or
- (iv) the aid or assistance of any beneficiary who, in the opinion of the trustees is unable to adequately maintain himself by his own professional exertions and other income.

Under the Trust deed, the PPCA nominates two members and the Musicians' Union of Australia and the Media Entertainment and Arts Alliance nominate one each. There appear to be no written policies in relation to the application of the Fund (except that the trust deed requires that two thirds of the fund be applied to musicians and one third to performers). It merely considers applications on an individual basis.

Since 1975, the Trust has distributed approximately \$800,000 to the unions for the benefit of their members (\$416,396 in the last five years).

30.6. COMMENT

Involvement of the societies in cultural and social support relevant to their rights owners, does not prevent individual members from also participating in such work. Rather it allows the individual members to participate in a structured, well articulated and focussed way.

Only PPCA and AMCOS do not acknowledge that they have any cultural role in the community other than their collection and distribution function for rights owners. This is perhaps a reflection of their structure in that both organisations are treated by their respective boards as merely a commercial extension of their members' operations. These societies take the attitude that decisions as to cultural and charitable spending are a matter for their individual corporate members.

In spite of its disavowal of such responsibilities, PPCA does have the PPCA Trust which makes sums available for cultural, industry support and charitable purposes. It is difficult to reconcile the Company's denial of any responsibility in this area with the fact that they pay a greater share of their net distributions to such purposes than any other collecting body. Given this conflict, it is easy to see how the cynics have described the payments by PPCA to the Trust as "paying off the unions".

The Inquiry has made no detailed examination of the operation of the Trust. What is apparent however, is that the system of written policy formulation, publication of grant procedures, written selection criteria, formal acquittal of grant procedures and formal reporting of awards of grant to the membership, are inadequate or non-existent and need to be addressed if the Trust is to maximise the benefit of the Fund.

The Company has taken the view, to date, that how the money in the Trust is allocated, is a matter for the Unions representing the beneficiaries. This should not be so. **The PPCA has a fiduciary obligation to ensure the proper management and application of the fund and accordingly must accept that it must play an active role in implementing the matters referred to in the above paragraph.**

Such funds have a wonderful potential to benefit the relevant community sector but if they are not to be viewed cynically, they must strive for and achieve, a faultless degree of transparency. High fiduciary standards are demanded of all trustees but where it is part of collective administration, a high degree of public reporting is to be expected. **Urgent attention must be given to bringing the administration of the Trust up to the highest standards of public accountability.**

30.7. CULTURAL AND SOCIAL SUPPORT ROLE FOR COLLECTING SOCIETIES

Collecting societies have an important representative and leadership role in their industry. As such they have a potentially important function in the development and maintenance of the culture of the country.

Where societies recognise this role, it is important that such allocations be according to a very carefully considered strategy. However, although all of the societies have in fact given money to cultural purposes, none do so in consultation with the Federal and State Government funding mechanisms. This failure alone, illustrates the piecemeal manner in which such funding is allocated, applied, and accounted for.

It is not suggested that government funding authorities should have any power over the way that collecting societies distribute such funds but **it seems an extraordinary inefficiency in the application of such limited funds that there are no channels of communication between Government agencies and the societies, so that the cultural and social support expenditure of each party may be applied with maximum effectiveness.** (The exception to this is AVCS which seems to have regular communication with the AFC, but as it does not have a policy or mechanism for cultural and social support, the relationship has had little or no impact in this area.)

APRA, AVCS and CAL have considerable undistributed funds (or funds that are not yet able to be distributed but have not yet been declared to be undistributable) and although they have in place plans to reduce these amounts (as discussed elsewhere in this Report), **it is recommended that a portion of these funds should be allocated to cultural and social support purposes relevant to the rights owners represented by each society.**

As the old saying goes: "two wrongs do not make a right". It is regrettable if the money cannot be paid to the right individual but it does not ameliorate the situation by paying the money to the wrong one. **Where the appropriate payee cannot be identified or found, it is recommended that a proportion of such moneys be used for the general interest of the relevant right group rather than putting such sums back into the general distribution pot as a windfall distribution to other owners.**

30.8. CULTURAL AND CHARITABLE PURPOSES FUND

It is suggested that given their important representative role in their respective cultural sectors, all societies should be encouraged to establish a Cultural And Charitable Purposes Fund ("CCPF).

This fund would be used, not to fund awards nights or litigation expenses) but to provide support to the general sector of the industry which is represented by the relevant rights owners. For example, it could support writers/composers studios, travel grants, educational programs, scholarships, benevolent schemes supporting arts practitioners who suffer calamity, and so on.

The members of the arts and entertainment industry have a great tradition for generosity and the establishment of CCPFs would better ensure that the assistance was directed to those within the industry who would truly benefit from assistance. It would be a notable example of industry bodies taking care of their own.

30.9. FUNDING THE CCPF

It is suggested that all societies be encouraged to allocate a specific proportion of gross distributions to cultural purposes.

Further study needs to be done as to the exact percentages that would be appropriate but it is suggested that contribution be divided into two categories:

(i) a percentage of the distribution funds, and

(ii) a percentage of undistributable funds.

As to (i), each society should allocate between one and two percent of its distribution fund to its CCPF. (This sum is clearly feasible as both APRA and CAL already achieve this.)

As to (ii), any society with undistributable funds should be required to allocate fifty percent of such funds to its CCPF prior to returning the residue to the distribution pool. The latter percentage is high, but this merely reflects the fact that the principal reason that such money is not being paid through to the relevant rights owners is that those persons cannot be found or identified. Thus the fifty percent allocation is equitable because:

(a) The persons who are most entitled to the undistributable moneys are more likely to be non-members than members.

(b) Such a scheme will give all members of the industry sector access to support, and yet

(c) would still permit members of the society to gain a windfall benefit in addition to the income that their rights have actually earned.

This system will further encourage societies to identify and locate owners and will have the effect of answering the criticism that societies with large undistributed funds are acting from self-interest (and the interests of their largest and most powerful members) in maintaining such funds.

30.10 RECOMMENDATIONS

- that all societies be encouraged to allocate a specific proportion of gross distributions and the undistributable funds, to cultural purposes.
- that Declared Societies be required to allocate a specific proportion of gross distributions and the undistributable funds, to cultural purposes.

31. REVIEW OF THE COPYRIGHT ACT AS IT AFFECTS COLLECTING SOCIETY EFFICIENCY OR EQUITY

31.1. ADDITIONAL STATUTORY LICENCES

31.1.1. Multi-Media Statutory Licence

31.1.2. Educational Copying Of Artistic Works

3.2. JURISDICTION OF THE COPYRIGHT TRIBUNAL

31.3. AMENDMENT TO SECTION 152 (8)

31.4. MATTERS RECOMMENDED FOR FURTHER STUDY

31.4.1. Extended Audio Visual Licence

31.4.2. Audio Home Taping Statutory Licence

31.4.3. Amendments In Relation To The Part VA And Part Vb Schemes

31.4.4. Deeming Of Representation

31.4.5. Amendments In Relation To Literary Works

31.4.6. Amendments In Relation To Mechanical Licence Provisions

31.5. RECOMMENDATIONS

31.1. ADDITIONAL STATUTORY LICENCES

Consideration was given to the question of whether the introduction of any additional statutory licences would assist a society (and be in the interests of licensees and/or general public).

Statutory licences are in direct conflict with the system of exclusive rights dictated by the Berne Convention. There is little or no doubt that Government has the right to introduce compulsory licensing for the purpose of restricting possible abuses of monopoly power but "this would have to be the genuine purpose behind the measure, and not simply the pretext for abridging rights which states are obliged to protect under the Convention" (Ricketson, The Berne Convention for the Protection of Literary and Artistic Works, Kluwer, 1987, para 9.73).

It is recommended that the Government should not consider the imposition of statutory licences where commercial voluntary licences, collectively administered, are effective.

For example, in APRA's case, there is no need for the creation of a statutory public performance licence because there would be effectively no difference between the voluntary licence regime under which APRA presently operates. If there were any evidence of widespread inefficiency or corruption in the collective administration of the rights, or a demonstrable failure to grant licences to users who were prepared to pay equitable remuneration for their uses, there may be real reason to introduce a statutory right.

The introduction of statutory licences is a last resort and their introduction is only necessary where the public interest demands it. There is no evidence of such public interest.

Moreover, before any statutory licences are introduced, experience shows that statutory licences drafted without appropriate industry consultation are often unworkable and voluntary licences are required to replace them. For example, the statutory mechanical reproduction right administered by AMCOS has been largely superseded by the negotiation of an industry agreement (the ARIA, AMPAL/AMCOS Agreement). The CAL statutory licence has been largely by-passed by negotiated agreements between the collecting society and the representatives of the relevant users (such as the AVCC).

31.1.1. Multi-Media Statutory Licence

It is not recommended that a statutory right be introduced to grant access to copyright material for the purpose of multi-media exploitations. The producers of multi-media productions argue that it is too expensive and administratively burdensome having to obtain individual licences for each piece of copyright material that they want to use in their own work. That may be so, but it must be observed that film makers have managed to do it for years. In any event, it is too early in the development of the technology to do away with two hundred years of development of the copyright regime simply because the pioneers of multi-media are having difficulty working out a commercially viable means of structuring their new industry.

The other argument in favour of a statutory licence for multi-media is based on the philosophical stance that there is a right of access to and use of information. Such a position is in direct conflict with traditional copyright principles by which persons who put information into a material form, enjoy rights of control over the uses to which that form may be put. There would have to be a very detailed and cogent argument presented before such a 'right of access to and use of information' were accorded and that case has certainly not yet been made.

Moreover, there is no evidence that creating a statutory right is appropriate or necessary at this stage of the industry's development. If, one day, there is sufficient need, it is likely that either

- one of the existing societies (such as AVCS) will take responsibility for multi-media licensing, or
- the existing societies will set up a joint-venture society to administer the rights on behalf of the relevant rights owners.

As the commercial need increases, existing societies will negotiate a commercial resolution by which their members' rights can benefit from that new potential for income.

If the above recommendation against the introduction of a non-voluntary licence for multi-media product is ignored, it is most strongly recommended that, if such a licence was to be introduced, it should only apply to the reproduction of underlying works that have already been licensed for incorporation into film.

The non-voluntary licence should not extend to underlying works which have not been previously licensed for inclusion in film. Where there has been no such prior licence, the permission of the rights-holder in the underlying works should still be obtained for inclusion in the multi-media product. In other words, the rights owner should maintain the absolute and exclusive right to determine when, how, by whom, and for how much, the first synchronisation/multi-media exploitation will occur.

31.1.2. Educational Copying Of Artistic Works

It is recommended that section 135 ZM be amended so as to permit CAL (or make it clear that it in fact has the right) to collect income in respect of artistic works at the same time as they are surveying educational institutions in respect of their use of literary works. There is no cogent reason why the owners of copyright in artistic works should be treated any differently from the owners of copyright in the literary work.

It is further recommended that the Copyright Act be amended so as to provide educational institutions with a statutory right to reproduce artistic works (other than those already covered by "fair dealing") subject to the payment of equitable remuneration to the copyright owner. (See "Visual Arts Collecting Society").

31.2. JURISDICTION OF THE COPYRIGHT TRIBUNAL

This Report recommends the expansion of the jurisdiction of the Copyright Tribunal. It is discussed at length in the following Chapter.

31.3. AMENDMENT TO SECTION 152 (8)

As discussed earlier in this Report, there is no good reason to maintain a 1% ceiling in section 152 (8). The owners of the rights in sound recordings should be able to negotiate with the broadcasters and in the event of inability to agree as to a rate, approach the Copyright Tribunal. This is a perfect example of where two commercial groups of similar power should be allowed to apply the conditioning forces of the market, without the intervention of Government through the imposition of this false ceiling.

31.4. MATTERS RECOMMENDED FOR FURTHER STUDY

Each of the societies was asked what amendments they perceived would be assist them to more effectively and efficiently administer their relevant rights. These are set

out below. It is noted that Government is already aware of most of these and indeed is presently working on several of them.

The Inquiry was instructed to desist from making recommendations in respect of the following issues. However, they are presented because they are issues perceived by the Societies as being of importance, and because they provide a useful checklist for potential reform and development. They are matters that must be considered in the context of any future comprehensive review of the Copyright Act and in light of the other copyright-related studies presently before Government.

31.4.1. Extended Audio Visual Licence

The video cassette recorder has meant that audio-visual works can be easily and inexpensively copied without the authority of copyright owners.

There is little doubt that the use of video recorders for time shifting does not easily permit of voluntary licensing. Not only are there hundreds of thousands of such video recorder users, the number of copyright owners in any audio-visual product and the complexity of the division of rights in these products, is vast. It is certainly not in the public interest for domestic VCR users to be in breach of the Copyright Act every time they use their equipment. At the moment the statutory licence administered by AVCS permits only educational taping.

Similarly, it is anomalous that CAL should have recently negotiated a licence scheme with Government as to photocopying while similar audio-visual copying remains unlicensed and unlawful. This too should be the subject of further inquiry. AVCS argues that this points to a need for an additional compulsory licence scheme if copyright owners are to be compensated for the use of their work. It may be so, but it would be advisable for a feasibility study to first be carried out to see if AVCS could obtain the necessary licensing rights by way of a joint venture with the other societies (AMCOS, APRA and PPCA) to perform the function, thus avoiding the need for a statutory licence.

31.4.2. Audio Home Taping Statutory Licence

The statutory licence that needs to be introduced forthwith is the home audio taping licence. This has been a subject of legislation and High Court litigation but the path is now reasonably clear. This is not the forum for further debate of the need for the blank tape levy/tax. There has been extensive industry consultation and debate, the collecting society is already formed (as a Declared Society) and the complementary legislation should be reintroduced without delay.

31.4.3. Amendments In Relation To The Part VA And Part Vb Schemes

Four years of experience in administering the Scheme indicates to CAL, various amendments which would promote a more effective administration of the scheme:

(i) Repeal of Record-Keeping System

The Copyright Act provides that an educational institution may elect to participate in the scheme on the basis of either the record-keeping system or the sampling system. Currently there are twenty-six educational institutions which participate in the record-keeping system, and a change to record-keeping is occasionally threatened in negotiations with educational authorities which operate under sampling regimes.

Given the onerous nature of full record keeping requirements, record-keeping can inherently lead to under reporting of broadcast copying by an educational institution. For this reason, it is not in the best interests of the owners of the relevant copyright for educational institutions to be able to elect to adopt this system.

The record-keeping system was apparently included in the Part VA Scheme to accommodate the anticipated small number of institutions that copy only infrequently. A sampling scheme can also accommodate these institutions. The sampling system as recently introduced into the university sector places universities into groups depending upon whether they are small, medium or large copiers of broadcast material. This system could be made even more sophisticated with the introduction of zero-tariff licences for very infrequent copiers. Such a system would obviate the need for institutions to forward nil returns each quarter. The Society is willing to offer zero-tariff licences, with appropriate safeguards, should the record-keeping system be repealed.

(ii) Profit-Making Educational Institutions

An educational institution as defined in Section 10 of the Copyright Act excludes an institution that is conducted for the profit, direct or indirect, of an individual or individuals. CAL wants the definition of educational institution be broadened for the purposes of Parts VA and VB of the Copyright Act to include profit-making educational institutions. This is for the following reasons:

- (a) it can be assumed that there is widespread copying of audio-visual items from television and radio broadcasts by such institutions for their educational purposes. By virtue of the difficulty in identifying the correct rights holders, it can be assumed that the majority of such broadcast copies have been made without the permission of the relevant copyright owner. Accordingly, members of the Society and other relevant copyright owners are not being remunerated for the use of their rights; and
- (b) by having a statutory scheme which imposes the payment of equitable remuneration upon educational institutions which fall within the definition of Section 10 while ignoring profit-making educational institutions, it in effect penalises traditional non-profit-making educational institutions in financial terms.

(iii) Removal of Technology-Based Distinctions

Section 135E of the Copyright Act enables an educational institution to make a copy of a broadcast or any film, sound recording or work incorporated in the broadcast without infringing copyright in the broadcast or other works or subject matter

included in it. The scope of the scheme is confined by specific references to methods of technology and means of delivery.

This general issue has been the subject of detailed examination by the Convergence Committee and it is not the place of this Report to traverse that territory.

31.4.4. Deeming Of Representation

One of the submissions received, proposed that a deeming provision be included in the Copyright Act to extend the Copyright Tribunal's jurisdiction so that, if a collecting society represents a substantial number of the owners whose works will be used under a proposed licence and the collecting society has obtained the Copyright Tribunal's approval of the scheme, then that collecting society would be deemed to represent all copyright owners for the purpose of that licence agreement.

To introduce such a scheme would be the inverse of a statutory licensing scheme. It is an important characteristic of voluntary licensing schemes that participation be voluntary. For example, there is a certain anger shown by some owners of copyright in literary works who believe, mistakenly, that CAL grants licences in respect of the works of non-members. This demonstrates a misunderstanding of the existing system but also demonstrates that there would be a section of relevant owners who would object most strongly to having such control of their exclusive rights appropriated by a collecting society.

31.4.5. Amendments In Relation To Literary Works

CAL proposes several amendments to the Copyright Act to assist it in administering the copyright rights of its members:

(i) Government Copying

The introduction of sampling provisions similar to the provisions for education, into s.183 of the Copyright Act. At present, Commonwealth government departments notify copying to CAL. The Society argues that this is administratively inefficient and is likely to lead to significant under-reporting of copying. AMCOS however, is concerned that the concept of copying "for the purposes of the Crown" needs careful consideration to ensure that commercial activities such as the use of sheet music by police/military bands, or recording of music, does not fall within the scope of the provision.

(ii) Educational Copying

Until the educational institution forwards CAL a remuneration notice, CAL is unable to carry out inspection to determine if copying is taking place. This means that the administration and supervision of the statutory licence is dependent upon the decision to comply by the institution rather than any power of the Society. Further consideration needs to be given as to why this protection for the recalcitrant, should remain.

(iii) Library Copying

The Society believes that it is now timely to reconsider the free copying provisions for libraries. Libraries have extensive free copying privileges which, in the context of high speed and digital copying technology, may no longer be relevant.

Libraries are adopting a commercial approach to document delivery services and their services compete directly with the services offered both by the copyright owners and commercial document delivery services. To allow libraries to continue to use a statutory exception to provide a business advantage is surely not the purpose of the provisions.

If public policy requires that certain libraries continue to copy without payment to copyright owners for the purpose of assisting individuals in research and study, then perhaps the UK approach of identifying "prescribed libraries" should be considered. The UK Act provides that the library copying provisions apply to libraries and archives as prescribed by regulations made by the Secretary of State. This approach allows for greater flexibility in determining which libraries are entitled to copy without payment to copyright owners and for what purposes.

(iv) Copying for External Students

Distance Education courses, such as open learning, are becoming more and more popular and will continue to rise in popularity. We can no longer cling to our image of children in the middle of the desert, Flying Doctor overhead, hunched over their wireless sets, doing their French lesson before hopping of their horse to check the fences. Nowadays, the distance learning student is just as likely to be living in the inner city. It often is more accurately described as Home Learning rather than Distance Learning.

For example, universities currently offer open learning courses via broadcasts from the ABC. Students enrolled in such courses are sent a package of photocopied materials to use as study and research aids. The view of the educators is that any copyright material included in such packages can be copied under the fair dealing exemption, in s.40 of the Act. The wording of the section is unclear, but in any case this exemption needs reconsideration, particularly as this type of copying will increase significantly when students are provided with their course materials electronically.

(iv) New Technologies

The introduction of new technologies will continue to have an enormous effect on the use of CAL's members' works. It is important that Government clarify the extent to which electronic reproductions are included in existing statutory licences (both remunerable and non-remunerable) in the Copyright Act. To this end, the Report of the Convergence Committee must be awaited.

It was the view of the Copyright Law Review Committee in its draft Report on Computer Software that these rights are not currently included in the scope of these licences, but that the licences should be extended to include them. The CLRC appears

to make no distinction between remunerable licences (such as those for education and government) and non-remunerable licences (such as for libraries).

In principle, there should be an extension of the scope of **remunerable** licences in this way (provided that appropriate rates and definitions of electronic use could be agreed with the licensee groups). Given the inevitable expansion of electronic copying and transmission, the extension of the scope of **non-remunerable** licences to include electronic copying would need to be most persuasively argued. Such a development would act unfairly against rights owners who have a proper expectation of receiving fair remuneration for the use of their rights.

Software also exists which enables sheet music to be printed out from MIDI files as well as technology which allows the scanning and printing of sheet music. These issues directly affect the rights of sheet music publishers and highlight the need for further consideration of the issues raised in Chapter 15 of the CLRC Draft Report on Computer Software Protection. The possibility of extending the rights of publishers to control the graphic reproduction of works and editions in a digital environment must be further considered.

31.4.6. Amendments In Relation To Mechanical Licence Provisions

(i) Abolition Of The Statutory Licence

Some foreign countries have eliminated "non-voluntary" licences. The removal of the statutory licence would mean copyright owners would have the right to deregulate the licence fee. For example, one might see a famous composer demanding a high mechanical reproduction fee for a "cover" while a less well known composer demanded a smaller one.

Interestingly, AMCOS observes that there is little obvious practical difference in the way licensing operates in countries with voluntary systems and those with compulsory licences. The Society points out that in the United Kingdom where the system has changed to voluntary licensing, there has been no major change in practice nor in the royalty rate as the licensing of the reproduction of musical works into records has been centralised through MCPS. The rate is referable to the Copyright Tribunal.

The significant difference between the United Kingdom situation and the Australian, is that AMCOS does not conduct centralised licensing. Without either the statutory licence or centralised licensing, it would be very difficult for small publishers to monitor and control the licensing of their works into records. Both publishers and composers would suffer.

At present the industry agreement is based on the statutory provisions. Without that mechanism, certain Trade Practices problems would surely arise. The statutory licence is generally introduced to prevent companies from acquiring a monopoly in any particular group of rights or abusing that monopoly position. The rationale has not changed.

(ii) Bootleg, pirate and counterfeit sound recordings

AMCOS seeks amendment to section 55 (1) to make it clear that the manufacture of bootleg, pirate and counterfeit sound recordings is exempt from its ambit. There is no public policy benefit in forcing the collecting society to grant a licence for the mechanical reproduction of a musical work in situations in which it has a reasonable belief that the grant of licence will result in the sale of bootleg, pirate or counterfeit records.

Similarly the Society seeks the extension of section 55 (2) beyond its present coverage of "adaptations" of the musical work. If adaptations of a work can be prevented by the withholding of a licence on the ground that it debases the work, it should be open to the owner of the rights in that work to withhold a licence if it has a reasonable belief that the quality of the record embodying the work will debase it.

For example, many of the bootleg, pirate and counterfeit records presently on the market are of very inferior technical quality. In an age when moral rights is recognised as a significant issue, should not a composer have the right to say, "I do not want my work debased by being on this inferior recording"? The Society argues that the discretion to determine whether a recording falls within the exclusions should be granted to the copyright owner of the musical work, along with an exception that the copyright owner or its licensee cannot be held in breach of Part IV of the Trade Practices Act for exercising its discretion. (As matters stand, there is a conflict between the obligations imposed on AMCOS by the statutory licence and the Government and the societies' commitment to fighting piracy.)

(iii) Definition of "record"

AMCOS argues that the Copyright Act definition of "record" should be amended so that it is clear which forms of new technology will be subject to the statutory licence in section 55(1). For example, some multi-media products appear to fall under the definition of "record" but can also embody a cinematograph work or computer program, and this creates difficulties in determining not only the rate but even the correct licensing body.

(iv) Extension Of Term Of Copyright Protection

The EEC has recently enacted a term of copyright protection for rights holders with the EEC of life plus seventy years. So that Australian rights holders are accorded equitable protection in foreign territories, AMCOS argues that Australia must give urgent consideration to an extension of the Australian copyright term.

For example, AMCOS' equivalent collecting societies in the EEC only accord protection on a reciprocal basis and therefore Australian rights holders are granted fifty years protection in the EEC and not seventy whereas AMCOS must collect on behalf of European owners for the longer period.

(v) Bulletin Board Responsibility

AMCOS is concerned that the recent explosion of Bulletin Boards and their ability to provide access to copyright works without remuneration to owners is interfering with their ability to collect on behalf of rights owners. It argues that further consideration should be given by Government to amending the Copyright Act so that Bulletin Board operators are made clearly liable for authorising reproductions of unlicensed copyright material which is down-loaded by subscribers.

There are already numerous Bulletin Boards operating in Australia which contain MIDI files, musical works and literary works that are unlicensed. Litigation has been instituted in the United States by music publishers and AMCOS' equivalent society, The Harry Fox Agency, against CompuServe, a Bulletin Board operator, alleging authorisation of reproductions of unlicensed musical works. Owing to the nature of Bulletin Boards, which have been classified in prior litigation in the United States as "electronic bookstores" or "libraries", there may be difficulties in showing authorisation. The relevant collecting societies in Australia would be confronted with the same difficulties if they attempted to enforce their members' rights. As was decided by the plaintiffs in the CompuServe litigation, it would be impractical for AMCOS to pursue the persons uploading the unlicensed musical works onto the Bulletin Board. Although the person carrying out the upload function is directly responsible for the breach of rights, he or she is usually difficult to identify. On the other hand, the commercial gatekeeper, such as CompuServe, is both identifiable and accessible.

(vi) A Distribution Right

At the moment the Copyright Act confers no exclusive distribution right. AMCOS argues that the introduction of such a right, which includes an importation right, would assist collecting societies to protect the rights of their members.

The very limited value of the sections which preceded sections 37 and 38 was highlighted in a submission by The Copyright Owners' Reproduction Society Ltd to the Spicer Committee in 1959. In the Report of the Copyright Law Review Committee, 1959, the Committee recommended that the onus should be on the importer, seller or dealer to prove he did not have knowledge that the work concerned was an infringement of copyright. This recommendation was not adopted in the 1968 Act. AMCOS seeks that this issue be revisited and that consideration be given to amending sections 37 and 38 so to incorporate the recommendations of the Copyright Law Review Committee, 1959.

Alternatively, AMCOS seeks that the Act be amended so as to grant an exclusive distribution right (which includes an importation right). This would mean that sections 37 and 38 could be reworded to allow rights holders and their collecting societies, a more effective means of enforcement. It argues that, at the very least, the drafting error in section 38 should be amended. (In its present state, AMCOS may not succeed in an action against an unlicensed retailer under section 38 because of the interpretation given to the section in International Writing Institute Inc v Rimila Pty Limited & Anor (1993) AIPC 91-035 by Lockhart J. at 39,748-39,749.)

(vii) Customs Powers Under Section 135

AMCOS and PPCA seek wide ranging powers to be given to Customs to deal with copyright infringing and counterfeit material, such as pirate, bootleg and counterfeit sound recordings and audio-visual articles, which are imported into Australia.

In Europe, IFPI (International Federation of the Phonographic Industry) was the first industry body to enter a Memorandum of Understanding with the Customs Co-operation Council, which contains guidelines on the relationship between the two bodies, and to draft model legislation granting Customs suitable powers to aid the music industry in monitoring sound recording piracy. A similar relationship between Customs and the music industry is sought in Australia. When legislation is drafted to implement TRIPs, there should be consultation with industry bodies and AMCOS, along with MIPI, to take advantage of their knowledge as to the system of importing copyright and trade mark infringing sound recordings.

31.5. RECOMMENDATIONS

- That Government should not consider the imposition of statutory licences where commercial voluntary licences, collectively administered, are effective.
- That section 135 ZM be amended or repealed so as to permit CAL to collect income in respect of artistic works at the same time as they are surveying educational institutions in respect of their use of literary works.
- That educational institutions be provided with a statutory right to reproduce artistic works (other than those already covered by "fair dealing") subject to the payment of equitable remuneration to the copyright owner.
- That there be no statutory licence introduced to grant access to copyright material for the purpose of multi-media exploitations.
- That further inquiry be made as to the matters raised by the Societies as to how the Copyright Act might be amended to improve their effectiveness and efficiency.
- That the jurisdiction of the Copyright Tribunal be expanded. (See following Chapter.)

32. JURISDICTION AND ROLE OF THE COPYRIGHT TRIBUNAL

32.1. OMBUDSMAN OF COPYRIGHT COLLECTING SOCIETIES

32.2. JURISDICTION OVER ALL LICENSING SCHEMES

32.2.1. AN ALTERNATIVE AMENDMENT

32.3. JURISDICTION OVER ANCILLARY ASPECTS OF LICENSING SCHEMES

32.4. PROCEDURE OF THE TRIBUNAL

32.5. RECOMMENDATIONS

Consideration was given as to whether and in what ways the jurisdiction of the Copyright Tribunal might be amended to benefit both the members of the societies and the interests of licensees and/or the general public. Inquiry was made of the societies as to whether the Copyright Tribunal should have control over their:

- processes for dealing with licence applications;
- procedures for dealing with licensee inquiries;
- procedures for dealing with licensee complaints;
- procedures for dealing with licensor complaints;
- setting of licence fees;
- non-financial terms of agreements with licensors;
- use of undistributed funds;
- other matters not presently controlled by the Tribunal

32.1. OMBUDSMAN OF COPYRIGHT COLLECTING SOCIETIES

All of the societies were concerned that if the Tribunal were to be invested with a jurisdiction which covered licensee applications, inquiries and complaints generally, their time would forever be taken up with minor complaints and administrative matters. Moreover, it is highly doubtful that the Copyright Tribunal itself would wish to become a consumer complaints tribunal.

That said, it is clear from this Inquiry that there have been complaints about the societies from both rights owners and rights users. Some of these are well founded but many are a result of misunderstandings or lack of understanding. Where they are well founded, there is a need for an independent body to which persons can go when their communications with the society have been unrewarding.

If the Copyright Tribunal is not the right body to deal with otherwise unresolved issues relating to processes and procedures for dealing with -

- * licence applications;
- * licensor and licensee inquiries;
- * licensor and licensee complaints;

then an appropriate body must be established.

It is recommended that there be established a position of Ombudsman Of Copyright Collecting Societies. This role may be only part time and may be best based within the Attorney General's Department. Alternatively, it may be preferable to position it as another arm of the Copyright Tribunal's (expanded) structure.

Certainly it is a role that must be seen to be independent of the societies themselves, so that both rights owners and users are assured of its independent stance. One cannot help but think that the recent controversy concerning PPCA would have been better dealt with by an early referral to such an entity so that the complaints and accusations could be dealt with rapidly and without unnecessary rancour, to the benefit of all parties and the industry generally.

The proposed Ombudsman's office could provide various resources including not only a facility for independent investigation but also alternate dispute resolution facilities. Where the Ombudsman makes a determination, if there is to be a right of appeal, it should be to the Copyright Tribunal, not the general courts.

The cost and funding of this role must be the subject of further and separate investigation but it seems appropriate that collecting societies contribute to the cost of such function - perhaps in proportion to the number and size of the references which concern them.

32.2. JURISDICTION OVER ALL LICENSING SCHEMES

All of the societies recognise the importance of having an independent body, such as the Copyright Tribunal, which is able to review collectively administered licensing schemes and set fees in the absence of the parties reaching their own agreement.

In principle, the Tribunal should have as wide a jurisdiction as possible in respect of licences and licence tariffs. This includes setting of licence fees and any non-financial terms of agreements with licensors, (including the equity or otherwise of sampling schemes and other methods for the identification of rights owners or quantification of payments). Similarly, the Copyright Tribunal should have jurisdiction whether or not the licence is statutory and whether or not it is a voluntary licence dealing with the public performance of literary, dramatic and musical works and sound recordings or in broadcasts and diffusions services. Such distinctions are of little value except to make the Tribunal an expert venue to which too few have jurisdictional access.

The Copyright Tribunal should have jurisdiction over all collectively administered licensing schemes. That its jurisdiction should be limited by the nature of the copyright material licensed, is specious.

It should be the appropriate forum for the variation, approval and interpretation of all licensing schemes, proposed/negotiated by collecting societies. It makes sense to allow as many aspects of the copyright administration function as possible, to come before the expert tribunal rather than the general court system.

For example, potential licensees and collecting societies may be unable to reach agreement as to:

- (i) royalty rates;
- (ii) whether particular uses are remunerable or not; and

(iii) appropriateness of sampling methods.

Where the parties are unable to reach agreement, either the society or the potential rights user, should have the right to approach the Tribunal. That a responsible body such as the Australian Council of Libraries and Information Services ("ICLIS") does not have that right in its dealings with CAL is anomalous and cannot be in the public interest.

All collecting societies' licence fees and conditions should be open to the potential scrutiny on the Tribunal simply because some arbitration mechanism is an essential requirement for the establishment of a working relationship between the society and users of its members' property.

The above principles apply regardless of whether the relevant rights are administered under voluntary or statutory licence.

32.2.1. An Alternative Amendment

If Government choses not to extend the jurisdiction of the Tribunal as suggested above, it should at least obtain a clarification of the definition of the term "licence". Owing to the definition of "licence" in section 136(1) it is arguable whether the Tribunal has jurisdiction over licensing schemes for :

- (i) "music video", where the music video is produced for sale and not only for broadcast; and
- (ii) Production Music, because the licence granted by AMCOS is to reproduce the sound recording, broadcast the sound recording and reproduce the musical work and the latter right is not covered by part (a) of the definition.

To overcome this uncertainty, ***it is recommended that the definition of "licence" should be amended along the lines of section 116(3) of the Copyright, Designs and Patents Act 1988 (UK) which defines "copyright licences" in the following terms: "licences to do, or authorise the doing of, any of the acts restricted by copyright."***

32.3. JURISDICTION OVER ANCILLARY ASPECTS OF LICENSING SCHEMES

The Copyright Tribunal has the power under section 135J and section 135zw of the Copyright Act to make determinations relating to sampling. For example, Section 135J (3) provides:

The extent of copying of broadcasts and any other matters that are necessary or convenient to be assessed by use of a sampling system, shall be assessed by use of a sampling system determined by agreement between the administering body and the collecting society or, failing such agreement, by the Copyright Tribunal on application made by either of them.

This jurisdiction is however restricted to copying performed in educational institutions and thus really only relates to CAL and AVCS. Even then, the Act restricts the possible parties to the educational institution and the collecting society. A rights owner does not have the right to bring such a sampling grievance before the Tribunal.

It is recommended that the Copyright Tribunal have explicit jurisdiction to hear grievances about the equity of all processes used in the identification of rights owners and quantification of royalty payments. If the recommendation to establish an Ombudsman of Collecting Societies is accepted, Government should consider making this jurisdiction subject to such grievance being first subjected to the alternate dispute resolution procedures of the Ombudsman's office.

32.4. PROCEDURE OF THE TRIBUNAL

It was the view of most of the societies and other parties who made submissions to the Inquiry, that proceedings before the Copyright Tribunal are expensive, slow and unnecessarily legalistic. As such they are only considered as a last resort.

As it is, only APRA, which uses the Tribunal as an integral part of its enforcement procedures and has considerable experience before the Tribunal, was satisfied with the present procedures.

For example, pursuant to section 152A of the Copyright Act the Copyright Tribunal has the power, upon application, to determine the royalty payable by record manufacturers for recording musical works. It was the view of AMCOS that if the cost of making application to the Tribunal could be minimised and a strict time limit for the making of orders adhered to, the option of making application to the Copyright Tribunal for a determination on rates would be more practical.

Of course, how to make any court process less costly and more expeditious is a challenge and given the commercial significance of the matters determined by the Tribunal it is important that the procedures give each party an equal opportunity to be fully heard.

32.5. RECOMMENDATIONS

- That there be established the position of Ombudsman Of Copyright Collecting Societies.
- That the definition of "licence" in section 136(1) be amended.
- That the Tribunal have as wide a jurisdiction as possible in respect of licences and licence tariffs including the variation, approval and interpretation of all licensing schemes whether the relevant rights are administered under voluntary or statutory licence.
- That the Tribunal have the right to review determinations of the Ombudsman.

- That the procedures of the Tribunal be examined to see how matters might be dealt with, faster and more cheaply.

33. TRADE PRACTICES ISSUES AND COLLECTING SOCIETIES

33.1. AUTHORISATION BY THE TRADE PRACTICES COMMISSION

33.1.1. APRA

33.1.2. AMCOS

33.1.3. PPCA

33.2. SECTION 51 (3) OF THE TRADE PRACTICES ACT

33.3. ABUSE OF A MONOPOLY

33.4. POTENTIAL FOR COMPETITION

33.5. SHOULD DECLARED SOCIETIES ENJOY A MONOPOLY?

33.6. RECOMMENDATION TO PROMOTE SOCIETY REFORM

33.6.1. Introduction Of Criteria For "Qualified Societies"

33.6.2. Effect Of Being A Qualified Society

33.6.3. Certification

33.7. RECOMMENDATIONS

There is a fascinating range of approaches and attitudes shown by the collecting societies to any inquiry as to the effect of the Trade Practices Act upon their operations. As one might expect, each society vehemently argues that they are not in breach of the Trade Practices Act. Whether they are or not is a matter that is outside the Terms of Reference and no view is expressed.

APRA has long argued that because it takes assignments, rather than licences (and is thus the owner rather than a licensee), the Act does not really affect it as only s.46 (1) could even be relevant. In spite of this approach, in certain cases brought by or against APRA, the Association's opponents raise the monopoly issue - even if it is only being used as a tactical tool.

All of the other societies are licensees and exercise various degrees of control over various rights. (See Rights Administered; Legal Basis).

All societies argue that they have never attempted, nor would never attempt, to prevent or hinder the entry of any person into any market. They argue that their whole purpose is to **facilitate** the lawful use of the relevant rights. As such, they supply a service to users which is cost efficient and simple; promotes increased competition in other markets; results in a supply of information to users so they can make informed choices; and promotes industry cost savings and ultimately lower prices. Their opponents argue that collecting societies are by their nature, monopolistic bodies that have the capacity to abuse that monopolistic position particularly through the imposition of restrictive licence terms or the operation of blanket licence schemes.

[There are two excellent background papers on this topic: the Trade Practices Commission's background paper entitled Application of the Trade Practices Act to Intellectual Property dated July 1991; and an article by Shaun McVicar entitled Copyright - Collecting Societies, Blanket Licences and the Misuse of Market Power,

Arts and Entertainment Law Review, number 2 of 1992, pages 1-10, and number 3 of 1992, pages 1-8.]

33.1. AUTHORISATION BY THE TRADE PRACTICES COMMISSION

One way of avoiding TPC problems is by obtaining an approval or "authorisation".

33.1.1. APRA

The Association did, between 1975 and 1980, hold an interim authorisation from the Trade Practices Commission but the Association did not seek to obtain a final clearance on the basis that its legal advice was to the effect that it does not run the risk of breaching the Act.

33.1.2. AMCOS

In September 1975 AMPAL gave notice to the Trade Practices Commission for an interim clearance of certain contracts, arrangements or understandings to which it was a party or proposed to enter into, pursuant to section 92 (1) of the Trade Practices Act 1974.

No contracts have been submitted to the Commission since that date. Apart from the blanket licences, AMCOS is a party to at least fifty other agreements, including industry agreements and one-off agreements with users. The Society was of the view that it would be obliged to pay \$7,500 per form for which approval was sought and that the cost of seeking approval would be simply prohibitive. Advice from the TPC is that the approval would be as to an 'overall course of conduct' rather than a particular form and that the above fee would be a one-time payment. In light of this the cost would in fact be quite reasonable.

33.1.3. PPCA

The Company has obtained an authorisation in respect of the public performance of records but was unsuccessful in its application relating to music videos.

33.2. SECTION 51 (3) OF THE TRADE PRACTICES ACT

Exceptions to the anti-monopoly provisions of the Trade Practices Act must be treated with due caution but Section 51 (3) of the Trade Practices Act presently provides an exemption in respect of certain dealings in copyright and largely relieves the societies of the need to seek an authorisation from the Trade Practices Commission.

The Hilmer Committee recently reviewed the Trade Practices Act and in particular, the scope of Part IV and recommended that the provisions of Part IV should apply to all bodies and societies and that the existing exemptions under Section 51 should be removed over a two to three year time span.

In respect of section 51 (3) of the Trade Practices Act, the Hilmer Committee stated that "It saw force in arguments to remove the current exemption ..." Nevertheless, it was "not in a position to make expert recommendations on the matter and recommends that the current exemption be examined by relevant officials in consultation with interested groups."

The core of section 51 (3) is that it acknowledges that intellectual property is a system based upon the ownership and control of exclusive rights and that there are public benefits in such a regime. It also recognises that

(i) exclusive rights can be used in such a way as to abuse market power, and that

(ii) such abuse would out-weigh the public benefits of exclusivity.

33.3. ABUSE OF A MONOPOLY

Certainly whenever a number of exclusive rights owners join together to form a licensing system, there is a potential for abuse and there is no doubt that each of the five collecting societies do have a dominant position in the market-place with respect to the types of rights that each controls. But the Trade Practices Act does not forbid **potential** misuse of power, it proscribes the taking of advantage of power in a market for the purpose of:

(a) eliminating or damaging a competitor in that or any other market;

(b) preventing entry to that or any other markets; or

(c) deterring or preventing competitive conduct in that or any other market.

[section 46 (1)]

It is important to recognise that CAL, AVCS, AMCOS and PPCA all administer (to varying degrees), statutory licences. In the majority of their licensing functions, they have no discretion to refuse a grant of a licence (except in the limited circumstance of non-payment of reasonable remuneration). After all, statutory licences were introduced largely to prevent monopolistic practices interfering with public access to otherwise exclusive rights. Insofar as licence schemes are statutory, the policy behind such schemes is compatible with the intention of section 46.

The Inquiry found no evidence of societies acting so as to eliminate or damage a competitor. The only evidence of 'preventing entry of a competitor to any relevant market' was the use of exclusive licence arrangements rather than non-exclusive ones. As the exclusive/non-exclusive distinction is central to the commercialisation of any intellectual property, it is hardly surprising or indeed problematic, that the owner of an exclusive right should exercise that right to permit another to administer the right on an exclusive basis. In other words, when a copyright owner exclusively licenses a society so as to allow administration on a collective basis, that transaction neither adds to nor detracts from the essentially exclusive nature of the relevant right. In any event, as all of the societies permit a rights owner to withdraw from the scheme upon

certain notice, there is nothing preventing a competitor being established and persuading rights owners to serve the requisite notice and change societies.

Accordingly, there is little Trade Practices significance in whether a licence from an owner to a collecting society is exclusive or non-exclusive.

Moreover, whether the licences are exclusive or non-exclusive, the important competition factor is whether or not the practice of the society interferes with the ability of other companies to compete with the society by providing not the **same** services but services **of the same type**. It is illogical to suggest that there is a Trade Practices problem inherent in preventing one corporation accessing the same intellectual property as another, but it is completely appropriate to cry "Trade Practices" if the activity of one corporation is designed to prevent others from entering the same field using intellectual property rights over which it has acquired control.

33.4. POTENTIAL FOR COMPETITION

It is particularly interesting to note that CAL's "worship" licence receives considerable competition from three licensing organisations which offer competitive licences (Word of Life International; Christian Copyright Licensing International; and Licensing).

The existence of these three competitors to the CAL licence demonstrates that there is a very real opportunity for the supply of alternative licensing services within particular market niches. These competitive companies also demonstrate that if their services are sufficiently attuned to the market they can charge considerably more for their services than that charged by the larger collecting society.

In some instances, the exclusivity is sought by a society so that it can be sure of getting a percentage from all permissions granted in respect of a right, not just the non-profitable ones. For example, it is a severe impediment to the functioning of AMCOS that the fifteen largest record companies account directly to the publishers for mechanical income rather than through the collecting society. This may be seen as a great plus for those who argue for the ability of corporations to maximise their profits but it is clearly a practice that means that the overhead of running the collecting society must be borne by a diverse range of only peripheral licensing functions - ones that are not profitable to handle in other than a collective manner.

For as long as corporations see the relevant collecting society merely as an extension of their commercial operation, there will always be potential for conflict of interest, entrenchment of interests, the abuse of minority interests and the abuse of monopoly positions.

33.5. SHOULD DECLARED SOCIETIES ENJOY A MONOPOLY?

There is certain controversy as to whether Declared Societies should be given a monopoly over their relevant rights. The antagonism seems to largely come from rights owners who object to having a Declared Society licensing (or refusing to license) their rights, negotiating the terms of such licences, and collecting on their behalf. An example of this was provided to the Inquiry by the Combined Newspaper

and Magazine Copyright Committee of Australia which represents "all major newspaper and magazine publishers in Australia".

In contrast, none of the user organisations who made submissions saw the monopoly of the Declared Societies to be a particular problem. After all, these groups have the benefit of dealing with only one agency when locating, negotiating and acquiring rights.

A statutory licence is generally granted to provide access to certain rights that the community (through the voice of Government) believes should be made available, without the normal commercial strictures. (That is not to say that the exploitation should not be on reasonable commercial terms, rather that there be no right to deny access or control.) The statutory education licences are a perfect example of this. In such cases, where the interests of the user are being placed above the interests of the rights owner, it is consistent for Government to demand that the statutory right be administered by one organisation. This assists the users for they have only the one organisation to deal with - the one-stop shop. Accordingly, it is highly efficient and cost effective for the rights users.

Beyond the statutory licence regime, there is no reason why a society should be given any monopolistic preference. If two or more companies wish to compete to attract rights owners and to set up the administration necessary to administer those rights and interests, they should be allowed to do so. It must be added that the position of Government licences, is based on principles different to those which apply to the educational statutory licences. The relationship between Government and a collecting society (such as CAL) is derived from negotiation. If the Government chose, it could negotiate an agreement with any collecting society for the use of its members' rights. If it so wished, it could adopt the rhetoric of competition and the free market rather than the present rhetoric of the natural monopoly. If it were to do so, it is difficult to see what advantage it would gain, beyond a degree of ideological purity. Being the supplier of licences to intellectual property is not the same as being a supplier of chairs. Any supplier can tender to furnish chairs to Government provided that it is the cheapest tenderer that can fulfil the functional requirements.

With intellectual property, the user needs permission in respect of a particular work rather than a general species of work. For this reason, it makes sense for Government to adopt a system that is most convenient and efficient for its own needs: namely, a system by which it has to deal only with one organisation in order to acquire the rights that it requires. Rather than relying on competitive organisations to regulate the sensibilities of price and conditions, it is more efficient to ensure that the Copyright Tribunal has the right to determine such issues in the absence of agreement between the parties.

The answer for rights owners who object to the Government-conferred monopoly, is to recognise that such collecting societies are non-profit distributing companies and that, as members, they would be entitled to nominate representatives for the board and that they would be able to influence the policies of the organisation in the same way as every other rights owner. That a new collecting society established by group representing "all major newspaper and magazine publishers" would enhance

competition and still assure the public benefit of access for governmental and educational copying, has yet to be established.

33.6. RECOMMENDATION TO PROMOTE SOCIETY REFORM

One approach is to say that no organisation (whether a collectively administered collecting society or not) should be exempt from the full rigour of the market principles imposed by the Trade Practices Act. That approach demands the phasing out of section 51 (3) exemptions. The implications of doing this involve interfering with the fundamental exclusive rights of intellectual property. Even if it were thought desirable, it may well be in breach of Australia's international treaty commitments under the Berne and Rome Conventions.

The other, and more positive contribution by Government, would be to see how it might persuade all societies to improve their structure, procedures and function so that they have an incentive for positive change, rather than maintaining a defensive posture in relation to Trade Practices issues. In other words, it is suggested that the Act can be used as a very directed carrot rather than a stick.

33.6.1. Introduction Of Criteria For "Qualified Societies"

It is recommended that the existing limited exemption accorded to collecting societies by Section 51 (3) of the Trade Practices Act remain (albeit in amended form) PROVIDED THAT each society brings its structure, procedures, functions and conduct within certain guidelines which will work to ensure that there is sufficient scrutiny of a society's conduct to protect its members, licensees, potential users, and owners of the relevant copyright.

It is emphasised that the compliance with such guidelines must be voluntary. After all, the societies are member-based organisations and those members must retain the decision as to whether they want to make changes and thus gain benefits, or whether they prefer to remain as they are. The choice must be theirs. For example, when AMCOS was asked about its attitude to enjoying the advantages of being a declared collecting society, its view was that the "monopoly problem" is more perceived than real and that the administrative inconvenience of becoming and operating as a Qualified Society, would outweigh any advantages.

The present Guidelines For Declared Collecting Societies provide an excellent starting place for the new guidelines. Obviously they would need to be altered to make them relevant. The matters that should be taken into account to ensure the good governance of societies include the following:

- (i) That the society be a non-profit company limited by guarantee;
- (ii) That all relevant rights owners have access to membership of the company (not just its services) and have equitable access to board membership and company control;
- (iii) That the relevant rights owners be equitably represented on the board of the society;

- (iv) That the maximum term of board membership be limited so as to inhibit entrenchment of interests;
- (v) That the accounts of the company be annually audited;
- (vi) That an Annual Report be provided to the Attorney General;
- (vii) That Qualified status be able to be removed by the Attorney General, either on his/her own motion or upon the recommendation of the Ombudsman For Collecting Societies;
- (viii) That it notify and obtain the approval of the Attorney General as to any intended rule changes;
- (ix) That the society maintain a Cultural And Charitable Purposes Fund for the benefit of relevant rights owners and members.

33.6.2. Effect Of Being A Qualified Society

It is recommended that the TPA be amended so that societies which are Qualified Societies, and thus subject to the regular scrutiny of government, should be given the protection of section 51 (3) thus, in effect, placing them in the same position as they would have been if they had received authorisations from the Trade Practices Commission.

It is further recommended that, a society's input agreement should not be in breach of section 45 if the society is Qualified and the output agreement should not be in breach of section 45 if it is either (a) statutory or (b) approved by the Copyright Tribunal.

33.6.3. Certification

It is further recommended that it be provided that where there is a purported abuse of a Qualified Society's monopoly power, no action may be commenced in respect of that abuse, under heading of the TPA, without the prior certificate of the Attorney General.

33.7. RECOMMENDATIONS

- That guidelines be drawn up and an approval mechanism instituted, by which those collecting societies which can demonstrate that their structures, procedures, functions and conduct is within those guidelines, are accorded the status of "Qualified Societies".
- That such guidelines be drawn up in consultation with the Trade Practices Commission and the societies.
- That Qualified Societies retain the protection of Section 51 (3) of the Trade Practices Act.
- That a society's input agreement should not be in breach of section 45 if the society is Qualified and the output agreement should not be in breach of

section 45 if it is either (a) statutory or (b) approved by the Copyright Tribunal.

- That where there is a purported abuse of a Qualified Society's monopoly power, the prior certificate of the Attorney General be a pre-condition to raising section 46 (1) in legal proceedings.

34. A COPYRIGHT COLLECTING SOCIETY FOR THE VISUAL ARTS

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34.12 STRUCTURE OF VISCOPY

4.13 RECOMMENDATIONS

34.1 INTRODUCTION

A centralised agency for the collection and distribution of copyright income is justified when administration of and access to rights is impracticable on an individual level. This is presently the case for visual artists in Australia. In the absence of a

centralised, properly resourced collecting society, the owners of copyright in visual art are being deprived of income to which they are entitled, and copyright users are being deprived of the opportunity to obtain copyright clearances in an efficient and responsible manner.

There has been concern at the inadequacies of copyright protection in the Australian visual arts among the practitioners, administrators and lawyers who work in the cultural industry for over ten years. The legislative anomalies and economic disadvantages which visual artists suffer in comparison with their colleagues in other practices (in particular authors of literary and musical works) have made it extremely difficult for visual artists to achieve a satisfactory degree of professional independence.

That concern has resulted in a plethora of publications investigating and reporting on the legal, economic and social circumstances of the visual artist. Since the late 1980s much of this work (which has variously been funded by the Australia Council, the National Association for the Visual Arts ("NAVA"), CAL and State Arts Ministries) has advocated the establishment of a visual arts copyright collecting society.

Material Commissioned For The Establishment Of A Visual Arts Collecting Society			
Date	Commissioner	Material	Author
Nov 1989	NAVA	Report on Copyright Fees for Visual Artists Libby Baulch	Australian Copyright Council
April 1990	NAVA/CAL	Feasibility Study Colin Golvan	Barrister
Oct 1991	CAL	Feasibility Study John Byrne	Consultan Australia
Jan 1992	NAVA/CAL Study on CAVAA: Copyright Agency for Australian	Visual Artists Natasha Serventy	Copyright Consultant
Nov 1993	NAVA	Income Research for Proposed VISCOPY Collection Agency	HH Guldberg Economic Strategies Pty Ltd
Dec 1993	NAVA	Business Plan for VISCOPY Anna Ward, Barbara Allen	NAVA

No one of these reports has provided an irresistible argument for introducing a visual arts copyright collection society but for all that, they have all arrived at the same conclusion: Australia needs a collecting society for the visual arts. No more reports need to be written to establish to need and viability of such a society.

34.2 THE NEED FOR AN AUSTRALIAN VISUAL ARTS COLLECTING SOCIETY

34.2.1. Income For Visual Artists And Craftspeople, And Enforcement Of Their Rights

The loss of income from and control over the exploitation of copyright that flows from the disparate art practices, geographic decentralisation and low income level of visual artists, together with the concealment of the practice of copyright infringement which is tacitly condoned by the lack of any efficient administration, are characteristic of the visual arts sector of the cultural industry and market in copyright works.

Organisations such as NAVA, Craft Australia, professional organisations, the Australian Copyright Council, the Arts Law Centre of Australia and Aboriginal Arts Management Association ("AAMA") cannot meet the demand for the services they already provide and have no resources to extend these services to deal with the complex and widespread problems which face visual artists in the exploitation and administration of their copyright. Nor is their charter to do so.

It has been clearly established that Australian visual artists comprise an especially low-income earning group in the cultural sector notwithstanding the fact that they are also among the highest qualified groups of income earners.

As a result of these severe economic disadvantages, visual artists In this Report "visual artists" is used compendiously and includes craftspeople, designers, photographers, illustrators, black and white artists and fine artists. lack the resources to supervise their rights, or to pay for the enforcement of them. Yet at the same time they are conscious of the practice of infringement of their works See Throsby and Mills When are you going to get a real job? (1989).

Research indicates three fundamental problems which confront visual artists in the exploitation of their copyright: lack of understanding of legal rights, weakness of bargaining position, and inadequate or ineffective enforcement mechanisms Publications which note these factors on the basis of research conducted into the financial status of visual artists, include:

Throsby and Mills, When Are You Going to Get a Real Job?, Australia Council (1989)

Baulch, Report on Copyright Fees for Visual Artists, Australian Copyright Council (1989)

Throsby and Thompson Individual Artists' Survey, Australia Council 1993 (to be published)

34.2.2. Understanding Of Legal Rights

Several national, government funded and professional organisations work to redress the difficulties which visual artists and craftspeople experience in getting information about their rights. The Australian Copyright Council, the Arts Law Centre of

Australia and NAVA have long-established educational programs to facilitate professionalism and self reliance among practitioners in the visual artists.

Federal and State Crafts Councils, and professional organisations provide educational and advisory services to its members, and lobby for legislative change in their interests.

In respect of Aboriginal and Torres Strait Islander artists, who suffer particular economic and cultural hardship at the unauthorised exploitation of their works, (as to which, see below) the Aboriginal Arts AAMA has been vigilant in the education of its members and the enforcement of their rights by providing information and assistance to Aboriginal and Torres Strait Islander artists and arts organisations in relation to matters such as contractual arrangements, copyright, moral rights which affect the production and use of Aboriginal and Torres Strait Islander cultures.

However, notwithstanding all of their efforts, education on its own is not enough. None of these organisations which educate, inform and advise visual artists and craftspeople can redress the financial and bargaining disadvantages which visual artists and craftspeople suffer.

34.2.3. Bargaining Power

As has been noted above, visual artists and craftspeople fare far worse than comparable income earning groups. Specifically in the exploitation of their copyright as a potential income source, visual artists are at the behest of their contracting partners in negotiation who invariably enjoy far greater commercial power both because they are likely to be far better resourced, and because they are buyers in a buyers' market. Further, and perhaps partly as a result of this inequality of bargaining power, there is no industry standard, or minimum fee structure, for the reproduction of artistic works, as exists in other countries (such as the United Kingdom, France and Germany) where minimum recommended licence fees are set by visual arts copyright collecting societies.

Both the Australian Copyright Council and the Arts Law Centre of Australia have extensive experience in the provision of national legal services to the arts community. The most recently published Annual Reports of both the Australian Copyright Council and the Arts Law Centre indicate that in the 1992 financial year a major proportion of the inquiries dealt with concerned the visual arts (21% in the case of the Australian Copyright Council and 42% in the case of the Arts Law Centre of Australia); and that a large proportion of those inquiries concerned copyright-related matters. These services play an important role in addressing the imbalance but cannot be expected to overcome the commercial effect of economic disadvantage, namely a diminished ability to negotiate a fair remuneration from the reproduction of their creative work.

34.2.4. Enforcement

Whilst individual artists, have the legal authority to control the use that is made of their works, they rarely have the economic resources to commence legal proceedings to enforce those rights. The Johnny Bulun Bulun case (involving copyright

infringements on t-shirts) sent a caution to infringers of copyright material in Aboriginal artistic works but infringement actions in the visual arts are unusual because visual artists and craftspeople are a dispersed, unmonied class, have no means to conduct a test case, and an account of profits in any single case is rarely likely to justify the expense of copyright infringement proceedings.

34.2.5. Conclusion

The precise economic impact of the loss of income to which visual artists and craftspeople are entitled, and of access to effective enforcement procedures, is impossible to calculate. However, the cultural industry statistics which are available indicate that the visual arts sector is a very substantial one Source:

The Arts: Some Australian Data Australia Council, December 1991

. In 1990-91 Australian households spent \$830 million on books, \$680 million on newspapers, \$550 million on photographic materials, services etc, \$420 million on magazines and other printed material. All of this material includes or involves the reproduction of visual art work.

As the already significant visual arts industry develops culturally and economically, on both a domestic and global level, artists' need for a responsible and effective agency to formulate minimum fees, set industry standards, collect and distribute their copyright income and foster a culture of respect of their rights, intensifies. The experience of visual artists in other countries, and the opinions of lead organisations in both the copyright and cultural sectors (funding bodies, progenitors of law reform, political organisations representing visual artists and visual artists themselves) unanimously indicate that the most appropriate way of dealing with these issues is by the establishment of a collecting society. In an age of mass reproduction, it is not only inefficient, it is practicably impossible, for artists to administer the full extent of their rights without the benefit of collective administration.

34.3 VISCOPY

To NAVA's credit, it has provided sustained support and pressure for the introduction of a visual arts copyright collecting society. It has established a company limited by guarantee named VISCOPY for the purpose. It exists. It is unfunded and unstaffed. For the moment, it is a corporate shell which needs slight restructuring and considerable funding.

34.4 EFFICIENT COPYRIGHT CLEARANCES AND SERVICES FOR USERS OF COPYRIGHT MATERIAL IN ARTISTIC WORKS

"The most startling and to some extent unexpected result of the .. inquiry was the widespread ignorance (among all participants in the industry) of copyright and the legal basis on which deals are negotiated...

Particularly where public bodies such as government departments and state galleries are involved, it was disappointing to see some practices being adopted that were so clearly unfair to artists and contrary to the aim of promoting artists' welfare. Tired arguments such as that the use will "promote" the artist and therefore should be free to the user were not

uncommon. There was a reluctance on the part of users to assess the value of the use to them as licensees (rather than the perceived value of the use to the artist)." Libby Baulch Report On Copyright Fees for Visual Artists, Australian Copyright Council, November 1989, pp 1, 27

The wide geographical dispersal of visual arts practitioners and the very individual nature of their work, suggests that it is difficult for users to identify, locate and contact the rights owners. Currently, not only is it easy for irresponsible firms to break the law; it also commercially impractical for responsible industry participants to meet their legal obligations.

It is to the mutual benefit of copyright owners and users that copyright users have access to a comprehensive repertoire of works and an efficient licensing administration which can be integrated into the commercial activities of copyright users with minimum disruption. Under these circumstances copyright users can fulfil their legal obligations and adopt best copyright practice in the most efficient way.

34.4.1. Services Required By Major Collecting Institutions

Notwithstanding the traditional antagonism expressed by some users of copyright material, several major institutional users of copyright material in artistic works eagerly anticipate the establishment of a copyright collecting agency which can administer copyright uses and fees efficiently. Letters of support were provided from several of these. The National Gallery of Australia (Kevin Munn, Assistant Director, Access and Marketing who was delegated by the NGA Council in late 1993 to address its copyright policies) endorsed the proposal saying that it

"will be more efficient to clear copyrights through a collecting society which is situated in Australia.

To date the Gallery has assisted in the establishment of an Australian agency by hosting a seminar for Gerhard Pfennig, Executive Director of BILD-KUNST, Bonn; and we are taking the initiative to facilitate a visit to Australia by Rachel Duffield, Executive Director of the Design and Artists Copyright Society Ltd., London. In addition, an officer has been made available to liaise with NAVA as a Director of the Board."

Other strong letters of support were received from the Regional Galleries of New South Wales and the Queensland Art Gallery. The latter placed a rider on its support saying that "... the State and National Galleries should seek to adopt a uniform position on VISCOPY." Accordingly, and very usefully, the Queensland Art Gallery will be presenting a recommendation to the next meeting of the Council of Australian Art Museum Directors. (Letters from Museums Australia and the Museum of Contemporary Art are also foreshadowed.)

Besides the traditional image reproduction needs in collecting institutions, the recent and continuing trend of Australian collecting institutions to increase their merchandising activity reflects similar overseas practice and indicates a growing market in the exploitation of copyright in artistic works. In 1992 the gross merchandising sales of the five largest state galleries was \$9.5 million.

Nett merchandising activity of the seven largest state galleries was \$2.2 million, and of regional galleries approximately \$0.6 million Jane Spring Museums 1992: Art Museums and Public Galleries in Australia and New Zealand, Research Paper No. 9 Australia Council July 1993

. These factors reveal the commercial imperative for collecting institutions to have access to efficient copyright clearance.

As noted above, the National Gallery of Australia ("NGA") is developing a formal in-house copyright policy. The NGA has expressed its preference for VISCOPY to operate as a centralised agency to assist it to implement that policy.

In September 1993, NAVA commissioned a report into the feasibility of a proposed visual arts collecting society Guldberg op.cit.

. The Report did not attempt a comprehensive survey of potential income sources for such an agency, but made a comprehensive analysis of selected market segments to comprise a 'base case' of reproduction rights associated with 'mainstream' art, and Aboriginal and Torres Strait Islander art and craft. In summary, the projected collections from art museums were \$30,000 in the agency's first year of operation growing to \$420,000 in its fifth year, and of collections from reproduction of Aboriginal and Torres Strait Islander artists was \$50,000 in year one growing to \$400,000 in year 5.

34.4.2. Educational Users Of Copyright Material

As a separate 'scenario', Guldberg analysed the potential income from the exploitation of reprographic rights by educational institutions (currently administered by CAL in respect of literary works) of artistic works. As is discussed elsewhere in this Report, that potential income is currently constrained by s.135ZM of the Copyright Act.

Using a sample of photocopied text provided by CAL, Guldberg found that more than 2% of the sample, yielded illustrated pages (not including graphs, diagrams, maps or line drawings). On the assumptions that CAL were willing to agree to a distribution to VISCOPY of the minuscule amounts currently collected for visual material, and that s.135ZM would be repealed in VISCOPY's fourth year, Guldberg estimated projected collections from this source of \$200,000 in year 1 and \$1.95 million in year 5.

It has been recommended elsewhere in this Report that s.135ZM be repealed and a statutory licence granted for educational copying. This has the advantage of making it clear that educational institutions have the right to copy and that CAL, acting as the agent of VISCOPY, would have the right to monitor and collect in respect of those uses. (Although Guldberg anticipated that such legislative amendments would not take place until VISCOPY's fourth year, such delay would only have the effect of increasing the amount of grant support that would be required to maintain the new Society in its establishment period.)

Over its years of operation, CAL has developed sampling and collection techniques which cause least disruption to educational institutions in meeting their obligations with regard to reprographic use of copyright material. The promoters of VISCOPY intend that the society would co-operate with CAL in the sampling and collection functions to deliver a cost effective service whereby VISCOPY will distribute to its

members income from reprography which CAL logs and collects from educational institutions. This is most sensible.

34.4.3. Conclusion

It is presently difficult for copyright users to identify and locate copyright owners efficiently to obtain their permission and negotiate a fee for the use of their work. It is hardly surprising that they are somewhat reluctant to bother. With copyright owners insufficiently resourced either to secure fair remuneration by bargain, or to enforce their rights against infringement, there has been little deterrent against unauthorised use, nor incentive for users to make the effort to meet their obligations.

The establishment of VISCOPY, will means that for some users, (in particular those who have not been paying for their use of visual art copyrights), their costs will increase. Moreover, all users will also have to become familiar with the new system for obtaining clearances. These however are matters that are justified in the interests of proper copyright administration and obtaining appropriate remuneration for copyright owners.

VISCOPY, particularly if it co-operates with the state and national collecting institutions and with CAL and AVCS, will enable copyright users to meet their obligations whilst at the same time ensuring that the rights owners receive fair remuneration for and maintain control over, the rights. It is a classic example of circumstances in which collective administration is desirable.

34.5 ABORIGINAL AND TORRES STRAIT ISLANDER INTERESTS

34.5.1. Role Of A Collecting Society For Aboriginal And Torres Strait Islander Art

In its chapter on cultural integrity and copyright, the 1988 Review Committee of the Aboriginal Arts and Crafts Industry ("the Altman Report") noted the following problems in enforcement of copyright in Aboriginal art:

- (i) *Lack of consistency in, and poor documentation of, Aboriginal art, particularly at the fine art level.* The Committee noted that such documentation was of a poorer standard in exhibitions of Aboriginal art than those of non-Aboriginal art, that the importance of proper documentation extended beyond collectors and students of Aboriginal art to the promotion of a more informed understanding by the general public of visual artists' copyright, and that adequate documentation could play a role in establishing and safeguarding visual artists' copyright.
- (ii) *Continuing practice of infringement of artists' copyright.* The Committee noted that notwithstanding the fact that Aboriginal artists have the same legal rights as other artists under Australian law, Aboriginal artists' rights have historically been more likely to be disregarded than the copyrights of non-Aboriginal artists. The Committee's view was that this was caused by widespread ignorance of copyright on behalf of both artists and would-be users of it.

- (iii) *Difficulties experienced by museums and art galleries in acquiring reproduction licenses for the use of Aboriginal art.* Submissions made by collecting institutions suggested streamlining of procedures for the reproduction of artworks, particularly in respect of non-commercial reproduction for promotion of exhibitions, inclusion in catalogues and for educational purposes. The Committee noted that Aboriginal artists have suffered particular disadvantage because of their often remote location so that even when potential users of material wanted to obtain the artist's permission for use of their work, where an artist could not be located the result was either that their work was not used, or that it was used without permission. The Committee regarded either consequence as risking offence to both personal and artistic integrity. (This view was also supported by submissions made to the present Report.)
- (iv) *The lack of standard guidelines to assist with negotiations of fees.* The lack of such guidelines resulted in complaints by copyright owners of unconscionable underpayment; and by users of unreasonably high demands.
- (v) *The prohibitive cost to individual copyright owners of bringing infringement actions.* The Committee noted the unsuccessful approaches which had been made to Aboriginal legal aid services in Sydney and Melbourne on behalf of Aboriginal artists, and the limited resources of these organisations.

With the exception of the funding of AAMA, little has been done to improve the position of the Aboriginal artists as described in the Altman Report. Since then, the cases of Johnny Bulun Bulun, and other actions brought by Aboriginal artists for infringement of their copyright by the manufacture of t-shirts appropriating their designs, have been possible through the limited funding from North Australian Legal Aid Service, the Federal Government and the Australia Council to fund the odd case. Although these cases are important, they are not the stuff of systemic reform.

The Altman Report was not convinced that a specialist Aboriginal copyright collection agency was warranted notwithstanding the copyright related issues which impact specifically on the creative output of Aboriginal and Torres Strait Islander artists. There is no reason to divide the interests of Aboriginal and non-aboriginal artists. Both need such an organisation. Both can ensure that their respective interests are taken into account through a structure that ensures that the interests of all of the relevant rights owners are represented.

A visual arts collecting society will not compete with existing organisations; it will complement and supplement them. In time it may also be a useful additional source of funding to support them. For example, AAMA investigates copyright infringements and supports action taken by other agencies in test case infringement actions. It negotiates copyright clearances and fees for the use of their members' work. VISCOPY, by virtue its centralised nature, could co-operate and build on both aspects of this work by working together with AAMA on educational programs, and administering the rights which Aboriginal and Torres Strait Islander artists grant in consultation with AAMA. There must be consideration of the extremely complex religious, cultural and economic issues which exist in the market for the exploitation of Aboriginal art. It is suggested that VISCOPY would not seek to usurp AAMA's role as the primary educational and advisory resource for Aboriginal and Torres Strait

Islanders, but rather would rely on AAMA's unique expertise in an equitable distribution of copyright fees for Aboriginal and Torres Strait Islander artists: work that AAMA is presently inadequately resourced to do.

Discussions were held with AAMA. These indicated that the establishment of VISCOPY is seen by their constituency as a positive contribution to the problems faced by aboriginal artists.

34.6 THE IMPACT OF NEW TECHNOLOGIES

Historically there has been a view that the major source of income for visual artists has been the sale of their original work. If this were once true, it is no longer for the vast majority of arts practitioners. Whilst this is not the place to give comprehensive coverage to the concerns of visual arts copyright owners with regard to the impact of new technologies, it is obvious that digital technology in particular has dramatically changed both the creation, storage, distribution, transmission, application and manipulation of copyright material. Now that technology such as CD-Rom can merge (converge) text and image without discrimination as to class of work or subject matter in which copyright subsists, it is axiomatic that artistic works should be treated in the same way as literary and musical works.

34.7 AUSTRALIA'S STANDING IN INTERNATIONAL COPYRIGHT PRACTICE: LAW, TRADE AND CULTURAL AWARENESS

Australia has a creditable record of commitment to international copyright conventions, particularly by its memberships of the Berne Convention, Universal Copyright Convention and most recently the World Trade Organisation.

Whilst none of these conventions requires copyright administration by a centralised agency, the lack of a visual arts collecting society limits the effectiveness of the enforcement of Australian visual arts copyright in the international arena which has, since the late 1970s, increasingly operated as a federation of national collecting societies.

34.7.1 GATT

Central to Australia's participation in the GATT is the improvement of its standing in the international trade in intellectual property works (from which it is argued benefits will flow to copyright owners). Without a sufficiently expert, efficient and comprehensive copyright agency to administer the rights and obligations which Australia assumes by virtue of its GATT membership, it denies itself the full benefit of its international participation, as well as denying the flow-on benefits to copyright owners.

34.7.2 Arrangements With Overseas Copyright Collecting Societies

There are visual arts collecting societies in over 30 countries. Each develops national standards of industry practice in the licensing of copyright to users, and each

negotiates reciprocal arrangements for the international enforcement of their members' copyright. There are, for instance, such agencies in the United Kingdom, the United States, France, Germany, Canada, Japan, Scandinavia, South Africa and Eastern Europe. Each belongs to the Confederation of International Societies of the Graphic and Plastic Arts and Photographers (CIAGP), a subsidiary council of the Confederation of International Societies of Authors and Composers (CISAC).

On 6 June 1994 CIAGP resolved to offer VISCOPY reciprocal agreements with their societies as soon as it is operational. Moreover, the Chief Executive of the United Kingdom visual arts collecting society, DACS, has written to the Chairman of NAVA that DACS will hand over administration of the rights of Australian visual arts copyright owners to VISCOPY once it is established. **Having the rights of Australians administered by a United Kingdom representative is clearly unsatisfactory and cannot continue.**

With this international standing VISCOPY would be assured of an operational base and international presence, to which Australia is already entitled by its participation in the GATT. It is highly unlikely that an agency not exclusively concerned with the interests of copyright owners in artistic works would be accepted into CIAGP.

Guldborg analysed information relating to 10 overseas visual art collecting societies for 1988 to 1991. In summary, he found a trend rate of growth amongst them of 28.8% pa, and that the three largest activity areas were reproduction rights, resale right and reprography. Guldborg notes a "spectacular 70% jump" in reprography rights in 1991 and growth in revenue from cable and broadcasting rights. The growth of collections in all areas significantly or greatly exceeded the rate of inflation.

It is obviously impossible to apply overseas experience in any general or direct way to the Australian legislative, economic and cultural context, but the economic review of these agencies highlights what work can be done by visual arts collecting societies so long as they achieve critical mass quickly and are administered efficiently and by people with appropriate expertise.

The legal, cultural and economic benefits of CIAGP membership for VISCOPY will include:

- (i) Income for, and a policing service against unauthorised exploitation of the works of, Australian artists internationally.
- (ii) Promotion of responsible use of copyright internationally.
- (iii) Practical recognition of Australia's status as a 'most favoured nation' trading partner in the international visual arts copyright market.
- (iv) Development of the international market for the use of Australian copyright material.

All of these benefits are of particular importance to Aboriginal and Torres Strait Island visual artists, for the reasons set out above.

34.7.3. International Awareness Of Australian Culture

The arts sector sells Australia overseas both as exports of works of art and as tourism. As has been noted above, inadequate enforcement mechanisms provide a tacit licence for the unscrupulous and unremunerated exploitation of copyright material. On an international level this has several consequences. First, it obscures the cultural complexity of Aboriginal and Torres Strait Islander Art; second, it hampers the potential for visual artists to achieve international recognition. On a national economic level it prevents Australia from maximising the economic potential of the cultural sector, because copyright users are prone to exploit copyright work without accreditation, or use other material altogether if a copyright owner is too difficult to find. Both the artist and Australia suffer.

34.7.4. Conclusion

At a time when participants in international affairs are increasingly identified as bloc territories, it is crucially important that Australia is represented in the international forum to the same level as are other countries, if only to guarantee its standing. In the field of international intellectual property law and practice the industry has increasingly organised itself around the centralised collecting agencies, whose charter and expertise are the representation of the interests of the classes of copyright owners who are their members. Those agencies are anxious for the establishment of VISCOPY for the mutual benefits they perceive this will provide their members, and the uniformity of copyright practice internationally. This view is consistent with the rights and obligations Australia has negotiated for itself at the level of international law. It needs a complementary mechanism to give those rights and obligations practical effect.

34.8 A SEPARATE COPYRIGHT COLLECTING AGENCY

Given that a copyright society for the visual arts is necessary, the question must be asked whether it needs to be a stand-alone society or whether its function could be undertaken by an existing society. **The recommendation of this Report is that the society have a separate structure and management.** The reasons are as follows:

- (i) Copyright collecting societies have traditionally represented the legal and economic rights of copyright owners according to the areas in which those rights owners operate. Collecting societies achieve credibility with both rights holders and rights users through their expertise in representing their members' interests. Each class of copyright owner has different interests, not always compatible. Accordingly, a collective administration must be owned and administered by representatives of the relevant rights owners - the artists.
- (ii) Copyright collecting societies are complex commercial and cultural institutions. One of the primary objectives of any responsible copyright collecting agency is to minimise operating costs without jeopardising its members' interests, and as this Report has discussed, there are only limited economies of scale which a collecting society can achieve by merging.

VISCOPY can benefit from many of the investments and progress which existing agencies have made in their operations and thereby reduce its establishment and

running costs, but existing agencies cannot afford to represent copyright owners in artistic works without either neglecting the administration of their members' interests, or charging more for the services they provide. In other words, there are limited economies of scale across industries.

(iii) Distinct commercial practices exist in the cultural sector around particular art forms. Accordingly, copyright collecting societies need to provide services which are appropriate to the rights and practices of copyright owners, and obligations and practices of copyright users. In particular, copyright collecting societies develop sophisticated databases which can store detailed information about the works, analyse information gathered about use of those works, and calculate distribution to rights holders of fees collected from rights users.

Therefore, whilst there can be scope for clear scale economies within industries (making it sensible to establish a single collection agency within the visual arts), there is less scope for economies across industries, and therefore no economic justification for merging the activities of a visual arts collecting society with those of another.

(iv) A separate visual arts collecting society would be well placed to represent the interests of Aboriginal and Torres Strait Islander visual artists. The Society would not only collect fees on behalf of such owners but would be able to co-operate with existing organisations and extend the educational work they undertake to educate the owners and users of copyright in such works.

(v) Copyright collecting societies for the visual arts in other countries are run independently from other copyright collecting societies (for the reasons set out above). They set national standards, fees and tariffs, and negotiate international arrangements through a federation of visual arts collecting societies. Australia needs to be included in this federation in order to reap the maximum potential of international copyright protection for Australian visual arts copyright owners. This could be jeopardised if a visual arts collecting society were established within another collecting society in Australia.

34.9. THE FUNDING OF THE ESTABLISHMENT PERIOD

As shown earlier in this Report, the traditional way for funding the establishment of a collecting society is through the investment, loan or gift of moneys from leading corporate entities within the relevant industry sector. This is not available to visual artists. They lack an alliance with any commercial organisation of financial substance. Unlike owners of copyright in books, sound recordings, musical works and literary works, by the nature of the practice of visual arts, the visual arts has no equivalent to the Australian Record Industry Association ("ARIA") or the Australian Book Publishers Association and Australian Society of Authors ("ABPA" and "ASA" respectively).

CAL is the only collecting society that has a potential role in assisting with the establishment of VISCOPY. It has already made a loan of \$30,000 to NAVA to fund the consultancy which resulted in the Serventy Report. This loan has been written off and is therefore best viewed as a grant that the Society has already made towards the establishment of the new Society. To expect CAL or AVCS to contribute by way of further major grants is unrealistic. They represent a particular group of rights owners

that may sometimes include, but is certainly not synonymous with, the rights owners represented by VISCOPY. Existing societies:

- (a) cannot be required or expected to fund (whether by way of loan or otherwise) the establishment of any third party organisation, let alone one that has little to do with its own legal objects, and
- (b) would be subject to considerable criticism from its own membership if it were to spend large sums on the establishment of an organisation that was not for the benefit of its general membership.

The owners of copyright in artistic works in Australia therefore suffer under a dual economic disadvantage in comparison with other copyright owners: they lack both a copyright collecting society and a potential industry investor in one.

Copyright collecting societies are expensive to establish and to administer. In considering the following projections, it must be taken into account that they are predicated upon the repeal of s. 135ZM and the introduction of a statutory educational licence. Accordingly, any delay in introducing those amendments will necessarily affect the projections and thus the financial viability of the society.

VISCOPY - Five year cash flow projection (\$000s)					
Year					
	1	2	3	4	5
Total collections					
<i>less</i>		240	440	1340	2300
Payments to copyright owners					
<i>gives</i>	69	180330		1005	1725
Operating income less					
23		60	110	335	575
Operating expenditure (including set-up costs)					
<i>gives</i>	403	380	404	441	462

Profit (loss)	(380)	(320)	(294)	(106)	113
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Source: HH Guldberg *Income Research for proposed VISCOPY Collection Agency* Sydney 1993

One praiseworthy feature of the VISCOPY proposal which NAVA has submitted to the Government is that its expenditure projections take advantage of the scope for co-operation with:

- sister collecting societies (for example access to CAL's database and computer software; splitting administration of reprography of artistic works between CAL for its collection and VISCOPY for its distribution. CAL has agreed to co-operate in this.),
- support organisations (AAMA with respect to arrangements for Aboriginal and Torres Strait Islander artists, the Arts Law Centre of Australia, NAVA and the Australian Copyright Council with regard to educational programs),
- overseas societies and
- major collecting institutions.

But even with expenditure at the minimum required for viability, as Table 1 shows, the estimated funding requirement of VISCOPY is \$380,000 for the first year.

What overseas and Australian experience shows is that the success (which will include self-funding status) of a copyright collecting agency depends on guaranteed resources and achieving critical mass in its early years. Guldberg's analysis confirms that VISCOPY can achieve the latter so long as it has the former.

The Federal Government is the only body with the resources to enable VISCOPY to become properly established.

34.10 GOVERNMENT ASSISTANCE

34.10.1. Introduction

In Australia, the Federal Government has made its contribution to the establishment of copyright collecting societies principally via the legislature, for instance by enacting statutory licences for the administration by CAL and AVCS which secured for those organisations an immediate income flow. The Government also in this way provided for access for copyright owners to the Copyright Tribunal and its jurisdiction to set equitable remuneration for particular exploitation of copyright.

Overseas, governments have made financial contribution to the establishment of copyright collecting societies where appropriate. For example, this has happened in the visual arts in Germany and Canada. Both organisations are now self-funding.

There is no reason in principle why governments should not fund copyright collecting societies. The relevant questions for Government relate to establishing a need for such

investment, the feasibility of the aims of the society under consideration and proximity to Government's policy concerns in the relevant sector.

It is appropriate for the Government to contribute support to this disadvantaged community sector on three levels: financial, legislative and political.

34.10.2. VISCOPY's Place In The Cultural Strategy

In anticipation of the National Cultural Policy to be delivered later this year, the most accessible expression of the Government's focus is probably contained in the objectives outlined by Senator McMullan when he was Minister for the Arts, and the ALP's 1993 Federal Election policy. Those objectives are:

- (i) Co-ordination of the cultural activities of different Federal departments.
- (ii) Encouragement of co-operation between organisations working in the same field.
- (iii) Maximising the industry and economic benefits to be gained from cultural activity.
- (iv) Making the best use of the revolutions in communications and technology.
- (v) Acknowledging the pluralist nature of Australian society.
- (vi) Improving access to cultural activity for participants and consumers.
- (vii) Conservation of Australia's cultural heritage in all of its diversity, and encouragement and assistance to what is distinctly Australian.

VISCOPY gives the Government the opportunity to implement each of these objectives.

34.11. SEED FUNDING FROM THE FEDERAL GOVERNMENT

The primary objective of a copyright collecting society is to secure maximum income for its members on an equitable distribution. Government allocation of funds to a project which encourages financial independence for a comparatively deprived community within an important economic and cultural sector of industry is an appropriate contribution for Government to make.

The objectives of VISCOPY are entirely consistent with the Federal Government's objectives in its support for the arts. VISCOPY will contribute to the strengthening of financial independence of the visual arts sector, improve artists' revenue, provide an orderly framework for the exploitation of copyright by users, protect works of cultural heritage and promote Australian visual arts to the world.

Experience in both Australia and overseas shows conclusively that the success of a copyright collecting society depends very much in its early years on having sufficient financial support - and that this support must be patient. However, as both CAL and AVCS show, collecting societies can be self-funding given sufficient early critical mass and financial security.

Unlike all other classes of copyright owner, the owners of visual art copyrights lack a potential institutional investor who has either access to funds, or security for funds, or the means to expect no return on investment, for five years.

Accordingly, it is recommended that the Government provide seed funding for the establishment of a collecting society for the visual arts. The funds which VISCOPY needs are small and short term in comparison with the long term significance of the project for the practice of visual arts in Australia, for the international awareness of Australia's culture, and for Australia's standing in international intellectual property law and practice.

VISCOPY will not need open-ended funding. Its progress should be monitored, and funding could be adjusted accordingly. The research referred to in this Report indicates that VISCOPY is an ultimately self-funding proposal.

As to the quantum or duration of Government support, under the present legislative regime it would be irresponsible to suggest that such support be less than four years with \$380,000 in year 1 (calendar year 1995) and up to \$1.1 million over four years, as presently sought by VISCOPY. However, Government can minimise its financial contribution to the establishment of the society by immediately enacting the recommendations made herein for the repeal of section 135 ZM and the introduction of a statutory licence for the reprographic use of copyright material in artistic works.

The prompt introduction of these legislative measures would enable Government to reduce its financial support to just \$700,000 over the first two years of the Society's existence (see Guldberg, Table 3.5, para 3.6).

34.11.1. The Amount

The confidential Business Plan prepared by NAVA in December 1993 is a useful document in that it sets out the likely income and expenditure of VISCOPY in its initial years. Such projections can only be a matter of considered surmise but the cost projections which are provided in the business plan appear reasonable as do the relevant explanatory notes. The plan anticipates expenditure in year one of \$403,000; year two, \$380,000; year three, \$404,000; year four, \$441,000; and year five, \$462,000.

If there is a criticism to be made of these projections, it is that there has been insufficient moneys budgeted for the marketing and promotion of the new society. The present plan implies that it will be the responsibility of the CEO to promote the society and this is not necessarily the most effective approach. The success of the society is going to be affected greatly by the success of the early marketing strategy and program. To this end, a further \$40,000 per year for the first two years should be budgeted towards marketing expenses. Thus the projected expenditure for year one would be \$443,000 and year two, would be \$420,000.

Given the above, it is suggested that the Government support in year one should be \$400,000, and year two, \$300,000. The greater amount is recommended in the first year to take into account the start-up capital costs and the fact that little earned income can reasonably be expected in the first year.

34.11.2. Loan Or Cultural Investment?

It is recommended that Government not treat its contribution to establishment costs as some species of loan. To saddle the new organisation with this size of debt would be to give it birth with one hand and cripple it with the other. A preferable strategy would be, at break-even point, to require an amount equivalent to fifty percent of the Government's grant to be paid into the Society's Cultural and Benevolent Fund and the remaining fifty percent to be expended on informing the relevant rights owners about the society and its services. (One of the problems that this Report has highlighted in respect of the existing societies, is that many of their problems are perceived rather than real and that much of the misinformation concerning them would be overcome by better targeted and more comprehensive programs to inform the relevant community about the society's goals, machineries and achievements. Government can help the new Society get it right.)

34.12. STRUCTURE OF VISCOPY

To ensure full accountability, *it is recommended that VISCOPY should conform with the prescriptions and procedures of declared copyright collecting societies and the criteria set out in this Report for Qualified Societies.*

In particular, it is strongly recommended that no organisation should have the ongoing right to appoint members to the board of the company. All members must have the right to board membership and no one organisation should have an automatic right to membership or control. In particular, although NAVA is to be congratulated in taking the leading role in the campaign for a collecting society for the visual arts, it should have no entrenched place in the structure of VISCOPY beyond the Society's first year of operation. It is a means of providing an equitable and transparent collective administration for all relevant rights owners.

34.13. RECOMMENDATIONS

- That VISCOPY to be included in the National Cultural Strategy
- That s.135ZM of the Copyright Act be immediately repealed.
- Amendment to Part VB of the Copyright Act to provide a statutory licence for the reprography by educational institutions of artistic works which accompany text
- That the Government provide seed funding for the establishment of a collecting society for the visual arts.
- Commitment to fully accountable seed funding for VISCOPY for a minimum of seven hundred thousand dollars over two years and a maximum \$1.1 million over five years, depending on the speed with which s. 135ZM is repealed and the statutory educational copying right is introduced.
- That Government not treat its contribution to establishment costs as some species of loan but rather require that at break-even point, the Society be

required to pay an amount equivalent to fifty percent of the Government's grant into the Society's Cultural and Benevolent Fund and to spend the remaining fifty percent on informing the relevant rights owners about the society and its services.

- Declaration of VISCOPY as a declared copyright collecting society to administer the rights subject of statutory licence subject only to appropriate review of its Articles and Memorandum so as to ensure equity of membership, control and accountability and its compliance with the criteria set out in this Report for Qualified Societies.
- That no organisation have the ongoing right to appoint members to the board of the company. All members must have the right to board membership and no one organisation should have an automatic right to membership or control.

35. NEW TECHNOLOGIES

35.1. AMCOS

35.2. APRA

35.3. AVCS

35.4. CAL

35.5. PPCA

It is in this area that there seems to be a need for further study.

There are currently over 20 million Internet users. 2.2 million computers are connected to the 'net' which links 27000 networks in 70 countries. The number of users is doubling annually. (Figures for growth rate vary widely.) [Source: *The Global Connection*, Draft ASTEC Report 1994]

In the USA all undergraduate students get a 'net' address and many are avid users. Although there are "copyright" reminders on many of the items available on the net, the "ethics" on the net seem to be that everything is free and should be made freely available to all especially the socially and economically disadvantaged and those in remote areas where access to information services is otherwise poor.

As the price/performance of computers continues to improve the possibilities for collecting, transmitting and receiving music of good quality across the net increase. In a news report on ABC television on 29th June, there was a report of the first "record" company (in the USA) who had decided to "publish" a work on CompuServe, a commercial branch of the Internet, instead of cutting and distributing records. The sound quality, given the appropriate computer equipment, is reported to be much better than that of the average CD.

On a home Macintosh computer costing less than \$A4000 very good quality sound can now be received and enjoyed. The ability to send a 'file' containing sound to all 20 million net users exists now, or to 'post' sound to a newsgroup from which anyone who cares can 'take' a copy. American students are using the net to 'broadcast' new and original music because it is free and fun.

The net is currently more used for the dissemination of printed matter and whole books, magazines and articles are being scanned in for pick up by any net member. As communications bandwidths improve sound and visual images will be transmitted more frequently.

At the recent Copyright Convergence Conference, held in Sydney on 23rd June 1994, it was obvious that although many participants understood the possibilities, few understood the way in which copyright dues could be collected.

Multi-media is another new emerging technology that is providing challenges to copyright collecting agencies. With multi-media being used in many teaching and home productions, APPLE's multimedia software, Quick-time is free to all who ask, it will be more difficult to collect copyright dues than currently envisaged. The extent to which Distance Education will use sound, book, film and video clips has not been quantified and is increasing rapidly. Also there is a growing trend towards the delivery of "continuing" education and private education providers all of whom are heavily investing in multi-media techniques for delivery.

The attitude of each of the Collecting Societies under review to new technologies differs fairly widely.

It is strongly recommended that, as a matter of urgency, further study is made of the impact of new technologies on copyright collecting societies and potential new methods of collection.

35.1. AMCOS

The Chief Executive of AMCOS, is following the impact of new technologies on his business very closely. He is experimenting with the Internet personally in an attempt to gain a further understanding of the facilities available.

35.2. APRA

APRA Executives appreciate many of the issues involved in collecting dues under the new technological environment but, like many others, are unsure of the effect it will have on their business.

35.3. AVCS

AVCS, like many enterprises, does not appear to appreciate the extent of facilities for electronic interchange that are already provided by the Internet. The Chief Executive, believes that as the Internet is covered by copyright, a way will soon be found to enable dues to be collected.

35.4. CAL

Of all the collecting societies, CAL appears to have the best grasp of the implications of new technologies on their business. CAL's Chief Executive, has followed the development of processes to collect copyright dues under the new technologies.

Whilst not yet having all the answers, he is well informed of the issues and overseas initiatives to find solutions.

35.5. PPCA

The Executive Director of PPCA has a very good understanding of the impact of new technology on the record industry. He participates in several UK and European industry forums and is actively trying to increase his personal understanding of the use of technologies such as the Internet.

RECOMMENDATION

- That, as a matter of urgency, further study is made of the impact of new technologies on copyright collecting societies and potential new methods of collection.

APPENDIX ONE: STRUCTURE OF INQUIRY MADE OF EACH SOCIETY

A. GENERAL OUTLINE:

- WHAT ARE COLLECTING SOCIETIES?
- WHAT DOES EACH DO?
- HOW DO THEY DO IT?
- FOR WHOM DO THEY DO IT?
- DO THEY DO IT FAIRLY?
- DO THEY DO IT EFFICIENTLY?
- WHAT LEGISLATIVE CHANGES WOULD ASSIST THE SOCIETIES?
- WHAT IS THE FUTURE OF THE SOCIETIES?
- DO THEY BENEFIT THE CULTURAL ECONOMY OF AUSTRALIA

B. QUESTIONS OUTLINE:

1. BACKGROUND

- historical background
- legal structure
- management plan

2. JURISDICTION

- geographical jurisdiction of the society
- offices and staff outside Australia
- supervision of the territory

3. RIGHTS ADMINISTERED

- the rights administered by the society
- legal relationship between society and rights owners
- whether the right administered is voluntary or non-voluntary
- degree of monopoly control by the society of the right administered
- equity of treatment of members
- degree of control over the right that is retained by a member
- licensor indemnity
- effect of new technology on the rights administered
- "non-voluntary" versus "collective administration"

4. MEMBERSHIP

- classes of society membership
- number of members
- methods used to attract and enlist new members
- published information for copyright owners
- eligibility requirements
- fees and/or commission charged
- activeness of membership
- representativeness of membership
- services or benefits provided
- annual report

- communication with members

5. GOVERNING BOARD

- size of board
- means of election
- degree of member representation
- voting power between board members
- term of board membership
- remuneration of board members
- frequency of meetings
- attendance at meetings
- record keeping
- delegations to staff

6. ACCOUNTS

- ease of comprehension
- frequency of audit
- reporting requirements

7. COLLECTION OF REVENUE

- gross sum collected
- collection income received from overseas sources
- role of non-members
- number of licences granted each year
- number of individual works licensed each year
- description of licensees
- geographical location of licensees

8. OWNER IDENTIFICATION

- processes/techniques used to identify copyright owners
- processes/techniques review systems
- criticisms of the processes/techniques
- training of those who participate in the processes/techniques
- role of Copyright Tribunal in determining the processes/techniques
- cost of the identification process, relative to the royalty it generates
- plans to change the identification processes/techniques

9. DISTRIBUTIONS

- processes/techniques used to quantify royalties
- frequency of distributions
- qualifications of recipients
- the distribution process
- proportion of gross income distributed to members
- use made of undistributed income not spent on direct administration
- use of undistributed money where owner unidentified or located
- use of escrow or trust accounts
- amount distributed to overseas copyright owners
- quality of accounting for royalties collected by the society?

10. THE SETTING OF RATES FOR COPYRIGHT USAGES

- the process by which the society sets the rates of fee/royalty
- equity of the rate setting process
- recommendations as to how the rate setting process might be improved
- degree of government control over the licensing procedures
- relevance and effectiveness of the Copyright Tribunal

- published material available as to the rates and how those rates are struck

11. ENFORCEMENT

- policing of rights performed by the society
- maintenance of a fighting fund for dealing with infringement cases
- enforcement policy
- role in promoting law reform and government policy formulation

12. COMPUTER ADMINISTRATION

- computer hardware/software appropriateness and efficiency
- computer location
- ownership
- administration

13. ADMINISTRATIVE EXPENDITURE

- technique for determining administrative deduction
- percentage of gross income spent for administrative purposes
- number function and location of staff
- cost effectiveness of overseas administrative expenses
- staff entertainment or amenities
- overseas travel
- cars
- awards night or like functions
- executive remuneration
- ownership value and indebtedness of premises
- sharing of administrative resources
- membership or affiliation fees
- loans to any other organisation or person

- co-operation or merger of societies
- declared collecting societies

14. EDUCATIONAL ACTIVITIES

- educational activities undertaken and planned
- target audience
- amount of funds contributed by society
- criteria used to select educational programs
- criteria are used to determine success
- reporting criteria
- international treaty or society rules

15. TAXATION

- tax status
- treatment of foreign copyright owners
- society as tax collector

16. FOREIGN SOCIETIES

- affiliation with international network of collecting societies
- reciprocal arrangements
- basis of distributions
- proportion of the society's income paid overseas
- proportion of the society's income received from overseas
- terms upon which overseas distributions are made and received
- efficiency of foreign societies in representation of local society
- deductions by the local society prior to overseas remittance
- deductions by the overseas society prior to Australian remittance
- role of umbrella organisations

- standardisation of documentation with overseas societies
- use of electronic data transfer and processing between societies

17. TRADE PRACTICES ACT

- impact of the monopoly provisions of the TPA on society operations
- registration of agreements with the Trade Practices Commission
- amendments to TPA for the good governance of the society

18. COPYRIGHT ACT

- role of Copyright Tribunal
- jurisdiction of the Copyright Tribunal
- amendment to role or jurisdiction of Copyright Tribunal
- introduction of any additional statutory licences
- amendments to the Copyright Act necessary

19. NEW TECHNOLOGIES:

- effect of emerging and new technologies

APPENDIX TWO: CONTACTS AND SUBMISSIONS

At the outset, it was decided by the commissioners of the Report that there was no need for public hearings or a formal process for asking for submissions. Instead, a number of organisations were identified as being key users of collecting societies - whether as copyright owners or copyright users.

These were written to and asked if they had views that they wished to put to the Inquiry. Many simply didn't reply; others made initial contact and said that they would make a written submission - and didn't; others did make useful submissions.

The following organisations were contacted, or having heard about the Inquiry from other sources, made contact of their own initiative.

KEY: * = no response; **PA** = personal attendance/meeting; **TR** = telephone response; **WR** = written response; **WR&S** = written response and submission.

Aboriginal Arts Management (PA)

ACTU (PA)

Art Gallery of NSW*

Art Gallery of South Australia*

b>Art Gallery of Western Australia*

Artbank*

Arts Law Centre of Australia (TR)

Ausmusic (TR)
Australia Council (TR)
Australian Book Publishers' Association
(WR)
Australian Broadcasting Authority*
Australian Council Of Libraries And Information
Services (WR&S)
Australian Film Finance Corporation (WR
and PA)
Australian Museum*
Australian Music Centre*
Australian Music Managers Forum (WR)
Australian Society of Authors (WR)
Australian Vice Chancellors' Committee
(WR)
Australian Writers' Guild*
Central Australian Aboriginal Media Association
(TR)
Coalition of Independent Recording Creators
(PA)
Combined Newspaper and Magazine Copyright
Cmtee. of Aust (WR&S)
Communications Law Centre*
Copyright Council (TR)
Country Music Association (TR)
Dept For The Arts And Cultural Heritage (SA.)
(WR)
Entertainment Industry Council (TR)
Entertainment Industry Employers Association*
Federation of Australian Radio Broadcasters
Limited (TR)
Federation of Commercial Television Stations
(TR)
Federation of Narrowcasting and Subscription
Services*
Fellowship of Australian Writers*
Film Australia*
Library & Information Management Services
(WR&S)
Media Entertainment & Arts Alliance
(WR&S)
Museum Of Applied Arts And Sciences*
Museum of Victoria*
Museum of West Australia (TR)
Musicians' Union of Australia (WR)
National Association For The Visual Arts
(WR&S)
National Film And Sound Archives (WR&S)
National Gallery Of Australia (WR&S)
National Gallery of Victoria*

National Library of Australia*
National Maritime Museum*
National Museum of Australia*
Northern Territory Museum of Arts and Sciences
(WR&S)
NSW Ministry Of The Arts (TR)
Producers And Directors Guild*
Queensland Art Gallery*
Queensland Museum*
Queensland TAFE (WR&S)
Regional Galleries Association of NSW
(WR&S)
Screen Production Association of Australia
(TR)
Songwriters Composers and Lyricists Association
Inc*
South Australian Museum*
St John Ambulance Australia (WS)
Tasmanian Museum and Art Gallery*
Uniting Church Synod (TS)
Victorian Fitness Industry Association
(WS)
Western Australian Museum (TR)

APPENDIX THREE: ADDITIONAL COLLECTING SOCIETIES

The focus of this Report is the five major collecting societies. There are at least three other licensing/collecting societies in Australia. They are newly established and the ambit of their operation is limited to the licensing of religious music for use in worship.

These organisations are:

Word Of Life Pty Limited

MediaCom Associates Inc (LicenSing)

Christian Copyright Licensing Pty Limited

Each of the above provided responses to the Inquiry questionnaire but the commissioners decided that the focus of the Report should be the five major societies. Accordingly, the commissioners have been supplied with the above responses in the supporting information and materials which accompanies the Report.

APPENDIX FOUR: GLOSSARY

ABPA: *Australian Book Publishers Association*

ACLIS: *Australian Council of Libraries and Information Services*

AEROS database: *Australian Electronic Record Ordering System*

AMMF: *Australian Music Managers Forum*

ANZ Music Copyright Agency: *predecessor to AMCOS*

ARIA: *Australian Record Industry Association*

ASA: *Australian Society of Authors*

ASCAP: *American Society of Composers , Authors and Publishers*

assignment: *transfer of ownership of rights*

Attorney-General's Guidelines: *Rules developed by the Attorney General's Department by which the Declared Societies are required to operate*

AMPAL: *Australian Music Publishers Association Limited*

AVCC: *Australian Vice-Chancellors' Committee*

BIEM: *the international society of mechanical copyright owners*

BillBoard: *American music magazine*

Blank Tape Levy: *Mechanism for rewarding the copyright owners whose works are reproduced by home taping of records and broadcasts*

blanket licence: *a licence relating to a species of copyright material cf. a licence for an individual work or recording, usually permitting use of such material for a set fee, irrespective of the which particular item within the species is used. The royalty liability is not directly related to the number of works used.*

BMI: *Broadcast Music Inc*

PRS: *British Performing Right Society*

CAE: *Compositeur-Auteur-Editeur, the composers authors and publishers register maintained by SUISA*

CD Rom: *An optical compact disc which is written at the factory and can only be read - not altered by the viewer/listener*

CIAGP: *Confederation of International Societies of the Graphic and Plastic Arts and Photographers , a subsidiary council of CISAC*

CISAC: *Confederation of International Societies of Authors and Composers*

collective administration: *a system of copyright administration whereby owners of rights authorise collective administration organisations to administer their rights, that is, to monitor the use of the works concerned, negotiate with prospective users,*

give them licences against appropriate fees and, under appropriate conditions, collect such fees and distribute them among the owners of rights..

CORS: *Copyright Owners Reproduction Society Limited , predecessor to AMPAL*

DACS: *Designers and Artists Copyright Society (U.K.)*

cover recordings: *recording by a performer other than the composer of the work*

cue sheet: *document that lists all music in a program, the order of performance, the time each performance runs, the names of the work's composers and publishers and performing rights society affiliations*

Declared Societies: *collecting societies which are formally declared under the Copyright Act and which operate pursuant to the Attorney General's Guidelines*

dormant repertoire: *works which are registered with the society but which have not been reported as having been exploited for many years.*

EDI: *Electronic Data Interchange*

fiches internationales: *international system of index cards indicating details of a work, author, the author's number, publisher/sub-publisher details, performing right %s and mechanical rights %s*

Grand Rights: *the right to perform or broadcast a dramatico-musical work, an oratorio or long choral work, or a work in association with ballet*

IDC: *Inter-Departmental Committee*

IFPI: *the International Federation of Phonograph Producers*

IFRRO : *International Federation of Reproduction Rights Organisations*

Independent: *a record company that is not owned by one of the Major companies*

Library recordings: *also known as Production Music*

licence: *permission to use one of the rights which is within the exclusive control of the copyright owner*

Major: *One of the six largest record companies in the country: BMG, Sony, EMI, Festival, Polygram and Warner Music*

MCPS : *UK mechanical copyright society*

mechanical royalty: *the royalty paid for the right to reproduce a work in a recording*

MIDI files: *discs of digitally sampled sounds which can be manipulated*

NAVA: *National Association for the Visual Arts*

neighbouring rights:

non-profit companies limited by guarantee: *companies that do not have a shareholding and in which persons become members by guaranteeing that in the event that the company is wound up and the liabilities of the company exceed its assets, they will pay an agreed sum towards to deficit: usually \$20. They are "non-profit" in that any profits made by the company must be spent on the objects of the company rather than paid out to the members.*

PACCS: *Private Audio Copyright Collecting Society*

PPD: *Published Price to Dealers*

Production Music: *library or mood music*

RROs: *Reproduction Rights Organisations*

RIANZ: *Record Industry Association of NZ*

RRA: *royalty rate advice*

Small Rights : *all performing rights that are not Grand Rights*

statutory or compulsory licence: *a licence granted by statute whereby a person can use a copyright, irrespective of the owner's wishes, provided that the user fulfils the statutory pre-conditions for such use*

statutory rate: *the term used to describe the fee set by the Copyright legislation as being payable in respect of the compulsory licence permitting the reproduction of a musical or literary work in a sound recording*

SUISA : *the Swiss performance collecting society*

synchronisation: *the embodying of music in the sound-track of a film*

WIPO: *World Intellectual Property Rights Organisation*